

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

----- X
Pennsylvania Public Utility :
Commission, Bureau of Transportation:
& Safety vs. Donald Fix, trading as :
Don Farr Moving Company. Various : Docket Number:
violations. : A-00107168C0107
Prehearing conference into an :
initial hearing. :
----- X

Pages 1 through 51 State Office Building
Hearing Room 1
300 Liberty Avenue
Pittsburgh, Pennsylvania

DOCUMENT
FOLDER

Thursday, March 14, 2002

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

JAMES D. PORTERFIELD, Administrative Law Judge

APPEARANCES:

R. K. SMITH, ESQUIRE
Pa. PUC, Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, Pa. 17105-3265
(For the Complainant, Pennsylvanian Public Utility
Commission, Bureau of Transportation & Safety)

LOUIS W. EMMI, ESQUIRE
Suite 201, 300 Mount Lebanon Boulevard
Pittsburgh, PA. 15234
(For The Respondent, Donald Fix, trading as Don
Farr Moving Company)

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WITNESS INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Cynthia Ann Hawthorne	7,26	---	---	---
Monroe Howard Dove	17	22	---	---
Donald Fix, Jr.	41	46	---	---

FORM 2

EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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Bureau of Transportation& Safety

1	1	(Bill of Lading for	9	40
2		Walker move)		
3	2	(Information For Shippers	10	40
4		Form)		
5	3	(Bill of Lading for Cameron	16	40
6		move)		
7	4	(Operating Authority)	18	40
8	5	(Estimated Cost Of Services	25	40
9		Order of Service)		

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE JAMES D. PORTERFIELD: Good
3 morning. I'm Administrative Law Judge James D. Porterfield,
4 the Presiding Officer assigned by the office of Administrative
5 Law Judge, Pennsylvania Public Utility Commission, to hear the
6 matter captioned Pennsylvania Public Utility Commission,
7 Bureau of Transportation & Safety versus Donald Fix, trading
8 as Donald Farr Moving Company, at Docket A-00107168C0107.

9 It being March 14, 2002, now, at approximately, 10:00
10 a.m., it's the day, time, and we're here in the 11th Floor
11 Hearing Room, Pittsburgh State Office Building, Pittsburgh,
12 Pennsylvania, the place set pursuant to Notice to the parties
13 dated December 14, 2001, for the initial evidentiary hearing
14 in this matter, to include a pre-hearing conference, which
15 we've attenuated at the onset.

16 The subject Complaint was filed on the Commission's
17 Motion on 11-08-01, and contains various allegations of
18 violations of Sections 1303, 1102, 1501 of the Public Utility
19 Code and Sections 31.121 and 31.16 of Title 52 of the
20 Pennsylvania Code. Most of the allegations, or I think,
21 perhaps all of the allegations, resulted from an audit
22 conducted by the Bureau of Transportation & Service on July 7
23 --- July 18 and 19, 2001, and the audit apparently disclosed a
24 number of items that raised allegations that the Respondent
25 operated outside of the authorized geographic area, no written

1 estimate, in some cases, given to their shipper, information
2 for the shipper not given prior to order for service, and
3 proper form was not used, according to the Complaint.

4 The Complaint was answered on November 20, 2001, and
5 basically admits and denies, in part, certain --- certain of
6 the allegations contained in the Complaint and an Interim
7 Order 1 issued on December 19, 2001.

8 This morning, R. K. Smith, Jr., Esquire, has entered an
9 appearance on behalf of BT&S and Lewis W. Emmi, Esquire, an
10 appearance on behalf of Donald Fix, doing business as Donald
11 Farr, Moving. Okay.

12 Before going on the record, the parties had started to
13 work out some stipulations, and I wanted to be on the record
14 when those stipulations are made, so we can conserve a little
15 bit of time. Do you want to proceed with the --- your
16 understanding so far of the stipulations, Mr. Smith?

17 MR. SMITH: Or we can take a few minutes and see if we
18 can give you a complete --- I mean, there maybe some others
19 that we could work through, too, Your Honor?

20 JUDGE PORTERFIELD: Okay. Well, let's get the ones we
21 had --

22 MR. SMITH: Okay.

23 JUDGE PORTERFIELD: --- (Continuing) --- and then we'll
24 go off the record.

25 MR. SMITH: Okay. Fine. Apparently, the Respondent is -

1 -- there are five allegations in the Bureau's Complaint that
2 there were a movements outside the carrier's certificated
3 geographic area, apparently. That's at paragraph 4A, 5A, 9A,
4 13A and 18A.

