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17 [For Chemical Leaman Tank Lines, Inc.]
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C O N T E N T S

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

[None.]

E X H I B I T S

NUMBER

FOR IDENTIFICATION IN EVIDENCE

[None.]

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P R O C E E D I N G S

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ADMINISTRATIVE LAW JUDGE MICHAEL SCHNIERLE: This is the time and place set for the prehearing conference in the matter of the application of Central Transport, Incorporated, Docket Number A-00108155.

All of the parties to this case were contacted regarding this prehearing conference. Three of them responded that they wanted to participate in this conference, and that was the Applicant and the representatives for Matlack and Crossett. We did not receive a reply from Mr. William J. O'Kane, who is representing Protestant Chemical Leaman.

At this time, it is my understanding that we have on the conference call William A. Chesnutt representing the Applicant, Central Transport. Mr. Chesnutt?

MR. CHESNUTT: I am here.

JUDGE SCHNIERLE: All right. James W. Patterson representing Protestant Matlack.

MR. PATTERSON: I am here, Your Honor.

JUDGE SCHNIERLE: Ronald W. Malin representing Protestant Crossett.

MR. MALIN: Yes. I am here, Your Honor.

JUDGE SCHNIERLE: And Andrew Isman?

MR. ISMAN: Isman, sir.

JUDGE SCHNIERLE: Isman. How do you spell that

1 last name?

2 MR. ISMAN: I-s-m-a-n.

3 JUDGE SCHNIERLE: And you are with Pepper,
4 Hamilton and Scheetz, did you say?

5 MR. ISMAN: Yes.

6 JUDGE SCHNIERLE: Is that in Philadelphia?

7 MR. ISMAN: That is in Philadelphia, Harrisburg,
8 Great Valley.

9 JUDGE SCHNIERLE: Well, where are you located?

10 MR. ISMAN: I am physically in the Great Valley
11 office.

12 JUDGE SCHNIERLE: Okay. Do you want to give me
13 your address?

14 MR. ISMAN: Sure. It is 1235 Westlakes Drive.

15 JUDGE SCHNIERLE: Westlake?

16 MR. ISMAN: Westlakes; one word.

17 JUDGE SCHNIERLE: Westlakes Drive. And what is
18 the town?

19 MR. ISMAN: Berwyn.

20 JUDGE SCHNIERLE: All right.

21 MR. ISMAN: 19312.

22 JUDGE SCHNIERLE: All right. The purpose of this
23 prehearing conference, it relates to the Commission's
24 remand of my earlier initial decision.

25 Specifically, the Commission remanded my decision

1 for the limited purpose of obtaining testimony and
2 evidence regarding Central Transport, Incorporated, Clean
3 Water Act violations and any other environmental or
4 safety violations occurring or becoming known since the
5 close of the evidentiary record in this proceeding and
6 the issuance of a supplemental initial decision.

7 Mr. Isman, are you familiar with this case?

8 MR. ISMAN: I am vaguely familiar. I have the
9 file here, and I have been looking over it. They gave
10 it to me yesterday and asked me to just sit in on the
11 conference call.

12 I am unclear as to whether the company is going to
13 withdraw their objections here or not.

14 JUDGE SCHNIERLE: All right. You don't have a
15 position yet.

16 The reason we attempted to contact Chemical Leaman
17 is they had been active in the case throughout the
18 hearings, although they filed no brief nor did they file
19 Exceptions, is my recollection.

20 However, in any event, you are in the prehearing
21 and may participate.

22 My purpose in requesting that a prehearing
23 conference be held is to determine, to the extent
24 possible, exactly what evidence, if there is any beyond
25 that which was presented in the petition to reopen the

1 record, the parties intend to present.

2 As I understand it, the petition to reopen was
3 grounded upon, basically, a guilty plea of Central to
4 certain environmental violations on March 5, 1990.

5 I note that two days of hearings have been
6 scheduled, however.

7 Is there any other evidence at this point beyond
8 that which the parties intend to present? Mr. Patterson?

9 MR. PATTERSON: Your Honor, on behalf of Matlack,
10 it is not our intention to present any further evidence
11 of our own.

12 My anticipation has been that Central would likely
13 come forward with whatever evidence there is, sort of on
14 an exclusive control arrangement as the best source of
15 any evidence or testimony. That was, at least, my
16 thinking up until now.

17 JUDGE SCHNIERLE: Mr. Chesnutt?

18 MR. CHESNUTT: Yes.

19 [Pause.]

