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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HOWARD HOLT, ET AL.,

Plaintiff,

No. 1:15cv931

vs.

CITY OF BATTLE CREEK,

Defendant.

Before:

THE HONORABLE JANET NEFF,  
U.S. District Judge  
Grand Rapids, Michigan  
Wednesday, August 22, 2018  
Trial Proceedings, Volume I

APPEARANCES:

Avanti Law Group  
MR. ROBERT ANTHONY ALVAREZ  
MR. AGUSTIN HENRIQUEZ, JR.  
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On behalf of the Plaintiff;

Kreis Enderle Callander & Hudgins PC  
MR. MARK E. KRETER  
MR. DANIEL WALLACE BOOCHER  
One W. Michigan Avenue  
Battle Creek, MI 49017  
269-966-3000

On behalf of the Defendant.

REPORTED BY: MS. KATHY J. ANDERSON, RPR, FCRR

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August 22, 2018

PROCEEDINGS, 8:42 a.m.

THE LAW CLERK: All rise, please. Court is now in session. You may be seated.

THE COURT: Good morning, everybody.

MR. ALVAREZ: Good morning.

MR. KRETER: Good morning, Your Honor.

THE COURT: This is the date and time set for trial in case number 1:15cv931, Howard Holt and Marvin Erskine versus the City of Battle Creek. May I please have appearances and introductions.

MR. ALVAREZ: Robert Anthony Alvarez on behalf of the plaintiffs. I also have here Martin Erskine, plaintiff Howard Holt, my associate counsel, Agustin Henriquez. I do also have my two paralegals, Maddison Linton, and M-A-R-I-S-O-L, S-A-U-C-E-D-O.

THE COURT: Thank you, Mr. Alvarez.

MR. KRETER: Good morning, Your Honor. Mark Kreter on behalf of the City of Battle Creek. I have with me the city manager, Rebecca Fleury, Dan Booher from our law firm, Kreis Enderle, and also Nancy Mullett from the City of Battle Creek is here. She was a witness but she has been excluded so I don't believe the sequestration order applies any more to her.

THE COURT: Very well. Thank you. This case is proceeding as a bench trial. I have put in place some time

1 limitations. Always feel free to use less time than is  
2 allotted. But I think, Mr. Alvarez, what we are ready for  
3 right now is your opening statement.

4 MR. ALVAREZ: Thank you, Your Honor. May it please  
5 the Court. Your Honor, this case is a simple, straightforward  
6 wage and hour case. We have two individuals who were required  
7 to work hours for which they were not compensated. They were  
8 required to be engaged to wait for something to happen.

9 They were battalion chiefs. The evidence will show  
10 that at least during the period of time in question the  
11 plaintiffs's primary duty, especially in the hours for which  
12 they were not compensated, their primary responsibility was as  
13 a fire fighter. The evidence will show that despite their  
14 titles, despite their job descriptions, their primary  
15 responsibility for the fire department was to be a fire  
16 fighter.

17 The evidence will show that during the period of time  
18 in question they were required on an alternating week basis,  
19 sometimes every third week, but for the most part every  
20 alternating week, to work essentially 168 hours a week, 24-hour  
21 periods for seven days straight as part of their  
22 responsibilities.

23 They would work their normal eight to nine-hour day,  
24 and then they would be required to be on-call, on standby is  
25 the term that's used throughout, that will be used throughout

1 this case.

2 And during that standby period, the evidence will show  
3 that they were so restricted in what they could do and could  
4 not do during that period of time that they should have been  
5 compensated; that they were working; that their time was not  
6 their own.

7 The defense will claim that they were free to do as  
8 they wanted, that they were able to go play golf, that they  
9 were able to go out to dinner, that they were able to do all  
10 sorts of things. The testimony of the plaintiffs and of their  
11 spouses will show that that's not the case. They were required  
12 to carry electronic devices with them at all times; they were  
13 required to monitor those electronic devices at all times; they  
14 were required to respond to any calls, any alarms that came  
15 through; answer telephone calls; they were required to respond  
16 to structure fires; they were required to respond to multi  
17 vehicle accidents; they were required to respond to hazardous  
18 material spills; they were required to respond to water  
19 rescues, ice rescues, and for requests and requests for mutual  
20 aid. And all of this with no advance warning. They didn't  
21 know, as they will testify, when one of those incidents was  
22 going to come through on the radio, or on their pager, or on  
23 their cell phone. And so they had to be monitoring, actively  
24 monitoring any calls that came through. Whether it be right  
25 after they got home from their full day of work or at 3 a.m. in

1 the morning.

2 Their wives will testify that the burden was so great,  
3 the restrictions were so great that in fact one of them will  
4 testify it felt like they were prisoners in their own home.

5 They had to always be within radio and telephone  
6 range; they couldn't drink alcohol; they couldn't baby-sit;  
7 they couldn't supervise or care for any minor children; they  
8 couldn't travel in one vehicle with their family; and as even  
9 the city's own witnesses have testified and will testify to,  
10 they had to be within 15 minutes of any emergency within the  
11 jurisdiction of the fire department.

12 They couldn't leave the jurisdiction to go out to eat;  
13 they couldn't leave the jurisdiction during that standby, that  
14 standby period when they were on-call to visit family outside  
15 of the jurisdiction; they couldn't attend sporting events.  
16 Mr. Erskine will testify that he no longer played sports as he  
17 used to regularly during the weeks that he was on-call; they  
18 couldn't mow the lawn, couldn't fix cars, as Mr. Erskine liked  
19 to do or did sometimes for friends and family. And though  
20 Mr. Erskine will testify and his wife will as well that they  
21 could go out to dinner, and in fact they did go out to dinner  
22 sometimes when he was, when he was on-call, they couldn't enjoy  
23 their dinner. They couldn't enjoy that time with each other  
24 because he had to have that, those electronic devices with him,  
25 and the interruption that was caused, the distraction that was

1 caused was not just to them but to those in the restaurant, or  
2 even those at church. They couldn't worship together.

3 They will testify that during the weeks that they were  
4 on-call, on standby, they couldn't sit with their spouses in  
5 church because of the radio that they had to monitor, that they  
6 had to carry with them at all times.

7 Mr. Holt will testify that after a while him and his  
8 wife just stopped doing anything. He stopped hunting, he  
9 stopped camping, and he stopped riding his motorcycle because  
10 of the restrictions that were placed on him during that period  
11 of time that he was supposed to be on standby every other week.

12 They could sleep but it wasn't a restful sleep. As  
13 they will testify, they had to be light sleepers. At any  
14 moment that an alarm would sound, that the radio would go off,  
15 that a pager would go off, they had to be awake, they had to be  
16 of present mind to understand what the call was, to confirm  
17 that it wasn't an emergency that they needed to respond to in  
18 that moment or if it was to get up, get dressed and head out  
19 the door.

20 Their spouses will testify that they couldn't get a  
21 restful sleep either during that week because the radio was in  
22 the bedroom, the radio would go off and it was loud enough for  
23 the plaintiffs to have to hear that; of course their wives were  
24 also awoken.

25 They will testify that they couldn't simply ignore a

1 call. They were on standby; they were required to respond  
2 because, though they are officers within the fire department,  
3 they also count towards the two-in/two-out rule which is  
4 mandated by law, and they will explain what that process is and  
5 explain why it's required.

6 They will testify that an engine responding to a call  
7 has two fire fighters and one officer for a total of three.  
8 Their response to a call would then total the four that's  
9 required under that regulation.

10 They will also testify that despite the job  
11 descriptions, despite the myriad of items that those job  
12 descriptions describe as to what their duties were during the  
13 day, they will testify to, they will also testify that if a  
14 call came in none of those other duties mattered, and they  
15 would have to drop what they were doing and respond.

16 So the evidence in this case will show that they are  
17 not exempt, also because their authority to make decisions,  
18 their judgment was limited based on the approval of the chief.

19 They will describe and give examples of events and  
20 times when they made recommendations for discipline, when they  
21 have made recommendations for suspensions that were rejected by  
22 the chiefs. They will testify to the fact that basically they  
23 were, as Mr. Holt will testify to, nothing more than a go  
24 between between the fire fighters union and the chief. That  
25 the work that they did, the majority of was clerical,

1 secretarial work.

2 And they will testify that at the end of the day they  
3 were, and Mr. Erskine still is, a fire fighter. And the  
4 biggest confirmation of this and the fact that this standby  
5 time came about and was created by Chief Houseman, as we will  
6 hear him testify to tomorrow, was primarily due to budgeting.  
7 Chief Houseman initiated this standby program, this standby  
8 action plan as a means to save the department money. At the  
9 time when there was a budget crisis, this was seen as a way to  
10 mitigate that budget shortfall. And in fact, the city did save  
11 a lot of money in overtime. And nothing confirms that more  
12 than the fact that today the City of Battle Creek Fire  
13 Department no longer uses this schedule, this alternating week  
14 schedule. They in fact have their battalion chiefs, four now,  
15 before it was only the two plaintiffs, now they have four  
16 battalion chiefs, and they are on a 24-hour rotation. And they  
17 get paid for all of that time. They are no longer on standby.  
18 And the same activities that the plaintiffs did when they were  
19 at home monitoring the radio are the same activities that  
20 Mr. Erskine and the other three battalion chiefs do now but get  
21 paid for it.

22 Mr. Erskine will testify that now on his day that he  
23 is on-call for 24 hours, he still goes out to eat with his wife  
24 but he gets paid for it. Whereas before that was not the case.

25 And so, Your Honor, we are going to request that this



1 Court find that they were engaged to wait. That they were not  
2 exempt from overtime either under the executive or the  
3 administrative exemptions, and that they should have been  
4 compensated for that time. And I would remind the Court that  
5 we are talking about a period of time between 2012 and 2015  
6 when it was only two battalion chiefs that were working and  
7 that were rotating on this standby schedule. And every other  
8 week they each had to work 24 hours a day, seven days a week.  
9 They had to be at the ready, to drop whatever they were doing  
10 to get their drop off, their gear together, and go join the  
11 other fire fighters on whatever scene they had to respond to.

12 Thank you. Nothing further.

13 THE COURT: Thank you, Mr. Alvarez.

14 MR. KRETER: Thank you, Your Honor. May it please the  
15 Court. When I prepare for a trial I try to break the case down  
16 to one simple theme or conclusion. And this case is about  
17 managing, leading, and directing. That is what the two  
18 battalion chiefs in this case, Mr. Holt and Mr. Erskine, did  
19 throughout 2012 and 2015. They managed, they led, and they  
20 directed. And that included their day-to-day activities as  
21 battalion chiefs and also their activities when there was a  
22 fire and they acted as incident commander.

23 The City of Battle Creek has anywhere from 85 to 90  
24 members of their fire department. The chief is the leader of  
25 the fire department and his two battalion chiefs make up the

1 management team. There are three people that make up the  
2 management team of the fire department.

3 I want to break this down as we went through our  
4 proposed joint statement of the case and elements of the claim.  
5 First, for plaintiff to establish their case, we have to  
6 determine whether they're exempt or nonexempt employees. The  
7 Supreme Court in April, United States Supreme Court issued an  
8 opinion in the Encino case which we have cited in our briefing  
9 that we look at the overall circumstances fairly when  
10 determining whether there's an exemption under FLSA. It used  
11 to be that the exemption was strictly construed. Now it's  
12 fairly interpreted.

13 So I would submit that throughout this trial we need  
14 to look at the overall set of circumstances to determine if the  
15 plaintiffs fall under that exemption. And there are two  
16 exemptions: There's the executive exemption. Can we put the  
17 joint statement on the screen?

18 So there's the executive exemption and there's the  
19 administrative exemption. And we are in agreement, except for  
20 a couple elements on each exemption. As far as the executive  
21 exemption goes, there's a dispute as to whether the battalion  
22 chief's primary duty was management of the fire department.  
23 And there's also a dispute as to the amount of authority or  
24 amount, amount of say so that they had in advancement,  
25 promotion of employees within the fire department.

1           The City of Battle Creek has a civil service procedure  
2           in place, so ultimately from a legal standpoint, it was the  
3           city manager that had the ultimate authority to hire or fire,  
4           however, the evidence will show that the battalion chiefs were  
5           given their opinion as to promotion, advancement, discipline,  
6           was given weight by the fire chief and the city.

7           But if we move down to the second administrative  
8           exemption, and I think this is the easiest path to establish  
9           that the battalion chiefs were exempt. We look at the two  
10          issues in dispute.

11          The one is the parties dispute whether the second  
12          requirement of the three-part test to come within the  
13          administrative exemption has been met, specifically, whether  
14          plaintiffs's primary duty is performance of office, or  
15          nonmanagerial work directly related to the management or  
16          general business operations of Battle Creek Fire Department.

17          We are going to produce evidence both by direct  
18          testimony from Chief Houseman, cross-examination testimony from  
19          the plaintiffs, and the documented evidence that their primary  
20          work was nonmanual, and that it was important to the business  
21          operation of the fire department.

22          Then the next requirement to meet the administrative  
23          exemption is specifically whether plaintiffs's primary duty  
24          included the exercise of discretion and independent judgment  
25          with respect to matters of significance.

1           Again, we are going to establish that in performing  
2 their jobs and being second in command of the fire department,  
3 that they had to exercise discretion, they had to exercise  
4 independent judgment, and they were of significance.

5           Perhaps the most on a day-to-day basis the fire  
6 department is a highly organized organization. Everybody, all  
7 85 to 90 members know their roles. The fire fighters know what  
8 their responsibilities are, the lieutenants, the captains, the  
9 battalion chiefs and the chiefs. And everything they do during  
10 the course of a week is designed to when that fire call comes  
11 in to suppress a fire or to prevent a fire.

12           You'll hear evidence that the battalion chiefs were in  
13 charge of and played an important function in maintaining  
14 equipment, in training fire fighters, and evaluating fire  
15 fighters, in disciplining fire fighters. And there are  
16 documents after documents in the exhibit books about standard  
17 operating procedures that were used by the Battle Creek Fire  
18 Department. The standard operating procedures is the play  
19 book. This was what the fire department used to prepare  
20 themselves to suppress fires, to respond to medical  
21 emergencies, to respond to HazMat situations. And, again, the  
22 battalion chiefs were involved in not only their input as to  
23 what would be in the standard operating procedures, but also  
24 implementing those operating procedures.

25           So, again, day-to-day basis the battalion chiefs were

1 involved in making sure everybody knew what their role was and  
2 putting everyone in the right place so they could safely,  
3 effectively, and efficiently suppress fires when needed.

4           When a fire occurred and the battalion chief was on  
5 standby, or during their 40-hour shift when the suppression  
6 chief would respond, ultimately when the battalion chief went  
7 to a fire scene, the battalion chief was not a fire fighter.  
8 The battalion chief was the incident commander. And we are  
9 going to go through I think a 10-page document that says what  
10 an incident commander does. The incident commander at a fire  
11 scene sits in his vehicle, is not supposed to get out of his  
12 vehicle, and listens to the radio traffic so that he knows what  
13 is going on by monitoring the radio traffic; he doesn't want to  
14 be outside the vehicle because he needs to concentrate. And  
15 his role is, as you will hear former fire Chief Houseman  
16 testify, is to manage, lead, and direct. In other words, all  
17 the training, all the procedures are now in place, it's time to  
18 fight the fire, and it's the battalion chief that is managing,  
19 leading and directing the fire fighters how to fight the fire.  
20 There could be no more important management job than fighting  
21 or commanding the fire scene. And, again, that was an  
22 important element of their job as battalion chiefs.

23           Subjectively I believe the evidence will show they  
24 never saw themselves as managers. They were always a fire  
25 fighter. They came up through the ranks of being a fire

1 fighter. But when they became battalion chiefs, they became  
2 managers.

3 And we believe that we will never get to the issue of  
4 standby because we believe the evidence will establish that  
5 they were exempt. And I would point out that in preparing for  
6 trial, obviously I have discussed with Mr. Houseman his  
7 testimony, and I've read plaintiffs's depositions and it looks  
8 like we have got two different organizations they are working  
9 for. But the one thing that's compelling are the documents.  
10 They are objective and they clearly will support our claim that  
11 they were exempt employees.

12 In the event the Court should find they were not  
13 exempt employees, then we look at standby. We look at was the  
14 battalion chiefs's time on standby so onerous as to prevent the  
15 plaintiffs from enjoying their personal pursuits of life. And  
16 we are going to go through several elements to do that  
17 analysis. But I will point out the evidence will show that,  
18 first, they were only, while on standby, the battalion chiefs  
19 are only required to respond to structure fires. The evidence  
20 will show that between 2012 and 2015 there was less than one  
21 structure fire a week. And a lot of those structure fires  
22 occurred during the daytime. There was no requirement that  
23 they monitor radio traffic. They did, it was required that  
24 they have a pager and the pager could be set at an alert tone.  
25 In other words, the evidence will show that when they were

1 sleeping, when they were out to a restaurant, when they were  
2 mowing the yard, if they set the, they could set the pager at  
3 the alert which would alert them of a structure fire. Then at  
4 that point they would go to the radio, monitor the radio and go  
5 to the scene. That's what Chief Houseman will testify to.

6 Again, the payroll records of Mr. Erskine and Mr. Holt  
7 will show that during this period of time that Mr. Erskine  
8 worked an average of 3.4 hours per week while on standby. What  
9 we will refer to as overtime. The records will show that  
10 Mr. Holt worked 2.2 hours per week of overtime while on  
11 standby. Effectively, those records support that there was  
12 only one structure fire a week and they were only called in on  
13 average once a week. They weren't being called in every day,  
14 multiple times a day. They have testified to that. But the  
15 records show that their time records that they fill out show  
16 that they were called in between 2.2 and 3.4 hours a week  
17 during that three-year period.

18 We think the evidence will be overwhelming to  
19 establish that standby was not so onerous to prevent plaintiffs  
20 from enjoying their personal pursuits of life. You will also  
21 hear evidence that in the event of a conflict, if somebody had  
22 a vacation, you know, family function, that they were willing  
23 to trade with each other. Either take a day, trade a week, but  
24 that there was flexibility. You will also, well, what you  
25 won't hear is any evidence that the plaintiffs complained of

1 the standby arrangement. You will hear evidence that this was  
2 a negotiated agreement, and you will also see an exhibit where  
3 the plaintiffs sent to the chief an e-mail saying that they did  
4 not want to switch to this 24/48-hour shift. And you will hear  
5 evidence from Chief Houseman who was the fire chief for the  
6 City of Battle Creek for 15 years, he retired in 2013, I  
7 believe, that standby did not interfere with his personal  
8 pursuits and other battalion chiefs's personal pursuits.

9 In the event the Court disagrees with us and finds the  
10 plaintiffs nonexempt, finds that the standby was onerous, then  
11 we will get to the issue of liquidated damages, and we need to  
12 establish, the burden is on the defendant to establish that we  
13 acted in good faith. You will hear evidence from  
14 Russ Claggett, the former employment relations administrator  
15 and attorney for the City of Battle Creek who negotiated this  
16 contract with the battalion chiefs, that he went through the  
17 exempt, nonexempt status when negotiating this and in his mind  
18 determined that the battalion chiefs were exempt and therefore  
19 that this was a valid agreement and that they were not entitled  
20 to overtime.

21 Finally, there's also a claim for willful damages. We  
22 have talked about 2012 to 2015. But we think the evidence will  
23 show that there is, in fact, I don't think there is any  
24 evidence to establish that the City of Battle Creek did  
25 anything willful. The City of Battle Creek didn't do anything



1 willful here then the time period is from 2013 to 2015. The  
2 2012 period is only if there's a finding that Battle Creek did  
3 something willful which is reckless, and I don't think that we  
4 are going to see that in this case.

5 The witnesses that we intend to call, as I've already  
6 mentioned, former fire chief Larry Houseman, Russ Claggett, and  
7 possibly Linda Morrison who is the finance director for the  
8 City of Battle Creek. And, again, I would emphasize that the  
9 exhibits are the best objective evidence in this case. Thank  
10 you, Your Honor.

11 THE COURT: Thank you, sir. Mr. Alvarez. Before we  
12 get to your witnesses, Mr. Alvarez, let's dispense with the  
13 formality of admitting the exhibits. There are 25 joint  
14 exhibits, correct?

15 MR. ALVAREZ: That is correct, Your Honor.

16 THE COURT: And we are going to admit those 25 without  
17 objection, correct?

18 MR. ALVAREZ: That is correct.

19 THE COURT: And then plaintiffs have 16 exhibits and  
20 the defendants have, oh, boy, I can't count past 26, whatever  
21 that is -- be 40, I guess. Are there going to be objections  
22 to those exhibits?

23 MR. ALVAREZ: To the defendant's exhibits?

24 THE COURT: Either to yours or to the -- sorry. Do  
25 you object to any of the defendant's proposed exhibits?

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 MR. ALVAREZ: No, Your Honor.

2 THE COURT: Mr. Kreter.

3 MR. KRETER: No, we have no objection. We stipulated  
4 to admission of all the exhibits.

5 THE COURT: Okay. So all of the exhibits which have  
6 been provided to the Court, Joint Exhibits 1 through 25,  
7 Plaintiff's Exhibit 1 through 16, Defendant's Exhibit A through  
8 MM, are admitted and we won't have any further indication of  
9 anything. You can just use them in your testimony or whatever  
10 you wish to use them for. Okay.

11 MR. ALVAREZ: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. ALVAREZ: Your Honor, at this time we would like  
14 to call Arthur David Schmaltz.

15 ARTHUR DAVID SCHMALTZ, PLAINTIFF WITNESS, WAS DULY  
16 SWORN

17 THE LAW CLERK: You may have a seat. If you'll please  
18 state your name and spell your last name for the record.

19 THE WITNESS: Arthur David Schmaltz. Last name is  
20 S-C-H-M-A-L-T-Z.

21 DIRECT EXAMINATION

22 BY MR. ALVAREZ:

23 Q Good morning, Mr. Schmaltz.

24 A Good morning.

25 Q Mr. Schmaltz, can you tell us what your relationship was

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 with the City of Battle Creek?

2 A I was the fire chief for the City of Battle Creek from 2014  
3 of February to August of 2018.

4 Q Okay. And can you tell us what was the or what is the  
5 jurisdiction of the fire department for the City of Battle  
6 Creek?

7 A As far as the jurisdiction of where we respond?

8 Q That is correct.

9 A The city limits.

10 Q And how big is the City of Battle Creek?

11 A I believe it's 44 square miles.

12 Q And when you were fire chief, how many battalion chiefs did  
13 you have working for the department?

14 A At the beginning I had two and then I promoted two more, so  
15 we had a total of four.

16 Q And when was it that you had those four?

17 A I think officially it would have been May of 2015.

18 Q And prior to May of 2015, isn't it true that the only  
19 battalion chiefs for the fire department of Battle Creek were  
20 the plaintiffs, Martin Erskine and Howard Holt?

21 A Correct.

22 Q And when you joined the department as fire chief, you  
23 inherited a system known as the standby system for  
24 addressing -- you inherited a system called a standby system.

25 A I don't think we call it a standby system. It was the duty

## ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 chief system. That's what I always referred to it as.

2 Q Okay. And the duty chief system was essentially an  
3 alternating week rotation among the battalion chiefs and I  
4 believe yourself, correct?

5 A Correct.

6 Q And that system called for either yourself or one of the  
7 battalion chiefs to be on-call after normal working hours from  
8 say 5:00 o'clock in the afternoon until 8:00 o'clock the next  
9 morning?

10 A Correct.

11 Q Seven days a week.

12 A Correct.

13 Q And you said that you eventually in May of 2015 hired two  
14 additional battalion chiefs.

15 A Correct.

16 Q And did you retain the deputy chief system, the same  
17 standby system?

18 A We didn't have deputy chiefs.

19 Q I'm sorry, duty chief.

20 A Duty chiefs. No, because I put the battalion chiefs on  
21 24-hour shifts.

22 Q And how, and how does that 24-hour shift rotation differ  
23 from the alternating week rotation?

24 A The 24-hour shift works 24 hours on then has 48 hours off.  
25 And it coincides with the three platoon system that we have in

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 the department.

2 Q And during those 24 hours on, the battalion chiefs are to  
3 remain at the fire house for the entire 24 hours.

4 A They, again, they go throughout the city. So but their,  
5 their office was at one fire station.

6 Q During that 24-hour system, unlike the standby system, we  
7 will just refer to it as the standby system for purposes of  
8 today, the fire chiefs under the 24-hour system were being paid  
9 for that entire 24-hour period, correct?

10 A Correct.

11 Q While under the standby system, they were not paid for  
12 those 24 hours that they were on duty.

13 A They were paid for the eight hours that they worked or  
14 whenever they were called back in.

15 Q So they were paid for the normal workday, the eight-hour  
16 workday.

17 A Yes.

18 Q During that 24-hour, during the 24 hours under the system  
19 that you implemented, a battalion chief along with all the  
20 other fire fighters after the close of the normal business  
21 hours, which are from 8:00 to 5:00, correct?

22 A Correct.

23 Q So --

24 A Well, let me back up. The battalion chiefs actually  
25 started at 6:30 is when they actually came in to, that was

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 their shift, 6:30 to 6:30.

2 Q Okay. So they had essentially an 11 and a half, 11 and a  
3 half or 12 and a half hour shift, that was their normal --

4 A Are we talking about when they were the standby system or  
5 are we talking about when --

6 Q Under this 24, under this new 24-hour system that you have.

7 A 24 on/48 off, the battalion chief's schedule was from  
8 6:30 a.m. to 6:30 a.m. for 24 hours.

9 Q Okay. So that was their, that was their entire shift.

10 A Yes, sir.

11 Q Okay. What is the normal business hours of the fire  
12 department?

13 A Normal business hours is 8:00 to 5:00.

14 Q Okay. So before 8:00 o'clock on this 24-hour system, the  
15 battalion chiefs are at the station, correct?

16 A They would come in early to get staffing scheduled, yes,  
17 sir.

18 Q And after 5:00 o'clock at the close of the normal business  
19 hours, the battalion chiefs were still at the fire station.

20 Correct?

21 A Again, in the standby system?

22 Q No. Under this 24-hour.

23 A The 24-hour system, yes, because they are under 24 hours,  
24 so like I said, 6:30 in the morning to 6:30 the next morning.

25 Q 24 hours there at the fire house.

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 A Yes.

2 Q Okay. And after normal business hours, after 5:00 o'clock,  
3 fire fighters and the battalion chiefs and the other officers,  
4 they have dinner, correct?

5 A Well, if available. I mean you have dinner when you can  
6 have dinner. I mean I wouldn't say it's right at 5:00 o'clock  
7 is when you sit down. It depends on you know, when they get  
8 their duties done if they feel they need to take care of  
9 something. There's been multiple times where you would go out  
10 to other stations, deliver supplies, run calls, sometimes you  
11 wouldn't sit down until 8, 9:00 o'clock to have dinner. But  
12 you try to have it, you know, relatively normal dinner time.

13 Q At some point in that 24 hours they have dinner.

14 A Yes.

15 Q Okay. And at some point in this 24 hours they also get to  
16 sleep, correct?

17 A Correct.

18 Q Okay. And under this new 24-hour on/48-hour off, the  
19 battalion chiefs are paid when they are sleeping.

20 A Correct.

21 Q Do they still have to monitor radio?

22 A Yes. Now, you know, I would -- if it was me, I certainly  
23 didn't have the radio on, you know. When a call would come in  
24 and it required a battalion chief to respond it would set off  
25 the station tones.

## ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 Q So you don't need to have the radio, well, because the  
2 alarm is going to go off in the fire department anyways.

3 A Yeah, or they would have their pager with them.

4 Q But under the standby system, they were monitoring the  
5 radios, they were at home, they were sleeping, and they didn't  
6 get paid, correct?

7 A They had a pager. So I don't know if I would necessarily  
8 say they were monitoring a radio. But they had the ability to  
9 be contacted. So but, yeah, they would sleep at home and  
10 stuff. If there was no calls or any reason to come back in,  
11 they would not be paid.

12 Q So they didn't have a radio with them?

13 A I don't know if they had a radio or not. I know they had a  
14 pager.

15 Q Okay. And this pager, does it just vibrate, does it make a  
16 noise?

17 A Depends on the setting you have on it. It will either  
18 broadcast the, well, again, it will set off a tone, then it  
19 will broadcast a message of what the call is. You can set it  
20 on to vibrate. You can set it on to only alerts when it's just  
21 your station. And you can also set it on to monitor for all  
22 traffic if you want.

23 Q And so if you're sleeping, would you put it on vibrate?

24 A Myself? If it's me --

25 Q If it's you.



## ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 A No, I don't put it on vibrate. I put it on alert for what  
2 I would call as, you know, the structure fire response.

3 Q Okay. And during that, during the standby system when you  
4 took your rotation, did you ever know when a call was going to  
5 come in? Were you able to predict when you were going to get a  
6 structure fire?

7 A No.

8 Q It would be great if you could, right?

9 A Yeah, I would be making a lot of money somewhere.

10 Q But you couldn't. So you had to keep monitoring your  
11 pager. You said you only had your pager. So you had to keep  
12 monitoring your pager even when you were dead asleep for any  
13 potential call that could come in, correct?

14 A I had it with me, yes.

15 Q Now, do you remember we took your deposition a few months  
16 ago?

17 A About a year ago, yeah.

18 Q Okay. It's been a while. And during that deposition I  
19 asked you what a reasonable response time was for --

20 A Sorry.

21 Q That's okay. I asked you what a reasonable response time  
22 was for the duty chief to respond to a call. And do you  
23 remember what you said?

24 A I believe my first response was 15 minutes. And then I  
25 followed that up with saying that it depends on exactly where

## ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 it is in the city, and I think I believe I gave the example  
2 that if, again, if I'm at station number 1 which is on the east  
3 side of the city, or hypothetically from where I live which is  
4 out on 10 and a half mile just outside by the casino, if I have  
5 to run all the way to the west side to get into the fort area,  
6 it will take longer than 15 minutes without a doubt. So it  
7 truly depends on where the call is at and where you're  
8 responding from. But I would say, you know, on average, it  
9 probably would take us about 15 minutes depending on where we  
10 needed to go. But you have to give that latitude as well based  
11 on where the call is, you know, traffic conditions, stuff like  
12 that.

13 Q So if a battalion chief or a duty chief responded and he  
14 was an hour to respond, but he was in Grand Rapids at the time  
15 that the call came through, you would understand that?

16 A Probably not.

17 Q Why not?

18 A Because, again, it's too far away.

19 MR. ALVAREZ: May I approach, Your Honor?

20 THE COURT: Sure.

21 BY MR. ALVAREZ:

22 Q I'm showing you what's been marked as Exhibit Number 4.

23 THE COURT: Is that a Joint Exhibit, Mr. Alvarez?

24 MR. ALVAREZ: I'm sorry, that's Plaintiff's Exhibit  
25 Number 4, Your Honor.

ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 THE COURT: Thank you.

2 BY MR. ALVAREZ:

3 Q I just want to be clear. Can I refer to you as chief?

4 A Dave, that's fine, whatever.

5 Q Well, you're wearing a uniform.

6 A That's fine. Absolutely.

7 Q So Chief Schmaltz, can you tell me what this form is?

8 A It's a FOIA request form from the county dispatch.

9 Q And this is a, this is in response to a FOIA request that  
10 was made by who?

11 A Battalion Chief Howard Holt.

12 Q And the reason was because there was a complaint that, by a  
13 citizen, resident of the city, that it took too long to respond  
14 to some sort of an emergency, correct?

15 A It would appear so.

16 Q And if you look at the handwritten notes it indicates  
17 towards the bottom of those handwritten notes that the total  
18 time call received to on scene was 14 minutes and 56 seconds.

