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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00108155 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. Further Hearing.

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Harrisburg, Pennsylvania
June 28, 1989

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Pages 605 to 701, inclusive

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JUL 19 1989

SECRETARYS OFFICE
Public Utility Commission

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HOLBERT ASSOCIATES
JAN H. JOHNSTON
Suite 401, Kunkel Building
301 Market Street
Harrisburg, Pennsylvania 17101

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CERTIFIED ORIGINAL

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00108155 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.
Further hearings.

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Stenographic report of hearing held
in Hearing Room 1, North Office Building,
Harrisburg, Pennsylvania,

RECEIVED

Wednesday,
June 26, 1989
at 10:00 o'clock a.m.

JUL 19 1989

SECRETARYS OFFICE
Public Utility Commission

- - - - -

BEFORE

MICHAEL SCHNIERLE, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

JAMES PATTERSON, ESQUIRE
800 Penn Mutual Tower
Philadelphia, Pennsylvania 19106
Appearing on behalf of Matlack, Inc.

HENRY M. WICK, JR., ESQUIRE
1450 Two Chatham Center
Pittsburgh, Pennsylvania 15218
Appearing on behalf of Refiners Transport &
Terminal Corp.

HOLBERT ASSOCIATES
Suite 401, Kunkel Building
301 Market Street
Harrisburg, Pennsylvania 17101

HOLBERT ASSOCIATES
(717) 232-4506

1 APPEARANCES: (Continued.)

2 WILLIAM J. O'KANE, ESQUIRE
3 102 Pickering Way
4 Exton, Pennsylvania 19341
5 Appearing on behalf of Chemical Leaman Corp.

6 WILLIAM CHESNUTT, ESQUIRE
7 100 Pine Street
8 P.O. Box 1166
9 Harrisburg, Pennsylvania 17108
10 Appearing on behalf of Central Transport, Inc.

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1 JUDGE SCHNIERLE: This is the time and place set for
2 a further hearing in the matter of the application of
3 Central Transport, Docket Number A-00108155. My name is
4 Michael Schnierle. I'm the Administrative Law Judge
5 assigned to preside over this case.

6 I note the appearances of William Chesnutt for the
7 applicant, Central Transport; James Patterson for protestant
8 Matlack, and Henry Wick for the protestant Refiners
9 Transport and Terminal Corporation.

10 I also note that I had received letters from Kenneth
11 Olsen and from Ronald Mayland indicating that they did not
12 intend to appear. Does anybody know if Chris Graf or Dave
13 Radcliff intend to be here today?

14 MR. CHESNUTT: It's my impression that they do not
15 intend to be here.

16 JUDGE SCHNIERLE: Because I did receive nothing from
17 them, but I believe they're still in the case.

18 MR. PATTERSON: Are they?

19 MR. CHESNUTT: We stipulated evidence concerning
20 their clients, and it's my recollection and I can tell you
21 --

22 JUDGE SCHNIERLE: They weren't going to cross examine
23 I think it was.

24 MR. CHESNUTT: And also they have no intention of
25 filing a brief. That's my perception.

1 JUDGE SCHNIERLE: I recall that now, yes. Thank
2 you. My understanding of the purpose of the hearing today
3 is to permit Matlack to put on its witness and Central has a
4 witness to testify at Matlack's request regarding certain
5 matters. Did you discuss the order among yourselves?

6 MR. PATTERSON: The only thing we discussed, Your
7 Honor -- Mr. Chesnutt and I discussed the fact that I would
8 call the witness and I think that he had no questions of the
9 Central environmental witness, if we may refer to him as
10 that.

11 JUDGE SCHNIERLE: All right. Are there any other
12 preliminary matters that we need to discuss?

13 MR. CHESNUTT: Yes, I have a preliminary matter in
14 this sense. My reading of the transcript of the testimony
15 indicates that I had an obligation to make a witness
16 available today, and I have a witness here.

17 The scope of that witness's appearance today,
18 according to the record, is to -- well, I better look at the
19 record to be sure. At page 62 of the transcript after the
20 Judge has ruled on Matlack Interrogatory questions 14 and
21 15, Counsel for Matlack states, I think we agreed earlier in
22 terms of Your Honor's order on the discovery matters that
23 this witness or some other witnesses, I guess if it is going
24 to be another, would be made available at some forthcoming
25 hearing to deal with those subjects which may come out of

1 the result of discovery.

2 And I indicate that the agreement is that -- I put
3 some qualifications in about waiving rights to interrogatory
4 appeal, which no long longer are valid -- we will comply
5 with the furnishing of discovery data and the providing of
6 the witness to address the issues which may come out of
7 discovery.

8 JUDGE SCHNIERLE: Well, I take it -- I've seen the
9 questions, I haven't obviously seen your answers.

10 MR. CHESNUTT: That's my point. You haven't
11 obviously seen the answers, and my point is under rule 5.342
12 that answers that were responded to on written
13 interrogatories may be used by a participant for an
14 appropriate purpose so far as admissible under the applicable
15 rules of evidence.

16 So I think that's where we are, and I think it's an
17 appropriate point now for me to indicate that I do not think
18 that these discovery responses or the subjects that they
19 raise are appropriate for introduction into evidence.

20 MR. PATTERSON: Your Honor, we are not there yet.

21 JUDGE SCHNIERLE: Why don't you wait until he calls
22 him and asks him a question? You can raise the objection
23 at that point.

24 MR. CHESNUTT: That's fine.

25 MR. PATTERSON: Your Honor, I will certainly do that

1 in such a manner that that objection can be treated at the
2 time and not try to skirt the issue.

3 JUDGE SCHNIERLE: All right. I think you're going to
4 call your witness first?

5 MR. CHESNUTT: No. I think we are going to call the
6 Central witness and I would like at least enough questions
7 to indicate who he is and have him state his position and
8 his qualifications.

9 MR. PATTERSON: Your Honor, I think this day is, by
10 agreement, mine and I'll run my case the way I've chosen and
11 the way I've organized the way it to be run, and I would at
12 this point like the opportunity to call a witness which I
13 thought was where we were.

14 JUDGE SCHNIERLE: I'm in agreement with you, Mr.
15 Patterson. I think it's appropriate that -- as I see the
16 agreement to furnish the witness, that would have been in
17 lieu of requesting a subpoena to have the witness here. And
18 if Mr. Patterson is going to call the witness, he's entitled
19 to choose the order in which he wishes to call them. So you
20 may call your first witness, Mr. Patterson.

21 MR. PATTERSON: I call Mr. Hynes, Your Honor.

22 MARTIN C. HYNES, JR., called as a witness, having
23 been duly sworn, was examined and testified as follows:

24 MR. PATTERSON: Your Honor, before beginning Mr.
25 Hynes' testimony, I would note for the record that this

1 morning I have distributed copies of a multi-page document
2 headed Prepared Testimony of Martin C. Hynes, et cetera, to
3 counsel for the applicant and to other counsel in the
4 hearing room, to Your Honor, and two copies to the Court
5 Reporter.

6 I would think it appropriate to, if Mr. Chesnutt
7 needs the time and he may well, recess for whatever time he
8 needs to review the prepared testimony because it's my
9 intention to put that plus a few, and I mean a few,
10 supplementary questions to Mr. Hynes and then tender him for
11 cross examination. So I think it appropriate that perhaps
12 we give Mr. Chesnutt some time.

13 JUDGE SCHNIERLE: Would you appreciate that Mr.
14 Chesnutt?

15 MR. CHESNUTT: Yes, I would.

16 JUDGE SCHNIERLE: Would 15 minutes be sufficient?

17 MR. CHESNUTT: No, it wouldn't be.

18 JUDGE SCHNIERLE: Half hour?

19 MR. CHESNUTT: Half hour will be, yes.

20 JUDGE SCHNIERLE: We'll reconvene at 10:35.

21 MR. PATTERSON: Your Honor, we didn't put a number on
22 that. I've neglected to ask you to do that. We can do that
23 when we come back.

24 JUDGE SCHNIERLE: As long as we have him on the
25 stand, why don't you have him identify himself -- well,

1 let's wait until we come back and we'll do the whole thing
2 then.

3 MR. CHESNUTT: Well, before I commit myself to a half
4 an hour, let me see whether we are going to need it. Are
5 there underlying data that I need to review here?

6 MR. PATTERSON: Yes, there are, and I'll be here to
7 give them to you.

8 JUDGE SCHNIERLE: I'll be in my office at G-5 if you
9 get done before then.

10 MR. CHESNUTT: Well, it's not going to be before
11 then. The question is whether we really shouldn't be
12 looking at something like 11:00.

13 MR. PATTERSON: Why don't you take a peak? It may
14 not be that long.

15 MR. CHESNUTT: Well, let me request that at the
16 moment.

17 JUDGE SCHNIERLE: Tentatively we'll reconvene at
18 10:35 and if we need more time, we'll entertain a request
19 for that at that time. Off the record.

20 MR. PATTERSON: Thank you, Your Honor.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SCHNIERLE: Do you need more time?

23 MR. CHESNUTT: Yes, I need more time.

24 JUDGE SCHNIERLE: Okay. We'll start back at 11:00.

25 (Whereupon, a brief recess was taken.)

1 JUDGE SCHNIERLE: Are you ready, Mr. Chesnutt?

2 MR. CHESNUTT: Yes, thank you very much. I
3 appreciate the time that you and Mr. Patterson accorded.

4 JUDGE SCHNIERLE: After a recess to permit Mr.
5 Chesnutt to study the prepared testimony of the witness,
6 Martin Hynes, we are prepared to proceed. I note that in
7 the interim Mr. William O'Kane has arrived and has entered
8 his appearance on behalf of Chemical Leaman Tank Lines. Mr.
9 Patterson, you may proceed.

10 MR. PATTERSON: Your Honor, if we might -- and I
11 don't have a current numbering of exhibits with me I'm
12 afraid, so I'm at a loss as to what number this is for
13 identification.

14 JUDGE SCHNIERLE: I don't recall. I don't have it
15 either. I don't recall Matlack --

16 MR. PATTERSON: We had one prior exhibit. There was
17 a Matlack Exhibit 1 put in during the cross examination of
18 the applicant's operating witness. I just don't remember
19 any other. That was a collection of freight bills of some
20 sort or bills of lading.

21 JUDGE SCHNIERLE: Yes, I recall that now. Why don't
22 we take a chance and we'll mark this Matlack Exhibit Number
23 2 and at the next break, I'll check my records and see if we
24 have any others.

25 MR. PATTERSON: Your Honor, may we go off the record

1 for a moment?

2 JUDGE SCHNIERLE: Yes.

3 (Discussion off the record.)

4 JUDGE SCHNIERLE: The prepared testimony of Martin
5 C. Hynes, Junior will be marked Matlack Exhibit Number 2.

6 (Matlack Exhibit No. 2 was produced and marked for
7 identification.)

8 DIRECT EXAMINATION

9 BY MR. PATTERSON:

10 Q. Mr. Hynes, would you state your full name and
11 address for the record, please.

12 A. My name is Martin C. Hynes, H-y-n-e-s, Junior.

13 Q. And your address, sir?

14 A. My address is One Rollins, R-o-l-l-i-n-s, Plaza,
15 Wilmington, Delaware 19899.

16 Q. Mr. Hynes, are you employed?

17 A. Yes. I'm vice president of marketing for
18 Matlack, Incorporated.

19 Q. Now, sir, do you have in front of you the
20 document that has been marked as Matlack Exhibit Number 2?

21 A. Yes, I do.

22 Q. Does your copy of that exhibit have a series of
23 appendicies attached to it, 1 through 9?

24 A. Yes, it does.

25 Q. Looking at the prepared testimony and the

1 appendicies attached to it, are you familiar with those
2 documents?

3 A. Yes, I am.

4 Q. Did you assist in their preparation?

5 A. Yes, I did.

6 Q. And have you reviewed them since they have been
7 prepared?

8 A. Yes.

9 Q. If I were to ask you questions intended to elicit
10 the information set forth in Matlack Exhibit 2, would your
11 answers under oath be the same as are set forth in that
12 exhibit?

13 A. Yes, they would.

14 Q. And do you desire to adopt Matlack Exhibit 2
15 including the prepared testimony and the appendicies as your
16 basic direct testimony in this proceeding?

17 A. Yes, I do.

18 Q. Mr. Hynes, if we may, let's turn to page 2 of
19 your prepared testimony. Under Roman Numeral 3 near the top
20 of the page it indicates that Matlack is also affiliated
21 with Rollins Leasing?

22 A. Yes, sir.

23 Q. Is it a fact that a short while ago Matlack was
24 also affiliated with RLC Corp., a New York stock exchange
25 company?

1 A. Yes, sir.

2 Q. Is there still an affiliation between RLC Corp.
3 and Matlack, Inc.?

4 A. The affiliation would be to the extent that we
5 have common shareholders.

6 Q. What change occurred in the last few months with
7 respect to the relationship between RLC Corp. and Matlack,
8 Inc.?

9 A. In January the RLC Corp. which was our parent
10 company, spun off Matlack Systems, Inc. as a separate
11 company to the shareholders by giving each shareholder one
12 share of Matlack Systems, Inc. stock for each three and a
13 half shares of RLC Corp. which they held.

