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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

February 7, 1989
10:00 a.m.

Pages 346 to 444, inclusive

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Public Utility Commission**

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Stenographic report of hearing held in Hearing
Room No. 1306, State Office Building,
Philadelphia, Pennsylvania

Tuesday,
February 7, 1989
10:00 a.m.

BEFORE

MICHAEL SCHNIERLE, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

WILLIAM A. CHESNUTT, ESQUIRE
MCNEES, WALLACE, & NURICK
100 Pine Street
Harrisburg, Pennsylvania 17108
Appearing on behalf of the Applicant, Central
Transport, Inc.

1 APPEARANCES (CONTINUED)

2 WILLIAM J. O'KANE, ESQUIRE
3 CHEMICAL LEAMAN CORPORATION
4 102 Pickering Way
5 Exton, Pennsylvania 19341-0200
6 Appearing on behalf of Protestant, Chemical
7 Leaman Corporation

8 KENNETH A. OLSEN, ESQUIRE
9 GEORGE A. OLSEN, ESQUIRE
10 P.O. Box 357
11 Gladstone, New Jersey 07934
12 Appearing on behalf of Protestant, Marshall
13 Service, Inc.

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1 JUDGE SCHNIERLE: This is the time and place set
2 for a further hearing in the matter of the application of
3 Central Transport. I note the appearances of William
4 Chesnutt for the applicant, William J. O'Kane for Chemical
5 Leaman Tank Lines, and Kenneth Olsen and George Olsen for
6 Marshall Service, Incorporated.

7 These hearings were originally scheduled for
8 February 7th, 8th, and 9th but because of various
9 scheduling conflicts and discovery problems, it appears
10 that we'll only be having -- we should be able to finish
11 up this hearing today. And if that's the case, the next
12 set of hearings in this proceeding will be on February
13 14th and 15th in Pittsburgh, February 14th starting at
14 1:00 and February 15th starting at 10:00 a.m.

15 With that preliminary note, I would inquire if
16 there's any other business that we need to discuss this
17 morning.

18 MR. CHESNUTT: If Your Honor please, I do have one
19 matter in the nature of a preliminary. In a letter dated
20 January 25, 1989 counsel for protestant Oil Tank Lines,
21 Inc. addressed a letter to me with a copy to you and other
22 parties, all other parties of record --

23 JUDGE SCHNIERLE: Yes, I recall that.

24 MR. CHESNUTT: -- and made reference to a
25 stipulation arrived at between himself and myself for our

1 respective clients. It's my impression from reading the
2 letter that copies of that stipulation were furnished to
3 His Honor and to all parties of record. I'm not worried
4 about all parties of record, but I'm worried about --

5 JUDGE SCHNIERLE: Yes, I received a copy of the
6 stipulation.

7 MR. CHESNUTT: Okay, and then it is my duty in my
8 agreement with Mr. Graf to make available two copies for
9 the record, which I will now do.

10 JUDGE SCHNIERLE: Why don't you just provide that
11 to the court reporter.

12 MR. CHESNUTT: I shall. And it's marked in terms
13 of an exhibit, Your Honor; and perhaps it should be
14 assigned a number. That's the way, at least, Mr. Graf has
15 framed it; and I have no particular ax to grind one way or
16 the other.

17 JUDGE SCHNIERLE: Why don't we make it just Oil
18 Tank Lines Exhibit 1.

19 (Oil Tank Lines Exhibit No. 1 was produced and
20 marked for identification.)

21 MR. CHESNUTT: All right. And I would be -- I
22 would move that it be received into evidence.

23 JUDGE SCHNIERLE: Are there any objections?

24 MR. OLSEN: I have none, Your Honor.

25 JUDGE SCHNIERLE: Oil Tank Lines Exhibit 1, being a

1 stipulation of counsel, is admitted into the record.

2 (Oil Tank Lines Exhibit No. 1 was admitted in
3 evidence.)

4 JUDGE SCHNIERLE: And I would also note for the
5 record that in accordance with Mr. Graf's request, he's
6 excused from appearing at these hearings on these dates.
7 If there are any other preliminaries, we'll take them up
8 now. If not, and that appears to be the case, I
9 understand that Marshall Service will proceed first.

10 MR. OLSEN: Yes, Your Honor. Good morning, Your
11 Honor.

12 JUDGE SCHNIERLE: Good morning.

13 MR. OLSEN: Your Honor, I'd like to call to the
14 witness seat Mr. Everett Marshall from Marshall Service,
15 Incorporated. Mr. Marshall, could you please sit there.

16 JUDGE SCHNIERLE: Please stand and raise your right
17 hand.

18 EVERETT MARSHALL, called as a witness, having been
19 duly sworn, was examined and testified as follows:

20 JUDGE SCHNIERLE: Please be seated.

21 DIRECT EXAMINATION

22 BY MR. OLSEN:

23 Q. Mr. Marshall, could you please give your full
24 name and business address for the record.

25 A. Everett Marshall III, Pearl Street, Newfield,

1 New Jersey.

2 Q. And Mr. Marshall, by whom are you employed?

3 A. Marshall Service, Incorporated.

4 Q. And in what capacity are you employed at

5 Marshall Service, Incorporated?

6 A. Vice president.

7 Q. As vice president of Marshall Service, what are
8 your functions?

9 A. As vice president of Marshall Service I do near
10 everything that has to be done at Marshall Service.

11 Q. Are you familiar with the operations, personnel,
12 equipment, and finances of your company?

13 A. Yes.

14 Q. As vice president are you involved in the sales
15 and solicitation of your company?

16 A. Yes.

17 Q. Mr. Marshall, did you have prepared by you or
18 under your supervision copies of your operating authority
19 which you hold from the Pennsylvania Public Utility
20 Commission?

21 A. Yes.

22 MR. OLSEN: Your Honor, I would ask that this two
23 page exhibit, copies of the operating authority of
24 Marshall Service, Incorporated, held from the Pennsylvania
25 Public Utility Commission be marked as Marshall Exhibit

1 Number 1.

2 JUDGE SCHNIERLE: It maybe so marked

3 (Marshall Exhibit No. 1 was produced and marked for
4 identification.)

5 BY MR. OLSEN:

6 Q. Mr. Marshall, to bring your attention to what's
7 been marked for identification as a two page exhibit,
8 Marshall Exhibit Number 1, is that a true and correct copy
9 of the operating authority held by your company, from the
10 Pennsylvania Public Utility Commission?

11 A. Yes.

12 Q. Mr. Marshall, does your company hold itself out
13 to provide service to the public throughout the scope of
14 this operating authority?

15 A. Yes, we do.

16 Q. Mr. Marshall, how long have you been with your
17 company?

18 A. I've been in charge of the operation since 1971.

19 Q. Prior to that, were you employed by Marshall
20 Service, Incorporated?

21 A. When I was growing up, I was. For 39 years I
22 guess I've been involved.

23 Q. In other words, it's a family company?

24 A. Yes.

25 Q. Does your company have any terminals or

1 facilities, Mr. Marshall?

2 A. We have one terminal in Newfield, New Jersey.
3 It contains our maintenance facilities and our cleaning
4 facilities and our parking area.

5 Q. Do you have tank cleaning facilities at this
6 Newfield, New Jersey --

7 A. Yes.

8 Q. Are your offices located at Newfield, New
9 Jersey?

10 A. All of our offices are also there.

11 Q. Approximately what is the size of that facility
12 at Newfield, New Jersey?

13 A. About two acres, three bays in the maintenance
14 facility. We have an additional two bays going to be
15 added for additional cleaning, at this point.

16 Q. And is your equipment domiciled at this
17 Newfield, New Jersey facility?

18 A. Yes.

19 Q. Mr. Marshall, did you have prepared by you or
20 under your supervision a list of equipment operated by
21 Marshall Service, Inc., taken from the records of the
22 company, kept in the ordinary course of business?

23 A. Yes.

24 MR. OLSEN: Your Honor, I would like to have a
25 three page -- excuse me, Your Honor -- two page document

1 marked for identification as Marshall Exhibit Number 2.

2 JUDGE SCHNIERLE: Do so.

3 (Marshall Exhibit No. 2 was produced and marked for
4 identification.)

5 MR. OLSEN: And just as a digression, Your Honor, I
6 had distributed copies of these exhibits just before the
7 start of the hearing to Mr. Chesnutt, counsel for the
8 applicant. I didn't want the record to appear I was
9 ignoring Mr. Chesnutt.

10 MR. CHESNUTT: I acknowledge receipt.

11 MR. OLSEN: Thank you.

12 BY MR. OLSEN:

13 Q. Mr. Marshall, I'd like to bring your attention
14 to this two page exhibit which has been marked for
15 identification as Marshall Exhibit Number 2 and ask you is
16 that a true and correct copy of the list of the equipment
17 operated by your company?

18 A. This is a true and complete list, as far as when
19 the list was made. There's an additional five trailers
20 that should be on it, a list of trailers we just
21 purchased.

22 Q. Okay, and what type trailers are these five
23 additional trailers?

24 A. These five trailers are three-compartment and
25 four-compartment trailers used primarily for lube oil

1 service, so that we can -- and they're large enough that
2 we can transport in both directions.

3 Q. In essence, they are tank trailers?

4 A. Yes.

5 Q. Mr. Marshall, is the equipment listed on
6 Marshall Exhibit Number 2 owned by your company?

7 A. Completely.

8 Q. Does your company utilize the services of any
9 owner/operators?

10 A. At the present time we have three lease
11 operators.

12 Q. Turning your attention to the second page of
13 Marshall Exhibit Number 2, are there any special features
14 that these trailers that are listed there have?

15 A. Six of the trailers are stainless steel
16 insulated. One of them is aluminum insulated. They can
17 be used to haul heavy oils. We have three-compartment
18 four-compartment and single-compartment trailers and also
19 bottom load, for products that need to be bottom loaded.

20 Q. Are any of these trailers equipped to protect a
21 product from freezing?

22 A. The insulated stainless steels are. They're
23 heat coils.

24 Q. Is this equipment being operated by your company
25 at full capacity at the present time?

1 A. No, unfortunately.

2 Q. Does your company have employees, Mr. Marshall?

3 A. Approximately 30 at the present time.

4 Q. Could you -- for the convenience of the Judge
5 and the record, could you break that down in terms of
6 drivers, mechanics, office personnel.

7 A. Sixteen drivers; we have -- including the
8 family, we have six people in the office; and the rest of
9 the people are out in the shop. Total of around 30,
10 usually off and on, depending.

11 Q. When you say the family, are there family
12 members?

13 A. My mother, my father, and myself.

14 Q. Are they salaried employees of the company?

15 A. Yes.

16 Q. Are these employees full time or part-time
17 employees, Mr. Marshall?

18 A. We have a couple part-timers off and on,
19 depending on how busy we are; and the rest are full time.

20 Q. And the part-time employees, how are they
21 employed? As office personnel, or how?

22 A. Both office and shop.

23 Q. When you say shop personnel, are you referring
24 to the mechanics or --

25 A. Mechanics and yard people that do the cleaning

1 of the trailers.

2 Q. And what is your definition of full time
3 employees versus part-time employees?

4 A. Full time is the guy that works all --

5 Q. At least 40 hours a week?

6 A. Yes. Most of the people do.

7 Q. And part-time employees are less than that, or
8 is it a specific number of hours per day?

9 A. Just less than that.

10 Q. What are the hours of operation of your company,
11 Mr. Marshall?

12 A. Seven days a week, 24 hours a day. We -- I can
13 -- I can say that we have phones in our homes. My father
14 has a phone in his house, I have one in mine; and when
15 there's nobody at the shop or in the office, one of the
16 families are home.

17 Q. Does your company stay on call for its customers
18 and the public?

19 A. Well, we have trucks out all the times of the
20 day and night, even on weekends, so we always have
21 somebody by the telephone.

22 Q. Who solicits the traffic and business for your
23 company, Mr. Marshall?

24 A. I do 95 percent of it. I have a part-time
25 salesman that works 5 percent of the time, I guess.

1 Q. Does your company stand ready, willing, and able
2 to perform transportation needs within the scope of its
3 authority held from this Commission?

4 A. Absolutely.

5 Q. Does your company have a safety program, Mr.
6 Marshall?

7 A. Yes. We have a bonus program that we have with
8 the drivers. We have on-board computers on the trucks,
9 that was not in the question and answer that we had done.
10 We've done that since then. We have a safety consultant
11 and the outside firm that comes and meets with the drivers
12 quarterly, and they audit what we do as far as the DOT
13 regulations and all the tests the drivers have to take for
14 that.

15 Q. Does your company conduct a continuing
16 surveillance on its safety program?

17 A. Yes.

18 Q. And how does it do that?

19 A. We use a consulting service along with myself
20 and our dispatch.

21 Q. Does your company have a specific program or
22 separate program regarding training in the transportation
23 of hazardous materials?

24 A. When new regulations come out, we have a three
25 day -- well, actually when we hire somebody, a man has to

1 ride at least three days. Sometimes it goes longer than
2 that. It depends on how quick he can pick up the job.
3 And at that point he's got everything he needs to know, as
4 far as DOT is concerned.

5 Q. And to what type of companies does your company
6 make deliveries and do pickups for? Describe for us your
7 customers.