5 My understanding from counsel, that carrier ---
6 Respondent's willing to concede that four of those five
7 movements were, in fact, outside the area. The only one not
8 conceded would be at paragraph 5A of the Bureau's Complaint.

9 JUDGE PORTERFIELD: Right. And there was another
10 stipulation regarding allegation of improper form of the
11 information to shipper?

12 MR. SMITH: Yes. The --- the Bureau concedes that the --
13 - the Bureau's not contesting that the form, itself, as far as
14 information for shipper's statement was not in compliance.
15 The other issues as to whether it was timely given ---

16 JUDGE PORTERFIELD: Okay. We'll ---

17 MR. SMITH: --- (Continuing) --- remains in play.

18 JUDGE PORTERFIELD: Those are the stipulations we have
19 thus far, so, let's go off-the-record, and we can continue to
20 work through the Complaint.

21 MR. SMITH: Okay.

22 (Off the record)

23 (Back on the Record)

24 JUDGE PORTERFIELD: Okay. As George W. says, "Let's
25 Roll."

1 MR. SMITH: Okay. Paragraph 4 is the first count in the
2 Bureau's Complaint. This notice --- we have a stipulation as
3 to 4A.

4 First of all, I call Cynthia Hawthorne as our first
5 witness.

6 Whereupon,

7 CYNTHIA ANN HAWTHORNE

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q Give us your full name, please?

12 A Cynthia Ann Hawthorne, H-a-w-t-h-o-r-n-e.

13 Q And by whom are you employed?

14 A Pennsylvania Public Utility Commission, as a
15 Supervisor out of Pittsburgh.

16 Q And how long have you been an Enforcement Officer?

17 A 20 years.

18 MR. EMMI: We'll stipulate as to her qualifications.

19 BY MR. SMITH:

20 Q 20 years, okay.

21 And, did you have occasion on July 18 and 19th of 2001,
22 to conduct a ---

23 A Yes.

24 Q --- (Continuing)--- household goods mover audit with
25 Paul Coliari?

1 A I did.

2 Q Okay. And who did you meet with --- which
3 representative of the carrier did you meet with?

4 A Mr. Donald Fix, Jr.

5 Q Okay. And he's present in the hearing room today?

6 A Yes.

7 Q Okay. And you got a series of documents during this
8 investigation, correct?

9 A Yes.

10 Q Okay. Could you just briefly describe to the Judge
11 how such an audit is conducted?

12 A We conduct a random sampling of household goods
13 moves that are done within the state of Pennsylvania.
14 Approximately, 15,000 are reviewed by ourselves, and then, the
15 documents are copied and forwarded in to Harrisburg for
16 technical review.

17 Q You --- you --- did they give you boxes ---

18 A Yes, we were ---

19 Q --- (Continuing) --- of the documents?

20 A --- (Continuing) --- we were assigned the carrier from
21 Harrisburg, and Mr. Donald Fix had --- we had specific months
22 that were assigned to us to review. He had all the files for
23 the particular months, in boxes, in his office, at the time.

24 Q Okay. So, they just bring out the boxes, and they
25 don't select which ones ---

1 A No. We randomly ---

2 Q You randomly select.

3 And as --- would the carrier representative be with you
4 during the audit?

5 A On and off throughout the audit, Mr. Fix was
6 present, yes.

7 Q Okay.

8 MR. SMITH: The first document I want to have marked for
9 identification purposes. Okay. I want to mark for
10 identification purposes only, at this point. This would be
11 BTS Exhibit number 1. Let the record show I am handing that
12 document to Miss Hawthorne.

13 (Whereupon, the document was
14 marked as BTS Exhibit 1
15 for identification.)

16 BY MR. SMITH:

17 Q What does that represent?

18 A This (indicating) is the Bill of Lading for the move
19 --- for the move for Ann Walker from Mount Pleasant, Pa., to
20 Mount Pleasant, Pa.

21 Q Okay. And the Respondent has already stipulated
22 that that was outside their territory.

23 Now, what other --- the Bureau's Complaint says, "No
24 written estimate was given to the shipper." How did you make
25 that determination in your audit?

1 BY MR. SMITH:

2 Q Ms. Hawthorne, what I'm showing you is BTS Number 2.
3 Did you make a copy of that Form from the ---

4 MR. EMMI: Again, not to interrupt, but maybe to speed
5 things along?

6 MR. SMITH: Sure.

7 MR. EMMI: All documents --- if you just want to ask her,
8 "Is this a copy?" I'm sure she's going to say that it is.
9 So, we don't have a problem ---

10 MR. SMITH: Okay.

11 MR. EMMI: --- (Continuing) --- with that. He doesn't
12 have to go through the whole ---

13 MR. SMITH: Okay. Okay. So, we can basically ---

14 MR. EMMI: Stipulate that the documents that you're
15 presenting ---

16 MR. SMITH: Yes.

17 MR. EMMI: --- (Continuing) --- are the documents that
18 she copied.

19 MR. SMITH: Okay. Okay.

20 Okay, Your Honor. Evie Cameron is the one count for the
21 outside area, not stipulated to. Mr. Dove is here. If we can
22 approach this issue this way. We're looking at 4B ---- I'm
23 sorry, 4A is the only outside geographic area not stipulated
24 to.