14 Q. So at this point Matlack, Inc. --

15 A. Matlack, Inc. is a wholly owned subsidiary of
16 Matlack Systems, Inc.

17 Q. And Matlack Systems, Inc. is owned at this point
18 by whom?

19 A. This is a publicly held company which is listed
20 in the American Stock Exchange.

21 Q. And has that transaction been approved by this
22 Commission?

23 A. Yes, it has.

24 Q. Now, on page 3, the second full paragraph where
25 it indicates that Appendix 3 -- or what Appendix 3

1 contains. Do you see that testimony?

2 A. Yes, sir.

3 Q. What were Matlack's intrastate, Pennsylvania
4 intrastate gross revenues for that five month period,
5 January 1 through May 31, 1989?

6 A. Approximately 2.4 million dollars.

7 Q. Now, sir, further down on that same page, the
8 last full paragraph on the page beginning with the words
9 within the past year having to do with solicitation of the
10 shippers who testified in this proceeding on behalf of the
11 applicant. Is the term within the past year intended to
12 indicate that Matlack had not solicited those shippers prior
13 to the last year?

14 A. No, sir. We've conducted regular solicitation of
15 all those shippers for a number of years.

16 Q. Turn to page 4 if you would, sir. The first
17 paragraph under the subheading Terminal Facilities at about
18 the 7th line down starting with the word Jersey it indicates
19 that the terminal, the Matlack terminal, in Swedesboro may
20 be utilized with respect to supplying equipment for
21 Pennsylvania intrastate service. Do you see that?

22 A. Yes, sir.

23 Q. Is that terminal, in fact, so utilized?

24 A. Yes, that terminal is utilized to supply
25 equipment and drivers for intrastate Pennsylvania

1 operations. It's located directly across the Delaware River
2 from Chester and Marcus Hook and is linked by a bridge that
3 goes right across the river at Chester, Pennsylvania to
4 Bridgeport, New Jersey. The service is the area south of
5 Philadelphia.

6 Q. Now, sir, on the top of page 6 you refer to the
7 implementation of a voice mail system on the second line of
8 that page. Would you describe that a little more fully?

9 A. Yes, sir. Voice mail is a fairly new technology
10 that utilizes a computer as a sort of a highly mechanized
11 answering machine which allows multiple users, literally
12 hundreds, to call in on a regular company telephone,
13 identify themselves as being a user of the system and enable
14 them to, first, understand if anyone in the company has a
15 message for them, and then enables them to leave responses
16 to those messages and also to initiate messages of their own
17 for other people within the company.

18 And it's all done in the various people's own
19 voices. It is not just canned computerese or done simply by
20 pressing numerical keys on telephone key pads, although,
21 they are utilized for various commands. It allows much
22 closer communication with the drivers and eliminates the
23 problem of some drivers calling in at the same time and
24 getting busy signals.

25 Q. Turn if you would, sir, to page 11 of your

1 prepared testimony. Near the bottom of that page you refer
2 to the minimization of salary expense by paying drivers a
3 percent of revenue referring to Central Transport's method
4 of compensation of their drivers.

5 A. Yes, sir.

6 Q. How, in your view, does that minimize salary
7 expense, that methodology of payment?

8 A. Well, number 1, it links the driver compensation
9 directly to revenue. So if a rate is low or cheap, the
10 driver is compensated accordingly and the driver is not
11 compensated directly according to his labors expended. He's
12 compensated based on revenue.

13 So if a particular shipment takes an extended amount
14 of time for loading or unloading or if it is in a highly
15 congested area, the driver is not compensated for the time
16 he spends or necessarily for the number of miles he travels
17 but rather simply based on the negotiated rate between the
18 shipper and the carrier.

19 Also the driver -- if there is a delay or simply the
20 time spent loading and unloading is typically not paid for
21 separately and, therefore, if the shipper or the receiver is
22 not ready for the driver and the driver has to wait, the
23 driver may not necessarily receive any additional
24 compensation.

25 Q. Now, sir, one of the points that you address also

1 on page 11 has to do with equipment utilization, Matlack's
2 equipment utilization, a subject which you also address on
3 pages 6 and 7 of your testimony under the heading Equipment
4 and with Appendix 8.

5 A. Yes, sir.

6 Q. In the most general sense, what is Matlack's
7 response over the long term when it is confronted with a
8 constant equipment under-utilization in a given territory?

9 A. Long term it results in the equipment being
10 withdrawn so that it can be utilized somewhere else because
11 equipment is a very precious and limited asset and in
12 addition to that, it can result in closure of a terminal
13 when utilization of the terminal facility also declines and,
14 of course, it results in the loss of the attendant jobs.

15 Q. Turn if you would, sir, to Appendix 3 attached to
16 your prepared testimony.

17 A. Yes, sir.

18 Q. Would you go through at least the top shipper and
19 describe each of the columns consecutively left to right and
20 what they show.

21 A. Yes, sir. The first column shows the intrastate
22 loads and revenue which we perform for Witco, one of the
23 supporting shippers in Central's application, for the time
24 period January 1, 1989 through May 31st, 1989 which is the
25 most recent five months of this calendar year that we have

1 available.

2 The second column shows the interstate shipments that
3 we did for Witco from or to Pennsylvania origins or Witco
4 plants within Pennsylvania. So it would be traffic related
5 to the intrastate service for the same shipping origins or
6 receiving destinations of Witco within Pennsylvania.

7 Q. So that if Witco has plants elsewhere in the
8 country, this would not reflect outbound loads from those
9 plants in California or Arizona or wherever they are except
10 to the extent that those loads might be destined to a point
11 in Pennsylvania?

12 A. That's right. And then the total is, of course,
13 the total of the two which would represent the entire
14 business that we did for Witco involving Pennsylvania.

15 Q. Turn if you would, sir, to Appendix 4, which is a
16 four page appendix and indicate, sir, the process of
17 selection of the commodities named in the far left column.
18 What is the intent there?

19 A. Well, Central restrictively amended their
20 application to exclude a variety of products, and so what we
21 did was we took our traffic study and organized it by
22 product and then eliminated those products which Central had
23 eliminated from their scope of their application so that we
24 could come up with the traffic which would be subject to
25 diversion if the Central application were to be granted.

1 Q. And I've neglected to ask you, with respect to
2 the prior information, the underlying documents are in the
3 hearing room and have been made available to counsel for the
4 applicant, have they not?

5 A. Yes, sir.

6 Q. Now, sir, let's move to the next appendix,
7 Appendix 5. I think perhaps a brief explanation because it
8 looks fairly self-explanatory to me.

9 A. These are the people which are employed
10 physically at each of the facilities in Pennsylvania and
11 also at the Swedesboro, New Jersey terminal by job
12 category. So, for instance, there are 230 drivers out of a
13 total of 376 employees which the totals are on the far
14 right-hand side.

15 Q. Is that an accurate and complete accounting for
16 the people so employed?

17 A. Yes, sir.

18 Q. The next appendix, Appendix 6, is an equipment
19 statement. Is that accurate and complete as of June 1 of
20 this year?

21 A. Yes, it is.

22 Q. Would you identify -- there was some testimony
23 from one or perhaps more of the supporting shippers
24 regarding compartmented tanks in this proceeding, liquid
25 tanks, tanks designed for the hauling of liquid bulk. Would

1 you identify those on Appendix 6, please.

2 A. On Appendix 6 they would be included within
3 several categories. They are not actually broken out on
4 Appendix 6. They are broken out for the Pennsylvania
5 terminals on Appendix 7 and present in the terminals serving
6 Pennsylvania we have a total of 30 multi-compartment
7 trailers.

8 Q. So that the word multi on Appendix 7 under the
9 heading Liquid would refer to the compartments in the
10 trailer?

11 A. Yes, sir.

12 Q. Does that indicate whether there is two or
13 three? What is the norm and how does that break down if you
14 have a sense of that?

15 A. The most prevalent type of multi-compartment
16 trailer that we have is a three compartment trailer. We
17 also have four compartment trailers and five compartment
18 trailers. There are a few two compartment trailers in the
19 company, but very, very few.

20 Q. Why is that, sir? Why have you chosen to go in
21 that direction?

22 A. Well, it has to do with the combination of the
23 typical ordering patterns of the customers and the three
24 compartment trailer is the most -- allows for the most
25 versatility as far as the number of products shipped at the

1 same time. Some shippers do require four compartments.

2 Also, the configuration is important to meet the
3 weight law limits since you have to be able to -- even
4 though you're hauling several products in the trailer, they
5 have to be distributed along the length of the trailer so
6 that you're not illegal on axle weights. It's quite a
7 problem with compartmental shipments.

8 Q. Turning back, Mr. Hynes, to Appendix 6 under what
9 general headings in there would the compartmented trailers
10 appear?

11 A. Well, the majority of them would appear in the
12 category SP, which is insulated pressure, MC 304-307
13 trailers of which we have a total of 1,258. There are both
14 single and multi-compartment.

15 Q. And that's under the general heading Steel
16 Stainless?

17 A. Stainless Steel, yes, sir. There would also be a
18 smaller number in the next two categories of non-insulated
19 trailers and we have a few in the aluminum classification
20 that would appear in the last category of non-insulated,
21 spec. There would be some of those -- 173 are
22 multi-compartment.

23 Q. All right, sir. Now, turn if you would to
24 Appendix 8, the trailer utilization report. From what
25 document was that report prepared?

1 A. That was prepared from a monthly computer
2 analysis. It's done for our operations control department.
3 It's one of their normal control documents so that they can
4 review the utilization of trailers assigned to each of the
5 terminals.

6 Q. Now, you've indicated on the right-hand column
7 the percentage utilization opposite each involved terminal.

8 A. Yes, sir.

9 Q. In reaching that percentage utilization it's
10 necessary, I suppose, to go back to examine how often the
11 trailer is used?

12 A. Yes, that's what it shows.

13 Q. If a trailer is used in a given day two hours on
14 a short trip and returned to the terminal and not used again
15 that day, does that show up as a day's use or a partial use
16 or what?

17 A. Well, there is only two distinctions made on the
18 report. I believe it's an X if it is used at all, and it's
19 an M if there are multiple uses of the trailer during the
20 same day.

21 Q. So that if it was used two hours, it would show
22 up as a day's use?

23 A. Yes.

24 Q. Now, the note below the listing indicates that
25 the utilization is based on the number of work days,

1 parentheses, Monday through Friday, closed parentheses?

2 A. Yes.

3 Q. Isn't it a fact that the underlying study also
4 indicates use during weekends?

5 A. It does, but we had a lot of argument within the
6 company as to just how to measure this because it's used as
7 a control as to whether or not equipment is being properly
8 utilized at each terminal.

9 It gives us an idea where we need to place more
10 equipment to meet customer demand and also the opposite of
11 where we can take equipment in order to meet a demand
12 somewhere else.

13 And, obviously, a terminal that is in the latter
14 situation, it might lose a piece of equipment wants the
15 argue about whether or not it's being used. So we decided
16 the fairest was to measure use only five days a week since
17 the majority of our customers do not operate on weekends.

18 Although, if a trailer did get used on a weekend, it
19 would simply count as one of the days of weekday use because
20 all we do is take the total number of days that a trailer
21 was in use and divide it by the number of weekdays in the
22 month.

23 In the case of May, there were 23 weekdays. So we
24 just take the number of days, regardless of what day it is,
25 divide it by 23 and that's the percentage as opposed to

1 dividing it by 31 which is the number of calendar days which
2 would result in a much lower percentage.

3 Q. So if you used a full month, you would reduce the
4 percentage significantly?

5 A. Yes. Like I said, we had a lot of argument and
6 it does become somewhat relative and this gives us a
7 relative number to the company.

8 Q. Now, sir, turn, if you would, to Appendix 9. Is
9 that an accurate picture of the fiscal year ending September
10 30, 1988 for Matlack's Pennsylvania related operations?

11 A. Yes, sir.

12 Q. That shows an operating ratio on page 2 of
13 102.28?

14 A. That's correct.

15 Q. Does that indicate that for your Pennsylvania
16 operations for every dollar of revenue it cost you
17 approximately \$1.02 to generate it?

18 A. Unfortunately, it does.

19 Q. And is that kind of a financial result, in your
20 view, related in any way to equipment utilization?

21 A. Yes. It's one of the factors.

22 Q. What are the others?

23 A. The others are the -- of course, the highest
24 cost, single cost we have is labor cost and when you relate
25 labor to revenue, revenue is what the shipper is willing to

1 pay you and we are in a period of over-capacity, tremendous
2 competition and if we were able to -- in fact, these numbers
3 were prepared for a rate increase justification for the
4 Pennsylvania PUC. It was submitted to the PUC last December
5 and, as a result, they approved a rate increase in January.

6 But Matlack is an old line Pennsylvania carrier.
7 We've been in Pennsylvania for 101 years. As a result, all
8 of our employees in Pennsylvania -- or not all of them, but
9 nearly all of them are old line employees.

10 They operate under a set of wage standards and
11 contracts which have been established for many years and
12 updated through collective bargaining agreements and so
13 forth, and a lot of the new competition is not encumbered
14 with this.

15 They are particularly not encumbered with the
16 benefits that senior employees have, four to five week
17 vacations, fully invested pension plans, health and welfare
18 programs, these types of things which we are obligated to
19 give to our employees by virtue of contract.

20 We hope we get through this period because it's a
21 difficult one. It's difficult for everybody because the
22 shippers, of course, the people that they -- I guess they're
23 wrestling with it, too, the trade off between getting the
24 cheapest price for their company which I suppose is an
25 obligation they have to their shareholders versus providing

1 the safest best possible service from the carriers.