19 A That's what it says.

20 Q So there was a response to this emergency within that  
21 15-minute window.

22 A Yes.

23 Q Now, what is the response time for an engine, for the fire  
24 fighters on the engine to respond to an emergency, what is the  
25 required or ideal response time?

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1 A The ideal response time, if you go off of an NFPA standard  
2 is you want to be there within the first four minutes  
3 90 percent of the time. I believe that the last numbers I ran,  
4 and this is off the top of my head, we were somewhere in the  
5 neighborhood of about four minutes and 30 seconds, I believe,  
6 is where we were at averaging as a department.

7 THE COURT: This is for, this is for an engine  
8 dispatch?

9 MR. ALVAREZ: Correct. For an engine dispatch, four  
10 minutes.

11 BY MR. ALVAREZ:

12 Q And you would want the duty chief, in this case the  
13 battalion chiefs, to respond to a call if this was a call to  
14 which they would normally respond to within 15 minutes.

15 A Well, again, you know, you want to try to get there as fast  
16 as you can. To put a hard and fast line on exactly a time  
17 frame, I don't think is fair. And I think that's why even in  
18 an NFPA, National Fire Protection Association, 1710, that's the  
19 standard number, that's why they say 90 percent, not a hundred  
20 percent of the time because you got to have latitude depending  
21 on, you know, again, traffic, weather conditions, so on and so  
22 forth.

23 Q Of course in the winter you wouldn't expect them to be able  
24 to make the same time as they would in the summer.

25 A Right. Or, again, you know, if you have multiple calls you

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1 could be in one part of the jurisdiction and just going to take  
2 you longer to clear to get there. You have to give some  
3 latitude. It can't be that hard and fast rule.

4 Q But 15 minutes is reasonable barring any traffic or  
5 weather.

6 A Well, again, that was, that was my opinion. You know,  
7 based off of my experiences in other organizations.

8 Q And is the NFPA standard or the guideline something that  
9 the City of Battle Creek adhered to?

10 A We have not adopted NFPA 1710, no.

11 Q But you followed it.

12 A We try to attain it.

13 Q So it's a goal.

14 A Yeah, absolutely, it's a goal. Just like any of the other  
15 NFPA documents, you try to make it a goal to try to conform  
16 with it, but the reality is you just can't.

17 Q Mr. Schmaltz, how many, how many fire fighters and officers  
18 are assigned to an engine?

19 A Minimum of three.

20 Q So that would be two fire fighters and one officer,  
21 correct?

22 A Correct.

23 Q And so if they respond to an emergency there's three people  
24 on the scene. Correct?

25 A Again, it just -- I can't say that it's going to be a hard

## ARTHUR DAVID SCHMALTZ - DIRECT EXAMINATION - MR. ALVAREZ

1 and fast rule because sometimes, you know, staffing allows we  
2 have four people on an engine. You know, let's say we are  
3 training all together and we got a call, you're going to be  
4 responding with two pieces of equipment possibly so you're  
5 going to have more than, more than three. So I can't say that  
6 it's always going to be three people.

7 Q But the typical was, standard was two fire fighters and one  
8 officer per engine, correct?

9 A I would say that would be our minimum staffing for a piece  
10 of equipment.

11 Q And that was, that's also in the agreement between the City  
12 of Battle Creek and the International Association of Fire  
13 Fighters Local 335, correct?

14 A That is correct.

15 Q So that's what was negotiated. So there's at least two  
16 fire fighters and one officer that are on an engine, and if a  
17 call comes in at the very least there's going to be three.

18 A Correct.

19 Q So if the duty chief shows up to that response to that  
20 call, he would be the fourth person. Correct?

21 A If he's the next person in, yes.

22 Q Isn't it true in your deposition that you also said that  
23 you confirmed that the battalion chief couldn't hire, fire, or  
24 suspend other fire fighters?

25 A I believe what I said is they gave me recommendations.

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1 Q Actually on your deposition page 36, which I can show you  
2 in a minute, I asked you whether battalion chiefs can hire fire  
3 fighters. You said no. I said can they fire fire fighters?  
4 You said no. I did ask you if they had the ability, I said so  
5 they can't hire, they can't fire, can they suspend a fire  
6 fighter? And you said, no, they don't have the ability to  
7 suspend. Do you remember that now?

8 A I do.

9 Q Chief Schmaltz, I have a bachelor's degree. I have a law  
10 degree. Could I be a battalion chief?

11 A Could you be a battalion chief?

12 Q Yes, could I be hired today as a battalion chief? I have  
13 no training as a fire fighter, I have no certification as a  
14 first responder, I have no experience as a fire fighter. Could  
15 I be hired today as a battalion chief?

16 A In the City of Battle Creek?

17 Q Yes.

18 A No.

19 MR. ALVAREZ: No further questions, Your Honor.

20 THE COURT: Cross-examination, please.

21 MR. KRETER: Thank you.

22 CROSS-EXAMINATION

23 BY MR. KRETER:

24 Q Chief Schmaltz, I'm Mark Kreter. We've met several times.  
25 What period of time were you fire chief in Battle Creek?

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 A What period of time?

2 Q Period of time.

3 A From February of 2014 until my official resignation date of  
4 August 5th of 2018.

5 Q It's my understanding you're now fire chief for the City of  
6 Coldwater?

7 A Correct.

8 Q Okay. And during the time that you were fire chief, how  
9 many people worked in the fire department?

10 A Not including myself, I believe it was 82.

11 Q And you were first in command.

12 A Yes, sir.

13 Q Okay. And your job responsibilities was one overseeing the  
14 fire department?

15 A Yes, sir.

16 Q And budgeting?

17 A Yes, sir.

18 Q Public relations?

19 A Yes, sir.

20 Q Adopting procedures?

21 A Yes, sir.

22 Q What else did you do as fire chief?

23 A You know, purchased equipment, planned for the future, you  
24 know, set goals. I ran, I ran the organization, made sure  
25 people were doing their jobs.



ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 Q What roles did the battalion chief play? Let's start with  
2 the suppression chief which would have been Mr. Holt.

3 MR. ALVAREZ: Objection, Your Honor. Outside the  
4 scope.

5 THE COURT: You may answer.

6 THE WITNESS: During, when Battalion Chief Holt was  
7 with me, he was in charge of all the suppression personnel, and  
8 purchasing equipment, taking care of stations, he was in charge  
9 of like the SCBAs, and fit testing, evaluations. He made sure  
10 those got completed. Ran calls.

11 BY MR. KRETER:

12 Q You were asked on direct examination whether a battalion  
13 chief could suspend someone.

14 A At that point, yeah, I said no.

15 Q Okay. But were they involved in the discipline process?

16 A Yes.

17 Q And what was the discipline process?

18 A During that time whenever we had an issue I would have one  
19 of the battalion chiefs either give a coaching counseling or a  
20 written reprimand.

21 Q Okay. And that's something they would do directly with the  
22 employee that would require that counseling or discipline?

23 A Yes.

24 Q Would that hold true for the administrative battalion chief  
25 as well, Mr. Erskine?

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 A During that time, probably not because Chief Erskine really  
2 only oversaw the training division.

3 Q I think Mr. Holt testified at his deposition he said every  
4 fire fighter worked for him, would that be fair to say?

5 A I don't know. I could say -- I suppose. I mean if you're  
6 an officer on an engine company you're going to say those guys  
7 work for you, yeah.

8 Q Okay. So as far as the disciplinary process would go,  
9 would you take into consideration what Officer Holt's opinion  
10 was regarding discipline?

11 A Yes, we would have a discussion.

12 Q Okay. Would you give his opinion particular weight?

13 A Absolutely.

14 Q And his opinion would be important to you.

15 A Yes, it would.

16 Q Okay. And in the event of somebody being suspended, again,  
17 would you give his recommendation or opinion particular weight?

18 A Yes.

19 Q And that's a significant event running the fire department,  
20 correct?

21 A As far as like a suspension goes?

22 Q Yes.

23 A Oh, yes.

24 Q Okay. And if I recall there was an incident, it may not  
25 involve either of the plaintiffs, but there was an incident

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 where there was an employee or that you had to discharge while  
2 you were captain, or chief, correct?

3 MR. ALVAREZ: Objection. Again, Your Honor, outside  
4 the scope.

5 THE COURT: You may answer.

6 THE WITNESS: Yes.

7 BY MR. KRETER:

8 Q And I think at the time Battalion Chief Beechum was  
9 involved in that, correct?

10 A Beauchamp.

11 Q Beauchamp.

12 A Yes, sir.

13 Q Could you briefly explain what happened in that situation?

14 A Yes. We had hired a fire fighter going through his normal  
15 probationary period, about the time I would say it was around  
16 the 7th or 8th month time frame, the officers let Battalion  
17 Chief Beauchamp know that this particular individual was not  
18 doing well. Having trouble retaining information, having  
19 trouble driving. We sat down, we discussed it, we implemented,  
20 for lack of better words, you know, a strategy in how we  
21 thought we could get him ramped up. I had Battalion Chief  
22 Beauchamp keep me abreast and he came back with me from him and  
23 the officer that was overseeing the fire fighter with  
24 recommendations that we go ahead and remove him.

25 Q And --

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1 A Or let me back up. To either remove him or ask him to  
2 resign.

3 Q And did you follow that recommendation?

4 A I did.

5 Q Okay. And so that was a situation where a battalion chief  
6 was involved in termination for a situation, correct?

7 A As far as giving me their advice and their opinion, yes.

8 Q And that advice and opinion was important to you.

9 A Very important.

10 Q Okay. And assume the same situation had occurred when  
11 Chief Holt --

12 MR. ALVAREZ: Objection. Calls for speculation, Your  
13 Honor.

14 THE COURT: Sustained.

15 BY MR. KRETER:

16 Q I asked you briefly what the suppression chief's job  
17 responsibilities were. What were the administrative battalion  
18 chief's responsibilities?

19 A His main responsibility was he oversaw the training  
20 division, and then he would fill in where we needed as far as,  
21 you know, again, he would assume some of the responsibilities  
22 of the suppression chief when that suppression chief was gone  
23 on vacation or when it was his turn to do the on duty or the  
24 on-call chief.

25 Q Were his duties of substantial importance to the fire

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 department?

2 A Yes.

3 Q And likewise, were Battalion Chief Holt's duties of  
4 substantial importance to the fire department?

5 A Yes.

6 Q Did you allow them to exercise independent judgment in  
7 performing those duties?

8 A Yes.

9 Q Were they involved in the day-to-day decision making of  
10 running the fire department?

11 A They certainly had latitude to make decisions, yes.

12 Q Okay. They were your right-hand men.

13 MR. ALVAREZ: Objection. Leading.

14 MR. KRETER: Cross-examination.

15 THE COURT: You may answer.

16 THE WITNESS: Yes.

17 BY MR. KRETER:

18 Q And it's my understanding that based upon the exhibits we  
19 have that standard operating procedures, there were many  
20 standard operating procedures in the fire department, correct?

21 A Could you repeat that?

22 Q SOP.

23 A Yes, we have them.

24 Q And what are SOPs?

25 A Standard operating procedures.

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 Q What's the purpose of an SOP?

2 A An SOP is to give guidance in how we are supposed to  
3 operate.

4 Q And did you from time to time enact new SOPs or modify  
5 existing SOPs?

6 A I did. Yes.

7 Q Did you seek the input from battalion chiefs when you did  
8 that?

9 A On some of them, yes.

10 Q And again was that input important?

11 A Very important.

12 Q Okay. I've got to grab an exhibit here. Sorry, I'm just  
13 getting in the groove here. Can I approach the witness?

14 THE COURT: Yes.

15 MR. KRETER: Thank you.

16 BY MR. KRETER:

17 Q So I want to show you -- I think it's that book there.  
18 I'll show you my book. This is Exhibit II. And I don't want  
19 to take you through every one, every page here. But will you  
20 just glance through probably the first 10 to 15 pages for me.  
21 Short, one sentence e-mails. And would it be fair to say that  
22 these are examples of you asking for input from the battalion  
23 chiefs on standard operating procedures?

24 A Yes, they look like e-mails that I sent to them.

25 Q Okay. And these standard operating procedures are of

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 significance and importance to the fire department, correct?

2 A Correct.

3 Q And you would give weight to the opinions or input that the  
4 battalion chiefs would have?

5 A Yes.

6 Q In fact, that's why you were asking.

7 A Yes.

8 Q And at times they would ask if you had any, or they would  
9 recommend changes to what you were suggesting.

10 A Yeah, we would have discussions about it.

11 Q Okay. So it was a joint team effort.

12 A Yes, sir.

13 Q Okay. In fact, would it be fair to say they were part of  
14 the management team of the fire department?

15 A I would refer to them as my senior staff.

16 Q Do you recall when there was the discussion from going  
17 40-hour shift to standby what Mr. Holt or Erskine's position  
18 was?

19 A They were against it.

20 Q Okay. Why were they against it?

21 A From what I recall in the conversation was they liked being  
22 on the hours that they worked.

23 Q In fact, again, this is an II, I apologize to the Court I  
24 know these things aren't Bates stamped. So this is an II,  
25 probably ten to 12 pages in. Did you receive an e-mail from

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 Mr. Holt on November 19th, 2014?

2 A That would appear to be an e-mail to me.

3 Q Could you read that e-mail?

4 A "Chief Schmaltz. Just to memorialize our conversation on  
5 11/18/14 concerning the battalion chiefs work hours, changing  
6 from 40-hour shift to 53-hour shift we are not in agreement  
7 with this shift change. Battalion Chief Holt, H. Holt,  
8 President OSP, Battalion Chief M. Erskine, V.P., OSP."

9 Q Thank you. Did they, either Battalion Chief Holt or  
10 Battalion Chief Erskine ever complain to you about the standby  
11 arrangement?

12 A Complain? We would talk about it and, you know, again, we  
13 discussed how sometimes it would be inconvenient for us.

14 Q Okay. When you came you were hired as fire chief and then  
15 you moved to Battle Creek I think in June of 2014, correct?

16 A That sounds right, yes.

17 Q And at that point you went on standby with them.

18 A Yes, sir.

19 Q So it would be every third week.

20 A Yes, sir.

21 Q That somebody would be on standby. Would you trade shifts  
22 with them during that period of time if somebody had a conflict  
23 or --

24 A Yes.

25 Q Okay. And so that was something regularly done, somebody



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1 had, that week was difficult for them, or they had a special  
2 event, the three of you would try to accommodate each other?

3 A I don't recall it being like a regular event. But I feel I  
4 made it pretty crystal clear that if something came up I could  
5 certainly cover. And when Chief Erskine would go off to his  
6 staff in command class, myself and Battalion Chief Howard Holt  
7 would cover it some way or another.

8 Q Okay. Plaintiffs's counsel asked you again about authority  
9 to fire fire fighters. When evaluating whether a fire fighter  
10 should be terminated, are there performance evaluations,  
11 something taken into consideration?

12 A It did for the one incident that we talked about basically  
13 because, again, he was on probation. I never had to cross an  
14 opportunity where we would have to discharge an employee that  
15 was off probation. However, I would think that that would have  
16 to play into it would be a performance evaluation and based off  
17 of the offense that took place.

18 Q And who performed the performance evaluations in the fire  
19 department, was it the battalion chiefs?

20 A During that time, oh, boy, without looking at them, I -- I  
21 know during when we went to the 24/48-hour shift, the battalion  
22 chiefs would do performance evaluations for the officers under  
23 their control or under their, the first line lieutenants and  
24 captains, then the captains and lieutenants would do the fire  
25 fighters.

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1 Q But you simply don't recall during the standby.

2 A I would honestly I would have to look at it to give you an  
3 honest answer.

4 Q Okay. Bear with me. Evaluations. HH. Okay. I'm  
5 referring to Defendant's Exhibit HH. This appears to be an  
6 e-mail of Thursday, October 23rd, 2014. Could you indicate  
7 what that e-mail is about?

8 A The subject is evaluations. It was to Howard Holt. It  
9 says -- do you want me to read it?

10 Q Yes.

11 A It says, "Chief, here is a list of people that HR still  
12 needs evals for. I know you are still trying to track down  
13 signatures, but I wanted to get the list that HR has to compare  
14 to yours." Then there is the list of everyone needed and my  
15 signature at the bottom.

16 Q So there's about 12 or 13 on that list?

17 A I would agree.

18 Q So it appears that during the standby period of time they  
19 were at least Chief Holt was performing evaluations.

20 A Yes.

21 Q Okay. Okay. So I want to discuss -- okay. So let's  
22 discuss standby. It's my understanding, correct me if I'm  
23 wrong, that when the battalion chiefs are on standby, they only  
24 needed to respond to structure fires.

25 A Yes, for the most part. Again, if it was an all stations

## ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 call, that's when we would go in.

2 Q And all stations call were --

3 A Mainly structure fires.

4 Q -- mainly structure fires.

5 A Yes.

6 Q Okay. So plaintiff showed you Exhibit 4. And this was a  
7 citizen's complaint. And this was for, actually it appears it  
8 was 17:05, which would be 5:05 in the afternoon.

9 A Uh-huh, yes.

10 Q That would be five minutes after the regular shift would  
11 have ended?

12 A Yes.

13 Q But this was for extrication.

14 A Yes.

15 Q That would be something a battalion chief would not even be  
16 called in for.

17 A Again, if this is the call that I'm, based off of what I'm  
18 kind of reading down here, or I read that it was the, if I  
19 remember right -- oh, no, I'm sorry, this is a different call,  
20 isn't it? Says rescue 6 was sent to rescue 4's area for an  
21 infant locked and the citizen, took us 30 minutes to arrive.  
22 So if I remember, if I remember this call right, it was, again,  
23 it was a lock in for a child locked in a car. And that's just  
24 a single engine response, what that would be. This would not  
25 be a call that chief officers would respond to.

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 Q Okay. Chief officers being the battalion chiefs who were  
2 on standby?

3 A Or myself, yeah. No, that would be a single engine  
4 response.

5 Q Okay. So alerts, pagers, we are going, we are going to  
6 hear a lot about that I think. You have with you a pager when  
7 you're on standby, correct?

8 A Correct.

9 Q And you have a radio.

10 A There would be one in the car. I would never bring mine  
11 in. I left mine in the car.

12 Q Okay. So when you were on standby at home you left your  
13 radio in the car.

14 A Correct.

15 Q Because would it be fair to say there was no requirement to  
16 monitor the radio traffic when you were on standby.

17 A I had the pager.

18 Q You had the pager. And you set the pager at vibrate or  
19 alert?

20 A Mine would be on the alert. So it would, you know, it will  
21 make an audible sound.

22 Q So it made an audible sound when an all stations call came  
23 in.

24 A Correct.

25 Q And that was a structure fire.

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 A For the most part, yes.

2 Q Okay. So when you were sleeping at night you didn't need  
3 the radio on.

4 A No, I just left my pager in the charger.

5 Q When you went out to eat, you didn't need to put the radio  
6 on the table as you were eating?

7 A I had the pager. So, no, I didn't take my radio with me.

8 Q So you relied on the pager.

9 A Yes, when I was on standby, yes.

10 Q So would you be able to mow your lawn?

11 A I did.

12 Q Okay. And would you be able to do most household  
13 activities when you were on standby?

14 A Yes.

15 Q Okay. And if I'm correct, the only restrictions really  
16 were you couldn't drink alcohol and you had to be within a  
17 reasonable geographical range which appears to be around  
18 15 minutes, correct, while on standby?

19 A Yeah. There is no way we could drink alcohol and then,  
20 yeah, you had to be, you know, common sense, you know, how far  
21 can you get away and still be, you know, reasonable time to  
22 respond back in.

23 Q Okay. So if plaintiffs testify they couldn't mow the lawn,  
24 they couldn't do other activities around the house, those were  
25 all self-imposed restrictions?

ARTHUR DAVID SCHMALTZ - CROSS EXAMINATION - MR. KRETER

1 A That's what I would say, yes.

2 Q Okay. And did you require the battalion chiefs when they  
3 were on standby and they came in to wear any particular  
4 clothing when they showed up at a scene?

5 A I did not.

6 Q Okay. In fact, I believe Battalion Chief Holt would show  
7 up in Hawaiian shirts at times.

8 A That's what I was told, yes.

9 Q Okay. Was there a reason you didn't put any restriction on  
10 what type of, how they showed up at a fire scene when they were  
11 on standby?

12 A Was there a reason why I didn't put?

13 Q Why you didn't put any clothing restrictions.

14 A Just wanted them to be comfortable when they were off duty.  
15 All the other jobs that I had worked where I was doing the same  
16 job as this, we wore civilian clothes and when the tones  
17 dropped, you know, you came in as you were. I mean my  
18 philosophy I guess kind of would be a citizen really isn't  
19 going to care what you're wearing just as long as you're there  
20 to help. And, you know, when we are on duty we have that  
21 professional standard that we want to look. But when you're  
22 off duty, I never put that restriction on myself.

23 Q I think you testified in your deposition you wanted a  
24 Battalion Chief Holt and Erskine to be relaxed when they are at  
25 home even when they are on standby.

ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 A I would agree with that, yes.

2 Q And be able to do what they could do?

3 A Yes.

4 Q Okay. Just a few more questions, I believe. Just give me  
5 a moment, Your Honor.

6 MR. KRETER: I don't have any further questions, Your  
7 Honor.

8 THE COURT: Thank you. Any redirect, Mr. Alvarez?

9 MR. ALVAREZ: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ALVAREZ:

12 Q Chief Schmaltz, going back to that fire fighter with which  
13 you had an issue, that battalion chief was Battalion Chief  
14 Beauchamp, correct?

15 A Correct.

16 Q So it wasn't either one of the plaintiffs that was involved  
17 in that specific instance, correct?

18 A Correct.

19 Q Okay. And the fire fighter ended up resigning, correct?

20 A Correct.

21 Q And it was the fire fighters from the local union fire  
22 fighters, the entry level fire fighters that were complaining  
23 about him. They are the ones that brought up the issue  
24 concerning that specific fire fighter, correct?

25 A I believe it was the officer that was overseeing that fire

1 fighter during the training and just like it would, normally it  
2 would work its way up the chain of command. So it went from  
3 the officer, to the battalion chief, then when they felt it was  
4 necessary it came to me.

5 Q The captains and the lieutenants are the ones that are  
6 responsible for performance evaluations of the fire fighters,  
7 correct?

8 A Like I said, I can't remember how we did it when we were on  
9 the standby. But the 24/48 the captains and the lieutenants  
10 did write the performance evaluations for the fire fighters.

11 Q There wouldn't have been any reason to change the way that  
12 the evaluations were done under the standby system versus this  
13 system, would there?

14 A I wouldn't think so, no.

15 Q Because the captains and the lieutenants are the ones that  
16 are in charge of the fire fighters, they are working with them  
17 directly, they are on the engines with them. So common sense  
18 says that they're the ones that would be in a better position  
19 to do those performance evaluations, correct?

20 A That's why I certainly did it with a 24/48. As I said  
21 before, I hate to say yes or no without actually looking at a  
22 performance evaluation from that time.

23 Q Thank you. I appreciate that. Now, all of these, all of  
24 these items, all of these things that the battalion chief  
25 position is supposed to be doing from monitoring, from checking



## ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 the equipment, these administrative tasks that you were  
2 discussing earlier, do they do those or did they do those  
3 duties during that standby period when they were on-call every  
4 other week?

5 A I would probably say no when they were at home.

6 Q So during the normal workday from I think you said it was  
7 6:30 -- no, I'm sorry, during the normal business day from  
8 8:00 o'clock to 5:00 p.m. that's when they did their duties,  
9 the administrative duties that the defendants keeps referring  
10 to, correct?

11 A Yes, with the exception of let's say somebody went home  
12 sick, they would have to do staffing and then they would come  
13 in in the mornings to set staffing requirements, and then on  
14 the weekends they would come in and do staffing.

15 Q But they would come in and they were, they would get paid  
16 to do that, though, correct, once they were at the fire  
17 station?

18 A Yeah, yes.

19 Q So the hours that they were at home, when they had to  
20 monitor the pager, or the radio or what have you, you say a  
21 pager, but whenever they had to monitor their electronic  
22 equipment for these calls, they weren't doing any of these  
23 other administrative management tasks.

24 A As far as I know they were not.

25 Q Okay. Now, you also said that in response to a question

## ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 from defense counsel that the duty chief only had to respond to  
2 structure fires, correct?

3 A I said all stations.

4 Q Okay. I'm sorry. To all stations. And they would have no  
5 idea, as much as you when you testified earlier, they would  
6 have no idea when such a call was coming in, correct?

7 A Correct.

8 Q So common sense dictates that if they don't know when one  
9 of those all station calls are coming in, that they would have  
10 to actively be listening, actively be monitoring that pager,  
11 that radio, whatever electronic gadget it was to make sure that  
12 they heard it, that they understood that it was an all station  
13 call, even at 3:00 o'clock in the morning, correct?

14 A It's similar to what you would with your cell phone. You  
15 know, you have it on your hip or you have it on your night  
16 stand at night and it's set to, again me personally, mine would  
17 be set to the audible alert for the all stations. It wasn't,  
18 wasn't monitoring -- because you can set it to an open switch  
19 where you can listen to every call that goes out. Mine was on  
20 an audible just for the all stations. So I equate it to no  
21 different than having a cell phone on you when a cell phone  
22 rings. I mean it's there, but you're alerted to it when it  
23 goes off.

24 Q But like a cell phone, you don't really know whose calling.  
25 Like the only calls I take in an emergency are calls from my

## ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 mother and my wife. I don't know when the phone rings who is  
2 calling me. I have to look. I have to pay attention. I'm  
3 assuming even more importantly in the context of responding to  
4 an emergency situation, that as a duty chief, they would have  
5 to always be alert to respond, to know when one of those, when  
6 one of those is coming through to be able to respond.

7 A Again, when the audible alert would go off, it's, it's a  
8 tone. And then the dispatcher comes across and tells you what  
9 you have, the address, so on and so forth.

10 Q But my point is, you never know, the duty chiefs never know  
11 when that tone is going to go off.

12 A Of course not.

13 Q So even at 3:00 o'clock in the morning, they could be sound  
14 asleep having the dream of their lives, and all of a sudden the  
15 tone could go off and they would have to respond. Or at least  
16 wake up enough to determine whether they were going to have to  
17 respond. Correct?

18 A For an all stations, yes.

19 Q Now, the defense also asked you or I believe they cited to  
20 some statistics about how many actual calls they were, how many  
21 hours they actually worked that they had to respond to. But  
22 can you, do any of those numbers -- none of those numbers tell  
23 you how often they had to listen for that tone, right?

24 A I guess I'm a little confused on what you're asking me. I  
25 don't recall Mr. Kreter asking me anything about statistics.

1 Q Well, I think he mentioned that -- he mentioned that there  
2 was about -- that there was approximately maybe three or four  
3 hours a week that they would have to respond, actually respond  
4 to a call or maybe a certain number that they had to respond  
5 to.

6 A Are you referring to the deposition or are you referring to  
7 today?

8 Q I believe it was today that he asked you that. If he  
9 didn't, I apologize.

10 A I do not recall him asking that today.

11 Q Well, do you know of any way that you or the City of Battle  
12 Creek would know how often they would have to be listening to  
13 their radio when they're at home on standby time?

14 A Of course not. That's, that's -- even with the fire  
15 fighters in the fire house, that's, that's why we have fire  
16 fighters; that's why the city hires fire fighters, you're there  
17 for when the call comes in. So, yeah, if we could predict when  
18 every call was going to come in when they would, that would be  
19 easy.

20 Q So just like the fire fighters in the station, they have to  
21 be ready to respond, correct?

22 A From my experience, again, I would operate like I'm on --  
23 when I was even, even today, so when I worked in Coldwater,  
24 Defiance, or when I was on the standby program here in Battle  
25 Creek, when I was off duty and in the standby role, I would go

## ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 about my day and my night like I was off duty. I had the  
2 pager. If it went off, I just adjusted and took care of the  
3 business that I had to take care of.

4 Q You would go out to eat?

5 A Yes, sir.

6 Q Would you come to Grand Rapids to eat?

7 A No, sir.

8 Q Would you go to Kalamazoo to eat?

9 A No.

10 Q Okay.

11 A But you have to remember -- I was going to say you have to  
12 remember too, though, my lifestyle, it could be different from  
13 somebody else's. As I told you I think in the deposition, I'm,  
14 I'm very much a homebody. So I didn't, I didn't go places.

15 Q So at least as it pertains to you, you didn't see it as  
16 being too inconvenient?

17 A And I wouldn't think anybody would, to be honest with you.  
18 There is plenty of places and things to do in our little area.

19 Q Are you married?

20 A I am.

21 Q Did your wife ever complain about the fact that you had  
22 these gadgets with you?

23 A No. I was already -- again, when I started, I was already  
24 in the fire service when we married, and I was working in  
25 Coldwater at the time. So it was just part of, it was part of

ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 my life.

2 Q So you had already become accustomed to it then?

3 A I was. And she just --

4 Q So was she?

5 A Yeah.

6 Q Okay. Now, you said that the only restrictions were no  
7 alcohol for obvious reasons, and they had to be within a  
8 reasonable response time to any emergency call. Correct?

9 A I would agree with that, yes.

10 Q Okay. And you said it's common sense. Well, isn't it  
11 common sense that if they don't know when a structure fire is  
12 going to happen, when a multiple vehicle accident is going to  
13 happen, when an emergency is going to happen that's going to  
14 require them to respond, isn't it common sense that they would  
15 have to be alert to listen for that tone, to listen for when  
16 that call came through and they couldn't just be -- and they  
17 couldn't just have that time to do whatever they want.

18 A I don't think I would necessarily agree with that.

19 Q In your experience.

20 A In my experience, yes.

21 Q Okay. When they were on duty, on standby, during the  
22 standby system, did they have a company vehicle?

23 A They did.

24 Q And in that company vehicle, did they have any equipment?

25 A They would have, of course, each vehicle would have a

## ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 radio, the mobile radio that would be in the vehicle and then  
2 they would have, they would have their protective equipment in  
3 the back of the vehicle.

4 Q So their gear bag.

5 A Yes.

6 Q Can you describe this gear bag?

7 A Well, yeah. It would be that red one right there and it  
8 would have --

9 Q Is it this one?

10 A Similar to it, yes. I don't know if that's the exact one,  
11 yes. And it would have their turnout equipment in it.

12 Q And this was something that they needed to have on, they  
13 needed to have with them if they responded to a call, correct?

14 A Yes, I wanted them to have that there. Just in case if the  
15 event escalated into something larger where I would have to  
16 come in and then they would have to leave, leave the vehicle.  
17 Most of the time we commanded --

18 Q And if they had to leave the vehicle and put on their gear,  
19 what would they be doing?

20 A Just would depend on what the size of the operation was.

21 Q So --

22 A It wouldn't be, the chances of them actually being in an  
23 IDLH atmosphere would be slim to none. Immediate danger to  
24 life and health. They would, they would probably be assigned  
25 to a sector where they would command from the outside.

ARTHUR DAVID SCHMALTZ - REDIRECT EXAMINATION - MR. ALVAREZ

1 Q So the likelihood is small, but they could be called upon  
2 to enter a burning building if the situation calls for it?