25 JUDGE PORTERFIELD: No, it's five.

1 MR. EMMI: Five. Four we stipulated to.

2 MR. SMITH: Yes. So, that is the only --- and I have Mr.
3 Dove.

4 JUDGE PORTERFIELD: What's the issue? Where --- I don't
5 need --- what's the issue?

6 MR. SMITH: The issue is, they're not conceding that that
7 was an outside the geographical area.

8 JUDGE PORTERFIELD: That's correct.

9 MR. SMITH: The four were done except the form --- the
10 form --- they're admitting that this is the form used for the
11 --- for the Ann Walker movement.

12 MR. EMMI: Before --- before, A and B were stipulated to.

13 MR. Smith: Yes.

14 MR. EMMI: C, we're not stipulating.

15 MR. SMITH: No, but 4, you're stipulating that that is
16 the document in the file.

17 MR. EMMI: That's right.

18 MR. SMITH: And this document speaks for itself, as we
19 had --- as to the same day of the move. I mean, that'll be
20 our argument, that the Judge will have to ---

21 MR. EMMI: We'll stipulate that that document is dated
22 for the same day of the move, but not necessarily signed or
23 given to the shipper prior to the move.

24 MR. SMITH: You're going to stipulate that this was the
25 document found in the carrier's file when audited by our

1 Bureau?

2 MR. EMMI: Yes.

3 MR. SMITH: Okay. So, now, we're looking at five ---

4 JUDGE PORTERFIELD: What happened to 4C? That's what
5 that means. I mean, it's Respondent's position that the form
6 was given prior to order for services, it's just dated the day
7 of the service, as a matter of policy, is that correct?

8 MR. EMMI: That's correct.

9 JUDGE PORTERFIELD: Okay. So that --- C is already ---
10 we're done with C. We're looking now at outside geographic
11 area.

12 MR. SMITH: Yes. On --- well, they --- on 5A, yes.

13 JUDGE PORTERFIELD: Okay. 4A.

14 MR. SMITH: They've stipulated to that.

15 JUDGE PORTERFIELD: Okay. 5A is the only one in
16 controversy. So, we're done with paragraph four?

17 MR. SMITH: Yes. C is the only one in controversy. That
18 becomes a legal argument.

19 JUDGE PORTERFIELD: Okay. Well, let's do 5B and C. We
20 might be able to --- C might be the same thing. Let's start
21 with paragraph five now.

22 MR. SMITH: Okay.

23 JUDGE PORTERFIELD: Are you --- you agree that we're done
24 with paragraph four?

25 MR. SMITH: Yes. That would be, I assume, Lou,

1 consistent throughout the Complaint, the same ---

2 MR. EMMI: Yes.

3 MR. SMITH: --- (Continuing) --- position ---

4 Mr. EMMI: On that, yes.

5 MR. SMITH: --- (Continuing) --- so --- okay. We can go
6 through every one of them that way. Okay.

7 Monroe Dove is the one to testify in the outside
8 geographic area.

9 JUDGE PORTERFIELD: Okay. Why don't you do what you
10 intend to do on paragraph five?

11 MR. SMITH: Okay.

12 JUDGE PORTERFIELD: We don't have to go A, B, C. Just
13 let's ---

14 MR. SMITH: Okay. On paragraph 5B, the allegation is no
15 written estimate given to the shipper. Okay.

16 Okay. Your Honor, consistent with all the written
17 estimate, our position is that the form doesn't meet the
18 requirements of the Regulation. The type is ---

19 MR. EMMI: Well, wait a minute. You have that alleged?
20 It's not alleged in your allegations, anywhere. It just says,
21 "No List Estimate Form." It doesn't say, "Not proper Form."
22 If you read your allegations, it'll say, "There's no written
23 estimates given to shipper --- "

24 MR. SMITH: Yes, we're going to amend --- we're going to
25 move to amend ---

1 MR. EMMI: I'm going to object to amendment at this point
2 because I'm not prepared to deal with a change in the
3 Complaint to make a major change, to say, "Well, they may have
4 given an estimate --- " if I might finish --- that they may
5 have given an estimate, but now, the form's not right. That's
6 not what you're saying? Oh, I thought that that was what he
7 was saying.