2 Q. And what is the reason, sir, that Matlack opposes
3 the Central Transport application for statewide limited
4 commodity, named commodity authority?

5 A. Well, we don't think there is a need for that
6 additional service in this state, and we feel it would be
7 detrimental to our company, as their interstate competition
8 has already been detrimental to our company, if they're
9 allowed to operate on an intrastate basis.

10 MR. PATTERSON: Very well, sir. That's all I have
11 and I tender the witness for cross examination and move the
12 admission of Matlack Exhibit 2 subject to cross examination.

13 JUDGE SCHNIERLE: Mr. Chesnutt?

14 CROSS EXAMINATION

15 BY MR. CHESNUTT:

16 Q. Mr. Hynes, I think I understood you to say at the
17 conclusion of your testimony that the competition of Central
18 Transport with your company on an interstate basis has been
19 detrimental to your company. Did I understand that
20 correctly?

21 A. Yes, sir.

22 Q. When your company made the 5,354,921 share
23 offering with Matlack Systems, Inc. to the public, it put
24 out a prospectus or filed a prospectus with the Securities
25 and Exchange Commission, did it not?

1 A. Yes, sir.

2 Q. Do you recall, and let me show you if you don't,
3 a statement from that prospectus which reads as follows: To
4 the extent that competition is based on service and
5 convenience, the number and location of Matlack's terminals
6 together with its ability to clean tank trailers places
7 Matlack in a favorable position to increase its business.
8 Do you remember that statement being made?

9 A. Yes, sir.

10 Q. Do you also recall a statement being made in that
11 prospectus that says, Matlack has withdrawn from markets
12 which have limited growth potential or pricing structures
13 that will not provide it with an adequate return on its
14 investment?

15 A. That's correct.

16 Q. With respect to the relations that Matlack has
17 with its labor force, you indicated that there are certain
18 benefits and other wage packages and so forth that you have
19 to pay to your labor force. Is that correct?

20 A. Yes, sir.

21 Q. Union organized labor force?

22 A. Yes, sir.

23 Q. And your company just doesn't take all of that
24 laying down, does it? It engages in hard-nosed negotiations
25 with labor unions, does it not?

1 A. There are hard-nosed negotiations, absolutely.

2 Q. And where necessary, your company has taken a
3 strike, has to not, in order to seek to prevail on its
4 positions in those negotiations?

5 A. We have had very limited strikes and in some
6 cases -- well, we do everything we can to avoid it because a
7 strike simply eliminates the business. There are too many
8 options available today from non-union carriers that there
9 are not -- that is not the way to solve the problem.

10 Q. But, where necessary, the company has endured
11 strike situations?

12 A. Our approach with our drivers is not to excite
13 strikes. It's to spend a great deal of time with the
14 drivers through our quality process to let them know exactly
15 what the company is doing and what benefit it is to them.

16 Q. Have you ever had a strike?

17 A. Of course we have.

18 Q. When? When was the last time?

19 A. The last strike we had in Pennsylvania was in
20 January or so of this year or February in York,
21 Pennsylvania. It lasted a couple of days.

22 Q. Turn with me, if you will, to Appendix 4 attached
23 to Matlack Exhibit Number 2. I think I understand this
24 exhibit, but let me just be sure about one item. If you
25 look at the third sheet of Appendix 4, about one third of

1 the way down that page there is a item commodity of paint,
2 36 trips, \$47,324.00. Do you see that?

3 A. Yes.

4 Q. Turn, if you will, to the next sheet. The 4th
5 commodity entry from the bottom indicates paint, 21 trips,
6 \$16,394.00. Are the 21 trips and \$16,394.00 encompassed
7 within the earlier entry?

8 A. No. They would simply be different commodity
9 codes. What we tried to do here is give you a generic, easy
10 to understand description of each code. There is actually
11 three lines of description contained in the computer for
12 each of the codes. One may be a water-base paint and the
13 other may be an oil-base paint.

14 Q. Okay. Thank you. Now, if you would please turn
15 to Appendix 7.

16 A. Yes, sir.

17 Q. I'm not clear in my own mind as of what date that
18 exhibit is effective?

19 A. That's as of June 1st. The same date as the
20 previous exhibit.

21 Q. And there are columns there where the trailers
22 are broken down by single and multi?

23 A. Yes, sir.

24 Q. Would you explain what the differentiation is
25 there?

1 A. Single is single compartment trailer and multi is
2 a multiple compartment trailer.

3 Q. And I believe you indicated that the
4 multi-compartment trailers can be of various types of
5 trailers as are more fully described on Appendix 6. Is that
6 correct?

7 A. Yes, sir. Most of them are stainless insulated
8 MC 307's.

9 Q. And as far as knowing, with respect to the
10 terminals listed on Appendix 7, what specific types of
11 trailers are assigned to these terminals, we can't tell
12 that. Is that correct?

13 A. We didn't design the exhibit to get down to that
14 fine detail. We simply show the number of trailers and with
15 the resources shown in Appendix 6, we were able to make
16 adjustments if there is a service requirement. That's one
17 of the purposes of that utilization report.

18 Q. One final item with respect to Appendix 7. That
19 last terminal entry on there is, indeed, Swedesboro, New
20 Jersey?

21 A. I'm sorry. It certainly is.

22 Q. Now, you were kind enough to furnish to me the
23 underlying data for Appendix 8 and discussing that with your
24 own counsel, I believe you indicated the underlying data
25 consists of the computer print-out in which there are a

1 series of columns for each of the terminals that have in the
2 first column a five digit number which is a trailer number,
3 the identification number for the trailer. Is that
4 correct?

5 A. That's the trailer number.

6 Q. Okay. And the next column is a two letter
7 designation which is the same type of two letter designation
8 that's being used on Appendix 6. Is that correct?

9 A. Yes. That would be the trailer type.

10 Q. And then the next column is a series of percent
11 calculations?

12 A. Yes. They're the specific percentages for each
13 trailer.

14 Q. And then there is a block, let's call it, in
15 which the 31 days of May are listed across the top of the
16 display. Is that right?

17 A. Yes.

18 Q. And then if a trailer is utilized, I think you
19 explained this before, on any particular day an X will
20 appear in the column if it was used once and an M, as in
21 Mary, will appear in the column if it was used twice or more
22 than once?

23 A. Yes.

24 Q. Multiple orders on this day?

25 A. That's correct.

1 Q. Now, there are certain of those trailers, are
2 there not, where there are more M's in the month of May than
3 there are X's for that particular trailer. Is that right?

4 A. That's right. They would have been doing shorter
5 distance -- what we call short haul movements where we would
6 get multiple loads per day.

7 Q. And that M counts for only one day's use just
8 like an X for a two hour use would count as one day's use.
9 Is that correct?

10 A. That's right. It might also mean that the
11 trailer was used for a shipment one day and then it was
12 reloaded that day for a delivery the next day in which case
13 there would be an M in the day it was reloaded and there
14 would be an X the following day because the trailer was used
15 for the delivery.

16 Q. Now, there are certain trailers that have zeros
17 next to them, do they not, zero percent? Weren't utilized
18 at all in the month of May?

19 A. That's correct, weren't used at all.

20 Q. Then when you get down to the bottom of Bensalem,
21 which is the first terminal discussed on this data, there is
22 a terminal percent calculated?

23 A. Yes.

24 Q. And it's at the foot of the third column that has
25 a series of percent calculations in it. Is that right?

1 A. That's correct.

2 Q. Now, was that terminal percent calculation
3 derived by adding up the various individual trailer
4 percentages and dividing by the number of trailers or was it
5 derived by multiplying the number of trailers times 23 days
6 and dividing by the number of days in which either an X or
7 an M appeared? Do you know?

8 A. I actually don't, but we did a calculation for
9 the overall sample both ways and it came up with a variance
10 of about three percent between the two answers. I don't
11 know how the program is written, but I believe right in our
12 testimony we stated it both ways to show that actually the
13 weighted average was a little bit lower than the arithmetic
14 average for all the terminals.

15 Q. Now, would I be correct that on June 1st Matlack
16 introduced 27 additional trailers to the pool at Bensalem?

17 A. On June 1st?

18 Q. Yes.

19 A. No. No, that's the count that was there on June
20 1st. Oh, there is a new numeric difference between the
21 count that you have on that report and the count that's in
22 this summary because that report is of the trailers that are
23 domiciled, that are assigned permanently to Bensalem.

24 We also have a central dispatch pool of trailers, so
25 there are actually additional trailers in service that we

1 don't account for in that report because they float from
2 terminal to terminal depending on the need.

3 So on any given day, the difference between what is
4 on that report and what is here will be the central dispatch
5 complement of trailers that are at the terminal.

6 MR. PATTERSON: For purposes of record, could we
7 identify that report?

8 MR. CHESNUTT: I'm going to attempt to summarize.

9 THE WITNESS: The difference between what is listed
10 on Appendix 7 and what is listed in the count that goes into
11 the numbers in Appendix 8, Number 8 has fewer trailers in
12 the sample because those are the permanently domiciled or
13 permanently assigned trailers at each of the terminals as
14 compared to the total number of trailers that are in use on
15 any given day because we have pool trailers, or trailers
16 that are assigned to central dispatch that move throughout
17 the system, so it's impractical to assign them to an
18 individual terminal.

19 But from an MIS standpoint, we then can't capture the
20 data on those trailers and assign it to any one terminal.

21 BY MR. CHESNUTT:

22 Q. Let me try it another way. On Appendix 7, you
23 show for Bensalem a total of 99 trailers. They're all
24 liquid trailers; right?

25 A. Yes, sir.

1 Q. Now, the underlying data for Appendix 8 in which
2 a 53.3 percent utilization factor was calculated was based
3 on 72 trailers by my count and I mean, if you wish to check
4 my count?

5 A. No. I'll accept that. That would make sense.

6 Q. That was the situation you were describing, which
7 as I understand it, says that on June 1, somebody took an
8 actual count of trailers at the Bensalem facility and got
9 99. Is that right?

10 A. Yes, sir. We actually do a daily terminal count
11 and keep track of that, so that's where that came from.

12 Q. Let's take -- and the difference of 27 trailers
13 between the Appendix 8 and the Appendix 7 count reflects
14 that there were centrally dispatched trailers that happened
15 to be in Bensalem at that particular point in time?

16 A. There is a float of trailers in Bensalem all the
17 time and on that particular day that's how many were there,
18 and that would be representative of what would be there at
19 any particular time.

20 Q. Now, on the Pittsburgh data in Appendix 8 that
21 was calculated on the basis of 24 trailers which, again, you
22 are welcome to count them.

23 A. No.

24 Q. And Appendix 7 indicates that on June 1 there
25 were only 15 trailers?

1 A. That's right. That's the actual count that
2 Pittsburgh gave us.

3 Q. On that date?

4 A. On that date. Which meant that there were
5 trailers that were not there.

6 Q. That were at some other terminal or on the road?

7 A. Yeah. They're permanently assigned to
8 Pittsburgh.

9 Q. Turn with me, if you will, to your Appendix 9.
10 Now, this is Pennsylvania profit and loss statement for the
11 12 months ending September 30, 1988. Is that correct?

12 A. Yes, sir.

13 Q. And it reflects the total operating revenues of
14 \$23,090,667.00. Is that correct?

15 A. Yes, sir.

16 Q. Now, for the fiscal year ending September 30,
17 1988 for Matlack Systems, Inc., the new company whose stock
18 has been distributed, the prospectus indicates total
19 revenues for that period of time of \$230,227,000.00. Would
20 you accept that as correct?

21 A. Yes, sir.

22 Q. And net earnings of \$1,412,000.00 or 26 cents per
23 share. Is that correct?

24 A. Yes, sir.

25 Q. Now, obviously Appendix 9 reflects only a portion

1 of the revenues that was the total system?

2 A. This is an exact reproduction of the information
3 supplied to the Pennsylvania PUC on their form in compliance
4 with their requirements for defining Pennsylvania related
5 revenue and then there is some further -- there is a
6 breakdown on the form of interstate versus intrastate.

7 They realize that carriers have a difficult time in
8 prorating or in separating interstate from intrastate so
9 they don't ask the carrier to attempt to do that. What they
10 want is the revenue from the Pennsylvania operations and
11 that's exactly what we gave them for their review.

12 Q. And this would be in connection with the
13 assessment function that this Commission provides?

14 A. No. This is not a part of the assessment
15 reporting. This is was done as justification for a request
16 of rate increase which was approved and we put into effect
17 in January.

18 Q. January 1, 1989?

19 A. It was about January the 15th or so of 1989.

20 Q. Do you know what -- are you familiar with the
21 fact that Matlack is required to file assessment reports
22 with the Pennsylvania Public Commission?

23 A. Yes, sir.

24 Q. And do you know what Pennsylvania gross
25 intrastate operating revenues the company reported for 1988?

1 A. More or less, but I don't have it available right
2 here.

3 MR. PATTERSON: I can confirm it if you have a
4 number.

5 MR. CHESNUTT: I don't have a number.

6 MR. PATTERSON: It's 6.9 million.

7 BY MR. CHESNUTT:

8 Q. And for 1987 that number was \$6,661,000.00?

9 A. And that would tie in with the 7 million figure
10 because we have experienced a volume decline in the quarter
11 October through December compared to the previous year
12 October through December.