3 A Slim, but, yes.

4 Q They have to have, they have to meet the requirements of  
5 having the mask fit their faces, correct?

6 A As far as I recall, we did not fit test the battalion  
7 chiefs until we went to the 24/48.

8 Q So before then it wasn't a requirement as far as you  
9 remember for them to have, be fitted?

10 A As far as I remember we did not fit test them.

11 Q Were they allowed to grow facial hair along the edges of  
12 where a mask would go?

13 A No, we had a policy that you could not have facial hair.

14 Q Why was that policy in place?

15 A To comply with the OSHA respiratory standard.

16 Q Because it was required for them to be able to have, to  
17 meet the fit test requirements, right, for the mask?

18 A Correct.

19 MR. ALVAREZ: No furthers questions, Your Honor.

20 THE COURT: Any recross?

21 MR. KRETER: Just a few brief questions.

22 RECROSS-EXAMINATION

23 BY MR. KRETER:

24 Q The gear bag. That was kept, you carried one, the  
25 battalion chiefs carried one in case of a slim to none



ARTHUR DAVID SCHMALTZ - RECROSS EXAMINATION - MR. KRETER

1 possibility if they had to actually fight a fire?

2 A Yes, yes, it was a precautionary thing.

3 Q Okay. Because their job at a fire scene was to be in the  
4 command center managing, leading, and directing the fire,  
5 correct?

6 A Correct.

7 Q Okay. And that was separate, isolated from the fire  
8 fighters that were fighting the fire.

9 A Yes.

10 Q And in any instance do you recall either Battalion Chief  
11 Holt or Battalion Chief Erskine having to put their gear bag,  
12 gear on when you would come to a fire scene?

13 A I do not.

14 Q Okay. And you were their fire chief for, what, under the  
15 standby system over a year?

16 A Yes.

17 Q Okay. Going back to evaluations. The battalion chiefs  
18 evaluated the captains and lieutenants, correct?

19 A Correct.

20 Q And there were about 27 of those.

21 A 24, I think.

22 Q Okay. So they would evaluate 24 people.

23 A Yes.

24 Q Okay. And the, the all stations alert, does that mean that  
25 all fire stations respond to a fire?

1 A Yes.

2 Q And how many people would end up at the fire scene?

3 A If everybody was in quarters, the minimum staffing we had  
4 was 19.

5 Q Okay. And so it was only in those instances the battalion  
6 chiefs had to respond when they were on standby when it was an  
7 all stations alert.

8 A Yes.

9 Q And so when we talk about the two by two rule, that's only  
10 if they're the fourth person there.

11 A Correct.

12 Q Because eventually there's going to be 19 people there.

13 A Yeah. Yes.

14 Q And the battalion chief is going to be in their command  
15 center managing, leading, and directing those 19 people.

16 A Yes.

17 MR. KRETER: I have no further questions, thank you.

18 THE COURT: Thank you, Mr. Schmaltz, you may step  
19 down.

20 MR. ALVAREZ: Your Honor, just a bit of housekeeping  
21 for purposes of the trial. We are done with Chief Schmaltz.  
22 So he was subpoenaed here today. He can be released unless the  
23 defendants had any objection.

24 MR. KRETER: No objection.

25 THE COURT: Any objection? You're released then,

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Mr. Schmaltz.

2 THE WITNESS: Thank you.

3 MR. ALVAREZ: Thank you, Chief Schmaltz. Your Honor,  
4 at this time I would like to call, let's call Rosalee Holt.

5 ROSALEE HOLT, PLAINTIFF WITNESS, WAS DULY SWORN

6 THE LAW CLERK: You may have a seat. If you'll please  
7 state your name and spell your last name for the record.

8 THE WITNESS: Rosalee Jean Holt. H-O-L-T.

9 DIRECT EXAMINATION

10 BY MR. ALVAREZ:

11 Q Good morning, Mrs. Holt. How you doing today?

12 A Doing pretty good.

13 Q Thank you for being here today. I appreciate it.

14 Now, what is your relationship to plaintiff Howard  
15 Holt?

16 A My husband of 41 years.

17 Q Congratulations.

18 A Thank you.

19 Q And in those 41 years, how many different types of jobs has  
20 he held?

21 A He's had several until he became a fire fighter.

22 Q Do you remember when he became a fire fighter?

23 A Yeah, I believe it was in 1987.

24 Q And is he still a fire fighter today?

25 A No, he's retired.

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Q And when did he retire?

2 A February of 2015.

3 Q How did it feel when he retired?

4 A Pardon me?

5 Q How did it feel when he retired?

6 A I still didn't hear you.

7 Q How did it feel for you when he retired?

8 A How did it feel for me?

9 Q Feel.

10 A Feel. Well, good and bad. Didn't have to listen to those  
11 electronics any more, and he was going to be home 24/7.

12 Q Well, so let's talk about those electronics.

13 A Yeah.

14 Q What do you mean electronics?

15 A Well, he had a radio and his cell phone and a couple other  
16 beeper and something else. I don't know what they were.

17 Q Do you remember when he became a battalion chief for the  
18 City of Battle Creek?

19 A No. The date doesn't --

20 Q Okay. When he retired --

21 A Correct.

22 Q -- as far as you know he was a battalion chief, correct?

23 A Yes.

24 Q Okay. And during those last few years that he worked  
25 before retiring, he had to bring some or he had with him some

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 electronic gadgets that he brought home?

2 A Correct.

3 Q And how many were there?

4 A Three or four. And his cell phone.

5 Q And do you know why he had those with him?

6 A Because he was on-call and he had to listen to them.

7 Q Was that every day?

8 A Every day he was on-call.

9 Q And do you remember how often he was on-call?

10 A Yeah. He was on-call like every other week, sometimes two  
11 weeks.

12 Q Okay. And when he was home, well, around what time would  
13 he typically get home on the weeks that he was on-call?

14 A On the weeks he was on-call, usually around 7:00.

15 Q And once he got home, he had those electronic devices with  
16 him?

17 A Correct.

18 Q And what would he do when he got home, typically?

19 A He would put his electronics in the little basket that I  
20 gave him to carry them around in because there was too many, he  
21 didn't have enough hands. And I would listen to the radio  
22 while he would take a quick shower, change his clothes, and  
23 then we would have supper and watch television.

24 Q So you listened to the radio for him while he took a  
25 shower?

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A Yes.

2 Q How long were his showers?

3 A Quick ones. Five minutes or so.

4 Q And why would you have to listen to the radio for him while  
5 he was taking a shower?

6 A In case -- because he couldn't hear it in the shower for  
7 one, and in case they called for car 4, for car 3, excuse me.

8 Q Were there any instances when a call came through when you  
9 were listening for him that you had to alert him to the call?

10 A Yes, there was a couple.

11 Q Okay. And you said after that you would have dinner and  
12 then you would watch TV the rest of the night?

13 A Yes.

14 Q Okay. And those gadgets were in a basket?

15 A Right beside him.

16 Q Would he, what would he do with that basket, say, if he  
17 wanted to go to the bathroom or he wanted to go to the kitchen  
18 or to the bedroom?

19 A He, he took his basket with him.

20 Q Everywhere he went he took it with him.

21 A Everywhere he went he took his basket.

22 Q Now those electronic gadgets, were they just sitting there,  
23 did they do anything during the night?

24 A Oh, yes.

25 Q What would they do?

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A They would go off in the night, an alert, beep, beep, beep,  
2 beep, very loud.

3 Q So while you're having dinner would the, would one of the  
4 gadgets go off?

5 A Yes.

6 Q When you were watching TV, would the gadgets go off?

7 A Yes.

8 Q When you were sleeping, would the gadgets go off?

9 A Yes.

10 Q Are you a heavy sleeper?

11 A No.

12 Q Is Mr. Holt?

13 A Not anymore.

14 Q So during the weeks that he was on stand, that he was  
15 on-call, and he had his gadgets, was there a difference in the  
16 way you two interacted those weeks?

17 A Yes. We were more laid back and we could do things, we  
18 could go places.

19 Q On the weeks --

20 A On the weeks that he wasn't on-call.

21 Q So what do you mean you were more laid back and you could  
22 do things? What kind of things would you do?

23 A Well, we could go visit the kids, we could go out to eat.

24 Q How many kids do you have?

25 A Two.

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Q Do you have grandchildren?

2 A Yes, seven.

3 Q And where do they live?

4 A In the Harbor Creek area.

5 Q So on the weeks that he was on-call, could you go visit  
6 them?

7 A No.

8 Q On the weeks that you were on-call, could you go out to eat  
9 with them?

10 A We tried a couple of times.

11 Q You tried. What happened?

12 A Well, he got a call, he would get a call and -- are you  
13 talking about with the kids or with just us?

14 Q Either.

15 A Okay. With just us, if he got a call, he would have to  
16 leave, and one time I remember sitting there I hope I have  
17 enough money to pay for this. And the waitress asked me if I  
18 wanted him to put his meal in a, the warmer, and I said I don't  
19 know when he's coming back.

20 Q So you were at dinner. Do you remember where you were  
21 eating?

22 A Yes, we were at Bob Evans.

23 Q At Bob Evans. And how long had you been there before one  
24 of the gadgets went off?

25 A 15 minutes, 20 minutes, whenever, however long it took him



ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 to get the meal there.

2 Q So the food hadn't even arrived yet?

3 A The food just arrived.

4 Q And he got a call.

5 A Correct.

6 Q And was it, did the noise that was made by -- what kind of  
7 noise was it that was made by the gadget?

8 A Well, it was the loud beep, beep, beep, beep, you know, I  
9 mean the whole restaurant would look at you.

10 Q So wasn't just something that, that only you two could hear  
11 at the table?

12 A No.

13 Q It was something that the entire restaurant could hear?

14 A Yes.

15 Q How do you know that everyone else could hear it?

16 A Well, they looked at him.

17 Q And you said you tried two times. So was there another  
18 time that you tried to go out to dinner, go out to eat?

19 A Yes. And he got a call and I had to call my son to come  
20 and get me and take me home.

21 Q So he left you at the restaurant?

22 A Yeah.

23 Q Had you ridden together?

24 A Yes.

25 Q Was it common for you two to ride together for dinner?

ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A Yeah, before that.

2 Q And what about after?

3 A After we drove two cars.

4 Q So why couldn't you or why didn't you ride together after  
5 that incident?

6 A Because I didn't want to be left at the restaurant.

7 Q Was there any way for you to predict when he was going to  
8 get a call on one of those gadgets?

9 A No.

10 Q So whether you're at the restaurant, whether you're at home  
11 sleeping, you never knew when a call was coming through.

12 A No.

13 Q So what other differences were there in your interaction  
14 with your husband on the weeks that he had the gadgets, when he  
15 was on-call versus the weeks that he wasn't on-call?

16 A Well, the weeks he wasn't on-call we could, we could do  
17 anything and go anywhere we wanted. But when he was on-call,  
18 we were pretty much prisoners right there in the house.

19 Q Why, why would you say prisoners? I mean you could go out  
20 to eat dinner, could you go around in the City of Battle Creek,  
21 correct, you could go out for a drive.

22 A No, we couldn't go out for a drive when he was on-call.

23 Q Why?

24 A Well, because he had to have his vehicle to respond to his  
25 radio if he got a call.

## ROSALEE HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Q You could still go out to eat.

2 A Yes. In two cars.

3 Q And you never knew when the alarm would go off?

4 A No.

5 Q Were there any activities that your husband used to do that  
6 he stopped doing when he started going on the on-call?

7 A Yeah, he couldn't go to the granddaughter's activities or  
8 he couldn't, he couldn't go to my grand, the one's graduation  
9 that was down at the Kellogg Arena because the parking is all  
10 over, you know, and he couldn't park close enough to respond,  
11 and plus if the thing went off inside the auditorium, it would  
12 disrupt the graduation.

13 Q How was he, from your point of view, how was he different  
14 the weeks that he was on-call versus the weeks that he wasn't  
15 on-call?

16 A Oh, well, he was more stressed out when he was on-call. He  
17 wouldn't get the sleep that he needed. The radio would go off  
18 a couple times a night and he's up and down and -- there was a  
19 time when he didn't even come home after he got a call like at  
20 1:30, he didn't come home until after he had everybody crewed  
21 up like after 8:00 and he could come home and put his uniform  
22 on.

23 Q Now, was there a particular, did he have -- when he was at  
24 night when you're going to bed, did he have any particular  
25 routine or what did he do to prepare for bed on the weeks that

ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 he was on-call?

2 A To prepare -- get his uniform ready and go to bed.

3 Q What do you mean his uniform, his pajamas?

4 A No. He would get his stuff all together for the next day,  
5 you know, his badge and all that stuff on his uniform.

6 Q Would he dress differently when he was going to bed on the  
7 weeks that he was on-call versus the weeks that he wasn't  
8 on-call?

9 A I guess I don't understand what you mean dress differently  
10 when he was going to bed.

11 Q Correct. Yes.

12 A No, he just -- no.

13 Q Okay. And the basket of electronics, where was that?

14 A It was right on his night stand.

15 Q Okay.

16 MR. ALVAREZ: No further questions.

17 THE COURT: Cross-examination, please.

18 CROSS-EXAMINATION

19 BY MR. KRETER:

20 Q Thank you, Your Honor. Mrs. Holt, I'm Mark Kreter, we met  
21 when I took your deposition so I just have a few questions.

22 The graduation at Kellogg Arena, that's right in  
23 downtown Battle Creek, correct?

24 A Yes.

25 Q In fact, my office is across the street from that. So

ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 there's a parking ramp at the arena, correct?

2 A Kellogg Auditorium.

3 Q Auditorium. That's --

4 A Did I say arena? I meant auditorium right downtown by  
5 Central High School.

6 Q Central High School. So Central High School there is a  
7 large parking lot across the street. And there's a parking lot  
8 next to Willard Library. And there is two public parking lots  
9 right over across the river, right?

10 A Yes.

11 Q And you could get to all those parking lots in a couple  
12 minutes walking?

13 A Walking -- yeah. You never knew where you had to park,  
14 though.

15 Q But all these parking lots are within a couple minutes of  
16 Kellogg Auditorium and you're saying your husband didn't go to  
17 your granddaughter's graduation because he couldn't find  
18 parking?

19 A No, I'm saying that if the tone went off, it would disrupt  
20 in the auditorium and you never knew where you had to park.

21 Q Were you aware that he could put the pager on vibrate?  
22 Never told you that?

23 A Well, I don't know.

24 Q Okay. And you don't know why he had to listen to the radio  
25 all the time, do you?

ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 A Well, yeah, in case there was an emergency.

2 Q But you also testified in your deposition that the pager  
3 would go off with a tone and that's how he knew he had to come  
4 in.

5 A Is that the pager?

6 Q The tone.

7 A That would go beep, beep, beep, beep.

8 Q I haven't heard it. So I ask you the question. Now when  
9 he was on-call, how would he get a call? How would he know  
10 that he would have to respond to an emergency? You answered,  
11 "Well, he had a pager that would go off with a tone. Certain  
12 tones. He had a radio, and he also had a phone." But you said  
13 he had a pager that would go off and that's how he would know  
14 he would have to respond. Is that fair to say?

15 A I guess.

16 Q Okay. And as far as -- I believe you testified too that  
17 you usually went out three, four times a week, correct, to eat?

18 A Yeah, maybe.

19 Q Okay. And that you also testified that you remembered two  
20 or three times but less than five times that he had to respond  
21 to an alert when you were out to eat. Do you recall that?

22 A No.

23 Q Okay. Can I show you your testimony to refresh your  
24 recollection? I'll show you page 15 of your deposition. Let's  
25 see. Page 21 you said, my question to you: "And you said you

## ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 remember a couple of occasions where he was called in when you  
2 had to go out to eat. Answer: Yeah, I remember times when  
3 that happened to us. Question: Less than five? Answer:  
4 Probably, yeah."

5 A Well, less than five, yeah.

6 Q Okay. And that's all the time you remember him being  
7 on-call, less than five times he was called in while you were  
8 out to eat?

9 A Well, because we drove two different cars after that.

10 Q Okay. I'm just asking you. Okay. And you would go out to  
11 eat three, four times a week.

12 A Yeah.

13 Q So over a year period, 50 weeks, I'll go three, I'll go  
14 minimum, that's 150 times you would go out to eat in a year.  
15 Three times 50 is 150.

16 A Well --

17 Q Is that fair to say?

18 A I don't know. That's quite a bit.

19 Q And your husband was a battalion chief from 2008 to 2013.

20 A Okay.

21 Q Is that correct?

22 A To 2015.

23 Q '15. Okay. During that period of time, those several  
24 years, you recall less than five times where he was interrupted  
25 at dinner when he was out to eat because he had to take a call.

ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 A Okay.

2 Q Okay. And you went out to eat three times a week and I did  
3 the math there, that would be a lot of times going out to eat,  
4 correct? And you said, you also testified that he could do  
5 most projects around the house but you mentioned painting,  
6 correct, when he was on standby or on-call.

7 A I mentioned --

8 Q I asked you the question, "He could do most projects around  
9 the house except you mentioned painting." Correct?

10 A Yeah.

11 Q Okay. That's when he was on-call.

12 A Correct.

13 Q Okay. But everything else he seemed to be able to do,  
14 correct?

15 A No. He couldn't mow the lawn and he, he didn't work,  
16 couldn't work on the cars. He's a do it your selfer, and --  
17 he couldn't do a lot of things.

18 Q Well, I want to make sure because I think we covered --  
19 okay -- so he couldn't mow the grass, couldn't paint the house,  
20 and couldn't work on his cars. But he could pretty much do  
21 everything else around the house when he was on standby.

22 A I believe so.

23 Q Okay. And he's a sports fan, correct?

24 A No.

25 Q Oh, he's not. Okay. And I think you said he would miss



ROSALEE HOLT - CROSS EXAMINATION - MR. KRETER

1 birthday gatherings or family events that were out of town,  
2 correct?

3 A I can't hear you.

4 Q I'm sorry. I've got to -- you said your husband would  
5 miss birthday gatherings or family events that were out of  
6 town. Correct?

7 A Yes.

8 Q But if they were in town he could attend.

9 A Well, sometimes if it was like a swimming event or, like I  
10 said, the graduation, it's noisy in there for one, and if his  
11 tones went off, it would disrupt things or he couldn't get to  
12 the car fast enough. So he didn't go.

13 Q But my question was birthday gatherings or family events,  
14 if they were in town, he could attend. Not sporting events.

15 A Oh, okay. Well, they usually weren't in town.

16 Q Harbor Creek has got a Battle Creek address, doesn't it,  
17 it's in town.

18 A I don't know it as Wattles Park. Wattles Park.

19 Q Yes. That's where your son lives.

20 A One of them. The other one lives in Marshall.

21 Q The one in Wattles Park, how far of a drive is it to  
22 downtown from where your son lives, less than ten minutes?

23 A Probably.

24 Q Okay.

25 MR. KRETER: I don't have any further questions.

ROSALEE HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 Thank you.

2 THE COURT: Any redirect, Mr. Alvarez?

3 MR. ALVAREZ: Just a couple questions.

4 REDIRECT EXAMINATION

5 BY MR. ALVAREZ:

6 Q Mrs. Holt, I want to be clear. When, after those two  
7 incidents where you were left at the restaurant --

8 A Correct.

9 Q -- did you still go out to eat three to four times a week?

10 A No.

11 Q When he was on-call?

12 A No.

13 Q So you would go out to eat three to four times a week on  
14 the weeks that he wasn't on-call?

15 A Yeah, sometimes, yeah.

16 Q But the weeks that he was on-call, you said yourself you  
17 felt like a prisoner because you couldn't do those things.

18 A Yes.

19 Q And as far as those devices go, and I think we made this  
20 point, but just to be clear, you never knew when they were  
21 going to go off and you never knew when he would have to  
22 respond, correct?

23 A Correct.

24 Q So it could happen at any time?

25 MR. KRETER: Your Honor, I'm going to object.

CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 THE WITNESS: Yes.

2 MR. KRETER: This is cumulative testimony. We have  
3 heard this ten times.

4 MR. ALVAREZ: I have no further questions.

5 THE COURT: We have plowed that ground already. Is  
6 there any recross?

7 MR. KRETER: No, Your Honor.

8 THE COURT: Thank you. You may step down. Thank you  
9 for your testimony.

10 MR. ALVAREZ: And, again, Your Honor, I believe I have  
11 no more use for this witness if the Court would agree to  
12 release her without any objections.

13 THE COURT: Yes, she is released.

14 MR. ALVAREZ: Thank you. At this time, Your Honor, I  
15 would like to call Carrie Erskine.

16 CARRIE ERSKINE, PLAINTIFF WITNESS, WAS DULY SWORN

17 THE LAW CLERK: You may be seated. If you'll please  
18 state your name and spell your last name for the record.

19 THE WITNESS: Carrie Mae Erskine. E-R-S-K-I-N-E.

20 DIRECT EXAMINATION

21 BY MR. ALVAREZ:

22 Q Good morning, Mrs. Erskine.

23 A Good morning.

24 Q What is your relationship to the plaintiff, Martin Erskine?

25 A He is my husband.

CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 Q And how long have you two been married?

2 A We have been married 36 years.

3 Q And of those 36 years, how many of those years have been  
4 with him as a fire fighter?

5 A For 23 years, 23 years.

6 Q And during those 23 years, do you remember when he attained  
7 the position of battalion chief?

8 A About six years ago. 1995, I believe. No. Six years ago.  
9 I think it's been six years ago.

10 Q That's okay. So six years ago. So possibly 2012?

11 A Yeah, yeah.

12 Q Okay. And is he still a battalion chief that you know of?

13 A Yes, he is.

14 Q Okay. And when he first attained that position, was there  
15 a difference in his, in his job duties from when he was not a  
16 battalion chief?

17 A Yes.

18 Q And what do you know about the change that happened as far  
19 as from your perspective?

20 A From my perspective, it changed as far as he became  
21 responsible for being on-call every other week. Well, when he  
22 first started the position, it was every two weeks. But as  
23 soon as the fire chief retired, Chief Houseman, it became every  
24 other week; he was on-call every other week.

25 Q Now, on-call, what do you mean by on-call? How many days

CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 or how many hours was he on-call?

2 A He was on-call seven days for 24 hours at a time. So that  
3 meant that he would go in to work and work, you can say eight  
4 hour, hours, but it really was more than that. He would get  
5 home 5:30, 6:30, and then as soon as he got home, though, he  
6 had to monitor radios and telephones and beepers, and his  
7 gadgets for emergencies.

8 Q His gadgets. So he would still work his normal workday?

9 A Yes.

10 Q During those weeks that he was on-call.

11 A Yes.

12 Q What time would he go in?

13 A He would go in, he had to be there at 6:30, he would leave  
14 the house at 6:00 to be there around by 6:30 to start man  
15 power; he had to make assignments.

16 Q And then what time would he be home, typically?

17 A He got home, it depended on the day, 5:30, 6:30 at night.

18 Q And once he was home, you said that the weeks that he was  
19 on-call he had his gadgets.

20 A Yes.

21 Q Do you remember how many gadgets he had?

22 A In the beginning there were about four of them that I can  
23 remember. There was a, there was a radio, a pager, his  
24 telephone, and when Chief Houseman was there there was this  
25 little, the old time like little pagers, phone pagers like

CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 things.

2 Q Like a beeper?

3 A Yeah, like a beep, yeah. He had all four of those with  
4 him.

5 Q And how would he go about monitoring those gadgets?

6 A He kept them with him all the time. Wherever he went the  
7 gadgets went.

8 Q So if he was in the living room, were they with him?

9 A They were in the living room. If he was in the bathroom,  
10 they were in the bathroom. If he was in the garage, they went  
11 to the garage with him. If he went to the basement, they went  
12 to the basement with him.

13 Q How would you say -- well, would you say that there was a  
14 difference in how you two interacted the weeks that he was  
15 on-call versus the weeks that he wasn't on-call?

16 A Yeah. I would say during the weeks that he was on-call,  
17 it's hard to have a communication with him because his ear is  
18 always turned to the road listening for that emergency. The  
19 radio would go off for different things, and it would interrupt  
20 conversations. So our interaction that way was differently.  
21 And then the way we interacted with other people was  
22 differently. Family was different. We just didn't go to a lot  
23 of those functions sometimes or if we did, if they were in  
24 town, all the gadgets come with us and he's off monitoring his  
25 radios.

## CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 Q Why was it different?

2 A It was because he was constantly on-call and you just  
3 didn't know when that emergency call was going to come in and  
4 when he was going to leave. So it was hard to have a good  
5 conversation or decision making with him during those times.

6 Q On the weeks that he was on-call, would you two still have  
7 dinner together?

8 A We would.

9 Q Would you cook dinner at home?

10 A Sometimes we would cook at home, and other times we would  
11 go out to dinner.

12 Q And when you went out to dinner, on the weeks that he was  
13 on-call, was there a difference from when you went out to  
14 dinner when he wasn't on-call?

15 A Yes. I drove separately in separate cars because if an  
16 emergency came in while we were at dinner, he would have to  
17 leave and I would be stranded at the restaurant and need to  
18 call someone to come and get me. So I always drove my own car  
19 because I didn't want to go with him to those emergencies.

20 Q Can you remember of any, any instances when you were left  
21 behind?

22 A There were times -- there was one time when we had gone to  
23 a family function and we were on our way home and, this was  
24 early on, I had rode with him that time. And it was my first  
25 time and my last time of riding with him. But we went to a

## CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 family function, we were on our way home, and he got a call, an  
2 emergency call, and he needed to go to. So we were just coming  
3 on to a stop light, it had turned red, so I jumped out of the  
4 car, and my parents happened to be behind us, so I ran to their  
5 car and asked them if they could take me home.

6 Q And you said that was the first time and the last time?

7 A Yes. I did not want to be caught in that situation again  
8 because I kept thinking in my mind, what if my parents weren't  
9 behind us. I would have gotten out because I didn't want to go  
10 with him and I would have been on a corner having to call  
11 somebody to come and get me.

12 Q What about household chores, the honey do list, was there a  
13 difference in how those types of things got done on the weeks  
14 that he was on-call versus when he was not on-call?

15 A The bigger household chores, like mowing the lawn would  
16 wait. He wouldn't do those on the weeks that he was on-call  
17 because being on the tractor, he had to have his radios with  
18 him at all times. So being on the tractor was loud and it was  
19 hard to hear the radio when you're mowing, and trying to keep  
20 track of all of them.

21 So he wouldn't do those.

22 The things like, one time we painted a room, we were  
23 going to paint a back bedroom but we waited until he was off  
24 call to start it because he's in the middle of it painting,  
25 it's too much of a hassle to stop and clean out your brush and



CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 restart again when you get back.

2 Q Now, the gadgets that he had, you said one of them or maybe  
3 two of them were pagers. Do you know if either one of those  
4 could be set to vibrate?

5 A I'm not sure.

6 Q Okay. Is there any reason that he wouldn't just have one  
7 of the pagers if they could be set to vibrate with him when he  
8 was mowing the lawn on the tractor?

9 A I imagine he could have. But the lawn mower makes a lot of  
10 vibrations too. I don't know if it's like my phone that  
11 vibrates, but it's hard, sometimes even though it's on vibrate,  
12 and you have it in your pocket, sometimes I miss it. I don't  
13 even know that it's gone off. So it's easy to miss.

14 Q Now when he had his gadgets, would only one of the gadgets  
15 go off at a time?

16 A No. They would all go off.

17 Q So if one went off, all of them went off?

18 A Yes.

19 Q And what kind of notification would they give?

20 A The phone would ding that there was a message that had come  
21 across. The one radio, I don't know if it was a radio or  
22 pager, one of them made a lot of noise, made a loud noise, and  
23 this dinging sound, ding, ding, ding, when there was a fire  
24 call that he had to go to.

25 Q And what about the volume of those notifications?

## CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 A They were loud.

2 Q So could you hear them in another room of the house?

3 A Yes, you could.

4 Q Now, did you two go to church?

5 A We did.

6 Q And was there a difference in when you went to church on  
7 days that he was on-call versus the days that he was not  
8 on-call?

9 A Yes. When he was on-call, he would never sit in church  
10 with me in the sanctuary part because the radios were loud and  
11 disruptive. And he liked to monitor them. So he would sit out  
12 in the, we call it the North Ex area so it was outside of the  
13 sanctuary and there were windows where you could see what was  
14 going on and then they had it piped out, you know, speakers  
15 coming out into the North Ex so you could hear as well. So he  
16 would sit out there during those times.

17 Q Why couldn't he sit with you?

18 A The radios are, they are loud when they go off. And, and  
19 it wasn't just the fire calls that would come across. There  
20 would be other calls, emergency calls that come across those  
21 radios. So there was always some kind of traffic, radio  
22 traffic going on. And they're loud. They are not quiet. And  
23 it would be disruptive.

24 Q Radio traffic. You mean like voices?

25 A Yes, yes.

## CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 Q And that was constant?

2 A Pretty much, pretty much. There was always some kind of an  
3 emergency.

4 Q Now, whenever the gadgets would go off, did he always have  
5 to leave?

6 A Not, not always.

7 Q Did he have a different routine when he would go to sleep,  
8 when he would go to bed at night on the weeks that he was  
9 on-call versus the weeks that he was not on-call?

10 A Yep. All of the radios, the phones would come into the  
11 bedroom. He tried one time to leave the loudest radio out in  
12 the living area so it wouldn't disturb me. But I could still  
13 hear it. I would still wake up. So, yes, he brought them into  
14 the bedroom with him so he would be sure to wake up if they  
15 went off. And they would go off. I remember one night in  
16 particular -- where I get up at 5:00 o'clock in the morning to  
17 go to work. And so I remember one night in particular where  
18 the radio went off three times, there were three fires that  
19 night, three times during the night and by the third time when  
20 it woke me up I just like looked at him and said, seriously? I  
21 think they need to put me on the payroll too. Because it's  
22 just, it was very disruptive during those weeks.

23 Q So obviously you could hear the gadgets going off when you  
24 were sleeping.

25 A Yes.

CARRIE ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 Q Now, he still works as a battalion chief for the City of  
2 Battle Creek. And has there been any change in the on-call  
3 from your perspective?

4 A Yes.

5 Q And what is that change?

6 A They hired three additional battalion chiefs, so there's  
7 one battalion chief that works every single day for -- they  
8 rotate it, but there's a battalion chief on-call every single  
9 day for 24 hours at a time. Martin works every Wednesday for  
10 24 hours.

11 Q What about the rest of the week, what does he do?

12 A He works in the office doing his job. He works Mondays,  
13 Tuesdays, and Wednesdays, or Thursdays, and 24 hours on  
14 Wednesday.

15 Q What about Friday, Saturday and Sunday?

16 A He has those days off. Unless he's working for someone.

17 Q And when he's working that 24-hour day on Wednesdays, are  
18 you able to get some sleep now?

19 A Yes.

20 Q And why is that?

21 A It's wonderful. No radios going off. Nothing to wake me  
22 up in the middle of the night.

23 Q Is he still sleeping next to you on those nights?

24 A No, he sleeps at the station.

25 Q And the rest of the week he's at home.

CARRIE ERSKINE - CROSS EXAMINATION - MR. KRETER

1 A Yes.

2 Q And he doesn't have his gadgets going off?

3 A No.

4 Q So how do you feel about the change in the on-call system  
5 now?

6 MR. KRETER: I am going to object, Your Honor. I'm  
7 not sure what relevance this has.

8 MR. ALVAREZ: It goes directly to how intrusive it  
9 was, how it affected their daily lives, how it was onerous.

10 THE COURT: I think we get that, Mr. Alvarez. I  
11 really think you can move on, please.

12 MR. ALVAREZ: Okay. I have no further questions.

13 CROSS-EXAMINATION

14 BY MR. KRETER:

15 Q Just a couple. Hi, Mrs. Erskine. Mark Kreter. You  
16 testified that when he had a fire call there would be a ding,  
17 ding, ding. That's how he would know he would have to come in,  
18 correct?

19 A Yeah. On one of the pagers.

20 Q That was the fire call. Would it be fair to say that the  
21 radio was the biggest disturbance, the constant chatter on the  
22 radio?