8 MR. SMITH: Okay. So, we're not --- we're not --- we'll
9 withdraw prosecution of 5B, Your Honor.

10 JUDGE PORTERFIELD: 5B withdrawn?

11 MR. SMITH: Yes.

12 MR. EMMI: Could we move to have 5C withdrawn, also,
13 because we did fax the estimate and the information for
14 shippers at the same time?

15 MR. SMITH: Well, it's ---

16 MR. EMMI: I mean, there was ---

17 MR. SMITH: Well, let's go through the rest of five.
18 Okay. Well, let's --- let's go through the rest of 5C. 5C, I
19 think --- I believe that 5C would be consistent throughout the
20 Complaint. The form was in the file. The same argument ---
21 we have the same argument. They have dated the day of the
22 move. Same stipulation. The one that was in the file.

23 MR. EMMI: As long as we have the stipulation that says,
24 there's no other information to say that you had, that says
25 that the shipper did not receive it, prior to the move.

1 BY MR. SMITH:

2 Q Was there --- okay. Let me get --- were there any
3 other documents, than the one Information For Shippers Form in
4 the file?

5 A For the move with Evie Cameron, there was an
6 estimate. A written estimate was in the file, along with the
7 Bill of Lading, and their carrier's Liability Certification
8 Form, and the telephone estimate that was given, and your
9 computer printout regarding the move.

10 JUDGE PORTERFIELD: That's paragraph five of the
11 Complaint, for the record. Okay.

12 We're off the record.

13 (Off the record.)

14 (Back on the record.)

15 BY MR. SMITH:

16 Q Ms. Hawthorne, I'm going to show you what's BTS 3,
17 the Bill of Lading for Evie Cameron.

18 (Whereupon, the document was
19 marked as BTS Exhibit 3
20 for identification.)

21 BY MR. SMITH:

22 Q Was that a document you found provided during your
23 audit?

24 A Yes.

25 Q Ms. Hawthorne, did you make --- did either you or

FORM 2

1 Officer Coliari make a determination as to whether this
2 particular movement was outside the Respondent's operating
3 territory?

4 A No.

5 Q No.

6 A That was left up to Technical Review in Harrisburg.

7 Q Okay. I have ---

8 JUDGE PORTERFIELD: We're ready to do the outside of
9 territory on paragraph five.

10 MR. SMITH: Yes. And that's the only one we'll ---

11 (Witness excused.)

12 Whereupon,

13 MONROE HOWARD DOVE

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SMITH:

17 Q Give us your full name, please?

18 A Monroe Howard Dove.

19 Q And by whom are you employed?

20 A The Public Utility Commission.

21 Q And in what capacity?

22 A Tariff Examiner.

23 Q And, how long have you been with the PUC?

24 A Oh, 27 years.

25 Q And did you have a part in the reviewing and

1 preparing this Complaint?

2 A Yes.

3 Q Okay. I direct your attention to what has been
4 identified as BTS 3, movement for Evie Cameron. Did you make
5 --- at my request, did you make a determination whether or not
6 this movement was outside the geographic territory of the
7 carrier?

8 A Yes.

9 Q Okay.

10 MR. SMITH: At this point, I want to have a Certification
11 from Secretary McNulty, which is the Operating Authority of --
12 ~ the Certification includes the Operating Authority of the
13 carrier's log and as well as his PUC Tariff.

14 JUDGE PORTERFIELD: May we identify this (indicating) as
15 BTS Number 4?

16 MR. SMITH: Yes.

17 JUDGE PORTERFIELD: Collection of documents. And this
18 will be applicable to other paragraphs, also.

19 (Whereupon, the documents were
20 marked as BTS Exhibit 4 for
21 identification.)

22 BY MR. SMITH:

23 Q Mr. Dove, this movement --- where did this movement
24 come from and where was it going to?

25 A It was coming from New Brighton, in Beaver County,

1 to North Versailles, in Allegheny County.

2 JUDGE PORTERFIELD: It's Versailles around here, Mr.
3 Dove. I know it's Versailles everywhere else in the world,
4 but here, it's Versailles.

5 BY MR. SMITH:

6 Q Okay. How did you make a determination that this
7 movement was outside the territory?

8 A We used a PC Miler. It's a computer software
9 program to determine the road miles used by --- it's used by
10 various State Agencies.