13 Q. Now, the revenues shown on Appendix 9 are for all
14 commodities transported by Matlack?

15 A. Yes, sir.

16 Q. And not just those for which revenues have been
17 summarized in Appendix 4 with respect to the period January
18 1 through May 31, 1989. Is that right?

19 A. That's correct.

20 Q. Now, let's look first at the expenses shown on
21 Appendix 9 and start with salaries of officers and
22 supervisory personnel. \$1,137,091.00 was assigned as that
23 expense attributable to Pennsylvania. Do you know on what
24 basis the calculation or allocation of \$1,137,091.00 was
25 made?

1 A. It is done primarily through the direct
2 assignment of the people who are assigned to the facilities
3 in Pennsylvania. In addition to that, there is a computer
4 allocation of a regional level and corporate level salaries
5 to each terminal and that's also in that.

6 Q. And that computer allocation of corporate
7 officers and persons that are not in direct line positions,
8 do you know on what basis that is made?

9 A. It's complicated. It's done through a matrix.
10 It's done according to the ICC methodology called Highway
11 Form A or F. I'm not sure which, but each department's
12 function is to find and then it's related to the operating
13 characteristic that most closely relates to what that
14 department does.

15 For instance, maintenance people are related to
16 equipment maintenance, of course, and that basically is a
17 function of distance traveled by the equipment, so it's
18 related to miles. Sales people are related to revenue.
19 Cleaning people are related to the number of shipments.

20 Terminal people are related to the number of
21 shipments or regional operations people are related to the
22 number of shipments. It's kind of complicated, but that's
23 the way it's done. It's a matrix of a matrix.

24 You take the expense and then you put it into the
25 various categories divided by the characteristic of that

1 category and come up with a unit cost for the company and
2 then you -- or for the region -- and then you multiply it
3 times the number of units within the terminal to get the
4 cost assigned to that terminal.

5 Q. What about equipment costs when you've -- such as
6 the description you've given in Appendicies 7 and 8 where
7 you have a fluctuating amount of equipment within
8 Pennsylvania at any particular point in time. How is that
9 handled in the allocation of costs?

10 MR. PATTERSON: You want him to address just the
11 fluctuating equipment, not the equipment that's permanently
12 assigned? I guess that's fairly obvious how that's done.

13 MR. CHESNUTT: Yes.

14 THE WITNESS: The equipment that's permanently
15 assigned that's in the pool is done by taking the number of
16 days that each terminal uses that piece of equipment and
17 allocating the cost of the equipment that way and they do it
18 on a pool basis rather than on an individual trailer basis.

19 So they determine how many days of use a terminal
20 makes of pool equipment and then gives it that prorated
21 share of the total cost for that function.

22 JUDGE SCHNIERLE: Mr. Hynes, you're going to have to
23 speak up a little bit. I notice that other counsel are
24 starting to sneak up on you here.

25 THE WITNESS: Okay. I'm sorry, sir.

1 BY MR. CHESNUTT:

2 Q. How is the cost of the equipment that is
3 domiciled at the Swedesboro, New Jersey terminal handled in
4 the calculation that occurs in Appendix 9?

5 A. In this particular case Swedesboro is not used
6 because it doesn't fit the precise definition of the PUC.

7 Q. You mention that some of the terminals that
8 Matlack operates have tank cleaning facilities located at
9 them?

10 A. Yes, sir.

11 Q. Does the company ever have occasion to have
12 equipment cleaned at facilities operated by other persons
13 other than Matlack?

14 A. Yes, we do.

15 Q. Do you have occasion to have them cleaned at
16 facilities operated by other carriers?

17 A. Yes, we do.

18 Q. Do you have occasion to have them cleaned at
19 terminals at facilities operated by Central Transport?

20 A. If you say we have, I couldn't argue with that.
21 I don't know specifically.

22 Q. Are you aware, Mr. Hynes, of whether Matlack on
23 August 23, 1985 was assessed a penalty of \$500.00 for a
24 violation by the EPA at its Lansdowne terminal?

25 MR. PATTERSON: Objected to as irrelevant. Your

1 Honor, there is no magic in January 1, 1986. I certainly
2 realize that although that was the date chosen to go back
3 far enough into the past regarding violations such as that,
4 but certainly whether or not they had a violation in 1985 is
5 not probative with respect to any issue involved in this
6 proceeding.

7 JUDGE SCHNIERLE: Mr. Chesnutt?

8 MR. CHESNUTT: If your honor please, we have already
9 received into evidence in this proceeding similar evidence
10 concerning other carriers including Refiners Transport and,
11 as Mr. Patterson correctly notes, the period of time there
12 is no magic to January 1, 1986 and the Judge has already
13 ruled about the relevance of the nature of the inquiry.

14 I indicated that the penalty was assessed in 1985.
15 My best information is that it was collected in 1986 and
16 that would seem to cure that problem.

17 MR. PATTERSON: Your Honor, we may have had one in
18 1944, too, or maybe before the EPA was around, but I really
19 -- we are --

20 JUDGE SCHNIERLE: I'm concerned about two things.
21 8/23/85 I thought was the date you gave the penalty was
22 assessed. When did the violation occur? That's one
23 question. The second thing is the term EPA violation. That
24 seems to me as pretty broad. It could cover violations that
25 may or may not be attributable to the trucking business at

1 that location. In the absence of more specificity, I don't
2 see where the answer to that question would have much
3 probative value at all.

4 MR. CHESNUTT: It occurred at the Lansdowne facility
5 which I think is --

6 MR. PATTERSON: Your Honor, now counsel is testifying
7 and I suggest that this, as one of my colleagues once said
8 -- I'll withdraw that. Let's proceed a pace in a proper
9 manner so that we don't get testimony in the record from
10 counsel about what is and what isn't.

11 MR. CHESNUTT: All right. Let me approach it another
12 way.

13 MR. PATTERSON: Are you going to show him documents?
14 Could I take a look at them first?

15 MR. CHESNUTT: Sure. I'm going to request that this
16 be marked as Central Transport's next exhibit number.

17 JUDGE SCHNIERLE: Do you know what that is?

18 MR. CHESNUTT: Do I know what what is?

19 JUDGE SCHNIERLE: What Central Transport's next
20 exhibit number is.

21 MR. CHESNUTT: No, I do not.

22 MR. PATTERSON: Your Honor, I'm going to ask that it
23 not even be marked and not be reviewed by Your Honor. I
24 don't know what we are about here. The smell of fish gets
25 very strong in the hearing room and by that I mean a

1 herring, a red one.

2 JUDGE SCHNIERLE: If the witness can identify the
3 document and explain what these -- I'm going to allow it to
4 be marked. I may take your objection into account when it
5 comes to admissibility. If there is not a witness in the
6 hearing room who can describe the document, then I don't
7 believe it's admissible. I tell you what. Why don't we
8 take about a five minute recess and let me go back to my
9 quarters and see what the next Central exhibit Number should
10 be so we can keep that straight.

11 MR. PATTERSON: Very well.

12 (Whereupon, a brief recess was taken.)

13 JUDGE SCHNIERLE: Back on the record. This two page
14 document will be marked for identification as Central
15 Exhibit 33.

16 (Central Exhibit No. 33 was produced and marked for
17 identification.)

18 MR. CHESNUTT: If Your Honor please, I'll represent
19 to you that this was obtained from the United States
20 Environmental Protection Agency, Office of Waste Programs
21 Enforcement in response to a Freedom of Information Act
22 request that I made of that agency and that the information
23 on it shows that class one violations occurred as indicated
24 on the dates indicated with the penalties assessed and
25 collected as indicated at the locations of Matlack

1 facilities as indicated.

2 MR. PATTERSON: Your Honor, I would still object to
3 any further questioning on this exhibit. This is not an
4 official document. It is a computer report generated -- it
5 appears to be a computer report generated by the EPA. I
6 don't trust the EPA's computer nor should anybody else who
7 has dealt with them.

8 I think we are entitled -- if we are going to be
9 confronted with ancient information, I think we are entitled
10 to better than this before we even begin questioning. We
11 deserve some sort of indication of what is intended from the
12 people who know something about whatever it is occurred.

13 Computers are useful tools, but they can also be
14 very dangerous. And I also would renew my objection because
15 my sense -- although I cannot find a letter or pleading
16 which agrees to it -- is that there was a sense of agreement
17 between counsel based on the initial objection of Central to
18 Matlack's initial version of interrogatories which asked for
19 information from 1983.

20 So there was a sense of agreement that we would start
21 with January 1 of 1986 on. Now, I can't tell you in good
22 conscience that there was an agreement that applied to
23 everything, but this cuts a pretty fine line between the
24 sense of agreement and fairness between counsel and now an
25 attempt because some document shows up that happens to

1 pre-date January 1, 1986 that it's put in with the
2 distinction between what we agreed for discovery purposes
3 and what we agreed for some other purposes.

4 I think it's plainly the smell of fish again and that
5 is a concentration of the inquiry in this proceeding upon
6 the protestants, not upon the applicant who seeks
7 affirmative relief from this Commission and that, Your
8 Honor, although I am abiding by it, is my abiding concern
9 with putting the fitness of protestants at issue in these
10 proceedings.

11 It is the new inadequacy test. Used to be us counsel
12 could cross examine shippers forever on the question of
13 inadequacy. Now an applicant's counsel is entitled to do
14 the same with respect to the protestant's fitness.

15 JUDGE SCHNIERLE: I'm clearly -- I take it it is not
16 your intention to question the witness to determine if he's
17 ever seen this document or is aware of it or anything like
18 that?

19 MR. CHESNUTT: That's correct. I doubt that he has
20 ever seen it. My purpose of it is to lay a foundation as a
21 basis for asking him whether these fines were, in fact,
22 assessed and paid by the carrier.

23 JUDGE SCHNIERLE: The problem that I have is that
24 this document doesn't indicate aside from the objection
25 raised by counsel for Matlack regarding the fact that

1 looking at these two pages it appears that three of the
2 four, I'll say, purported violations shown thereon occurred
3 prior to 1986 or January 1, 1986 which seemed to be the
4 agreed date.

5 There is nothing on here to indicate what the
6 violation consisted of or whether it was connected in any
7 way, shape, or form with the trucking industry and,
8 consequently, it's my opinion that it's irrelevant or, at
9 best, it has so little weight to be meaningful to the
10 record.

11 MR. CHESNUTT: Well, it would seem to me that if the
12 witness knows anything about these, we might find out
13 whether they were related to transportation or not. At this
14 point, there is a pending objection to my questioning the
15 witness whether the company, in fact, paid these fines.

16 MR. PATTERSON: Well, I think Mr. Chesnutt nodded to
17 your suggestion that he wasn't even going to ask the witness
18 whether he knew about these things.

19 MR. CHESNUTT: No, I wasn't going to ask him about
20 the documents. The events that this documentation reflects,
21 I would like to ask the witness about.

22 MR. PATTERSON: Your Honor, I think you have to lay a
23 predicate first.

24 JUDGE SCHNIERLE: I'm going to sustain the objection
25 to the admission of the exhibit because it just doesn't

1 contain sufficient information in a form that is
2 understandable to someone other than -- I suppose, if you
3 were a computer programmer or some sort of a technical
4 expert from the EPA you might be able to read this and
5 understand what it applies to, but, in my opinion, there
6 isn't sufficient information contained in this document to
7 indicate any relevance to the issue at hand.

8 If you want to ask the witness, I will permit,
9 although reluctantly, you to go back to this 1985 violation
10 and ask the witness if he knows anything about it. But if
11 he doesn't know anything about it, I don't anticipate the
12 questioning going any further along those lines.

13 BY MR. CHESNUTT:

14 Q. Do you know anything about it, Mr. Hynes?

15 A. The only thing I can tell you about Lansdowne,
16 Pennsylvania is that it is not a Matlack terminal. It never
17 has been a Matlack terminal. That was the location of our
18 corporate headquarters up through approximately March of
19 1986, at which point we moved, and we no longer own that.

20 It is not a trucking facility. It simply is an
21 office building in the middle of Lansdowne, Pennsylvania
22 with a parking lot for people's cars to be parked in. There
23 isn't even room for a truck to be there.

24 MR. PATTERSON: But the question is do you know
25 anything about the violation.

1 THE WITNESS: I don't know anything about these
2 violations or the violations on the next page and I don't
3 know of -- we have no Pennsylvania facility called Baldwin
4 either. We have a Baltimore, Maryland terminal.

5 BY MR. CHESNUTT:

6 Q. Mr. Hynes, are you familiar with a terminal
7 maintained by Matlack at Madison, Ohio?

8 A. Yes, sir.

9 Q. Is that terminal still in existence?

10 A. Yes, it is.

11 Q. On March 3, 1989 did Matlack participate in a
12 consent decree that required a number of companies,
13 including Matlack, to pay the United States Government the
14 sum of \$1,470,000.00 with respect to a hazardous waste
15 disposal site called Alaskan site in Ohio?

16 MR. PATTERSON: Objected to, Your Honor. It has no
17 relevance to this proceeding and it is a continuing effort
18 to focus Your Honor's attention and, thereafter, the
19 Commission on the fitness of the protestants and not on the
20 dona of this proceeding and that is the affirmative relief
21 sought by the applicant. We are not on trial here. The
22 applicant seeks affirmative relief.

