

ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: A-00108155 Application of Central Transport, Inc.
A Corporation of the State of North Carolina, for
the right to transport, as a common carrier,
property, in bulk, in tank and hopper-type
vehicles between points in Pennsylvania.
Initial hearings.

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HOLBERT ASSOCIATES
TRACY L. THOMPSON, COURT REPORTER
JAN H. JOHNSTON, COURT REPORTER
Suite 401, Kunkel Building
301 Market Street
Harrisburg, Pennsylvania 17101

1 APPEARANCES: (Continued)

2 HENRY M. WICK, JR., ESQUIRE
3 WICK, STREIFF, MEYER, METZ & O'BOYLE
4 1450 Two Chatham Center
5 Pittsburgh, Pennsylvania 15219

6 Appearing on behalf of Refiners Transport &
7 Terminal Corporation; Chemical Leaman Tank
8 Line, Incorporated

9 WILLIAM J. LAVELLE, ESQUIRE
10 VUONO, LAVELLE, & GRAY
11 2310 Grant Building

12 Pittsburgh, Pennsylvania 15219
13 Appearing on behalf of Dart Trucking Company,
14 Incorporated

15 DAVID H. RADCLIFF, ESQUIRE
16 GRAF, ANDREWS, & RADCLIFF
17 407 North Front Street

18 Harrisburg, Pennsylvania 17101
19 Appearing on behalf of Oil Tank Lines,
20 Incorporated

21 RONALD W. MALIN, ESQUIRE
22 Key Bank Building
23 4th Floor

24 Jamestown, New York 14701
25 Appearing on behalf of Crossett, Incorporated

CRAIG A. DOLL, ESQUIRE
214 State Street
Harrisburg, Pennsylvania 17101

Appearing on behalf of Samuel Coraluzzo
Company, Incorporated

DWIGHT KOERBER, ESQUIRE
110 North Second Street
P.O. Box 1320
Clearfield, Pennsylvania 16830

Appearing on behalf of Quality Carriers,
Incorporated

WILLIAM J. O'KANE, ESQUIRE
102 Pickering Way
Exton, Pennsylvania 19341-0200

Appearing on behalf of Chemical Leaman
Corporation

1 APPEARANCES: (Continued)

KENNETH OLSEN, ESQUIRE

2 BY: DAVID H. RADCLIFF, ESQUIRE

P.O. Box 357

3 Gladstone, New Jersey 07934-0357

Appearing on behalf of Marshall Service,

4 Incorporated

5

6

7

HOLBERT ASSOCIATES

TRACY L. THOMPSON

8

JAN H. JOHNSTON

Suite 401, Kunkel Building

9

. 301 Market Street

Harrisburg, Pennsylvania 17101

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1 JUDGE SCHNIERELE: This is the time and place set
2 for the initial hearing in the application of Central
3 Transport, Incorporated, docket number A-00108155. My name
4 is Michael Schnierle. I am the Administrative Law Judge
5 assigned to this case.

6 I note the following appearances: David H. Radcliff
7 for Royal Tank Lines and also for Marshall Service,
8 Incorporated. I take it you are sitting in for Mr. Olsen,
9 in accordance with his letter of October 18.

10 MR. RADCLIFF: That's correct, Your Honor.

11 JUDGE SCHNIERLE: William J. LaVelle for Dart
12 Trucking Company, Incorporated; Craig A. Doll for Samuel
13 Coraluzzo Company, Incorporated. Mr. Doll, I take it you
14 are sitting in for Attorney Louis Carter. Is that correct?

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

16 JUDGE SCHNIERELE: Ronald W. Malin -- am I pronouncing
17 that correctly?

18 MR. MALIN: You are pronouncing it correctly, Your
19 Honor.

20 JUDGE SCHNIERLE: For Crossett Incorporated; Henry M.
21 Wick for Retiners Transport and Terminal Corporation and
22 Chemical Leaman Tank Lines, Incorporated; Dwight L. Koerber,
23 Jr. for Quality Carriers Incorporated; and James W.
24 Patterson for Matlack, Incorporated.

25 Does that include everyone who is appearing here on

1 behalf of a party today?

2 MR. CHESNUTT: It does not include William A.
3 Chesnutt appearing for Applicant.

4 JUDGE SCHNIERLE: I'm sorry, Mr. Chesnutt. And do
5 you have any other preliminary matters that we need to
6 discuss before we begin the hearing.

7 MR. PATTERSON: Yes, Your Honor. There are
8 unresolved discovery disputes involving interrogatories
9 propounded by Matlack and to some extent objected to by the
10 Applicant.

11 I believe Your Honor has the objection and Matlack's
12 reply to the objection before you. I'm not suggesting that
13 it's necessary to resolve that this morning. I want to make
14 sure -- to the extent that it's resolved in favor of
15 requiring answers that we be given the opportunity to have
16 the witness back on the stand again if it is some other day
17 when that occurs.

18 JUDGE SCHNIERLE: I received a copy of your reply to
19 objections. I don't think I'd seen the objections
20 themselves, but let me look at the file. I just got the
21 file late yesterday afternoon.

22 Mr. Chesnutt, did you file the objections?

23 MR. CHESNUTT: Yes I did, Your Honor. I did not
24 serve you. I would expect that the objections were served
25 on the Commission, but in order to make it a little more

1 expeditious, I will hand you the objections. They are all
2 of two pages long.

3 JUDGE SCHNIERLE: All right. I'll try to take a look
4 at these either at the break or this evening and make a
5 ruling on them no later than tomorrow, at the hearing
6 tomorrow.

7 MR. PATTERSON: Thank you, Your Honor.

8 JUDGE SCHNIERLE: Is there anything else that we need
9 to discuss? There's one item that I noted in the file that
10 I'd like to discuss if everybody else is finished at this
11 point.

12 Mr. Doll, I note that Samuel Coraluzzo -- according
13 to the Commission's records -- has only a contract carrier
14 permit. And, quite frankly, I'm somewhat -- I wonder the
15 extent of a contract carrier's standing of protest the
16 common carrier application.

17 MR. DOLL: At this point, Your Honor, having come
18 into the case as of Friday afternoon, I would think that at
19 this point I'm going to make a recommendation based upon an
20 exhibit -- I believe number 5, which is going to be offered
21 today. Though it doesn't resolve a standing, it may remove
22 the issue that Mr. Coraluzzo withdraw his protest.

23 JUDGE SCHNIERLE: All right. I'll wait and see how
24 that turns out.

25 MR. DOLL: Thank you, Your Honor.

1 MR. CHESNUTT: Your Honor, if I might, before we
2 leave the subject of the interrogatory objections and the
3 reply of Matlack to them, I understand Your Honor is going
4 to review those written pleadings on that issue, but I would
5 like an opportunity -- before you make your ultimate ruling
6 -- to have some discussions on the record concerning the
7 answer filed by Matlack, but I don't think that needs to be
8 done now.

9 JUDGE SCHNIERLE: Why don't we hold that until I have
10 a chance to look at them. I also note that yesterday
11 afternoon I received a phone call from Peter Loftus to
12 indicate that you intended to offer a restrictive amendment
13 today which will essentially take care of the interest of
14 Seaboard Tank Lines.

15 MR. CHESNUTT: That's my understanding, Your Honor.
16 I spoke with Mr. Loftus and indicated that I'd be doing
17 that. And indeed I think on what will be subsequently
18 identified as Exhibit 5, we have highlighted the aspect of
19 his position that pertains to Mr. Loftus.

20 JUDGE SCHNIERLE: Thank you. If there's nothing
21 more, would you call your first witness.

22 (Applicant's Statement No. 1 (Exhibits 1A through 1H)
23 and Exhibits Nos. 2 through 7 were produced and
marked for identification.)

24 MR. CHESNUTT: I would ask that David Fesperman to
25 stand forward and be sworn, please.

1 W. DAVID FESPERMAN, called as a witness, having been
2 duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CHESNUTT:

5 Q. Would you state your full name, sir, and your
6 business address.

7 A. My name is W. David Fesperman,
8 F-e-s-p-e-r-m-a-n. My business address is Post Office Box
9 7007, Highpoint, North Carolina 27264.

10 Q. Mr. Fesperman, with what company are you
11 associated and in what capacity?

12 A. I'm employed by Central Transport, Incorporated,
13 as director of traffic services.

14 Q. Mr. Fesperman, have you prepared certain written
15 testimony which appears in an exhibit premarked as Exhibit
16 1?

17 A. Yes, sir, I have.

18 Q. And consisting of 15 pages together with
19 accompanying Exhibit 1-A through 1-H?

20 A. Yes, sir, I have.

21 Q. And if I were to ask you the same questions that
22 appear in that prepared testimony orally today, would your
23 answers be the same as they are written?

24 A. Yes, sir, they would.

25 Q. And to the best of your knowledge, information,

1 and belief, are the data contained in the exhibits true and
2 correct?

3 A. Yes, they are, sir.

4 MR. CHESNUTT: Your Honor, Exhibit Number 1 was
5 pre-circulated to all parties of record and to yourself
6 yesterday afternoon. I offer to the reporter the two copies
7 required for the record.

8 BY MR. CHESNUTT:

9 Q. In addition, Mr. Fesperman, have there been
10 additional Exhibits 2 through 6 marked and given to all
11 parties and the record?

12 A. Yes, sir. That's correct.

13 Q. And finally, Exhibit Number 7, supplemental
14 prepared testimony, is that also testimony that you offer
15 here and verify as being true and correct to the best of
16 your knowledge and belief?

17 A. Yes, sir, it is.

18 Q. And in Exhibit Number 7, have you identified and
19 discussed the purposes of Exhibits 2 through 6?

20 A. Yes, sir, I have.

21 MR. CHESNUTT: Your Honor, I might point out that in
22 connection with Exhibit one, there has been a duplicating
23 redundancy with respect to Exhibit 1-G, as in George.
24 Everybody's copy, I believe, has three Exhibits 1-G, and
25 it's just one and the same piece of paper. And we apologize

1 for that error. But I think it's worth pointing out so no
2 one spends time trying to discern the differences between
3 those three pages.

4 BY MR. CHESNUTT:

5 Q. Mr. Fesperman, would you please direct your
6 attention to Exhibit 1-C.

7 A. Yes, sir.

8 Q. And let's start with page 2 of the Exhibit 1-C.
9 In the fifth column entitled total months, do you see that
10 column?

11 A. I believe it's the seventh column.

12 Q. Oh, okay.

13 A. Yes, sir.

14 Q. Well, all right. There is a column that's headed
15 months in Exhibit 1-C. Do you see that?

16 A. Yes, sir.

17 Q. In that column at the end of the first set of
18 entries which pertain to terminal designation 201, there is
19 a figure 100.7 average, and then there's a notation 23
20 count. Would you explain what those are.

21 A. The 100.7 average is an average of the months in
22 service of the units in that first set of units. The 23
23 count is the number of units in that first set.

24 Q. All right. And similar entries throughout
25 Exhibit 1-C would have a similar explanation?

1 A. That's correct, sir.

2 Q. The page 7 of Exhibit 1-C at the bottom of the
3 page, there's an entry 55.1 AVG age CO, and then underneath
4 that, 367 total CO. Would you explain what those entries
5 are intended to convey?

6 A. 55.1 is an average age for the company equipment
7 which is listed on the exhibit up to that point. The 367 is
8 the total number of units owned by the company listed on the
9 exhibit up to that point.

10 Q. All right. I direct your attention now to
11 Exhibit 1-D, as in David?

12 A. Yes, sir.

13 Q. And looking at the column -- looking at page 2 of
14 the exhibit looking at the column to the extreme right, we
15 have similar entries there as those that you have just been
16 explaining with respect to Exhibit 1-C?

17 A. Yes, sir.

18 Q. Is your explanation of what that information is
19 the same except that it pertains to trailers in this case
20 rather than to tractors?

21 A. Yes, sir. That's correct.

22 MR. CHESNUTT: I believe with those clarifying
23 questions, the witness's testimony is complete on direct
24 examination as it's contained in Exhibits one and 7. And he
25 is available for cross examination.

1 JUDGE SCHNIERLE: At this point, I think it would be
2 helpful to establish in order for cross examination. I'd
3 also like to ask that all the parties refrain from
4 repetitive cross examination. If one of you asks a
5 question, there is no need for all of you to ask the same
6 question.

7 Why don't we start with Patterson and go clockwise
8 around the table.

9 MR. PATTERSON: Very well, Your Honor.

10 JUDGE SCHNIERLE: Mr. Patterson.

11 CROSS EXAMINATION

12 BY MR. PATTERSON:

13 Q. Mr. Fesperman, are you aware of the information
14 -- as a preliminary matter, the information sought by
15 Matlack interrogatories number 14 and 15 and of the nature
16 of the objection which you -- your company, through counsel
17 have made to supplying that information?

18 A. Yes, sir, I am.

19 Q. And if this Administrative Law Judge and/or this
20 Commission orders you to respond despite that objection,
21 will you -- will Central Transport respond with respect --
22 except with respect to matters asserted to be subject to
23 attorney/client privilege?

24 A. Yes, sir.

25 Q. Are you aware within the last -- since January of

1 1986 -- and you've been with the company since 1985?

2 A. That's correct, sir.

3 Q. Are you aware of any investigations by the
4 Federal Bureau of Investigation with respect to hazardous
5 substances violations or alleged violations?

6 MR. PATTERSON: Your Honor, I'll object to any
7 inquiry on that line because that is really part of the
8 controversy we have with respect to interrogatory number 14
9 of Matlack in the response by Mr. Patterson to our
10 objections to that interrogatory.

11 One of the allegations raised -- or one of the
12 observations made, I suppose, appears at page 2 -- the
13 second complete paragraph on page 2 in which --

14 MR. PATTERSON: Of what, Mr. Chesnutt?

15 JUDGE SCHNIERLE: Page 2 of what document?

16 MR. CHESNUTT: Of Matlack's reply to the objections
17 to interrogatories in which the allegations -- or the
18 observation I think is a better way to make it -- is raised,
19 quote, if Central is a frequent and serious violator of the
20 law -- whether environmental or otherwise -- that fact is a
21 critical element in the Commission's determination of this
22 matter, close quote.

23 I think that states pretty much the fundamental
24 differences between myself and Mr. Patterson on this issue.
25 I do not believe that, with all due respect to His Honor and

1 this Commission, that your determination here goes to
2 environmental issues. The Commission does not regulate
3 environmental issues.

4 And I think for us to embark on the frolic and detour
5 into environmental areas or into a whole lot of other areas
6 which we don't know the scope of because I would remind you
7 we are talking about environmental or otherwise. And that's
8 a rather broad phrase.

9 And I would further point out that in Interrogatory
10 Number 14, we were asked to furnish documentation concerning
11 materials that were linked to rules and regulations enforced
12 by -- we are asked to respond to concerning complaints,
13 warnings, notices of claims, or citations issued by any
14 governmental agency in connection with alleged violations of
15 any of their rules or regulations.

16 It's the breadth of that and the amount of time that
17 potentially could be devoted in this case to exploration of
18 issues that this Commission has no jurisdiction over or
19 concerning. And that is the basic area of my objection.
20 And I think for Mr. Fesperman to be directed to respond to a
21 question about FBI -- whatever question was framed related
22 to the FBI here.

23 First of all, Mr. Fesperman, if directed to respond,
24 has not -- at least at my instruction -- been asked to look
25 into those matters. I don't think he is the appropriate

1 witness for the company.

2 If the Judge is going to allow this exploration to
3 occur, we are going to have an entirely different focus of
4 document examination within the company by persons other
5 than Mr. Fesperman.

6 Mr. Fesperman's qualifications have been given. If
7 he is concerned with trucking matters -- this is a trucking
8 case -- and we are going to have this Judge conduct an
9 examination of environmental regulation -- then I think I
10 ought to know that now, and I ought to know what the scope
11 of that is.

12 And then we'll decide about -- I certainly am going
13 to have the Commission speak on that if the Judge should
14 rule that we are to explore that area.

15 JUDGE SCHNIERLE: Mr. Patterson, do you wish to
16 respond before I make a ruling?

17 MR. PATTERSON: Yes, sir, but only briefly.
18 Shakespeare once said, Thou doth protest too much. It seems
19 to me very simply that a carrier's fitness -- especially a
20 carrier that now holds no authority from this Commission --
21 is very much the issue in these proceedings.

22 It may well be that Your Honor wants to put some
23 perimeters around any governmental agency request as a means
24 of controlling discovery. Right now I have a witness on the
25 stand. He's the witness that Central put there. I simply

1 asked him a straight and simple question, is he aware of any
2 FBI investigation regarding hazardous material problems that
3 Central has since January 1, 1986? I didn't ask him whether
4 any governmental agency has filed a complaint.

5 I think that things like that -- matters involving
6 hazardous material -- when a bulk carrier seeks authority
7 from this Commission, a carrier that is going to carry
8 around this state tons and tons of liquid and dry materials,
9 chemicals and the like.

10 The question of its safety rating, of its treatment
11 of hazardous materials and so forth, are at the very base of
12 the Commission's job in regulating entry to become a common
13 carrier in the state.

14 So I would suggest the question is well within
15 bounds. The discovery issues are separate issues for Your
16 Honor to deal with given good time to do that. Right now,
17 we are engaged in a process whereby this witness, through
18 his written testimony, has talked about the carrier safety
19 procedures. He's talked about how they trained drivers in
20 the control of hazardous substances. I think the question
21 is clearly relevant to his direct testimony.

22 MR. CHESNUTT: I have no objection to the question as
23 long as it is confined to the issue of the transportation of
24 those materials.

25 MR. PATTERSON: Well, Your Honor, Mr. Chesnutt sure

1 fooled me then because I would have sworn he was objecting
2 to the question.

3 MR. CHESNUTT: I'm just objecting to the breadth of
4 the question. I'm perfectly willing to have this witness,
5 and I think it is incumbent upon me to have him examined on
6 the scope of his testimony. As long as it's confined to
7 transportation issues, I have no objection to the question.

8 MR. PATTERSON: Your Honor, might I make a suggestion
9 before you rule?

10 JUDGE SCHNIERLE: Certainly.

11 MR. PATTERSON: I think it might make some sense for
12 you to have the opportunity, if I may so suggest, since this
13 issue has been broadened to include the discovery. It might
14 make sense for Your Honor to have an opportunity to go over
15 the objection and the reply and perhaps the questions that
16 were asked that are being objected to in the reply because
17 it seems to be all part and parcel of the same problem.

18 I will proceed, if you wish Your Honor, depending on
19 your ruling. I make that suggestion for your consideration.

20 JUDGE SCHNIERLE: My initial reaction is that the
21 question seeks relevant information. My recollection is
22 that the Commission, a couple of years ago, denied an
23 application on the basis that the trucking company had been
24 -- I believe either pleaded guilty to or found guilty of
25 mail fraud violations in connection with their trucking

1 activities.