8 A. Most of our customers -- well, we have the major
9 oil companies that we haul for; and we haul to a lot of
10 processing plants, canning houses that can motor oil.
11 That's basically the biggest part of the business.

12 Q. Does your company perform scheduled and timed
13 pickups and deliveries?

14 A. Most of the refineries that we haul in and out
15 of give us pickup times. Because of the nature of the
16 types of oils that we haul, you have to be there at a
17 particular time and you have to then obviously get to a
18 customer, because maybe the customer at either end -- you
19 never know whether it's the oil is being ready at a
20 particular time or the customer requests a particular time
21 delivery.

22 But yes, we're within a half hour of pickup and
23 delivery times, without any unforeseen -- that's just the
24 way the business seems like lately. It's worse.

25 Q. And if I may digress for a moment, Mr. Marshall,

1 going back to the safety program and the hazardous
2 material transportation program, has your company been
3 inspected and audited by the United States Department of
4 Transportation?

5 A. Yes.

6 Q. And was that recent?

7 A. In the last two years, I believe, maybe a year
8 or two. I'm not sure when the date was.

9 Q. Does your company receive any satisfactory or
10 unsatisfactory rating from the --

11 A. Satisfactory. I can say that it was supposed to
12 be a two-day audit, and they were there for just
13 approximately a half a day. Everything was in order, so
14 apparently we were doing what we had to do right.

15 MR. CHESNUTT: I think I'll object to that
16 gratuitous comment on the record. He's drawing a
17 conclusion about the length of stay. It could have been
18 very busy. They may have had a lot of people to visit
19 that day. Who knows why they left after half a day?

20 MR. OLSEN: Your Honor, it was in response to my
21 question. I think the objection goes to the weight, maybe
22 not the admissibility of the statement.

23 JUDGE SCHNIERLE: Well, it's already in the record.
24 I'm going to overrule the objection, but your comment
25 about the weight is well taken.

1 MR. OLSEN: Thank you, Your Honor.

2 BY MR. OLSEN:

3 Q. Mr. Marshall, are you aware of the authority
4 sought in this proceeding by the applicant Central
5 Transport, Incorporated?

6 A. Yes.

7 Q. And do you believe that authority sought by the
8 applicant is in conflict with the authority you hold now
9 from this Commission?

10 A. Yes.

11 Q. Can you tell us what portion or any portion of
12 your authority is in conflict with the authority sought by
13 the applicant.

14 A. Thirty-five miles from Philadelphia.

15 Q. Mr. Marshall, I bring your attention to the
16 second page of Marshall Exhibit Number 1. By your last
17 answer are you referring to Folder 1, Amendment C?

18 A. Yes.

19 Q. If you would look further down on the second
20 page to your Folder 1, Amendment D, do you also believe
21 that to be in conflict with the authority sought by the
22 applicant?

23 A. Yes.

24 Q. Mr. Marshall, have you been informed of the
25 supporting shipper witnesses that appeared in support of

1 the applicant in this proceeding?

2 A. Yes.

3 Q. Are any of those supporting shipper witnesses
4 present customers of Marshall Service?

5 A. Two of the -- two of them are.

6 Q. Do you remember which two?

7 A. E. F. Houghton, H-o-u-g-h-t-o-n; and Quaker
8 Chemical, Conshohocken.

9 Q. Do you presently transport shipments for those
10 two companies within the scope of your operating
11 authority?

12 A. Yes.

13 Q. Have you received any calls for service from any
14 of the supporting shipper witnesses, calls for service
15 that is within the scope of your operating authority?

16 A. Since this proceeding?

17 Q. Since the beginning of this proceeding.

18 A. No.

19 Q. Have you called upon any of the supporting
20 shipper witnesses for traffic since the beginning of this
21 proceeding?

22 A. No.

23 Q. Mr. Marshall, did you have prepared by you or
24 under your direction a representative traffic study of
25 movements of traffic by your company?

1 A. Yes.

2 MR. OLSEN: Your Honor, I would ask that this
3 ten-page document be marked for identification as Marshall
4 Exhibit Number 3.

5 JUDGE SCHNIERLE: Make it so.

6 (Marshall Exhibit No. 3 was produced and marked for
7 identification.)

8 BY MR. OLSEN:

9 Q. Mr. Marshall, was what's been marked for
10 identification as Marshall Exhibit Number 3, the traffic
11 study, prepared by you or under your supervision?

12 A. Yes.

13 Q. And does this Marshall Exhibit Number 3 contain
14 approximately 445 movements of traffic?

15 A. Approximately.

16 Q. Looking at that Marshall Exhibit Number 3, would
17 you please tell us approximately from what dates, what
18 beginning date to what ending date this exhibit covers, as
19 far as dates of shipments.

20 A. July of '88 to December of '88.

21 Q. Does this Marshall Exhibit Number 3 contain all
22 of the intrastate Pennsylvania shipments handled by your
23 company within the scope of its operating authority?

24 A. No, just a portion of.

25 Q. And Mr. Marshall, bringing your attention to the

1 fourth column on each page of Marshall Exhibit Number 3
2 which is entitled commodity, with the word petroleum
3 product listed for each movement of traffic, would you
4 please describe for us what petroleum product is moved in
5 these instances.

6 A. Antifreeze, glycol, lubricating oil, some
7 specialty oils.

8 Q. Is that basically the transportation, the
9 commodities transported by your company within the scope
10 of your authority held by this Commission?

11 A. Yes.

12 Q. Mr. Marshall, did you bring with you today the
13 underlying original documents which went into formulating
14 this Exhibit Number 3?

15 A. Yes.

16 Q. And are those -- excuse me -- are those original
17 underlying documents available for applicant's counsel's
18 inspection if he so chooses?

19 A. Certainly.

20 (Pause.)

21 BY MR. OLSEN:

22 Q. Mr. Marshall, did you or did anyone under your
23 supervision have prepared from the books and records of
24 your company kept in the ordinary course of business the
25 balance sheet and income statement for the period ending

1 December 31st, 1987?

2 A. Yes.

3 MR. OLSEN: Your Honor, I would ask that this
4 three-page document be marked for identification as
5 Marshall Exhibit Number 4.

6 JUDGE SCHNIERLE: Make it so.

7 (Marshall Exhibit No. 4 was produced and marked for
8 identification.)

9 MR. CHESNUTT: Are you going to give me a copy of
10 that?

11 MR. OLSEN: I'm sorry, Bill. I thought I did.

12 MR. CHESNUTT: Oh, I'm sorry.

13 BY MR. OLSEN:

14 Q. Mr. Marshall, I'd like to bring your attention
15 to what's been marked for identification as Marshall
16 Exhibit Number 4. Is that a true and correct copy of the
17 balance sheet and income statement for your company for
18 the period ending December 31st, 1987, taken from the
19 books and records of the company?

20 A. Yes.

21 Q. I'd like to bring your attention, Mr. Marshall,
22 to the third and last page of this exhibit, to the
23 category Operating Revenue, Freight Revenue, Total
24 Operating Revenue. Would you please tell us what the
25 figure is for 1987 in that category.

1 A. 2,166,570.

2 Q. Mr. Marshall, did you have prepared or did you
3 have prepared under your supervision copies of the balance
4 sheet and income statement of your company for the period
5 ending October 31st, 1988, taken from the books and
6 records of the company and kept in the ordinary course of
7 business?

8 A. Yes.

9 MR. OLSEN: Your Honor, I would ask that this five
10 page exhibit be marked for identification as Marshall
11 Exhibit Number 6 -- I'm sorry -- Number 5.

12 JUDGE SCHNIERLE: You may so mark it.

13 (Marshall Exhibit No. 5 was produced and marked for
14 identification.)

15 BY MR. OLSEN:

16 Q. Mr. Marshall, bringing your attention to what's
17 been marked for identification as Marshall Exhibit Number
18 5, is this a true and correct copy of the balance sheet
19 and income statement of your company for the period ending
20 October 31st, 1988, taken from the books and records of
21 your company?

22 A. Yes.

23 Q. I'd like to bring your attention to the second
24 page of this Marshall Exhibit Number 5, to the category
25 Operating Revenue, Freight Revenue, Total Operating

1 Revenue. Would you please tell us for the record what
2 figure is there for the period 1988.

3 A. \$1,817,022.

4 Q. Mr. Marshall, just referring back to Marshall
5 Exhibit Number 4 to the total operating revenue reflected
6 for the period ended December 31st, 1987, does that
7 operating revenue represent your intrastate and interstate
8 revenue?

9 A. All the revenue for the company.

10 Q. To your knowledge, the company's finances and
11 operations, Mr. Marshall, could you please tell us what
12 percentage of this total operating revenue figure
13 represents your Pennsylvania intrastate revenue.

14 A. Oh, approximately 7 percent.

15 Q. Mr. Marshall, I'd like to bring your attention
16 now to Marshall Exhibit Number 5, to the second page, the
17 total operating revenue figure for the period ended 1988..
18 Does that represent your inter and intrastate revenue?

19 A. Yes.

20 Q. Could you please tell us based on your knowledge
21 of the company's finances and operation what percentage of
22 that figure represents your Pennsylvania intrastate
23 revenue.

24 A. About 7, 7 and a half percent.

25 Q. As you sit here today, Mr. Marshall, could you

1 tell us in terms of dollars and cents what 7 or 7 and a
2 half percent approximately represents in dollars and cents
3 terms.

4 A. About \$140,000.00.

5 Q. Of the Pennsylvania intrastate revenue figure
6 and percentage you had just given us, Mr. Marshall, in
7 your opinion, if this application is granted, would they
8 be subject to a diversion?

9 A. Could.

10 Q. And why would that be, Mr. Marshall?

11 A. Just puts another carrier in that can do the
12 work that we're doing. There's enough carriers in there
13 now.

14 MR. CHESNUTT: I object to that, the last
15 statement. I move that it be stricken. The Commission is
16 the arbiter of how many carriers should be in the field.

17 He's certainly entitled to opine whether he thinks
18 that the entry of the new carrier would cause a division
19 of business, but I don't think he's been qualified to
20 opine on what is the appropriate level of total number of
21 carriers.

22 JUDGE SCHNIERLE: Mr. Olsen?

23 MR. OLSEN: Your Honor, we have no problem with
24 striking the last portion of the more than enough
25 carriers.

1 JUDGE SCHNIERLE: Strike the last portion of that
2 statement.

3 BY MR. OLSEN:

4 Q. Is that 7 and 7 and a half percent Pennsylvania
5 intrastate revenue figure you told us about, is every
6 dollar of that intrastate revenue figure important to your
7 company?

8 A. Yes.

9 Q. And why is it important to your company?

10 A. The more money you make, the better it is.

11 Q. Do you have competition -- when I say you, your
12 company, Mr. Marshall, does it have competition now for
13 business in intrastate Pennsylvania?

14 A. Yes, very strong competition.

15 Q. Is the applicant presently a competitor of yours
16 in intrastate Pennsylvania?

17 A. No.

18 Q. Are they presently a competitor of yours in
19 interstate commerce?

20 A. Not to my knowledge.

21 Q. Based on your knowledge, Mr. Marshall, as vice
22 president of your company in its operations, do you
23 believe there is a need for this application?

24 A. No, not within the scope of my authority.

25 Q. Is that the reason why you are protesting this

1 application at these proceedings?

2 A. Yes.

3 Q. Does your company presently hold authority for
4 interstate commerce, Mr. Marshall?

5 A. Interstate, yes.

6 Q. Interstate commerce?

7 A. Yes.

8 MR. OLSEN: I have no further questions, Your
9 Honor. I would tender Mr. Marshall for cross examination
10 and would move for the admission of the Marshall Exhibits
11 Numbers 1 through 5, subject to cross examination.

12 JUDGE SCHNIERLE: Are you prepared to proceed, Mr.
13 Chesnutt, or do you want a recess?

14 MR. CHESNUTT: Well, why don't I proceed as far as
15 I can go and then have a recess, because --

16 JUDGE SCHNIERLE: Fine. Proceed.

17 MR. CHESNUTT: -- I have some thoughts.

18 CROSS EXAMINATION

19 BY MR. CHESNUTT:

20 Q. What's the territorial scope of your Interstate

21 --

22 A. -- Interstate.

23 Q. -- Interstate Commerce Commission operating
24 authority?

25 A. Forty-eight states.

1 Q. What is the commodity?

2 A. Commodity is in bulk.

3 Q. Is it your testimony that you are unaware of
4 Central Transport as an operator, interstate commerce --

5 A. No.

6 Q. -- transporting commodities in bulk?

7 A. No.

8 Q. That is not your testimony?

9 A. No. I can clarify what I meant, if you would
10 like me to do that.

11 Q. You don't need to, as far as I'm concerned. I
12 didn't quite understand your testimony about Exhibit 4.
13 Would you look at it, please.

14 Were you intending that the Judge and the
15 Commission understand that 7 percent, 7 to 7 and a half
16 percent of the \$2 million in total operating revenues
17 shown for 1987 were derived from transportation performed
18 in Pennsylvania intrastate commerce?

19 A. Yes.

20 Q. That would be about \$140,000.00?

21 A. Approximately.

22 Q. And why did your company report \$115,000.00 as
23 its Pennsylvania intrastate operating revenues when it
24 filed its assessment report with the Interstate -- with
25 the Pennsylvania Commission?