23 A The radio, yeah, and there was a, I think the pager kind of  
24 made a noise too.

25 Q But as far as background noise and stuff, the radio is kind

CARRIE ERSKINE - CROSS EXAMINATION - MR. KRETER

1 of like -- do you ever recall a CB where there's stuff going  
2 on?

3 A Yes.

4 Q Okay. And that's what would interrupt conversations or --

5 A Yes.

6 Q But your husband wouldn't necessarily have to go in when  
7 that's happening, correct?

8 A Not necessarily. But he would listen to that chatter to  
9 make sure that there wasn't something important happening that  
10 he needed to leave for.

11 Q So you said he liked to monitor the radio.

12 A Yeah, he did.

13 MR. KRETER: I don't have any further questions.  
14 Thank you.

15 THE COURT: Mr. Alvarez, anything further?

16 MR. ALVAREZ: Nothing further, Your Honor.

17 THE COURT: Thank you. Thank you, Mrs. Erskine, you  
18 may step down.

19 MR. ALVAREZ: Again, Your Honor, may she be released?

20 THE COURT: Yes. I think we are going to take our  
21 morning break at this point. It's almost 11:00 o'clock. Let's  
22 take 20 minutes, we will come back for your next witness at  
23 11:20, Mr. Alvarez.

24 MR. ALVAREZ: Your Honor, I did have a question with  
25 regard to that.

1 THE COURT: I'm sorry?

2 MR. ALVAREZ: I'm sorry, I did have a question with  
3 regard to that. My next witnesses are going to be Mr. Erskine  
4 and Mr. Holt and their testimony is going to be quite lengthy.  
5 Would the Court be okay if we took our lunch break at this  
6 point and then continued on with them the rest of the afternoon  
7 or was the Court planning on taking some sort of break later  
8 on?

9 THE COURT: Well, my plan would be to take this brief  
10 break, start with your next witness, and somewhere around the  
11 noon hour, perhaps a little after noon take a 45-minute lunch  
12 break, and then recommence and sometime in the middle of the  
13 afternoon take another short break like this one. So that  
14 would be my preference.

15 MR. ALVAREZ: That's fine. And what time will we be  
16 ending for the day?

17 THE COURT: 4:00 or 4:30 depending on where you are in  
18 your proofs.

19 MR. ALVAREZ: Thank you, Your Honor.

20 THE COURT: All right. We are in recess for 20  
21 minutes.

22 THE LAW CLERK: All rise, please. Court is in recess.  
23 (Recess taken, 11:01 a.m.; Resume Proceedings,  
24 11:28 a.m.)

25 THE LAW CLERK: All rise, please. Court is back in

HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 session. You may be seated.

2 THE COURT: Mr. Alvarez.

3 MR. ALVAREZ: Your Honor, at this time I would like to  
4 call plaintiff Howard Holt to the stand.

5 HOWARD HOLT, PLAINTIFF, WAS DULY SWORN

6 THE LAW CLERK: You may have a seat.

7 MR. ALVAREZ: Good morning, Mr. Holt.

8 THE WITNESS: Good morning.

9 DIRECT EXAMINATION

10 BY MR. ALVAREZ:

11 Q How long have you, how long did you work for the City of  
12 Battle Creek?

13 A Approximately 28 years.

14 Q And of those 28 years, how many years did you work as  
15 battalion chief?

16 A I believe it was eight.

17 Q And when did you retire?

18 A February of 2015.

19 Q During your time as battalion chief, did there come a point  
20 where your scheduling was such that you were required to be  
21 on-call?

22 A When I became a battalion chief, they, they only had two  
23 battalion chiefs at that time so there was already an on-call  
24 system in place at that time.

25 Q And what was that on-call system?



## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A Well, you would work your, under Chief Houseman, you would  
2 work your regular shift from 8:00 to 5:00 and then from, if you  
3 were on-call, from 5:00 until, actually it was 6:30 the next  
4 morning, you were on-call and you had to respond to any  
5 emergencies that you were required to respond to.

6 Q And was this, and how often would you have to be on-call?

7 A When I worked for Chief Houseman, you would do a week on  
8 and two weeks off.

9 Q So every two weeks you would have to be on-call for a  
10 seven-day stretch?

11 A Correct.

12 Q So you would work your normal, your normal shift and then  
13 you would be on-call the remainder of the evening.

14 A Correct.

15 Q Until the next morning.

16 A Correct.

17 Q Did that change before you retired?

18 A It became more frequent. After Chief Houseman retired,  
19 there was only two battalion chiefs because he used to take a  
20 week, so it was just myself and Battalion Chief Erskine, so we  
21 did it every other week.

22 Q Well, but when Chief Houseman retired, didn't someone take  
23 over his position at least in the interim?

24 A Jackie Hampton. He was the Chief of Police. He was  
25 assigned to oversee the fire department.

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1 Q So you had Jackie Hampton who was the Chief of Police who  
2 was acting as fire chief as well in that position?

3 A Yes.

4 Q And why did, or did Chief Hampton also take an on-call  
5 week?

6 A No.

7 Q And why not?

8 A He didn't have the level of training as a fire fighter to  
9 be able to respond to an incident.

10 Q So the fire chief, the acting fire chief at that time could  
11 not enter the rotation because he didn't have training as a  
12 fire fighter?

13 A Right. He had, he had some training. He went to I would  
14 call it an abbreviated chief's class where he learned some of  
15 the, the routines that a fire fighter would do and some of the  
16 meanings of what we were talking about, but he really never  
17 served any time anywhere as a fire fighter.

18 Q And is it a requirement that in order to be on-call that  
19 you have to have fire fighting training?

20 A In order to become a battalion chief you have to serve two  
21 years in the next lower grade which would be a captain, and it  
22 also repeats for a lieutenant, and so you would have to  
23 actually start out as a fire fighter.

24 Q And why is it important to have that training in order to  
25 participate in the on-call system?

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1 A Well, it's for the safety of everybody involved and to  
2 understand and recognize signs when you go to mitigate a fire.  
3 I mean it's obviously dangerous or everybody would do it.

4 Q Could Chief Hampton have put on the gear and participated  
5 in fire fighting activity?

6 A No.

7 Q So let's talk about your role as a battle battalion chief.  
8 You worked as a battalion chief under Chief Houseman, Chief  
9 Hampton and Chief Schmaltz?

10 A Correct.

11 Q Okay. So under Chief Houseman, what -- what years did you  
12 work?

13 A I worked from the time that I became, that I was promoted  
14 to a battalion chief until he retired and I believe that was  
15 April of '12.

16 Q And then with Chief Hampton.

17 A Chief Hampton had, I don't remember the dates, but Chief  
18 Hampton was in charge until Chief Schmaltz was hired.

19 Q And Chief Schmaltz was hired in '14?

20 A June of '14, I believe.

21 Q You don't remember exactly?

22 A No, I don't remember exactly.

23 Q Now, this on-call system was already in place when you  
24 became battalion chief under Chief Houseman.

25 A Correct.

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Q So prior to that you were working for the City of Battle  
2 Creek as what?

3 A A fire fighter. I have been, you know, I mean I started  
4 out as a probationary fire fighter, after four years I became a  
5 first class fire fighter, then I think I was on about ten  
6 years, I took a test, I was promoted to a lieutenant, and I ran  
7 a fire station. I had two fire fighters who worked for me, and  
8 then I think about four years as a lieutenant, I took a test  
9 and was promoted to a captain, and I served as a captain for a  
10 couple of years.

11 Q Before you became a battalion chief then?

12 A Correct.

13 Q Okay. So this on-call system was in place when you became  
14 a battalion chief for how long, do you know?

15 A I don't really remember when it started for sure. I'm  
16 going to -- I'm going to say about 2010, I believe. 2011,  
17 maybe.

18 Q And did this on-call system impact you as a captain or as a  
19 lieutenant?

20 A Yes. I think it had an impact on me as a fire officer.

21 Q How is that?

22 A Well, because you always have that chain of command. You  
23 know, we are kind of military. You have our sergeants,  
24 lieutenants, captains. And they can have a very delayed  
25 response sometimes. I mean you try not to, but like when I

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1 started one of the first battalion chiefs, Battalion Chief  
2 Linaur, Chief Houseman allowed him to go play golf. So he  
3 would show up at a fire scene, he would be late because he had  
4 to run off a golf course, get in his car. He would bring his  
5 teenage son with him, and, you know, it was just not conducive  
6 to have that happen for the safety of everybody around. That's  
7 a big impact. If you've got somebody sitting in your car with  
8 you, especially a young person who's wanting to ask questions  
9 all the time, well, you need to listen to radio traffic.

10 Q Were there any complaints that were made about Battalion  
11 Chief Linaur?

12 A Yeah, I think the union --

13 MR. KRETER: I am going to object. Lack of foundation  
14 and hearsay.

15 THE COURT: Sustained.

16 BY MR. ALVAREZ:

17 Q Do you know if there were any concerns about the fact that  
18 he would arrive late?

19 A Well, I know I personally talked to the union. What the  
20 union did with it after that, I don't know.

21 Q Do you know if there were any concerns about him bringing  
22 his son with him?

23 A Yes. I was also a complaint that was made several times.

24 Q So when you became a battalion chief, were you given any  
25 guidelines as to what you could or could not do when you were

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1 on-call?

2 A I was told that I was paid to monitor the radio, and to  
3 stay within a response time where I could respond quickly.

4 Q That was under Houseman.

5 A Correct.

6 Q What about Hampton, was there any difference?

7 A Hampton seemed to be just kind of a hands off, you know,  
8 whatever you guys have been doing, just keep doing it. And we  
9 are going to have several meetings a week that you keep me  
10 apprised of everything that's going on, if anything big pops  
11 up, let me know.

12 Q And what about Chief Schmaltz?

13 A Chief Schmaltz was kind of the same thing. He kind of came  
14 in and he had inherited, you know, the system the way it was.  
15 He was from basically out of town. He came in from Ohio but I  
16 do know that he had worked in Coldwater prior to that. So,  
17 yeah, he was, he was pretty much, look, you know, you guys,  
18 let's just operate like you've been operating, and then as I  
19 get acquainted with what's going on, I'll change things.

20 Q Did your duties as a battalion chief change under any of  
21 these three chiefs?

22 A No, they pretty much stayed the same from what Chief  
23 Houseman had initiated. There might have been some subtle  
24 changes in the fact that, you know, Chief Hampton never did an  
25 on-call, wasn't able to, and I would say for about the first

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1 six months that Chief Schmaltz was there he was unwilling to be  
2 on-call. I mean he just basically said, that's not what they  
3 hired me for. So it was quite a while before he would even  
4 take an on-call. So Marty and I continued to do, or Battalion  
5 Chief Erskine and I continued to do it every other week.

6 Q So under Houseman, Houseman did participate in the on-call  
7 system and he alternated with both of you. Chief Hampton did  
8 not. And Chief Schmaltz did after about six months?

9 A I think about six months. Maybe not quite that long. But  
10 it took, it took quite a while for him to warm up to the idea.

11 Q So what are your duties and responsibilities as a battalion  
12 chief, or what were they when you were working for the City of  
13 Battle Creek?

14 A Well, mine were to respond to multiple engine or all  
15 station calls, to oversee fires; I was responsible for writing  
16 evaluations for the fire officers; I was charged with doing the  
17 repair work on self-contained breathing apparatus; I was  
18 charged with seeing that the stations got what they need. If  
19 they had any repairs, I was supposed to be the go between guy  
20 between somebody reporting something wrong at the station and  
21 they would assign me to it, or I mean they would tell me about  
22 it and then I would have to go have a conference with the  
23 chief, explain to him what was going on, and then whatever he  
24 said from that point is what happened, where we went with it.

25 Q Okay. So you said that one of your first responsibilities

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1 was to respond to multiple calls.

2 A Correct.

3 Q And what is that response or what are you supposed to do in  
4 responding to a call?

5 MR. KRETER: Your Honor, just for clarification, are  
6 we talking about when he's working 40 hours during the course  
7 of the week, or on standby?

8 THE COURT: That's a good point. I think you do need,  
9 Mr. Alvarez, to be a little more specific in terms of what  
10 you're talking about.

11 MR. ALVAREZ: At this time I'm talking about general  
12 and then I'm going to get into the details.

13 THE COURT: Well, I think you need to make that clear  
14 to both the witness and to defense counsel and me.

15 MR. ALVAREZ: Thank you.

16 BY MR. ALVAREZ:

17 Q So, Mr. Holt, in general, what is the battalion chief's  
18 duty with regard to responding to a call?

19 A Well, you start out -- I mean you get what you would call,  
20 let's say it was a house fire, or some kind of a structure  
21 fire, you would start out with what they would call a multiple  
22 stations tones where it would set off an audible beep, it would  
23 open up a radio channel and they would, dispatch give you the  
24 address and give you whatever they were able to get from the  
25 telephone call or on what the emergency was. Then we would go



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1 into a radio check. So as soon as they start giving radio  
2 checks, you have to start listening to make sure that everybody  
3 is coming that should be coming, and if there was something  
4 different, you know, maybe you had an engine company that was  
5 out that dispatch didn't know about or something, you would  
6 have to maybe advise dispatch that they need to send somebody  
7 else or maybe the type of call they would normally be sending a  
8 four engines, you might have to tell them I think, you know,  
9 you should send us a fifth engine.

10 Q And this is in general during the week when you're working  
11 your regular shift.

12 A Correct.

13 Q Okay. Was there a difference between responding to a call  
14 during your regular shift as opposed to when you were on  
15 standby status?

16 A Only the fact that I didn't have to be in my uniform. I  
17 mean, Chief Houseman made it abundantly clear to me that he  
18 paid me to monitor the radio. Now, he always said I don't  
19 expect you to have to listen to it when you're trying to go to  
20 sleep at night. But until you go to bed, you listen to that  
21 radio.

22 Q Okay. And so let's talk about your standby time. What  
23 time on the weeks that you had, that you were on standby, at  
24 what time would you start your shift, your regular shift?

25 A Well, my regular shift always started at 8:00. But if I

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1 was on standby, I would have to go to the station at by about  
2 6:00 o'clock in the morning because part of our job was to set  
3 the staffing for the next day, and the fire fighter could, you  
4 know, call in sick or request a vacation day or anything up to  
5 about 30 minutes prior to the start of shift. So you had to go  
6 in and listen to the, what we call the call-in line and see who  
7 had called in sick, who was requesting a vacation change, or  
8 fire fighters had what they call a Kelly day they could take.  
9 So you had to take all of that information and put it over into  
10 the, the staffing sheet to make sure that all of the stations  
11 had the required number of people to operate for the day.

12 Q So you would start your day at around 6:00 o'clock in the  
13 morning?

14 A Correct.

15 Q And what time would your normal shift end?

16 A Well, my normal shift technically ended at 5:00. But it  
17 was kind of rare that it got to end especially if you were  
18 on-call because the fire stations would always say, well, you  
19 know, I know you're going home, but, you know, we have got a  
20 tire on our engine that's got a cut in it. We are not going to  
21 drive it. We think it's unsafe. Can you come by and see if  
22 you need to call a mechanic to, you know, have our tire  
23 replaced, or things of that nature. Or maybe you had supplies  
24 that you had promised you would get to them but because of  
25 things through the day you didn't do it. And if I gave you my

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1 word I would do something, I tried to keep it even though it  
2 meant I may not leave at 5:00 o'clock.

3 Q So once you left the station and you went home, and you  
4 were on standby, what did you have to do, what did you  
5 understand your duties were when you were on standby?

6 A To monitor the radio as least up until the time that I went  
7 to bed at night, and answer telephone calls that may come in,  
8 answer radio traffic from fire engines that called in or  
9 dispatch as they radioed.

10 Q Now, what did you use to monitor this, these alarms or this  
11 traffic or these notifications?

12 A I always preferred to use my portable radio.

13 Q Did you have any other items?

14 A I had a radio pager, I had a cell phone, a personal cell  
15 phone, and in the beginning we had, you know, what you used to  
16 see the doctors carry, the little telephone pager.

17 Q And were those electronics required for when you were on  
18 standby?

19 A Yes. They were all assigned to me except for my personal  
20 cell phone at which time the city when I became a battalion  
21 chief, they gave me a small stipend to offset the city use of  
22 it, kind of compensate me for using my cell phone for city  
23 business.

24 Q And those four devices, how often would you say that they  
25 were making some sort of noise or giving you some sort of

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1 notification?

2 A Well, the radio was on all the time. The pager was usually  
3 set to alert, and obviously the telephone pager only went off  
4 if somebody called the page number and left a message.

5 Q But now did you really have to monitor the radio all the  
6 time?

7 A It was, it was my clear understanding from Chief Houseman  
8 when I became a battalion chief, that, yes, I monitored the  
9 radio. He did, as I said, I was not required to do it when I  
10 turned in for the night to go to sleep; I could switch it to  
11 alert, but other than that, I was supposed to be listening.

12 Q Did that change at all under Chief Hampton or Chief  
13 Schmaltz?

14 A No.

15 Q You had, I believe you had a different title or a more  
16 specific title when you were battalion chief.

17 A Right. I was, I was known as the suppression battalion  
18 chief.

19 Q And is that a title that's outlined in some regulation,  
20 some directive, some rule of the fire department?

21 A There is no specific outline of what a suppression  
22 battalion chief is. It was just, I was given that because,  
23 well, my duties kind of coincided with the suppression forces.

24 Q And so who gave you those duties or that title?

25 A That title existed when I took the job, and it was created

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1 by Chief Houseman to the best of my knowledge.

2 Q And so as suppression chief, we will just call it that,  
3 what were your responsibilities during your normal, during your  
4 normal shift?

5 A During my normal eight hours?

6 Q Yes.

7 A Well, I repaired the self-contained breathing apparatus; I  
8 was charged once a year with writing evaluations for the  
9 captains and lieutenants; as I say, I was supposed to be the go  
10 between between the fire fighters and the fire officers and the  
11 chief, but the city had a very liberal open door policy, so  
12 most of the time the fire fighters and the officers just kind  
13 of went around me and, you know, went to the chief and then  
14 usually if there was a problem I would hear it from the chief  
15 because that's just, wasn't supposed to work that way but  
16 that's kind of the way it works.

17 Q So there was a chain of command that was supposed to be  
18 followed but you're saying that it wasn't often followed?

19 A Correct.

20 Q And now did you have a lot of discretion in the duties that  
21 you had as battalion chief?

22 A I didn't feel so. My, my duties were pretty well  
23 prescribed especially working under Chief Houseman he was a --  
24 I would say, to be polite, a very hands on chief. So you ran  
25 everything through Chief Houseman.

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1 Q What do you mean everything?

2 A Well, if I, if I wanted to discipline somebody, before I  
3 could do that I would have to go and sit down and have a  
4 conference with the chief, tell him what happened, and tell him  
5 what I wanted to do; and he may say, yes, you can do that or he  
6 may say, well, don't do, that's kind of hard, don't do that  
7 much. Or he may say, no, we are not going to do that. Or  
8 there were even oftentimes where he may say, yeah, go out and  
9 give this person an oral reprimand. Because all I could do is  
10 either give you an oral reprimand or a written reprimand. And  
11 he might say, yeah, give them an oral reprimand, and then when  
12 the union would complain that I gave the fire fighter an oral  
13 reprimand and they went down and had a meeting with him, he  
14 would remove it. He would completely reverse what I had done.  
15 Even though I had his permission to do it.

16 Q Do you remember a time when that happened specifically?

17 A I can remember an incident where a fire fighter -- we had a  
18 female from city hall that would carry the mail around from  
19 station to station and he would use some profanity, I mean some  
20 very serious profanity in front of her, and I had gotten wind  
21 to it and I went in and I asked the chief, I told him here's  
22 what he did, here's what he said, I would, you know, and I had  
23 spoke to her. And she told me that he had said it. And I had  
24 asked her why she didn't come forward, she said, well, I really  
25 don't want to start problems, you know. So I had asked the

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1 chief if I could write the guy up, and he told me no. If, if  
2 the girl from city hall didn't want to say anything, then let  
3 it go.

4 Q So you couldn't hire fire fighters.

5 A No.

6 Q You couldn't fire fire fighters.

7 A No.

8 Q Could you suspend them?

9 A No.

10 Q What would you say in general is the most important or most  
11 essential function of you as a battalion chief?

12 A As far as emergency calls or --

13 Q Yes.

14 A To, to mitigate emergencies and oversee the safety of all  
15 fire personnel.

16 Q When you were on-call, when you were on-call, was there a  
17 difference in your daily life from the weeks that you were  
18 on-call, from the weeks that you were not on-call?

19 A Yeah. When I was, well, obviously when I wasn't on-call I  
20 was free to do or go wherever I wanted without too much worry.  
21 I mean there were a few exceptions. But when I was on-call, I  
22 had to stay within a, I mean I'll say a geographical area. It  
23 was basically I had to be able to respond quickly and be able  
24 to receive radio reception.

25 Q And so were you in any way limited to what you could do on

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1 the weeks that you were on-call?

2 A Yeah. I -- I didn't feel I could mow my yard because I  
3 couldn't hear the radio. I, lots of things I couldn't do. I'm  
4 kind of a do it your selfer. So, you know, let's say something  
5 simple, like maybe I was going to change the oil or do a brake  
6 job to a car. I couldn't really do it because that would  
7 require me to spend an extra four or five minutes cleaning up,  
8 you know, before I could respond.

9 Q Well, four or five minutes isn't a long time, right?

10 A Four or five minutes when something is on fire is an  
11 extremely long time.

12 Q And why couldn't you mow your lawn? As I understand it,  
13 you had a pager that you could put on vibrate.

14 A That's true. I did have a pager that you did have a  
15 vibrating setting on it. The problem is the lawn mower also  
16 vibrates and lawn mowers are not automobiles, they aren't built  
17 with radio suppression factors in it so any time you're sitting  
18 on top of this lawn mower and it's running, it interferes with  
19 radio traffic.

20 Q Now, you heard your wife and her testimony testify about  
21 going out to dinner and the inconveniences that it brought when  
22 you were on-call. How often would you go out to dinner with  
23 your wife the weeks that you were on-call?

24 A Well, I think initially we started, you know, we would try  
25 to do once or twice, but after, you know, I had to leave her



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1 behind once and then she, and then the second time I had to  
2 leave her behind I believe that's when she had to call my son  
3 to come get her because I wasn't able to return. After that  
4 she pretty much said, you know, look, I don't want to be left  
5 behind and I said, well, you can go with me and she said that's  
6 even worse than being left behind. So we, we kind of limited  
7 it. I mean we -- in the beginning it was kind of nice and you  
8 know, well, this isn't going to be too obtrusive, but then you  
9 find out, well, yeah, it's a little more, a little more to it  
10 than I thought. And I'm, I'm not a person who wants to sit in  
11 the restaurant and listen to my radio go off and have everybody  
12 stare at me as I jump out and run out, and people think is this  
13 guy not wanting to pay, is he stealing groceries from the  
14 grocery store as I'm running through the supermarket.

15 Q When you went out to dinner couldn't you just take your  
16 pager and put it on vibrate?

17 A You, that would have been an option, except for me, I was  
18 clearly informed by Chief Houseman that during my awake hours,  
19 I was to monitor the radio traffic. And you can get the  
20 emergency tone over the, over the pager, but the problem with  
21 the pager is it's only one way communication. You can hear  
22 something coming in, but you don't have the ability to address  
23 that or speak to anybody. And it's nice that we say that,  
24 well, you only had to go on all stations. Well, no, I had to  
25 go anytime there was a multiple engine response. Which could

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1 have been a hazardous material, it could have been a multiple  
2 accident where they had so many victims that they needed two or  
3 three engines. It could be that I was, I was monitoring  
4 because, even though I had a telephone with me, fire fighters  
5 don't always do what you tell them they are supposed to do. So  
6 if they want me, what's the easiest way for them to get me?  
7 They are on scene and they get the radio and they say engine 4  
8 to car 3. Well, if I'm not listening to my radio, I don't know  
9 they are calling me. Or dispatch is calling me, you know, here  
10 again, they're going to just pick up the radio because that's  
11 what they are doing, they are sitting at a radio console and  
12 they are just going to key the city frequency and they are  
13 going to say dispatch to car 3, we have a report of a hazardous  
14 material incident, you know, who do you want us to send.

15 Q But couldn't you still respond to them after getting your  
16 page? If you're in the restaurant, you get a page, you can  
17 leave the restaurant and go to your car and get the radio.

18 A Well, I guess anything is possible. But to me, when  
19 they're calling you, time is always of the essence. And, you  
20 know, you don't want to have any kind of delays; if it's an  
21 emergency, you certainly don't want a delay. If it's a  
22 nonemergency, well, you know, and you don't answer, they're  
23 just going to go do what they think they want to do. If it's  
24 wrong, well, I'm the guy that's going to be trouble, well, we  
25 called him, he didn't answer.

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1 Q And like Chief Schmaltz, you never knew what kind of call  
2 was going to be coming in on any of your devices at any given  
3 time?

4 A No.

5 Q Now, you heard Chief Schmaltz's testimony earlier that he  
6 relied on your input, yours and Mr. Erskine's input during, on  
7 many things during the day, during work hours.

8 A Yes.

9 Q Okay.

10 MR. ALVAREZ: Your Honor, may I approach?

11 THE COURT: Yes.

12 MR. ALVAREZ: I'm showing you what's been marked as  
13 Plaintiff's Exhibit 1. Could you take a minute to look at  
14 those, please?

15 THE WITNESS: Okay.

16 BY MR. ALVAREZ:

17 Q Now, these are e-mails sent to and from you and Chief  
18 Schmaltz, correct?

19 A Correct.

20 Q Now, it looks like this first e-mail, this first e-mail  
21 which is labeled Plaintiff's Exhibit 1, 0001, Bates stamp  
22 number, it looks like it's some sort of quote on a Cavcom Omni  
23 HazMat system, is that correct?

24 A Correct.

25 Q Now, why were you sending this quote to Chief Schmaltz?

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A Because, you know, one of the problems you have in the fire  
2 service is as soon as you put on your SCBA you have all the  
3 ambient noise, you go into the fire, you don't have very good  
4 radio communication because, still pretty much to this day, we  
5 rely on holding the microphone up around your mask and trying  
6 to get clear reception. You know, some people, depending on  
7 their voice, you hear very well, other people it's terrible.

8 Q I'm sorry. I guess my question is, why did you send the  
9 quote, why couldn't you have just approved the quote or not?

10 A Oh, I didn't have permission to approve a quote. I mean to  
11 buy anything. I just had to, you know, request that they send  
12 some equipment in for us to try out, and then we would go from  
13 there.

14 Q So you were just requesting quotes?

15 A Oh, yeah, yeah, I had no budget. I had no power to buy  
16 anything.

17 Q If you go to two pages later, 0005, it says, "Re hose  
18 testing" at the top. That's an e-mail from Chief Schmaltz to  
19 you. What's that e-mail about?

20 A Every year the fire department has to have hose testing to  
21 comply with NFPA standards, and this is a company that Chief  
22 Houseman used to comply for the hose testing, and Chief  
23 Schmaltz wanted to know who we had used in the past.

24 Q If you flip the page, the next e-mail. It says at the top  
25 "station 7 transfers." It's an e-mail from you to Chief

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 Schmaltz. This is relating to transfers between the stations?

2 A Yeah. Back about that time we took over the Battle Creek  
3 Airport for a fire suppression, and we were in the process of  
4 assigning personnel out there, and it was going to be done on a  
5 volunteer basis because you have to have special training to,  
6 to do aircraft fire fighting. And I was wanting to know if, if  
7 according to his list if he knew who was going next or if he  
8 wanted me to ask for more volunteers.

9 Q Why couldn't you make that decision?

10 A I didn't have the authority to transfer people.

11 Q Can you go to the bottom, it will be 00048 at the top it  
12 says "Lakeview Meadows report." It looks like you're  
13 responding to an e-mail from Chief Schmaltz asking where he's  
14 asking you to provide him a copy of a report.

15 A That's correct.

16 Q Did Chief Schmaltz have a secretary?

17 A Yes.

18 Q So why are you getting an e-mail requesting a copy of a  
19 report as battalion chief?

20 A I don't know because the fire officer first on scene would  
21 have created the initial report. And because I know this  
22 particular incident, the fire marshal came in to do an  
23 investigation so he would have had the remainder of the report.

24 Q I guess my point is, e-mail after e-mail that we see here  
25 shows that he's asking you or you're providing him with

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 information but you're not making any decisions. What decision  
2 making authority or what discretion did you have in your job?

3 A In my opinion very little without chief's authority.

4 Q Was it different under Chief Houseman versus Chief  
5 Schmaltz?

6 A I think it was a little more rigid under Chief Houseman  
7 because he's kind of the guy that created this position, and  
8 he's also very hands on. I think when Chief Schmaltz came in,  
9 I don't think he really knew what to think about it. So he  
10 just kind of, you know, like I said, you know, let's just do it  
11 like you've been doing it, and then we will change things when  
12 I get acclimated.

13 Q Chief Schmaltz earlier testified that there was no fit  
14 testing required for battalion chiefs, at least that he could  
15 remember. Do you remember him saying that?

16 A Yes.

17 Q Do you know if there was fit testing required for battalion  
18 chiefs?

19 A There was. When I was in charge of doing fit testing I fit  
20 test everybody in the fire department. Battalion chiefs, the  
21 only, even Chief Schmaltz I think I fit tested.

22 Q Why does a battalion chief need to be fit tested?

23 A Because in the emergency situation, you might have to put  
24 on an SCBA. So you need to know, to be compliant, you have to  
25 have a mask that fits you correctly and know that it doesn't

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 leak and it's the proper size. And according to MIOSHA and  
2 OSHA because of two-in/two-out rule, we were able to be the  
3 fourth fire fighter on scene so they could immediately start  
4 fire suppression.

5 Q So it's possible that you as battalion chief could be  
6 called to actually enter a building, to fight a fire?

7 A It is possible.

8 Q Was it a requirement that you be able to, that you have the  
9 ability to step in and fight a fire if the situation called for  
10 it?

11 A If the situation called for it, yes, that's why we carried,  
12 well, as you've seen a turnout bag of everything there except  
13 an SCBA or self-contained breathing apparatus which we always  
14 carried extra SCBA on the fire engine.

15 Q So what's in your turnout bag, what was in the turnout bag?

16 A It was fire boots, fire bunker pants, fire coat, fire hood,  
17 fire helmet, and fire gloves, and an SCBA mask that was tested  
18 and fit to your face.

19 Q And that was a requirement as battalion chief for you to  
20 have that gear with you when you were on-call?

21 A That was a requirement for me to have that gear at all  
22 times when I was at work whether on-call or my regular  
23 eight-hour shift.

24 Q What was the, you mentioned the two-in/two-out. Is that a  
25 rule, guideline, is that a law?

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A No. That was a regulation that was put in place by OSHA  
2 and adopted by Michigan so it was, it became a MIOSHA  
3 regulation that had to be in effect.

4 Q If a fire fighter wanted to take sometime off, would you be  
5 able to approve that time off?

6 A It wasn't really a case of me approving it if the -- are  
7 you talking about a vacation or -- what kind of time off are  
8 you talking about?

9 Q Well, how many different kind of time offs are there?

10 A Well, fire fighters had Kelly days they could take, they  
11 had vacation days they could take, and they could always call  
12 in sick.

13 Q So aside from calling in sick, for those other two, did you  
14 have the discretion to approve or deny?

15 A No.

16 Q Why not?

17 A Because I don't have that decision making capability.

18 Q But I believe the defendant's counsel has said already in  
19 your deposition testimony you said that all fire fighters work  
20 for you. If they work for you, can't you approve them taking a  
21 day off?