23 MR. CHESNUTT: I think that objection has already
24 been entertained and ruled on.

25 MR. PATTERSON: Not by me.

1 JUDGE SCHNIERLE: The objection is overruled for the
2 reasons stated in my orders regarding the interrogatories.

3 MR. PATTERSON: Very well, Your Honor. My
4 understanding is that those rulings relate to the scope of
5 discovery and that the scope of discovery is greater than
6 the scope of relevancy of things at hearing which is why I
7 raised it, but I understand Your Honor's ruling and I'll
8 abide by it.

9 JUDGE SCHNIERLE: Please answer the question.

10 THE WITNESS: I don't know anything about that
11 consent order.

12 BY MR. CHESNUTT:

13 Q. But when you say you don't know anything about
14 it, are you saying that you don't know that it exists or you
15 don't know what the contents of it are?

16 A. I don't know whether it exists and I don't know
17 anything about the contents.

18 MR. CHESNUTT: If Your Honor please, I would like to
19 have marked as Central Exhibit Number 34 a multi-page
20 document. The first page of which is a copy of the amended
21 complaint -- I'm sorry -- amended caption to a third party
22 complaint of a matter in the United States District Court
23 For The Northern District of Ohio on the second sheet of the
24 exhibit of which the name of Matlack, Inc. appears as a
25 Defendant and that is accompanied by copies of portions of

1 the civil docket in the matter identified on the cover sheet
2 of which numerous references are made to Matlack, Inc.

3 JUDGE SCHNIERLE: It may be so marked.

4 (Central Exhibit No. 34 was produced and marked for
5 identification.)

6 MR. CHESNUTT: I have available for inspection by
7 counsel for Matlack a certified original copy of the pages
8 that I have identified as Exhibit Number 34 indicating that
9 they are a true and correct copy of this civil docket from
10 the court indicated.

11 MR. PATTERSON: Yes, I'd like to take a look at
12 those.

13 MR. CHESNUTT: I would point out that I have not
14 supplied all pages to this civil docket and I'd be happy to
15 supply the remaining pages.

16 The basis for selecting certain pages were to extract
17 only those pages on which there was any reference to Matlack
18 and the pages are numbered in the upper right-hand corner.
19 And beginning at page 125 as numbered in the upper
20 right-hand corner the last entry indicates that on September
21 16, 1988 that there was a notice of hearing for oral
22 arguments of counsel on a consent decree which was scheduled
23 for October 14, 1988 in which the name of Matlack appears.

24 And from that point forward to the end of the
25 document I have included all pages so that the reader will

1 have an ability to discern whether Matlack was somehow
2 eliminated from the case subsequent to September 16, 1988.

3 I would further point out that on the third sheet of
4 Central Exhibit Number 34 there is an indication that the
5 EPA is the plaintiff in this case and that the violations
6 that are being alleged occur under named sections of the
7 United States Code having to do with hazardous waste.

8 And, finally, at the third from the last page of
9 Exhibit 34 there is an entry on March 3, 1989 indicating
10 that a consent decree was entered ordering that within 30
11 days the settling defendants, not otherwise identified,
12 shall pay \$1,470,000.00 to the United States Government.

13 That was the basis for my question to Mr. Hynes and
14 that document is offered as a true and correct copy of a
15 document from a United States District Court of which I
16 believe the Judge may properly take official notice.

17 MR. PATTERSON: Are you moving its admission at this
18 point?

19 MR. CHESNUTT: Yes.

20 MR. PATTERSON: Your Honor, Mr. Chesnutt has
21 described the document. He has not identified the document,
22 nor does the document contain anything which indicates that
23 Matlack's involvement in this case has anything to do with
24 its provision of transportation service.

25 Nothing in this document, in my very quick review

1 since I just saw it, indicates that Matlack's involvement in
2 this matter has anything to do with transporting goods and I
3 would suggest that absent that -- that's why in most
4 instances it's good to have somebody here who knows what the
5 case is about, and if we would have some notice, we might
6 have been able to do that.

7 Mr. Hynes doesn't know what it's about. I have no
8 personal knowledge of the case at all and I would suggest
9 that the absence of some indication that Matlack's
10 involvement has something to do with its function as a
11 transporter of goods as a carrier even in Ohio, that it is
12 simply material that's sort of gratuitously bruising in this
13 matter.

14 It makes it look like something is wrong with the
15 transportation service and nothing in there actually says
16 so. Even if you do take official notice of it, it still
17 doesn't have anything to do with transportation.

18 JUDGE SCHNIERLE: I don't have any problem with the
19 authenticity of the document in view of the fact that you
20 have averred that you have a certified copy here and you
21 could offer it.

22 MR. PATTERSON: I've examined it and it is certified.

23 JUDGE SCHNIERLE: But, again, I have severe problems
24 with relevancy because aside from citing some statutory
25 provisions, which I suppose I can go look up, there is no

1 indication of what Matlack's involvement is with this
2 thing.

3 In looking at the other defendants, they run all over
4 the lot, General Motors Company, an oil company, Rockwell
5 International, Warren Production Credit Association.
6 Moreover, just judging by the docket number this is some
7 event that occurred prior to 1984. You know, the consent
8 decree might be 1989, but the case obviously started in
9 1984. I'm going to sustain the objection of this document
10 on the basis of relevancy.

11 MR. PATTERSON: Thank you, Your Honor.

12 MR. CHESNUTT: Those are all the questions I have of
13 Mr. Hynes.

14 JUDGE SCHNIERLE: Do counsel for Refiners or counsel
15 for Chemical Leaman wish to ask questions of this witness at
16 this time?

17 MR. WICK: I have no questions, Your Honor.

18 MR. O'KANE: No, Your Honor.

19 JUDGE SCHNIERLE: Do you have any questions on
20 redirect of this witness, Mr. Patterson?

21 MR. PATTERSON: Let me review my notes for just a
22 second, Your Honor.

23 (Pause.)

24 MR. PATTERSON: I have nothing further, Your Honor.

25 JUDGE SCHNIERLE: You may step down, sir.

1 MR. PATTERSON: I move for the admission, if I didn't
2 so before, of Matlack Exhibit 2.

3 JUDGE SCHNIERLE: You did, subject to any objections
4 on cross examination.

5 MR. CHESNUTT: I have no objections.

6 JUDGE SCHNIERLE: Matlack Exhibit Number 2 is
7 admitted into the record.

8 (Matlack Exhibit No. 2 was admitted in evidence.)

9 JUDGE SCHNIERLE: Do you desire to call the other
10 witness now or would you prefer to do so after lunch?

11 MR. PATTERSON: Your Honor, I need to make some
12 copies of things. I'm going to use a law office in town to
13 do that. I would prefer, if we could, to take a lunch and I
14 could run over and do my copying.

15 JUDGE SCHNIERLE: Return at 1:30 or 2:00?

16 MR. PATTERSON: Well, 2:00 would be safer unless it
17 throws anybody's plane or train schedules off.

18 MR. CHESNUTT: Could we try the 1:30 and then it if
19 doesn't -- why don't we compromise at 1:45?

20 JUDGE SCHNIERLE: Back from lunch at 1:45.

21 MR. PATTERSON: Thank you, Your Honor.

22 MR. CHESNUTT: Thank you, Your Honor.

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

25

AFTERNOON SESSION

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JUDGE SCHNIERLE: Mr. Patterson?

MR. PATTERSON: Your Honor, I think where we were, we are finished with Mr. Hynes and the next witness is the witness from Central, who I believe Mr. Chesnutt said he wanted to introduce on the record, if I recall your suggestion.

MR. CHESNUTT: Yeah. That was the suggestion. I'm certainly willing not to. I'm not insisting on it.

MR. PATTERSON: If you'd like to do that, that's fine with me. If not, I'll just call him.

MR. CHESNUTT: I thought you were objecting to my introducing him.

MR. PATTERSON: Oh, no.

JUDGE SCHNIERLE: Well, do you want to take the witness stand?

JERRY SKIDMORE, called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHESNUTT:

Q. Would you state your name, sir?

A. Jerry Skidmore.

Q. Is that spelled S-k-i-d-m-o-r-e?

A. Yes, it is.

Q. By whom are you employed?

1 A. Central Transport, Incorporated.

2 Q. What is your business address?

3 A. P.O. Box 7007, High Point, North Carolina 27264.

4 Q. And what position do you hold with the company?

5 A. Director of cleaning and waste treatment systems.

6 Q. And how long have you held that position?

7 A. Approximately four and a half years.

8 Q. And what is your -- what are your

9 responsibilities in that position?

10 A. To ensure that tank cleaning is carried out and
11 the quality and to ensure that the waste treatment is
12 handled at an economical and approved method.

13 Q. How long have you been with Central?

14 A. Four and a half years.

15 Q. Did you have any prior experience in the trucking
16 industry?

17 A. Yes.

18 Q. With whom?

19 A. Coastal Tank Lines.

20 Q. And how long did you work for Coastal?

21 A. Seventeen years.

22 Q. And what were your responsibilities with that
23 company?

24 A. Basically the same.

25 MR. CHESNUTT: Thank you. That's all I have of the

1 witness as a matter of introduction.

2 CROSS EXAMINATION

3 BY MR. PATTERSON:

4 Q. Mr. Skidmore, you indicated that your
5 responsibility was to oversee the cleaning of trailers and
6 the maintenance and proper operation of waste treatment
7 systems operated by Central Transport. Am I stating it
8 right or am I confused?

9 A. No, you're stating it right.

10 Q. What do you have to do -- strike that. Give me
11 the chain of command, if you will. Who do you work for in
12 the organization of Central Tank Lines?

13 A. Cliff James, vice president and general operation
14 manager.

15 Q. Who is the person who deals with spills if there
16 are any on the highway? Does that come under your
17 bailiwick?

18 A. No, sir, our environmentalist, Glen Simpson.

19 Q. Glen?

20 A. Glen and the safety department.

21 Q. And does the safety department also report to Mr.
22 James, to Cliff James?

23 A. Yes.

24 Q. Now, from the standpoint of spills as either as a
25 result of accidents or for some other reason on the highway

1 not related to cleaning the trailers, who else in the
2 company gets involved in that other than Mr. Simpson and the
3 safety department?

4 A. What do you mean by who else? I don't --

5 Q. I just don't know enough about the organization
6 of your company so I don't know whether some other
7 department or section when there is a trailer spill
8 somewhere who rushes to the scene other than the safety
9 department and Mr. Simpson.

10 A. Anyone that would be in the area in a management
11 position would probably be the first or the terminal manager
12 at that closest location.

13 Q. But there is no other formal team that the
14 company has to respond to those kinds of incidents?

15 A. Not to my knowledge, no.

16 Q. And is there a rapid response team or some sort
17 of group of people who are ready to go and deal with a spill
18 to the extent that, for example, it's starting to go into a
19 stream or some other body of water that they get there as
20 soon as they can to deal with it?

21 A. Most of that, sir, is contracted out at the
22 incident, closest to the incident by professional people
23 that do handle this type of stuff.

24 Q. Did you have any function in responding to any of
25 the interrogatories, the questions that Matlack asked

1 Central Transport to respond to in this case?

2 A. The first part of the question was?

3 Q. Did you have anything to do with those
4 responses? Did you participate in providing paperwork or
5 telling people what had happened in connection with the
6 cleaning of terminals and cleaning trailers? Did someone
7 come to you and seek information in connection with this
8 case?

9 A. Yes.

10 Q. What incidents did you supply information about
11 in connection with this case?

12 A. The incident on the deaths in Charlotte.

13 Q. And describe briefly without going into great
14 length what occurred in Charlotte and when it occurred?

15 MR. CHESNUTT: I object to further inquiry about that
16 item. The incident to which Mr. Patterson refers was
17 treated in two interrogatory responses which the Judge has
18 not seen, but which I will furnish him a copy. Those are
19 incidents one and five of the response to revised Matlack
20 interrogatories numbered 14 and 15.

21 MR. PATTERSON: I'm lost, Your Honor. This is an
22 objection.

23 JUDGE SCHNIERLE: What is the basis of the
24 objection?

25 MR. CHESNUTT: The objection is that the incidents

1 about which testimony is sought to be elicited do not come
2 within the ambit of the trucking relationship rule that the
3 Judge used this morning in excluding certain testimony and
4 certain information about Matlack.

5 MR. PATTERSON: On the contrary, Your Honor. It has
6 nothing to do with this morning. He's already testified
7 that it has to do -- and these things indicate cleaning of a
8 trailer. I don't know how much closer you can get.

9 The cleaning question has been woven throughout this
10 proceeding since Mr. Fesperman's prepared testimony talked
11 about the cleaning facilities maintained by this applicant
12 at Karns City. I have reviewed the testimony of some of the
13 other protestants. They've all talked about cleaning
14 facilities. Matlack's testimony has a lot to do with
15 cleaning facilities and indeed there was cross examination
16 on that subject by Mr. Chesnutt only an hour or so ago.

17 JUDGE SCHNIERLE: I agree. The objection is
18 overruled. .

19 MR. CHESNUTT: All right. I have a further objection
20 to inquiry about this information and that is that it is not
21 relevant within the ruling made by the Judge which was that
22 the reason the inquires could be made in the area of
23 regulation by agencies other than this Commission, to wit,
24 the agency of the Occupational Safety and Health Act, was
25 because of a decision in Expressed Trucking in which this

1 Commission looked to activities of an applicant involving a
2 guilty plea on a matter involving mail fraud in respect of
3 its transportation activities which I think is a direct
4 analogue to the cleaning of trailers.