1 A. I can't answer that.

2 MR. CHESNUTT: If Your Honor please, I'd like to
3 have marked for identification as cross examination
4 exhibit whatever you want to mark it, a copy of what
5 purports to be the assessment report filed with the
6 Pennsylvania Commission by this protestant.

7 JUDGE SCHNIERLE: I think we're up to Central
8 Exhibit Number twenty -- the last one I have is 22. Why
9 don't we make this Central Exhibit Number 23.

10 (Central Exhibit No. 23 was produced and marked for
11 identification.)

12 BY MR. CHESNUTT:

13 Q. Do you have a person in your company, Mr.
14 Marshall, who's responsible for filing an assessment
15 report?

16 A. No.

17 Q. Do you have any reason to doubt that the copy
18 that I've given you, which has been marked as Central
19 Exhibit Number 23, is indeed the assessment report filed
20 by your company with the Pennsylvania Commission?

21 A. I would assume it is.

22 Q. Now, as I understand Exhibit Number 3, which
23 you're sponsoring, that is some portion of the
24 Pennsylvania intrastate service your company performed
25 during this second half of 1988. Is that correct?

1 A. Yes.

2 Q. On what basis did you make the selection of
3 traffic that you would include in this exhibit and the
4 traffic that you would exclude from that exhibit?

5 A. There was no real dialogue. We just -- it
6 appears as though we picked out customers that we have,
7 because the movements are basically in the same places.

8 Q. Are there -- you didn't -- when you say it
9 appears, I assume you didn't personally get involved in
10 selecting this?

11 A. No.

12 Q. So you really don't -- did you give any
13 instructions?

14 A. I directed my bookkeeper.

15 Q. What instructions did you give your bookkeeper?

16 A. Just pick out where we've gone.

17 Q. Pick out where we've gone. Okay. Looking at
18 this exhibit and without looking at the underlying data,
19 which I'm going to do later, can you point to me any of
20 the traffic that is on here which was moved for E. F.
21 Houghton?

22 A. No.

23 Q. Same question with respect to Quaker Chemical.

24 A. No, I couldn't.

25 Q. When you responded to Mr. Olsen's question that

1 you're providing service to both of those companies, were
2 you speaking in terms of Pennsylvania intrastate commerce?

3 A. Not at the present moment. Interstate, I was
4 speaking.

5 Q. I see. And would that be true for all of 1988?
6 Its service to Houghton and Quaker would have been in
7 interstate commerce rather than intrastate commerce?

8 A. I would not say that that's entirely true. I
9 would think -- I couldn't answer that without going back
10 to the records.

11 Q. Okay. Could you indicate whether any of the
12 traffic shown on Exhibit Number 3 was transported under
13 either of the certificates that appear on the first two --
14 first page of Marshall Exhibit Number 1.

15 A. Say that question again.

16 Q. Was any of the traffic depicted on Exhibit
17 Number 3 transported as a result of authority that you
18 hold under the two certificates outlined on the first page
19 of Marshall Exhibit Number 1?

20 A. Could have been.

21 Q. What origin -- let's look at the first
22 certificate shown on Marshall Exhibit Number 1. Strike
23 that.

24 (Pause.)

25 BY MR. CHESNUTT:

1 Q. Are you Everett E. Marshall Roman numeral III?

2 A. Yes.

3 Q. You're the same person that furnished answers to
4 interrogatories that --

5 A. Yes.

6 Q. -- that my client served on you?

7 A. Yes.

8 Q. You mentioned during Mr. Olsen's examination
9 that in addition to the trailers depicted or described on
10 page 2 of Exhibit Number 2, that your company had recently
11 purchased five additional trailers. Is that correct?

12 A. Yes, sir.

13 Q. Have there been any trailers listed on this list
14 which was as of February 16, 1988 that have been retired,
15 sold, otherwise put out of service, since this list was
16 made up?

17 A. Everything that's on this list still sits in the
18 yard, and we still have tags on everything.

19 Q. Is there any intention on the part of your
20 company in light of the purchase of five additional
21 trailers to retire or sell or otherwise dispose of any of
22 these trailer units?

23 A. Not at the present moment.

24 MR. CHESNUTT: I think I'm at the point, Your Honor
25 -- excuse me.

1 BY MR. CHESNUTT:

2 Q. You indicated to Mr. Olsen that you did have
3 competition from other carriers with respect to performing
4 transportation in between points in Pennsylvania. Do you
5 recall that?

6 A. Yes.

7 Q. Who are those carriers?

8 A. Oil Tank Lines, Seaboard Tank Lines, Chemical
9 Leaman, Matlack. Basically they're --

10 Q. Okay. Is it your testimony that all of the
11 equipment shown on here, Exhibit 2, is your own equipment

12 --

13 A. Yes.

14 Q. -- that you own?

15 A. Yes.

16 Q. Both on the power units and the trailer units?

17 A. Yes.

18 MR. CHESNUTT: Okay, Your Honor. I think I'm at
19 the point where I'd need to look at the underlying data to
20 Exhibit Number 3; and I would expect I can accomplish that
21 review in 15 minutes.

22 JUDGE SCHNIERLE: There will be a 15 minute recess.
23 We'll start in again at 11:00.

24 (Whereupon, a brief recess was taken.)

25 JUDGE SCHNIERLE: Mr. Chesnutt, do you wish to

1 continue cross examination?

2 MR. CHESNUTT: Yes.

3 JUDGE SCHNIERLE: Proceed.

4 BY MR. CHESNUTT:

5 Q. Mr. Marshall, while we've been off the record
6 you were kind enough to furnish me the underlying data
7 from which Exhibit 3 was prepared. Let me see whether I
8 understand the underlying data. It consists, first of
9 all, of a pink sheet, which I would call an invoice. Is
10 that an appropriate --

11 A. Yes.

12 Q. -- description of it? And that invoice has
13 attached to it at least one and in some cases multiple
14 bills of lading. Is that correct?

15 A. That's correct.

16 Q. And the date that appears on Exhibit Number 3
17 under the column Date is not the date of the invoice but
18 rather the date of the bill of lading. Is that correct?

19 A. I would assume that's true.

20 Q. And would it also be true that as far as the
21 commodity column of your Exhibit 3 is concerned, that the
22 commodity column, you've chosen to use a description of
23 the petroleum product rather than a whole variety of
24 different descriptions that are used on bills of lading?

25 A. Yes.

1 Q. Now, let me direct your attention to a group of
2 entries that appear on the first page of your Exhibit 3.
3 As I understand the layout of the first page of Exhibit 3,
4 there is a break or double spacing as the month changes,
5 in the date column. Is that basically correct?

6 A. That's a good observation, I'd say.

7 Q. If you go down to the shipments that are set out
8 for September and look at the second shipment, which is
9 September 2, 1988, am I correct that when one looks at the
10 underlying data for that sheet or for that entry it
11 reflects transportation of \$7,000.00 -- 7,000 gallons of
12 combustible kerosene?

13 A. That's what it says.

14 Q. All right. And have you been advised by your
15 counsel that in Supplemental Exhibit Number 5 received
16 into evidence in this proceeding that Central Transport
17 has excluded transportation of kerosene from its
18 application?

19 A. Yes.

20 Q. And looking now down to again on the first page
21 of Exhibit Number 3 there is an entry for October, the
22 last entry in the October series, dated October 27th.
23 Again 7,000 gallons in Philadelphia, Pennsylvania to
24 Warminster, Pennsylvania and again the commodity is
25 combustible kerosene. Is that correct?

1 A. Yes.

2 Q. Now, Warminster's in Bucks County, Pennsylvania,
3 isn't it?

4 A. Yes.

5 Q. Would you indicate for the Judge under what
6 authority described in Exhibit Number 1 the transportation
7 of the kerosene shipments was handled.

8 (Pause.)

9 THE WITNESS: I cannot see that there's any.

10 BY MR. CHESNUTT:

11 Q. That's right. You don't hold any authority to
12 perform intrastate transportation of kerosene, do you?

13 A. No.

14 Q. I'll put those back --

15 JUDGE SCHNIERLE: He couldn't transport that
16 between points in the city of Philadelphia, I believe. Is
17 that --

18 MR. CHESNUTT: Yes, but Warminster's in Bucks
19 County. I think we've agreed to that.

20 BY MR. CHESNUTT:

21 Q. Now, I believe you were responsible, were you
22 not Mr. Marshall, for furnishing responses to certain
23 interrogatories that I served on your counsel?

24 A. Yes.

25 Q. And in response to one of the questions in that

1 series of interrogatories, you furnished to me the same
2 photocopies of the same type of invoices that underlie
3 Exhibit Number 3. Is that right?

4 A. Yes.

5 Q. The same basic documentation?

6 A. Right.

7 Q. Different period of time. Okay. Now, in that
8 documentation there were two invoices, one dated
9 reflecting traffic transported on February 19 of 1988 and
10 the other on May 31 of 1988, again showing transportation
11 of kerosene, combustible kerosene from Philadelphia to
12 Warminster, Pennsylvania. Would you agree with that?

13 A. Yes.

14 Q. Now, also, in the material you furnished in
15 response to the interrogatories, let me show you a series
16 of other documents. The one is your invoice number 648,
17 bill of lading number 30149, showing that on September 18
18 of 1987 you performed transportation of antifreeze from
19 Philadelphia to Wilkes-Barre, Pennsylvania?

20 A. That's what it says.

21 Q. All right. And could you indicate under what
22 authority shown in Marshall Exhibit Number 1
23 transportation of antifreeze from Philadelphia to
24 Wilkes-Barre is authorized.

25 A. The shipment came from -- there's an interstate

1 movement by rail. We picked it up in Philadelphia after
2 it came from Jersey. That's my understanding at the time,
3 and still is, that we can do that.

4 Q. All right. Let me show you invoices reflecting
5 service performed on the 15th of September of '87, 17th of
6 September of '87, 30th of September '87. Origin,
7 Philadelphia in all instances; antifreeze is the
8 commodity; and the destinations in Pennsylvania are
9 Lewisberry and Williamsport.

10 A. Continuing -- interstate movement, the same as
11 the other with antifreeze.

12 Q. All right. Look, if you will, finally at a
13 document, your invoice number 19890, making reference to
14 your bill of lading number 29161, reflecting that on July
15 31, 1987 transportation was performed from Marcus Hook,
16 Pennsylvania to York, the commodity being Sun Quench. Is
17 that a Sun or Sun Oil Company product?

18 A. Yes.

19 Q. And Marcus Hook is an origin from which you're
20 authorized to serve Sun Oil Company?

21 A. Yes.

22 Q. Sunday Oil Refining? And the extent of that
23 authority is shown on Exhibit 1 under Folder 1, Amendment

24 A. Is that correct?

25 A. Well, that wasn't hauled for Sun Oil, what you

1 showed me.

2 Q. Who was it hauled for?

3 A. East Falls Chemical.

4 Q. All right. And under what authority was that
5 transported?

6 A. Am-C.

7 Q. Amendment C?

8 A. Yes. The load went to -- if you'd like me to
9 explain, the load went to Pottstown. The customer
10 couldn't hold it. We had to take the rest of it to York.
11 The destination is Pottstown, which was in the scope of
12 the authority.

13 Q. But York, Pennsylvania is outside the scope of
14 the --

15 A. That's correct. It was on the truck and there
16 wasn't anything we could do with it.

17 Q. Okay.

18 Q. You indicated in response to a question that I
19 had asked you earlier that Chemical Leaman and Matlack and
20 Oil Tank Lines were competitors of yours. Is Refiners
21 Transport and Terminal a competitor of yours?

22 A. Yes.

23 Q. What about Crossett?

24 A. Not a direct competitor. I would assume if they
25 have authority. I don't really know. I never have any

1 dealings with them.

2 Q. Okay, but in -- well, I wouldn't expect you to
3 have dealings with them.

4 A. No, no. I mean, as far as knowing they competed
5 with me directly.

6 MR. CHESNUTT: Right. Thank you. There's no other
7 questions I have, Mr. Marshall.

8 REDIRECT EXAMINATION

9 BY MR. OLSEN:

10 Q. Mr. Marshall, could I bring your attention to
11 what's been marked for identification as Central Exhibit
12 Number 3.

13 MR. CHESNUTT: What? I'm sorry.

14 MR. OLSEN: I'm sorry. Central Exhibit Number 23.

15 BY MR. OLSEN:

16 Q. In response to a question by Mr. Chesnutt, you
17 had stated that your intrastate revenues for the year 1987
18 was 115,971. Is that correct?

19 A. Right.

20 MR. CHESNUTT: Can I have that question and answer
21 read back.

22 (The question and answer were read back by the
23 court reporter.)

24 MR. CHESNUTT: Thank you.

25 BY MR. OLSEN:

1 Q. All right. Mr. Marshall, is that -- looking at
2 Central Exhibit Number 23, is that an increase or a
3 decrease from your intrastate revenues reported for 1986?

4 A. Decrease.

5 Q. Can you tell us what that decrease is attributed
6 to?

7 A. It could be a lot of things. Increased
8 competition, I guess.

9 Q. In preparation of Marshall Exhibit Number 3,
10 under your direction do you instruct your bookkeeper to
11 pick out the freight invoices of your company for a
12 certain period of time, showing certain origins and
13 destinations, or did you just instruct your bookkeeper to
14 pick out --

15 A. Pick out --

16 Q. -- invoices? Were those invoices -- excuse me
17 -- was that direction and instruction in preparation of
18 Marshall Exhibit Number 3 in preparation for this hearing?