22 A No.

23 Q Who would approve?

24 A Well, it would normally, that situation where if you were  
25 asking for a Kelly day or vacation day, I mean as a fire



## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 fighter, you would, you should know whether you have a vacation  
2 day or a Kelly day, and if there was a vacancy in the allotment  
3 for that day, then you could request it. And it really wasn't  
4 a question of me approving it, it was more of a question of,  
5 well, you've got it. You know. I mean I might say, no you  
6 can't have it, but there would be some other rule or regulation  
7 that caused me to say that like somebody, somebody with more  
8 seniority asked for it at the same time, or, you know, it was  
9 filled and you just haven't seen the updated sheet yet. But as  
10 far as telling somebody you can't have a vacation day, no, I  
11 wasn't allowed to do that.

12 Q Do the fire fighters have a union?

13 A Yes.

14 Q And does that union have a collective bargaining agreement  
15 with the city?

16 A Yes.

17 Q And does that collective bargaining agreement outline when  
18 and how they can take days off?

19 A Yes.

20 Q And so were you limited in your discretion by the  
21 collective bargaining agreement?

22 A Yes.

23 Q Did you have any other limitations to your discretion?

24 A Yeah. I had -- obviously I couldn't give a verbal or a  
25 written without discussing it with the chief. And we had the

1 union had grievance agreements where they had written grievance  
2 on things that had happened, and so, you know, they didn't  
3 necessarily show up in contract language or in the SOP, but  
4 they were grievance settlements agreed to by the chief that we  
5 had to remember the things that we couldn't do.

6 Q When you were on-call did you have a different routine when  
7 you went to bed when you were on-call versus when you were not  
8 on-call?

9 A Yeah. I turned in usually much earlier because you know my  
10 days started out about 4:30 in the morning. I had to get my  
11 uniform out, get it around ready for the next day. And then  
12 when I went to bed, you know, usually because I was liable to  
13 be awoken to an alarm, I did things that I didn't normally do  
14 like sleep with pajamas on, socks. I had to take a little,  
15 little extra care to know where I hung my pants and my shirt  
16 and where I placed my shoes so when the alarm went off I could  
17 get up, quickly get dressed, and go to my staff car.

18 Q Now, did you have to respond to every call that came in in  
19 the middle of the night?

20 A No.

21 Q And how often would your devices go off when you were on  
22 standby at home?

23 A I can only give you a rough estimate. I mean a lot of  
24 times it would go off, I would get up, and by the time I got to  
25 my car, got my car started, got the garage door opened, they

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 would say, okay, this is a false alarm. So then I didn't  
2 proceed any further. I just turned around and went back in and  
3 went back to bed, tried to go back to sleep.

4 Q So you never knew even if when you were responding to a  
5 call if you were going to actually have to get to the emergency  
6 location and/or whether it would be a false alarm and you would  
7 have to turn around?

8 A Correct.

9 Q Your wife testified that you couldn't attend your, I  
10 believe it was your daughter's graduation?

11 A Granddaughter.

12 Q Granddaughter. I apologize for that. You couldn't attend  
13 your granddaughter's graduation, but it was within the city  
14 limits of Battle Creek, correct?

15 A Yeah, it was right downtown Battle Creek.

16 Q And as opposing counsel said, there is a lot of parking  
17 where you could have parked so that you could have attended the  
18 graduation. Why didn't you?

19 A Well, it's that inconvenience factor. First of all, you  
20 know, you have, I mean you just -- you have a crowd of people  
21 that you have to get through. You're not talking about the  
22 normal event here where, you know, 40, 50 people show up.  
23 You've got a thousand people or more, and every parking space  
24 you can find, unless you get there an hour early, it's taken.  
25 And it's, of course, you know, I don't think my wife really

1 ever quite understood it, but you know, you're sitting there,  
2 your radio goes off, you have to get up, you know, you're in  
3 the upper balcony because, well, the lower balcony is filled  
4 with graduates and the special guests. So you have to make  
5 your way down. There's people overfilled. You know, they are  
6 standing all around. Then I have to make a nice little jog to  
7 my car and get in my car, you know, tell them, you know, tell  
8 them I'm responding as I'm running down the road. And as I  
9 said, time is always of the essence, at least it is for me.  
10 There's, I always felt that the later I was, the more in danger  
11 people were.

12 Q Were you ever told what a, what a response time was, what a  
13 reasonable response time would be when you were on-call to an  
14 emergency situation?

15 A I don't know that anybody, which in my case would have been  
16 Chief Houseman, I don't know that he ever give me minutes. He  
17 just, he just expected you to, to immediately answer the call.  
18 Because Chief Houseman monitored the radio and he -- if he did  
19 not hear you answering that radio call quickly, you can bet he  
20 would be pulling you aside or giving you a telephone call  
21 wanting to know why you had a delay.

22 Q Did that ever happen to you?

23 A It happened several times.

24 Q It happened where Chief Houseman admonished you in some way  
25 for not responding immediately?

## HOWARD HOLT - DIRECT EXAMINATION - MR. ALVAREZ

1 A Well, yeah. Indirectly. I mean I would either get a phone  
2 call or the next day when I went to work he would call me in  
3 his office and want to know, all right, what's going on. Why  
4 didn't, why didn't you respond quicker.

5 Q And what was immediately in terms that you understood for  
6 Chief Houseman?

7 A Well, I think it was well understood that when you were a  
8 fire fighter and you were working in the station you strived to  
9 be on the rig and out the door in a minute or less. And so for  
10 me, just for years that's what it carried over to. You know,  
11 you immediately get up, you get dressed, you try to listen to  
12 the radio traffic so you have the address, and I'm headed out  
13 the door to my staff car.

14 MR. ALVAREZ: No further questions, Your Honor.

15 THE COURT: It's about 12:20. Let's take our lunch  
16 break now and come back ready to start right at 1:00 o'clock  
17 for cross-examination.

18 THE LAW CLERK: All rise, please. Court is in recess.

19 (Recess taken, 12:22 p.m.; Resume Proceedings,  
20 1:08 p.m.)

21 THE LAW CLERK: All rise, please. Court is back in  
22 session. You may be seated.

23 THE COURT: Okay. Are we ready for cross-examination  
24 of Mr. Holt?

25 MR. KRETER: Yes, we are, Your Honor.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

## CROSS-EXAMINATION

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BY MR. KRETER:

Q Mr. Holt, could you tell me what a fire fighter does? I don't need a 20-minute summary, but fire fighters at a fire station, all structure call comes in, what does the fire fighter do? What's the first thing he does at the station, to getting to the scene, to suppressing the fire?

A Well, the first thing he does is he stops doing whatever he's doing. He immediately reports to the rig, excuse me. Unless you're the driver, you put on all of your bunker pants or your fire pants, your fire coat, your fire hood, then you take a seat on the engine and you respond to the call.

Q Okay. So you get to the scene. Now, what does a fire fighter do at the scene? I know everybody has got different responsibilities, but generally speaking, what does a crew do to suppress a fire?

A Well, they pull a hose off the engine, and if they are in compliance, if there is not an immediate life danger, they, they, there's not an immediate life danger and they are in compliance with the two-in/two-out, they start suppression.

Q And what do they do to suppress? They pull the hose out and actually turn the hose on and start?

A Well, the fire fighter pulls the hose out, stretches it up to the door, the officer, be captain or lieutenant, would go behind him, and if, like I said, if there's not an issue with

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 an immediate rescue, and you're in compliance with the  
2 two-in/two-out, then you can go interior and start suppressing  
3 the fire.

4 Q And that's physical activity, whatever they need to do,  
5 knock down a door, you know, I don't even watch it on TV. I  
6 have never been a fire fighter. So, again, what's usually done  
7 to suppress a fire once you enter the facility?

8 A Yeah, that would be a typical thing, whether you knock down  
9 the door, just simply turn the knob.

10 Q Okay. And so you've got your fire fighters, you've got  
11 your lieutenants, you have your captains doing that, correct?

12 A Well, no. I can do that also.

13 Q But the -- yes, you can do that also. But generally at the  
14 scene, you've got the fire fighters putting out the,  
15 suppressing the fire, correct?

16 A Are you talking about putting the water on the red stuff?

17 Q The physical, manual labor aspect of putting out the fire.  
18 That's the fire fighters.

19 A Yes, normally.

20 Q Okay. And the two-in/two-out, when it's a structure fire,  
21 that's an all stations alert, correct?

22 A Correct.

23 Q And an all station alert literally means all fire stations  
24 in Battle Creek are going to respond to that fire.

25 A It has varied from time to time.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 Q But how many people, fire fighters and lieutenants and  
2 captains generally respond to an all structure fire?

3 A Well, that also can vary. In the beginning, when you had  
4 an all stations, we had five stations, four would respond and  
5 then one engine would go do what we call setting locally in  
6 case there was any other calls, and then later on because of  
7 reduced manpower, then we just said, well, all engines will go.  
8 And what they do today, I don't know.

9 Q Okay. Well, let's concentrate on 2012-2015 which would  
10 have been the last two and a half years of your employment.  
11 Who responded to an all stations call?

12 A During my last years that is the way it went.

13 Q Okay.

14 A You know, we used to leave one engine out to maintain other  
15 calls, and then we, because the reduced manpower, we started  
16 picking up that engine.

17 Q So what would the manpower be then at the fire scene with  
18 all stations responding?

19 A Approximately 18 counting myself.

20 Q Okay. So the, so the only time the battalion chief would  
21 have to be counted toward the two-in/two-out rule is if he was  
22 one of the first four there, right?

23 A Yes.

24 Q And within a short period of time, I think somebody said  
25 four minutes, you want everybody to respond, you're going to



## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 have up to 18 fire fighters there, correct?

2 A No.

3 Q No. Okay. Explain that.

4 A Well, if we have a fire I can actually be, whether I'm at  
5 the station or at home, depending on geographical location, I  
6 can be the first person there. I can make an assessment, I can  
7 tell them what we need, I can tell them, I can open the door,  
8 make sure there's nobody there. Lots of things I can do that I  
9 don't necessarily need a fire engine and a hose to do it. I  
10 can -- I had, I once upon a time had a concrete truck on fire,  
11 I was the first one there, I went back to assess the situation,  
12 it was an electrical fire. Because the concrete truck carries  
13 pressurized water system, I climbed up on the truck, grabbed  
14 the garden hose off of it that they use to clean, I put the  
15 fire out.

16 Q That wasn't a structure fire.

17 A But it was a fire.

18 Q Okay. I'm talking about structure fires. When there's a  
19 structure fire, what's the sequence of stations coming, how  
20 long does it take? Because my understanding is as a battalion  
21 chief if you're on standby, everybody is referring to about  
22 15 minutes a reasonable time. So would you expect the stations  
23 to be all there within 15 minutes?

24 A It depends.

25 Q Well, it depends. What's your experience? I know there

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 can be an aberration to any situation. But your general  
2 experience, how long does it take for each station for the  
3 stations to respond to a fire scene?

4 A Well, I would say that if I was at home on-call and it was  
5 in the station 6, station 3 area, very high probability that I  
6 would be the second one in.

7 Q But that's not my question. I'm talking about how long  
8 does it take for the all stations to have all their fire  
9 fighters there at the fire scene generally.

10 A Anywhere from five minutes to 25 minutes.

11 Q Okay. But you would expect within five minutes there's  
12 going to be at least one engine company there?

13 A I would hope so.

14 Q And probably two.

15 A Probably not two.

16 Q Within ten minutes there would be two?

17 A I would hope in 10 or 15 minutes you would get two.

18 Q And then you've got at least six to eight fire fighters at  
19 that point.

20 A You would have six.

21 Q Okay. And then you have had enough to count for the  
22 two-in/two-out rule.

23 A Correct.

24 Q Okay. Interestingly, Chief Houseman said he didn't want to  
25 ever be the first one on the scene because people on the scene

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 expect the first person there to respond, and when you're on  
2 standby, you're not equipped to actually extinguish or suppress  
3 the fire.

4 A Well, I don't think that's necessarily factual. That may  
5 be how Chief Houseman personally felt. But there's lots of  
6 things that can be done to help mitigate even as far as size up  
7 and telling people what you have, which is extremely important.

8 Q Okay. Let's go to -- you're the incident commander when  
9 you're on scene, correct?

10 A Yes.

11 Q Okay. So I would like you to look at, I don't think you've  
12 got my -- Defendant's Exhibit P, Incident Command Procedures.

13 A I don't have it.

14 Q Let me show you my book. I think you have it up there.

15 A Okay.

16 Q It's Exhibit P.

17 A Sure.

18 Q Okay. You're close. There we go. So have you seen this  
19 document before?

20 A This document does not look familiar to me.

21 Q Okay. Well, let's go through it anyway because what I  
22 understand is the standard operating procedure for establishing  
23 incident command at the fire scene. And I'm sure you're  
24 familiar with that. Paragraph 1, "The purpose of this policy  
25 is to identify a standard operating procedure that will be

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 employed in establishing Command. The system provides the  
2 effective management of personnel and resources providing for  
3 the safety and welfare of personnel. It also establishes  
4 procedures for the implementation of all components of the  
5 Incident Management System for structural/fire operations." I  
6 think you said earlier that your job as battalion chief at that  
7 fire scene is make sure everyone is safe and to manage the  
8 fire. Is that correct?

9 A My job has always been to make sure everybody is safe.  
10 Whether I was a fire fighter, lieutenant, or captain.

11 Q Okay. But when you're a battalion chief, unless the chief  
12 takes charge at a fire scene, you're the incident commander  
13 when you're at that fire scene, correct?

14 A Normally, yes.

15 Q Okay. And the purpose, as I just read, is what you tried  
16 to do in establishing command.

17 MR. ALVAREZ: I'm going to object to the reference to  
18 this document only because this document appears to have come  
19 from December 21st, 2015, when by which time Mr. Holt had  
20 already retired, and he said he didn't recognize this document,  
21 so --

22 THE COURT: Aren't you a little late in objecting,  
23 Mr. Alvarez?

24 MR. ALVAREZ: No, Your Honor. This is the first  
25 question that he's asked. He had been giving a narrative.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 THE COURT: Well, no. You agreed at the beginning of  
2 this trial --

3 MR. ALVAREZ: Oh, Your Honor, I'm not objecting to the  
4 admission of this document. I'm objecting to it being used  
5 with this witness as the witness has already said that he  
6 doesn't recognize this document and this witness was not even  
7 working for the fire department when it was implemented.  
8 That's my objection.

9 THE COURT: That goes to the weight of his testimony,  
10 I suppose. But I don't think it precludes the questioning that  
11 Mr. Kreter is engaged in at this point.

12 MR. ALVAREZ: That's fine. I just wanted to note my  
13 objection.

14 THE COURT: Okay.

15 BY MR. KRETER:

16 Q I want to use this document to try to give us a guideline  
17 of what you do as incident commander at a fire scene as a  
18 battalion chief. Okay. So it's my understanding that if  
19 you're at home and you get an alert, that you immediately go to  
20 your radio, is that correct, to respond?

21 A Well, my, my radio would be with me. I would immediately  
22 go to my car.

23 Q Okay. You immediately go to your car. But you go to the  
24 radio to check in. Is that correct?

25 A Yeah.

HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 Q To acknowledge that you've got, received the alert.

2 Correct?

3 A Correct.

4 Q And then everyone else that's responding acknowledges via  
5 the radio that they have received the alert, correct?

6 A Well, you have it backwards. First they acknowledge, then  
7 I would acknowledge because I need to hear that they have  
8 received it.

9 Q Okay. So they -- so and you're doing this as you're  
10 entering your car and driving to the scene.

11 A Correct, could be, yeah.

12 Q So you've established as you're driving to the scene radio  
13 contact hopefully with everybody that's going to be involved at  
14 the fire scene.

15 A Hopefully.

16 Q Okay. And then you're monitoring radio traffic as you get  
17 to the, as you're driving to the fire scene?

18 A Yes.

19 Q You're hearing what's going on. Correct?

20 A Yes.

21 Q So if station 1 gets there first, you're hearing what  
22 they're transmitting via the radio?

23 A Yes.

24 Q So you're already starting your incident command process,  
25 would that be fair to say?

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Actually they're starting the incident command process and  
2 I'm just hoping that they're doing it correctly.

3 Q Well, but you're listening and so you know what is  
4 transpiring at the scene once you get there.

5 A Yes, somewhat, yes.

6 Q Right. And so you're, so once you get to the scene it's my  
7 understanding that you remain in your car unless it's an  
8 exceptional situation?

9 A We remain in your car primarily so that everybody knows  
10 where we are. But, yes, I'm not, I'm not glued there. If I  
11 need to get out, I can always pass command to somebody else. I  
12 can have somebody, I can have another fire fighter sit and  
13 monitor my radio while I go do whatever I need to do.

14 Q I understand there is always exceptions. But generally the  
15 protocol, in talking to Chief Houseman and Chief Schmaltz, is  
16 that the command center is your vehicle when you're at the fire  
17 scene, that's where you're supposed to be. Is that fair  
18 enough?

19 A Under normal circumstances.

20 Q Okay. And that allows you to be able to concentrate on  
21 everything that's coming in, you're not distracted by noise  
22 because I assume a fire scene is noisy. Correct?

23 A Yes.

24 Q So you're in your vehicle monitoring traffic and then  
25 you're directing the captain, you're directing how the fire

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 should be suppressed?

2 A Well, I don't necessarily know that I'm always directing  
3 because there are so many things that happened at a fire scene.  
4 You're not always on the radio because people come to your car  
5 window and, you know, you're engaged face-to-face, probably as  
6 much if not more than you're on the radio and they are telling  
7 you what they have and what they are going to do and you're  
8 just in agreement with them, usually.

9 Q Well, because you've trained them well during the course of  
10 their regular duties, would that be fair to say?

11 A Well, I didn't train them personally but, yes, I hope they  
12 have been trained well.

13 Q Okay. So let's, again, I'm using this as a rough outline.  
14 Actually it was first adopted in September of 2014. But let's  
15 turn to page 2, Functions of Command. So when you arrive at  
16 the scene, this says you, "Assume and announce Command to  
17 establish effective operating position." Is that what you  
18 would do, tell everybody you're there and now you're relieving  
19 a captain or lieutenant?

20 A Well, that's what everybody would be doing during the  
21 transfer of command.

22 Q Okay. And so when you get there, you're saying you're  
23 there, you're now in command, so everybody knows it, right?

24 A Yes.

25 Q And then you're rapidly evaluating the situation, sizing it



## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 up.

2 A There again that's usually done by the first person in.

3 Q And they're communicating then on the radio what they are  
4 sizing up, right?

5 A I hope so.

6 Q And you're listening to them?

7 A I hope so.

8 Q So they're helping you size it up. Then you, "Initiate,  
9 maintain, and control the communication process."

10 A I don't agree that I control the communication process.

11 Q Okay. Fair enough. "Identify overall strategy, develop an  
12 incident action plan, and assume companies and personnel  
13 consistent with plans and standard operating procedure." Is  
14 that your role to develop the strategy and plan to suppress the  
15 fire?

16 A Yeah. Well, as you said, somebody else has already sized  
17 it up. Hopefully they have done that and you're just in  
18 agreement by the time I arrive.

19 Q But your agreement is important because you are the  
20 commander of the scene, right?

21 A My, my agreement is, should be important, but everybody  
22 there is a chief, you know.

23 Q Well, no. No. I think you've got fire fighters, you've  
24 got lieutenants, you've got captains, and then you have two  
25 battalion chiefs, and one chief of the fire department. Is

HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 that fair?

2 A Yes, we have those titles.

3 Q So when you're at a fire scene, there is usually only one  
4 battalion chief at the fire scene, right, usually?

5 A Usually.

6 Q And that's usually you as a suppression chief unless  
7 Mr. Erskine is on standby and called in, correct?

8 A Correct.

9 Q And the police or the police chief, the fire chief, they  
10 don't necessarily all go to the fire, they don't go to all fire  
11 scenes, correct?

12 A Well, yeah. Chief Houseman, like I said, he is a very  
13 hands on guy; he's liable to show up any time that he felt he  
14 wanted to come.

15 Q Wanted to come. But would he relieve you of your command  
16 when he came?

17 A He's done it.

18 Q Well, he's done it. But how often did he do it in the  
19 eight years you were under him and you were commanding a scene?

20 A Oh, probably a half a dozen.

21 Q Okay. So six times in eight years he may have relieved you  
22 from the scene and taken command.

23 A Yes.

24 Q Otherwise, you were in command for those eight years when  
25 you went to the scene.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Yeah, I was the incident commander.

2 Q Okay. And you would "provide tactical objectives," you  
3 would "review, evaluate and revise your incident action plan"  
4 as you're going along. Things happen that you don't expect,  
5 right?

6 A Yeah, on feedback from fire crews.

7 Q Okay. And actually you would have the discretion to assume  
8 command when you go to a fire scene. I assume that most of the  
9 time when you went to the fire scene you assumed command  
10 because you were there, but you had the discretion not to do  
11 that, correct?

12 A No. The policy said the highest ranking officer must  
13 assume.

14 Q Well, okay. So since this is in evidence, as long as we  
15 are on it, let's go to page 5 of this document, and it's in the  
16 top page, number 6. It says, "Assumption of command is  
17 discretionary for Assistant Chiefs and Fire Chiefs."

18 A Oh, okay, I'm with you, thank you.

19 Q So you don't recall that being the case with you?

20 A Well, I'm not an assistant chief, and I'm not a fire chief.

21 Q Okay. You're a battalion chief. The department didn't  
22 have an assistant chief. Good catch, I guess.

23 So let's go to the next page. We are almost done with  
24 this document. First paragraph, would you agree with the  
25 statement, "The Command organization must develop at a pace

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 which stays ahead of the tactical development of personnel and  
2 resources. In order for the Incident Commander to manage the  
3 incident, they must first be able to direct, control, and track  
4 the position and functions of all operating companies.

5 Building a Command organization is the best support mechanism  
6 the Incident Commander can utilize to achieve the harmonious  
7 balance between managing personnel and incident needs."

8 A So are you asking me if I agree with that statement?

9 Q Yes.

10 A I think in a perfect world that's a great statement.

11 Q Okay. So would it be fair to say there's a difference  
12 between, a significant difference between your role as a fire  
13 fighter when you went to a structure fire, and your role as a  
14 battalion chief, incident commander?

15 A I think my responsibilities were different, but I'm always  
16 a fire fighter. If something happens and I have to step in and  
17 help with a rescue, or whatever needs to be done, or if I show  
18 up as a second battalion chief because I'm called to the scene,  
19 then I can be assigned anything.

20 Q Okay. Let me ask you this question. How many times you  
21 were the battalion chief and you're at the fire scene and  
22 you're an incident commander that you actually did what a fire  
23 fighter does, went in and suppressed the fire, physically did  
24 that, when did you act as a fire fighter when you were a  
25 battalion chief?

HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A When crews were already there?

2 Q Yes.

3 A Probably never.

4 Q Okay. Never. You would only do that when you were the  
5 first person on the scene. It sounds like you did it once with  
6 a cement truck.

7 A Yeah, yeah. I mean there is lots of things you can do that  
8 you don't necessarily need a --

9 Q But the point is, as battalion chief, you never had to act  
10 as a fire fighter when you were incident commander at a fire  
11 scene.

12 A Here again, if you're talking about when crews are already  
13 there and they are actively engaged, no.

14 Q Okay. And same situation, when the crew is already there  
15 and they are actively engaged, did you ever have to put your  
16 fire fighting gear on?

17 A Yeah.

18 Q Why did you do that?

19 A Because it was required.

20 Q It was required to put your gear on when you acted as  
21 incident commander?

22 A Yeah, if you -- we didn't have to wear our coat or our  
23 helmet and gloves, but, yeah, it was not uncommon to get out  
24 and put your pants and boots on.

25 Q How about the mask?

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Well, no, you would only use that as any fire fighter would  
2 if you're going into a dangerous atmosphere.

3 Q So if you got out of the truck or out of your car you put  
4 your boots and pants on?

5 A Yeah.

6 Q But most of the time you stayed in the car?

7 A Unless I had to get out.

8 Q So the gear is, you've got it there just in case you've got  
9 that catastrophic situation where you as incident commander now  
10 are going to have to do something to suppress the fire or  
11 whatever danger there is.

12 A I don't think it has to be a catastrophic situation because  
13 I never know when things are going to deteriorate to the point  
14 that I may have to do something.

15 Q But in your eight years you never had to do something at a  
16 structure fire if there was somebody on, there was fire  
17 fighters already on-site.

18 A I've done things, yes. But not necessarily as far as  
19 grabbing the nozzle, no. But I have had to go over and tell a  
20 pump operator, hey, you've got the wrong valve open, you need  
21 to open this valve. I have had to go out and I have had to  
22 finish opening hydrants because fire fighters were in a hurry  
23 and they weren't getting water. The hydrant is right there by  
24 my car. Sure, I can assign that task to somebody or I can get  
25 out and open it up myself.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 Q Okay. Let's move to -- were you familiar with the chief's  
2 job duties?

3 A Not really. I mean --

4 Q Okay. You never -- you had three chiefs, so they never  
5 discussed with you what their duties were?

6 A I think there was always that, they don't want us to know  
7 what they do.

8 Q Okay. I think, you know, you were at Chief Houseman's  
9 deposition and I think he testified to, and the transcript will  
10 tell us, but that he did such things as budgeting, public  
11 relations, general oversight of the fire department. Does  
12 that --

13 A Yeah, okay.

14 Q Do you agree with that? And tell me, how many people were  
15 in the fire department, 85 to 90, is that a fair estimate?

16 A I don't think there was 90, probably more in the 75 to 85  
17 range, I would guess.

18 Q And so the chief is on top and then you and Chief Erskine  
19 are right below the chief?

20 A Yes.

21 Q Now you've been referred to by Chief Erskine, not Chief  
22 Erskine, Battalion Chief Erskine, you've been referred to by  
23 Chief Schmaltz this morning and Chief Houseman in his  
24 deposition that you were part of the management team in the  
25 fire department. Do you disagree with that?

HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Yes, I disagree with that.

2 Q Why do you disagree with that?

3 A Because my opinions did not carry any more weight or have  
4 any more influence than a captain or a lieutenant or even a  
5 friend of the chief.

6 Q That's your subjective opinion.

7 A That's a fact.

8 Q Well, that's your, you just said that was your opinion.

9 A Yes.

10 Q Okay. So you would disagree when Chief Schmaltz this  
11 morning testified that he would give your opinions particular  
12 weight in making his decisions.

13 A I don't feel he give my opinions any particular weight.

14 Q Okay. We went through a series of e-mails about standard  
15 operating procedures, and we can go through this. I would  
16 rather in the interests of time not, but there were multiple  
17 standard operating procedures that he sent to you and Chief  
18 Erskine for review. Do you recall that?

19 A I recall reviewing some of them, yes.

20 Q And in those e-mails, and according to his testimony, he  
21 said that he sought your input on those standard operating  
22 procedures. Is that fair to say that was true?

23 A I would say that was true.

24 Q And so then you would give your input; would he listen to  
25 your input?



## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A I always thought that he was just kind of looking for my  
2 input because of the, the institutional knowledge I had  
3 because, you know, having been there for 28 years I knew of  
4 things that the union had already agreed to, or they had  
5 grievances because we kind of had to know those things.

6 Q But so he was looking for your input, irregardless of the  
7 reason he was looking for your input in adopting those standard  
8 operating procedures.

9 A Quite possibly. Could have been wanting me to check the  
10 spelling. I'm not sure.

11 Q Okay. And the standard operating procedures are a  
12 significant part of the department. They're the play book that  
13 everybody the fire department runs by. Correct?

14 A That's what we strive for, yes.

15 Q Okay. So your job description, let's go to Exhibit G, flip  
16 back in your, or maybe flip up. There you go. Do you have  
17 Exhibit G?

18 A Is it SOP 1000.03?

19 Q No. It's Battle Creek Fire Department Departmental  
20 Directive from Houseman -- let me help you, if I may.

21 A Sure. I may have the wrong --

22 Q You may have GG.

23 A Oh, I'm sorry. I see the other G now.

24 Q There you go. So Chief Houseman testified to this about  
25 his responsibilities and your responsibilities and the

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 administrative battalion chief's responsibilities but I want to  
2 talk to you about yours. See number 4, suppression battalion  
3 chief.

4 A Yes.

5 Q So that says, "A. Immediate supervisor for all Station  
6 Officers." Correct?

7 A Yes.

8 Q And that would be true.

9 A Yes.

10 Q And that's 24 to 27 lieutenants and captains.

11 A Yeah, I'll trust you on that number. I would have to --

12 Q Somewhere in the mid to high 20s.

13 A Yeah, I'll trust you on that number. I don't really  
14 remember.

15 Q I'm not trying to trick anyone with these questions. But  
16 B, maintenance standards?

17 A Yes.

18 Q Okay. So the maintenance of standards. What are those  
19 standards?

20 A For me the maintenance of standards were things like taking  
21 care of the SCBA, fit testing, seeing that people had their,  
22 you know, that they weren't walking around with turnout gear  
23 all torn up.

24 Q So okay. You were the overseer for the maintenance of  
25 standards. Maintenance standards, correct?

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Yeah.

2 Q Facility issues. Again, what would you do with facility  
3 issues?

4 A Well, here again that's where I was the kind of buffer  
5 between the chief and the station officer. If they had  
6 problems around their fire station, they were supposed to call  
7 me and then, you know, depending on, you know, how descriptive  
8 the officer was, some of them just like to tell you it's broke  
9 and that was it, you would either go up so you could have a  
10 good description for the chief, or you would just relay it on  
11 to the chief and then he would tell you how he wanted it  
12 handled.

13 Q And one of the reasons perhaps is the chief was in charge  
14 of budgeting, right, he was in charge of the money for the  
15 department?

16 A Chief was in charge of everything.

17 Q Well, but specific obligation was budgeting, is that fair  
18 to say?

19 A Yeah, that's one of his jobs.

20 Q Okay. And then you would be responsible for supplies.

21 A Well, now, see, I would disagree with that. Obviously I  
22 mean supplies did kind of fall under me, but this wasn't a  
23 physical activity that I done. Long before I was battalion  
24 chief Battalion Chief Houseman had set up a, as a matter of  
25 fact, I think the city in general had an account with Lansing

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 Sanitary Supply Company, and the salesman would, he would come  
2 in and he would go down to the supply cabinet, or I mean the  
3 supply room and he would walk around and take an inventory, he  
4 had pre, pre made sheets of what was to be ordered in the  
5 station, and the quantity, so when it fell below a certain  
6 quantity, he just automatically ordered it.

7 Q Okay. Scheduling. That's something that the two battalion  
8 chiefs did, right?

9 A Yeah, yeah.

10 Q Okay. And so you said you were constrained, you couldn't  
11 give vacation time or days off, but you were constrained by the  
12 collective bargaining agreement, right?

13 A Well, they had rules governing vacation and Kelly, and  
14 yeah, we had to follow those rules. We weren't free to make  
15 our own decisions or grant anybody time off.

16 Q So even the chief or the city manager would have to follow  
17 those rules, I assume?

18 A Well, no. The chief had the authority to, you know, the  
19 best I can remember is, you know, we had what would be called a  
20 vacation sheet and you could have three fire fighters off on  
21 vacation, then you could have three fire fighters off on Kelly.  
22 But if there was something that come up, a fire fighter could  
23 go under the chief and say, well, chief, you know, I have this  
24 problem or that problem, and all the vacation and Kelly slots  
25 are full, the chief could say, all right, I'll give it to you

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 off as a seventh person. I couldn't do that.