2 Now, that was the XTL case involving the LCB in
3 Philadelphia. I believe the question involving the
4 violation of the environmental laws or transportation law as
5 to hazardous substances transportation are relevant.

6 However, because I have the discovery issue
7 unresolved at this point, I would prefer not to rule on your
8 question just at this point. I'd like to have an
9 opportunity to look at this thing in the context of the
10 discovery issue. But my gut reaction is this is a relevant
11 question.

12 What are your plans in terms of Mr. Fesperman? Do
13 you intend that he will be here tomorrow? Would he be
14 available for examination on this issue tomorrow?

15 MR. CHESNUTT: I expect that he will be available
16 throughout the hearings that are now scheduled. As to his
17 availability to discuss certain issues, depends how broad
18 your ruling is going to be. I stress again he's given his
19 qualifications, and I'm confident he can respond with
20 respect to issues of the transportation of hazardous
21 materials.

22 But if we are going to get into environmental
23 questions at large, I'm not confident that this is the best
24 -- that this is even a knowledgeable witness on those
25 issues. And certainly, I would -- from what I know about

1 the company, there are people who are specialists in that
2 area in the company who I would want the opportunity to have
3 available to discuss environmental issues.

4 And I want an opportunity to review -- I do not
5 regularly know what is required by the Environmental
6 Protection Agency, the Department of Environmental Resources
7 in Pennsylvania in the way of regulations. And I want an
8 opportunity to properly prepare to respond to inquiries that
9 go along those lines.

10 MR. PATTERSON: Your Honor, I haven't asked any
11 questions about complicated methodology or techniques of
12 handling particular types of hazardous materials. I simply
13 asked about violations. I only asked one question.

14 I would review my suggestion, Your Honor. It would
15 seem to me it may be efficient to get this somewhat under
16 control before we go further because a lot of questions that
17 I had planned to ask really spring from that same subject
18 matter.

19 And I don't know whether I can effectively -- I will
20 try, but I don't know if I can effectively separate, in my
21 questioning, that subject matter from subject matter which
22 may be objectionable or to which objections may be asserted
23 on the same basis. I would suggest again, Your Honor for
24 your consideration, we take a recess.

25 JUDGE SCHNIERLE: I agree. Ten minute recess while I

1 have an opportunity to review Mr. Fesperman's direct
2 testimony and review the case law to some extent.

3 MR. PATTERSON: Do you have with you, Your Honor -- I
4 think Mr. Chesnutt handed up his objections on that
5 discovery issue. If that's what you intend to review in
6 this ten minute recess -- or I don't know because I have the
7 objections and my reply here and the questions themselves,
8 if you need them.

9 JUDGE SCHNIERLE: This is an objection, it appears to
10 only interrogatory number 13. And you -- I believe your
11 reply goes to interrogatory 13.

12 MR. CHESNUTT: I probably gave you the wrong document
13 if it's 13.

14 MR. PATTERSON: It's the wrong one.

15 JUDGE SCHNIERLE: His reply involves interrogatory 14
16 and 15. That's an objection to 13.

17 MR. CHESNUTT: I'm sorry. I handed you the wrong
18 document.

19 MR. PATTERSON: That has to do with Refiners'
20 discovery, the document that you have.

21 JUDGE SCHNIERLE: Off the record.

22 (Discussion off the record.)

23 JUDGE SCHNIERLE: We had a short recess at which I
24 looked at Matlack interrogatories 14 and 15 and the
25 Applicant's objections thereto. I have now been notified

1 that there is a possibility of settling the case of some of
2 the additional Protestants. Is that right?

3 MR. CHESNUTT: Yes, I think that there are some
4 developments during the recess in that regard. I might
5 direct everyone's attention to Exhibit Number 5 which has
6 already been circulated.

7 JUDGE SCHNIERLE: Mr. Patterson, I think that this
8 won't satisfy the interests of your client.

9 MR. PATTERSON: I don't know what it is yet, but I'm
10 pretty sure that it won't.

11 JUDGE SCHNIERLE: Do you mind if I delay my ruling on
12 that somewhat further?

13 MR. PATTERSON: I think it is smart to get these
14 people out of the way.

15 MR. CHESNUTT: I do know what it is, and I can state
16 with confidence it will not remove the interest of Mr.
17 Patterson's client. If everyone has Exhibit 5 before them,
18 there are four proviso paragraphs associated with the basic
19 description. The second of those discusses products
20 beginning with aviation gasoline, and the second product is
21 butane. There should be a comma after butane so it doesn't
22 become a modifier of the next two words.

23 That was brought to my attention by the counsel for
24 Sam Coraluzzo. So I have checked that with my client, and
25 we are satisfied that correction needs to be made. In

1 addition, off the record discussions have been had with
2 Counsel Koerber with respect to his client, Quality
3 Carriers, Inc.

4 And I will read into the record, if I may at this
5 time, some further changes in the context of Exhibit Number
6 5 and then later supply yet a further correction to Exhibit
7 Number 5.

8 In the second paragraph -- the second proviso
9 paragraph that we have been talking about, we would add as
10 an additional excluded commodity, to that second proviso
11 paragraph would be added the following product description:
12 Cryogenic liquids, dispersants and refrigerant gases.

13 And then the final change to Exhibit 5 would be the
14 addition of a fifth proviso paragraph. It would read,
15 provided that no right, power, or privilege is granted to
16 provide service from the facilities of PENNWALT Corporation,
17 Keystone Division, located in the City and County of
18 Philadelphia, and in the County of Bucks, to points in
19 Pennsylvania, and vice versa.

20 MR. KOERBER: Your Honor, with the imposition of the
21 more comprehensive restrictive amendment as read in the
22 record by Mr. Chesnutt, the interest, of my client, Quality
23 Carrier, Inc., have been satisfied. I would withdraw as a
24 Protestant on behalf of them.

25 MR. DOLL: Your Honor, with the classification made

1 by Mr. Chesnutt, I'm authorized to withdraw the protest of
2 Samuel Coraluzzo, Inc.

3 JUDGE SCHNIERLE: Thank you.

4 JUDGE SCHNIERLE: Now, you are going to submit that
5 in writing as well. Is that correct, Mr. Chesnutt?

6 MR. CHESNUTT: Yes, if Mr. Koerber would leave me
7 that copy that we have. Yes, I will submit an Exhibit 5. I
8 think the best way to do it would be to title it Revised
9 Exhibit 5 and then indicate that the amendments were as of
10 November 1 rather than as of October 31.

11 JUDGE SCHNIERLE: Fine. I've look at the
12 interrogatories 14 and 15 and the objection and replies to
13 objections. I believe, that for the most part, the
14 interrogatories should be answered. However, I do have one
15 problem on the four other governmental agencies.

16 I quite frankly -- that could be just absolutely
17 anything from a parking ticket on up. With that phrase in
18 there, it sounds like tell us anything bad you've ever done
19 kinds of question. And if -- Mr. Patterson, if you would be
20 willing to either drop that phrase or perhaps be more
21 specific on governmental agencies which regulate
22 transportation, something of that nature. With that sort of
23 modification, I would direct that the interrogatories be
24 answered.

25 MR. PATTERSON: I would be happy to adopt your latter

1 suggestion, that is, other governmental agencies which
2 regulate transportation and limit that part of the
3 interrogatory -- and so limit that part of the
4 interrogatory.

5 JUDGE SCHNIERLE: In that event, I would -- with that
6 modification, I would direct that interrogatories 14 and 15
7 be answered, Mr. Chesnutt. I believe these are -- I will
8 return them to you.

9 Now, as to the last question you asked of the witness
10 which I believe was whether he was aware of any FBI
11 investigation of Central Transport, I'm having some
12 difficulty with the breadth of that question as well.

13 Again thinking back to the Express Truck Lines case,
14 I believe in that case there had been convictions or guilty
15 pleas. I also am aware that the Express Truck Line case was
16 not appealed on the merits. And I, myself, had some problem
17 with the breadth of the violations that were used there in
18 ruling out fitness.

19 Could you be more specific as to FBI investigation of
20 what?

21 MR. PATTERSON: I think, Your Honor, in the question
22 having to do with hazardous substances since January 1,
23 1986, was the question. And that's the question. If that's
24 what Your Honor meant, I would propose that.

25 JUDGE SCHNIERLE: Would you rephrase it, then.

1 BY MR. PATTERSON:

2 Q. Mr. Fesperman, are you aware of any FBI
3 investigation of Central Transport with respect to
4 violations of any hazardous substances law since January 1
5 of 1986?

6 A. Yes, sir.

7 Q. What violations or alleged violations did the FBI
8 investigation deal with?

9 A. You are talking about specific allegations?

10 Q. Yes, sir.

11 A. I do not know.

12 Q. Are you aware of any investigations involving
13 Central's Charlotte, North Carolina terminal?

14 A. Yes, sir.

15 Q. Are you aware of whether that investigation had
16 to do with the alleged dumping of hazardous substances into
17 a local stream or body of water?

18 A. Excuse me. Would you repeat the last portion of
19 the question?

20 MR. PATTERSON: May I ask the reporter to read it
21 back, Your Honor?

22 JUDGE SCHNIERLE: Yes.

23 (The question was read by the Court Reporter.)

24 THE WITNESS: No, sir.

25 BY MR. CHESNUTT:

1 Q. In Charlotte?

2 A. No, sir.

3 Q. Are you aware of any investigations by the North
4 Carolina Division of Environmental Affairs or Bureau of
5 Environmental Issues -- I forget the exact name -- involving
6 the Charlotte terminal?

7 A. No, sir.

8 Q. Are you aware of any deaths occurring at the
9 Charlotte terminal as a result or in some manner connected
10 with hazardous materials violations?

11 MR. CHESNUTT: Let me object to that question.
12 Hazardous materials regulations in what respect? How would
13 deaths occur because of --

14 MR. PATTERSON: That's what I'm asking. I'm not here
15 to testify. I'm here to ask questions. If he doesn't know,
16 he doesn't know. I have asked him about is the deaths at
17 the Charolettetown terminal in some manner related to
18 hazardous material violation. If he knows, he knows.

19 THE WITNESS: Deaths resulting today by hazardous
20 material violations?

21 MR. CHESNUTT: Are you aware?

22 THE WITNESS: Not connected, no, sir -- not connected
23 to hazardous material violations. I don't know.

24 BY MR. PATTERSON:

25 Q. Are you aware of any FBI investigation of the

1 dumping of hazardous waste at the Charlotte terminal into
2 the sewer system?

3 A. Alleged dumping?

4 Q. Yes, sir.

5 A. Yes, sir.

6 Q. I'm sorry. I consider the sewer system a body of
7 water. I guess maybe it isn't.

8 JUDGE SCHNIERLE: During what period of time are we
9 talking about here?

10 MR. PATTERSON: All my questions are conditioned
11 since January 1 of 1986. I beg your pardon.

12 BY MR. PATTERSON:

13 Q. Would your answer be the same with that
14 condition, sir? That is it's since January of 1986?

15 A. To the allegations involving the sewage system?

16 Q. Yes, sir.

17 A. Yes, sir. That's correct.

18 Q. Are you aware of any similar investigations by
19 the Pennsylvania Department of Environmental Affairs or the
20 D.E.R. --

21 JUDGE SCHNIERLE: Environmental Resources.

22 MR. PATTERSON: I beg your pardon.

23 BY MR. PATTERSON:

24 Q. With respect to the Karns City, Pennsylvania
25 terminal?

1 A. No, sir, I'm not.

2 Q. What is the approximate average gallonage carried
3 by one of your fuel or liquid bulk tanks?

4 A. Well, I don't know the average overall. We do a
5 lot of transport.

6 Q. What would the range be, sir?

7 A. The range would be from approximately 4400
8 gallons to 6500 gallons. We have a few aluminium trailers
9 that would transport solvents in the 8500 gallon. Most
10 would be 4500 to 6500 gallons.

11 Q. Could you have a sense of the liquid bulk
12 commodities that you -- the Central Transport handles? What
13 percentage of those commodities are regarded by the EPA or
14 the DOT or somebody as hazardous?

15 A. It would probably be in excess of 50 percent. I
16 don't have an exact figure.

17 Q. In excess of 50 percent?

18 A. Yes, sir.

19 Q. Would you be willing to say in excess of 75
20 percent?

21 A. No. I would not be willing to say that without
22 doing some investigation of my own.

23 JUDGE SCHNIERLE: If I may break in for a question,
24 do you transport anything of that nature that does not have
25 to be placarded.

1 THE WITNESS: Do we transport?

2 JUDGE SCHNIERLE: Do you transport anything in liquid
3 bulk that does not have to be placarded?

4 THE WITNESS: Yes, sir. We do.

5 JUDGE SCHNIERLE: For example?

6 THE WITNESS: The largest movement or product that we
7 handle is Dimethyl Terephthlate which is probably the number
8 one commodity of the volume which would have to be
9 placarded.

10 BY MR. PATTERSON:

11 Q. Has your company done any studies, Mr. Fesperman,
12 to project the amount of traffic you expect to add to your
13 system if this application is granted?

14 A. No specific studies. We have indications from
15 our operations people and our sales force that it would
16 result in the addition of a minimum amount of \$1,000,000.00
17 of revenue per year, but those are not scientific studies.

18 Q. And who made those, sir?

19 A. Our operations people and our sales force.

20 Q. Any particular person or persons involved in that
21 even though they weren't all that formalized?

22 A. There's a group of people -- probably 5 -- do you
23 want their names?

24 Q. Is there someone who runs that group, or who is
25 the supervisor?

1 A. There is our vice president of marketing, our
2 director of national accounts, our sales representative for
3 this area and on the operations side. We have your terminal
4 manager, and the Karns City facility and our northeastern
5 regional manager.

6 Q. Who chairs the group?

7 A. It is not a formal group, sir.

8 Q. What's the name of the vice president of
9 marketing who is involved -- if I understood you -- in that
10 process?

11 A. His name is Don Webb.

12 Q. Would you spell the last name?

13 A. W-e-b-b.

14 Q. Thank you. Even though informal, what -- how did
15 the study conclude -- on what basis did the study conclude
16 that Central would generate an additional million dollars a
17 year in traffic if this application were granted?

18 A. Based primarily on their knowledge of the
19 customers, those that we serve now and what we think the
20 addition of intrastate authority would help us approach in
21 an effort to obtain some of their business.

22 Q. Now, sir, I understand that Central holds no PUC
23 -- Pennsylvania Utility Commission authority at this point?

24 A. That is correct, sir.

25 Q. And that this is a statewide application to the

1 extent that there are commodities not excluded by amendment
2 that you want to go from any point in Pennsylvania to any
3 other point in Pennsylvania with those commodities which are
4 still subject to the application?

5 A. That is correct, sir.

6 Q. Did you consider, at any point, taking a half
7 step rather than asking for the whole state at once?

8 A. No, sir. We did not.

9 Q. Can you restate the application as it has been
10 amended in positive terms? I refer you, Mr. Fesperman, to
11 your answer to question number 14 on page 9 of your prepared
12 testimony where you indicate that the purpose of the
13 amendments as they -- restrictive amendments as they then
14 stood was to address a distinct segment of the bulk carrier
15 transportation market. Do you see that answer?

16 A. Yes, I have it here.

17 Q. What distinct segment, in its present form or
18 segments, does the application address?

19 A. The most distinct segment that it would address
20 would be the chemical segments of the industry.

21 Q. Any other segment that you can identify that it
22 addresses?

23 A. Well, to the extent that the dry bulk products
24 would also be chemicals. They would be included in my first
25 answer. But if the dry bulk product is not considered a

1 chemical, it would be a distinct segment still addressed by
2 the application.

3 Q. So there are some dry bulk left in the
4 application after the amendments?

5 A. Yes, sir.

6 Q. You've excluded cement and flour, if my memory
7 serves me. What's left?

8 A. Things like plastic belts. That is what comes to
9 mind most readily.

10 Q. Anything else come to mind in terms of dry bulk?

11 A. Other product comes to mind -- I don't know
12 whether it moves within the State of Pennsylvania. Another
13 product we deal with in a lot of other areas is terephthalic
14 acid. It is a drop product.

15 Q. At the risk of it being a quiz, could you spell
16 that kind of acid for me?

17 A. Yes, sir. I'm writing it down.
18 T-e-r-e-p-h-t-h-a-l-i-c acid.

19 Q. Thank you very much, sir. Now, sir, of your
20 chemical traffic in your system, what percentage of your
21 chemical traffic is hazardous -- considered to be hazardous
22 by the DOT -- the U.S. DOT or the EPA or other such
23 agencies? Approximately?

24 A. Well, I want to stick with the same answer.

25 Q. About 50 percent again?

1 A. In excess of 50 percent.

2 Q. Now, sir, in your testimony, you suggest that
3 your terminals at Baltimore and somewhere in New Jersey --
4 the name escapes me at this point -- would be used as points
5 of supply for equipment to service Pennsylvania originating
6 traffic and intrastate traffic?

7 A. Yes, sir. That would be a possibility. That
8 would exist for the eastern portion of the state.

9 Q. And, am I correct, it is those two terminals
10 along with the Karns City, Pennsylvania terminal which would
11 be the points of supply for equipment for intrastate
12 commerce in Pennsylvania?

13 A. Along with equipment unloading in Pennsylvania
14 and the surrounding areas.

15 Q. And your prepared testimony contains --
16 especially the supplemental prepared testimony contains an
17 indication of the amount of equipment, does it not, at the
18 New Jersey and Baltimore terminals?

19 A. Yes, it does, sir.

20 Q. I beg your pardon. I believe that in your
21 initial prepared testimony at Exhibit 1-C -- it is also in
22 the -- let me do it this way, sir. Where, in your prepared
23 testimony, does it indicate the amount stationed at your New
24 Jersey, your Baltimore, and your Karns City, Pennsylvania
25 terminals?

1 A. Exhibit 1-C addresses tractors stationed at the
2 individual terminals including the three that you named.
3 And Exhibit 2 directs itself to trailers stationed at each
4 terminal, including the three that you named.

5 Q. Thank you, sir. I take it that the ratio of
6 owner/operator tractors to company-owned tractors at your
7 Baltimore, Maryland, and Paulsboro, New Jersey terminals is
8 a little bit different than your company average. It looks
9 to be a 4-1 ratio in favor of owner/operator units in those
10 two terminals. Does it, approximately?

11 A. Yes, sir. That would be correct.

12 Q. Does any other terminals come into play in
13 supplying equipment to Pennsylvania other than Karns City,
14 Pennsylvania, and the New Jersey and Maryland terminals?

15 A. I think all of the terminals would be possible
16 with the exception of one or two that are located in the
17 southeast one time or another have equipment delivering into
18 Pennsylvania or a state close enough that equipment would be
19 considered as available to service Pennsylvania.

20 Q. So you would dispatch equipment -- other than
21 those that come into Pennsylvania loaded and needing to
22 deliver their loads and be cleaned out, you're not telling
23 me that you would supply equipment to Pennsylvania out of
24 Wilmington, North Carolina, for example, as a normal event?