19 A. Yes.

20 Q. Were the invoices that contained Pennsylvania
21 origins and destinations --

22 A. Yes.

23 Q. -- were those invoices to be for a certain
24 period of time or for the entire year of 1988?

25 MR. CHESNUTT: I object. He already asked that

1 question. He said they didn't pick them out for any
2 special period of time. That was the question before this
3 one.

4 JUDGE SCHNIERLE: Mr. Olsen?

5 MR. OLSEN: We'll strike that, Your Honor.

6 JUDGE SCHNIERLE: Question withdrawn.

7 BY MR. OLSEN:

8 Q. Mr. Marshall, the combustible kerosene movements
9 from Philadelphia to Warminster that Mr. Chesnutt was
10 questioning you on, were they also continuing interstate
11 movements from rail cars?

12 MR. CHESNUTT: I object. Leading question.

13 MR. OLSEN: Could you -- I'll rephrase, Your Honor.

14 BY MR. OLSEN:

15 Q. On these movements of combustible kerosene from
16 Philadelphia to Warminster, describe what type of
17 movements were they?

18 A. That particular kerosene used to come from Exxon
19 in Paulsboro, New Jersey. Paulsboro was closed, the
20 terminal of Exxon in Paulsboro was closed, and we
21 continued to service the customer out of Philadelphia.
22 All the movements came, then, out of Philadelphia.

23 MR. OLSEN: I have nothing further, Mr. Marshall,
24 and I would offer into evidence Marshall Exhibits 1, 2, 3,
25 4, and 5.

1 JUDGE SCHNIERLE: Do you have any recross?

2 MR. CHESNUTT: I have one question on recross.

3 RE CROSS EXAMINATION

4 BY MR. CHESNUTT:

5 Q. Is it now your testimony, Mr. Marshall, that
6 \$115,971 is the correct amount of Pennsylvania intrastate
7 revenues for 1987?

8 A. Well, you asked me that before, and I said I
9 assume that's right. That's what I reported.

10 Q. Well, then, your counsel asked you whether you
11 stated that, whether this was the number; and you had
12 earlier stated \$140,000.00. I'd like to note what your
13 position is, as we close the record on your testimony.

14 A. We had an average for the last three years of
15 approximately 140,000. I believe that was what I was
16 referring to when I said about 7 percent normally. Under
17 normal circumstances we're 7 percent, which is about
18 \$140,000.00. Specifically per year, I couldn't say that;
19 but if you look at the documents, it comes out as 140.

20 Q. So you're standing by your representation that
21 someone from your company made to the Pennsylvania Public
22 Utility Commission?

23 A. Certainly.

24 JUDGE SCHNIERLE: Before you make your motion, I
25 have one or two questions.

EXAMINATION

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BY JUDGE SCHNIERLE:

Q. Your Folder 1, Amendment D, operating authority, property excluding household goods and with some other restrictions, you don't transport property generally; I mean, you don't use that authority to its full extent, I take it. You're a bulk commodity hauler?

A. Right. Only -- basically.

Q. Okay. That type of authority could be used to haul a large range of commodities, is what I'm getting at. You don't haul those --

A. Not presently, anyway.

Q. Presently you don't exercise that authority to its full extent. And just to clarify, on Exhibit -- Marshall Exhibit 4, what you're showing there is -- excuse me -- Marshall Exhibit 5, you're comparing both years January 1 through October 31, '87 and '88. The figures on Exhibit 5 for each year is January through October 31. Is that --

A. Right.

Q. -- correct? It's January -- the '87 figure is January 1 '87 through October 31 '87, and the '88 figures are January 1 '88 through October 31 '88. Is that --

A. Well, if you look on both the statements, the '87-88 are there for that particular month, if that's what

1 you're asking.

2 Q. Yes.

3 A. October 31st in --

4 Q. Okay. For the ten months ending --

5 A. Right. And the '87 figure for that is there
6 also.

7 Q. Okay, and the '87 figure is for the ten months
8 ending October 31, 1987?

9 A. Would be 1,784,294.

10 JUDGE SCHNIERLE: Okay. You may make your motion.

11 MR. OLSEN: I again, Your Honor, renew my motion to
12 enter into evidence Marshall Exhibits Numbers 1, 2, 3, 4,
13 and 5.

14 JUDGE SCHNIERLE: Any objection?

15 MR. CHESNUTT: No. There's one question I would
16 like to ask the witness, if I may, if I may be indulged.

17 JUDGE SCHNIERLE: Go ahead.

18 MR. CHESNUTT: It's recross.

19 RE CROSS EXAMINATION

20 BY MR. CHESNUTT:

21 Q. When you answered to Mr. Olsen that you guessed
22 that the reason that your intrastate revenues were 115,000
23 in 1987 versus 168,000 in 1986, could you tell me what
24 carriers obtained authority to perform Pennsylvania
25 intrastate operations in bulk commodities during the

1 period 1987. What new operations were instituted?

2 A. I couldn't tell you right offhand.

3 Q. Are you aware of any?

4 A. Not right offhand.

5 MR. CHESNUTT: That's all I have.

6 JUDGE SCHNIERLE: Do you have any objection to
7 Marshall Exhibits 1 through 5?

8 MR. CHESNUTT: I have none, Your Honor, and I would
9 move the admission of Central Exhibit Number 23.

10 JUDGE SCHNIERLE: Marshall Exhibits 1 through 5 are
11 admitted into evidence.

12 (Marshall Exhibits No. 1 through 5 were admitted in
13 evidence.)

14 JUDGE SCHNIERLE: Do you have any objection --

15 MR. OLSEN: I have no objection to Central Exhibit
16 Number 23.

17 JUDGE SCHNIERLE: Central Exhibit 23 is admitted
18 into evidence.

19 (Central Exhibit No. 23 was admitted in evidence.)

20 JUDGE SCHNIERLE: Do you have any further witnesses
21 to call?

22 MR. OLSEN: No, Your Honor. I have no further
23 witnesses on behalf of my client, Marshall Service; and I
24 would ask Your Honor respectfully, that he be excused at
25 this time from this hearing, since this only witness today

1 has been put on with his testimony.

2 JUDGE SCHNIERLE: You may be excused, and you may
3 step down, sir.

4 MR. OLSEN: Thank you, Your Honor.

5 JUDGE SCHNIERLE: Mr. O'Kane, do you want to start
6 now, or do you want to take about an hour for lunch and
7 come back at 12:30 and we'll start in then?

8 MR. O'KANE: I think if we take an hour for lunch
9 and come back at 12:30 that will be fine.

10 JUDGE SCHNIERLE: Is that acceptable to you, Mr.
11 Chesnutt?

12 MR. CHESNUTT: Absolutely, Your Honor.

13 JUDGE SCHNIERLE: The hearing stands in recess
14 until 12:30.

15 (Whereupon, at 11:25 a.m. the hearing recessed, to
16 recovene at 12:30 p.m.)

17 JUDGE SCHNIERLE: Mr. O'Kane, are you prepared to
18 present testimony?

19 MR. O'KANE: I am, Your Honor.

20 JUDGE SCHNIERLE: Proceed, please.

21 Stand and raise your right hand.

22 JOHN B. REPETTO, called as a witness, having been
23 duly sworn, was examined and testified as follows:

24 JUDGE SCHNIERLE: Please be seated.

25 DIRECT EXAMINATION

BY MR. O'KANE:

1 Q. John, will you please state your name and
2 business address for the record.

3 A. John B. Repetto, 102 Pickering Way, Lionville,
4 Pennsylvania 19353.

5 Q. By whom are you employed?

6 A. Chemical Leaman Tank Lines.

7 Q. And in what capacity?

8 A. Vice president of pricing and traffic services.

9 Q. And what are your job responsibilities as the
10 vice president of pricing and traffic services?

11 A. As vice president of pricing and traffic
12 services, I am responsible for the corporate pricing
13 activities and all of the traffic related functions,
14 including contract, administration, and tariff
15 responsibilities for both interstate and intrastate
16 filings.

17 Q. What is the business of Chemical Leaman Tank
18 Lines?

19 A. Basically the business of Chemical Leaman Tank
20 Lines is to provide distribution services, specializing in
21 bulk transportation of both liquid and dry commodities.

22 Q. Does it engage in these services in Pennsylvania
23 and elsewhere?

24 A. Yes, it does, both on an intrastate basis and on
25 an interstate basis, serving shippers within the

1 Pennsylvania area and also consignees within Pennsylvania.

2 Q. How long have you been employed by Chemical
3 Leaman?

4 A. Approximately 18 years.

5 Q. And would you describe the positions you've held
6 over that period of time.

7 A. Start with Chemical Leaman, working in the
8 field, working at an operating terminal in the
9 mid-Atlantic region, which would be the Essington/Croydon
10 area. I served as a cost methods analyst, doing time and
11 motion studies.

12 I moved into the corporate headquarters
13 approximately four or five years later, worked in their
14 data processing department, was responsible for Central
15 dispatch, which is the moving of the equipment basically
16 on an interstate and intrastate basis; and I guess for
17 approximately the last 8 years have been working on the
18 administrative side, basically in pricing and traffic.

19 Q. Have you appeared for Chemical Leaman in the
20 past as a witness before the Public Utility Commission in
21 Pennsylvania or similar commissions?

22 A. Yes, I have.

23 Q. And in what -- what did you do in such hearings?
24 What functions did you perform in such hearings?

25 A. Basically it was to provide testimony in support

1 of various matters before the Commission. This involved
2 both authority and also rate matters, more recently rate
3 matters.

4 Q. Are you familiar with the application of Central
5 Transport in this matter?

6 A. Yes, I am.

7 Q. Are you familiar with the authority that
8 Chemical Leaman holds in Pennsylvania?

9 A. Yes, I am.

10 Q. Will the authority which Central is applying
11 for, if granted, adversely affect Chemical Leaman?

12 A. Yes, it will.

13 Q. Are you familiar with Chemical Leaman terminals
14 in the Pennsylvania area?

15 A. Yes, I am.

16 Q. Where are these terminals located?

17 A. We have approximately 89 terminals within the
18 State of Pennsylvania. If I have a list -- can I refer to
19 my list?

20 MR. O'KANE: Yes, that's fine.

21 Do you have any objection to his referring to a
22 list? I'm not planning to --

23 MR. CHESNUTT: You're not going to introduce it as

24 --

25 MR. O'KANE: I'm not planning to introduce it. It

1 was a list that was furnished to you and --

2 MR. CHESNUTT: Okay. Fine.

3 THE WITNESS: First terminal it lists is the
4 terminal at Glenmoore. Second one is a terminal we have
5 at Nazareth, Pennsylvania. The third one on the list is a
6 terminal we have in Bethlehem, Pennsylvania. The fourth
7 on the list is a terminal we have in Mechanicsburg,
8 Pennsylvania. The fifth one on the list is a terminal out
9 of Williamsport, Pennsylvania.

10 The sixth on the list is a terminal we have in
11 Wilkes-Barre, Pennsylvania. The next on the list is a
12 terminal in Malvern, Pennsylvania. The next one on the
13 list is Evansville, Pennsylvania.

14 The next one is a terminal in Warren, Pennsylvania.
15 The next one on the list is a terminal in Aliquippa,
16 Pennsylvania, which is outside of Pittsburgh. The next
17 one on the list is a terminal in Altoona, Pennsylvania.
18 And the last one on the list is a cleaning and maintenance
19 facility in Groveton, Pa.

20 JUDGE SCHNIERLE: Could I stop you for a minute.
21 Where are Glenmoore, Evansville, and Groveton, in terms of
22 counties?

23 THE WITNESS: Glenmoore is in Chester County.
24 It's on Route 322. It's basically I'm going to say about
25 10 miles west of Downingtown.

1 JUDGE SCHNIERLE: How about Evansville?

2 THE WITNESS: Evansville, Pennsylvania -- if you
3 have a map of Pennsylvania, I can tell you what counties
4 -- I'm not familiar with the county, off the top of my --
5 it's in the eastern part of the state.

6 MR. CHESNUTT: I think I can help you, if Your
7 Honor please. Well, there are two Evansvilles. One's in
8 Berks County and the other is in Columbia County.

9 JUDGE SCHNIERLE: Berks County. How about
10 Groveton?

11 THE WITNESS: Groveton is in the western part of
12 the state, and I'm going to say -- you're going to have to
13 draw a line. It's west of Harrisburg, and I'm not sure.

14 MR. CHESNUTT: Groveton, under -- in the Rand
15 McNally commercial reference map and guide of Pennsylvania
16 it indicates that there's a Groveton in Allegheny County.

17 MR. O'KANE: Near Pittsburgh. For the record also,
18 Groveton, as far as I understand, is not a terminal.

19 THE WITNESS: It is a cleaning and maintenance
20 facility.

21 MR. O'KANE: It is a cleaning and --

22 THE WITNESS: It does not have tractors and power.

23 JUDGE SCHNIERLE: Thank you. I didn't realize the
24 specific location of those three.

25 BY MR. O'KANE:

1 Q. Are you familiar with the products that Chemical
2 Leaman hauls out of those terminals in Pennsylvania?

3 A. Yes, I am.

4 Q. Would you go through a list and state the
5 chemicals that Chemical Leaman hauls at the various
6 terminals; and where applicable, state whether or not they
7 have anything to do with Central's -- that is, whether or
8 not -- whether or not Central's application would be such
9 that Central could haul a similar type product if the
10 authority was granted. Do you understand the question?