2 Q Would they come to you on that issue?

3 A No.

4 Q Okay. Morning briefings. Let's go to Exhibit J, what was  
5 the morning briefings?

6 A Under Chief Houseman or under Chief Schmaltz?

7 Q Let's go Chief Houseman, start with him.

8 A Morning briefing was just a rough plan of the day of what  
9 we had hoped to accomplish. It was typed up and then we would  
10 fax it out to all stations then the chief would usually come in  
11 at 8:00 o'clock and change everything that we had just faxed  
12 out to all stations.

13 Q Okay. So every morning it would be the responsibility of  
14 one of the battalion chiefs to do the morning briefing, the  
15 plan of the day for the entire fire department.

16 A Yeah. I would say that was part of our secretarial duty,  
17 yes.

18 Q Secretarial duty. Okay. So why do you call it a secretary  
19 -- why do you call it a secretarial duty?

20 A Because it was assigned to us but his secretary could have  
21 done it if she would have come in. As a matter of fact, I did  
22 that same thing as a captain.

23 Q Well --

24 A -- until they couldn't reach an agreement with the local  
25 bargaining unit and the bargaining unit said if you're not

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 going to pay us extra for it, we are not going to do it so then  
2 they dumped it on us.

3 Q So what is the morning briefing? I mean what does it  
4 include?

5 A It includes the training schedule, it includes -- you have  
6 to give me a second. I'm trying to go back here three years to  
7 remember what one looked like. But hopefully, you know, what  
8 you were going to do on the training, if somebody had a public  
9 relation event that the fire prevention department had set up  
10 and they were requesting an engine, if there was some kind of a  
11 meeting, just in general what you had hoped was going to  
12 transpire during the day.

13 Q You and Chief Erskine, what you guys had hoped would  
14 transpire during the day for your suppression division and for  
15 Chief Erskine's training division as administrative battalion  
16 chief.

17 A Well, as information was supplied to us basically we just  
18 put it on a sheet of paper and send it out.

19 Q Who came up with this information?

20 A Well, usually the chief kind of come through and told you  
21 here's what we are going to do. Like I said, fire, fire  
22 prevention made public relations things, whether they were  
23 going to take the smoke house or they were going to go out to a  
24 school and have an engine take the kids out.

25 Q So this SOP is wrong, you had no discretion here, it's the

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 chief that should be doing the morning briefing, according to  
2 you.

3 A Well, indirectly he did.

4 Q So did that apply with Hampton, Chief Hampton when he was  
5 also police chief who said I'm hands off, just let me know if  
6 something important is happening?

7 A Well, I think that gets back to the fact that Chief Hampton  
8 just basically said continue on doing what you've been doing.  
9 So we just did what we were trained to do.

10 Q So who did -- so did Chief Hampton have time to put  
11 together these or second guess these morning briefings as  
12 police chief?

13 A Chief Hampton didn't -- he didn't second guess the morning  
14 briefings. I'm not even sure how relevant they were when Chief  
15 Hampton took over.

16 Q Okay. We have talked about staffing. Station transfers.  
17 Let's go to M. "3A, the Shift Battalion Chief will either  
18 approve/or deny station transfers." Is that true?

19 A That is incorrect.

20 Q Okay. Who had that authority?

21 A The chief.

22 Q Okay. Let's go to Exhibit O, discrimination, harassment,  
23 retaliation policy.

24 A Which one is that?

25 Q Exhibit O.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A O.

2 Q The second page, filing a complaint. First paragraph.

3 "Should an employee feel uncomfortable reporting the claim to a  
4 Human Resources office or EEO officer, a written complaint may  
5 be presented to any Battalion Chief, the Fire Chief, or the  
6 City Manager." So you had authority to accept harassment  
7 complaints, is that correct?

8 A Yeah, I think, yeah.

9 Q Okay. And you were involved in discipline, at least  
10 written oral warnings.

11 A With the chief's approval, yes.

12 Q Well, you discussed it with the chief, right? You would  
13 make a recommendation and discuss it with the chief.

14 A Which he would give his approval to either do it or not do  
15 it.

16 Q Okay. So okay let's go to Exhibit R. This is a letter  
17 that you wrote to Chief Schmaltz on June 4th, 2014. And I  
18 think you were concerned that Chief Schmaltz made the decision  
19 to allow you not to take home staff cars when you weren't  
20 on-call. And the first paragraph of the letter you said the  
21 last sentence, we find that the action -- "We find that action  
22 unprofessional and displays your unwillingness to operate  
23 within our chain of command and openly communicate to create a  
24 cohesive team of the chief officers to operate the fire  
25 department." Let's go down to the third paragraph. "In one --



## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 in our one and only formal staff meeting with you, Battalion  
2 Chief Erskine and I expressed our reluctance to file grievances  
3 against you feeling that our level of management should be  
4 working close enough together to work problems out without  
5 following grievance procedures." You felt that you were high  
6 level management in the fire department when you wrote this  
7 letter, didn't you?

8 A Well, actually I feel that the reason I wrote this letter  
9 was because during the time after Chief Houseman retired,  
10 because nobody took was on-call, Marty and I or Battalion Chief  
11 Erskine were the only two doing it. So if I needed something  
12 on a fire scene, or if he needed something from a fire scene,  
13 then one of us would have to respond into the fire station, get  
14 whatever we needed, and then respond out. So Chief Hampton  
15 said, well, you guys can take your staff cars home. Well, we  
16 figured it up and when Chief Schmaltz come in and we said you  
17 know really if we're using it as they say for basically city  
18 business, you know, it's roughly, I think we figured like a  
19 \$400 a year perk to us, so we wanted to know why we couldn't  
20 keep the cars. And also when Chief Schmaltz come in, as I  
21 said, I don't remember exactly but it was four to six months  
22 before he started doing the on-call, and during that time we  
23 were allowed to take our cars. So basically it was a change of  
24 working conditions and --

25 Q But the point is you referred to yourself as management.

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 A Well, I was hoping he would agree with me. Obviously he  
2 didn't. He didn't think we were very important because he took  
3 our cars away.

4 Q Although you were here this morning when he testified you  
5 were part of the management team in the fire department,  
6 correct?

7 A Those are his words, sir.

8 Q Okay. And you actually wore different uniforms than the  
9 rest of the fire fighters too, correct, as battalion chief?

10 A Yeah.

11 Q Okay. You had like a gold belt buckle or I'm not sure, the  
12 Exhibit T tells us what the uniform is. But you were supposed  
13 to look different than everybody else, you and fire chief and  
14 the two battalion chiefs?

15 A Yeah.

16 Q Supposed to dress differently?

17 A We dressed differently, yeah.

18 Q You said it was like the military, that's to recognize your  
19 command. Would that be fair to say?

20 A Well, I think that's fair to say for citizens. If you work  
21 in the fire department, we all know who everybody is. It's not  
22 a big department.

23 Q And you said there's really no, there was basically not a  
24 lot of change between the three chiefs, Houseman ran the  
25 department one way, Hampton came on board said do what you've

## HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1       been doing, and Schmaltz, he was trying to get up to speed,  
2       basically do what you've been doing. Right?

3       A     Well, I think I probably had less communication with Chief  
4       Schmaltz than I did Chief Hampton or Chief Houseman.

5       Q     So do you disagree that you and Chief Erskine were running  
6       the fire department on a day-to-day basis when Chief Hampton  
7       was there for the year as the interim acting fire chief and  
8       police chief?

9       A     Yeah. I think the fire department is well established so  
10      it basically ran itself, and then we just continued to do what  
11      Chief Hampton wanted us to do.

12      Q     But you were overseeing to make sure it was running  
13      smoothly on a day-to-day basis when Chief Hampton was acting as  
14      fire chief.

15      A     Yeah, I would say I was following his orders to do what  
16      needed to be done.

17      Q     Okay. Because he wasn't there on a day-to-day basis, you  
18      would see him one hour a week.

19      A     No, that's not correct.

20      Q     That's what you said, testified to in your deposition or  
21      Chief Erskine did. You talked to him every day but see him for  
22      a one-hour weekly meeting.

23      A     Yeah. Actually what we had we had an hour personal  
24      meeting, that he would meet with me, and then he would meet  
25      with Marty, then he would meet with the fire prevention, then

HOWARD HOLT - CROSS EXAMINATION - MR. KRETER

1 he would meet with the union, and then usually somewhere along  
2 the line he would meet with Marty and I together.

3 Q Okay. You also had authority to talk to the media, that  
4 was given to you, the battalion chiefs, the chief, and maybe  
5 the fire inspector, but those were the only four members of the  
6 fire department that had that authority and discretion to talk  
7 to the news media, correct?

8 A About ongoing incident.

9 Q Yes. Okay. Almost through. So Chief Houseman testified  
10 that you did not have to monitor the radio. You only had to  
11 respond to alerts. So he was wrong?

12 A That is not what Chief Houseman told me when I took the  
13 position.

14 Q But you were there at his deposition, and would you agree  
15 with me, if you don't I can show it to you, that he said that  
16 you didn't have to monitor the radio. You only had to monitor  
17 the alerts.

18 A I, I remember him saying that.

19 Q Okay.

20 MR. KRETER: Just a moment. Almost through. I don't  
21 have any further questions. Thank you.

22 THE COURT: Any redirect, Mr. Alvarez?

23 MR. ALVAREZ: Yes, Your Honor.

24

25

HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

REDIRECT EXAMINATION

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BY MR. ALVAREZ:

Q Okay. Mr. Holt, going back to Exhibit P, if you could open that back up. On the second page at the bottom where it says, where the heading is establishing command down at the bottom.

THE COURT: Which exhibit?

MR. ALVAREZ: Defendant's Exhibit P.

THE COURT: P.

THE WITNESS: Okay.

BY MR. ALVAREZ:

Q So Defendant's Exhibit P under the heading establishing command. It says that, "The first fire department member or unit to arrive shall assume command of the incident." Is that your understanding of what the process was, what the procedure was?

A Yes.

Q And so if an engine crew arrived, there's two fire fighters and a captain, right?

A Could be two fire fighters and a lieutenant.

Q Or two fire fighters and a lieutenant. And you said the highest ranking member on the scene takes command, correct?

A Correct.

Q So then either the lieutenant or the captain would then be incident command at that point?

A Correct.

HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 Q Now, if their command at that point -- okay -- so strike  
2 that.

3 So their command at the incident, as far as you know,  
4 are they getting paid time and a half for the work that they're  
5 doing as incident commander?

6 THE WITNESS: No.

7 BY MR. ALVAREZ:

8 Q How do they get paid?

9 A Well, they work a 24-hour shift where they're on 24 hours  
10 and they are paid for the entire 24, and then they have  
11 48 hours off which is their time to do whatever they want.

12 Q And that was in place during the period of time that you  
13 were on standby?

14 A Correct.

15 Q Okay. If a captain was called in because they needed help  
16 and it was going to be, he was going to be going over on his  
17 hours, would that captain or lieutenant be getting paid time  
18 and a half?

19 A If he was called in from home, yes, he would get time and a  
20 half.

21 Q And as a matter of fact, if you showed up on the scene  
22 during your standby time, if you had to respond to the scene  
23 and you were incident commander you were getting paid.

24 A Yes.

25 Q And at what rate were you getting paid?

## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 A I got, for the time that I was on scene, I got time and a  
2 half.

3 Q If you get a call while you're on standby, you get a call,  
4 and as was inquired of you by opposing counsel, you're  
5 listening to the radio, information is flowing through the  
6 radio, you're assessing the situation, are you in command at  
7 that point?

8 A No.

9 Q Okay. When can you take command?

10 A I take command when I'm physically on the scene, my car is  
11 parked, and I'm not creating a danger to anybody while trying  
12 to figure out what's going on and point A. while I'm driving  
13 down the road.

14 Q And so help me and the Court understand, Mr. Holt. We are  
15 talking about a claim of not getting paid overtime, but when  
16 you arrive at the scene, and you're incident commander, and as  
17 a matter of fact when you're en route to the scene, you're  
18 already getting paid time and a half, correct?

19 A Correct.

20 Q So then what is your claim?

21 A Well, it's all the hours in between waiting for a call to  
22 come in that I wasn't paid. You know. And all the things that  
23 I couldn't do, you know, because I was waiting for a call to  
24 come in.

25 Q So you had no complaints about the other week when you did

HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 your normal eight-hour shift, and you did all of these other  
2 duties where you had to inspect the equipment, where you had to  
3 do performance evaluations, correct?

4 A Correct, correct. You talking about my normal 8:00 to 5:00  
5 week.

6 Q Yes.

7 A Yes. No, that's fine.

8 Q And I believe you said it yourself that you can remember  
9 one incident where you were the first person to respond to an  
10 incident and you essentially had to put out a fire.

11 A Correct.

12 Q Is that something that's within your duties as battalion  
13 chief?

14 A Suppression of fires is always within the duty of all fire  
15 fighters.

16 Q And you consider yourself a fire fighter?

17 A I am a fire fighter.

18 THE COURT: Well, you were. You're retired.

19 THE WITNESS: Well, I think I still am, Judge, at  
20 heart.

21 BY MR. ALVAREZ:

22 Q And fire chief or Acting Fire Chief Hampton, would you  
23 consider Acting Fire Chief Hampton a fire fighter?

24 A No.

25 Q So Acting Fire Chief Hampton couldn't show up on the scene



## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 and start putting out a fire.

2 A Not within the -- no, no.

3 Q Now, there was a little discussion that was had during your  
4 questioning about, well, but that's not a structure fire. Is a  
5 structure fire and a regular fire any different in the eyes of  
6 a fire fighter?

7 A A fire is a fire.

8 Q When you're on the scene and you take command, do you have  
9 to remain in your vehicle or can command go mobile?

10 A I could go mobile. I think we, we try to stay in our  
11 vehicle so that we have a common location so that when they  
12 want to find us they know where we are at. Because, as I said,  
13 people are always at the window. I probably spend as much time  
14 or more talking to people coming to the window of the car than  
15 I did on the radio.

16 Q You said that one time you also remember having to open a  
17 hydrant because the fire fighters in an effort to get to the  
18 fire quickly hadn't turned it on all the way.

19 A Correct.

20 Q Are there any other incidents or situations where if you're  
21 the first one on the scene you can respond and take care of  
22 that incident without the need of other fire fighters?

23 A Sure. I once responded up in the post edition to a  
24 multiple company call of a structure fire. I was the first one  
25 on the scene. I went up to the porch, I looked through the

## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 front door window, trash can was on fire. I merely opened up  
2 the door, walked in, grabbed the trash can, carried it outside  
3 and there was no structural damage or it had not penetrated the  
4 structure.

5 Q What would you do as battalion chief if you were the first  
6 person on scene at a personal injury accident?

7 A Render, well, I guess the first thing I would do would be  
8 assess the situation to, for obvious dangers. And then I would  
9 render medical aid if needed, or gather information so that  
10 whoever is responding I can give them better detailed  
11 information of what we have. And as I said, a lot of times you  
12 get two accidents and you may have let's say, for example, you  
13 got two cars, two passengers in one, and two passengers in the  
14 other. That's more than three people can handle. So you might  
15 call for another engine.

16 Q Did you ever have occasion to arrive on the scene of a  
17 grass fire?

18 A Yeah.

19 Q And what in your capacity as battalion chief or as first  
20 responder would you do?

21 A At a grass fire?

22 Q Did you do. At a grass fire.

23 A For the most part for a grass fire, just because of the  
24 spread out nature of it, I mean unless it's a small, contained  
25 area that I could just easily go over and sweep out, you're

## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 going to assess and you're going to tell the incoming companies  
2 how big of an area it is, and you might, you might ask for more  
3 help.

4 Q Now, we have been talking a lot about what you do as a  
5 battalion chief when you're responding to a call when you're on  
6 standby. What about those other weeks, if you're at the  
7 station and a call comes in, a multiple engine or all stations  
8 call, what does the battalion chief do on duty?

9 A When I'm working my normal 8:00 to 5:00?

10 Q Correct.

11 A I drop everything I'm doing and I respond to the call  
12 immediately.

13 Q What if you're in the middle of a doing an evaluation for  
14 one of the captains?

15 A I drop everything I'm doing. Unless I'm doing CPR, saving  
16 somebody's life, I stop what I'm doing and I go to the call.  
17 That's my job.

18 Q What if you're in the middle of doing your daily morning  
19 briefing?

20 A Here again, that's, that would, I would again just put it  
21 down and go on and answer the call.

22 Q So responding to the calls is your first priority?

23 A Yes.

24 Q And how do you know that that's the case?

25 A Because that's what I was told my job is. Monitor the

## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 radio and respond to calls.

2 Q Is that anywhere in any of these standard operating  
3 guidelines or procedures?

4 A No. It's not uncommon in the fire service to not have  
5 everything written down because you have, you have SOPs which  
6 somewhere along the lines, because of lawsuits, you know being  
7 standard operating procedures, somebody got in trouble  
8 somewhere because they said this is the way it says you do it,  
9 and so they changed it to SOG which is standard operating  
10 guidelines so they could say this is the way we try to do it.  
11 And then we had CBA with the union that we had.

12 Q The collective bargaining agreement?

13 A Collective bargaining agreement with the union. We had, we  
14 had the procedures that we had to go by, we had grievance  
15 assessments that were basically, you know, kind of written hand  
16 shake agreements between the chief and the union. I guess some  
17 of them if they went to second step it could have went to city  
18 hall, but we had to operate off of that. And then we just,  
19 quite honestly especially under Chief Houseman, we just had  
20 things that we did because he said this is what you do.

21 Q Mr. Holt, did it matter at the time where you were part of  
22 the two-in/two-out for two minutes or three minutes or five  
23 minutes?

24 A I don't think it matters. Time is of the essence and we  
25 can, you know, it's a nice thing about the two-in/two-out

## HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 policy, where it says you can't go into a dangerous atmosphere  
2 unless you have two in and two out. And, you know, you have to  
3 remember that pump operator was part of that two-in/two-out,  
4 and he wasn't any better dressed running that fire pump than I  
5 was in a command car as far as safety gear. And any time you  
6 can use that two-in/two-out that allows them to get in and  
7 aggressively do an interior fire attack and we can say that  
8 there's no, no immediate rescue which would allow them to waive  
9 that rule if they knew it, but you really, you really don't  
10 know until you get in and look around that there isn't somebody  
11 in the building. You know, just because there is no cars in  
12 the driveway doesn't mean, you know, grandma who doesn't drive  
13 any more isn't sleeping in the bedroom. So it's always been  
14 official that any time you can get in quickly to do that  
15 interior attack and do a search, that saves lives.

16 Q But even two minutes?

17 A It only takes a minute to die.

18 Q Can you turn to Defendant's Exhibit G, please? So while  
19 you're on standby after your normal work shift, your eight-hour  
20 work shift, would you order supplies?

21 A No. As I said, I never really ordered them. That was a  
22 maintenance thing that was done by a sales rep that came in.

23 Q Okay. During your standby time after your eight-hour  
24 shift, would you inspect uniforms and the turnout gear?

25 A No.

HOWARD HOLT - REDIRECT EXAMINATION - MR. ALVAREZ

1 Q Would you inspect the SCBA?

2 A No.

3 Q Would you do any of your regular duties as battalion chief  
4 during your standby time?

5 A No.

6 Q What then was the purpose of you being on standby?

7 A To monitor the radio, and respond to emergency calls.

8 Q If you could go to Exhibit O, Defendant's Exhibit O,  
9 please. Now, on the second page, the defendants point out that  
10 you were in the line of individuals within the fire department  
11 or in the city that could receive a written complaint for  
12 harassment. Correct? Or discrimination.

13 A Yes.

14 Q How many times did you actually receive a complaint of  
15 discrimination?

16 A I don't think I ever received one.

17 MR. ALVAREZ: Just one second, Your Honor. No further  
18 questions, Your Honor.

19 THE COURT: Thank you. Recross, Mr. Kreter.

20 MR. KRETER: I do not have any further questions, Your  
21 Honor. Thank you.

22 THE COURT: Thank you. I do have a couple of  
23 questions, Mr. Holt.

24 Just to kind of clear some things up for me.

25 Do you not agree that as the suppression battalion

1 chief that you were the immediate supervisor for station  
2 officers?

3 THE WITNESS: I was -- I mean the best way I can  
4 clarify that is I was the go between. They were supposed to  
5 come to me. It was supposed to follow a chain of command but  
6 because the city had such a liberal open door policy, they  
7 didn't have to come to me. There was no, no punishment if they  
8 didn't follow the chain of command even if it was a, I mean,  
9 you know, we always know that there's some, some private things  
10 that you know you don't want to tell everybody, you want to go  
11 right to the chief with to kind of, you know, keep it  
12 confidential. But, yeah, there was never any penalty for going  
13 around me. So you could go, you could go into the chief's  
14 office any time you wanted, you could go to the city manager's  
15 office any time you wanted.

16 THE COURT: Now, I want to talk a little bit about  
17 this incident command procedure which apparently was originally  
18 adopted in September of 2007. Would you agree with the  
19 statement that the incident commander has the overall  
20 responsibility for managing an incident; that he or she has  
21 complete authority and responsibility for the incident?

22 THE WITNESS: I think I would agree that any incident  
23 commander could, yeah, that would probably be a fair statement.  
24 The only question is it doesn't have to be me as the incident  
25 commander.

1 THE COURT: Well, I was going to get to that. If you  
2 as a battalion commander arrive on the scene, unless the chief,  
3 unless the fire chief is there, you are the person with the  
4 highest authority, correct?

5 THE WITNESS: Right.

6 THE COURT: And so in order to organize the response  
7 to the incident, you would be responsible for doing that,  
8 correct?

9 THE WITNESS: The response to the incident, I think  
10 it's better to say the response to the incident is already pre  
11 organized.

12 THE COURT: Well, isn't it fair to say, though, that  
13 it is important when you have an ongoing incident, a fire, say  
14 a fire that involves a structure, it is important to have  
15 someone who is in charge, right?

16 THE WITNESS: Yes. And that's why the incident  
17 command was established.

18 THE COURT: And that is you as the battalion commander  
19 when you are there, right?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Now, in the event that something  
22 goes wrong with the way the incident is handled, who takes the  
23 blame for that?

24 THE WITNESS: Well, I certainly think they would  
25 always be pointing as far up the ladder as they could point.



1 But until, you know, usually what would happen would be, you  
2 know, the National Fire Protection, they would come in, you  
3 know, there would be a big investigation and they would want to  
4 know what everybody did from the incident of, let's say, a  
5 lieutenant showed up first, he became incident command, then  
6 another engine come in and the captain showed up and he became,  
7 it was transferred to him, and then finally I showed up, they  
8 would want to know what everybody did in every step.

9 THE COURT: And ultimately, the person who is the  
10 highest ranking officer on the scene who is in control bears  
11 the ultimate responsibility, right?

12 THE WITNESS: I think that's true depending on where  
13 they find the failure occurred. You know, if it occurred by  
14 the lieutenant, and it just wasn't recognized by anybody, then  
15 I think the responsibility falls to them.

16 THE COURT: Now, the battalion chiefs, if I understand  
17 correctly, were not members of the same bargaining unit as the  
18 fire fighters, is that right?

19 THE WITNESS: That is correct, Your Honor.

20 THE COURT: Who, what bargaining unit were you a  
21 member of, if any?

22 THE WITNESS: Well, we were recognized as an  
23 organization. We didn't really have a bargaining unit, per se  
24 where you, you know, you pay dues and you, you know, you are  
25 able to build a fund for grievances and stuff. It was just the

1 two of us. And they just recognized the two as, as an  
2 organization. Originally when we started, all they did for the  
3 two original on-call battalion chiefs was they basically just  
4 took the contract book of 335, duplicated it, and then just  
5 changed where it said 335 to, I believe we were called  
6 Organization of Supervisory Personnel, OSP. And so for a long  
7 time they were just identical booklets.

8 THE COURT: But you were considered to be separate and  
9 apart from the bargaining unit that bargained on behalf of the  
10 fire fighters and other personnel, is that right?

11 THE WITNESS: Yes.

12 THE COURT: Okay. And you were called the  
13 Organization of Supervisory Personnel.

14 THE WITNESS: I think -- as best I can remember that  
15 was the title of it. I mean it always went by OSP so --

16 THE COURT: That's all I have. You may step down,  
17 Mr. Holt. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 MR. ALVAREZ: Your Honor.

20 THE COURT: Yes.

21 MR. ALVAREZ: May I have a two-minute break to run to  
22 the restroom?

23 THE COURT: Sure. Let's take ten minutes right now.

24 (Recess taken, 2:21 p.m.; Resume Proceedings,  
25 2:36 p.m.)

MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 THE COURT: Okay. Mr. Alvarez.

2 MR. ALVAREZ: Your Honor, at this time I would like to  
3 call plaintiff Martin Erskine to the stand.

4 MARTIN ERSKINE, PLAINTIFF, WAS DULY SWORN

5 DIRECT EXAMINATION

6 BY MR. ALVAREZ:

7 Q Mr. Erskine, can you please state your full name for the  
8 record, please?

9 A Martin W. Erskine.

10 Q And what is your relationship with the City of Battle  
11 Creek?

12 A I'm employed by the fire department as a fire fighter,  
13 battalion chief.

14 Q And how long have you worked for the City of Battle Creek?

15 A It will be 23 years September 10th.

16 Q And most recently what position within the fire department  
17 have you held?

18 A I'm one of the fire battalion chiefs.

19 Q And how long have you been a battalion chief?

20 A Since June of 2012.

21 Q And as a battalion chief under which fire chiefs did you  
22 work?

23 A I first started with Chief Houseman, then he retired and  
24 then I had Chief Hampton, then I had Chief Schmaltz, now I  
25 serve under Chief Blocker who is the interim. He's also police

MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 chief but interim fire police and fire service director. And  
2 starting next month I'll serve under the next fire chief, Chief  
3 Sturdivant.

4 Q Now, can you go to Joint Exhibit book Exhibits 5 and 6.  
5 May I approach, Your Honor?

6 A Exhibit, what, sir?

7 MR. ALVAREZ: Exhibits 5 and 6. Now, Exhibit 5 is SOG  
8 number 102.03. What is that?

9 THE WITNESS: What was that number?

10 BY MR. ALVAREZ:

11 Q I'm sorry. Joint Exhibit 5 is the battalion fire chief job  
12 description, correct?

13 A Yes, sir.

14 Q And Joint Exhibit 6 is also a battalion chief job  
15 description labeled SOG number 102.02, do you see that?

16 A Yes, sir.

17 Q Okay. Now, we are going to be going back and forth between  
18 a couple of different exhibits. May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. ALVAREZ: I'm also going to be showing you what  
21 has been marked as Plaintiff's Exhibits 5 and 6 for comparison.  
22 So beginning with Joint Exhibit 5.

23 THE WITNESS: Okay.

24 BY MR. ALVAREZ:

25 Q If you look at what the physical requirements are under the

1 battalion fire chief description, can you read that out for me,  
2 please?

3 A "Expected to perform the following or it is a critical part  
4 of the position: Standing, driving motor vehicles at a high  
5 rate of speed, lifting zero to 14 pounds, climbing, reading,  
6 writing, seeing near and/or far depth and field, hearing,  
7 talking, using the telephone, contact with general public,  
8 working alone, inside and outside. ENVIRONMENT: Wet  
9 surroundings, working at night, loud noises and low  
10 temperatures."

11 Q Now would you agree that those are the physical  
12 requirements and the working conditions of a battalion chief?

13 A Not all of them.

14 Q What don't you agree with or what's missing?

15 A Well, the lifting of zero to 14 pounds, I mean my gear bag  
16 weighs more than that.

17 Q How much does your gear bag weigh?

18 A I would say approximately 50 pounds.

19 Q Okay. If you could flip to Joint Exhibit Number 6 and also  
20 look at the physical requirements and working conditions under  
21 that job description.

22 A Okay.

23 Q And can you see that they are virtually the same? Take a  
24 minute to review.

25 A Yes, sir.

1 Q Okay. Now, I want you to turn your attention to  
2 Plaintiff's Exhibit 5.

3 A Okay.

4 Q And what is Plaintiff's Exhibit 5?

5 A Fire captain, description of a fire captain's job,  
6 description of a fire captain.

7 Q Okay. And if you would look at the physical requirements  
8 and working conditions for fire captain, what would you say  
9 with regard to how they compare to those of a battalion chief?

10 A Very similar.

11 Q Is there anything different? In fact, they are virtually  
12 the same.

13 A Yes, looks like it.

14 Q If you would look at Plaintiff's Exhibit Number 6. That is  
15 the job description for a fire lieutenant.

16 A Yes.

17 Q And would you say that the physical requirements and  
18 working conditions of that job are also the same as the  
19 captain's and the battalion chief?

20 A Yes, very similar.

21 Q And would you agree that the environment working conditions  
22 are also similar across those three job descriptions?

23 A Yes.

24 Q If you would turn to Joint Exhibit Number 6. Joint Exhibit  
25 Number 6 should be right in front of you. The battalion chief

1 job description.

2 A Yes.

3 Q The SOG. One of the essential job functions listed under  
4 this SOG is responsible to fire alarms and responds to fire  
5 alarms and other types of alarms.

6 A Yes.

7 Q Would you agree that that is an essential function of the  
8 battalion chief job description?

9 A Yes, I would say that would be the most essential function  
10 of a battalion chief.

11 Q Why would you say that?

12 A Because that's our primary mission of the fire department  
13 is responding to emergencies of the citizens of Battle Creek.

14 Q Well, if you're on your regular shift 8:00 to 5:00, your  
15 eight-hour shift, and you're sitting at your desk or sitting or  
16 at the fire house and you're performing inspections of  
17 personnel, equipment and quarters, or keeping office  
18 appointments, or planning and coordinating assignments, or  
19 preparing records and reports, if a call comes in, an all  
20 stations call, which takes precedence?

21 A All stations call.

22 Q So you would have to stop what you're doing and respond to  
23 that all stations call.

24 A That's correct.

25 Q Is there anything on your, on the listed job functions that

1 would take precedence over responding to an alarm or any other  
2 type of alarm?

3 A No, sir.

4 Q If you would look at Joint Exhibit Number 5 which is the  
5 battalion chief, the battalion fire chief job description as  
6 well. If you would look at the bottom under minimum  
7 qualifications for employment, what is that first listed  
8 minimum requirement?

9 A "Thorough knowledge of fire fighting methods and practices  
10 and ability to apply this knowledge to various fire control and  
11 fire prevention problems."

12 Q It says and the ability to apply this knowledge. What does  
13 that mean to you, or what does that mean within the context of  
14 your position?

15 A To make sure that the emergency is properly mitigated by  
16 myself, our fire fighting crews that are responding.

17 Q To fight the fires.

18 A To fight the fires.

19 Q And if you go to Joint Exhibit Number 6, the second page,  
20 which is Bates stamp number 0000076 under minimum  
21 qualifications for employment, the first requirement is the  
22 same.

23 A Correct.

24 Q If you turn to Joint Exhibit Number 5, the second page, one  
25 of the other minimum qualifications is that, "Battalion chief



MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 possess and maintain a current State of Michigan first  
2 responder certification or higher." What is that?

3 A That is a medical emergency responder license. That's  
4 governed by the Michigan Department of Public Health. You have  
5 to take so many, we have to take a class for initial  
6 certification and you have to have so many reoccurring credits  
7 over a three-year period to maintain your license.

8 Q Is this something that's required of all first responders?

9 A Yes.

10 Q Now, I note that in here it also requires a course of  
11 study, an associate's degree. Do you have an associate's  
12 degree?

13 A No, sir.

14 Q Was one required when you applied for the position and  
15 obtained the position?

16 A No, sir.

17 Q Since then have you been asked to obtain an associate's  
18 degree?

19 A No, sir.

20 Q Under Joint Exhibit 6, one of the other essential job  
21 functions is, "Responsible for application of disciplinary  
22 practices." Do you see that?