25 A. I don't think that's what I answered.

1 Q. So you are not telling me that?

2 A. I think what I said was with the exception of a
3 couple of terminals in the southeast, all of the other
4 terminals at one time or another have equipment unloading in
5 the Pennsylvania or in the surrounding areas close enough to
6 Pennsylvania to be considered available for Pennsylvania
7 traffic.

8 Q. Let's talk about equipment that is not coming
9 into this area with somebody's load of goods on it. Let's
10 talk about the supply of equipment out of terminals directly
11 to an origin. Are the three terminals that you mentioned
12 the ones that would supply empty equipment out of their
13 fleet to Pennsylvania shippers seeking service?

14 A. In most cases, yes, sir.

15 Q. Have you worked out, Mr. Fesperman, the
16 relationship of outbound loads to inbound loads which you
17 show in your Exhibit 1-B?

18 A. Have I worked out the relationship? I am not
19 sure I understand what you are asking.

20 Q. Let's go to your answer to question number 9.
21 Your answer is mostly on page 6 of the prepared testimony.
22 Am I correct that the loads outbound from Pennsylvania
23 substantially exceed the loads inbound to Pennsylvania as
24 shown by the numbers which you cite on page 6 in your answer
25 to question number 9?

1 A. Yes, sir.

2 Q. And do you know what that difference is for the
3 periods shown?

4 A. From 1987, the difference between 3,370 loads
5 outbound and 2,128 loads inbound.

6 Q. Well, let me put it another way. For the period
7 you talk about in your answer to question number 9, which is
8 a period from January 1, of '87 to June 30, of 1988, as I
9 understand your testimony. Is that correct? That's the
10 period covered in total?

11 A. Yes.

12 Q. That you have 1,412 more loads outbound from
13 Pennsylvania than you had inbound to Pennsylvania. Is that
14 correct?

15 A. How many did you say?

16 Q. One thousand -- I think I said 405. Let me go
17 back to that page, 1,412?

18 A. Yes, sir.

19 Q. Am I also correct that in looking the Exhibit 1-B
20 that 45 percent -- in round numbers -- of all of the traffic
21 that you handled in and outbound from this state came out of
22 four origins or went to the same four designations?

23 A. You're going to tell me which four?

24 Q. Yes, sir. I'd be happy to. No use keeping it a
25 secret, is there? Karns City, Petrolia, Philadelphia, and

1 Rochester. I take it that is Rochester, Pennsylvania?

2 A. It is, sir.

3 Q. Thirty loads from and to those points?

4 A. I could confirm those a bit faster if I could get
5 my calculator.

6 MR. CHESNUTT: I certainly have no objection, Your
7 Honor.

8 MR. PATTERSON: Why don't we just do this. I can
9 add. That is about the last of my statment. I'm not going
10 to run on this kind of thing very long.

11 MR. CHESNUTT: I'll accept it subject to check.

12 JUDGE SCHNIERLE: Why don't you do it subject to
13 check. That's what -- 45 percent approximately?

14 THE WITNESS: As long as I can check and correct it
15 if it is incorrect.

16 MR. PATTERSON: Trust me. I'm a lawyer.

17 BY MR. PATTERSON:

18 Q. Mr. Fesperman, would I be correct that none of
19 the equipment stationed at the three terminals we talked
20 about -- the Baltimore, Maryland, the Paulsboro, New Jersey,
21 and the Karns City, Pennsylvania has a dry bulk equipment
22 and dry bulk trailers?

23 A. Did you include Baltimore in that?

24 Q. Yes, sir.

25 A. There are two dry bulk trailers stationed in

1 Baltimore.

2 Q. Other than those two, that's it?

3 A. The two at Baltimore and the one at Karns City.

4 Q. To a total of three?

5 A. Yes, sir.

6 Q. Where do you keep your -- on page 9 in your
7 answer to question number 13, you indicate that you used all
8 of the types of trailers that you have in Pennsylvania
9 except the flatbed and the safety training trailer. Is that
10 kept in some particular spot?

11 A. Its basic location is in High Point, North
12 Carolina.

13 Q. Stays there for the most part, or does it move
14 around to your terminals?

15 A. It's mobile. It moves around, but I'm not aware
16 to what extent it's moves. It's a mobile classroom
17 facility.

18 Q. In any event, you haven't brought it to
19 Pennsylvania?

20 A. I can't say that for certain, sir.

21 Q. That's what you do say here. That's why I'm
22 asking you the question.

23 A. I think that answer relates itself to the traffic
24 study. Of course, we would not have brought a safety
25 trailer to Pennsylvania in relation to a revenue producing

1 load.

2 Q. I see because it only doesn't carry a revenue
3 producing load. That's all you meant by that?

4 A. Yes, sir.

5 Q. Now, sir, on page 12 in your first sentence of
6 your answer on that page, you indicate that you have seven
7 full-time employees at Karns City. Do you see that?

8 A. Yes, I do.

9 Q. Do you not count the drivers as employees or --
10 my question is this. You've got a number of company
11 tractors shown as stationed there. I forget how many
12 offhand, but certainly more than twenty. And I don't -- I
13 can't quite understand why there are only seven employees?

14 A. Because the answer was to a question involving
15 Central's cleaning of tank trailers at Karns City.

16 Q. Yes, sir.

17 A. That's what the answer addresses. There are
18 seven employees at Karns City involved in tank cleaning.

19 Q. All right. So that answer doesn't count the
20 drivers?

21 A. It does not, sir.

22 Q. Now, further down the page you indicate that
23 although you have cleaning facilities at Karns City, they
24 are not used for cleaning trailers that have handled
25 products classified as U or P on the priority pollutants

1 list?

2 A. Yes, sir.

3 Q. Why is that, sir? Why don't you clean those
4 things out of the trailers?

5 A. It has something to do with the waste that is
6 generated by that. By the time it goes through the -- I
7 lost the word I wanted. By the time it goes through the
8 filtering process, the sledge that is left from that, it
9 contains a product classified as U or P. It would be
10 considered as a hazardous waste product. We would be unable
11 to dispose of it.

12 Q. Well, you handle -- you clean other trailers
13 there that have handled other kinds of hazardous materials?

14 A. Yes, sir.

15 Q. In the last sentence in that answer, sir, at the
16 bottom of page 12, intended to indicate that you are making
17 a change so that you will be able to handle U or P products?

18 A. No, sir. It does not.

19 Q. So heating the small boiler for heating products
20 and chemical tanks has nothing to do with the prior sentence
21 that's has to do with cleaning trailers that have
22 transported such products?

23 A. That's correct. It does not.

24 Q. What kind of products are classified as U or P?
25 I have no sense of that. Do you, sir?

1 A. Without referring to the actual list of U or P, I
2 don't either, sir.

3 Q. Do you know whether they are particularly
4 difficult kinds of products to transport and to control and
5 protect during the process of transportation?

6 A. I'm not sure about how difficult they are to
7 transport or control. I think it directs itself more to
8 their toxicity, but to what degree, I'm not certain.

9 Q. Do either of the other two terminals which are
10 fairly proximate to Pennsylvania? That is Paulsboro, New
11 Jersey and Baltimore have cleaning facilities?

12 A. No, sir. We clean the publicly commercial
13 facilities at each of those locations.

14 Q. Have you done any -- I noted in your resume that
15 you have done some costing work in the history of your
16 employment. I believe that back here in Exhibit 1-A, you
17 indicate that you had responsibilities for costing at
18 sometime during a seven year period -- '75 to '85 with
19 another carrier. You have done costing work before, have
20 you not?

21 A. Yes, sir, I have.

22 Q. You still do?

23 A. Yes, sir.

24 Q. Have you had occasion to cost cleaning procedures
25 for cleaning out tank trailers so that they are reusable for

1 either other products or either more of some product to the
2 extent they need to be cleaned?

3 A. Yes, sir. I have.

4 Q. Have you done any costing on the Karns City
5 terminal?

6 A. Our costing procedure, we have seven or eight
7 terminals that have their own facilities. As presently
8 handled, we lump all of those eight together. So the Karns
9 City would be lumped in with the other facilities. And we
10 look at those as a total, and we look at our tank cleaning
11 costs that we incur from commercial facilities. So
12 specifically looking at Karns City individually, the answer
13 is no.

14 Q. Can you tell me generally or even specifically
15 where the seven terminals are? I think you said seven.

16 A. Seven or eight. I have to count them as I go.

17 Q. The terminals where you have cleaning facilities.
18 Karns City would be one.

19 A. Karns City; High Point, North Carolina.

20 Q. Excuse me just a second, sir. Let me get my
21 list. All right, sir.

22 A. Wilmington, North Carolina; Charlotte, North
23 Carolina; Greenville, South Carolina; Charleston, South
24 Carolina; Atlanta, Georgia, and Kingsport, Tennessee. I
25 believe that makes eight.

1 Q. Kings?

2 A. Kingsport.

3 Q. Got it. Do any of those terminals have the
4 capacity to clean out U or P products? That's products
5 classified as U or P on the priority pollutants list?

6 A. I think they do. I cannot say for certain.

7 Q. Do you know the difference in cost to maintain a
8 cleaning facility that's able to deal with U and P as
9 opposed to one that isn't like Karns City?

10 A. The cost to do the cleaning is virtually the same
11 cost. It's the cost of treating the waste water that
12 varies. I do not determine that cost.

13 Q. How traditionally or how does Central Transport
14 presently handle cleaning costs in terms of whether you pass
15 them on to your customers identified as such, or whether
16 those costs are folded into your line haul rates?

17 A. I would say that in most cases the cost of
18 cleaning is folded into the rate. And that we have
19 identified a relatively short list of commodities where the
20 cleaning costs is generally a little higher than would be
21 folded into the rate on which we assess an additional
22 charge.

23 In each case before that charge is implemented, it is
24 negotiated with the customer. And our reasons for
25 requesting that additional charge are set forth. In some

1 cases we have been successful in having the customer agree
2 to the charges presented. And in some cases, we have
3 compromised. And in some cases, we have lost the battle and
4 gone ahead without the cost of the cleaning charge to obtain
5 the business.

6 Q. But generally speaking where a particular product
7 or the products shipped by a particular customer, are costly
8 to clean, and you try to get them added on?

9 A. Yes, we do, sir.

10 Q. Now, speaking of that kind of thing, am I correct
11 that the majority of your interstate revenue is now contract
12 carrier revenue rather than common?

13 A. It would be close. I would say that's probably
14 correct. It would be close to a 50/50 proportion.

15 Q. And you'll recognize that this application is a
16 common carrier application?

17 A. Yes, sir very definitely.

18 Q. You are conversant, I take it, with the
19 difference between with having to abide by a tariff and what
20 a contract carrier can do and that is to design rates and
21 charges for a particular shipper?

22 A. Very much so.

23 Q. You are aware that a contract carrier has the
24 right to discriminate between shippers. It doesn't have to
25 have an even set of charges for similar traffic moving under

1 similar conditions?

2 A. Yes, sir.

3 Q. What determines generally, Mr. Fesperman, whether
4 you deal with a customer in interstate commerce as a common
5 carrier or as a contract carrier?

6 A. Generally, it's what the customer wants.

7 Q. Generally, also isn't the larger customers that
8 you deal with as a contract carrier? By larger, I mean who
9 tender you more traffic.

10 A. I don't think that's the case essentially. I
11 would say we carry an even split again. With the number of
12 contract that we have in existence, probably about half of
13 those are with a fairly major chemical company whose name
14 would be recognized by anybody.

15 The other half are with chemical companies whose name
16 would not be recognized by more than five or ten people who
17 happened to operate in the same area we are operating in.
18 It is not all the size of the customers.

19 Q. But you don't generally enter into a
20 transportation contract with a customer that gives you two
21 or three shipments a month -- two or three loads a month?

22 A. We have some of those.

23 Q. Isn't it generally so that they are certainly
24 above that level. They may not be a giant company, but they
25 are generally more repetitive customers than that?

1 A. I would think two or three loads a month -- it's
2 small in terms of numbers, but it's repetitive speedy
3 business. Yes, sir. We enter a contract with that type of
4 customer.

5 Q. Aside from the fact you regard that as nice,
6 isn't it a fact that most of the contract revenue comes from
7 large customers?

8 A. Most revenue does, yes, sir, because the larger
9 customer gives you more business.

10 Q. And that the majority of contracts are with large
11 customers?

12 A. No, sir. That is not correct.

13 Q. Not true. Judging by the collection of revenue
14 from only a few origins in Pennsylvania that we earlier
15 talked about -- the 45 percent figure that you accepted
16 subject to checking, those customers at those origins are
17 contract customers in interstate commerce of Central
18 Transport, are they not? And I'm purposely not naming the
19 customers, Mr. Fesperman. I'm not being mysterious. I'm
20 doing that on purpose.

21 A. At the four origins that you mentioned, they are
22 customers with whom we have contracts.

23 Q. Now, sir, in your testimony you indicate the
24 provision of service from one point in Pennsylvania to
25 another. I'm not sure where in your testimony you indicate

1 that, but I know it's in there. Do you recall either where
2 it is, or do you recall that testimony?

3 A. You are speaking of an actual movement that
4 moved?

5 Q. Yes, sir. Traffic that you've handled from one
6 point in Pennsylvania to another point in Pennsylvania?

7 A. Yes, sir, page 6.

8 Q. Of your original testimony?

9 A. Yes, sir.

10 Q. Have you responded, sir, to discovery with
11 respect to documents covering traffic in 1988 --

12 A. Yes, we have.

13 Q. -- handled in that matter?

14 A. Yes, we have.

15 Q. I have in my hand, Mr. Fesperman, what -- I'll
16 show it to your counsel -- what I believe to be the
17 documents which I know are the documents that were handed to
18 me in connection with those 20 or 22 loads that you refer to
19 -- 22 loads which you refer to in your answer to question
20 number 9 on page 6?

21 A. Yes, sir.

22 Q. Do you have handy anywhere copies of those
23 documents that you provided to me?

24 A. Yes, sir, I do.

25 Q. Do you have them in your hands?

1 A. Yes, sir, I do.

2 Q. All right, sir. Is the top one a shipping order
3 copy of a bill of lading showing Air Products in the upper
4 right-hand corner with a number handwritten 405454 up there?

5 A. Yes, it is.

6 Q. Looking somewhat like a pro number of some sort?

7 A. Yes, sir.

8 Q. Now, sir, tell me if you would, what the origin
9 and destination of that particular shipment was?

10 A. The origin was Unitank Terminal Services which I
11 believe is in Philadelphia and the designation was
12 Interstate Chemical Company in care of Ridgeway Trucking in
13 Ridgeway, Pennsylvania.

14 Q. What is the business of Unitank Terminal Service,
15 if you know?

16 A. I think they are a terminal service. It's a
17 storage facility.

18 Q. And that would indicate then that a tank load of
19 acidic acid glacial moved from Philadelphia, PA to Ridgeway,
20 PA on January 14, of 1988?

21 A. Yes, it would, sir.

22 Q. And that the product that -- the shipper was Air
23 Products and Chemicals Inc., or Air Products. So far, so
24 good?

25 A. So far, yes, sir.

1 Q. The consignee was Interstate Chemical in care of
2 Ridgeway Color in Ridgeway, PA?

3 A. Yes, sir.

4 Q. Where did you get the rates which you applied to
5 this shipment?

6 A. From the interstate contract that is in existence
7 between Central Transport and Interstate Chemical.

8 Q. On which basis do you regard that traffic to have
9 moved in interstate commerce?

10 A. It had a prior movement by water prior to its
11 arrival at Unitank Terminal Services.

12 Q. Is there any documentation here in the hearing
13 room which indicates that prior movement by water?

14 A. There is not.

15 Q. What makes you think it had a prior movement by
16 water?

17 A. Both our sales department and our operations
18 department have checked with the people at Unitank to
19 determine how the product arrived at their location.

20 Q. Do you know where it came from?

21 A. No, I do not, sir.

22 Q. Do you know when it moved by water?

23 A. No, sir. I do not.

24 Q. Do you know how long it sat at the Unitank
25 Terminal Service in Philadelphia before being moved to

1 Ridgeway?

2 A. No, sir, I do not.

3 Q. Do you know who owned the product when it was
4 moving by water?

5 A. I do not.

6 Q. Do you know when the product was sold by Air
7 Products to Interstate Chemical Company?

8 A. I do not.

9 Q. Do you recognize that there are a lot of things
10 -- a lot of commodities that move in interstate or foreign
11 commerce whether by rail, water, or truck which come into a
12 state, sit for a while, and are sold, for example, out of
13 inventory where that secondary movement within the state
14 after the sale is in intrastate commerce. Do you recognize
15 that concept?

16 A. I recognize there are a lot of questions involved
17 in that concept.

18 Q. I see. Now, making the assumption that this
19 product was not sold -- indulge me for my minute. It's only
20 an assumption. I don't know. Making the assumption --
21 drawing the assumption that the product was sold only after
22 arriving into the storage tank in Philadelphia at Unitank.
23 It was thereafter sold to Interstate Chemical and moved to
24 Ridgeway. In your view, would that move be a move? In
25 intrastate commerce, or a move in interstate?

1 A. Inter.

2 Q. Inter?

3 A. Yes, sir.

4 Q. Have you sought the advice of counsel on that
5 subject?

6 A. Not this counsel, but other counsel. Yes, sir.

7 Q. Have you sought it with respect to this
8 particular move or moves like from Unitank Terminal Service
9 in Philadelphia?

10 A. No, sir.

11 Q. Now, sir, without going laboriously through --
12 strike that, please. Indulge me for a moment, and I'll
13 count something here, and we can dispose of this, I think,
14 more quickly.

15 Of the shipping orders making up the packet of
16 documents in front of you, Mr. Fesperman, I count 18 similar
17 movements from Unitank in Philadelphia to Interstate
18 Chemical Company in care of Ridgeway Color in Ridgeway,
19 Pennsylvania?

20 A. Yes, sir. I believe that's correct.

21 Q. Would your knowledge regarding each of those
22 movements -- in terms of prior movement by water -- when it
23 moved, how long it sat in the Unitank Terminal Service in
24 Philadelphia, and when the commodity was sold by Air
25 Products to Interstate Chemical? Could your answers to

1 those questions be the same as they were with respect to the
2 initial document that we looked at. That is that you don't
3 know?

4 A. That would be correct, sir.

5 MR. CHESNUTT: If I might inquire at this point, Your
6 Honor, of Counsel Patterson, was the count of 18 exclusive
7 of the first one you examined him about?

8 MR. PATTERSON: Yes. I don't stand by the count. I
9 did it too quickly.

10 MR. CHESNUTT: I did it also, and I'm at 18 of that
11 category.

12 MR. PATTERSON: Your Honor, may we go off the record
13 for just a moment.

14 JUDGE SCHNIERLE: Off the record.

15 (Discussion off the record.)

16 JUDGE SCHNIERLE: We had a short discussion about
17 submitting the documents about which the past several
18 questions have been concerning as an exhibit. Sufficient
19 copies will be submitted this afternoon and will be marked
20 for identification as Matlack Exhibit 1.