11 Q Could you describe how that works?

12 A You plug in your first point. Well, we went into
13 the Authority that he has, and ---

14 Q Can you point out to the Judge ---

15 A We did a printout from Braddock, Pennsylvania to
16 North Versailles, and it was 8.2 miles.

17 Q What does their territory --- what is their
18 Authority ---

19 JUDGE PORTERFIELD: You may have misspoken. I think you
20 said, "North Braddock." I think you meant New Brighton?

21 MR. SMITH: The Complaints says, "New Brighton."

22 THE WITNESS: North --- New Brighton's outside their
23 area. So, we had to take it to a point that would be closest
24 to their area of Authority.

25 JUDGE PORTERFIELD: Okay.

1 THE WITNESS: Which would be North Versailles.

2 JUDGE PORTERFIELD: Mr. Fix, let counsel --- direct your
3 comments to counsel, rather than the witness.

4 BY MR. SMITH:

5 Q Okay. Their --- they can go --- I'm looking at
6 Class D carrier. I believe it's the fourth paragraph under
7 "Operating Authority," on page number one. "From points in
8 the Borough of Braddock and within five miles"?

9 A Yes. And within five miles to --- by using that
10 travel highways --- to the points within 30 miles, I used the
11 travel highways and vice versa.

12 Q And what --- how many miles did you make that
13 determination?

14 A That North Versailles is 8.2 miles from Braddock.

15 Q So that the movement --- did the movement ---

16 A Within that five-mile radius of Braddock ---

17 Q --- (Continuing) --- it originated outside the five-
18 mile radius?

19 A --- (Continuing) --- right.

20 JUDGE PORTERFIELD: What page are you looking at, Mr.
21 Smith, that shows that Authority?

22 MR. SMITH: Well, I was looking at the Tariff.

23 THE WITNESS: Yes, it's page one of the Tariff. Two.
24 Well, it's actually page two, but it's not ---

25 MR. SMITH: On the Operating Authority, it would be page

1 two, also, Your Honor, at ordering paragraph one. The fourth
2 ordering paragraph, that a Class D carrier, "household goods
3 in use from points in the of borough of Braddock, Allegheny,
4 and within five miles by the usually traveled highways, of the
5 limits of the said borough, to points within 30 miles."

6 JUDGE PORTERFIELD: This (indicating) is what you gave
7 me. Show me where that is. And it's in the Tariff, also?

8 MR. SMITH: It's in the Tariff, yes.

9 JUDGE PORTERFIELD: Okay.

10 THE WITNESS: That's the only piece of Authority that
11 comes close to --- that's the only one that would even come
12 close to being able to be used this for the move.

13 JUDGE PORTERFIELD: And your testimony is that neither
14 New Brighton nor North Versailles is within five miles of
15 Braddock?

16 MR. SMITH: Right.

17 BY MR. SMITH:

18 Q Is your testimony, Mr. Dove, that New Brighton was
19 further from --- well, the destination was North Versailles.
20 How many miles was New Brighton? Did you make that
21 determination?

22 A Well, that --- that's beyond North Versailles. I
23 mean, that's way beyond. The only point that would fit into
24 the Authority would be North Versailles. That's outside the
25 County, New Brighton.

1 Q Okay. Anything further on that issue, Mr. Dove?

2 A No.

3 Q Okay.

4 MR. EMMI: Your Honor, for expediting purposes, could I
5 cross-examine him now?

6 MR. SMITH: No problem.

7 MR. EMMI: Because I'll be done with him then.

8 MR. SMITH: No problem.

9 CROSS-EXAMINATION

10 BY MR. EMMI:

11 Q Sir, you used a computer program to make that
12 determination, is that right?

13 A Yes.

14 Q Okay. Isn't it true that there are multiple,
15 different ways to go to different locations?

16 A Correct.

17 Q Some short, or some longer?

18 A Right.

19 Q Computers sometimes take you the longer, quickest or
20 easiest route to go?

21 A Yes.

22 Q Okay. Sometimes there's shorter routes to get
23 there? Is that right?

24 A Yes.

25 Q So, based upon your interpretations, based upon the

1 computer program, not actually measuring the miles out?

2 A Right.

3 Q Okay. Now, would you agree that North Versailles is
4 right next to Braddock, or do you know where it is?

5 A I don't remember, to be honest.

6 Q Okay. So, you really don't know how close they are
7 to each other, other than what that computer program told you?

8 A Right. I mean, we looked at it with a map, but I
9 don't remember now, as to how close it was.

10 Q So, in all reality, there could be a route that is
11 only five miles, rather than eight miles from where they are
12 at, to where they have to go?

13 A It's possible.

14 Q Okay. And also, in the Tariff, on page two, you
15 were looking at paragraph two and subparagraph one, two, third
16 one down, that's what the determination --- how you made your
17 determination?