23 A Yes.

24 Q Now, as battalion chief, generally speaking, what  
25 discipline were you able to mete out?

## MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 A As a battalion chief kind of the same as it was when I was  
2 a captain or lieutenant, I could give coaching and counseling,  
3 an oral reprimand, a written reprimand, but before we ever did  
4 those we always make sure we checked with the chief of the  
5 department.

6 Q So as a captain and as a lieutenant, you could also not --  
7 you were also limited only to verbal and written?

8 A Yes.

9 Q Could you hire any fire fighters?

10 A No.

11 Q Could you fire any fire fighters?

12 A No.

13 Q Could you suspend any fire fighters?

14 A No, sir.

15 Q Now, in your six years as a battalion chief --

16 A Yes, sir.

17 Q -- have you had occasion to write any fire fighter up?

18 A Yes.

19 Q Has there ever been a time when you've wanted to write  
20 someone up and it was countermanded?

21 A Yes, sir.

22 Q When was that?

23 A One time when, one time, a couple examples I give you. One  
24 time when one of our fire fighters was driving to an emergency,  
25 he took a turn too sharp in the parking lot and damaged the

## MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 ladder truck he was driving. I did the investigation because I  
2 was the battalion chief on duty at the time. I did an  
3 investigation of the accident, had him fill out an accident  
4 report, and took it to Chief Schmaltz and recommended that the  
5 captain on the truck get a coaching and counseling in that the  
6 driver of the ladder truck, be fire fighter Mervin, he had an  
7 oral reprimand. And Chief Schmaltz says told me not to give it  
8 to him. He had talked to Captain Majors also and it was just  
9 an accident.

10 Q Did you have, when you were a battalion chief, did you ever  
11 have occasion to recommend a suspension for any fire fighters?

12 A Yeah, I worked, we kind of had a joint -- with the  
13 battalion chiefs we had a fire fighter that allowed his child  
14 to spend the night at the station, and we recommended to the  
15 chief at the time, to Chief Schmaltz, that, you know, he at  
16 least should be suspended if not even terminated. But our  
17 recommendation being the first offense, a suspension. Chief  
18 Schmaltz come back and said he ran it past I believe Nancy in  
19 employee relations and she said that it didn't meet the  
20 criteria for suspension. And we -- I think he ended up, his  
21 direct supervisor ended up giving him just a written reprimand  
22 at the time. I highly recommended at least a suspension for  
23 this kind of violation.

24 Q Now, when you were a captain, and you were -- was there  
25 ever an occasion when you were a captain that you -- well, as

## MARTIN ERSKINE - DIRECT EXAMINATION - MR. ALVAREZ

1 a captain, would you ever have occasion to need to recommend  
2 some sort of disciplinary action for a member of your crew?  
3 A Absolutely. I can remember once when I had a probationary  
4 fire fighter, they are on probation for 12 months, I wrote  
5 monthly reviews on him. I was having problems with him on a  
6 lot of front. Major thing was he was afraid of heights,  
7 wouldn't climb a ladder. There was other issues also with  
8 that. And so I was doing the documentation on that, and making  
9 my recommendations. Actually at that time Battalion Chief Holt  
10 was the suppression battalion chief going through him. And  
11 also had occasion to talk to Chief Houseman that this employee,  
12 you know, the first time he did it, he can't climb a ladder, we  
13 should have let him go. He said, no, keep working with him in  
14 training. And then one cold afternoon or cold day at work,  
15 Battalion Chief Holt called me at station 6 and said I want you  
16 to come down to station 1 later and work with that probationary  
17 fire fighter and another probationary fire fighter on ladder  
18 training, on the aerial ladder apparatus that we had. So I  
19 came down there. And at the time I didn't know it but  
20 Battalion Chief Holt had to go home for the day, and so I had  
21 asked the other battalion chief and the chief is there any  
22 particular thing they wanted me to do. And they said, no,  
23 whatever I wanted to. So I set both of the ladders up and told  
24 him, you know, climb both of them, show me you can climb it,  
25 give them a task to do on it. The one probationary fire

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1 fighter had no problem doing it. The other probationary fire  
2 fighter refused to even climb the ladder.

3 Q This was when you were a captain.

4 A When I was a captain. So after that task was over, again  
5 Battalion Chief Holt was gone for the day, I went in, knocked  
6 on Chief Houseman's office and said, look, he didn't perform  
7 this task. I think we have demonstrated there was enough  
8 training at this time; it's time to start the process. He said  
9 what do you recommend. I said I recommend bringing him in. He  
10 is going to have two choices, one is he can resign as a  
11 probation, as a fire fighter from the Battle Creek Fire  
12 Department, or, two, we are going to start the process to  
13 terminate his employment on the recommendations of all the  
14 evaluations that I had given him and another officer had given  
15 him during his probationary period.

16 Q And what did the chief do?

17 A Right at that moment the chief brought him in and gave him  
18 those options and gave him, I don't know, like a couple shifts  
19 to make a decision. He came back in the next day, the next  
20 shift, and asked to talk to the chief and I, and he resigned  
21 from the department.

22 Q Now, what role did Battalion Chief Holt play in that  
23 recommendation and that decision, do you know?

24 A I don't know. He was never in the meeting that I had with  
25 the chief. I had one-on-one meetings with him being the

1 suppression and I was the captain of the station but I don't  
2 know what he did from there.

3 Q But as a captain, you went directly to the chief and made  
4 your recommendation.

5 A Yes.

6 Q Based on the evaluations that you as a captain had done  
7 over your crew.

8 A That's correct.

9 Q And you didn't have to go first through the battalion  
10 chief.

11 A That's correct.

12 Q You mentioned earlier that your turnout gear weighs about  
13 50 pounds.

14 A That would be my guess.

15 Q Okay. What is in the turnout gear?

16 A In the bag I carried, as mentioned earlier by Battalion  
17 Chief Holt, I carry my helmet, a set of boots, fire boots, they  
18 have got to be fire boots, our turnout pants, our bunker pants,  
19 BP, proper personal equipment, a jacket that is also rated for  
20 the standards of a personal protective equipment, a no max fire  
21 hood, fire gloves, and also I have my SCBA mask that is  
22 assigned to me in case I need to use it.

23 Q Now, I notice that you have a mustache. Have you ever  
24 wanted to grow out a beard?

25 A Yes.

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1 Q And why don't you?

2 A Because it's against the policies and against the  
3 respiratory standards set forth in MIOSHA part 74.

4 Q But as a battalion chief, why would you need to be able to  
5 meet those standards?

6 A In case my assignment puts me into the IDLH, which is  
7 immediate danger to life and health at a scene.

8 Q So what does that mean?

9 A That means in case -- I guess best example I can give you,  
10 if Battalion Chief Holt is the IC or battalion chief on, he's  
11 the incident commander, me being the second battalion chief,  
12 even especially during the day, kind of like one of those  
13 bigger incidents, I would report to him and say, you know,  
14 what's my assignment. There is a lot of things that we have to  
15 do in the incident command. It has to be assigned. He could  
16 assign me anything from being the public information officer,  
17 go talk to the news media, to lead a crew, to interior section  
18 commander, safety officer, any of those roles. It's up to the  
19 incident commander.

20 Q So you could be assigned to enter a burning building?

21 A I could be assigned, yes, sir.

22 Q And that's why you would need to meet the standards for the  
23 mask.

24 A That's correct.

25 Q Now, let's talk about when you first joined the department

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1 as a battalion chief. What was the schedule like at that time?

2 A When I first became battalion chief in June of 2012, it was  
3 me and Battalion Chief Holt were the battalion chiefs and Chief  
4 Houseman was the fire chief, and we had a schedule of Monday  
5 through Friday 8:00 to 5:00, then we took turns being the duty  
6 chief for on-call chief after 5:00 o'clock, weekends and  
7 holidays, and that was on a three-week rotation with myself,  
8 Battalion Chief Holt and Chief Houseman at that time.

9 Q So then with Chief Houseman, he was in the rotation, and so  
10 every two weeks you would be required to be on-call for seven  
11 days straight.

12 A That's correct. One week on, two weeks off.

13 Q Yeah, okay. I understand. So every third week then you  
14 would be on.

15 A That's correct.

16 Q Okay. And so then describe a typical day during the  
17 standby week.

18 A Typical day during the standby week was coming in at, being  
19 there no later than 6:30 usually like we usually get there  
20 between 6:00 o'clock or so. Get us a cup of coffee, start  
21 getting everything fired up, such as computers, technology  
22 takes to fire up, and get ready to, at 6:30 I would check what  
23 they call the fire, fire fighter's call-in line to see if  
24 anybody called in sick, requested a vacation day, or a Kelly  
25 day, set the staffing, make sure there was, that every



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1 apparatus met the confines of the collective bargaining  
2 agreement which means one officer or acting officer and two  
3 fire fighters. And one happened to be qualified to be able to  
4 drive the apparatus. Assign that there. Like I said, if it  
5 was Monday through Friday, a lot of times when Battalion Chief  
6 Holt would arrive he would take over some of those watching out  
7 for suppression, and he would take the, be the main point on  
8 the all stations calls at that time.

9 But if he wasn't there then I would also take those.  
10 And then after 5:00 o'clock that day, I would be home and I  
11 would go back to being the primary chief officer on-call or  
12 chief fire fighter on-call where I would respond to all  
13 emergencies that was, that we were required to do, would  
14 monitor, again, I would monitor radio also, and have my phone  
15 and the pager.

16 And like I said earlier, when we first started we had  
17 one of those telephone pagers. I think Chief Houseman was kind  
18 of old fashioned, cell phones was still somewhat fairly new at  
19 that time. And would stay within the confines of, you know, I  
20 live in Pennfield Township, stones throw from the city limits.  
21 So I was never that far out so I could respond especially  
22 pretty quick to the northeast side of the City of Battle Creek.

23 Q So then you would do, you would do your normal eight-hour  
24 day.

25 A Correct.

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1 Q And then you would go home and begin your standby time.

2 A That's correct.

3 Q And during that standby time what were you supposed to be  
4 doing?

5 A During that standby time I was supposed to be ready to  
6 respond to any emergencies and any other requests for, from the  
7 stations for other duties such as, you know, apparatus broke  
8 down I had to make sure they swapped it out, make sure it got  
9 there. But the main thing would be ready to respond to those  
10 calls that required a battalion chief to respond.

11 Q And what type of calls would require a battalion chief to  
12 respond to?

13 A It was kind of broken down to any what we would call a  
14 multi company response. Again, it could be any -- multi  
15 company would be more than one engine. So it could be two  
16 engines, such as a PI accident on I-94 that would require that.  
17 You never know when you've got to get the helicopter in. Water  
18 rescues that would require a multi company's respond.  
19 Hazardous material response. And any mutual aid call. We get  
20 notified, usually they toned us at the same time, they would  
21 tone a station to do a mutual aid call such as one of the  
22 surrounding townships requesting an engine crew, we would  
23 always, the battalion chief would always respond to those also.

24 Q And how were you alerted as to any of these calls coming  
25 in?

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1 A Me, I would be, it's about triple alerted. One because I  
2 have the radio on so that would beep and tone, and my pager if  
3 I didn't have it on monitor I have it on alert. That would  
4 beep and tone out like the radio traffic come through. Also I  
5 had set up on my cell phone that I would actually get a text  
6 message from dispatch warning me of an emergency coming in that  
7 I needed to respond to. That was fairly, that was commonly  
8 happen not too long after I got promoted or right when I got  
9 promoted, right before that. It was kind of nice to be able to  
10 get that. A lot of times the text message would almost come  
11 first. Also we had the thing on our phone that the department  
12 purchased called active 911 that would also alert you.

13 Again, nothing is 100 percent sure so I, I can't speak  
14 for any of the other duty chiefs, but I wanted to make sure an  
15 example I could give you one time me and my wife was in  
16 Lakeview Square Mall in Hudsons when they were still there at  
17 the time, and the only notification I got of the emergency was  
18 through my text message on my phone. My radio and my pager  
19 never went off inside that store. So as soon as I got out the  
20 door when I seen the text message, I got out the door, I heard  
21 the radio check coming. So note to myself then, hey, you know,  
22 I'm not going to Lakeview Square Mall anymore. Obviously you  
23 don't have good reception. So nothing is 100 percent. I think  
24 that's why I always even at night would keep the radio on be  
25 real low volume that would also tone. Sometimes that radio

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1 antenna would pick it up before the alert pager would also.

2 MR. ALVAREZ: Your Honor, may I approach?

3 THE COURT: Yes.

4 MR. ALVAREZ: Thank you.

5 BY MR. ALVAREZ:

6 Q Mr. Holt, I have handed you what's been marked as exhibit  
7 but I don't remember what exhibit number it is. What is that  
8 electronic device that you have in your hand?

9 A This is my personal assigned mobile radio.

10 Q It's the radio.

11 A It's the radio, yes.

12 Q So this would be marked as Plaintiff's Exhibit 16.

13 So that's the radio.

14 THE WITNESS: Yes, sir.

15 BY MR. ALVAREZ:

16 Q And you have, were you required to carry that with you when  
17 you were on standby time?

18 A Yes.

19 Q Okay. And how does it work? What does it do?

20 A Well --

21 Q Can you show us?

22 A Yeah. (Sounding alert tone) That's the one coming on.

23 That's a lot of times what an alert tone would sound like.

24 Again, this one doesn't have where you can just have an alert

25 always going to monitor the traffic. Also have more frequency

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1 on this than just the city. I can turn it to, if we are  
2 responding to a mutual aid township, can turn it to their  
3 frequency to have radio communications with them.

4 Q And so that would give out a tone similar to the one that  
5 just went off.

6 A It would.

7 Q And could you also hear voices on it?

8 A Yes, you can always hear voices on this one.

9 Q Okay. And so did you always have that on when you were on  
10 standby time?

11 A I did, yes, I did.

12 Q You said that you also had another device. Your Honor, may  
13 I approach?

14 THE COURT: Yes. I have handed you another electronic  
15 device. Can you tell me please what that device is?

16 THE WITNESS: That's called our alert pager.

17 BY MR. ALVAREZ:

18 Q And that is listed as Plaintiff's Exhibit Number 14. So  
19 how does that pager work? Because when I was thinking of a  
20 pager I was thinking more of a beeper type.

21 A Like those, this one make, may I turn it on? Forewarn you  
22 there. It makes a little bit different sound. (Sounding  
23 alert) That would be we know we got a tone coming in. So  
24 that's how -- then you hear voices, you can hear the dispatch  
25 information immediately from there. No matter what you had it

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1 on. Like I said, that was C. would be the one we could monitor  
2 all radio traffic, if you had it on A. it would just be when  
3 that tone went off then the radio traffic would come through.  
4 On B. the vibrate, you know -- this one didn't do it, I'm  
5 sorry. Sometimes the vibrate for me didn't work enough. I  
6 don't know. I don't even feel vibrate on my phone half the  
7 time.

8 Q And that alert pager was it something you were also  
9 required to have with you when you were on standby time?

10 A Yes, sir.

11 Q Why was it necessary to have at least those two items?

12 A For me --

13 Q In addition to your cell phone.

14 A -- for me it was to make sure, one, I got the call that I  
15 was supposed to respond to, for the radio, as I said, I  
16 constantly did monitor the radio. Again, when we went to bed  
17 at night it would be turned down to very low volume or no  
18 volume. And in case -- because that beep would come across if  
19 we did get a tone. And a lot of times Battalion Chief Holt  
20 testified earlier, we would get calls from either dispatch or  
21 engine companies on that first before they would bother calling  
22 the telephone pager or calling our cell phones. You know, it's  
23 easier for them, they might not even have a cell phone with  
24 them. Or radio. It would come on whatever your call sign was,  
25 like mine was car 4, if I was a duty chief any time I hear car

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1 1, car 3, car 4 I always answer because I know they are trying  
2 to get ahold of the duty chief.

3 Q Now, in addition to those two devices, you also had your  
4 cell phone?

5 A That's correct.

6 Q And you received a stipend from the city for that?

7 A I did.

8 Q Same as Mr. Holt.

9 A Yes, sir.

10 Q Okay. And you said you had a beeper.

11 A Yeah, like the old, I think my wife explained earlier kind  
12 of like the old doctor in the hospital pager; you just called  
13 this number and the station officer could leave a message, hey,  
14 station 6, Captain Smith calling for the duty chief. Fire  
15 fighter Jones is going home sick, please call me back. So I  
16 would call him back, okay, he's going home. Put this down. Do  
17 I have any staffing or I would have to right away, that was  
18 another thing in the restaurant was you had to immediately  
19 address that concern.

20 Q So you had four electronic devices that you had with you at  
21 all times when you were on standby time.

22 A That's correct.

23 Q And what would you do with those devices when you were at  
24 home?

25 A I would, I kind of do the same thing as Howard would do. I

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1 had a little basket that would carry them around with or put  
2 them on the stands wherever I was at.

3 Q And were there, was there a difference between your home  
4 life from when you were on-call or on standby from when you  
5 weren't?

6 A Absolutely.

7 Q What were those differences?

8 A To me they were night and day differences. You know, I  
9 find it an honor and a privilege to be a battalion chief.  
10 Excuse me. And I took that very serious. So when I was  
11 on-call, I never wanted to put the fire fighters at risk. So  
12 it was kind of a relief the weeks that you weren't. So I was  
13 free to bring the wife up to Grand Rapids, go wherever to  
14 dinner, go to the kids house lived in Richland, watch my  
15 grandson. Excuse me.

16 Q And you weren't able to do those things when you were on  
17 standby?

18 A Not with the same freedom. I could go out to eat, could  
19 visit, I couldn't watch. I could eat in Battle Creek. But you  
20 get tired of the same old restaurants. We got quite a few but  
21 I'm kind of -- my wife is kind of finicky, I will say that.  
22 Kind of the same five restaurants all the time.

23 Q So then you said you did go out to eat. How often would  
24 you go out to eat when you were on standby?

25 A I would say we probably limit it to a couple times a week.



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1 Most of the time, a lot of times we get takeout and bring it  
2 home.

3 Q And why was it that you would limit the amount of time, the  
4 amount of times that you would go out to eat when you were on  
5 standby?

6 A Well, few reasons. One is you get tired of the same five  
7 restaurants. Two, I never knew if I was going to be able to  
8 finish a meal. You know, it just wasn't as enjoyable. As my  
9 wife testified earlier, and you know like I said, I took it  
10 serious. I listened.

11 Q Why could you only go to the same five restaurants?

12 A Well, they were in the -- one, they were in the  
13 jurisdiction that we could be in.

14 Q So you couldn't come up to Grand Rapids and even the Chop  
15 House, for example?

16 A No, sir. No, it would be nice.

17 Q You couldn't go to Kalamazoo to eat at one of the  
18 restaurants there.

19 A No, sir.

20 Q And when you did go to dinner with your wife, where did you  
21 leave your electronic devices?

22 A They were always sitting on the table. Used to drive her  
23 nuts.

24 Q And would it, would your devices go off when you were at  
25 dinner?

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1 A Yes.

2 Q How often would you say?

3 A Seems like just about every time. Like I said, I had the  
4 radio kind of on a lower volume it was kind of like always like  
5 this for me. My wife explained to you earlier, you know, kind  
6 of was annoying to her because the conversations wasn't the  
7 same, you know. I'm ADD anyway so give me a distraction and  
8 she would go, hey, I told you that yesterday at dinner. And  
9 you know, I wouldn't remember because my mind would be  
10 distracted.

11 Q So you felt that -- well, so you were limited in what you  
12 could do with your after hours time?

13 A Absolutely I was limited in what I could and couldn't do.

14 Q You heard earlier that Mr. Holt stopped mowing his lawn on  
15 the weeks that he was on standby. What would you do with your  
16 lawn?

17 A I would do the same thing. I would just mow it as soon as  
18 I got off of being on-call.

19 Q The weeks that you were on-call you wouldn't mow your lawn?

20 A Then I would mow it like the day before. Like say on-call  
21 you just started Friday so I would mow my lawn on Thursday of  
22 that week, then Friday I would go on-call so I would wait until  
23 the next Friday when I got home to mow it.

24 Q Were there any activities that you couldn't do or you  
25 stopped doing because you were on standby?

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1 A I did. I played, you know, kind of like sports guy. I  
2 could watch sports at home with it but I couldn't go to a lot  
3 of the sporting events. Local maybe but still really didn't  
4 like to. I played intramural softball and basketball eight  
5 years running defending church league champions in basketball.  
6 So I stopped really doing that. You know, and it was really a  
7 let down because I could finally start playing with my kids.  
8 So I didn't do it because I couldn't monitor and I didn't feel  
9 like responding to the safety of that thing, I wanted to  
10 respond quicker. You know, if I'm in the pitching or out field  
11 even if I had the wife's monitor and I could, but, you know,  
12 you wanted to come running off the field, if I miss something  
13 my wife is not trained to listen for those kind of calls. They  
14 could be calling car 3, I thought they were calling car 4.  
15 You're car 4, I didn't think it meant to you. Even though she  
16 wouldn't realize they are trying to get ahold of the duty  
17 chief. So I just stopped playing.

18 Q But, Mr. Erskine, you were at the deposition of Chief  
19 Houseman, weren't you?

20 A Yes.

21 Q And you heard when he said that you didn't have to listen  
22 to the radio, and that as far as he was concerned your time was  
23 to do with as you wanted.

24 A Well, I know what Chief Houseman said but what Chief  
25 Houseman said and did were in my opinion two different things.

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1 I think the best training is example. And I know I was a fire  
2 fighter, then a lieutenant, and a captain in an on-call system.  
3 And I know as one of those the example was if I need to get  
4 ahold of the duty chief my first thing in those was on the  
5 radio and I would say probably nine times out of ten they  
6 answered, and I know Chief Houseman monitored the radio,  
7 whether he was duty chief or not duty chief because I would  
8 hear him come in and he would knew all the radio traffic and  
9 stuff. Like I said, once in a while I remember a night of a  
10 bad power outage, this is 10:00 o'clock at night, and it was  
11 more on the north side we were losing power, power lines down  
12 all over the thing, and alarms and stuff, and he calls me on  
13 the radio. Hey, I'm coming in to help, I've been listening to  
14 you on the radio. I was actually getting ready to call  
15 somebody, hey, we are going to need some help in here.

16 So the example that was shown, there was nothing  
17 really a lot of things written down on what you do and don't do  
18 as the duty chief. It's kind of what you learned by examples  
19 of Battalion Chief Holt and the battalion chiefs before him. I  
20 kind of knew what it was coming into it. I really thought I  
21 was prepared. You know, it wasn't, it was a bad enough being  
22 on-call every third week, but that every other week, that got  
23 really to me.

24 Q And you're still with the department now, correct?

25 A I am.

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1 Q And what system do they have now? What schedule do you  
2 have now?

3 A Well, now we, after Howard retired we sat down and come up  
4 with a schedule promoting three shift battalion chiefs, but  
5 Chief Schmaltz still wanted to keep another battalion chief to  
6 do some of those other things, in charge of the training  
7 division. I still call that administrative. I just simple  
8 factor no really job description, so the administrative  
9 battalion chief, it's a battalion chief job description,  
10 administrative, because administrative people like the training  
11 officer is considered, even though he's in the union, is  
12 administrative position. He works for me. And I have some  
13 other job duties. But I also -- so we didn't get into any of  
14 the other over 53-hour FLSA rules on a shift that I work a  
15 24-hour shift every Wednesday. So the other battalion chiefs  
16 work a constant 28 on/48 off but on the weeks they work Sunday,  
17 Wednesday, Saturday, then they have Wednesday off and I always  
18 work that shift. So I work all three shifts. Then there's  
19 time when they are on vacations or at classes that we divide up  
20 those shifts on a rotating basis and we work overtime on those  
21 shifts.

22 Q So when you're on your 24-hour shift on Wednesdays --

23 A Yes.

24 Q -- are you at home for any part of that?

25 A No. I stay right at, mainly mostly at the station. Again,

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1 like I said, I do have some, some to go around to the other  
2 stations or the airport station or whatever.

3 Q But you don't go sleep at home.

4 A I don't go sleep at home.

5 Q You sleep at the station.

6 A I do.

7 Q With the other fire fighters.

8 A Well, station 1 we have no other fire fighters at this  
9 time. When I first that system come on, we did have fire  
10 fighter station at 1 and we would sleep downstairs and the fire  
11 fighters would sleep upstairs. But now they have closed  
12 station 1 again for responding of the firefighter due to  
13 reutilize, I guess re deployment of resources and now I'm the  
14 only one down there after 5:00 o'clock.

15 Q And what do you do when your shifts end on those days that  
16 you're working those 24 hours, what do you do from 5:00 o'clock  
17 until you go to bed?

18 A From 5:00 until I go to bed, well at 5:00 right away now we  
19 do vacation changes. We used to do that before I went home.  
20 We just kind of gave it a little leeway to the fire fighters  
21 that they could extend requests for vacation from 3 to 5 since  
22 we are working these 24 and we are at the station anyway. So  
23 we kind of do vacation changes at 5. After 5 I usually go to  
24 dinner. A lot of times my wife will meet me for dinner,  
25 usually right downtown at Claras. She doesn't complain as bad

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1 now that's it's not on-call system since it's once a week.

2 Q So now on your 24-hour once a week schedule, you still go  
3 out to dinner with your wife?

4 A I do. As long as it's inside the city limits.

5 Q But it's only once a week.

6 A It's only once a week.

7 Q You're not required to stay at the station those entire  
8 24 hours?

9 A No.

10 Q So you can leave, you can leave the station at any time?

11 A Yes, as long as I stay within the city limits.

12 Q But you're paid for all the time that --

13 A I'm paid for every hour I work now.

14 Q What about sleeping, when you sleep at the station on your  
15 24 hours, do you still have your devices with you?

16 A I do. Still the same thing. I still have the pager right  
17 next to the bed, again, it may be on alert, I have the radio  
18 there, I got a night stand turned down kind of low. And also  
19 my cell phone.

20 Q What about the nights that you're not working your 24-hour  
21 shift?

22 A No. I would probably be divorced.

23 Q So you don't take your devices home with you on the other  
24 nights?

25 A Just my own personal cell phone.

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1 Q During your standby hours, how often would the radio or one  
2 of the pagers or your cell phone go off or alert you?

3 A It would be just a ball park, but like it seem like every  
4 day something would come up on, something would go off where I  
5 was needed to do something. I would say probably, you know,  
6 three to five times a week during that I was responding to some  
7 kind of report of an emergency that required a battalion  
8 chief's response.

9 Q Let's be clear. When you did respond, when you did have to  
10 respond, leave your house and respond to an incident, you did  
11 get paid.

12 A Yes, I did.

13 Q And what did you get paid?

14 A One and a half times my rate of pay.

15 Q And when you were simply at home monitoring your radio,  
16 throughout the night, did you get paid?

17 A No, sir. There was some in the contract that says we got  
18 one hour of time and a half for after duty hours, and two hours  
19 on the weekend.

20 Q So would you say that the amount of time that you had to  
21 listen to the radio and the number of calls that came in  
22 amounted to one hour of your time when you were on standby?

23 A No, no, sir.

24 Q Why is that?

25 A It's just constantly having to monitor that. Like I said a



MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 lot of it wasn't put down. I mean they paid us for our  
2 response but what about, like I said, those calls that come on  
3 the pager, cell phone that we had to respond to an officer's  
4 need for something.

5 MR. ALVAREZ: No further questions.

6 THE COURT: Thank you. Cross-examination, Mr. Kreter.

7 CROSS-EXAMINATION

8 BY MR. KRETER:

9 Q Thank you, Your Honor. Hello, Mr. Erskine.

10 A Hello, Mr. Kreter.

11 Q Now you said you're paid every hour you work. You work  
12 Monday, Tuesday and 24 hours Wednesday, right?

13 A Yes. And eight hours Thursday.

14 Q Okay. Eight hours Thursday. You used to work when you  
15 were on the 40-hour standby shift, Monday, Tuesday, Wednesday  
16 Thursday, Friday, 8:00 to 5:00 where you would have to come  
17 maybe early at 6:30 for scheduling then you were on standby.

18 A Yes.

19 Q So you got paid your salary, and then you got paid your  
20 stipend for being on standby, and then time and a half for any  
21 time you were called in.

22 A Correct.

23 Q Okay. So --

24 A I would say yeah -- I would say that's not totally correct.

25 Q Okay.

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 A I mean part would be correct, I got paid for responding to  
2 emergencies.

3 Q Right. Responding -- okay. Responding to emergencies  
4 when you went in. And you wrote that on your time slip.

5 A Yes, I tried to.

6 Q Because you kept track. Because that's how you got paid,  
7 you wrote it out yourself.

8 A Right, right.

9 Q Actually Exhibit Q is your time records and Mr. Holt's time  
10 records and it's about 600 pages and I will not bore anyone  
11 going through that. But those, that Exhibit Q, your payroll  
12 records, would be based upon what you had written out yourself.

13 A That would be correct for the hours.

14 Q Okay. And I think you testified in your deposition that  
15 the payroll records would get me to the ball park of how often  
16 you were called in when you were on standby if I looked at  
17 them.

18 A It would get you to the ball park. Ball park is pretty  
19 big.

20 Q Okay. So I have reviewed the payroll records. Well,  
21 somebody in my office has. And over a three-year period you  
22 worked, you received extra pay, time and a half pay which  
23 appears to be the time you were called in, although it could  
24 have covered some other things, but I'm assuming it's the time  
25 that you were called in for structure fires and you were

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 required to appear; it's an average 3.4 hours a week.

2 A Okay.

3 Q So when you were called in, actually had to go to a  
4 structure fire scene, how often would that be? I mean how long  
5 would you stay there on average recognizing there's variances?

6 A I would say given those facts, you're averaging at least an  
7 hour on scene.

8 Q At least an hour.

9 A As I said, probably be three to five times a week  
10 responding. So --

11 Q There are times in those records I see eight hours, I see a  
12 lot of two hours.

13 A Correct.

14 Q Okay. And, again, I had an opportunity to go through  
15 structure fires, and I know we may have some disagreement as to  
16 when you had to respond, but from 2012 to 2015, and this number  
17 can change just a little bit based upon what dates you use, but  
18 I think what I've included in the structure fire exhibit there  
19 were like 124 or 137 structure fires during that three-year  
20 period, somewhere in that range. Would you disagree with that?

21 A No, I probably agree that's what we code them, what we call  
22 a 111 on the net verse (phonetic). There would be a lot of  
23 reports of possible structure fires that would be coded  
24 something different that we were responding to.

25 Q Okay. But all stations calls would be structure fires,

1 111?

2 A All station calls, yeah. 111 would create all stations  
3 call, yes.

4 Q Okay. And over a three-year period somewhere between 124,  
5 137, that's about once a week.

6 A I would agree with that.

7 Q Okay. Now, you said you responded to other types of calls  
8 when you're on standby but I didn't hear Chief Schmaltz testify  
9 to that, I don't think Chief Houseman is going, has testified  
10 to that. So I'm trying to -- I need to reconcile why you felt  
11 you had to respond to other calls.

12 A I believe it's one of the exhibit kind of gave the kind of  
13 calls that we responded to.

14 Q Okay. You said multi engine calls.

15 A We say multi. What we call multi engine company,  
16 especially on the highway for like, you got to forgive me, I  
17 have been a battalion chief six years, I have had a lot of  
18 changes over the six-year period of what I respond to. So I'm  
19 trying to confine it to the on-call years. So, again, a lot of  
20 that was responding, you know, I can recall responding to PI  
21 accidents, I can remember responding to hazardous materials, I  
22 can remember responding to a water rescue.