11 A. Yes, I do. Let me answer the first one. If I
12 don't, come back to me. The Glenmoore terminal basically
13 handles two types of products, one of which is food grade;
14 and the other is dried chemicals.

15 The food grade would not be effected by Central's
16 request. The dry chemicals would be. The second terminal
17 is Nazareth, Pennsylvania. They are primarily a cement
18 terminal. They also handle various chemical products.
19 The chemical side would be effected. The cement side
20 would not be effected.

21 The third terminal, Bethlehem, Pennsylvania, is a
22 cryogenic terminal. It handles basically cryogenic
23 products, which include liquid nitrogen, liquid argon, and
24 liquid oxygen, and would not be effected.

25 The fourth terminal is Mechanicsburg. That is

1 primarily a petroleum terminal. There are, I believe, two
2 trailers that handle chemical products. The two that
3 handle chemical products would be effected by Central's
4 request.

5 The third -- excuse me -- the next terminal,
6 Williamsport, is predominantly a chemical terminal and
7 would be effected. The next terminal, Wilkes-Barre, is
8 again a chemical terminal and would be effected. The next
9 terminal, Malvern, is again a chemical terminal and would
10 be effected.

11 The next terminal, Evansville, is wholly a cement
12 terminal and would not be effected. Warren is
13 predominantly a petroleum terminal and would not be
14 effected. Aliquippa is predominantly a chemical terminal
15 and would be effected.

16 Altoona is predominantly a petroleum terminal and
17 would not be effected. And Groveton, as I said before, is
18 a cleaning and maintenance -- does not provide
19 transportation services.

20 Q. Is Chemical Leaman Tank Lines a publicly-owned
21 company?

22 A. Chemical Leaman Tank Lines is a wholly-owned
23 subsidiary of Chemical Leaman Corporation. Chemical
24 Leaman Corporation is a publicly-held company.

25 Q. Has Chemical Leaman Tank Lines ever been a

1 publicly held --

2 A. Chemical Leaman Tank Lines was a publicly held
3 company up to I believe 1970 or 1977 when, in effect, they
4 became a subsidiary of Chemical Leaman Corporation; but
5 prior to 1977 they were a publicly held company.

6 Q. Since 1977 has Chemical Leaman Tank Lines --
7 strike that. Since 1977 what operating companies have
8 been owned by Chemical Leaman Corporation, if you know
9 that, if you have the answer.

10 A. Chemical Leaman Corporation owns Chemical Leaman
11 Tank Lines. They also own a real estate holding company
12 called Chemical Properties. They own a company called
13 Tank Service Company, they own a company called Chemical
14 Leaman of Virginia, they own a company called Klipsch
15 Hauling, and they own a more recent company called New
16 Bulk Services. I believe that's the list.

17 Q. Do you know approximately the percentage of
18 revenues generated for Chemical Leaman Corporation by
19 Chemical Leaman Tank Lines?

20 A. Chemical Leaman Corporation will do
21 approximately \$245 million in 1988, and Chemical Leaman
22 Tank Lines will be approximately 225 million of that. If
23 I had a calculator I could do the math.

24 Q. Prior to the formation of New Bulk Services,
25 what percentage of Chemical Leaman Corporation's revenues

1 would Chemical Leaman have contributed, approximately?

2 A. I'd say approximately 99.5 percent, the only
3 difference being would be Chemical Properties. There was
4 small income on trailer leasing, but 99.5 percent are
5 higher.

6 Q. Do you own any stock in Chemical Leaman
7 Corporation?

8 A. As of today I do not. I have been a past
9 stockholder of both Chemical Leaman Tank Lines and
10 Chemical Leaman Corporation.

11 Q. Has Chemical Leaman Corporation -- is Chemical
12 Leaman Corporation at the present time paying dividends?

13 A. Chemical Leaman Corporation is not paying
14 dividends. I believe the last dividend that the stock
15 paid was approximately the first quarter of 1982.

16 Q. Prior to 1982 did Chemical Leaman Corporation
17 and when Chemical Leaman Tank Lines was a public company
18 prior to 1977, did those companies pay dividends while you
19 were a shareholder?

20 A. Yes, they did.

21 Q. Did they pay dividends on a regular basis?

22 A. They paid dividends on a regular basis, yes,
23 they did. Again, I'm speaking from the time frame 1971
24 through 1981-82.

25 Q. Within the last five or six years has Chemical

1 Leaman closed any terminals in Pennsylvania?

2 A. Yes, it has. It's closed, I believe, five
3 terminals within the state of Pennsylvania. It closed
4 Essington, Pennsylvania; it closed Croydon, Pennsylvania,
5 which is in north Philadelphia; it closed Conshohocken; it
6 closed Paris, Pennsylvania, which is approximately 10 to
7 15 miles west of Pittsburgh; and it closed Perryopolis,
8 which is approximately 20 miles south of Pittsburgh.

9 Q. Are you familiar with the rationale of Chemical
10 Leaman in closing such corporation -- in closing such
11 terminals?

12 MR. CHESNUTT: I object. He's not been shown to be
13 qualified in the area of having responsibility for
14 decision making on the closing of terminals, so anything
15 he might have in the way of knowledge would be hearsay.

16 BY MR. O'KANE:

17 Q. John, in your functions as vice president of
18 Chemical Leaman, do you participate in any committees?

19 A. Yes, I do. I participate in the Chemical Leaman
20 management committee, which is charged with the day-to-day
21 running of the company. I am also a member of an
22 administrative committee. I'm on a data processing
23 steering committee, and chairman of the Chemical Leaman
24 pricing committee.

25 Q. And have you participated in these committees or

1 similar type committees over a period of time, and if so,
2 so state --

3 A. The answer is I have participated on those for a
4 period of time. And I'm going to say that I've been a
5 corporate officer since 1978, and I have been a member of
6 the management committee since that time. And the other
7 committees were after that time frame, but they are all
8 involved in the day-to-day working of Chemical Leaman.

9 Q. Have you ever been a director of Chemical Leaman
10 Tank Lines, Inc.?

11 A. I have not been a director.

12 Q. In your capacity as a member of those committees
13 for Chemical Leaman Tank Lines, were you a party to
14 information regarding the closing of terminals by Chemical
15 Leaman?

16 A. Yes, I was.

17 Q. Did you participate in any way in decisions to
18 close any of those terminals?

19 A. Yes, I did.

20 Q. With respect to the Essington terminal, will you
21 describe why Chemical Leaman closed that terminal and what
22 were the factors that were considered in connection with
23 Chemical Leaman's closing of that terminal.

24 A. The Essington terminal was predominantly a
25 petroleum and lube oil terminal located, I guess, just

1 south of the Philadelphia airport. It was mainly moving
2 various products for Philadelphia Electric, which was our
3 largest customer.

4 Based upon plant -- or a planned closing of the
5 lube oil and the heavy oil business by Philadelphia
6 Electric, the terminal was not necessarily required to
7 service that customer. The main reason there was the
8 advent of nuclear power, with Three Mile Island and Peach
9 Bottom coming on stream.

10 Q. Did Chemical Leaman transport any chemicals out
11 of the Essington terminal?

12 A. Yes, it did. It transported chemicals for other
13 shippers basically out of the Marcus Hook; Claymont,
14 Delaware; southern Philadelphia tier; and they were not
15 related to the nuclear situation with Philadelphia
16 Electric.

17 Q. Now, with respect to those customers for which
18 Chemical Leaman transported chemicals out of the Essington
19 terminal, was Chemical Leaman able to continue to service
20 those customers after closing the Essington --

21 A. It was not able to.

22 Q. With respect to Croydon, could you go into the
23 background of the closing of that terminal.

24 A. Croydon was a terminal we had located in the
25 north Philadelphia area. Predominantly worked for

1 customers in that area. That would include Rohm-Haas;
2 Stauffer; A.E. Staley's, in Morrisville, Pennsylvania.

3 And basically for a competitive situation, the cost
4 of maintaining that terminal for those shippers did not
5 prove to be a financial situation where Chemical Leaman
6 could produce a desirable return on its investment.

7 Q. Now, when Chemical Leaman closed that terminal,
8 was it able to service any of these customers from other
9 terminals?

10 A. On an intrastate basis the answer would be no.
11 On an interstate basis, some of the loads were picked up
12 by our Bridgeport, New Jersey terminal, which is located
13 approximately two miles across the Commodore Barry bridge
14 in New Jersey.

15 Q. And what was the approximate date that Chemical
16 Leaman ceased operations in Croydon?

17 A. I'd say it was approximately 3 and a half years
18 ago.

19 Q. Now, with respect to the Paris terminal, could
20 you give us any information about the closing of that
21 terminal.

22 A. The Paris terminal was -- well, Paris and the
23 Perryopolis terminal were both in existence mainly to
24 handle the steel mills in the western Pennsylvania area.
25 They handled an awful lot of sulfuric acids, nitric acids,

1 et cetera, power serving also some facilities in the West
2 Virginia market.

3 Because of the decline of the steel industry within
4 I guess the entire United States, it was deemed that these
5 terminals could not necessarily provide the services,
6 mainly due to plant shutdowns by the individual steel
7 mills.

8 Q. Were there any existing customers that were
9 serviced by these -- by those two terminals, with respect
10 to chemicals, other than the steel mills?

11 A. Yes, there were.

12 Q. Was Chemical Leaman able to service those
13 customers from other terminals in the area?

14 A. I do not believe so.

15 Q. Was there another terminal that Chemical Leaman
16 closed that we mentioned?

17 A. There was a terminal in Conshohocken,
18 Pennsylvania, which closed in I'm going to say
19 approximately five years ago. It was a terminal that
20 handled cement, to some did agree, and also dry chemicals.

21 Q. Now, when Chemical Leaman closed these
22 terminals, what happened to the employees who were working
23 out of those terminals?

24 A. I would say the vast majority of them were laid
25 off.

1 Q. Were they offered positions at other terminals?

2 A. In some cases they were, and in some cases it
3 wasn't -- the employees did not necessarily want to
4 relocate. But it was hard, for example, for drivers
5 living in a certain area to relocate great distances, so
6 the net result was the majority of them were laid off.

7 Q. I believe you have testified that Chemical
8 Leaman Tank Lines paid dividends on this common stock to
9 its public shareholders prior to 1977 when it became a
10 subsidiary of Chemical Leaman Corporation, and then
11 Chemical Leaman Corporation continued to pay dividends
12 until 1982?

13 A. That's correct.

14 Q. Do you know why Chemical Leaman Corporation
15 ceased paying dividends in 1982?

16 A. Yes, I do, and the reason being was basically
17 the financial performance of the company. There was not
18 enough money to pay the stockholders a dividend.

19 Q. Has that situation continued until the present
20 date?

21 A. It has. There have been no dividends paid from
22 I guess the first quarter of '82 through today.

23 Q. Are you familiar with the published earnings
24 reports of bulk haulers in general, regarding their
25 revenues and profits since 1980?

1 A. Yes, I am. As in -- as chairman of the
2 corporate pricing committee, one of my responsibilities is
3 obviously to look at our competition and to see what --
4 how our competitors are doing. And that data I do see
5 rather frequently, especially the information that's
6 published through the ICC annual reports.

7 Q. Have bulk transportation carriers in general
8 been as profitable since 1980 as they had heretofore?

9 MR. CHESNUTT: I object. There's -- first of all,
10 I would expect anyone that's going to answer a question on
11 degree of profitability to have specific data, because
12 it's obviously a qualitative judgment question as to
13 whether it's more profitable or less profitable or what is
14 indeed profitability, particularly if you're viewing
15 privately held corporations, because there's lots of ways
16 to measure profitability and there's lots of ways to get
17 money out of corporations, through salaries and other
18 means, that would cause one to question a broad brush
19 statement such as is being asked from this witness.

20 Secondly, I don't think it's relevant to measure
21 the profitability of the broad category of carriers that
22 Mr. O'Kane has asked about, because they are not
23 participants in this proceeding.

24 We have no idea whether they conduct operations in
25 Pennsylvania intrastate commerce, which is the focus of

1 this matter, and it just simply is an irrelevant and
2 unfounded question or -- I mean, the witness is in no
3 position to provide an answer to which the Commission and
4 the Judge can assign any degree of credibility.

5 JUDGE SCHNIERLE: Mr. O'Kane?

6 MR. O'KANE: Your Honor, I think it is relevant in
7 these proceedings. I think the profitability of carriers
8 in general is wide spread and known by people in the
9 industry. The profits have been seriously hurt since
10 deregulation, amongst carriers.

11 It affects things very relevant to this hearing,
12 that is, the public interest involved in this. And we
13 have an applicant seeking new authority in Pennsylvania,
14 where there is no showing that existing carriers have been
15 unable to provide it.

16 We have a proceeding in which if the authority is
17 granted we're going to have one more carrier, more
18 capacity, and a possibility if not the probability that
19 marginal characters, not necessarily Chemical Leaman, will
20 be forced out of business.