21 (Matlack Exhibit No. 1 was produced and marked for
22 identification.)

23 MR. PATTERSON: Very well, Your Honor.

24 MR. CHESNUTT: Might I inquire, do you want them
25 arranged in the order in which you examined them on. That

1 is, the 405054 document followed by 17 similar Unitank
2 moves.

3 MR. PATTERSON: May we go off the record for this?

4 JUDGE SCHNIERLE: Off the record.

5 (Discussion off the record.)

6 JUDGE SCHNIERLE: We have been discussing
7 housekeeping chores regarding Matlack Exhibit 1. Please
8 continue, Mr. Patterson.

9 BY MR. PATTERSON:

10 Q. Mr. Fesperman, the second document in the
11 collection of documents that have been marked Matlack
12 Exhibit 1, is headed emergency resource management contact
13 assistance amount form?

14 A. Yes, sir.

15 Q. Does that indicate a movement within
16 Pennsylvania?

17 A. That indicates a movement last winter when the
18 Ashland oil fuel tank collapsed in the Pittsburgh area. We
19 were called upon to furnish water in various governmental
20 locations or fire stations or things of that nature during
21 the contamination of the river or water sources in Western
22 Pennsylvania.

23 Q. And that's applied as a movement from one point
24 in Pennsylvania to another? The water came from somewhere
25 else in Pennsylvania?

1 A. To my knowledge. It was also my understanding
2 during that emergency the Utility Commission authorized tank
3 carriers to provide that type of service.

4 Q. I see.

5 JUDGE SCHNIERLE: I think he's correct.

6 MR. PATTERSON: I just didn't know about it.

7 BY MR. PATTERSON:

8 Q. Now, sir, going back to the sixth page of the
9 Exhibit which is a document with a handwritten number 65999
10 in the upper right-hand corner?

11 A. I have that.

12 Q. You have it, sir?

13 A. I have it.

14 Q. Do you see on there a movement of traffic within
15 the State of Pennsylvania?

16 A. Yes. This is also involving movement of water
17 during the period of time that water sources were
18 contaminated in Western Pennsylvania.

19 Q. Very well, sir. Would the same be true of the
20 document later on in the Exhibit with a control number
21 F-91316 in the upper right-hand corner, shipper shown as
22 Koppers. The heading is Central Transport in the middle of
23 the top of the document.

24 A. No, sir. That document covers work that was
25 performed entirely within the confines of the Koppers Plant

1 and Petroleum.

2 Q. No public highway coming through that plant, sir?

3 A. To my knowledge, no, sir.

4 Q. What was the commodity? It says 4,000 gallons.

5 Gallons of what?

6 A. I do not know.

7 Q. And is it your testimony that your unit or units

8 that are providing this service didn't venture out on the

9 public highway in pursuance of that service?

10 A. While they were loaded?

11 Q. Yes, sir.

12 A. No, they did not.

13 Q. With the exception of the -- I think it was three

14 documents that we just were talking about. Everything else

15 is a -- all other documents in the exhibit are the Unitank

16 Terminal related documents, are they not, sir?

17 A. Let me just do a check to make sure. No, sir.

18 There is one document remaining that is not a Unitank

19 document.

20 Q. And that's the document headed 90158, sir, in the

21 upper right-hand corner?

22 A. That is correct.

23 Q. I'm trying to find it, sir. I'll be with you in

24 a second. Now, sir, if you would indicate on there where

25 that shows a movement of a product within Pennsylvania?

1 A. If you look at the document itself, you couldn't
2 discern that. But loaded at Morrisville, Pennsylvania. At
3 the time it was loaded into the tank, the consignee was
4 Interstate Chemical in Brookfield, Ohio. On completion of
5 the loading process, we were notified that the load was
6 reassigned to Interstate Chemical in Western Middlesex,
7 Pennsylvania. And it would be considered an intrastate
8 Pennsylvania movement. The product was on the tank
9 already. We moved it.

10 Q. That was on when, sir?

11 A. It looks like May the 11th.

12 Q. Of 1988?

13 A. Yes, sir.

14 Q. Is this the same Interstate Chemical that buys
15 products and has to deliver to Ridgeway, Pennsylvania?

16 A. Yes, sir. I believe it is.

17 Q. Out of Unitank?

18 A. Yes.

19 Q. Are the line employees of Central Transport
20 represented by a collective bargaining agent?

21 A. No, sir they are not. They are not.

22 Q. So in the common everyday parlance, Central is a
23 non-union carrier?

24 A. That is correct.

25 Q. What methodology does Central use for setting the

1 wages of drivers?

2 MR. CHESNUTT: I object.

3 MR. PATTERSON: By that, I mean do you use a system
4 of seniority or ability? Do you use standard wage rates in
5 any particular locale to give you a base point? How are
6 those wages set?

7 JUDGE SCHNIERLE: Your objection?

8 MR. CHESNUTT: The objection is the relevance of that
9 line of inquiry to the regulatory responsibilities of this
10 Commission and this record. I don't think an answer to that
11 question is going to make any difference, nor is it
12 pertinent to the issues that Your Honor spoke upon to
13 decide.

14 MR. PATTERSON: Your Honor, the direct testimony is
15 chock-full of references about the employees of the
16 company. We have been given a folder showing a gentleman
17 who had been serving us for 20 years. And some emphasis is
18 put on the ability of the company, and its ability is
19 exercised through its employees. I think we are entitled to
20 go into the relationship between the employees and the
21 company. It's a necessary part of the whole.

22 MR. MALIN: Your Honor, could I be heard? You do not
23 want repetitive questions. I honor that. There was some
24 indication in the direct testimony that charges might be
25 lower than Matlack. I think Matlack, as well as any other

1 carrier, has the right to go to questions of cost such as
2 statements to find out what it is predicated upon. I think
3 the question is acceptable on those additional grounds, Your
4 Honor.

5 MR. CHESNUTT: The charges that I referred to as
6 being lower than Matlack are the ones of accessorial
7 services, not line haul services.

8 MR. PATTERSON: I assume those accessorial services
9 are provided by human beings who are employees of the
10 company as well.

11 MR. WICK: At some stage -- at some part of this mass
12 of papers, there is evidence presented by the Applicant as
13 to the methodology of compensation. It appears in the
14 safety materials. So that it has already been presented by
15 the Applicant, and it's certainly the subject of cross
16 examination.

17 JUDGE SCHNIERLE: I think it's borderline relevant.
18 I will allow you to continue for a bit. But let's not try
19 to get too far down the path. Please answer the questions.

20 MR. PATTERSON: If we could ask the young lady to
21 read back.

22 (The question was read by the Court Reporter.)

23 THE WITNESS: Central pays its line haul drivers a
24 percentage of revenue. That percentage varies depending on
25 seniority. And when it comes to accessorial charges, it

1 varies, depending on the charge.

2 BY MR. PATTERSON:

3 Q. Are you telling me the drivers get a percentage
4 of the accessorial charges? Did I understand you?

5 A. Some of the accessorial charges.

6 JUDGE SCHNIERLE: Excuse me. These are the employee
7 drivers. We are not speaking about other operators.

8 THE WITNESS: I was referring to company employees.

9 JUDGE SCHNIERLE: Thank you.

10 BY MR. PATTERSON:

11 Q. Of the accessorial charges listed on pages 14 in
12 your answer, which of those accessorial charges do your
13 drivers get a piece of?

14 A. You are referring to the last sentence in that
15 answer?

16 Q. Yes, sir.

17 A. They would get a percentage of pension pumps,
18 layovers, and stopovers. They would not get a percentage of
19 cleaning. We do not have a charge for supplying extra
20 drivers. We do not have a charge for Sunday service. The
21 driver would not get a portion for supplying trailers.

22 Q. So to the extent that you are, for example,
23 dealing with shippers as I think you earlier noted with
24 respect to -- I beg your pardon. You did not. To the
25 extent that you are dealing with shippers in connection with

1 detention charges, and you decide for that particular
2 shipper on an interstate contract basis not to assess
3 detention charges, Central Transport, by that act, is giving
4 up not only its percentage of the those detention charges,
5 but also the drivers' percentage thereof?

6 A. We have no situations where we have agreed to
7 give up and not assess detention charges.

8 Q. You have agreed to give up an extra charge for
9 Sunday service? Or you don't charge for Sunday service?

10 A. We do not have the Sunday service charge.

11 Q. The use of pumps. You certainly have negotiated
12 circumstances where you have agreed not to make an
13 accessorial charge for use of the pumps, have you not?

14 A. We have a couple of those.

15 Q. To that extent, you have given up not only your
16 percentage, but the drivers' percentage thereof?

17 A. That would be correct.

18 Q. What else -- what other accessorial charges is
19 that true of? That is where you -- in circumstances where
20 you negotiated with a shipper for no charge, you have given
21 up not only your own percentage thereof but also the
22 drivers'?

23 A. Perhaps weighing or furnishing of extra lengths
24 of hose. There are a couple circumstances where that charge
25 has been negotiated. Those are the only two additional ones

1 that come to mind.

2 MR. PATTERSON: Excuse me for just a second, Your
3 Honor. That's all I have, Your Honor.

4 JUDGE SCHNIERLE: Well, is it everybody's purpose to
5 continue now or take a break for an hour and come back?

6 MR. MALIN: I prefer to take a break, sir.

7 MR. CHESNUTT: If you could give me an hour and 15
8 minutes, I would appreciate it. I have copy duties.

9 MR. PATTERSON: Your Honor, if I might? I have no
10 more questions. I think we agreed earlier in terms of Your
11 Honor's order on the discovery matters that this witness or
12 some other witnesses -- I guess if it is going to be another
13 -- would be made available at some forthcoming hearing to
14 deal with those subjects which may come out of the result of
15 discovery. I think there was agreement to that, but I just
16 want to make certain on the record that there was.

17 JUDGE SCHNIERLE: Is there agreement?

18 MR. CHESNUTT: The agreement is that without waiving
19 my right to any interlocutory appeal of Your Honor's ruling
20 which I am not disposed at all to waive at this point.
21 Although I'm necessarily going to take it, I'm not going to
22 waive it by any statement I now make. But if -- if we
23 either choose not to file an interlocutory appeal, if, upon
24 filing just an appeal, your ruling is upheld, we obviously
25 will comply with the furnishing of the discovery data and

1 the providing of the witness to address the issues which may
2 come out.

3 MR. PATTERSON: Thank you.

4 JUDGE SCHNIERLE: With that discussion concluded, we
5 will break for an hour and 15 minutes. I have 12:30 now.
6 We should be back at 1:45. Thank you.

7 (Whereupon, at 12:30 p.m., the hearing recessed to
8 reconvene at 1:45 p.m. the same day.)

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AFTERNOON SESSION

1
2 JUDGE SCHNIERLE: We have all returned from the lunch
3 time recess. We just finished Mr. Patterson's cross
4 examination of Mr. Fesperman. Are we prepared to proceed at
5 this point?

6 MR. CHESNUTT: I think we have some housekeeping
7 matters, Your Honor, before --

8 JUDGE SCHNIERLE: Yes. Do you have the Matlack
9 Exhibit 1?

10 MR. CHESNUTT: Yes. The Matlack cross examination of
11 the Witness Fesperman Exhibit 1, which consists of the
12 documents we furnished in response to Matlack interrogatory
13 number 11, have been compiled in the form of an exhibit
14 simply by collating and stapling them. And copies in that
15 format have been furnished to all counsel and that, I think,
16 takes care of that matter. I asked the reporter to hand a
17 copy up to you.

18 JUDGE SCHNIERLE: Is there anything else at this
19 point?

20 MR. CHESNUTT: Not for me, Your Honor.

21 JUDGE SCHNIERLE: Mr. LaVelle?

22 MR. LAVELLE: Your Honor, during lunch recess I
23 contacted my client, Dart Trucking Company, and in view of
24 some of the testimony this morning and a clarification as to
25 the intent of the amendment here, I've been authorized to

1 withdraw their protest at this time.

2 JUDGE SCHNIERLE: You're excused.

3 MR. LAVELLE: That's the Dart Trucking Company. And
4 the clarification -- just so it's on the record here -- I
5 mentioned it to Mr. Chesnutt and the operative witness this
6 morning. The understanding is that among other things that
7 the first restriction on Exhibit Number 5 -- the first
8 restrictive paragraph there --

9 JUDGE SCHNIERLE: Yes.

10 MR. LAVELLE: -- excludes, among other things, the
11 transportation of limestone and limestone products and I was
12 advised that it was intended by the applicant that that
13 would include the commodity lime if it was no question about
14 it that that was their intent, to exclude lime as well. I
15 just wanted to put that on the record, if that's correct.

16 MR. CHESNUTT: That is correct. And we had further
17 agreed that if clarity would be served by adding the word
18 lime, we have no objection to that happening.

19 MR. LAVELLE: The only reason that I raised that is
20 because operating authority of Dart Trucking Company
21 specifically grants both lime and limestone products and I
22 don't know if that was just a duplication of terminology or
23 or if it was a term of art there that I'm not aware of but
24 that's been clarified now.

25 JUDGE SCHNIERLE: Thank you. Mr. Wick, are you

1 prepared to cross examine the witness?

2 MR. WICK: Yes, Your Honor. I'll proceed.

3 W. DAVID FESPERMAN, the witness on the stand at the
4 time of recess, resumed the stand and testified further as
5 follows:

6 CROSS EXAMINATION

7 BY MR. WICK:

8 Q. Mr. Fesperman, when did Central move into the
9 Karns City terminal?

10 A. January of 1987.

11 Q. And about what date did Central begin this
12 movement from Unitank terminals in Philadelphia to other
13 points in Pennsylvania?

14 A. I'm not sure, sir.

15 Q. Does your company have a policy or procedure that
16 is to be followed when a terminal receives a request for
17 transportation from one point in Pennsylvania to another
18 point in Pennsylvania?

19 A. Yes, sir.

20 Q. What is that policy?

21 A. The terminal or the person receiving that request
22 is to check with the traffic department at High Point for a
23 determination as to whether that traffic is intrastate in
24 nature, in which case we would decline the load or
25 interstate, in which case we would accept the load.

1 Q. Are you the person at High Point who makes that
2 decision as to whether traffic is intrastate or interstate
3 in nature?

4 A. Not necessarily.

5 Q. Did you have anything to do with the decision
6 which resulted in Central beginning to transport those
7 products from Unitank terminal in Philadelphia to other
8 points in Philadelphia?

9 A. In the beginning? No, sir, I did not.

10 Q. Who in your company would have made that decision,
11 sir, that that traffic was intra/interstate in nature?

12 A. It would have been one of probably two people.
13 Our vice president of traffic or another member of the
14 traffic department whose position is involving pricing.

15 Q. And could you give us the names of those people,
16 sir?

17 A. The names?

18 Q. Yes, sir.

19 A. Ben Keller is the Vice President of traffic. Tom
20 Paulson, P-a-u-l-s-o-n, is the Director of Pricing.

21 Q. Now, you indicated in response to a prior question
22 that you believed you had received advice or an opinion from
23 counsel as to the lawfulness of that movement from
24 Philadelphia to other points in Pennsylvania?

25 A. Yes, sir. That's correct.

1 Q. And can you tell us the approximate date on which
2 you received that advice?

3 A. The original advice on which the company bases its
4 decisions, I cannot give you a date. A current or more
5 recent check of that position or that advice took place
6 within the last three weeks.

7 Q. And was that in preparation for this proceeding?

8 A. No, sir. It was in preparation for determining
9 whether there were any instances throughout the company
10 where we were handling movements that we had heretofore
11 considered to be interstate.

12 Whether the advice that the company had been given
13 still stood that it had a prior movement into the state and
14 subsequent movement within the state that it can be
15 considered intrastate. It was not in relationship to this
16 proceeding.

17 Q. And as I understand your concept, that is, the
18 concept of your company is that if the prior movement is by
19 water into Philadelphia, that the traffic moving from
20 Philadelphia at sometime thereafter from the storage point
21 is interstate in nature?

22 A. That is correct, sir.

23 Q. And has your company -- does your company plan to
24 continue that policy in operating within Pennsylvania?

25 A. Unless we are advised or instructed otherwise,

1 yes, sir, we do.

2 Q. And, specifically, does Central intend to continue
3 transporting product from the Unitank origin to points in
4 Pennsylvania?

5 A. Yes, sir. Under the conditions that I've
6 described.

7 Q. Mr. Fesperman, are the instructions for your
8 employees as to differentiating interstate from intrastate
9 traffic in written form?

10 A. I don't think so. No, sir.

11 Q. Have those instructions been given to your
12 terminals at Baltimore and at Paulsboro, New Jersey?

13 A. Yes, sir.

14 Q. Do your terminal managers have any instructions as
15 to recommending other carriers when you determine that you
16 do not hold the authority in a state such as Pennsylvania
17 for transportation requested?

18 A. I don't know what the terminal managers have been
19 so instructed. I know that personnel in the traffic
20 department have been so instructed. If we know a carrier
21 has the authority, we'll make that recommendation.

22 MR. WICK: Your Honor, may I approach the witness?
23 I'd like to ask some questions on some details of the
24 traffic study which has been presented.

25 JUDGE SCHNIERLE: You may.

1 MR. CHESNUTT: And if appropriate, Your Honor, I would
2 like to advise the witness as to who each of these gentlemen
3 represent. I think that's helpful for the witness today.

4 MR. WICK: Yes. Mr. Fesperman, I represent Refiners
5 Transport Corporation and for today I'm also representing
6 Chemical Leaman Tank Line Company. Your Honor, we have been
7 provided with a document which is entitled Loads from
8 Pennsylvania by Origin and this is intended to support the
9 testimony of Mr. Fesperman concerning total traffic handled
10 in and out of Pennsylvania and I'm going to direct my
11 questions to certain of the pages and the line numbers on
12 that document which is not an exhibit and which I don't
13 intend to offer as an exhibit.

14 JUDGE SCHNIERLE: Could I have a little more
15 clarification? Was that document used to prepare his
16 testimony insofar as from --

17 MR. CHESNUTT: Yes. The document is described, Your
18 Honor, in Exhibit 1. The document that Mr. Wick is using is
19 described in Exhibit 1 as the underlying data for Exhibit
20 1-B. And the description of the document that Mr. Wick is
21 now using appears at the answer to question 11 on page 7 of
22 Exhibit 1 and it is a document -- a business document that
23 the company uses that has essentially 15 columnar sources of
24 information in it and they are recited at that point.

25 JUDGE SCHNIERLE: Proceed, Mr. Wick.

1 MR. WICK: Thank you.

2 BY MR. WICK:

3 Q. I'm looking at page 61, Mr. Fesperman, at line 8
4 refers to a shipment in which the shippers name is BASF
5 Corp. going to Interstate Chemical from Philadelphia to West
6 Middlesex. Is that one of the shipments you've referred to
7 that move from Unitank in Philadelphia?

