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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	(	CAUSE NO. 3:11-CV-2017-P
COMMISSION, et al,	)	
Plaintiffs,	(	
	)	
vs.	(	
	)	DALLAS, TEXAS
EMCARE, INC.,	(	OCTOBER 20, 2014
Defendants.	)	9:00 a.m.

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VOLUME 5 OF 6

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TRIAL ON THE MERITS  
BEFORE THE HONORABLE JORGE A. SOLIS  
UNITED STATES DISTRICT JUDGE  
and a jury

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1 offensive in the workplace and you said no. Do you mean that?

2 A. Yes. I would not intentionally do anything.

3 Q. But you do understand that it doesn't matter what you  
4 thought was offensive; it matters how it was perceived by  
5 others in the workplace. Do you understand that?

6 A. I understand.

7 Q. And you have previously testified that you never heard  
8 Ms. Stokes make any kind of inappropriate sexual comments at  
9 work. Correct?

10 A. Rephrase that question. I am not --

11 Q. You have previously testified that you never heard  
12 Ms. Stokes make any inappropriate sexual comments at work.  
13 Correct?

14 A. I don't recall any.

15 Q. Okay. Are you telling this jury that you don't think it  
16 is inappropriate to have exchanged emails with David Copple  
17 that included an image of a penis with a tattoo on it?

18 A. I don't recall that image.

19 Q. Okay.

20 A. I know who David Copple is. He is a sales guy for  
21 EmCare, but I don't recall that specific --

22 Q. Okay. And you had an email account through EmCare.  
23 Correct?

24 A. I did.

25 Q. And your name was listed as jimanesthesiologymckinney on

1 that account. Correct?

2 A. It doesn't sound right.

3 Q. That doesn't sound right to you?

4 A. But it may be.

5 Q. Okay. But the account -- The email account that you did  
6 have through EmCare you used to exchange emails with employees  
7 of EmCare. Correct?

8 A. Yes.

9 Q. Okay. And you are telling me that you don't recall  
10 exchanging an email with David Copple that had an image of a  
11 penis with a tattoo on it?

12 A. No, I do not.

13 Q. Okay. Do you recall receiving an email from Mr. Copple  
14 with anything penis related?

15 A. No.

16 Q. Do you recall sending an email to Mr. Copple in response  
17 to an email he sent to you with an image titled tat.jpg and  
18 your response being deep or shallow?

19 A. No.

20 Q. Okay.

21 MS. HALLMON: Your Honor, Intervening Plaintiff  
22 would offer exhibit -- This is not an exhibit for impeachment,  
23 but it is Stokes 30. May I approach?

24 THE COURT: Yes.

25 MS. HALLMON: It is 53 and 54 for impeachment

1 purposes.

2 (The following was had outside the hearing of the  
3 jury.)

4 THE COURT: Do they have a copy?

5 MS. HALLMON: Yes. It has been filed in discovery.

6 MS. MARTIN: Your Honor, I don't know how this is  
7 impeachment. He has not testified that he didn't send this.  
8 He has testified that he doesn't recall it.

9 Specifically, though, she has alluded to the fact there  
10 is some image attached to this. This was produced to us  
11 exactly like this but with no image attached, and so I am  
12 going to say the prejudicial value is going to outweigh any  
13 probative value it is going to have, because the suggestion is  
14 being made about what the attachment is, but they can't  
15 produce the attachment.

16 MS. HALLMON: And we don't have the attachment.

17 MS. MARTIN: And we don't either.

18 THE COURT: We only have the testimony provided by  
19 Ms. Stokes, which is in evidence, about what the attachment  
20 was, and we have got the title here at the bottom of what the  
21 attachment was. It was something that was embedded in the  
22 email. It wasn't -- you can tell from the top line that there  
23 is not an attachment. It is actually embedded into the email.

24 MS. MARTIN: And Your Honor, that is exactly why it  
25 is prejudicial to us. They didn't produce the image to us,

1 she has made this suggestion of what it is, and we are not  
2 able to effectively cross examine about it.

3 THE COURT: You can cross examine, to the extent  
4 that you did, as you did with her. This is the evidence that  
5 exists, and so you can cross examine on whatever evidence  
6 exists, just like you cross examined her on that statement.  
7 Of course, he is here. He can answer to whatever he can  
8 testify to.

9 MS. MARTIN: Well, I mean, Your Honor, I think it is  
10 not relevant to any issue, and it is not actually probative of  
11 anything. It is prejudicial.

12 THE COURT: Overrule the objection.

13 What exhibit number is this?

14 MS. HALLMON: It is not an exhibit. I guess it is  
15 going to be No. 35.

16 THE COURT: Plaintiff's No. 35. That is admitted.

17 (The following was had in the presence and hearing  
18 of the jury.)

19 MS. HALLMON: May I approach the witness to give him  
20 a copy?

21 THE COURT: Yes.

22 Q. (BY MS. HALLMON) Mr. McKinney, I am handing you what has  
23 been marked as Intervening Plaintiff and EEOC Exhibit No. 35,  
24 which is a document that is Bates labeled Stokes 53 and 54.  
25 And if you will turn with me to the second page of that



1 exhibit. As we do with emails, we have to start at the  
2 bottom.