18 A It was paragraph four.

19 Q You were looking a paragraph four? And there's a
20 30-mile radius in that, also, isn't there?

21 A Yes.

22 Q Okay. Now, do you know where New Brighton is?

23 A That's in Beaver County.

24 Q Beaver. Is New Brighton 30 miles within their
25 Tariff?

1 A It may be, but the move has to be --- the first part
2 of the Authority it's Braddock and a radius of five miles.
3 One of the points has to be within a five-mile radius of
4 Braddock.

5 Q Okay. And again, other than the computer program,
6 you don't know if North Versailles is within five miles of
7 Braddock?

8 A I don't know.

9 Q Okay. And you have nothing other written, to see if
10 there was any shorter route between North Braddock and North
11 Versailles?

12 A No.

13 Q And do you understand that they border one another?

14 A That's what you're saying.

15 Q Okay. Do you take a computer program and go from a
16 point, to a point, to make that determination of miles, or is
17 it air miles?

18 A It's highway miles.

19 Q Okay. So, you have to have a starting point and a
20 finish point, is that right?

21 A Yes.

22 Q So, when you put your information into the computer
23 program, you put North Versailles and Braddock and determine
24 how far it is away from one another?

25 A Yes.

1 Q You don't use street numbers or street designations?

2 A No.

3 Q So, in all reality, if you're at the furthest most
4 point in North Braddock, to the closet point in North
5 Versailles, could be less than five miles?

6 A Yes.

7 Q Thank you.

8 MR. SMITH: Your Honor, I think the interesting thing to
9 do is take all the testimony from Ms. Hawthorne and retain Mr.
10 Dove here for the Tariff calculation issues. So, we just run
11 through the rest ---

12 JUDGE PORTERFIELD: Let's do --- include Mr. Dove on the
13 geographic outside the authorized territory testimony, but
14 reserve the Tariff testimony.

15 MR. SMITH: Yes, that's what I said. That was the only -
16 -- they stipulated to the other four counts, so, that would be
17 the only ---

18 JUDGE PORTERFIELD: This is the only one we have for
19 outside the territory.

20 MR. SMITH: And, Your Honor, here at paragraph 6B, the
21 Complaint does allege improper form use for estimate.

22 This (indicating) would be BTS 5.

23 (Whereupon, the document was
24 marked as BTS Exhibit 5
25 for identification.)

1 MR. EMMI: Well, wait a minute. Again, I just want to be
2 sure where we're at here. You're saying that D is the
3 improper form of the document that you just entered introduced
4 for this particular number 6B?

5 MR. SMITH: Yes.

6 MR. EMMI: Okay.

7 MR. SMITH: And that has to do with the height of the
8 lettering.

9 (Witness excused.)

10 Whereupon,

11 CYNTHIA ANN HAWTHORNE

12 having been previously duly sworn, testified further, as
13 follows:

14 DIRECT EXAMINATION (Continued)

15 BY MR. SMITH:

16 Q Is that your review of the document, which is BTS 5,
17 the Estimate Form? Is this the form that was in the file?

18 A This is the form that was in the file, that we made
19 a copy of.

20 Q And your determination of the form being inadequate
21 is based on what, Officer?

22 A The height of the lettering, under "Estimated Cost
23 of Services," the Regulation stipulates or states that it has
24 to be a half an inch in height, and that is what the technical
25 review supposedly stated.

1 JUDGE PORTERFIELD: What section are you referring to?

2 THE WITNESS: Estimated Costs of Services.

3 JUDGE PORTERFIELD: What has to be --- the font size of a
4 half inch?

5 MR. SMITH: Your Honor, 31-122 Number two, the form for
6 Estimates of Charges, "At the top of each form, there shall be
7 in print letters not less than one half inch high, the words
8 "Estimated Cost."

9 THE WITNESS: This is what technical --- technical review
10 had stated that the Estimated Cost of Services did not meet
11 the font, as in, I guess it's only --- it's a quarter inch
12 versus a half an inch.

13 JUDGE PORTERFIELD: How long is it?

14 THE WITNESS: It's only about a half an inch. I mean,
15 it's --- your --- the lettering on this particular letterhead
16 is only about a quarter of an inch, and the Regulation states
17 a half an inch.