20 MR. CHESNUTT: Oh, you want me to comment on that?

21 JUDGE SCHNIERLE: Yes.

22 MR. CHESNUTT: Yes. I agree with Mr. Patterson.

23 I think we do have information to present.

24 He has placed into evidence the guilty plea, and I
25 think we need to have witnesses speak to the circumstances

1 surrounding that, and we intend to present a witness that
2 would indicate the company's position with respect to
3 future compliance.

4 JUDGE SCHNIERLE: All right. By the way, the
5 other thing I wanted to address briefly, to avoid any or
6 at least limit any further evidentiary discussions, it
7 turns out that the Commonwealth Court has recently issued
8 a decision in an application proceeding called Limelight
9 Limousine, Incorporated, versus Pennsylvania Public
10 Utility Commission. It is 1742 Commonwealth Docket 1989.
11 The opinion was filed on September 28, 1990.

12 The long and short of the opinion is that the case
13 was remanded to the Commission to consider evidence
14 regarding fitness that did not rise to the level of a
15 conviction, but rather was firsthand, if you will,
16 testimony regarding an act or series of acts which, if
17 believed, would in the Court's opinion likely disqualify
18 the applicant from holding a certificate of public
19 convenience.

20 I am, at this point, bringing it to everyone's
21 attention, because, as far as I know, this is the latest
22 and possibly the only appellate court pronouncement on
23 this subject and because there was considerable
24 discussion in the prior hearings about what could be
25 received and what couldn't be received.

1 So that we don't have any further -- in order to
2 limit any further legal argument on that point, I bring
3 it to the parties' attention and urge you to review it
4 before the hearings in this case.

5 MR. CHESNUTT: I am not quite sure what you mean
6 by "eliminate any further argument." Do you mean that
7 this is so conclusive that no one is able to come up with
8 any other interpretation other than the one you have just
9 placed on it?

10 JUDGE SCHNIERLE: I think it is absolutely --
11 well, you can read it, but it seems clear to me that the
12 Court is saying that you don't have to -- the Commission
13 is not limited to considering --

14 MR. PATTERSON: Convictions only?

15 JUDGE SCHNIERLE: -- convictions only.

16 On the other hand, in this particular case, the
17 evidence was, essentially, the testimony of a victim,
18 if you will, of the bad act. So, there was no hearsay
19 problem involved.

20 It wasn't a case of -- I believe in the earlier
21 parts of this hearing attempts were made to introduce
22 newspaper articles. I don't think this case opens the
23 door for newspaper articles and that sort of thing,
24 because it involved, essentially, eyewitness testimony.

25 But, by the same token, the Court, in my opinion,

1 makes it crystal clear that convictions -- you don't
2 have to have a conviction to consider it in the course
3 of determining fitness.

4 I will tell you specifically what the alleged
5 bad act was. It was, obviously, an application for
6 something, a limousine -- I believe it was a limousine
7 certificate, and the applicant was alleged to have
8 assaulted another limousine driver in connection with an
9 argument about who was first in line, that sort of thing.

10 The criminal complaint had not yet come to trial
11 when the application was heard. Essentially, there was
12 some question over whether or not the Commission should
13 consider it because no conviction had been as yet had.

14 I think if you read the opinion you will find that
15 the Court made it absolutely clear that a conviction was
16 not needed.

17 And, under the circumstances, an assault such as
18 the applicant is alleged to have embarked upon would, if
19 proven in the application case, likely disqualify the
20 applicant from holding a certificate where he has to,
21 essentially, deal with the public.

22 MR. CHESNUTT: I wouldn't have thought that the
23 Court would have reached that conclusion, would they, if
24 they remanded it?

25 JUDGE SCHNIERLE: Well, there is some pretty

1 strong dicta in the case. Let's put it that way.

2 I urge all parties to take a look at that opinion,
3 because I think it -- as I said, had that been available
4 earlier in the proceedings, it may have made some
5 difference in some of my evidentiary rulings.

6 How many witnesses do you anticipate having, Mr.
7 Chesnutt?

8 MR. CHESNUTT: No more than three.

9 JUDGE SCHNIERLE: Mr. Malin, you don't anticipate
10 presenting any testimony at this point?

11 MR. MALIN: No. I will probably be the most quiet
12 one there, unless cross-examination or something of that
13 nature, but I will have no witnesses.

14 JUDGE SCHNIERLE: All right. Mr. Patterson, it
15 is your position at this point that the conviction -- or
16 the guilty pleas are already in the record? I want to
17 make sure that --

18 MR. PATTERSON: We have not considered that. I am
19 not so sure that they are, Judge. It would certainly be
20 my purpose, if they haven't been, to make a motion to the
21 extent necessary to make them part of the record.
22 Otherwise, all of this would be sort of useless.