8 A. No, sir. This particular shipment on line 8 shows
9 a load count of zero and a revenue of zero. That would be a
10 listing of what we refer to as a DR or delivery receipt in
11 this particular case because it reflects zero loads and zero
12 revenue.

13 It would have been part of a blind shipment which is
14 a shipment involving a third party. A third party knows the
15 origin and knows the destination of the shipper. It the
16 does not know the destination of the consignee and consignee
17 does not need to know the origin.

18 Q. I'm puzzled as to why you would show it at an
19 origin of Philadelphia and a destination of West Middlesex.
20 Was that really the origin and the destination?

21 A. No, sir.

22 Q. How were we to know what the origin and
23 destination were?

24 A. From this I can't tell.

25 Q. But you're saying even though it's shown here, it

1 did not move from Philadelphia to West Middlesex?

2 A. That's correct, sir.

3 Q. Well, upon what documents was this computer run
4 based, sir?

5 A. This computer run was based on the computer file
6 of delivery receipts for the period October 1st, 1987,
7 through September 30th, 1988.

8 Q. Wouldn't that indicate that on the face of it that
9 you didn't transport a shipment from Philadelphia to West
10 Middlesex?

11 A. No, sir. Because on the face of it if that's what
12 it indicated, it would show load count of 1 and some revenue
13 having been generated from that shipment.

14 Q. Well, you've lost me. If you had delivery receipt
15 on which this was based, the delivery receipt would refer to
16 a shipment, would it not?

17 A. The delivery receipt can be a part of an overall
18 movement of freight, a blind shipment. Let's say that
19 Shipper A tenders the load to the carrier going to Consignee
20 B. Consignee B has said to the carrier, I really want that
21 load to go to C and I want C to think it came from me.

22 So several delivery receipts are prepared. One for A
23 showing it going to B. One from B showing it going to C and
24 then one covering the actual movement of the freight in
25 order to preserve the nature of the shipment which the

1 middle party has requested it be preserved. It's a very
2 common practice in the bulk industry.

3 Q. But based upon this exhibit, we would have no way
4 of knowing from what origin the shipment actually did move.
5 There was a shipment, was there not?

6 A. There was a shipment.

7 Q. But this exhibit would not tell us the origin or
8 the destination?

9 A. No, sir.

10 Q. Nor would it tell us if it was really between two
11 points in Pennsylvania?

12 A. No, sir.

13 JUDGE SCHNIERLE: Can you tell from looking at that
14 particular entry is there another entry in that document
15 that would accurately reflect the actual origin and
16 destination of that shipment?

17 THE WITNESS: Only if the actual origin or destination
18 of that shipment was Pennsylvania to Pennsylvania. If the
19 actual origin was outside the state, it moved into
20 Pennsylvania or if the actual origin was in Pennsylvania and
21 it moved outside of the state, I cannot tell from this
22 document.

23 JUDGE SCHNIERLE: Do you have other documents that
24 will show that?

25 THE WITNESS: No, sir. Not here. No, sir.

1 JUDGE SCHNIERLE: Not with you.

2 BY MR. WICK:

3 Q. Well to perhaps help you, in line 7 there is
4 another shipment from the same shipper going from
5 Philadelphia to Ridgway, PA. Is it likely that -- is that a
6 separate and distinct shipment? Line 7.

7 A. That could be a shipment the tract -- the terminal
8 handling that shipment and the trailer number that handled
9 that shipment are identical. Line 7 could reflect a
10 shipment from Philadelphia to Ridgway.

11 Q. Now, there are a number of cases in which there
12 appears to be zero revenue of this study. Would it be
13 accurate to state that in each of those cases there is one
14 of these fictitious delivery receipts intended to hide the
15 shipper and/or the receiver?

16 A. No, sir. That wouldn't be accurate.

17 Q. Let's look at line 34 on that same sheet 61. You
18 show a shipment moving between points in Philadelphia
19 entitled miscellaneous with a revenue of \$1,035.00. Is that
20 an intrastate shipment, sir?

21 A. That's probably a DR covering a trailer spotting
22 charge for a trailer that was spotted at Rohm and Haas.

23 Q. And that would generate charges of \$1,035.00?

24 A. Yes, sir. It depends on how long it was spotted
25 there.

1 Q. Is there any indication on this document that it
2 was for a spotting charge?

3 A. No, sir, not conclusively.

4 Q. Would you turn to page 62 on line 32 or rather
5 line 36 in which a shipper shown as Air Products an origin
6 of Philadelphia, a destination of Ridgway. Is that the
7 movement that we have been discussing from Unitank origin?

8 A. Yes, sir.

9 Q. Now, there is one immediately above it which shows
10 a movement to West Middlesex and again a zero revenue and
11 the shipper is the same, Air Products, and the origin is
12 Philadelphia. How do you have any zero revenue there, sir?

13 A. Again that appears to be two DR's that are
14 involved in a blind shipment.

15 Q. So that only one of them -- that was the one
16 showing revenue -- was the actual shipment?

17 A. That's correct, sir.

18 Q. Will you turn to page 63 of your study, line 37
19 which indicates that you were performing transportation for
20 Allegheny Ludlum Steel Company which is located in Allegheny
21 County, PA. And there was a revenue shown of how much, sir?

22 A. \$4,292.25.

23 Q. Was that transportation being performed intrastate
24 in Pennsylvania? It shows an origin of Pittsburgh, a
25 destination of Pittsburgh.

1 A. Yes, sir. From the date on this -- again, I
2 cannot say conclusively -- but from the date on this January
3 6th, 1988, it would appear to have been a movement in and
4 around the time of the Ashland Oil Tank collapse in the
5 Pittsburgh area.

6 Q. All right, sir. So you believe it was a movement
7 of water even though it does not show a commodity?

8 A. Correct, sir.

9 Q. Would you turn to line 28 and, again, we have the
10 situation where there is one shipment from Air Chemical --
11 Air Products rather -- of Philadelphia to West Middlesex
12 showing zero revenue followed by a second entry showing
13 revenue of -- what is that \$600.00?

14 A. Yes, sir.

15 Q. Is that a likely revenue for a transportation of
16 the acidic acid from Philadelphia, PA to Ridgway, PA?

17 A. Yes, sir.

18 Q. And do you believe those two documents -- two
19 entries cover one shipment?

20 A. Yes, indeed.

21 Q. Will you turn to page 65, line 48. What is the
22 approximate date of that shipment? Do you show any date?

23 A. January 21st, 1988.

24 Q. And is it your belief that that involved
25 transportation of water?

1 A. No, sir, I don't. I think this would involve
2 spotting.

3 Q. That's a movement shown from Rochester, PA to
4 Rochester, PA?

5 A. Yes, sir.

6 Q. Is there any indication of any entry on spotting
7 charges?

8 A. No, there is not.

9 Q. Is there any revenue shown?

10 A. Yes, sir, \$2,400.00.

11 Q. Would you drop down to line 59. Is that the same
12 entry, same type? Rochester, PA to Rochester, PA?

13 A. There is not a line at 59.

14 Q. Forty-nine.

15 A. Yes, it is.

16 Q. And what is the revenue shown on that traffic?

17 A. \$2,525.00.

18 Q. And what is your explanation of that entry, sir,
19 showing Rochester, PA to Rochester, PA?

20 A. It appears to be a spotting charge.

21 Q. Is there any reference on your exhibit that says
22 spotting?

23 A. No, there is not.

24 Q. Would you turn to page 66, line 39. Again, there
25 is a reference to a corporation known as Valspar Corp. with

1 a movement shown from Rochester, PA to Rochester, PA. What
2 is the revenue on that?

3 A. \$2,400.00.

4 Q. And is it your position that's a spotting charge?

5 A. It would appear that way. Yes, sir.

6 Q. Again, is there any indication of the nature of
7 the charge?

8 A. No, sir.

9 Q. Would you go to page 66.

10 A. I'm on 66.

11 Q. Excuse me. Would you go to page 70. Start at
12 line 20.

13 A. Okay, sir.

14 Q. Again, do we see a movement from Rochester, PA to
15 Rochester, PA for Valspar Corp.?

16 A. Yes, I do.

17 Q. And again, is it your position that is simply a
18 spotting charge?

19 A. Yes.

20 Q. Is there any code of any kind that would tell us
21 the difference between freight charges and spotting charges
22 on this underlying document you're examining?

23 A. The key is to whether it involved line haul
24 transportation and an over the road movement of equipment
25 where it had a load count of one in the load column and all

1 of these examples that we've looked at thus far have had
2 zero in the load count column with the exception of the
3 loads from Air Products at Philadelphia to Ridgway Color.

4 Q. Would you move to page 72, sir, line 47. I see an
5 entry which says there was a shipper named Pennzoil a
6 consignee with a different name Boler, B-o-l-e-r, indicating
7 a movement from Rothsville, PA to Wayne, Pennsylvania but
8 again revenue of zero.

9 Is it your position that is one of these fictitious
10 delivery receipts intended to avoid showing the correct
11 shipper and or receiver?

12 A. I'm not sure that I agree with the word
13 fictitious.

14 Q. I'll withdraw that. It's a method of attempting
15 to hide the name of the shipper or the receiver or the
16 origin?

17 A. Just below that line on line 48 is a load from
18 Pennzoil at Rothsville to Chicago, Illinois involving the
19 same date, the next DR in numerical sequence, the same
20 terminal and the same trailer which would indicate that the
21 actual movement of freight went to Chicago.

22 Q. Would you move to line -- or to page 73, line 1
23 showing a movement from Rothsville, PA to Wayne,
24 Pennsylvania with a revenue shown of \$63.00. It shows a
25 shipper Pennzoil, a consignee B-o-l-e-r. Was that not an

1 actual revenue shipment, sir?

2 A. No, sir. Again, it looks as if we look on the
3 line just above that what is an unnumbered line same date DR
4 in sequence same terminal, same trailer. It appears that
5 the actual movement of freight moved from Pennzoil at
6 Rothsville to Brooklyn, New York and that the line on number
7 1 involved an accessorial charge of some sort for \$65.00.

8 Q. Even though it shows an origin of Rothsville and a
9 destination of Wayne?

10 A. Correct, sir.

11 Q. Would you turn to page 78, line 19. That entry
12 shows a shipper named Hercules, a consignee of the same
13 name, an origin of West Elizabeth and a destination of West
14 Elizabeth both in Pennsylvania and a revenue?

15 A. Yes, sir.

16 Q. Are you able to indicate what date that shipment
17 moved?

18 A. I don't believe it was a shipment. It shows a
19 zero load count but the date shown is June 9th, 1988. It
20 appears to be an accessorial charge and based on the amount
21 of \$650.00, it appears to be a spotted charge but I cannot
22 say that conclusively.

23 Q. It -- is it your position you have not transported
24 anything for Hercules between points in Pennsylvania?

25 A. Yes, sir. That's correct.

1 MR. WICK: I'll ask counsel this question, if I may,
2 Your Honor. Are there here in the hearing room any of the
3 actual delivery receipts upon which this document tendered
4 to us was based?

5 MR. CHESNUTT: No. I would ask that the witness
6 really is in a better position to respond to that and I have
7 no hesitation in asking him to do so.

8 THE WITNESS: No, sir.

9 BY MR. WICK:

10 Q. Mr. Fesperman, you were able to supply, in
11 response to interrogatories, information concerning certain
12 proceedings in Pennsylvania in which Central has been
13 involved which involved violations of the Vehicle Code or
14 other regulations of an agency in Pennsylvania.

15 MR. WICK: Your Honor, I'm going to show these
16 documents to Mr. Chesnutt.

17 BY MR. WICK:

18 Q. Mr. Fesperman, I'm going to show you a document
19 supplied in response to an interrogatory which indicates
20 that Central was assessed a fine in the amount of \$517.50
21 for transporting corrosive material on the Pennsylvania Pike
22 through a tunnel. Have you looked at that document?

23 A. Other than preparing it to send it to Mr.
24 Chesnutt, no, sir, I have not.

25 Q. Could you tell me the date of that violation?

1 A. July 15, 1986.

2 Q. I note on that document the following entry in
3 handwriting, quote, to be deducted from driver Randall
4 Soaper, payroll number 874, \$100.00 per pay. You see that
5 entry?

6 A. Yes, sir, I do.

7 Q. Is it the practice of Central to deduct from
8 driver's wages any fine assessed against the company?

9 A. I'm not sure that the policy is to deduct any
10 fine. I think that if the fine results from a violation of
11 company procedures which resulted in a violation of the
12 regulations of Pennsylvania or any other state, we are going
13 to seek to get that back from the driver or the operator.

14 Q. Is that true in all cases where there is a
15 violation charged against the company?

16 A. I think so. I don't know that conclusively. I
17 think so, yes, sir.

18 Q. Does that entry that I read, in fact, mean that
19 Central did deduct from this driver's paycheck \$100.00 until
20 the fine was fully paid?

21 A. I think so, yes, sir.

22 Q. I show you another document in which it appears
23 that there was a prosecution in Pennsylvania in Somerset
24 arising out of the lack of a driver vehicle report involving
25 a driver named William Reap. I'll show you that document

1 and ask if you can find a date when this incident occurred?

2 A. It appears to be May 12th, 1988.

3 Q. And is there any notation on that document which
4 would tell us whether the driver was charged for that
5 violation?

6 A. What do you mean charged?

7 Q. Is it deducted from his pay?

8 A. Yes, sir. It appears on a notation on there.

9 Q. What does that notation say?

10 A. It looks like it says deduct from Bill Reap,
11 number 1252.

12 Q. And who makes the decision whether you will deduct
13 from the driver's pay any fine assessed against the company?

14 A. I would think that it's someone in the Operations
15 Department.

16 Q. But you don't have anything to do with that?

17 A. No, sir, I do not.

18 Q. Does that policy -- the deducting from driver's
19 pay -- appear in your driver's safety program that you've
20 presented to us?

21 A. I'd have to review it to be sure. I'm not sure.

22 Q. Finally I show you one --

23 JUDGE SCHNIERLE: Excuse me. What was that
24 violation? That one you just finished.

25 MR. WICK: This was no driver vehicle report. I'll

1 show it to you, Your Honor.

2 JUDGE SCHNIERLE: Were you planning on making exhibits
3 of these things?

4 MR. WICK: Yes. I just have one more. It's a little
5 hard to read. I may not be able to get these until
6 tomorrow.

7 BY MR. WICK:

8 Q. The last one I want to ask you about, Mr.
9 Fesperman, involves an apparent violation for placards
10 relating to hazardous materials being displayed improperly.
11 I'll show you the papers which appear to include also a
12 violation against the same driver, an individual named Roy
13 Short, for brake problems. Would you tell me if those
14 documents include two citations and, if so, what the date of
15 each citation was?

16 A. The date appears to be December 23rd, 1986. It
17 appears to be a citation for front and rear placards
18 displayed improperly. And I can't read all of the second
19 one but it appears to have something to do with brakes.

20 Q. Can you read the date on the brake violation?

21 A. It appears to be the same date. Yes, sir. It
22 appears to be December 23rd, 1986.

23 Q. And is there a notation that the driver was going
24 to be charged for those fines resulting from those two
25 violations?

1 A. There appear to be contradictory notations on the
2 check request. One check request indicates that part of the
3 fine should be deducted from L-271, which is the payroll
4 number of the driver. The second one contains a notation
5 that says this should not be deducted because the placard
6 holder was mounted incorrectly.

7 Q. So you aren't able to tell us what actually
8 occurred?

9 A. That is correct, sir.

10 Q. Has the driver contended that he should not have
11 had this fine deducted?

12 A. Apparently, yes, sir.

13 Q. Is there any appeal from the decision of your
14 Operating Department as to the deduction of payroll?

15 A. Yes, sir.

16 Q. Where does that appeal go?

17 A. Back up through the Operations Department,
18 Operations Manager, Director of Operations, Vice President,
19 and General Manager and, ultimately, it could go to the
20 President of the company. We have a very open door policy.
21 Drivers -- any employee has access to the President and can
22 go in and discuss any matter. If he feels he's being
23 wronged, he can talk to him about it.

24 MR. WICK: Your Honor, I'd like to have these marked
25 as exhibits, these three documents. I probably will not be

1 able to return them until tomorrow. Should we assign a
2 number or -- this would be on behalf of Refiners Transport
3 Exhibit Number 1 or do you wish to wait until tomorrow.

4 JUDGE SCHNIERLE: What -- did you plan to offer these
5 through this witness?

6 MR. WICK: Yes.

7 JUDGE SCHNIERLE: Is it expected that he will be on
8 the stand yet tomorrow?

9 MR. CHESNUTT: I am probably the last person in the
10 world that could speak to the accuracy of that but he is
11 available -- as I indicated -- tomorrow as well as all
12 scheduled hearing dates at this point.

13 JUDGE SCHNIERLE: Off the record for a moment.

14 (A brief discussion was held off the record.)

15 MR. WICK: I'd like to have the series of documents
16 relating to four separate violations by Central Transport in
17 Pennsylvania marked as Refiners Transport Exhibit Number 1.

18 JUDGE SCHNIERLE: They will be so marked.

19 (Refiners Transport Exhibit No. 1 was produced and
20 marked for identification.)

21 MR. WICK: And I assume there is no objection to their
22 offering, Mr. Chesnutt, since you gave us the documents.

23 MR. CHESNUTT: That's correct. You assumed
24 correctly.

25 MR. WICK: I'll present them tomorrow.

1 JUDGE SCHNIERLE: Fine.

2 MR. WICK: Thank you. That's all I have of this
3 witness. Thank you.

4 JUDGE SCHNIERLE: Mr. Radcliff?

5 MR. RADCLIFF: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. RADCLIFF:

8 Q. Mr. Fesperman, when you enter into contracts --
9 when your company enters into contracts with shippers in
10 interstate commerce you indicated that you negotiate the
11 accessorial charges as well as the transportation. Is that
12 correct?

13 A. Yes, sir.

14 Q. So the accessorial charges applying to any one
15 shipper could only be determined from looking at that
16 contract rather than at your ICC tariff?

17 A. Yes, sir.

18 Q. And one shipper that you serve under contract may
19 have different levels of charges than would apply to another
20 shipper even if both were located in the State of
21 Pennsylvania?

22 A. Under contract?

23 Q. Under contract.

24 A. Yes, sir.

25 Q. And either of those contract shippers or both of

1 them could differ from your ICC published tariff?

2 A. That's possible.

3 Q. And you do not file your contracts with the
4 Interstate Commerce Commission? You maintain those separate
5 as documents between you and the shipper?

6 A. Correct, sir.

7 Q. The equipment distribution shown on your Exhibit 2
8 between the various terminals in your system is as of
9 September 26, 1988, I note?

10 A. That's correct, sir.

11 Q. Do you know if it is the same today as it was on
12 September 26th?

13 A. I don't think it is. I think we added additional
14 -- or additional 1988 model tractors.

15 Q. And you don't purport that this exhibit will
16 remain static as the equipment distribution of your company
17 throughout 1987 even?