18 BY MR. SMITH:

19 Q It's your understanding, Officer, that like the
20 Estimated, the E is not a half an inch?

21 A Yes.

22 Q Okay. It's not the combination of the two lines?

23 A That's my understanding of the Regulation.

24 MR. SMITH: That becomes another legal argument.

25 JUDGE PORTERFIELD: That's 52 PA Code 31 what?

1 MR. SMITH: 122, Number two, Your Honor.

2 MR. EMMI: What Number is it?

3 MR. SMITH: 122, Number two.

4 So, that becomes an argument at the end of the Case, Your
5 Honor, so --- I believe we can stipulate the same scenario,
6 again, as to on C, again, the form that was in the file has a
7 date of the day of the move, that that is consistent with the
8 other stipulations.

9 JUDGE PORTERFIELD: Okay. Does that put us on to
10 paragraph seven?

11 MR. SMITH: Seven would involve Cheryl Collins.

12 MR. EMMI: Again, shortcut, I spoke with Mr. Fix. We're
13 willing to stipulate to the --- all the counts related to
14 Tariff overcharges or undercharges. That will free Mr. Dove,
15 I believe, to be complete in his testimony.

16 MR. SMITH: Am I understanding then, that ---

17 MR. EMMI: 6A we'll stipulate to.

18 MR. SMITH: And this holds true with the ---

19 MR. EMMI: 7B.

20 MR. SMITH: --- (Continuing) --- 7B.

21 MR. EMMI: And 11B.

22 MR. SMITH: We have 10A.

23 MR. EMMI: 10A?

24 MR. SMITH: 10A.

25 MR. EMMI: Yes.

1 MR. SMITH: 11B. .

2 MR. EMMI: Yes.

3 MR. SMITH: Mr. Dove was here, also.

4 MR. EMMI: 15A?

5 MR. SMITH: As to the quarterly report of underestimates.

6 JUDGE PORTERFIELD: Okay. Let's finish up what we're on,

7 Mr. Smith. Stay with the Tariff charges.

8 MR. SMITH: Okay. 15A.

9 MR. EMMI: 16A.

10 MR. SMITH: 16A, 17A. Mr. Dove was here, also, on the
11 quarterly report.

12 MR. EMMI: And we'll stipulate to 18D, which is the
13 quarterly report.

14 MR. SMITH: 18D stipulated.

15 There's another, 13D?

16 MR. EMMI: 13D? Yes, we'll stipulate to that, also.

17 MR. SMITH: Those were the only two on that issue, I
18 believe?

19 MR. EMMI: We'll stipulate again, and I apologize, Your
20 Honor, as we go along, there's so many files, I'm trying to --
21 -- we have to go through them and --- to 7A, "No written
22 Estimate for Cost of Services provided."

23 MR. SMITH: Okay. On 8A, 7C, the same ---

24 MR. EMMI: Right.

25 MR. SMITH: --- (Continuing) --- scenario throughout.

(Off the record.)

(Back on the record.)

1 JUDGE PORTERFIELD: Let's go on the record.

2 We're on paragraph 8 now?

3 MR. SMITH: Yes.

4 BY MR. SMITH:

5 Q Officer Hawthorne, you had testified that for
6 Barbara Goecke did you find a written estimate for --- in the
7 file for that shipper?
8

9 A For the shipper, Pamela Goecke, there was no written
10 estimate in the file.
11

12 JUDGE PORTERFIELD: That's 8A you just testified to, is
13 that right, Ms. Hawthorne? That pertained to paragraph 8A?

14 MS. HAWTHORNE: Correct.

15 JUDGE PORTERFIELD: Okay.

16 MR. SMITH: Your Honor, on 8B, I believe the stipulation
17 would be the same. That has been consistent throughout this
18 Case, which will be legal argument. The form was, which was
19 dated the day of the move.

20 JUDGE PORTERFIELD: Okay. Go on to paragraph nine,
21 Harvey Baughman, B-a-u-g-h-m-a-n.

22 MR. EMMI: Just so that we can be clear, in that one, it
23 says, on 8B, "Information for shipper was not retained in
24 Respondent's file and not given to shipper, prior to --- "

25 MR. SMITH: We're --- we are not ---

1 MR. EMMI: Okay.

2 MR. SMITH: We're conceding that that was in the file,
3 but, you know ---

4 MR. EMMI: Okay. Great.

5 MR. SMITH: Harvey Baughman, 9A has been stipulated to.
6 9B ---

7 BY MR. SMITH:

8 Q Okay. Officer Hawthorne, could you give your
9 testimony regarding the Harvey Baughman movement? What did
10 you find in Respondent's file?

11 A Regarding the Harvey Baughman as shipper, we did not
12 find a written estimated --- written Estimate of Cost of
13 Services Form. We found the Telephone Order Form instead.