23 JUDGE SCHNIERLE: Well, I think it is important.
24 I think it would be a good idea to start the proceeding
25 by such a motion so that we have them in the evidentiary

1 record. And, at that point, Mr. Chesnutt can proceed
2 with his presentation.

3 MR. PATTERSON: All right, sir.

4 I can tell you that I am in Washington, sir, and
5 not in my office, as you probably know. I am not aware
6 of any.

7 On page 10 of the Commission's Order reopening the
8 proceeding, it does indicate "any other environmental or
9 safety violations" occurring or becoming known since the
10 close of the record, the evidentiary record.

11 I am not aware at this juncture whether my client
12 is aware of whether there are any such environmental or
13 safety violations or whether my client is aware of any,
14 if they do exist.

15 So, I don't want to foreclose myself right now. I
16 don't believe that that is going to be the case. It
17 would be a surprise to me if there were such, but I don't
18 want to be foreclosed as a result of this discussion this
19 morning.

20 MR. CHESNUTT: Wasn't there some suggestion that
21 your discovery was sort of continuing, so that if there
22 were any additional things other than were brought out in
23 your motion, that they are to be incumbent upon Central
24 to bring them to the attention of those and the Court?

25 MR. PATTERSON: I don't recall reading that.

1 MR. CHESNUTT: Anyway, it was one of your
2 arguments as to why it should be reopened.

3 MR. PATTERSON: Yes. It would certainly be a
4 healthy resolve.

5 JUDGE SCHNIERLE: Well, my concern at this point
6 is that we put this record to bed, essentially, once and
7 for all. I would rather not go through another round of
8 reopening the record later on.

9 I would like to see this thing terminated, you
10 know, at this juncture, when the hearings close, so that
11 if there is anything further, I don't want to see it come
12 out again later on.

13 MR. PATTERSON: Maybe Mr. Chesnutt could speak to
14 that point.

15 As I say, I am not aware of any other violations.
16 And, because of that, I am not intending to put a witness
17 on to talk about that, because I don't know that they
18 exist.

19 I don't know what Central is going to do, and I
20 have no need to test Mr. Chesnutt this morning on that
21 issue.

22 But, if he -- I mean, that would maybe put some
23 parameters around it, if he knew whether they were going
24 to introduce evidence just with respect to the guilty
25 plea in the North Carolina matter or whether there is

1 going to be -- and with respect to future compliance,
2 as he earlier said, or whether there is going to be
3 testimony or evidence with respect to other violations.

4 JUDGE SCHNIERLE: Mr. Chesnutt?

5 MR. CHESNUTT: I am not aware of any. But, if any
6 there be, I would have an obligation to address them,
7 obviously.

8 JUDGE SCHNIERLE: All right. Do you know who your
9 witnesses are going to be at this point, Mr. Chesnutt?

10 MR. CHESNUTT: No. I don't know them by name, no.

11 JUDGE SCHNIERLE: Is it your intention to supply a
12 witness list at some point prior to the hearings?

13 MR. CHESNUTT: If you instruct me to do so, of
14 course, I would.

15 JUDGE SCHNIERLE: I think that would be a good
16 idea. I think it probably -- at least one week
17 beforehand, I think, would be a reasonable practice at
18 this point, so that if the parties have any further
19 questions they want or clarifications they want to
20 obtain, they will be able to have some time to do so.

21 I would direct you to submit to the parties at
22 least one week prior to the scheduled hearings a list of
23 the witnesses and a general description of the scope of
24 their testimony.

25 MR. CHESNUTT: Okay.

1 JUDGE SCHNIERLE: Is there anything further we
2 need to discuss today? Mr. Chesnutt?

3 MR. CHESNUTT: Not from me.

4 JUDGE SCHNIERLE: Mr. Patterson?

5 MR. PATTERSON: No, sir.

6 JUDGE SCHNIERLE: Mr. Malin?

7 MR. MALIN: I just have one question. Do you
8 think you are going to need the two days, Bill, or do
9 you have any guesstimate at this time?

10 MR. CHESNUTT: I am probably the person in the
11 least position to make that estimate, Ron.

12 MR. MALIN: Your direct testimony, I mean, can
13 you do it in an hour?

14 MR. CHESNUTT: Sure.

15 MR. MALIN: Up to cross then.

16 MR. CHESNUTT: Yes.

17 MR. MALIN: Okay. Fair enough.

18 JUDGE SCHNIERLE: Mr. Isman?

19 MR. ISMAN: I have nothing.

20 JUDGE SCHNIERLE: All right. Then this prehearing
21 conference is adjourned, and I will see you all at the
22 scheduled hearing, I think the first day of which is
23 December 4. Thank you very much.

24 [Whereupon, at 10:20 a.m., the prehearing
25 conference was concluded.]

C E R T I F I C A T E

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