21 And I think that's in the public interest and I
22 think this witness can testify. He's not testifying
23 specifically as to something. He's testifying to
24 something that's general knowledge in the industry.

25 MR. CHESNUTT: Well, I submit that there is no

1 exception that I'm aware of to the admissibility standards
2 that this Commission applies, that it reaches into quote
3 the general knowledge area. I mean, I really doubt that
4 the profitability of a segment of the trucking industry is
5 a matter of general knowledge. It's a matter of specific
6 knowledge.

7 I mean, there are specific data that are submitted,
8 and I just -- you know, I think it's an area that we
9 should not have this witness introducing testimony in this
10 generalized presence.

11 JUDGE SCHNIERLE: There's no doubt in my mind that
12 it's an issue that's relevant to the proceeding, in terms
13 of the profitability of the industry, but I'm having some
14 serious problems assigning any weight to it.

15 MR. O'KANE: Your Honor, I'll withdraw --

16 JUDGE SCHNIERLE: I understand your general
17 approach.

18 MR. O'KANE: All right. I will withdraw the
19 question at this time. May we have a short recess?

20 JUDGE SCHNIERLE: Five minute recess.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SCHNIERLE: I'm going to explain a little
23 more of my reason for my ruling on that objection. I'm
24 going to sustain the objection. I just think at this
25 point the question is too -- the question's too broad.

1 We're not dealing with all bulk carriers, first of
2 all, and I can't see where the answer would have any
3 weight whatsoever, without some further foundation in
4 terms of what specific carriers he's looked at for what
5 period of time, you know, some more detail before you get
6 to the question.

7 MR. O'KANE: I understand, Your Honor, and I'm
8 going to withdraw that question. I'm not going to pursue
9 that avenue.

10 BY MR. O'KANE:

11 Q. If this application is granted, will you expect
12 it to have a significant, adverse impact on Chemical
13 Leaman Tank Lines immediately?

14 A. No, I would not. It would not have a
15 significant impact.

16 Q. And why would you say it would have no
17 immediate, significant, adverse impact?

18 A. Well, in your question I took the word
19 significant and immediate --

20 Q. Fine.

21 A. -- to the answer. If those words were not
22 there, if you're talking about a longer range, then I'm
23 saying one more competitor within the area would have an
24 impact but it would not be a significant, immediate
25 impact.

1 Q. But an added competitor would have a significant
2 -- it would have an impact on the competitors in the area?

3 A. Absolutely.

4 Q. Chemical Leaman. From Chemical Leaman's
5 standpoint, you are familiar with Chemical Leaman's
6 decision-making process. If the impact grew to be a
7 significant impact and effected the profitability of a
8 terminal, what course of action could you expect Chemical
9 Leaman to take in the circumstances?

10 A. Would you give me that --

11 Q. Okay. If the authority were granted and
12 Central's intrastate traffic in Pennsylvania grew to a
13 point where it seriously impacted Chemical Leaman's
14 operations at a given terminal, what steps might Chemical
15 Leaman take in such a situation?

16 MR. CHESNUTT: I think I'm going to have to object
17 to that. First of all, it's speculative on the condition
18 precedent; but even if the condition precedent is
19 satisfied, we -- the Judge and the Commission have an
20 awful time trying to figure out at what point significant
21 impact has been achieved versus insignificant impact.

22 And then from that the Judge, then, has to accept
23 whatever this witness is going to say about the
24 decision-making process to close the terminal. I just
25 don't think it's probative evidence.

1 MR. O'KANE: Your Honor, I think I'm presenting the
2 rules or the -- I guess the criteria which the Commission
3 uses to determine whether or not to grant an authority put
4 a very significant burden, I believe, on protestants to
5 find that the granting of it would be contrary to the
6 public interest.

7 And I think, as you pointed out in your order of
8 the second, the protestants will generally file protecting
9 their own interest or attempting to protect their own
10 interest; and I agree. Again, I think in protecting their
11 own interest, I again -- as Adam Smith said, they're lead
12 as if by an invisible hand, at times, to protect the
13 public interest.

14 I think we have testimony on the record now that
15 because of things that have happened over the past years,
16 employees are laid off, I think that's the public
17 interest. Stockholders are not receiving dividends. I
18 think that affects the public interest.

19 I think shippers who had a carrier with authority
20 to serve them closed terminals and effected those
21 shippers, that's a public interest.

22 And I think this is simply designed to say that
23 although immediately the grant of this authority might not
24 significantly impact Chemical Leaman, which is a larger
25 carrier in Pennsylvania, at least over the course of time,

1 the grant of authority on request will have an impact on
2 Chemical Leaman and on other carriers and it may
3 significantly impact the public interest. And that's the
4 -- that's the avenue I'm attempting to go down.

5 JUDGE SCHNIERLE: He -- I'm going to overrule the
6 objection. He's testified that he's been involved in
7 these kind of decisions in the past. I think he's capable
8 of giving an answer to that last question.

9 THE WITNESS: Obviously the answer, the ultimate
10 problem would be closing the terminal. If we were not
11 able to compete adequately, provide adequate return to the
12 stake holders of the company, that being the employees,
13 the shareholders, the customers within the area, the
14 ultimate alternative would be to close the terminal.

15 MR. O'KANE: I have no further questions.

16 JUDGE SCHNIERLE: Mr. Chesnutt, do you wish to
17 cross examine?

18 MR. CHESNUTT: I think so.

19 JUDGE SCHNIERLE: Would you want a recess, or you
20 want to start right in?

21 MR. CHESNUTT: Well, I think we may as well start
22 right in. If I get bogged down I'll ask for a recess.

23 JUDGE SCHNIERLE: Proceed.

24 CROSS EXAMINATION

25 BY MR. CHESNUTT:

1 Q. When was the Glenmoore terminal of Chemical
2 Leaman first opened?

3 A. I've been with the company 18 years. It was
4 prior to my tenure with Chemical Leaman.

5 Q. Same question with Nazareth.

6 A. Same answer.

7 Q. Bethlehem?

8 A. Bethlehem terminal opened 1976, I believe.

9 Q. Now, you did furnish responses to certain
10 interrogatories that I served on your counsel, did you
11 not?

12 A. That is correct.

13 Q. And when you responded to those interrogatories
14 you furnished me a list of Pennsylvania terminals 1988
15 from which, I believe, you were reading when you gave
16 answers on direct examination. Is that right?

17 A. That is correct.

18 Q. And the material from which you're reading
19 indicated that with respect to Mechanicsburg, that that
20 facility was being moved to a new location in January but
21 you didn't know of what year?

22 A. That is of January 1989.

23 Q. And did it, in fact -- was that facility, in
24 fact, moved?

25 A. Yes, it was.

1 Q. And to what location was it moved?

2 A. I do not have the street address, but it is in
3 Mechanicsburg, the new facility in Mechanicsburg. I'm not
4 aware of the street address.

5 JUDGE SCHNIERLE: Could I break in for a second?
6 In other words, you'd had a facility in Mechanicsburg at
7 one street address and you've just moved it to another
8 street address?

9 THE WITNESS: That is correct. That is correct.

10 BY MR. CHESNUTT:

11 Q. How long has the company operated a facility,
12 some facility at Mechanicsburg?

13 A. Again, it's going to be in excess of my tenure
14 with Chemical Leaman, which would be at least 18 years.

15 Q. Okay. Are there any of the facilities that you
16 mentioned in your direct examination as terminal
17 facilities that were not in existence in 1980 as terminal
18 facilities of the company?

19 A. 1980. Malvern facility was acquired by Chemical
20 Leaman when we purchased Coastal Tank Lines in 1986.

21 Q. All right. You acquired another trucking
22 company in 1986?

23 A. Correct.

24 Q. And the name of that company was Coastal Tank
25 Lines?

1 A. That is correct.

2 Q. It in itself was a major participant in the
3 transportation of bulk commodities on an interstate basis,
4 wasn't it?

5 A. Yes, it was.

6 Q. Did it hold any Pennsylvania intrastate commerce
7 or intrastate commerce authority at the time that Chemical
8 Leaman purchased it?

9 A. Yes, it did.

10 JUDGE SCHNIERLE: Did you buy the PUC authority as
11 well, the Pennsylvania intrastate?

12 THE WITNESS: No, we did not. We did not. We
13 purchased the assets of Coastal Tank Lines, which would be
14 the tractors, the trailers, and some of the facilities.
15 We did not purchase Coastal Tank Lines.

16 MR. O'KANE: Your Honor, I don't know whether we're
17 on the record or not on the record --

18 JUDGE SCHNIERLE: We're on the record..

19 MR. O'KANE: We're on the record. If I might
20 interject on the record. Chemical Leaman purchased assets
21 of Coastal Tank Lines, but also did purchase authority.
22 And the authority, I believe there was Pennsylvania
23 authority acquired and assigned to new bulk services; and
24 I think New Bulk --

25 JUDGE SCHNIERLE: Okay.

1 MR. CHESNUTT: I'm more than willing to accept the
2 statement of counsel on that.

3 MR. O'KANE: I don't think that -- I don't know
4 whether that was -- I was just responding to your
5 question. I don't know it as relevant, necessarily, to
6 this.

7 JUDGE SCHNIERLE: All right. Thank you.

8 MR. CHESNUTT: No, I appreciate having that in the
9 record. So maybe if I might inquire of counsel, New Bulk
10 Services, then, holds an ability to perform services in
11 intrastate commerce, Pennsylvania, to the extent of
12 whatever Coastal Tank Lines authority authorizes?

13 MR. O'KANE: I believe so, Bill. I believe it has
14 some, yes.

15 JUDGE SCHNIERLE: All right. Thank you for that
16 clarification, Mr. O'Kane.

17 MR. CHESNUTT: With respect --

18 JUDGE SCHNIERLE: Sorry for that interruption.

19 MR. CHESNUTT: No, it's quite all right. Anything
20 to clarify the record.

21 BY MR. CHESNUTT:

22 Q. Now, the Essington facility was closed when?

23 A. I'm going to say approximately five years ago.

24 Q. Okay. And the Paris facility?

25 A. I'm going to say approximately six years ago.

1 Q. Is that as in France?

2 A. Yes, it is. P-a-r-i-s, Paris.

3 Q. And Perryopolis?

4 A. I'm going to say at the same time, approximately
5 six years ago.

6 Q. Were those facilities, Essington, Croydon,
7 Paris, Perryopolis, and Conshohocken engaged in performing
8 only Pennsylvania intrastate service when they were up and
9 operating?

10 A. The Essington terminal was approximately 90
11 percent intrastate. I would say the same was true for the
12 Conshohocken terminal. The other three terminals were
13 predominantly interstate.

14 Q. Now, your company -- and when I refer to your
15 company, I'm talking about Chemical Leaman Tank Lines,
16 Inc. -- does provide services in both Pennsylvania
17 intrastate commerce and in interstate and foreign
18 commerce. Is that correct?

19 A. That is correct.

20 MR. CHESNUTT: All right. If Your Honor please,
21 I'd like to have marked for identification as Central
22 Exhibit Number 24 for the purposes of cross examination
23 what purport to be assessment reports filed with the
24 Pennsylvania Public Utility Commission by protestant
25 Chemical Leaman Tank Lines, Inc. And I will borrow the

1 reporter's copy for just a moment.

2 JUDGE SCHNIERLE: You may do so.

3 (Central Exhibit No. 24 was produced and marked for
4 identification.)

5 BY MR. CHESNUTT:

6 Q. I don't know that you're necessarily the person
7 responsible for making this filing with the Pennsylvania
8 Public Utility Commission, Mr. Repetto, but do you have
9 any reason to doubt the accuracy of what I've handed to
10 you as Central Exhibit Number 24?

11 MR. O'KANE: Objection, Your Honor. This is beyond
12 the scope of direct examination of this witness, and I
13 don't think it's proper scope for the cross examination.

14 MR. CHESNUTT: Well, I don't think I'm bound by the
15 scope of direct examination. We're making an
16 administrative record here. We have a witness who's
17 described an adverse effect on his company, and we have
18 testimony along those lines.

19 This is an indication of the relative impact of
20 Pennsylvania intrastate operating revenues on the total
21 operating revenues of the company, and I -- you know, I
22 can't believe it's not a relevant piece of information for
23 this record.

24 Indeed, I believe if I wish to do it another way I
25 could request the Judge to take judicial notice of this

1 information, as a report filed with the Commission.

2 MR. O'KANE: Your Honor, I have no objection to
3 your taking judicial notice of this report as being filed
4 with the Commission, but I believe that counsel for the
5 applicant should restrict his cross examination to those
6 matters that the witness testified to.

7 JUDGE SCHNIERLE: I'm -- the problem I'm having, I
8 don't recall -- I don't recall him testifying that the
9 profitability of Chemical Leaman had been impaired. I
10 recall testimony regarding terminal closings, but not any
11 testimony regarding profitability.

12 MR. CHESNUTT: Well, what are we -- what's being
13 objected to? The question -- whether it's accurate or
14 not. Is that --

15 MR. O'KANE: I'm not objecting to the accuracy of
16 it. I'm objecting to expanding the scope of our case
17 through cross examination. I think he -- I think the
18 rules permit the witness to be cross examined on all
19 matters that he testified to.