18 A. No, I do not.

19 MR. CHESNUTT: Might I ask if counsel would be kind
20 enough to indicate to Mr. Fesperman the carriers that he
21 represents?

22 MR. RADCLIFF: I'm sorry. I represent today Oil Tank
23 Lines and also for Mr. Olsen I've entered an appearance for
24 Marshall Service.

25 BY MR. RADCLIFF:

1 Q. And the equipment that is shown on your Exhibit 2
2 may change as to the nature of that equipment at any one
3 terminal you may delete a dry bulk unit at one terminal and
4 add a dry bulk unit at another terminal in the future?

5 A. That's possible, yes, sir.

6 Q. If a dry bulk aluminum trailer from your Baltimore
7 terminal delivered a load in the Philadelphia area, would it
8 be available then for a movement from -- I think it was
9 Unitank terminals. I'm not familiar with the shipper in
10 Philadelphia. It was discussed earlier.

11 A. Unitank.

12 Q. Unitank was the terminal service that the Air
13 Products shipment were moving out of to Ridgeway. Are you
14 familiar with that shipper, Unitank?

15 A. Yes, sir. If Unitank is storing dry bulk product
16 then the trailer would be available to handle dry bulk and a
17 dry bulk load.

18 Q. Do you know today that Unitank is storing dry bulk
19 products?

20 A. No, I do not.

21 Q. But if Unitank has no dry bulk products, then that
22 unit would not be available to handle any of their liquid
23 bulk products?

24 A. You're still speaking of a --

25 Q. Of that aluminum dry bulk trailer?

1 A. That's correct. Correct, sir.

2 Q. On page 11 of your exhibit 1 in answer to question
3 16 you state that availability of the equipment will depend
4 on the product that needs to be cleaned. Do you find that
5 statement about a third of the way down on page 11?

6 A. Yes.

7 Q. Could you expand on that? What type of product
8 needing to be cleaned would that statement be directed to?

9 A. Well, it would depend. They're all interrelated
10 and I don't think you can just pluck one of those out. So
11 to sort -- to answer the question I'd sort of have to talk
12 about them all. It relates to -- let's take a look at latex
13 and that loads in the central part of Pennsylvania.

14 If we have a load that that trailer can be used on
15 but the trailer needs to be cleaned, where we get that load
16 cleaned is going to be a big factor because the product is
17 latex. The sooner we can get latex cleaned, the easier it's
18 going to be and the less expensive it's going to be. If it
19 is closer to run that unit in Karns City and clean it
20 ourselves, that's what we'll do.

21 If there's a the commercial cleaning facility closer
22 and we can get the latex out of the trailer, that's what we
23 are going to do. A lot of cleaning materials particularly
24 your resins, latexes, plasticizers, can coatings -- the
25 cleaning of those products the sooner you can get it done,

1 the easier it is to clean and as a result, the less costly
2 it will be.

3 Q. So you're saying that as a matter of timeliness in
4 cleaning the unit it may be appropriate to take from Central
5 Pennsylvania to your Karns City facility because it can get
6 it cleaned quicker than even a commercial facility in the
7 Central Pennsylvania area that might have a particular
8 backlog of cleaning to be done, that you couldn't get your
9 unit in quickly on it?

10 A. That's possible, yes, sir.

11 Q. On your Exhibit Number 3 and you have the list of
12 products available?

13 A. Yes, sir. I have that.

14 Q. On the third page the 4th line up from the bottom,
15 would you tell me what Hexane is?

16 A. To my knowledge it's a type of solvent, petroleum
17 solvent.

18 Q. Petroleum solvent?

19 A. To my knowledge, yes.

20 Q. It is not a motor fuel?

21 A. Don't think so.

22 Q. And on page 5 the 5th line down ethyl alcohol. Is
23 that the same as ethanol?

24 A. I'm not sure. Methyl alcohol is the same as
25 methanol so I would assume that ethyl alcohol is the same is

1 ethanol.

2 Q. Is not ethanol a motor fuel?

3 A. It can be.

4 Q. So to the extent that ethyl alcohol is motor fuel,
5 you would not be permitted to handle it under this
6 application as amended?

7 A. That's correct, sir.

8 Q. On the same page 5 the 4th line up from the bottom
9 you have cheating compound?

10 A. That's a typographical error. It should be
11 chelating.

12 Q. What industry is that used?

13 A. The product that we handle -- it goes into -- I'm
14 not sure what it goes into. It goes to people like Proctor
15 and Gamble, Consumer Products Companies.

16 MR. RADCLIFF: Your Honor, may I approach the witness
17 for the purpose of going over with him the computer
18 printouts that he's previously been shown.

19 JUDGE SCHNIERLE: Yes, you may,

20 BY MR. RADCLIFF:

21 Q. Mr. Fesperman, I'll give you both the destination
22 city listing and the origin city listing and would you turn
23 in both documents to that portion which relates to East
24 Butler, Pennsylvania?

25 A. Yes, sir.

1 Q. In the listing by origin city I see that all of
2 the destinations are in East Butler and in the destination
3 city list all of the origins are in East Butler. Is that
4 correct?

5 A. That's correct.

6 Q. And that the load count on all of these is zero?

7 A. Correct.

8 Q. You have a total of zero loads for \$4,000.00
9 revenue?

10 A. Yes.

11 Q. And the same amount is reflected in each document
12 with the same number of load?

13 A. That's correct.

14 Q. So you handled no traffic in or out of East
15 Butler?

16 A. That's correct.

17 Q. And its appearance on the Exhibit 1-B as a
18 Pennsylvania origin or destination that is incorrect?

19 A. No, sir. It represents our revenue that we earned
20 in Pennsylvania for cleaning tank trailers for Refiners
21 Transportation and Leaseway.

22 Q. Did you clean them in East Butler?

23 A. No. East Butler is the location of the Refiners
24 terminal or facilities that we clean them for. We cleaned
25 them at Karns City.

1 MR. CHESNUTT: I would agree with counsel that for the
2 purposes that Exhibit 1-B is offered for as the origin or
3 destination of line haul loads that I think his point is
4 very well taken. I'm happy to strike East Butler as the
5 origin of freight as long as my witness is satisfied that
6 those are the only entries on the underlying data with
7 respect to that point.

8 JUDGE SCHNIERLE: Well, excuse me. I notice there are
9 several others on 1-B where there is no loads and two
10 loads. For example, right above East Bulter is Doylestown
11 further down in Edgely.

12 BY MR. RADCLIFF:

13 Q. If we could go through East Butler, I could read
14 off the places where there are either no loads to or no
15 loads from or perhaps both and yet revenue is shown.

16 And I would ask the witness on exhibit 1-B does that
17 indicate then that they had revenue or some type of
18 accessorial service even though no transportation was
19 involved for points such as Carnegie where we indicate no
20 loads into Carnegie?

21 A. That's correct.

22 Q. And as Your Honor has mentioned, Doylestown where
23 there are neither loads into or loads from Doylestown and
24 Easton where there are no loads into and yet a revenue of
25 \$847.50 is shown.

1 JUDGE SCHNIERLE: Without going through the -- do we
2 have to go through the rest of these one by one?

3 MR. RADCLIFF: I only have one more. No, I'm sorry.
4 There are others.

5 JUDGE SCHNIERLE: If there is no load shown but a
6 revenue it's for an accessorial charge.

7 THE WITNESS: Yes. I had a choice in preparing the
8 exhibit. I had computer printouts that had total loads and
9 total revenues. If my exhibit didn't balance with the
10 printouts, we would have a roomfull of protestants that
11 would have attacked me on that basis. I chose to include
12 the revenue so that my exhibit would balance with my
13 supporting documents and take the chance on being questioned
14 about that.

15 JUDGE SCHNIERLE: In this fashion.

16 THE WITNESS: Yes, sir.

17 MR. MALIN: Your Honor, to be fair to the witness, I
18 had some similar questions I will pursue in relation to
19 Wayne from the exhibit. I'm not sure you can lump
20 everything into one text.

21 JUDGE SCHNIERLE: Is there any other reason that you
22 would show revenue and not a load on here?

23 THE WITNESS: Well, there are accessorial charges of
24 some nature; spotting, cleaning, stop offs.

25 MR. MALIN: How about the different delivery receipt

1 from the bona fide.

2 JUDGE SCHNIERLE: Are the blind shipments included in
3 1-B as well?

4 THE WITNESS: If any revenue was produced on the
5 secondary delivery receipt, that revenue would be included.
6 It would not count as a load.

7 MR. CHESNUTT: I think it's fair to say, is it not,
8 that in Exhibit 1-B where there is revenue and no load
9 indication associated with that revenue -- is it not fair to
10 say that no line haul transportation service occurred unless
11 there is an indication of a load. Is that a fair statement.

12 THE WITNESS: Correct. To that destination. We could
13 have had --

14 MR. CHESNUTT: Can we all read the exhibit that way
15 and maybe that will lend some clarity to it. Unless, that
16 protestants' counsel think that --

17 MR. MALIN: If you got two loads, one that says it's
18 going to Brooklyn, New York for revenue and one says that
19 it's going to Wayne, Pennsylvania without revenue and you
20 don't have the underlying delivery receipt then New York
21 State, for example, has been concerned over picking up sales
22 taxes on gasoline.

23 I don't know which occurred. I only know what the
24 exhibit shows. It shows one movement with no revenue and
25 one movement with a revenue. So I don't know whether we

1 have anything in the hearing room here that suggests that
2 the move was not made.

3 MR. CHESNUTT: Well, I think that's a different issue
4 and several references made to the underlying data as
5 exhibits and Mr. Malin just did it again. The underlying
6 data is not an exhibit. The exhibit that we are talking
7 about right now is 1-B that Mr. Radcliff is focusing. When
8 Mr. Malin gets in his examination, let's have him do it.
9 I'd like that remark stricken from the record because I
10 think that is not at all helpful.

11 JUDGE SCHNIERLE: I agree. I think I should have cut
12 you off sooner. Strike his last remark; why don't you
13 continue with your examination, Mr. Radcliff.

14 MR. RADCLIFF: Thank you, Your Honor.

15 BY MR. RADCLIFF:

16 Q. Mr. Fesperman, in the listing for Philadelphia on
17 these underlying documents, I find a listing for March 22nd,
18 1988, from Philadelphia to Philadelphia for -- excuse me,
19 Your Honor.

20 I don't have it by line number so I don't have what
21 the company was -- I have the company's name abbreviated for
22 Vanwaters and Rodgers -- isopropyl alcohol indicating the
23 movement with a load count on DRF 90007. The load count of
24 one Philadelphia to Philadelphia and a revenue \$11,169.88.
25 Do you agree with that?

1 A. That's what this says, yes, sir.

2 Q. And that was a movement from Philadelphia to
3 Philadelphia?

4 A. It appears to be.

5 Q. Now, does that movement also show up in your
6 listing by destination city?

7 A. It would, yes, sir.

8 Q. So the revenue is duplicated between the two
9 listings and the summary of those listings it appears on the
10 Exhibit 1-B? Where the revenue is summarized on 1-B it's
11 duplicated?

12 A. If the origin was Pennsylvania and the destination
13 was Pennsylvania then it appears on both lists, yes, sir.

14 Q. Similarly, under Easton, Pennsylvania you have a
15 revenue of \$847.50 which shows up on both lists? Where
16 Easton is both an origin and a destination?

17 JUDGE SCHNIERLE: Excuse me, Mr. Radcliff. I don't
18 show any front loads on Easton on 1-B. I only show an
19 \$847.50 charge under front revenue.

20 BY MR. RADCLIFF:

21 Q. Your origin city indicates Easton destination,
22 Easton with a revenue and is that duplicated in the revenue
23 for Easton as a destination city?

24 A. Yes.

25 MR. RADCLIFF: The revenue is duplicated even though

1 there was no load.

2 JUDGE SCHNIERLE: I understand that. Thank you.

3 BY MR. RADCLIFF:

4 Q. Now, we have looked through the documentation
5 underlying Exhibit 1-B. I'll ask you that time period is
6 October 1, '87 through September 30, '88. Is that correct?

7 A. Yes, that's correct.

8 Q. But in your Exhibit 7 the supplemental testimony
9 which you referred to this morning at the bottom of the
10 first page where you talk about revenues then a portion of
11 that revenue is duplicated between the origin and the
12 destinations being duplicated where the origin and
13 destination was shown both as a Pennsylvania point?

14 A. Yes, I believe that's correct.

15 Q. So that the Easton to Easton, whether it was a
16 shipment or not, the revenue was duplicated in both columns
17 and that would be the same for many other accessorial
18 listings in these exhibits where there was zero load count
19 but revenue shown then on both origin and revenue listing?

20 A. I think it would be the same as some others. I'm
21 not going to agree that it will be many others.

22 Q. Shall we count?

23 A. It's up to you.

24 JUDGE SCHNIERLE: Excuse me. That only occurs where
25 the origin and destination are both the same location. Is

1 that correct -- on that printout?

2 THE WITNESS: It occurs where the location is shown as
3 being a Pennsylvania both as an origin and as a destination.

4 JUDGE SCHNIERLE: All right

5 BY MR. RADCLIFF:

6 Q. That would be true for all the revenue from East
7 Butler that we looked at earlier, the \$4,000.00 revenue from
8 East Butler?

9 A. From East Butler --

10 Q. From and to East Butler where it was the same in
11 both columns?

12 A. That's correct. \$4,000.00.

13 Q. And that would be true of any revenue shown where
14 there was an accessorial charge for an item on Exhibit 1-B
15 that had no shipments involved with that particular city
16 such as Edgely where there is \$273.00 in revenue with no
17 shipments shown so that it would then have been both Edgely
18 and Edgely as a shipment?

19 A. No, sir. It would not because the revenue of
20 \$273.00 inbound Edgely had an origin of Charlotte.
21 Therefore, it would not be on both shipments. It would be
22 on the into -- it should be on the into list because it's
23 into Edgely. It would not be on the from list because
24 Edgely was not the origin. Charlotte, North Carolina was
25 the origin.

1 Q. You indicated earlier that you did a cost
2 accounting study with regard to your trailer cleaning
3 facilities throughout your system?

4 A. Yes, sir.

5 Q. Are you familiar with the revenue generated by the
6 trailer cleaning facilities throughout your system?

7 A. No, sir.

8 Q. You don't know what percentage of the company's
9 overall revenue that would be?

10 A. Maybe one tenth of one percent.

11 Q. In your testimony in Exhibit 1 in answer to
12 question 9 on page 5 and continuing on page 6 -- do you find
13 that?

14 A. Yes, sir, I do.

15 Q. You refer to a number of loads originating in
16 Pennsylvania during 1987 with revenue and loads coming into
17 Pennsylvania delivered in Pennsylvania with revenue. Do you
18 have any documents in the hearing room to support those 1987
19 loads or revenue?

20 A. The response to Matlack's interrogatories are the
21 only documents supporting those figures. Those figures were
22 generated in response to Matlack's interrogatories.
23 Interrogatory number 9, I believe, was calendar year 1987.

24 Q. You're showing me the answer that your Counsel
25 submitted as response to that interrogatory?

1 A. That's correct.

2 Q. You have no other documents to support those
3 figures?

4 A. No, sir.

5 MR. RADCLIFF: Thank you. I have no further
6 questions.

7 JUDGE SCHNIERLE: Mr. Malin?

8 MR. MALIN: My name is Ron Malin. I represent
9 Crossett. Maybe a few things -- basics to begin with

10 BY MR. MALIN:

11 Q. Is your company a public or private corporation?

12 A. It's private, sir.

13 Q. It's incorporated in what state, sir?

14 A. North Carolina.

15 Q. And are you one of the officers of the company or
16 a director of the company?

17 A. You're referring to director as far as the board
18 of directors?

19 Q. Right.

20 A. No, sir. I am not.

21 Q. Is it a private company? Is the ownership of the
22 company -- do you know who the owners are?

23 A. Yes, sir, I do.

24 Q. Who are they? Is there one family that owns it?

25 A. Yes. The Honbarrier family.

1 Q. Now, you have a terminal in Karns City. When did
2 you open this terminal?

3 A. January of 1987.

4 Q. And before January of 1987 then you had no
5 presence in Pennsylvania?

6 A. No, sir, that's incorrect. We had been at Parker,
7 Pennsylvania -- Parker, P-a-r-k-e-r -- for approximately
8 three years prior to opening the facility at Karns City.

9 Q. Where is Parker in relation to Karns City?

10 A. I'm going to say seven or eight miles. I'm not
11 exactly sure. A little bit further north of Karns City.

12 Q. So then three years before you opened Karns City
13 you had a facility in Parker?

14 A. That's correct, sir.

15 Q. What county is that in, sir?

16 A. I'm not sure of the county.

17 Q. Make some comparatives in your exhibit using the
18 company that I represent. Are you familiar?

19 A. I know the name. As far as complete details, no,
20 sir. I'm not.

21 Q. You don't know where they operate; where their
22 primary customers are, what their concerns are. Is that
23 correct?

24 A. Well, I know that some of your concerns are, some
25 of your primary concerns must be in Pennsylvania.

1 Q. Well, one we are headquartered in Warren,
2 Pennsylvania. Warren County and one facility there of size
3 is the United Refining Company. Looking at your exhibit, I
4 would say 1-B, you have not generated any movements out of
5 the county of Warren in interstate commerce. Is that
6 correct?

7 A. I would have to look at a map and see which
8 cities.

9 Q. Try Warren in Warren County. Warren, for openers,
10 is the city where United Refinery is located. In looking at
11 Exhibit 1-B, that would indicate you generated no revenue
12 for the City of Warren. Is that correct?

13 A. Yes, sir.

14 Q. And this exhibit covers how long a period of time,
15 sir?

16 A. It's from October 1st, 1987 through September
17 30th, 1988.

18 Q. So we are talking --

19 A. Twelve month period.

20 Q. -- twelve month period?

21 A. So, frankly, you were not granted any authority
22 for what reason who knows to serve the City of Warren or the
23 United Refining Company that would not have anything to do
24 with your past business. You have had no past business
25 there. Is that correct?

1 A. That's correct, sir.

2 Q. Okay. In fact, looking at your Exhibit 1-B and
3 just take one step further for Mr. Patterson, I counted
4 cities where you had a hundred shipments in or out more or
5 less and it would be Brideville, Camp Hill, Karns City,
6 Marcus Hook, Petrolia, Rochester, Reading and West
7 Middlesex, Pennsylvania in or out to -- or operatively?

8 A. Operatively.

9 Q. Just taking any place alone shows one-sided or the
10 other?

11 A. That sounds correct. You were going rather fast
12 but I think that sounds correct.

13 Q. Now, as far as you know, sir, none of those cities
14 are up in Northwestern Pennsylvania where Warren is
15 located. Is that correct?

16 A. I don't think they are.

17 Q. One thing I was interested in looking at your
18 Exhibit 1-B in comparing it and -- maybe I'm following the
19 same route. Forgive me for doing it but I came across, on
20 your destination exhibit, the City of Wayne. Is this a
21 destination?