5 The Judge will read the materials that have been
6 furnished with respect to Matlack interrogatories 14 and 15
7 and with respect to particularly instances one and five you
8 will find that those materials reflect that the violations,
9 the alleged violations have been disposed of in final orders
10 in which a finding, a stipulation has been made that the
11 settlement shall not be construed as an admission by
12 respondent, which is Central Transport, of the validity of
13 the allegations in the complaint and citation.

14 In the Expressed Truck Lines case you had a guilty
15 plea. Here you have a notice of violation which is resolved
16 by an agency other than this Commission with a finding and
17 an adoption of a settlement agreement in which the
18 allegations are not admitted by the respondent, Central
19 Transport.

20 MR. PATTERSON: Judge, this is evidence. The
21 distinction is certainly an interesting academic one. It is
22 not the same argument that Mr. Chesnutt has made previously
23 with respect to STL and your raising of that case at the
24 initial hearing.

25 It seems to me that when a carrier who seeks

1 authority from this Commission is involved in violations,
2 whether or not in the record presented to you it admits
3 those violations or attempts a protective move which would
4 say this should not be construed as an admission, this
5 Commission -- you and this Commission are entitled to look
6 at those things and to draw whatever inferences you choose
7 to draw from them.

8 I don't think you're captured by the North Carolina
9 Occupational Safety and Health people. I think you're
10 entitled to look at the facts as we can bring them out here
11 with these and with this witness' testimony and make your
12 own judgement. I think that is the business that you, sir,
13 and this Commission are in.

14 MR. CHESNUTT: And I disagree wholeheartedly. I
15 don't think you're in that business at all. These are
16 matters beyond your purview and the facts that were listed
17 in this relate to a decision that has been made by the
18 agency having appropriate jurisdiction over this.

19 I have no objection to the receipt into evidence of
20 the complete documentation furnished with respect to
21 incidences one and five. I think that is a possible
22 solution to the admission of evidence problem, but I don't
23 think that to go in and retry an issue that has been
24 litigated and tried in the appropriate forum is an
25 appropriate exercise of this Commission's discretion. And

1 I would point out further that it has to do with North
2 Carolina and not with Pennsylvania.

3 MR. PATTERSON: Your Honor, this Commission is in the
4 business of making those decisions and is entitled to
5 information and evidence. The fact that some other forum in
6 some other state has ruled on things within its purview
7 doesn't remove those facts from your view and shouldn't be
8 allowed to.

9 JUDGE SCHNIERLE: Well, I'm inclined to agree that we
10 are not -- I don't believe the Commission is held to receipt
11 of only guilty pleas or convictions. On the other hand, I
12 am inclined to agree that it -- that receiving facts about
13 the violation is one thing, but there is certainly no need
14 to, in essence, retry the violation.

15 MR. PATTERSON: I don't think we are doing that, Your
16 Honor.

17 JUDGE SCHNIERLE: I would suggest -- I'm going to let
18 Mr. Patterson continue. When he is finished with his
19 examination, upon your examination of the witness if you so
20 desire to bring into evidence these other facts regarding
21 the disposition of the violations, I'll certainly be glad to
22 hear them at that point, Mr. Chesnutt. On the other hand,
23 if we get to a point where it looks like we are retrying the
24 case, we'll sustain the objection to any further
25 questioning.

1 MR. CHESNUTT: Well, I will have a continuing
2 objection to this line of testimony because the facts are
3 set out in this documentation. They are stipulated to.
4 There has been an adjudication.

5 There have been findings of fact made and to, quote,
6 elicit those facts from this witness is totally
7 inappropriate because there are limited number of facts
8 which have been held to be relevant in the adjudication made
9 by the agency having jurisdiction over both of these
10 incidences. And I object to the continuing and take
11 exception to the Judge's ruling.

12 JUDGE SCHNIERLE: Mr. Patterson may proceed.

13 MR. PATTERSON: Your Honor, I'd like marked as
14 Matlack Exhibit 3 a multi-page document which is, in fact,
15 responses one through -- I beg your pardon. Let me get the
16 right terminology here -- which are, in fact, the initial
17 answers of Central to Matlack revised interrogatories 14 and
18 15 and as further explanation these are the answers that
19 relate to incidences one through four which Mr. Chesnutt has
20 just referred to.

21 JUDGE SCHNIERLE: They may be so marked. By the way,
22 I checked that at the last recess and three is the correct
23 number for this exhibit.

24 (Matlack Exhibit No. 3 was produced and marked for
25 identification.)

1 MR. PATTERSON: Thank you, sir. I would note that on
2 the face of the exhibit sits the interrogatory simply to
3 identify the sense of what is underneath it and as Matlack
4 Exhibit 4, a supplemental response from Central consisting
5 of a copy of what appears to be an order from the
6 Commissioner of Labor of North Carolina which I believe Mr.
7 Chesnutt has referred to previously as incidence number 5.

8 MR. CHESNUTT: Well, let me try to clarify the
9 exhibits that we have identified. Matlack Exhibit 3 as I
10 read it has responses concerning five instances rather than
11 four. Matlack Exhibit -- no, it doesn't.

12 Well, as he said this morning, it's his case. Let
13 him try it. The cover sheets refer to an instance number 5,
14 but there is no underlying data with respect to the instance
15 number 5.

16 MR. PATTERSON: And as Matlack 4 for identification,
17 Your Honor, is the order from the Commissioner of Labor from
18 North Carolina. As Matlack 5, a multi-page document on what
19 appears to be the letterhead of the United States Department
20 of Transportation described in its text as a safety
21 compliance review.

22 As Matlack 6, a single page copy of what appears to
23 be a newspaper article from the Charlotte Observer entitled
24 and appears to be dated May 14, 1987 with the byline FBI
25 Searches Firm Seeking Evidence Of Waste Dumping.

1 MR. CHESNUTT: Your Honor, I object to that on two
2 reasons. First of all, it's a newspaper article and I think
3 it's totally inappropriate for reception or even
4 identification in this matter and I would also note that
5 this goes beyond the scope of the engagement for which Mr.
6 Skidmore has been brought here.

7 The Judge very clearly recognized that the witness
8 was brought to respond to interrogatory responses. That's
9 clearly indicated on two points in the record. This was not
10 part of any interrogatory response that was furnished.

11 It was not anything that would have been
12 appropriately covered by the interrogatories tendered, and I
13 would note that with respect to what Mr. Skidmore should be
14 required to testify about, that we have a direct parallel in
15 this record that when I sought to cross examine the Chemical
16 Leaman witness on certain matters not covered in the direct
17 testimony by the Chemical Leaman witness, you sustained an
18 objection by Counsel O'Kane for Chemical Leaman that
19 prohibited me from inquiring about matters beyond the scope
20 of direct examination.

21 I think there is a direct parallel here. This
22 witness was brought here with the idea of responding to
23 matters discussed and appropriately within the interrogatory
24 responses. This is not anything that we would have been
25 required to furnish in response to interrogatories and nor

1 is it anything that we, in fact, furnished with response to
2 interrogatories.

3 MR. PATTERSON: Judge, I think in observance with the
4 procedure observed prior today or earlier today and I will
5 get to respond to that. I'd like to finish marking and
6 identifying documents as was done this morning before we get
7 into a discussion of the text of those documents.

8 All I've done is to identify what they are and asked
9 that they be marked so that the record can know later on
10 what we were talking about. If I may withhold replying and
11 observe the same kind of procedure that we observed this
12 morning in terms of marking things first, identifying them,
13 and then getting to their merits or whether they're
14 admissible or not, I would refer to do that. I have only
15 one more.

16 JUDGE SCHNIERLE: Your objection as to the marking of
17 this document is overruled. However, I will entertain
18 objections to the admissibility.

19 (Matlack Exhibits Nos. 4 through 6 were produced and
20 marked for identification.)

21 MR. PATTERSON: As Matlack 7, another newspaper
22 article headed Route 30 In Exton Closed; Toxic Liquid Leaks.

23 MR. CHESNUTT: Same objection, Your Honor.

24 JUDGE SCHNIERLE: Same ruling.

25 (Matlack Exhibit No. 7 was produced and marked for
identification.)

1 BY MR. PATTERSON:

2 Q. Mr. Skidmore, let's go back to Matlack Exhibit

3 3.

4 JUDGE SCHNIERLE: Before you start, I want to take a
5 five minute recess.

6 (Whereupon a brief recess was taken.)

7 JUDGE SCHNIERLE: Let's go back on the record. Mr.
8 Patterson?

9 BY MR. PATTERSON:

10 Q. You don't have anything in front of you, Mr.
11 Skidmore?

12 A. No.

13 Q. Let me give you a copy of what has been marked as
14 Matlack's Exhibit 3 and Matlack's Exhibit 4. Take a moment,
15 sir, if you would and look beneath the first couple pages of
16 Exhibit 3 and specifically to the page headed incident --
17 the second page of the exhibit that's headed instance number
18 1 where it indicates location of alleged violation 600
19 Melynda Road, Charlotte, North Carolina. Do you see that
20 response?

21 A. Yes, I do.

22 Q. Is that the incident involving the death of two
23 Central Transport employees?

24 A. I don't know.

25 Q. Would you page back a few more pages and you'll

1 see some documents associated with that instance. Take your
2 time and look through and see if you can identify in that
3 pile of documents that's been marked as Applicant's Exhibit
4 3 the documents that are associated with the instance that
5 you alluded to before the break here, that is the death of
6 two Central employees.

7 JUDGE SCHNIERLE: I don't think he mentioned the
8 death of anybody. I think he referred to something called
9 the Charlotte incident.

10 MR. PATTERSON: I think he did before a lot of fuss
11 and flurry, but I'll amend my question just to make it more
12 comfortable if you wish. The documents with respect to
13 incidence number 1.

14 MR. CHESNUTT: I'll stipulate that the documents with
15 respect to instance 1 contain the statement in the factual
16 findings by the Safety and Health Review Board in North
17 Carolina that there was an investigation of the double
18 fatality at respondent's Charlotte terminal on June 4,
19 1986.

20 BY MR. PATTERSON:

21 Q. Do you see that document, Mr. Skidmore?

22 A. Are we looking at this document?

23 Q. Yes, sir. It's headed before the Safety and
24 Health Review Board.

25 A. Yes.

1 Q. Now, sir, leave it open at that point and look
2 across the desk there to the document that's been marked
3 Matlack Exhibit 4. Does that refer to the same instance --
4 is the problem addressed in that document the same incident
5 that you refer to in instance number 1?

6 A. Yes.

7 Q. Arising out of the same problem, isn't it?

8 A. Yes.

9 Q. Now, sir, the date of the stipulation and notice
10 of settlement that's on your left and part of Matlack
11 Exhibit 3, the document headed before the Safety and Health
12 Review Board, what was the date of that document? Do you
13 see it anywhere on it? Look at page five to give you a
14 hand.

15 A. It says the 20th day of May.

16 Q. What year, sir?

17 A. 1987.

18 Q. And the date on Matlack Exhibit 4, on the
19 document marked as Matlack Exhibit 4, what is the date
20 there, sir, where it says filed on the front page?

21 A. January 26, 1989.

22 Q. Almost two years later?

23 A. Yes.

24 Q. May of '87 to January of '89. Were you
25 intimately involved in this incident? Did you know about it

1 and were you part of the solution to the problem, the
2 cleaning problem?

3 MR. CHESNUTT: I object to the question because it
4 indicates a cleaning problem and I'm not -- there is no
5 finding here that there was a cleaning problem and there is
6 no admission by the company as to the truthfulness or the
7 validity of any of the allegations to the extent that a
8 problem of cleaning may have been among the allegations.

9 That's why I objected to this whole line of testimony
10 is because we are now beginning to smear the record with
11 innuendo and carefully calculated questions that talk about
12 problems when, in fact, this Commission doesn't have any
13 jurisdiction even if there were a problem, but far more
14 overriding is that whatever problem may have existed, if one
15 did exist, it was dealt with by another agency and it has
16 been finally and firmly adjudicated.

17 JUDGE SCHNIERLE: Well, I believe that your objection
18 is not well taken because for the reasons I've indicated
19 previously on the record regarding this. I will ask Mr.
20 Patterson, if he would, to rephrase that to refer to the
21 alleged cleaning problem.

22 BY MR. PATTERSON:

23 Q. Maybe another way would be shorter and sweeter.
24 In 1986 am I correct that there was a double fatality in
25 connection with the cleaning of a Central Transport tank at

1 the Central Transport facility in Charlotte, North Carolina?

2 A. I don't know how to answer that. You're saying
3 cleaning of the tank and I don't really --

4 Q. Well, did two men die as a result of something to
5 do with a Central Transport tank at your facility in 1986?

6 A. Two men died in a clean tank.

7 Q. In a clean tank?

8 A. Yes, sir.

9 Q. What did they die of, sir? If you know?

10 MR. CHESNUTT: I object to that question.

11 JUDGE SCHNIERLE: Overruled. Answer the question.

12 MR. CHESNUTT: Well, you're asking this man to
13 conclude what -- he's not the coroner.

14 MR. PATTERSON: All he has to say is I don't know if
15 he doesn't know.

16 JUDGE SCHNIERLE: He's been presented as the person
17 in charge of tank cleaning for Central.

18 MR. CHESNUTT: But he's not been presented as the
19 person that adjudicated whatever problem arose with respect
20 to the death of these men. He wasn't the coroner that
21 signed the death certificate as to the cause of death.