20 He has not testified to Chemical Leaman's revenues
21 in calendar years '87, '86, or '85. And to the extent
22 that Mr. Chesnutt wants to -- wants the Court to take
23 judicial notice of this document, I have no objection to
24 that, but I don't think this witness should be cross
25 examined on matters that he hasn't testified to.

1 And actually we will have, Your Honor -- we may
2 have, Your Honor, for the -- I read your order on the
3 Matlack matter. We responded -- we did respond to all
4 interrogatories, and I think that's for the purpose of
5 informing counsel so that he can prepare for our
6 testimony.

7 Last week or I believe last week I got a letter
8 from Mr. Chesnutt requesting that I send documentation
9 supporting Chemical Leaman's response to question 17,
10 which I haven't responded to as yet. I -- we have not
11 brought that in as a part of our case.

12 I don't think it is -- it is relevant to our case,
13 and I don't think -- I don't think it should be dragged
14 out of us via a discovery route, if you will, and then put
15 in the record here.

16 I think we're entitled to present our case the way
17 we want to present it, to try or attempt to get on the
18 record what we want to get on to protect their interest in
19 this, the interest of the public; but I don't think our
20 witnesses should be open to broad and widespread cross
21 examination by simply appearing.

22 JUDGE SCHNIERLE: I'm going to sustain the
23 objection. I don't believe the witness testified
24 regarding set -- let me finish, Mr. Chesnutt. I don't
25 believe the witness testified regarding Central -- or

1 excuse me -- Chemical Leaman's profitability.

2 If you wish to submit this exhibit, either ask me
3 to take judicial notice of it or submit a certified copy
4 of these documents.

5 I have no problem accepting them as rebuttal
6 evidence on behalf of Central; but I don't believe it's
7 appropriate to cross examine this witness on these
8 documents, since I don't recall any testimony regarding --
9 from him regarding Chemical Leaman's profitability.

10 MR. CHESNUTT: If I understand Your Honor
11 correctly, are you sustaining Mr. O'Kane's position that
12 I'm limited to exploring issues about this participant in
13 this proceeding by whatever Mr. O'Kane chooses to define
14 as the scope of what they had to say by this witness on
15 direct examination?

16 JUDGE SCHNIERLE: Yes. That's my ruling.

17 MR. CHESNUTT: All right. Well, I'm going to take
18 a section of that. I might say to Your Honor that the
19 protest filed in this document by this carrier makes
20 specific reference to this number. It also takes the
21 position that the service will be detrimental to the
22 existing authorized service of the above named motor
23 carrier.

24 And if you're telling me a protestant can come in
25 here and expose my client to whatever examination that he

1 wants to conduct of him and then he can take refuge by
2 putting on a little case like he's put on here where he
3 hasn't produced one document and hasn't made any sort of
4 respectable showing that a protestant would make and then
5 take refuge in the fact that I haven't put anything in
6 this record.

7 So now I'm going to shut the applicant's counsel
8 up, because I have chosen to put in a halfhearted
9 protestant's case. That's what you rule.

10 JUDGE SCHNIERLE: Yes. I'll elaborate on that.

11 MR. CHESNUTT: Good.

12 JUDGE SCHNIERLE: If he has not proven -- if he has
13 not put in sufficient evidence to sustain the allegations
14 in his protest, then that's a risk that he bears. But
15 that doesn't justify expanding the record way beyond what
16 is needed to make a judgment on the merits of the two
17 sides' cases.

18 If I make an allegation and a pleading and I don't
19 put on evidence in support of it, that's my risk. But the
20 objection is sustained. You may proceed.

21 MR. CHESNUTT: Do we have that exhibit marked? Is
22 it --

23 JUDGE SCHNIERLE: It's marked as Central Exhibit
24 24.

25 MR. CHESNUTT: Thank you. And do I have a

1 statement from you, Mr. O'Kane, on the record, that this
2 is an accurate presentation of the assessment report form
3 MT-87, MT-86, and MT-85 filed by your client with the
4 Pennsylvania Public Utility Commission?

5 MR. O'KANE: I'm not going to make a statement on
6 the record like that. I think the record will speak for
7 itself, that this came from the Commission's files. I
8 won't object to it if it is submitted as under judicial
9 notice. I -- what's filed is filed.

10 MR. CHESNUTT: I request that the Judge take
11 official notice of this document.

12 JUDGE SCHNIERLE: I will take official notice of
13 the document.

14 MR. CHESNUTT: Thank you, sir.

15 (Pause.)

16 MR. CHESNUTT: If Your Honor please, I'd like to
17 have marked for identification as Central Exhibit Number
18 25 what is a multipage document, 17 pages in length, which
19 states at the top Securities and Exchange Commission,
20 Washington, D.C. 20549, form 10-Q.

21 (Pause.)

22 JUDGE SCHNIERLE: It shall be so marked.

23 (Central Exhibit No. 25 was produced and marked for
24 identification.)

25 MR. CHESNUTT: Thank you. And I would request Your

1 Honor take judicial notice of this document, as well.

2 MR. O'KANE: I object to that, Your Honor. I don't
3 know of any rule that permits taking judicial notice of a
4 filing with the Securities and Exchange Commission in this
5 proceeding.

6 This, Your Honor, is the document for which I have
7 received a request for admission from Mr. Chesnutt. I
8 haven't responded.

9 I think it's appropriate for you to rule at this
10 present time, because I would -- I would respond that this
11 is not relevant to these proceedings and that basically
12 counsel for Central is entitled to put on his case as he
13 sees fit with what documents and other evidence he can put
14 before the Commission.

15 And whether we choose to put on a two-bit
16 performance or whatever that is referred to, that is our
17 right and risk; but we shouldn't have Central's case
18 pulled out of our files, is my position.

19 JUDGE SCHNIERLE: Well, as I understand it, this is
20 a document that is -- these are documents that are
21 publicly filed, are they not?

22 MR. O'KANE: This is not a publicly filed document.
23 The document, I have no objection to the accuracy of the
24 document; I have an objection to the relevancy of the
25 document in this proceeding.

1 JUDGE SCHNIERLE: Well, assuming you have, let's
2 take those one by one. If you had an objection to the
3 accuracy of the document --

4 MR. O'KANE: I have no objection, Your Honor.

5 JUDGE SCHNIERLE: -- Mr. Chesnutt could supply a
6 certified copy and I would have to accept that, so --

7 MR. O'KANE: I have no objection.

8 JUDGE SCHNIERLE: What's your challenge on the
9 relevancy issue?

10 MR. O'KANE: Well, I think -- I think before I
11 challenge it, I think perhaps Mr. Chesnutt should make a
12 statement as to why he believes it is relevant.

13 JUDGE SCHNIERLE: Would you give us an offer of
14 proof, Mr. Chesnutt.

15 MR. CHESNUTT: As to why I think it's relevant?

16 JUDGE SCHNIERLE: Yes.

17 MR. CHESNUTT: Sure. First of all, I think it's
18 now been established that what is contained in Exhibit
19 Number 25 are facts; and the Judge is empowered to take
20 official notice, judicial notice, if you will, of facts.
21 And it's in 52 Pennsylvania Code Section 5.408-A, it is
22 stated that the Judge --

23 JUDGE SCHNIERLE: Can I stop you for just one
24 second. Since Mr. O'Kane has stipulated to the accuracy
25 of the document, I don't -- I believe that if -- I'm

1 assuming that if I rule that this is relevant, you will
2 not object to its admissibility otherwise.

3 MR. O'KANE: That's right. He has made a request
4 for an admission and, of course, if you order that that's
5 a valid request, we're not -- we're not questioning the
6 accuracy. We're questioning the relevancy of it.

7 JUDGE SCHNIERLE: I don't think we have to argue
8 about the judicial notice at this point. What's the
9 relevancy of the document, Mr. Chesnutt?

10 MR. CHESNUTT: Well, the relevancy of the document,
11 among other things, is that it gives a current picture of
12 the company's financial condition, about which we have
13 heard at great length from the witness about this failure
14 to pay dividends and all these other gloom stories; and so
15 we have an updating of that information through October 2,
16 1988.

17 Now, certainly that's within the scope of his
18 examination, and I think His Honor is certainly entitled
19 to have a very up-to-date piece of information concerning
20 that.

21 That takes us through page ten. Well, in fact,
22 that takes us the whole way through the document, because
23 it is, in effect, a financial document. That's all it is.
24 And so on that basis alone it would meet Mr. O'Kane's
25 unusual objection about having cross examination limited

1 to the scope of the witness's direct examination. So on
2 that basis alone, I believe it would be admissible.

3 But as a second item, let me call Your Honor's
4 attention to page 11, where we have discussion of a
5 significant development; and there we have placed in issue
6 certain issues that have intrigued the Judge, concerning
7 applicant and on which he has required applicant to
8 provide information, testimony.

9 And when I sought the same sort of information from
10 Matlack, we had a big hassle. But the Judge's latest
11 ruling on that is that I'm entitled to have that
12 information from Matlack. And I think the Judge is
13 entitled to know what the situation is with respect to
14 Chemical Leaman, as well.

15 JUDGE SCHNIERLE: I believe that in view of his
16 testimony regarding the failure to pay dividends for
17 several years, I don't -- it seems to me that the
18 relevancy of this document is inescapable, Mr. O'Kane.
19 And to that extent, with respect to this document, I'm
20 going to overrule your objection.

21 You may proceed, Mr. Chesnutt.

22 MR. CHESNUTT: Thank you.

23 (Pause.)

24 MR. CHESNUTT: Now --

25 MR. O'KANE: Your Honor, now, in overruling the

1 objection and the context of the request that there be an
2 admission here, I assume that there is an admission.

3 JUDGE SCHNIERLE: That's what I assume.

4 MR. O'KANE: I think that's an admission that can
5 become part of the record. I don't know that it's
6 relevant to cross examine this witness on it; but if he
7 chooses to, I think that has to be kept to the testimony,
8 direct testimony.

9 JUDGE SCHNIERLE: I -- that's my understanding.
10 I'm assuming you're going to cross examine him regarding
11 the failure to pay dividends in the closing of the five
12 terminals.

13 MR. CHESNUTT: Yes, I'm going to cross examine him
14 about that. I don't think I'm obliged to cross examine
15 him about anything, but quite frankly, but --

16 JUDGE SCHNIERLE: The point is you're not going to
17 go beyond that point, using this document.

18 MR. CHESNUTT: No, sir. I certainly am not.
19 That's right. If Your Honor please, I am now distributing
20 to everyone a document that has the number 16 on it, which
21 I request be marked as Exhibit Number 26 on behalf of
22 Central.

23 JUDGE SCHNIERLE: It maybe so marked.

24 (Central Exhibit No. 26 was produced and marked for
25 identification.)

1 MR. CHESNUTT: Thank you, sir.

2 BY MR. CHESNUTT:

3 Q. Mr. Repetto, do you recognize Exhibit Number 26?

4 A. Yes, I do.

5 Q. You furnished that answer, didn't you --

6 A. Yes, I did.

7 Q. -- in your response to interrogatories that I
8 served on your counsel. Is that right?

9 A. That is correct on I believe number 16, which is
10 on the document.

11 Q. Yes. And these regulatory income statements
12 that appear in response to this document are true and
13 correct?

14 A. To my knowledge, yes. I did not personally
15 prepare them. They were prepared at my request.

16 Q. Right. But as the person furnished responding
17 to interrogatories, you do take responsibility for the
18 accuracy of them. Is that correct?

19 A. That is correct.

20 Q. Now, there's an item, if you'll turn with me to
21 page 3 of Exhibit Number 26, if you follow down the line
22 to --

23 A. I'm sorry. I don't have a page 3. Or page 3 is
24 this or -- I'm not sure which one you were looking at.

25 Q. Okay. Let me -- I'm on Exhibit Number 26, which

1 is the last --

2 A. Okay. The last page.

3 Q. Third sheet.

4 A. Third sheet.

5 Q. That's the more accurate way. And you see
6 there's an entry very much to the bottom of the page under
7 Roman numeral III called interest and amortization of
8 discount expense and premium. Do you see that?

9 A. Yes.

10 Q. And that in 1987 was in the amount of four
11 thousand seven hundred and eighty-six thousand seven
12 hundred and one?

13 A. I believe the number is 4 million.

14 Q. You're absolutely correct. Four million seven
15 hundred and eight-six thousand seven hundred and one
16 dollars. Is that correct?

17 A. That is correct.

18 Q. Is it not a fact that during 1987 Chemical
19 Leaman Corporation took out a termed loan in the amount of
20 \$9 million for the purpose of using the proceeds of that
21 loan to repurchase its common stock?

22 A. That is correct.

23 Q. And do the payments on the item, the
24 \$4785,701.00 item that I referred to from Exhibit Number
25 26, include a repayment of that loan?

1 A. That's where it would be calculated, yes.

2 Q. And were payment terms of that loan for the
3 annual payment of \$2,250,000.00 of principal per year for
4 four years?

5 A. That, I'm not aware. I cannot attest to that.

6 Q. Are you aware of whether the interest rate on
7 that loan is 1 percent?

8 A. Again, I'm not aware of that.

9 Q. If I were to show you page 14 of the annual
10 report of Chemical Leaman Corporation in 1987,
11 stockholders annual report, would that refresh your
12 recollection?