23 Q Now this is when you were on standby, not during the week  
24 when you are working Monday through Friday.

25 A When, when I was responsible to be the --

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q Duty chief.

2 A -- to be the duty chief.

3 Q Okay.

4 A I said if I was not the duty chief I was working and  
5 Detective Holt was a duty chief, if it was a confirmed  
6 structure fire with occupants trapped in an apartment building,  
7 by all means I would drive to the scene and, you know, report  
8 to him, hey, what do you want me to do, could be anywhere like  
9 I said those assignments to, hey, stay in a car and help me  
10 monitor the radio traffic.

11 Q So would that be during the work week?

12 A Yes, that would be during the work week, sir.

13 Q Primarily it would be Chief Holt that would respond to  
14 structure fires and then all calls during the work week, the  
15 multi engine calls because he was the suppression chief.

16 A Yes.

17 Q And you as the administrative chief you would not. I mean  
18 when would you respond during the work week?

19 A When would I respond during the work week? When Battalion  
20 Chief Holt was absent. When it sounded like an escalating  
21 event or when Chief Houseman told me to. There was a lot of  
22 times when he would say let's go and I would jump in actually a  
23 car with him and we would both respond.

24 Q But that wasn't the norm. The norm would be Chief Holt.

25 A There is nothing normal about fire fighting.

1 Q That's a good answer. But still on average, that wasn't  
2 the norm. Most of the time Chief Holt would respond during the  
3 course of the week because you were the administrative  
4 battalion chief, he was the suppression chief.

5 A Yes, he was the, he had to respond.

6 Q How many times where you were on standby that you went to a  
7 scene and either the chief or Chief Holt took command and you  
8 followed command? Do you understand my question?

9 A No, I don't understand your question.

10 Q Okay. So somebody is the incident commander; was there  
11 ever a time where both of you, both battalion chiefs, were on  
12 scene?

13 A Yes, sir.

14 Q When you were on standby.

15 A When I was the standby. How many times?

16 Q When you were the duty chief.

17 A When I was the duty chief, okay.

18 Q Okay. Was there any time or where Chief Holt was the duty  
19 chief, either way.

20 A I understand your question.

21 Q You're on standby, did you come in and all of a sudden now  
22 you're not commanding the scene. How often did that happen?

23 A I can recall specifically a couple times when Chief  
24 Houseman come in or Chief Schmaltz come in and took over as the  
25 incident commander.

MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q So that's just a couple times.

2 A Just a couple times.

3 Q Otherwise you were on the scene, you were the incident  
4 commander.

5 A Most of the time I was incident commander.

6 Q Okay. So you said that you knew what was involved becoming  
7 a battalion chief. As I hear your testimony, it sounds like it  
8 was a terrible job when you were on standby.

9 A I don't understand your question.

10 Q Well, it sounds like it was terrible when, the week you  
11 were on standby. Terrible job. That's how it sounds. Sitting  
12 back there.

13 A There are parts of it was that terrible, yes, I will say  
14 that being that things that I couldn't do with my family, that  
15 that part was terrible.

16 Q So why didn't you transfer out? Why didn't you ask for a  
17 new assignment?

18 A You know, I don't know if that's even a possibility.

19 Q Okay. But being a battalion chief is something I assume  
20 that you strive for. I mean, I mean Chief Houseman said that  
21 you were dedicated and a hard worker.

22 A Yes, yes.

23 Q And I assume that as you're working your way up through the  
24 ranks that's a position you strive for.

25 A It was. It was. I tell you the truth I made this

1 statement. It's friends and colleagues try to say are you sure  
2 you want to do this job. My thing was, you know, when I took  
3 the promotion in June of 2012 I knew Chief Houseman had to  
4 retire in April of 2013, and being a betting man I would bet  
5 that the next chief was going to come in and wanted to change  
6 the system back to 24-hour battalion chiefs. Because of the,  
7 because of the having to respond. Chief Schmaltz did not like  
8 to respond from home either.

9 Q You called it a promotion, you wanted to achieve the  
10 position, and that's because it was an important rank in the  
11 fire department.

12 A I think it's a very important, yeah, very important job in  
13 the fire department. All jobs are important. Was important  
14 for me to move up the ranks, and with my experience, you know,  
15 I have been fire fighting since 1982 so, you know, I was  
16 prepared to be able to take that next step in my career.

17 Q Now, I showed Chief Schmaltz an e-mail that was from you  
18 and Mr. Holt that you did not want to shift back or change from  
19 40 to 53. And it's my understanding there was some resistance  
20 to that. Why -- why, again, if you didn't like the standby  
21 arrangement, why did you not want to shift back to the 24/48?

22 A I would say that I really wanting to but it really wasn't  
23 defined what that was going to look like. And two, few reason,  
24 one, negotiating ploy. You know, you can change our hours,  
25 again, just kind of grab that control and let us have some



## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 power over how this is going to look. Famous fire chief once  
2 says there is two things fire fighters say, they hate the way  
3 things are, and they hate change. Probably a little bit of it.  
4 Again, I think it was fear of the unknown. What was this new  
5 system going to look like. We know what this system was. To  
6 be honest with you, I didn't like it, as I stated. I am a  
7 hundred times more happier now with my battalion chief position  
8 than I was then.

9 Q So how -- you're asking for a lot of money in this case.  
10 How do I know what you're saying today isn't a negotiating  
11 ploy? I mean it sounds like you didn't like it and you wanted  
12 to change, but then when you were negotiating a new contract  
13 you said, no, I don't want to change. How do I know today?

14 A We are not negotiating now, Mr. Kreter. We have, we have a  
15 new collective bargaining agreement that says I work --

16 Q You're asking for a lot of money today. And your testimony  
17 is important to the outcome of this case.

18 A That's correct.

19 Q And you said that you used it as a negotiating ploy before.  
20 Now I don't want to go to the 53 hours. How do I know you're  
21 not doing the same thing today?

22 A I don't understand your question.

23 Q I'll move on.

24 A What do you mean by ploy? Negotiating ploy? What am I  
25 negotiating?

MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q I'm using your words.

2 A I understand that. There is a difference between changing  
3 my work schedule and standing up for my FLSA legal rights that  
4 was constitutionally passed by the Supreme Court.

5 Q Okay. You talked about that incident at the military base,  
6 actually it was the military base. You recommended a  
7 suspension, correct, of a fire fighter?

8 A I did.

9 Q And you said that that was eventually overruled by the  
10 labor attorney, Nancy Mullett?

11 A Yes.

12 Q Okay.

13 A At least that's what was relayed to me from Chief Schmaltz.

14 Q And that was the military base too?

15 A That was at station 7, correct, would be at the  
16 international guard base on the WK Kellogg airport.

17 Q And station 7 was a new station, relatively new.

18 A Relatively new.

19 Q And so the protocols hadn't been set up, I mean had it been  
20 set up where there were new protocols because it was a military  
21 base, correct?

22 A I don't think we needed new protocols. We had a clear  
23 policy that says that you could limit visitors limited to two  
24 hours of visiting and no visitors after 21:00 hours. It didn't  
25 say stations 1 through 6, excluding station 7. It was the

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 departmental rule.

2 Q Was it your understanding because it was station 7, it was  
3 at the military base, that there were some complicating factors  
4 and that's why the labor attorney had to get involved and  
5 render their opinion?

6 A I know the chief, again, got the labor attorney, or the  
7 employee relations director involved because we were  
8 recommending suspension.

9 Q Okay.

10 A And I don't believe, I don't know if the chief had  
11 authority or not had authority to suspend without going through  
12 HR or employee relations.

13 Q Would you concede this may have been a situation a little  
14 more complicated than usual suspension and required some  
15 additional, wasn't just the chief overruling you, there were  
16 other reasons and factors involved.

17 A I wouldn't agree to that. It was cut and dried to me, sir.  
18 No matter if it's station 7 or 2, I would have suspended the  
19 employee.

20 Q Okay. And we are getting late in the day, so I want to be  
21 briefer than I had intended.

22 So your job description, and we can go to Exhibit G,  
23 that's Defendant G black book. That could be -- if I can  
24 approach.

25 THE COURT: Yes.

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 BY MR. KRETER:

2 Q So let's go through your job description real quick. Job  
3 duties. Okay. So you were in charge of training.

4 A Yes, sir.

5 Q Okay. That's training all fire fighters for day-to-day  
6 activities.

7 A Let me preface this that the training, there was a training  
8 officer that also -- I guess the best way to describe how the  
9 training division run is the chief is the superintendent, you  
10 know, I may be the curriculum director as long as he approves  
11 it, and the training officer is the teacher.

12 Q Okay. But would the chief also take input from you as to  
13 how training would go?

14 A Yes.

15 Q Okay. HazMat, what's HazMat?

16 A The hazardous materials. Now we have a hazardous materials  
17 team. At the time we really didn't. We had a hazardous  
18 material vehicle and I would make sure it's mandated by OSHA  
19 that we receive eight hours of training in this area per year.

20 Q Okay. By the way, would you agree that training fire  
21 fighters is an important function of the fire department?

22 A I would agree with that.

23 Q Okay. Road safety. What's that?

24 A That's the safety system put on the vehicles that monitor  
25 driving of the vehicles.

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q Okay. And you were in charge of that.

2 A Yes, I would download what they call download the driving  
3 every month and send it out. The chief had a policy that  
4 anybody that fell below the standards for two consecutive  
5 quarters would receive a coaching and counseling from their  
6 station officer.

7 Q Plan of the day. You know, I'm sorry, but I used to watch  
8 Hill Street Blues, I remember that sergeant that plan of the  
9 day and then say let's go. For some reason that's the mental  
10 picture I have in my mind. You were meeting with the fire  
11 fighters or through intercom system or Skype, and this is the  
12 plan of the day. This is what we are doing.

13 A The plan of the day would be put on what we call the  
14 server. Again, a lot of this I would look at, I would keep  
15 track of a little bit of a counter, say plan of the week, plan  
16 of the day, be in charge of training and try, try to come up  
17 with a plan of the day the best I could. I would say  
18 50 percent of the time the plan of the day didn't go as  
19 planned.

20 Q That's because you don't know when a fire is going --

21 A Not only that but Battalion Chief Holt testified earlier,  
22 Chief Houseman would come in and call one of us or both of us  
23 in and change the plan of the day. He was at a fire the night  
24 before and fire fighter X. screwed up making the hydrant so  
25 let's go out and do hydrant training this week. So we would

1 have to change it on the fly.

2 Q Have to be fluid.

3 A Yes.

4 Q And there is a lot of downtime for fire fighters, correct?

5 I mean when they are busy they are busy but there is downtime

6 when they are sitting at the station, would that be fair to

7 say?

8 A I would guess that would be fair to say.

9 Q So when there is the downtime, plan of the day is

10 important, for example, scheduled training for them to do, is

11 that fair?

12 A I wouldn't call that downtime.

13 Q No, no. What I'm saying so there isn't --

14 A Isn't as much downtime. You want to keep them as busy as  
15 possible, yes.

16 Q Okay. Thank you. You did that better than I.

17 Response issues, street closures, water off, et  
18 cetera.

19 A We just give notification on that from Department of Public  
20 Works and it would, it would go on there that Main Street is

21 closed between Michigan and Cliff. And it would go on for FYI.

22 Q And special events, PR, you would be involved in public  
23 relations?

24 A I would -- we would give request, hey, we need or be told  
25 they were sending a fire engine up to the 911 Memorial at

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 6:00 o'clock, 18:00 so I put it on the plan of the day. It was  
2 up to the duty chief to make sure somebody got there.

3 Q Did you feel you were part of the management team of the  
4 fire department? There's 80 to 90 members of the fire  
5 department, and there's the chief and two battalion chiefs.

6 A I would be honest when I first started I did not. It has  
7 evolved into what it should be, I feel. Towards the end of  
8 Chief Schmaltz's tenure we were able to get through to him some  
9 of those things we talked about would have been nice to do.  
10 Again, like I said, my fellow battalion chief so eloquently  
11 worded it, Chief Houseman was very hands on and just managed  
12 everything. Now I have, I'm in charge of building maintenance  
13 and I got to watch the budget. I never had to watch a budget  
14 under Chief Houseman or Chief Hampton.

15 Q Chief Hampton wasn't, I don't want to dwell on this too  
16 much, but Chief Hampton wasn't there on a day-to-day basis for  
17 you, correct?

18 A I don't know if I agree with that. I mean he was always --  
19 just because his office at the police station he was a phone  
20 call away or a drive away that I could go to meet with him;  
21 same as I do now, Chief Blocker doesn't have an office at the  
22 fire station but, you know, again, every morning I text him my  
23 staffing.

24 Q Okay. Can I go through Joint Exhibits -- I don't know  
25 which book. You've got it. Let's go through Joint Exhibit it

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 starts with Erskine and it goes to 15 Erskine.

2 A Pardon me? What was that?

3 Q It starts with Exhibit 8, it starts with your name then  
4 Erskine biweekly reports.

5 A Yes, sir.

6 Q And so look to Exhibit 8. So what was the purpose of these  
7 reports?

8 A I guess because Chief Schmaltz communicates a lot different  
9 than I do. He liked to e-mail and text and not one-on-one  
10 meetings, so he kind of want us to send him, again, just what,  
11 I don't know if he keep track of what we were doing or  
12 whatever.

13 Q So --

14 A I would send him, he required me to send him a biweekly, I  
15 believe he required Battalion Chief Holt also send a biweekly  
16 report.

17 Q Okay. So that was the first, well, this is one  
18 October 10th, 2014. Let's go to number 9.

19 A Okay.

20 Q And this is November 10th, 2014. And on the bottom:  
21 "Personal: Duty chief rotation saw no major fires or  
22 incidents." So that would have been at least for a week period  
23 of time there were no major fires.

24 A Yes, that's what that meant. I did, reading a little  
25 further there we did have an all stations call to the Oaks at



## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 706 North Avenue but it ended up being nothing more than a  
2 minor electrical problem.

3 Q That could have been during the regular working hours?

4 A No.

5 Q Okay. How do you know that?

6 A Duty chief rotation, again, like I said, I think this is  
7 time, what's the date on it? November of 2014. During the  
8 regular time the Battalion Chief Holt would have responded to  
9 that.

10 Q So would part of this report be for you to report on fires  
11 that occurred?

12 A I probably didn't really tell me. Didn't give me much  
13 guidance. Just wanted to know what's going on.

14 Q At least this report you did.

15 A I did. I usually did if I was the duty chief.

16 Q The October report, number 8 you did not, there is no  
17 mention of fires.

18 A Yeah. Like I said, there was no -- really just what's  
19 going on. You know, kind of keep him abreast of what's going  
20 on. Didn't tell us all we had to put in it. Kind of left to  
21 guess.

22 Q So November 23rd, that's Exhibit 10.

23 A Exhibit 10.

24 Q Again you're going through the projects and training. You  
25 also said, "Just started duty chief rotation. Took vacation

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 day on Friday to attend nephew's wedding, took two-day vacation  
2 November 20-21st for wife's surgery."

3 A Correct.

4 Q So notwithstanding your duty chief's responsibilities you  
5 were able to take vacation time, attend your nephew's wedding  
6 and wife's surgery. Might have to plan around your duty but  
7 you were able to do those activities, correct?

8 A I can't remember what the rotation was. I don't know if I  
9 took a vacation when I wasn't on duty chief, I can't remember  
10 that part. I had to look at the dates.

11 Q Okay. And, again, there is no mention of any fires.

12 A No. I didn't put any in. Again, like I said, sometimes I  
13 did, sometimes I didn't.

14 Q Number 11. There you have duty, that's December 5th, 2012,  
15 "Duty chief rotation last week, no major incidents." By the  
16 way, it's probably 2014.

17 A Probably. I'm not good at typing.

18 Q But you would agree no major incidents as duty chief.

19 A Yeah, I guess going on that, I mean to me major incidents  
20 may be different. Don't mean I didn't do any responses.

21 Q Okay. December 19th, that's Exhibit 12.

22 A Okay.

23 Q Again, the date is probably off, the year. But "Personal:  
24 Duty chief rotation last week, no major incidents. Winding  
25 down for year, getting ready for Christmas. Request to use

1 vacation day in February." So, again, no major incidents when  
2 you were or the duty chief didn't have any. And then in fact  
3 Battalion Chief Holt was on vacation, and that you were  
4 covering his duties. Which was common that you guys would  
5 cover for each other.

6 A Yes.

7 Q Okay.

8 A Somebody had to cover. We took vacation, the chief could  
9 have covered or assigned us and usually they assign one of us  
10 to cover.

11 Q And in fairness, we will go to Exhibit 13. I'm not going  
12 to be selective here.

13 A Okay.

14 Q January 16th, 2015, "duty chief rotation, house explosion."

15 A Yes.

16 Q "Fire on Lamora. All went well." Was that your rotation,  
17 do you recall or --

18 A Yes, sir, I remember that instance well.

19 Q Okay.

20 A All went well because nobody got hurt.

21 Q Did you act as incident commander?

22 A I did.

23 Q Okay.

24 A Also had a vacant garage fire on Burnham Street, nobody got  
25 hurt.

MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q Again, did you act as incident commander?

2 A Yes, I did.

3 Q Okay.

4 A Command on I-94 incident also.

5 Q Was that a fire?

6 A No, that would have been an accident.

7 Q All stations call.

8 A That would have been a multi company call at least.

9 Q That was while you were duty rotation. Or was that during  
10 your regular work hours?

11 A I believe I was the duty chief. I believe.

12 Q But you're not sure.

13 A No. No, I can't be sure.

14 Q And one more. We will go to I guess Exhibit 14. Maybe we  
15 will have two more. Exhibit 14, again, January 30th, no fires  
16 on duty rotation.

17 A Yeah. Go to that one there since you bring it up. "Had  
18 possible structure fire at apartment complex on Carl Avenue."  
19 That was the incident I was talking about where truck 1  
20 received some damage going out to the hill and drive.

21 Q Okay. And then the last one, 15, which is February 13,  
22 2015, duty rotation, couple minor fires.

23 A Yes.

24 Q Okay.

25 A And I lost 33.1 pounds so far.

## MARTIN ERSKINE - CROSS EXAMINATION - MR. KRETER

1 Q Okay. Good job. So from October through February, was  
2 that a typical sequence for fires, responding?

3 A There is no typical sequence for fires.

4 Q Maybe I shouldn't be using these general expressions.

5 A As you said, you get back to the one where I had three  
6 major incidents in a one-week rotation.

7 Q Okay. We are almost home. I haven't asked this question.  
8 But you could do activities of daily living even when you're on  
9 standby like personal hygiene, dressing, eating, cooking, doing  
10 dishes, pet care, if you have a pet, things like that.

11 A Yeah, yeah, we have to do those type of things. Personal  
12 hygiene. It would be, as Mrs. Holt testified earlier, if we  
13 were the duty chief showers were a lot quicker.

14 Q And entertainment, you could watch TV, and you're a sports  
15 fan and you talked about that a lot.

16 A Yes, sir.

17 Q And you could that on standby.

18 A Yes.

19 Q Let me just take a moment, Your Honor. I'm almost through.  
20 I guess I do have, if you look -- well, maybe we don't even  
21 have to look at the exhibit although it is JJ in our book.  
22 When there was a change from Houseman, when he retired, Ken  
23 Tsuchiyama, the city manager at the time, asked you and  
24 Mr. Holt to be involved, correct?

25 A Involved in what, sir?

1 Q In the fire chief search.

2 A No, sir.

3 Q He didn't?

4 A No, sir.

5 Q Can you look at Exhibit JJ in the black book?

6 A I guess define what you mean by involvement in the search.

7 Q I'll just read what he said. "I would like your input to  
8 be," he wrote the two of you a letter, he wrote a letter to  
9 both of you?

10 A Yes.

11 Q "One of the things Chief Hampton and I will be doing"  
12 second paragraph, "I will be going over the next month or two  
13 is not only sitting down with each of you to obtain your input,  
14 but also visiting each shift each station to obtain some input  
15 on what staff deems most important qualities as to what the new  
16 chief could possess." I would like that input to be genuine.  
17 In other words, the city manager is reaching out to you and  
18 Chief Holt to not only get input from you but to help him  
19 coordinate input with the other fire fighters.

20 A That meeting never happened.

21 Q Okay. And the City of Battle Creek has a Civil Service  
22 Commission set up, right?

23 A Yes, sir. Three commissioners: A city representative, a  
24 union representative, and then a neutral representative.

25 Q And that's something that the union bargained for.

MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 A No, sir, that was voted in by the citizens of City of  
2 Battle Creek. 1966.

3 Q Okay. But you would attend those meetings on behalf of the  
4 chief at times, correct?

5 A No, sir. I would attend the meetings but not on behalf of  
6 the chief.

7 Q Okay. And because of the civil service arrangement the  
8 ultimate authority for hiring and firing does rest with the  
9 city manager, correct?

10 A I believe. I believe -- I don't know if it was all that --  
11 I know city manager, I can't say 100 percent definitely if it  
12 was because of something in there. I'm trying to recall what  
13 is in the civil service act.

14 MR. KRETER: I don't have any further questions.  
15 Thank you, Your Honor.

16 THE COURT: Mr. Alvarez, any redirect?

17 MR. ALVAREZ: Yes, just a few questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. ALVAREZ:

20 Q Mr. Erskine, Mr. Kreter mentioned that his office's review  
21 of the number of calls that came in revealed that you got about  
22 4, 4.3 calls per week that you had to respond to.

23 MR. KRETER: Your Honor, that was hours, not calls.

24 MR. ALVAREZ: Okay. So hours that you recorded that  
25 you responded to.

MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 THE COURT: Those were the hours for which he was  
2 paid.

3 MR. KRETER: Yes, ma'am.

4 MR. ALVAREZ: Correct. That you were paid about  
5 4.3 hours for responding to instances.

6 MR. KRETER: 3.4.

7 MR. ALVAREZ: Oh, 3.4.

8 THE COURT: And Mr. Holt was 2.2, I think.

9 MR. KRETER: Yes, Your Honor.

10 THE COURT: Thank you.

11 MR. ALVAREZ: And so let's do a little bit of math.

12 THE WITNESS: Okay.

13 BY MR. ALVAREZ:

14 Q You've got your 40-hour work week, your regular work week,  
15 right?

16 A Yes, sir.

17 Q And then your standby time is all of those other hours in  
18 that seven-day period, correct?

19 A Correct.

20 Q So out of 168 hours in a week, seven times 24, that's  
21 128 hours on standby, right?

22 A Minus the 40 hours of the --

23 Q Minus the 40 hours.

24 A Yes, right.

25 Q So 128. In one week.



MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 A Yes, sir.

2 Q If you had 3.4 hours that you were paid in that week, that  
3 means about 124 hours or so that you were not paid.

4 A That's correct.

5 Q And during that time you were required to monitor the  
6 radio, and monitor the pager, monitor your cell phone, and was  
7 your time only spent when you responded and left the house?

8 A Yes.

9 Q When a call would come in, did you have to listen to it?

10 A Absolutely.

11 Q Did you have to assess whether it required a response?

12 A I would define -- if that beep, beep, beep went off, I  
13 knew I was responding. There were some other ones, usually it  
14 went off, you're never sure, that's why personally for me I  
15 monitor the radio. Dispatch does have a tendency to make an  
16 error every now and then and dispatch --

17 Q In any of the time entries or the time sheets that you  
18 submitted, did you list how many times the radio would go off  
19 or how many times voices would come across on the radio to make  
20 some sort of notification?

21 A No, sir.

22 Q And he cited a statistic of his analysis of a period of  
23 time between 2012 to 2015, it was 124 to 137 approximately  
24 structure fires.

25 A Correct.

## MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 Q Now, I know I have asked this many times. I'm going to ask  
2 it one more time. Was there any way for you to know when you  
3 were on standby when any of those calls would be coming in?

4 A No, sir. I agree with Chief Schmaltz if I could do that I  
5 probably would be making a lot more money somewhere.

6 Q But you had to be ready and prepared to respond.

7 A That's correct.

8 Q And as Chief Schmaltz said, or testified to, was it your  
9 understanding that a reasonable response time was about  
10 15 minutes?

11 A Yes. That's what we tried to get there. I mean, again,  
12 the NFPA standard that he quoted earlier, NFPA 1710 actually  
13 stated that we had to have 15 personnel including an incident  
14 commander on scene on a ten minute time 90 percent of the time  
15 so we didn't want to throw that average off so we tried to get  
16 there as quickly as we could.

17 Q Now, was there ever an occasion when you did have to  
18 respond to an all stations call or a structure fire that you  
19 did have to put on all of your gear and assist?

20 A There was a few times. One of the things that he brought  
21 up was the accident on the highway that was that major  
22 incident. It was a winter day and it was several car pileup.  
23 It was a mutual aid call. I responded to that. I threw my  
24 gear on. Again, it was multiple departments there. I wasn't  
25 incident commander of that. I was kind of watching out for my

## MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 crew. And being several vehicles, I was going around helping  
2 the crews with patient assessment or triage is what we call it.  
3 There was a time even recently where when I was at the station  
4 where I showed up we had a fire and I threw my bunker pants on  
5 trying to get the crew in there. I threw my other gear on just  
6 in case two-in/two-out crew come into effect so they could go  
7 in immediately and fight the fire. Then there was one other  
8 time on a grass fire started before I could get more resources  
9 there, I threw my stuff on. Again, grass fire is a little bit  
10 than going in to a structure fire, helping control the fire  
11 especially when the wind changes, the wind changes started  
12 coming towards the vehicle. I grabbed the hose off the vehicle  
13 and started putting the fire out.

14 MR. ALVAREZ: Are you okay, Your Honor?

15 THE COURT: Yeah, I'm fine.

16 BY MR. ALVAREZ:

17 Q If you could turn to Defendant's Exhibit G.

18 A Okay. I think I'm there.

19 Q Okay. Where it lists what the responsibilities are for an  
20 administrative battalion chief.

21 A Yes.

22 Q Did you do any of those things when you were on standby  
23 time?

24 A The only thing I would do was vacation and Kelly changes.

25 Q And that was in the morning when you arrived to set the

MARTIN ERSKINE - REDIRECT EXAMINATION - MR. ALVAREZ

1 schedule for the day.

2 A Yes, sir, on the weekend.

3 Q And so when you were on standby time the only  
4 responsibility you had was to monitor the radio and to respond  
5 to any all station calls or multiple vehicle accidents or  
6 requests for mutual aid.

7 A Or station needs.

8 Q Or station needs, okay. If you go to Joint Exhibit 8. So  
9 Joint Exhibit 8 through I think it's 15, these are the biweekly  
10 updates.

11 A Yes.

12 Q That Mr. Kreter was discussing with you.

13 A Right.

14 Q On any of those reports did you list or did you advise  
15 Chief Schmaltz about the number of times that your radio would  
16 go off or that your alert pager would go off when you were on  
17 standby time?

18 A No, sir.

19 Q Finally, the activities of daily living that Mr. Kreter was  
20 talking about, personal hygiene, taking a shower, brushing your  
21 teeth, all those things. Do you do those now during your  
22 24-hour shift?

23 A Yes.

24 Q And you're paid for that time?

25 A Yes, sir.

MARTIN ERSKINE - RECROSS EXAMINATION - MR. KRETER

1 Q And, Mr. Erskine, what is it that you're asking for in this  
2 lawsuit?

3 A The wages for my standby time that I was not paid for my  
4 time that I worked over the 40-hour work week that I wasn't  
5 paid.

6 MR. ALVAREZ: Thank you, Your Honor. No further  
7 questions.

8 THE COURT: Any recross, Mr. Kreter?

9 MR. KRETER: Just a couple cleanup questions.

10 RECROSS-EXAMINATION

11 BY MR. KRETER:

12 Q When we did the calculation, 48 hours paid, 3.4 hours  
13 average, you know --

14 A 48 hours paid.

15 Q 40, the 168 hours.

16 A Okay. Yes, sir.

17 Q 40 was your regular hours.

18 A Okay.

19 Q Then we took 3.4. You also were paid nine hours because of  
20 the stipend, two hours each Saturday, Sunday, just for  
21 clarification.

22 A Yes, I would agree to that.

23 Q The I-94 accident, was that the 192-car pileup where the  
24 fireworks truck exploded?

25 A Yes, sir.

MARTIN ERSKINE - RECROSS EXAMINATION - MR. KRETER

1 Q And it closed the highway down for five days; it was on the  
2 national news?

3 A Yes, sir.

4 Q That's the one you responded to.

5 A Yes.

6 Q Okay.

7 A There was one, that was the one on that report.

8 Q Everybody responded to that.

9 A No, not everybody in the city.

10 Q Municipalities in the Kalamazoo --

11 A I responded -- only two crews and myself responded to that.

12 Q Okay. And then you said you lived in Pennfield. We were  
13 talking response time. I live on Tiffany Lane, Minges Hills;  
14 that takes longer than 15 minutes for you to get from Pennfield  
15 to Tiffany Lane, and I live in Battle Creek. Correct?

16 A It would be close. I mean I'm not, Battle Creek is, like I  
17 say, a big city. But, yeah.

18 Q You live beyond --

19 A Jumping on I would be closer to 15. Again it was that  
20 average thing we are trying to get at.

21 Q It would be close. You live beyond, I know the Judge  
22 doesn't know Battle Creek, but you live beyond Bailey Park.

23 A Just beyond Bailey Park, yes.

24 MR. KRETER: Okay. Thank you. No further questions.

25 THE COURT: Thank you. Thank you, Mr. Erskine, you

1 may step down.

2 THE WITNESS: Thank you, Ma'am.

3 THE COURT: Well, it's a little after 4:00 o'clock.  
4 Mr. Alvarez, what if any additional testimony will you be  
5 presenting?

6 MR. ALVAREZ: None, Your Honor.

7 THE COURT: Okay. Are you prepared to rest at this  
8 time?

9 MR. ALVAREZ: Plaintiff rests.

10 THE COURT: Okay. Okay. Mr. Kreter, do you want to  
11 make a motion or do you want to wait until tomorrow morning?

12 MR. KRETER: I would like to wait until tomorrow  
13 morning. And my plan for tomorrow morning is, as you will  
14 recall, I have two witnesses, Chief Houseman, we have his video  
15 deposition. I think it runs an hour and 20 minutes. And then  
16 we have Russell Claggett who I said would be available at  
17 1:00 o'clock tomorrow. So I'm not sure how that would impact  
18 the Court's schedule because I doubt we will use the whole  
19 morning.

20 THE COURT: Well --

21 MR. KRETER: We could watch the video now, I mean.

22 THE COURT: No, I don't want to do that. I think it's  
23 too late in the day. Well, if we start at 11:00 o'clock --

24 MR. KRETER: I would like to make a motion. If you  
25 want me to make it now it would be off the top of my head.

1 THE COURT: I think I would really rather give you a  
2 little time to prepare for it which will also give me a little  
3 time to think about it. If we start tomorrow morning at  
4 10:00 o'clock and then take a lunch break and then your witness  
5 can be prepared or and ready to go at 1:00 o'clock.

6 MR. KRETER: Yes.

7 THE COURT: Okay. Why don't we do that. We will  
8 start tomorrow morning at 10, we will hear the defense motion,  
9 and if it is denied we will hear the video deposition  
10 testimony, and then go from there.

11 MR. KRETER: Thank you, Your Honor.

12 THE COURT: Okay. All right. Mr. Alvarez, anything  
13 further?

14 MR. ALVAREZ: No, Your Honor, thank you.

15 THE COURT: Okay. We are adjourned for today.

16 THE LAW CLERK: All rise, please. Court is adjourned.  
17 (Proceedings concluded, 4:11 p.m.)

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REPORTER'S CERTIFICATE

I, Kathy J. Anderson, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Kathy J. Anderson

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