22 A. I have the destination.

23 Q. Look at Wayne or alphabetically from the back?

24 A. Yes, sir.

25 Q. And I found you had some revenue from Wayne and to

1 Wayne on your exhibit, not much, but some?

2 A. Yes, sir.

3 Q. \$35.00 and \$65.00?

4 A. Thirty-nine and 65.

5 Q. Thank you for correcting me and yet you show no
6 loads and you show wax and miscellaneous and petroleum. As
7 far as items is concerned, why would they be listed as
8 shipments from points in Pennsylvania to points in Wayne
9 now? They are not Wayne to Wayne?

10 A. Right.

11 Q. Let's take petrolatum as an example and, Your
12 Honor, for reference I guess we are on page 69 and we are
13 looking at a movement from Pennzoil to Quaker State of
14 Bouler petroleum from Emlenton, Pennsylvania to Wayne,
15 Pennsylvania as an example. Now, why would that show up?

16 A. It appears to be the secondary portion of a
17 shipment that moved from Emlenton Quaker State at Emlenton
18 to another destination.

19 Q. Why would you know that?

20 A. May I look at the other document?

21 Q. You know these better than I, in fact, I only --

22 A. Looking at the other document which is a study of
23 loads from Pennsylvania by origin there are consecutive DR's
24 listed, one of which is the DR you just asked me about
25 showing Emlenton, Pennsylvania to Wayne, Pennsylvania and

1 the second one is a DR showing Emlenton, Pennsylvania to
2 Madison, Ohio same date, consecutive DR numbers --

3 Q. When you say -- I'm not trying to interrupt you.
4 I'm trying to understand. When you say consecutive DR
5 numbers, it's not the same number, is it? Or is it?

6 A. The number you asked me about H804832 and the one,
7 I believe, is coupled with that is H804831. It shows the
8 same date.

9 Q. Where does that show that one went?

10 A. It went to Madison, Ohio.

11 Q. Madison, Ohio?

12 A. Yes, sir.

13 Q. Now, how can I tell?

14 MR. CHESNUTT: Better let the witness finish the
15 answer.

16 BY MR. MALIN:

17 Q. Are you finished?

18 A. Except for saying it's the same terminal that
19 handled the loads. It's the same trailer on the same date.
20 One shows a load count and one shows zero load counts and
21 zero revenue as the indication to me that the first DR --
22 the one that you asked me about -- is the DR that's involved
23 in the blind shipment at the request of the customer.

24 Q. When you say blind shipment, how do I know from
25 your records other than trusting you as an honest man that

1 it did not, in fact, move from this point in Pennsylvania to
2 this destination in Pennsylvania for which you billed for it
3 over here so you got compensation on the blind movement to
4 Ohio.

5 How do I know that here as a distrusting, cynical
6 attorney on the other side who wants to make sure that you
7 have no PUC authority here. We'll play it straight.

8 A. Except for the fact that I came all the way up
9 here and I was sworn in here this morning to tell the truth,
10 you have to take my word for it today and my explanation of
11 the printouts. That's all I have to offer you today.

12 Q. So what we have is your word. We don't have any
13 underlying documents to show actually where that movement
14 went from. Is that correct?

15 A. No, sir.

16 Q. Now --

17 JUDGE SCHNIERLE: Excuse me. You have no underlying
18 documents here today. I trust you have underlying documents
19 that you could produce.

20 THE WITNESS: Oh, yes, sir

21 BY MR. MALIN:

22 Q. Now, the same thing would be true of any other
23 shipment for which you had a blind document during this
24 period of time on one of these computer printouts and
25 referred to in this exhibit?

1 A. Yes, sir.

2 Q. How many -- how many times does this occur? How
3 many -- approximately how many zeroes do you have scattered
4 throughout here. Let's just take the community of Wayne,
5 itself; the destination of Wayne, itself. How many zeroes
6 do you have just for the destination Wayne?

7 A. Twenty-eight.

8 Q. And for every one of those 280 load destinations,
9 how many of them stated that if you believe the origin on
10 this blind document, how many of those origins were in
11 Pennsylvania of those 28?

12 A. All of them.

13 Q. Twenty-eight. So your computer printout shows 28
14 intrastate moves in the State of Pennsylvania for which you
15 say, no, we never really made the move. These are blind
16 documents?

17 A. My printout doesn't show any intrastate movement
18 from Pennsylvania to Wayne. It shows zero movements from
19 Pennsylvania to Wayne.

20 Q. Because of the load factor?

21 A. Correct.

22 Q. But not in the origin or the destination factor?

23 A. Correct.

24 Q. Now, that was printed from what?

25 A. It was printed from an IBM system 38 using IBM

1 software package called Query in which we ask it to print.
2 We gave it certain parameters. It accessed the billing
3 file. The parameters were to select dates between a range
4 of October 1st, '87 through September 30 of 1988. We asked
5 it to select destination equal to Pennsylvania and we asked
6 it to sort our destination city.

7 It has -- the package has no "if" logic which means
8 we can't say if certain things exist, print it. We have to
9 take what it prints when we give it some parameters.

10 JUDGE SCHNIERLE: Excuse me, Mr. Malin. I'd like to
11 ask a question. The 28 Wayne shipments, are they all the
12 same -- I'm going to say real shipper?

13 THE WITNESS: No, sir. I don't believe they were.
14 No. There are, I believe, there are two different
15 shippers. Just a quick glance involved they are all going
16 to the same 3 shippers.

17 JUDGE SCHNIERLE: Three shippers?

18 THE WITNESS: Yes, sir. All going to the same
19 consignee.

20 BY MR. MALIN:

21 Q. And how many origins, for the judge?

22 A. I believe there is three of those, three origins.

23 JUDGE SCHNIERLE: And these are the -- it's the
24 consignee I take it then, that's asking for the blind
25 shipment?

1 THE WITNESS: That would be correct.

2 JUDGE SCHNIERLE: That's your indication? Thank you.

3 BY MR. MALIN:

4 Q. Just to pursue that one more time a little bit
5 here, one of these shows a charge of \$65.00. Is that
6 correct?

7 A. Yes, sir, that's correct.

8 Q. And that's what appears on your Exhibit 1-B?

9 A. Yes.

10 Q. You have never had, according to your Exhibit 1-B
11 during this period of time, a shipment into or out of Wayne?

12 A. Correct.

13 Q. And yet you have money on your Exhibit 1-B \$39.00
14 and \$65.00. What were those charges for if the shipments to
15 or from Wayne were never there?

16 A. Well, looking at the amounts \$39.00 and \$65.00
17 there appear to be detention of vehicle charges.

18 Q. Now, where would that detention have occurred?
19 What city?

20 A. It would have occurred at the origin that's listed
21 here.

22 Q. The origin in Pennsylvania?

23 A. It would be either Rouseville, Emlenton or Farmers
24 Valley.

25 Q. Why would one of them be listed at one \$39.00

1 being from and one \$65.00 being to Wayne?

2 A. Well, let's look --

3 Q. I'm talking about your exhibit now. That's where
4 it's listed. You might check your exhibit not the
5 underlying document and then maybe you can explain why one
6 is an inbound charge, so to speak, and one is an outbound
7 charge in a city that you have never made a shipment to or
8 from?

9 A. Well, we have \$65.00 shown on the inbound side of
10 the report.

11 Q. That's right. From.

12 A. From. And we have a 39 charge on the outbound
13 side. Looking at the outbound side, it would appear to be
14 the portion of the shipment that involved a further movement
15 or the movement actually to Brooklyn, New York so there are
16 normally --

17 Q. Excuse me?

18 MR. CHESNUTT: Please let him finish.

19 THE WITNESS: My answer is finished.

20 BY MR. MALIN:

21 Q. Why would the \$65.00 not have been charged to
22 either Brooklyn, New York or Rouseville or where some point
23 that had a relationship with the shipment as you see?

24 A. It is not a document that says where the charge
25 was billed or where it occurred. It's a document that says

1 this is revenue that was generated. One report is revenue
2 or loads showing an origin of Pennsylvania.

3 That's the first two columns of Exhibit 1-B and it's
4 backed up by this printout and says loads from Pennsylvania
5 by origin. The 3rd and the 4th columns of 1-B represent
6 loads and revenue to points in Pennsylvania. It is backed
7 up by this document that is entitled loads inbound and to
8 Pennsylvania. I have explained more than one time how we
9 get involved in what we call at Central Transport blind
10 shipments. They maybe called other things by other carriers
11 but we call them blind shipments.

12 Q. Okay. Maybe -- but here you have \$65.00 charges
13 against Wayne?

14 A. Because on the DR --

15 Q. Now, if, in fact, that shipment was somewhere else
16 where you charged for it to Brooklyn, New York or Ohio or
17 whatever it was, why wasn't that \$65.00 charge attributed to
18 that other bill of lading where the actual shipment went?
19 Why was it charged to this particular blind bill of lading?

20 A. Because that is not a summary of bill of lading.
21 A bill of lading is what we call the documents that we get
22 from the customer. The bill of lading we call our own
23 internal document a delivery receipt. We say DR for short
24 because I have trouble saying delivery.

25 It's a summary of DR's and on this particular DR that

1 shows Emlenton to Wayne zero loads at \$65.00 that's the DR
2 on which that demurrage occurred, it would be a loading
3 demurrage. Over here on where we are going from
4 Pennsylvania, the \$39.00 that shows, it shows on a shipment
5 from Wayne to Brooklyn or it shows on a line from Wayne to
6 Brooklyn there was no load involved. There was a demurrage
7 of \$39.00.

8 Again, by knowledge of how we do our billing, that is
9 an unloading demurrage that took place in Brooklyn. It
10 shows on the front Pennsylvania list because our DR which is
11 one of a series of DR's involving this load, showed Wayne as
12 an origin.

13 Q. Okay. I hear what you're saying but I'm having
14 some difficulty because this \$65.00 charge could be
15 attributed to a DR where it actually was or it could be
16 attributed to a DR where it didn't actually went or would it
17 be attributed to both?

18 A. It is attributed to this DR. That's the DR on
19 which it occurred. That's the DR which this covered the
20 load. It covered the actual loading. You have to have a
21 series of DR because you have a customer in the middle
22 that's asking you to maintain a certain degree of -- I
23 hesitate to use the word secrecy or confidentiality on what
24 he wants done with the shipment.

25 You have to prepare a series of DR's in order to

1 protect that wish of the customer. If you don't protect it,
2 you may be sued by the customer. If you divulge something
3 that you have -- that they have asked you not to divulge and
4 you've caused him some type of grief --

5 Q. For every blind DR you would have a valid DR where
6 it actually went to and from?

7 A. Right.

8 Q. And I guess my question is why didn't you put the
9 charge on the valid DR? Why did you put the charge on the
10 invalid DR as it relates to this \$65.00?

11 A. Let's take a loading demurrage. Let's take this
12 one that --

13 Q. Take the 65.

14 A. That's the one that I'm referring to. It's a
15 \$65.00 charge occurring at Quaker State and Boulter,
16 Pennsylvania. It occurred at Quaker State and Emlenton,
17 Pennsylvania. Quaker State thinks the loads went to Wayne.
18 We have a loading demurrage that is billable to Quaker
19 State.

20 We have to put it on this DR so as not to divulge
21 that the load went to Brooklyn. We have an unloading DR and
22 an unloading demurrage where the consignee thinks the load
23 came from Wayne rather than Emlenton. We have to put that
24 charge on that DR so as not to divulge where the load came
25 from. The freight charges go on the other DR's. He's happy

1 and we have preserved his wish to maintain confidentiality
2 on what he requested us to do on the load.

3 Q. So if, then, Quaker State or somebody is supposed
4 to be paying a sales tax or whatever there may be or to some
5 state if they're told it's going to Pennsylvania and they
6 couldn't pay that, that's somebody else's problem; not
7 yours?

8 A. I have no knowledge about what kind of sales tax
9 Quaker State may or may not have to pay.

10 Q. Now, sir, looking at your Exhibit 1-C if I
11 understand it correctly, if I took your vehicles that are
12 presently based in the New Jersey, Baltimore, Karns City
13 terminal and made ratio of those which you own with those
14 which you lease from owner/operators of your own numbers, I
15 would get 36 owned and 21 leased. Is that correct?
16 Tractors?

17 A. I'm sorry. What did you just say?

18 Q. Adding up the vehicles --

19 A. Not the whole question. Just the last thing you
20 said.

21 Q. Tractors.

22 A. Karns City, Baltimore, and Paulsboro. I get 34
23 owned, 21 leased.

24 Q. Here your ratio is more like three to two as far
25 as company vehicles versus leased vehicles as to those

1 vehicles that operate in this territory. Is that correct?

2 A. Those are the ones based here. The ones that we
3 operate in the territory would be reflective of the overall
4 ratio because we have equipment from all locations coming
5 into the territory.

6 Q. Wouldn't -- in your underlying -- your computer
7 printout indicate that most of the time you would be
8 operating in this area from vehicles from these terminals?

9 A. I have a document that would answer that question
10 exactly but I don't know where it is.

11 Q. Don't let me push you. If you don't know, you
12 don't know.

13 A. Sitting here I do not know, but I had a study that
14 would answer that precisely and I don't know where it is.

15 Q. In any event, let me ask you a question. You
16 hardly know anything about Crossett but you made some
17 analysis of Crossett. Did you personally make that analysis
18 of Crossett?

19 A. I made them in conjunction with Mr. Chesnutt.

20 Q. Now, for example, are you suggesting in any
21 manner, shape or form that Crossett's current liability
22 ratio is insufficient?

23 A. No, sir. We are saying that ours is better.

24 Q. Are you saying that there is anything wrong in
25 Crossett operating with its ratio of company owned vehicles

1 and owner/operators in the Northwestern Pennsylvania area?

2 A. No, sir. We are saying that we prefer to do it
3 our way.

4 Q. But your way you don't know what your ratio would
5 be. Is that correct?

6 A. I think we do. I think that our ratio is
7 representative of the company as a whole.

8 Q. Let me ask you about your finances in a second
9 here. It seemed to me, and I'm not sure whether I'm missing
10 something but when you talk about cash in your financial
11 statements it seems like you have a minus after your first
12 number. For example, look at Exhibit 1 at page 1. It says
13 cash and working funds. What does the minus after that
14 number mean?

15 A. The minus is the balance in the checkbook at High
16 Point. It does not reflect the balance in the bank
17 account. The bank accounts are monitored every day. Cash
18 is transferred into the bank accounts as needed. If it is
19 not needed, it's kept in temporary cash investments where it
20 earns interest.

21 Q. Does that mean you're \$780,792.61 in the red as
22 far as that particular cash working fund account is
23 concerned on December 31, 1986?

24 A. As far as the bank is concerned.

25 Q. No. As far as you're concerned, you wrote checks

1 on it that haven't cleared yet?

2 A. Yes.

3 Q. That means that right now at that minute your
4 accountant says your balance of cash is minus \$780,792.61 as
5 of December 31st, 1986. Is that correct?

6 MR. CHESNUTT: Objection. He's asking what his
7 accountant says. I don't think Mr. Fesperman knows what his
8 accountant says. I don't think his accountant talks to
9 him.

10 MR. MALIN: What does he say? What does it mean?

11 MR. CHESNUTT: I object to the question. I want a
12 ruling on the objection, please.

13 MR. MALIN: It's a simple question. Does minus mean
14 minus?

15 JUDGE SCHNIERLE: I'm going to sustain the objection.
16 I think he's correct. Could you explain what the minus
17 means in the cash working funds category on page 1 of
18 Exhibit 1-H.

19 THE WITNESS: Can I?

20 JUDGE SCHNIERLE: Yes, sir.

21 THE WITNESS: It means that as far as the checkbook at
22 High Point, North Carolina is concerned the balance is a
23 negative balance. We have written checks that have not
24 cleared.

25 JUDGE SCHNIERLE: Checks amounting to \$780,792.61?

1 THE WITNESS: Right. When it comes time for those
2 checks to clear, that money will be transferred from the
3 temporary cash investments account and they will clear. The
4 checking accounts are left as far as the actual amount at
5 the bank.

6 They're left as low as Possible so that the amount of
7 cash at Central Transportation can earn interest while not
8 being used and the money is shoved into the checking account
9 to cover the checks that have been written.

10 You have to keep in mind that all these balance
11 sheets are a snapshot of a particular point in time on
12 December 31 or I think it's June 30th, 1988. You know, the
13 bottom line is that as of December 31st, 1986 Central had
14 cash of \$3,421,503.96.

15 BY MR. MALIN:

16 Q. You had cash investments?

17 A. We had cash -- cash special deposits, temporary
18 cash.

19 Q. What are the special deposits?

20 A. What are they?

21 Q. Um-hum.

22 A. I don't know. I'm assuming they're CD's.

23 Q. Well, you don't know whether they're 30-day,
24 60-day, 90-day?

25 A. No. I do not.

1 Q. You don't know whether there is any time period to
2 get that money out. Is that correct?

3 A. No, I don't.

4 Q. Would the same thing be true of temporary cash
5 investments? Is it one year treasury bills? Do you know
6 what they are?

7 A. I do not know the details.

8 Q. Again, you do not know the whether they are
9 instantaneously available or whether they are tied up in
10 something that is maturing in the short term basis. Is that
11 correct?

12 A. The details I do not know.

13 Q. As far as a checking account is concerned that
14 snapshot showed a minus figure as of December 31, 1986?

15 MR. CHESNUTT: Objection; repetitive.

16 JUDGE SCHNIERLE: I think I sustained it the last
17 time. This time I'm going to overrule it because I think
18 it's a fair question but I think -- will you give your
19 answer? I think we have finished with that subject at this
20 point.

21 BY MR. MALIN:

22 Q. I'm pursuing it just a little further, Your Honor,
23 going to December 31, 1987 that would show a like situation
24 of a minus of \$690,377.00. Is that correct?

25 A. That is correct.

1 Q. Pursuing it just a little further, it's going to
2 snapshot as of June 30, 1988. That would show a minus
3 figure of \$1,034,238.00. Is that correct?

4 A. That is what it shows.

5 Q. In making your analysis of Crossett, did you find
6 any negatives in their cash checking account?

7 A. I don't know.

8 Q. Pardon?

9 A. Our analysis of Crossett is looking at total
10 current assets to total current liability. I don't know
11 what the details are.

12 Q. So looking at your Exhibit Number 3, could you
13 tell me how was that produced?

14 A. We took the same basic information from which we
15 had prepared Exhibit 1-B and instead of asking the computer
16 to sort that information about origin or destination we
17 asked it to sort it by commodity and we very laborously
18 listed the commodities in prepared Exhibit 3 --

19 Q. Did you delete from this list any items because of
20 your restrictive amendment or does this list purport to be
21 anything that might have appeared on anything of your
22 computer printouts?