13 MR. O'KANE: Your Honor, I object. Your Honor,
14 this witness has testified to his position and
15 responsibilities at Chemical Leaman. He is not a member
16 of the accounting staff. He didn't prepare these
17 statements. He may or may not have -- this is beyond the
18 scope of his -- of his testimony.

19 MR. CHESNUTT: Well, he was pretty expert when he
20 was on direct examination, telling about the failure to
21 pay dividends and all the other financial problems that
22 the corporation was having. I can't imagine that he's
23 lost that information in a short span of time.

24 MR. O'KANE: If you will limit your cross
25 examination to what he testified, then I'll have no

1 objection.

2 JUDGE SCHNIERLE: The objection's overruled. I
3 believe this is legitimate cross examination regarding the
4 issue of failure to pay dividends.

5 BY MR. CHESNUTT:

6 Q. Now let me show you page 14 of the 1987 annual
7 report to stockholders by Chemical Leaman Corporation.
8 And they have a little item here about the term loan, and
9 the interest rate's 11 percent. Isn't that correct?

10 A. That is correct.

11 Q. And payable within one year in 1987 is
12 \$2,250,000.00. Is that correct?

13 A. That is correct.

14 Q. And payable after one year is the amount of
15 \$6,750,000.00. Is that correct?

16 A. That is correct.

17 Q. Would you agree with me that \$2,250,000.00
18 multiplied by four is \$9 million?

19 A. That is correct.

20 Q. Thank you, sir.

21 (Pause.)

22 BY MR. CHESNUTT:

23 Q. Now let me show you page 16 of the annual report
24 to stockholders of Chemical Leaman Corporation for 1987.
25 And would you agree with me that the representation as

1 made in there, that commitments to purchase revenue
2 equipment and to improve operational facilities amount to
3 \$1,111,000.00 at December 31, 1987?

4 A. That's exactly what it says.

5 Q. Thank you, sir. Do you have any reason to
6 disbelieve that statement in the annual report?

7 A. No, I do not.

8 Q. Turn with me, if you will, to Exhibit Number 26
9 again. That's the three page item which is the response
10 to interrogatory number 16. And look at the second sheet
11 of that exhibit, if you would, sir. And you break -- or
12 the preparer of the income statement breaks operating
13 revenue down into four general categories under Roman
14 numeral I. Do you see that?

15 A. Yes, I do.

16 Q. Would you indicate whether any of the intercity
17 contract carrier revenues on the second line under Roman
18 numeral I -- that is the second line that's associated
19 with any dollar figures -- any of that intercity contract
20 carrier revenue is derived from operations conducted in
21 Pennsylvania intrastate commerce?

22 A. I would believe the answer would be no, it would
23 not. It should be in the top line, common carrier
24 revenue.

25 Q. Thank you. Tell me about freight revenues -

1 local cartage. What does that mean?

2 A. That number there is normally revenue we derive
3 from an intracity revenue, so it would be within the state
4 of -- within the city of Philadelphia or within the city
5 of Houston, within the city of Chicago.

6 MR. CHESNUTT: If Your Honor please, let me read my
7 notes here and maybe -- if you want to take a five minute
8 recess that's fine, but I don't think I'll need five
9 minutes. I'll abide by your ruling on that, and all other
10 rulings.

11 JUDGE SCHNIERLE: We'll take a five minute recess.

12 (Whereupon, a brief recess was taken.)

13 BY MR. CHESNUTT:

14 Q. Mr. Repetto, has Chemical Leaman Tank Lines
15 opened any new terminal facilities anywhere in the United
16 States during 1988?

17 A. Yes, it has.

18 Q. Where?

19 A. Opened a new facility in Laredo, Texas; it
20 opened a facility in Louisiana, right outside of Baton
21 Rouge; it opened a facility in Ohio, Coal Grove, Ohio.
22 They are three that come to mind very quickly.

23 Q. In 1988?

24 A. Yes.

25 Q. Open any in 1987?

1 A. I'm going to say the answer is yes. I know
2 there was one that was opened in Ohio right outside of
3 Ripley.

4 Q. Open any in 1986?

5 A. Well, I'm still on '87.

6 Q. Oh, I'm sorry.

7 A. I'm sorry. I think that's probably it in '87.
8 '86, I cannot recall.

9 Q. Because it was too long ago?

10 A. That is correct.

11 Q. Possible they could have opened some?

12 A. I would say it's probable.

13 Q. Same thing would be true in 1985, wouldn't it,
14 that it's probably they opened some but you couldn't
15 recall specifically?

16 A. Probably less probable in '85.

17 MR. CHESNUTT: Your Honor, I request that you mark
18 I think it's Exhibit Number 27, on behalf of Central -- is
19 that correct --

20 JUDGE SCHNIERLE: Yes.

21 MR. CHESNUTT: -- a document on which is an item
22 number 17, which is an interrogatory framed to this
23 protestant by me on behalf of my client.

24 JUDGE SCHNIERLE: It shall be so marked.

25

1 (Central Exhibit No. 27 was produced and marked for
2 identification.)

3 BY MR. CHESNUTT:

4 Q. Mr. Repetto, did you furnish this answer to
5 interrogatory number 17?

6 A. Yes, I did.

7 Q. Are you aware of a followup request? And I
8 direct it to your counsel, in which I've requested the
9 documents that are associated with the four incidents that
10 are described on pages 2 and 3 or sheets 2 and 3 of
11 Exhibit Number 27.

12 A. I am aware that there is a request, yes.

13 Q. Are you aware that I have not been furnished
14 with those documents?

15 A. That, I'm not aware of.

16 Q. Were any documents generated as the result of
17 these incidents?

18 A. I guess I don't understand the question.

19 Q. Do documents exist concerning these incidents?

20 A. Again, I'm not sure -- I'm not trying -- I just
21 don't understand the question.

22 Q. All right. Let's turn to page 2 of Exhibit 27,
23 which states when you relate it to the question that's on
24 page 1 of Exhibit 27, as I read Arabic numeral 1 on page
25 2, it says that on November 7, 1986, there was an alleged

1 violation. Did that alleged violation take the form of a
2 writing that was directed to Chemical Leaman Corporation?

3 A. Yes, it would have, yes.

4 Q. And who would have issued that writing?

5 A. It would have been one of the agencies listed on
6 page 11, in answer to your interrogatory number 17, and I
7 do not have the underlying document, whether it was
8 Pennsylvania Public Utility Commission or the Department
9 of Environmental Resources, et cetera.

10 MR. CHESNUTT: Those are all the questions I have
11 of the witness.

12 JUDGE SCHNIERLE: Any redirect, Mr. O'Kane?

13 MR. O'KANE: No redirect.

14 JUDGE SCHNIERLE: Do you move for admission of your
15 exhibits?

16 MR. CHESNUTT: I do, sir.

17 MR. O'KANE: I object, Your Honor.

18 JUDGE SCHNIERLE: Let's take them one by one. 24
19 is the assessment report, or assessment reports. Do you
20 have an objection to that, those?

21 MR. O'KANE: I have no objection. I think you
22 already said you would take judicial notice of those,
23 those documents.

24 JUDGE SCHNIERLE: All right. Exhibit 24 is
25 admitted.

1 (Central Exhibit No. 24 was admitted in evidence.)

2 JUDGE SCHNIERLE: Central Exhibit 25, which is the
3 Securities and Exchange form and the attachments?

4 MR. O'KANE: I think Your Honor has already ruled
5 on that issue. I think there is a -- there was a motion
6 for an admission, and I think you ruled that --

7 JUDGE SCHNIERLE: You don't challenge the accuracy
8 of that document?

9 MR. O'KANE: I'm not challenging the accuracy of
10 that document.

11 JUDGE SCHNIERLE: Central Exhibit Number 25 is
12 admitted.

13 (Central Exhibit No. 25 was admitted in evidence.)

14 JUDGE SCHNIERLE: Central Exhibit Number 26?

15 MR. O'KANE: No objection.

16 JUDGE SCHNIERLE: Central Exhibit Number 26 is
17 admitted.

18 (Central Exhibit No. 26 was admitted in evidence.)

19 JUDGE SCHNIERLE: And Central Exhibit Number 27.

20 MR. O'KANE: Objection, Your Honor, on that one.

21 JUDGE SCHNIERLE: Grounds?

22 MR. O'KANE: On the grounds of relevancy beyond the
23 scope of cross examination, beyond the proper scope of
24 cross examination.

25 JUDGE SCHNIERLE: You probably should have raised

1 the scope question when he was asking the questions.

2 What's the relevancy to this, Mr. --

3 MR. CHESNUTT: Well, the relevancy of it is in line
4 with Your Honor's order recently issued on the similar
5 issues with Matlack, that it's a, I guess, what's sauce
6 for the goose is sauce for the gander type ruling.

7 We have a situation where issues have been called
8 into question about violations of this type. We've been
9 compelled to furnish information; we've done so. And Your
10 Honor has stated more articulately than I possibly could
11 reasons why this information is as relevant from the
12 protestant's side of the aisle as it is from the
13 applicant's.

14 JUDGE SCHNIERLE: Mr. O'Kane?

15 MR. O'KANE: Well, Your Honor, Matlack objected --
16 Matlack, I guess, first filed written interrogatories on
17 the applicant, asking for this information. Then Mr.
18 Chesnutt objected. Matlack argued that they went to the
19 fitness of the applicant, and you agreed. I don't
20 disagree.

21 We didn't -- Chemical Leaman didn't serve
22 interrogatories on the applicant in this regard. In part
23 of your opinion in your recent order written you said Mr.
24 Chesnutt's interrogatories directed at Matlack were
25 relevant.

1 You said what's sauce for the goose is good for the
2 gander, or something to that effect, or people who live in
3 glass houses shouldn't throw stones. And I think perhaps
4 those comments are appropriate. We didn't throw any
5 stones. As a matter of fact, we -- as a matter of fact,
6 we responded -- we did respond to the interrogatories.

7 Our response along with those of our protestants
8 were used by Mr. Chesnutt in his argument on there. Now
9 -- and there was a typographical error. We responded
10 fully. There was a typographical error apparently in
11 question number 18. And we then furnished the documents.

12 I think -- I think the fitness of the applicant is
13 proper, is a proper grounds here. I think perhaps his
14 environmental record is a proper determination for this.
15 I don't know that this is -- it was used for the extent to
16 provide balance or whatever it is.

17 I have no objection, but the problem here is to get
18 something in on the record. I don't know what it means
19 there. There's some servicing information. There's no
20 explanation of the contingencies. We don't think it's in
21 our interest to open up this avenue as a protestant in
22 this area, and --

23 JUDGE SCHNIERLE: Well, my feeling -- I have a
24 couple of responses or thoughts on that subject. One is
25 this thing, but for the fact that because of the ongoing

1 battle between Matlack and Central over this issue, it's
2 possible that Matlack -- as far as I know -- I don't know
3 what Matlack's going to do in their case in chief about
4 Central's -- whatever potential violations Central may
5 have.

6 I understand, however, that Central may desire to
7 respond to whatever Matlack raises by not only looking to
8 the records of Matlack but to the other carriers, other
9 carriers in the industry as well, including Chemical
10 Leaman.

11 So consequently, the fact that you didn't go after
12 them first, I don't view as necessarily relevant to
13 determining the issue. The other aspect, as I indicated
14 in my order, I could envision an applicant using this kind
15 of information in an affirmative fashion, in any event.
16 And consequently, I'm going to overrule the objection and
17 admit Central Number 27 into evidence.

18 (Central Exhibit No. 27 was admitted in evidence.)

19 JUDGE SCHNIERLE: I suspect this may not -- may or
20 may not be the last word I hear on this issue, if you
21 furnish the documents that he's seeking that underlie
22 these violations. I suspect I may be hearing more about
23 this in the future, possibly. But at this point in the
24 game, I believe that Central 27 is relevant and
25 admissible.

1 Is there any further business to transact today?
2 Do you have any further witnesses?

3 MR. O'KANE: No further witnesses, Your Honor.

4 JUDGE SCHNIERLE: Mr. Chesnutt?

5 MR. CHESNUTT: I was out of witnesses some time
6 ago, Your Honor. And I would suggest that we adjourn
7 until next Tuesday, I believe it is.

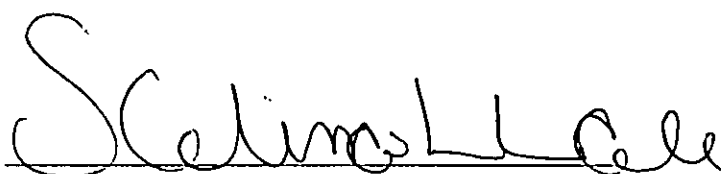
8 JUDGE SCHNIERLE: The hearings on this matter are
9 adjourned until 1:00 p.m. of Tuesday of next week. Thank
10 you very much.

11 MR. O'KANE: And Your Honor, I would expect to be
12 excused from those hearings. We'll have no interest in
13 the protestant's case going on in Pittsburgh, and there is
14 no need for us to appear.

15 JUDGE SCHNIERLE: That's correct, Mr. O'Kane.

16 (Whereupon, at 2:10 p.m. the hearing was
17 adjourned.)
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1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by
3 me during the hearing of the within cause, and that this
4 is a true and correct transcript of the same.

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