22 MR. PATTERSON: Your Honor, I think Mr. Chesnutt is
23 under the impression only for his client not when we were
24 delving into the safety records of others that somehow if
25 the problem has been adjudicated by some other body that

1 we're allowed to talk about it or consider it and I think
2 that's just dead wrong. That's what I'm trying to do.

3 JUDGE SCHNIERLE: Well, the objection is overruled.

4 BY MR. PATTERSON:

5 Q. Do you know what they died of?

6 A. They died of asphyxiation.

7 Q. Do you know how the asphyxiation occurred? Was
8 it as a result of some chemical that was still in the tank
9 or did the top close on them or what?

10 A. It was never determined that it was in the tank.
11 But it was determined by the coroner it was Methylene
12 Chloride was the product.

13 Q. And that had been the product that had been
14 carried in that tank prior to them cleaning it?

15 A. No.

16 JUDGE SCHNIERLE: I take it they had been sent into
17 the tank to clean it. They didn't just happen to fall into
18 the tank?

19 THE WITNESS: No, it was part of their duties, Your
20 Honor.

21 BY MR. PATTERSON:

22 Q. Did they have protective equipment on?

23 A. No.

24 Q. Oxygen masks and that kind of thing?

25 A. No.

1 Q. Has Central had similar instances since that time
2 either at Charlotte Terminal or elsewhere?

3 A. Involving a tank cleaning?

4 Q. Yes, injuries or deaths involving tank cleaning.

5 A. Not to my knowledge.

6 Q. If there had been any, would you know about them
7 as part of your job?

8 A. Yes.

9 Q. And you've been in your present position, did you
10 say for three to four years? Did I understand you?

11 A. Four and a half years.

12 Q. Four and a half. I beg your pardon. And this is
13 the only incident in that time since whenever the incident
14 was in 1986 that you know of that someone getting hurt or
15 killed in the process of cleaning a Central tank? The
16 incident at Charlotte is the only one you know about?

17 A. In Central tank cleaning facilities.

18 Q. How about right outside?

19 A. I don't know what you mean.

20 Q. Right outside Central's facilities? Anybody hurt
21 there cleaning tanks?

22 MR. CHESNUTT: Well, I object to this question
23 because we're getting beyond the scope of the
24 interrogatories was which was a notice of violation. The
25 interrogatories asked applicant to respond to any

1 complaints, warnings, or notices of claim. That goes beyond
2 the scope of interrogatories. That's what the witness was
3 presented for.

4 I call Your Honor's attention to the fact the
5 limitations that were imposed on counsel for Central and its
6 examination of Chemical Leaman and I think I'm getting
7 unequal treatment.

8 MR. PATTERSON: Your Honor, I happen to note on my
9 way through page 19 of the transcript in which this subject
10 initially came up. I believe it's 19. It's really the
11 first time that we got into the question of asking Mr.
12 Fesperman who was then on the stand about safety and
13 environmental matters and at that point at the bottom of
14 page 19 Mr. Chesnutt indicated that Mr. Fesperman was not
15 the best witness for that and as a result of that have
16 withheld questions on that subject.

17 He also indicated that he has people in the company
18 who are specialists in that area in the company who I would
19 want the opportunity to have available to discuss
20 environmental issues. Later on, on page 20 we talk about
21 the handling of particular times of hazardous materials and
22 about violations and so forth.

23 Eventually, shortly thereafter, we deferred all that
24 questioning until Mr. Chesnutt -- until Central Transport
25 could produce a witness who they regarded as knowledgeable

1 in those subjects. I don't believe that we are foreclosed
2 by the particular interrogatory.

3 We were certainly foreclosed for purposes of
4 discovery by that interrogatory, but now we are at an
5 evidentiary phase of the hearing and I think we withheld, I
6 think the record is pretty clear, we withheld getting into
7 any more of that until they brought a witness here who could
8 speak to that and certainly these questions are directly
9 related to that kind of thing.

10 Without getting into all sorts of complex issues
11 regarding that rather complex question which was in both of
12 our interrogatories, it's a simple matter of this man here,
13 as I understand it, to speak to safety and environmental and
14 hazardous materials kinds of questions involving the
15 applicant and that's what I intend to cross examine him
16 about. That's why I've marked these things as exhibits.

17 JUDGE SCHNIERLE: I agree. The objection is
18 overruled.

19 MR. CHESNUTT: Your Honor, I would take exception to
20 the fact that I have two representations from Your Honor.
21 One, at page 62 and 63 of the transcript in which you
22 indicate that the witness is expected to be brought to
23 respond to the interrogatory answers and, again, the same
24 representation was given to me at pages 311 and 312 of the
25 transcript.

1 MR. PATTERSON: Now, Your Honor, that's a
2 characterization. All you've got to do is read the top of
3 page 63. It says something about the witness to address the
4 issues which may come out. Now, I don't suggest that we can
5 talk to him about the color of his trucks or how many
6 vehicles he's got at his New Orleans terminal, but I think
7 darn sure that we are -- that's not open-ended, but it
8 certainly suggests what I had said earlier, that this man is
9 here to answer questions about safety, environmental, and
10 other types of concerns like that.

11 MR. CHESNUTT: And I suggest that the issues to come
12 out of the interrogatories are complaints, warnings, or
13 notices of claim as the Judge was careful to circumscribe at
14 the time he allowed the interrogatories to occur.

15 JUDGE SCHNIERLE: Well, again, in my opinion the
16 interrogatories are the scope of evidence which can be put
17 in the hearing and is not limited to the same extent as the
18 interrogatories. And as far as I'm concerned, the last
19 question is well within the scope of questions which are
20 admissible in this proceeding. The objection is overruled.
21 You have an exception. Please answer the -- do you remember
22 the question?

23 THE WITNESS: No, I don't remember the question.

24 JUDGE SCHNIERLE: Could you repeat the question, Mr.
25 Patterson?

1 BY MR. PATTERSON:

2 Q. I think your answer to me was that no injuries
3 had occurred in connection with the cleaning of tanks except
4 the ones that we have been referring to at the Charlotte
5 terminal and I think you've said in answer to that that
6 that's correct on Central's facilities. And my question to
7 you was, somewhat jokingly, how about just outside your
8 facilities?

9 A. When you said right outside, it's got me
10 confused. I don't understand what you mean. That wall is
11 right outside. I don't understand the question.

12 Q. All right, sir. I'll withdraw that question. It
13 really was a followup. It sounded to me like your answer
14 was very limited. Let me ask you another question. Have
15 Central employees been injured since the incident in 1986
16 that we have referred to and, for ease of reference, we'll
17 call it the Charlotte incident so we both know what we are
18 talking about. Have Central employees been injured cleaning
19 Central's tanks? I don't care where.

20 A. Since the incident?

21 Q. Yes, sir.

22 A. Yes.

23 Q. How many times, sir? Give me a sense. Is it a
24 hundred times or is it two more times? I don't have a frame
25 of reference.

1 MR. CHESNUTT: Again I object to this, Your Honor,
2 because had they been injured, they could have cut their
3 finger coming out of the trailer and I think this is a
4 wholly unwarranted inquiry. This is not the basis of which
5 the witness was brought here.

6 MR. PATTERSON: Your Honor, I can only ask one
7 question at a time.

8 MR. CHESNUTT: Well, the question is framed too
9 broadly, were they injured.

10 JUDGE SCHNIERLE: Well, I think when we get a couple
11 more questions on the record we'll find out whether or not
12 they were injured cutting their finger or whether or not
13 they were injured because there was some problems with the
14 procedures used to clean the tank. The objection is
15 overruled.

16 BY MR. PATTERSON:

17 Q. The question is how many have been injured,
18 ballpark figure, cleaning tanks?

19 A. Four.

20 Q. About four?

21 A. Yes.

22 Q. Any of those injuries serious and, by that, I'll
23 define that for you, requiring any hospitalization?

24 A. Not to my knowledge.

25 Q. Did any of those injuries occur in Pennsylvania?

1 A. Not to my knowledge.

2 Q. Now, sir, go back near the front of Matlack
3 Exhibit 3 on the second page if you would, sir. The second
4 instance mentioned is named instance number 2 and has to do
5 with the transportation of a hazardous material without
6 properly prepared shipping papers. Do you see that?

7 JUDGE SCHNIERLE: Hold on this line of questioning.
8 Are you going to ask him what the nature of the injuries
9 were involved in those tank cleaning operations so that we
10 don't have the cut finger?

11 MR. PATTERSON: I asked about hospitalization and I
12 guess I hadn't intended to. I'm happy to. I figured that
13 was a dividing line.

14 BY MR. PATTERSON:

15 Q. Let me withdraw that question and ask you of the
16 nature of the four injuries that you can recall in the tank
17 cleaning line of questioning, what was the nature of the
18 injuries to the people?

19 A. One I recall was a sprained back. There was a
20 couple cut fingers and it could have been three cut
21 fingers. Sprained back and small things.

22 Q. And to close it out, no more inhalation injuries,
23 that is, inhalation of some gas or some refuse left in a
24 tank?

25 A. None to my knowledge.

1 JUDGE SCHNIERLE: Thank you.

2 BY MR. PATTERSON:

3 Q. Now, let's go back to instance number 2, sir. If
4 I understand your testimony, this incident would have
5 nothing to do with your scope of responsibility? I mean the
6 one named in instance number 2 on Matlack Number 4.

7 A. You're correct, I don't have any.

8 Q. You don't know anything about that one?

9 A. No, sir.

10 MR. CHESNUTT: But I'm willing to stipulate that
11 those facts are as they are reported on that document.

12 MR. PATTERSON: Your Honor, it was my understanding
13 from Mr. Chesnutt's earlier argument that the witness be
14 produced at very least even in his interpretation of the
15 limitations, if you will, on questions to this witness was
16 that he can respond to those things that Central responded
17 to in the interrogatories.

18 MR. CHESNUTT: Your Honor, I made a judgment as
19 counsel that there was one incident in here beyond the scope
20 of this witness's responsibilities and it was the one that
21 we have just treated.

22 I felt that it was a reasonable response that we
23 admit this violation and not bring us a separate witness to
24 address a two page citation that reads that we failed to put
25 an X in the right box of some shipping documents. I felt

1 that that gets the evidence into the record.

2 It's an admission against the interest of my client,
3 and I don't know what more can be done with it by having a
4 witness here that's been done with it by admitting it.

5 JUDGE SCHNIERLE: Do you have a problem with that
6 response, Mr. Patterson?

7 MR. PATTERSON: No, Your Honor.

8 BY MR. PATTERSON:

9 Q. Let's go to incident number 3 on the third page.
10 Do you have any knowledge with respect to that instance?
11 Are you familiar with that?

12 A. Yes, sir.

13 Q. Would you point out the documents in the
14 collection of documents underlying which relate to instance
15 number 3. Can you give me some kind of indicator on it?

16 A. Yes. A citation of notification of penalty,
17 issuance date 1/29/87.

18 Q. That has to do with the Greenville, North
19 Carolina terminal of Central?

20 A. Yes, sir.

21 MR. CHESNUTT: Greenville, South Carolina, I believe
22 it is.

23 MR. PATTERSON: I beg your pardon.

24 BY MR. PATTERSON:

25 Q. And would you agree with me that the nature of

1 that violation also has to do with washing tanks and people
2 who were doing that exposed to hazards associated with
3 working in confined spaces?

4 MR. CHESNUTT: No objection to the question as long
5 as we understand it's the notice of alleged violation
6 because the dispositive order by the South Carolina
7 Occupational Safety and Health -- I'm sorry. Occupational
8 Health and Safety Review Board indicates that there is no
9 admission by respondent with respect to these alleged
10 documents. At paragraph seven of the --

11 MR. PATTERSON: Your Honor, maybe it be better if Mr.
12 Chesnutt get on the stand. I'm simply asking this witness
13 questions. I'm not confusing him or asking him whether
14 these are admissions. I'm simply asking whether that
15 instance had to do with the same problem. I don't think
16 that requires a recitation of all the conditions. They're
17 here.

18 MR. CHESNUTT: They're here and that's right and you
19 are talking about violations and I'm talking about alleged
20 violations. I have no objection to the question. I'm
21 simply pointing out to the Judge why my point that alleged
22 violation is the proper phraseology is correct and I'm
23 protecting the record and I'm entitled to protect the
24 record.

25 MR. PATTERSON: I think I referred to it as an

1 instance.

2 MR. CHESNUTT: You referred to it as a violation.

3 JUDGE SCHNIERLE: Well, take it as in instance.

4 Let's proceed.

5 BY MR. PATTERSON:

6 Q. And that this instance also had to do with
7 failing to require your people to wear appropriate
8 protective equipment and respirators. Is that correct?

9 A. That's correct.

10 Q. What have you done, sir, to correct the problem
11 at the Greenville, South Carolina terminal that raised this
12 instance of alleged violation?

13 A. We have implemented a confined space, entry
14 procedures and safety procedures. We have given employees
15 training, handbooks, and instructions. We have videos that
16 all employees are required to view. We have safety drills
17 monthly. We have surprise drills by safety personnel.

18 Q. When did you start that, sir?

19 A. I don't have a date.

20 Q. I don't need a day. Give me a sense of when you
21 started it.

22 A. It was in the making when the previous violation
23 at Charlotte, North Carolina happened. Soon after that and
24 it took quite sometime to put it together so I want to say
25 in February or March.