23 A. We did not delete any products because of the
24 amendment.

25 Q. Did you delete any item for any reason such as

1 maybe this being a delivery receipt that wasn't truly
2 applicable or like some of the other situations we discussed
3 or is this just a listing of everything that showed up
4 anywhere on any one of those computer printouts?

5 A. I made some deletions.

6 Q. You made some deletions?

7 A. Yes, sir.

8 Q. What intrigues me a little bit in light of being
9 animal or vegetable, because you don't have a former two
10 marked off. I'm looking at page 3 item code 461. Why would
11 that appear on this list if it doesn't have a from or to
12 asked?

13 A. I would think that there is a typographical error
14 and from or to was left out. Other than that, I don't know.

15 Q. Have you gone through this list at all to
16 determine what items, if any, or what items, if any, would
17 be deleted from this list appropriately under your
18 restrictive amendment?

19 A. I don't think any items can be deleted from this
20 list because of the amendment. The exhibit is showing what
21 we have handled into or out of Pennsylvania, not showing
22 what we would propose to handle within Pennsylvania if we
23 are granted any authority, so I don't think the amendment
24 would cause any deletions.

25 Q. So this is not meant to be what you will transport

1 that would come from your shipper witnesses, I take it?

2 A. That is correct, sir.

3 Q. Have you prepared a list of shipper witnesses for
4 these proceedings? Do we know who the shippers are going to
5 be?

6 MR. CHESNUTT: If the Court please, there has been an
7 arrangement in place since August 31st to which all counsel
8 has been advised as to when notification of shipper
9 witnesses is going to be made. Mr. Malin is on that service
10 list. He gets those notifications just like all the other
11 counsel do.

12 MR. MALIN: My question was, does he know what
13 shippers are going to be, Your Honor. It's a simple
14 question. Yes or no.

15 JUDGE SCHNIERLE: Excuse me. What is the
16 arrangement? When are you to notify them?

17 MR. CHESNUTT: Notify them 10 days in advance of the
18 witnesses' appearance. And two notices have gone out. The
19 witnesses for tomorrow were noticed 10 days ago. The
20 witnesses for next week in Philadelphia were noticed this
21 past Friday.

22 The witnesses for the Pittsburgh session will be
23 noticed this Friday -- this coming Friday. This was an
24 arrangement which I circulated on August 31st that when --
25 in response to an interrogatory of Mr. Wick.

1 Mr. Wick acceded to that. As far as I know all other
2 counsel acceded to it. They have been given information.

3 MR. MALIN: I'm not objecting. I'm just wondering if
4 we can take Exhibit Number 3 and he could give me an idea of
5 what items we are going to talk about. Knowing that this
6 load list is not necessarily relevant. That's what I'm
7 trying to do. I'm not trying to change Mr. Chesnutt's
8 arrangement.

9 MR. CHESNUTT: Well, if that's the purpose of the
10 question, that's equally invalid because the testimony is
11 that this is a listing of the shipments that are reflected
12 of the commodities that were transported on the Exhibit
13 1-B.

14 And that's all it purports to be and that line of
15 examination that Mr. Malin indicates that he's going to
16 follow I would object to on grounds of irrelevance.

17 JUDGE SCHNIERLE: Well, I'm going to sustain the
18 objection. I also believe it's beyond the scope of direct
19 of this witness.

20 MR. MALIN: All right, Your Honor. I have nothing
21 further, Your Honor.

22 JUDGE SCHNIERLE: I have a couple questions.

23 BY JUDGE SCHNIERLE:

24 Q. Directing your attention to Exhibit 1-B, you show
25 601 loads originating from Karns City. Do those originate

1 at your terminal or is there a shipper at Karns City that
2 you're transporting for?

3 A. There is a shipper there.

4 Q. Who might that be?

5 A. It's Pennzoil.

6 Q. Are you a contract -- I trust you have rights to
7 North Carolina?

8 A. Yes, we do, sir.

9 Q. Is there a scheme of regulations similar to
10 Pennsylvania's or is it to the ICC where you can get broad
11 contract carrier rights?

12 A. I'm not a hundred percent certain of the rules
13 regarding contract rights within North Carolina because we
14 are a common carrier in North Carolina. I believe that they
15 have loosened up their regulations in North Carolina
16 somewhat along the lines of the ICC, but I'm not certain to
17 what extent.

18 Q. But you're familiar with the difference between
19 regulation in Pennsylvania and regulation on an interstate
20 level?

21 A. Yes, sir. Very much so.

22 Q. I take it you have contract -- the typical broad
23 type of contract carrier type from the ICC that specifies no
24 shipper but permits you to transport as a contract carrier
25 for anybody in the geographical area. Is that the case?

1 A. That's correct, sir.

2 Q. You indicated that drivers are paid a percentage
3 of revenue. Do you consider them employees and withhold
4 income tax and Social Security and so forth or do you treat
5 them as independent contractors?

6 A. We have both. We have --

7 Q. Well, the independant contractors would be
8 owner/operators?

9 A. Right, sir. But the company drivers are
10 employees.

11 Q. Are employees?

12 A. Yes, sir.

13 Q. And you withhold taxes and so forth?

14 A. Yes.

15 Q. And I take it the difference being that an
16 owner/operator owns his own tractor typically or is
17 purchasing it or something -- has some sort of ownership
18 interest in the truck?

19 A. Yes.

20 Q. Finally, directing your attention to Exhibit
21 Number 5 which is the revised scope of authority, there are
22 a couple of descriptions in here that I don't recognize, and
23 I'd like you to simply educate me, if you would. In the
24 first paragraph, the 4th line down, second item over is dry
25 litharge is that --

1 A. That's correct.

2 Q. What is that?

3 A. I don't know, myself.

4 MR. CHESNUTT: If the Court please, I really will take
5 responsibility for this exhibit in terms of constructing
6 it. And the witness has taken responsibility in terms of
7 authorizing it. The commodities that you see here are
8 designed to track verbatim certain protestants'
9 authorizations from this Commission.

10 And neither I nor the witness can be held accountable
11 for what this Commission has used to describe certain
12 products. But the dry litharge in particular is stated in
13 bold face type because that was the request of Mr. --
14 Seaboard Tank Line's Counsel Peter Loftus wanted that
15 commodity eliminated and we eliminated it after consultation
16 with the client. And it appears in the certificate of
17 Seaboard Tank Lines.

18 JUDGE SCHNIERLE: There is only one other along those
19 lines that I make an inquiry about and the next restrictive
20 amendment there is turbo fuel.

21 Mr. Chesnutt: Again that is out of the, I believe,
22 it's the certificate of Samuel Coraluzzo, Incorporated. I
23 believe that's where that appears.

24 MR. PATTERSON: Your Honor, off the record for a
25 moment?

1 (A brief discussion was held off the record.)

2 BY JUDGE SCHNIERLE:

3 Q. You're familiar with Exhibit Number 5 and the
4 modifications that were made this morning?

5 A. Yes, sir, I am.

6 Q. And the interpretation regarding limestone and
7 limestone products as including lime?

8 A. Yes.

9 Q. And you're agreeable to those modifications on
10 behalf of the company?

11 A. Yes, sir, I am.

12 JUDGE SCHNIERLE: Thank you. I have no further
13 questions at this time. Mr. Chesnutt, do you have any
14 redirect?

15 MR. CHESNUTT: Might I have a recess and see if I can
16 shorten up the redirect?

17 JUDGE SCHNIERLE: Shall we return in 10 minutes?

18 MR. CHESNUTT: Ten minutes will be fine.

19 JUDGE SCHNIERLE: It's presently 3:30 by my watch.
20 We'll return by 20 till four.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SCHNIERLE: We'll proceed with redirect
23 examination of Mr. Fesperman.

24 REDIRECT EXAMINATION

25 BY MR. CHESNUTT:

1 Q. Mr. Fesperman, I heard one of the counsel to the
2 left of me ask you a question about those shipments from the
3 Unitank terminal service in Philadelphia which I recall as
4 having been framed this way and if the record is different
5 then so be it, the but I heard the counsel say, so it is
6 your position, Mr. Fesperman, that if it had a prior
7 movement by water, then you transport it. Do you recall a
8 question of that sort to which I believe you answered yes?

9 A. Yes, sir. I am familiar with that.

10 Q. Did you really mean that?

11 A. I meant it to the extent that I assumed we were
12 talking about a movement by water from an out of state or
13 foreign point. If it was a movement by water within the
14 same state, then I would not take the same position.

15 Q. All right. The computer printouts which underline
16 Exhibit 1-B and about which you've been examined
17 extensively, could you explain for the judge what use
18 documents of that sort and documents generated in that
19 manner are made in the company's business?

20 A. Primary use of documents of this type is to
21 analyze a segment of traffic, whether it be a particular
22 shipper's traffic or a particular consignee's traffic or may
23 be a traffic lane. A lane just, for example, being North
24 Carolina to Pennsylvania.

25 If we wanted to see what was moving, how it was

1 moving, how it was being handled, we would generate reports
2 using the same DR file on the 38 computer and use Query to
3 generate reports and then we would analyze that traffic.

4 Perhaps, depending on where we wanted to go and what
5 the nature of that analysis dictated, we would use that
6 information to run through our cost model to see how well we
7 were doing, whether we needed to go to the customers, talk
8 about rates or talk about charges generally used to analyze
9 traffic of some sort.

10 MR. CHESNUTT: Those are all the questions I have of
11 the witness. I offer the exhibits into evidence.

12 MR. PATTERSON: A moment, Your Honor?

13 JUDGE SCHNIERLE: Sure.

14 MR. CHESNUTT: Exhibit 1 through 7.

15 MR. PATTERSON: No objection.

16 MR. WICK: No objection.

17 MR. RADCLIFF: I have objection to that portion of
18 Exhibit 1-A page 5 in answer to question number 9 carrying
19 through the first four sentences of the answer about a third
20 of the way down on page 6 where he refers to 1987 traffic
21 because that is not supported by any document in the hearing
22 room.

23 JUDGE SCHNIERLE: Mr. Malin, do you have any
24 objections?

25 MR. MALIN: I have one objection, Your Honor. I

1 object to Exhibit Number 3 as being not relevant to this
2 particular proceeding. The witness on the stand indicated
3 as to items or commodities that the shipper was relevant and
4 this is just a list of items that came out of the computer
5 printout without regard to -- really to this proceeding.

6 MR. RADCLIFF: I join in that objection, Your Honor,
7 because the witness also indicated that he made some
8 deletions as he prepared that exhibit from the underlying
9 documentation.

10 JUDGE SCHNIERLE: Mr. Chesnutt, do you have a response
11 to that?

12 MR. CHESNUTT: Yes. My response is that the Exhibit 3
13 addressing them in reverse order -- that the Exhibit 3 is
14 here with underlying data. It's available -- it was
15 available for examination. It simply is offered for the
16 purpose of showing the capability of the company to handle a
17 variety of products and it's products that were actually
18 handled.

19 The objections to Exhibit 1 at page 5 -- I believe it
20 was at page 5.

21 MR. RADCLIFF: Yes, it was.

22 MR. CHESNUTT: And on to page 6, we didn't offer that
23 information for the purposes of indicating specific origins
24 or specific destinations in Pennsylvania. It's a
25 generalized statement about the level of business I think it

1 has substantial credibility.

2 I don't think this witness would have furnished that
3 data in response to an interrogatory directed to him
4 lightly. I don't think he would have been that specific as
5 to the number of loads and the revenues without having
6 looked at statistics of some sort in order to do that.

7 It's very -- I think furthermore that the level of
8 participation in traffic into and out of Pennsylvania for
9 calendar year 1987 and for the first 6 months of 1988 as
10 shown on there are very consistent with the more detailed
11 information shown for a period of time that spanned both of
12 those years.

13 For those reasons, I think at best the objections of
14 Mr. Radcliff go to the weight of that evidence and I think
15 the objections of Mr. Malin of exhibit are totally
16 unwarranted.

17 JUDGE SCHNIERLE: I'm in agreement with your response
18 with respect to Exhibit 1. I think that your objection is
19 more to the weight of the evidence, Mr. Radcliff, than to
20 the admissibility and I'm going to overrule your objection.

21 I'm also going to overrule your objection, Mr. Malin,
22 because I believe that for a limited purpose for which
23 Exhibit 3 was offered, it's relevant to the proceeding. Do
24 you have any --

25 MR. PATTERSON: Briefly, Your Honor, some redirect.

1 JUDGE SCHNIERLE: Recross?

2 MR. PATTERSON: Recross. I'm sorry.

3 JUDGE SCHNIERLE: Exhibits 1 through 7 -- that's

4 Central Transport's Exhibits 1 through 7 are admitted into
5 evidence.

6 (Central Transport Exhibits Nos. 1 through 7 were
7 admitted in evidence.)

8 JUDGE SCHNIERLE: Mr. Patterson?

9 RECROSS EXAMINATION

10 BY MR. PATTERSON:

11 Q. Mr. Fesperman, your position on the
12 inter/intrastate issues that we have talked about in
13 connection with the Unitank terminal loads which are
14 illustrated by Matlack Exhibit Number 1. Would your
15 position be the same as I understand it -- let me state it
16 first so that we are talking the same language.

17 If traffic comes into Pennsylvania via boat from
18 another country or from another state that you regard the
19 ongoing movement by motor carrier within the State of
20 Pennsylvania as an interstate movement, is that your
21 position?

22 A. Yes.

23 Q. Would the same be true within your view with the
24 prior movement of that sort by rail or motor?

25 A. Yes.

1 Q. And would that be so no matter how much time
2 elapses between the time the commodities came into the state
3 and the time they move via motor carrier within the state?

4 A. As I've been advised, yes, sir.

5 Q. And that is true regardless of whether the
6 commodities have been sold at the time they come into the
7 state. That is sold to the ultimate user in Pennsylvania?

8 A. That would be correct, sir.

9 Q. Who may I ask gave you that opinion?

10 A. The, I think, my earlier answer was the original
11 opinion that the company had obtained, I do not know who
12 that opinion came from.

13 Q. Yes, sir.

14 A. The most recent opinion was obtained from an
15 attorney in Washington Steve Heisley.

16 Q. And that was obtained when, sir, approximately?

17 A. Approximately three weeks ago.

18 Q. Is that opinion in writing? I think you did say
19 it was.

20 A. It is not.

21 Q. Is the question that you posed to Mr. Heisley in
22 order to get that opinion in writing?

23 A. It is not. It was a telephone conversation.

24 Q. Were you privy to that conversation?

25 A. I had the conversation with him.

1 Q. Would you indicate for this record as best you can
2 the question that you asked? To be clear, sir, one of the
3 great problems with all of this is that one asked a question
4 can only respond in terms of that question. And I'm trying
5 to get my arms around for the purposes of this record, the
6 situation that you posed or the question that you asked him
7 -- to Mr. Heisley to answer?

8 A. The basic question was what is the current status
9 on interstate versus intrastate movements in the United
10 States. And I referred to some publicity that has been in
11 various motor carrier trade journals over the last year or
12 so involving the State of Texas or the State of Missouri
13 where rulings have been made as to what people say is inter
14 and other people are saying is intra.

15 I asked him what the status was and his response was
16 basically if it moves into a state by water or by rail or by
17 truck or any other means -- pipeline, he mentioned pipeline
18 and it comes into that state and then subsequently moves
19 within the state. The fact that it came into the state from
20 out of the state, it was his advice that it was interstate
21 traffic.

22 Q. Have you sought opinions more specifically from
23 your present counsel in that same regard?

24 A. I have not.

25 Q. Do you intend to?

1 A. I will, yes, sir. And I will abide by that advice
2 also.

3 MR. PATTERSON: That's all I have, sir. Thank you.

4 JUDGE SCHNIERLE: Mr. Wick?

5 MR. WICK: I have nothing further.

6 MR. RADCLIFF: No further questions.

7 MR. MALIN: Nothing further.

8 BY JUDGE SCHNIERLE:

9 Q. I have a couple more questions about Unitank
10 service. You claim to haul this under your ICC authority.
11 Is that correct?

12 A. That's correct, sir.

13 Q. And would that be under your ICC contract carrier
14 authority?

15 A. In this particular case, yes. Because we do have
16 a contract with Interstate Chemical which is the consignee,
17 I believe.

18 Q. In these cases?

19 A. Yes, sir.

20 Q. Is that always the case of transporting from
21 Unitank terminal?

22 A. To the best of my knowledge, shipments from
23 Unitank going to Interstate are to someone they designate.

24 Q. Interstate is a middleman essentially. Is that
25 correct?

1 A. Yes, sir.

2 Q. And do you know if they deal with -- they don't
3 own Unitank Terminal Service?

4 A. I don't know.

5 Q. You don't have any idea?

6 A. No, sir.

7 JUDGE SCHNIERLE: I have no further questions.

8 MR. CHESNUTT: I have no questions in response to
9 recross or to the Judge's examination.

10 JUDGE SCHNIERLE: Anything further?

11 MR. PATTERSON: I think we ought to move Protestant
12 Matlack and Protestant Refiners Exhibits two 1's into
13 evidence.

14 JUDGE SCHNIERLE: Any objection?

15 MR. CHESNUTT: No. None whatsoever.

16 JUDGE SCHNIERLE: Exhibit Matlack Exhibit Number 1 and
17 Refiners Transport Exhibit Number 1 --

18 (Discussion held off the record.)

19 JUDGE SCHNIERLE: We'll admit into evidence Matlack
20 Exhibit 1 and Refiners Transport Exhibit 1.

21 (Matlack Exhibit No. 1 and Refiners Transport Exhibit
22 No. 1 were admitted in evidence.)

23 MR. PATTERSON: One further matter, Your Honor, with
24 respect to the discovery involving hazardous material
25 difficulties. Mr. Chesnutt and I will endeavor to get

1 together to come up with a timetable. One of my concerns is
2 that this case is on a rather quick track in terms of
3 hearings.

4 JUDGE SCHNIERLE: Yes. I wanted to discuss that as
5 well because I'm not entirely -- I was not privy to the
6 scheduling of this hearing and I would like to know what you
7 people expect to have over the next couple weeks. Why don't
8 we go off the record to discuss scheduling in general at
9 this point.

10 (Discussion off the record.)

11 JUDGE SCHNIERLE: We have had a brief discussion of
12 further scheduling of hearings. At this point, it appears
13 that it will be reconvening tomorrow at 10:00 a.m. and
14 Applicant will be presenting the testimony of two
15 witnesses. And if there is nothing further, the hearing
16 will stand in recess until tomorrow morning at 10:00 a.m.

17 (Whereupon, at 4:03 p.m., the hearing recessed to
18 reconvene at 10:00 a.m. the following day.)

19 I hereby certify that the proceedings and
20 evidence are contained fully and accurately in the notes
21 taken by me during the hearing of the within cause, and that
22 this is a true and correct transcript of the same.

23
24
25

JAN H. JOHNSTON

HOLBERT ASSOCIATES

(717) 232-4506

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JAN H. JOHNSTON
Suite 401, Kunkel Building
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