3 Do you see here this is an email to you from David Copple  
4 with an embedded JPEG is I think how that is referred to that  
5 says tat.jpg?

6 A. Yes.

7 Q. Do you see that?

8 A. Yes.

9 Q. It is April 2nd, 2009. Correct?

10 A. Yes.

11 Q. And this is your email address at EmCare. Correct? Or  
12 your account there at EmCare?

13 A. Yeah. It is a prefix. It is actually -- I know what it  
14 is now. It is jim.mckinney@emcare.com.

15 Q. Okay.

16 A. And they just put a sub-heading anesthesia.

17 Q. Sure. So, I mean, this is obviously not your email  
18 address per se. It is the way that it is titled, your name is  
19 titled.

20 A. That is correct. Right.

21 Q. Okay. And your response here is deep or shallow.  
22 Correct? Do you see that?

23 A. Yeah. I am looking at the time here--and again, I don't  
24 recall this, so remember this, but --

25 Q. But this is your email address. You don't recall sending

1 it, but you are not suggesting somebody else typed that on  
2 your behalf.

3 A. Oh, No, no, no. I am suggesting I may have been having a  
4 different conversation with him, because he sent it at 4:00  
5 p.m. I responded at 6:00 p.m.

6 Q. Okay.

7 A. Wait a minute here. How come the second one when I  
8 responded at 6:00, and the third one he writes -- he is at  
9 5:42?

10 Q. Could you have been traveling and perhaps been in a  
11 different time zone?

12 A. I don't remember.

13 Q. Okay. What did you mean when you wrote deep or shallow  
14 there?

15 A. See, that is what I mean. I don't know. It could be I  
16 was talking about an account. And then see where I say I  
17 chartered a plane?

18 Q. Uh-huh.

19 A. The next one up?

20 Q. Right.

21 A. So I just don't know.

22 Q. You think you were using the phraseology deep or shallow  
23 referring to an account of EmCare?

24 A. Could be. I don't know.

25 Q. Okay.

1 A. But the next thing says -- he says, well, and I said I  
2 chartered a plane.

3 Q. Okay. And the next one after that is an email from  
4 Mr. Copple to you that says, "Please review. My wife." What  
5 was that about?

6 A. I have no clue.

7 Q. You don't know what that was about?

8 A. Un-huh.

9 Q. And your response to that was, "Nice." What did that  
10 mean?

11 A. Well, let me think. Copple bought a new car for his  
12 wife. I remember that, because I am a car guy. I like cars.  
13 And then up here I wrote--is this me--"Does your sweetie have  
14 one?"

15 "Probably says Frank."

16 You know who Frank is. Frank is a cohort of Copple's.  
17 Frank Bossio, he is a sales guy in the California area.

18 Q. Okay.

19 A. So "big boys welcome"?

20 Q. Don't know what that means either?

21 A. No. I am sorry.

22 Q. Okay. Now, this is not the first time that you had a  
23 similar kind of exchange with Mr. Copple, was it?

24 A. In terms of a picture or --

25 Q. Well, let me ask it this way. You and he had

1 conversations in or near your office on at least one or two  
2 occasions discussing the sizes of your penises, didn't you?

3 A. I don't recall those conversations.

4 Q. Okay. And tattoos on your penises and what they would  
5 look like in various stages of sexual arousal. Do you recall  
6 those conversations?

7 A. I do not.

8 Q. Okay. How about telling Mr. Copple, oh, yeah, you want  
9 to give your wife a little piece of me, or I'll show her who  
10 is better than you? Do you remember making a remark like that  
11 to Mr. Copple in your office?

12 A. No. I never met his wife. I don't have any idea.

13 Q. I see.

14 And he laughed back and said, oh, you can't handle her.  
15 Remember remarks like that?

16 A. No.

17 Q. And you have testified that Ms. Stokes had access to your  
18 email and had your permission to look at your email, at least  
19 sometimes. Correct?

20 A. Yeah. I don't remember how that works. There is  
21 different levels of access. I just don't recall.

22 Q. I understand. But you have previously testified that she  
23 did, in fact, have access to your email and had permission  
24 from you to look at your email, at least sometimes. Correct?

25 A. Yes.

1 Q. And this was an email -- This Exhibit No. 35 was an email  
2 sent through your EmCare account.

3 A. Yes.

4 Q. Correct?

5 A. It looks like.

6 Q. Okay. So these remarks that I have talked to you about  
7 that you deny any recollection of with Mr. Copple, you are not  
8 telling the ladies and gentlemen of the jury that you think  
9 that is appropriate conduct for the workplace, are you?

10 A. If someone was talking about that, that is inappropriate.

11 Q. That is inappropriate, isn't it?

12 A. Yes.

13 Q. Okay.

14 MS. HALLMON: Pass the witness.

15 THE COURT: Mr. Schell or Ms. Martin?

16 REDIRECT EXAMINATION

17 By Ms. Martin:

18 Q. Good morning, Mr. McKinney.

19 A. Good morning.

20 Q. First let me back up. I want to clarify something first  
21 that you were talking about with Ms. Shepard and make sure  
22 that no one misunderstood anything, because she asked you a  
23 series of questions where she was saying, do you deny. Do you  
24 deny that you ever said this to Ms. Shaw, and do you deny that  
25 you ever said that someone was hot, and you answered all of