1 Q. Of?

2 A. Of 1987.

3 Q. So it was in place at least at Greenville by
4 February or March of '87 or was it in place companywide at
5 that point?

6 A. Companywide. It was not all at one time.

7 Q. Now, sir, let's turn to instance number 4 which
8 has to do with your Pennsylvania terminal at Karns City.
9 Does this kind of alleged problem come under your
10 supervision and control for Central Transport?

11 A. I haven't found 4 yet, sir.

12 (Pause.)

13 A. Yes, sir.

14 Q. Now, sir, just for the record, tell me what the
15 general nature of the instance had to do with?

16 A. This was a brand new facility at this time and we
17 had a waste treatment facility and it had arrangements with
18 the city of Parker to transport our water to them.

19 Q. That's washing water?

20 A. Right, after it's been pre-treated. Upon really
21 getting into the training of the people and just starting up
22 Mr. Wozineck with the Department of Environmental Resources
23 came to our facility for an investigation. We had not taken
24 any water off site. We was treating water.

25 We were having an analysis run of the water to

1 determine if it was a hazardous or non-hazardous commodity
2 along with the diatomaceous earth which comes off the vacuum
3 cleaner drum. His contention was that if we cleaned
4 anything on the EPA's priority prudence list, that it would
5 pollute the whole -- everything. And so it was really, as
6 it says in here under violations, we was not -- I was not
7 familiar with the no mix law in Pennsylvania.

8 Q. And what have you done to correct that problem?

9 A. We clean no priority pollutants under the U's or
10 P's on Pa.'s list at that facility.

11 Q. And that's still the case that that facility does
12 not clean hazardous materials that are characterized or
13 catagorized as P or U materials?

14 A. Yes, sir, that's true. We do not.

15 Q. Now, sir, with respect to Karns City it had to do
16 with the waste material that comes out of tanks after you've
17 cleaned them out dealing with the disposal of that waste as
18 a general matter. Is that correct?

19 A. Yes.

20 Q. Have you had instances relating to the Charlotte
21 terminal more current than that, more current than your
22 problem at Karns City involving the dealing with that waste
23 product that comes out of the cleaning process?

24 A. Repeat it.

25 Q. Have you had more current instances involving the

1 disposal of tank cleaning effluent since the Karns City
2 instance?

3 A. The alleged instances you have the paperwork on
4 that.

5 Q. Are you referring to the Matlack Exhibit 6, the
6 newspaper article from the Charlotte Observer?

7 MR. CHESNUTT: Your Honor, Exhibit Number 6 purports
8 to be an article from the Charlotte Observer from Thursday
9 May 14, 1987 and I object to any inquiry concerning that
10 matter because I don't think it's properly founded with the
11 introduction of hearsay materials from a newspaper where we
12 have no opportunity to cross examine and to find out the
13 veracity of any of the allegations that were made in that
14 document.

15 MR. PATTERSON: Your Honor, it's obvious that the
16 article has struck a responsive core in the witness because
17 it's being used to refresh his recollection and that's as
18 far as I've gone with it so far.

19 JUDGE SCHNIERLE: Well, quite frankly, Counsel, I
20 will allow you to use it to refresh his recollection, but
21 I'm disinclined to admit this because, number 1, it
22 describes an investigation and there is no other exhibits
23 entered or marked exhibits which would indicate that this
24 investigation was brought to any kind of conclusion.

25 And, number 2, I think there is all sorts of other

1 hearsay contained in this thing. The potential prejudice
2 far out weighs the value contained therein, so you can use
3 it to refresh his recollection to see what he knows about
4 that incident, but I'm disinclined to admit the document as
5 an exhibit.

6 BY MR. PATTERSON:

7 Q. Mr. Skidmore, take a moment and read the article
8 so that your recollection is fully refreshed. You were
9 working for the company at the time of this article in May
10 of 1987?

11 A. Yes.

12 Q. And you're at the Charlotte terminal?

13 A. Yes.

14 Q. Were you at that time? Were you physically
15 located? Is that where you work out of?

16 A. No.

17 Q. But you were familiar with it at that time?

18 A. Yes.

19 Q. Were you at all familiar with water samples taken
20 downstream from that facility?

21 A. No.

22 Q. Were you familiar at the time that such samples
23 were being taken?

24 A. No.

25 Q. With respect to the incident or incidents

1 described in the article, has anything occurred, to your
2 knowledge, since May 14, 1987 which appears to be the date
3 of the article in connection with the subject matter of that
4 article?

5 A. Has anything occurred?

6 Q. Yeah. Has there been more articles? Has the
7 government withdrawn any investigation? Have you admitted
8 anything with respect to this? Has anything occurred in
9 connection with that subject matter?

10 A. Not to my knowledge.

11 Q. Now, sir, I direct your attention for purposes of
12 refreshing your recollection to an article marked for
13 identification as Matlack Exhibit 7.

14 MR. CHESNUTT: Now, I object to this for a further
15 reason, Your Honor. First place, we don't have any idea
16 what publication this came out of. It's an undated article,
17 so we have no point of reference with respect to dates and
18 we had a limitation imposed today concerning the magic date
19 of January 1, 1986.

20 We have no basis on which to know whether this was
21 prior to or after January 1, 1986, and it has all the other
22 defects that Matlack Exhibit Number 6 has which you've
23 already taken cognizance of.

24 MR. PATTERSON: Your Honor, I've asked him to refresh
25 his recollection. I haven't asked him to admit the exhibit

1 yet.

2 MR. CHESNUTT: But he's asking him to refresh his
3 recollection about a matter that may be beyond the scope of
4 the Judge's ruling on what is admissible with respect to
5 this area of inquiry.

6 MR. PATTERSON: Judge, I would suggest to you that
7 there is --

8 JUDGE SCHNIERLE: There is no date on this thing.
9 Are you willing to take the witness's word for what the date
10 is?

11 MR. PATTERSON: No. I haven't asked him a question
12 yet. I've asked him to read the article and put in the
13 record what I've put before him to read. That's all I've
14 done so far. It may turn out that he doesn't know anything
15 about it.

16 JUDGE SCHNIERLE: Well, I'll let it be used to
17 refresh his recollection and we'll see what he has to say in
18 response to it. Are you finished, Mr. Skidmore?

19 THE WITNESS: No, sir, I'm not.

20 (Pause.)

21 BY MR. PATTERSON:

22 Q. Have you finished the article, sir?

23 A. Yes, I have.

24 Q. The document that's been marked for
25 identification as Matlack Exhibit 7, are you at all familiar

1 with the incident therein described?

2 MR. CHESNUTT: And I object.

3 JUDGE SCHNIERLE: Overruled. Please answer the
4 question.

5 THE WITNESS: No.

6 BY MR. PATTERSON:

7 Q. Take a look, sir, if you would at Matlack Exhibit
8 5 which is a multi-page document headed United States
9 Department of Transportation Federal Highway Administration
10 Safety Compliance Review?

11 MR. CHESNUTT: If your honor please, I would object
12 to any testimony concerning this document on the basis that
13 it is not within the purview of this witness's appearance.
14 Interrogatories 14 and 15 regarded complaints, warnings, or
15 notices of claim. This one none of the three.

16 MR. PATTERSON: I agree with that. I agree that
17 interrogatory number 14 and 15 has to do with what Mr.
18 Chesnutt just talked about. We have been through this gate
19 15 times this afternoon and I thought Your Honor ruled that
20 I was not circumscribed by the interrogatories in my cross
21 examination of this witness.

22 JUDGE SCHNIERLE: Again, your objection is
23 overruled. You can ask him if he is familiar with it. If
24 you get a negative response, that's the end of that.

25 BY MR. PATTERSON:

1 Q. Do you assist when a DOT safety investigator
2 comes to visit one of your company's facilities?

3 A. No.

4 Q. Do you recognize the document that has been
5 marked as Matlack Exhibit 5?

6 A. No.

7 MR. PATTERSON: That's all I have of this witness,
8 Your Honor, and I request a five minute recess because I may
9 have a motion that I would like to discuss with my client.

10 JUDGE SCHNIERLE: Let's have a five minutes recess.

11 (Whereupon, a brief recess was taken.)

12 MR. PATTERSON: I have nothing further.

13 JUDGE SCHNIERLE: Mr. Chesnutt?

14 MR. CHESNUTT: I have nothing further.

15 JUDGE SCHNIERLE: Mr. O'Kane?

16 MR. O'KANE: I have no questions.

17 JUDGE SCHNIERLE: You may step down, sir. Do you
18 wish to move for the admission of any of these exhibits?

19 MR. PATTERSON: Yes, sir. I'd like to move for the
20 admission of Matlack Exhibit 3 and 4, and I would ask Your
21 Honor to take official notice of the document now marked as
22 Matlack Exhibit 5 consisting of that DOT safety compliance
23 review. I do not seek to admit Exhibits 6 and 7 in view of
24 the responses of the witness.

25 JUDGE SCHNIERLE: Exhibits 6 and 7 are not admitted

1 into evidence, Matlack 6 and 7. Do you have any objection
2 to Matlack Exhibit Number 3?

3 MR. CHESNUTT: I do not.

4 JUDGE SCHNIERLE: Matlack Exhibit Number 3 is
5 admitted.

6 (Matlack Exhibit No. 3 was admitted in evidence.)

7 JUDGE SCHNIERLE: Do you have objection to Matlack
8 number 4?

9 MR. CHESNUTT: I do not.

10 JUDGE SCHNIERLE: That also is admitted into
11 evidence.

12 (Matlack Exhibit No. 4 was admitted in evidence.)

13 JUDGE SCHNIERLE: Do you have an objection to the
14 request to take judicial notice of the document presently
15 described as Matlack Exhibit Number 5?

16 MR. CHESNUTT: I do. I don't think it comes within
17 the ambit of the matters that a Judge is able to give
18 official notice to.

19 JUDGE SCHNIERLE: Well, in my view, Matlack Exhibit 5
20 could be submitted as an official document if a certified
21 copy were provided.

22 MR. CHESNUTT: I don't doubt the authenticity.

23 JUDGE SCHNIERLE: You don't challenge the
24 authenticity?

25 MR. CHESNUTT: No.

1 MR. PATTERSON: In my quick reading of the transcript
2 and, Your Honor, I wasn't here at the hearings, it seems to
3 me that Matlack 5, simply for purposes of identifying what
4 we are talking about, not as an exhibit, falls pretty much
5 in the same catagroy as other matters given official notice
6 at the other hearings at which protestants testified.

7 JUDGE SCHINERLE: Well, if view of the fact that the
8 authenticity of the document is not challenged, I think it
9 would be preferable simply to admit it as an exhibit over an
10 objection based on relevancy?

11 MR. CHESNUTT: Yes.

12 JUDGE SCHNIERLE: So Matlack Exhibit Number 5 is
13 admitted as an exhibit.

14 MR. PATTERSON: Thank you, sir.

15 (Matlack Exhibit No. 5 was admitted in evidence.)

16 JUDGE SCHNIERLE: Are there any other evidentiary
17 matters that you wish to bring at this time, Mr. Patterson?

18 MR. PATTERSON: No, sir.

19 JUDGE SCHNIERLE: Mr. O'Kane?

20 MR. O'KANE: No, Sir.

21 JUDGE SCHNIERLE: I believe you have no rebuttal
22 testimony, Mr. Chesnutt?

23 MR. CHESNUTT: That's correct.

24 JUDGE SCHNIERLE: In that event, I would ask that the
25 parties indicate their desire -- I'm assuming you want to

1 file briefs?

2 MR. CHESNUTT: That's certainly true of applicant,
3 yes.

4 JUDGE SCHNIERLE: I will set a briefing schedule.
5 The Commission's latest regulation for briefs, which is 52
6 Pa. Code Section 5.502 indicates that the first or initial
7 briefs shall be filed by the participant upon whom the
8 burden of proof rests and other participants may respond.

9 If no specific time is fixed, initial briefs shall be
10 filed and served within 30 days after the date and service
11 of notice and filing of the transcript. It's my inclination
12 to follow that schedule.

13 So that, Mr. Chesnutt, your brief would be due 30
14 days after the last transcript is available and the
15 protestants' briefs would be 20 days thereafter, and I will
16 send a letter out indicating the receipt of the final
17 transcript and as a reminder to the briefing schedule.

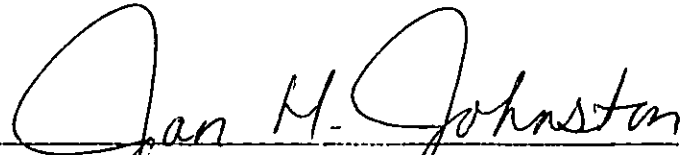
18 MR. PATTERSON: Very well, sir.

19 JUDGE SCHNIERLE: And I would expect the briefs to be
20 complying in content and form of 52 Pa. Code Section 5.501.
21 If we have no further business to transact, and I don't
22 believe we do, this hearing is adjourned. Thank you very
23 much.

24 MR. PATTERSON: Thank you, Your Honor.

25 (Whereupon, at 3:15 p.m., the hearing was concluded.)

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause, and that
4 this is a true and correct transcript of the same.

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8 JAN H. JOHNSTON
9 Court Reporter

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14 HOLBERT ASSOCIATES
15 JAN H. JOHNSTON
16 Suite 401, Kunkel Building
17 301 Market Street
18 Harrisburg, Pennsylvania 17101
19
20
21
22
23
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