14 Q What was the date of the --- on the Telephone Order
15 Form?

16 A There's no particular --- it has a moving date of
17 November 12, but there's no other date referenced on the Form.

18 MR. SMITH: Your Honor, I have to get copies, or can we
19 get a stipulate --- this (indicating) is the Form we have.

20 MR. EMMI: That's fine.

21 MR. SMITH: Stipulate that there's no date on the Form?

22 MR. EMMI: Yes.

23 MR. SMITH: Okay.

24 MR. EMMI: Yes, we'll stipulate to that.

25 JUDGE PORTERFIELD: In other words, it's the Respondent's

1 position that an estimate was given by telephone, and there's
2 no date of that --- indicating when that telephone estimate
3 was provided?

4 MR. EMMI: That's correct, Your Honor.

5 MR. SMITH: That would take us up to paragraph nine, Your
6 Honor. I'm sorry, paragraph 10. 10A has been stipulated to.

7 10B, the improper Estimated Cost of Services Form. Your
8 Honor, our position would be that the Form was in the file on
9 --- we're looking for the Amy --- on 10B, that the font was --
10 - didn't meet the height requirement of the Regulation. Could
11 we stipulate --- you know, get the --- it's the same ---

12 MR. EMMI: We'll stipulate that the letter length is
13 approximately, one quarter inch. I'm not going to stipulate
14 that that is in violation.

15 MR. SMITH: No, no, but you're stipulating as to the fact
16 of the Form, itself. Okay.

17 MR. EMMI: Yes.

18 MR. SMITH: Paragraph 11 --- there again, at 10C, Your
19 Honor, there again, the stipulation would be the file was ---
20 the Estimated or the Information Shippers Form was in the
21 file, but dated the day of the move, the same as we've been
22 doing throughout.

23 11A, movement for Richard Wisser, Estimated Cost for
24 Services.

25 JUDGE PORTERFIELD: Same issue, font size?

1 MR. SMITH: The allegation was no Estimated Costs of
2 Services Form given the shipper.

3 JUDGE PORTERFIELD: Well, a form could be so deficient,
4 that theoretically you could argue that no estimate was given.
5 I just want to be clear what you're alleging. That it was so
6 defective, that it amounted to no ---

7 BY MR. SMITH:

8 Q Was there a written estimate, or a telephone
9 estimate, Officer Hawthorne?

10 A For the shipper, Richard Wisser, there was a
11 telephone estimate given to Mr. Wisser. There was no written
12 estimate in the file.

13 JUDGE PORTERFIELD: Was the document --- was the
14 documentation of the telephone estimate not dated, or was it
15 dated?

16 THE WITNESS: The moving date was dated December 19. No
17 other date appears on the Form, Your Honor.

18 JUDGE PORTERFIELD: Thank you.

19 MR. SMITH: Counsel, the same scenario we have. We have
20 a Telephone Estimate Form. The date of the move dated the day
21 the phone estimate was not appearing on the Form. Will you
22 stipulate to that?

23 MR. EMMI: Yes, we could stipulate there's no date of
24 when the phone call was made in the section which is "Call."

25 MR. SMITH: Okay.

1 12, Joseph Mayernik, no Estimated Cost Of Services.

2 MR. EMMI: This one, we would stipulate there was not an
3 estimate provided by telephone.

4 MR. SMITH: By written, or telephone?

5 MR. EMMI: No, by telephone. Telephone, but not ---

6 JUDGE PORTERFIELD: In the telephone --- there's
7 documentation that the telephone estimate doesn't bear a date
8 of the conversation. Okay. Let's go on.

9 MR. SMITH: Okay. And ---

10 JUDGE PORTERFIELD: B is the same ---

11 MR. SMITH: The same situation, Your Honor.

12 JUDGE PORTERFIELD: Again, what's the situation on B?
13 The date of the information?

14 MR. SMITH: It's our allegation it wasn't given prior to
15 the order for services.

16 JUDGE PORTERFIELD: And the policy that accompanies is
17 the date of the day of the movement.

18 MR. SMITH: Yes, and we're not --- the proper form ---
19 we're not prosecuting without --- throughout the Complaint.

20 JUDGE PORTERFIELD: Okay. Let's go on to 13, Barb Greco.

21 MR. SMITH: 13A has been stipulated to outside. And D
22 has been stipulated to.

23 JUDGE PORTERFIELD: Is B a --- 13B, again documented as a
24 telephone estimate?

25 THE WITNESS: There is a document --- there was a

1 document in the file for Barb Greco for an Order of Cost.

2 MR. SMITH: The allegation is the improper form, and I
3 believe it's --- there again ---

4 JUDGE PORTERFIELD: The font size?

5 MR. SMITH: --- (Continuing) --- the font size.

6 Darcy ---

7 MR. EMMI: I just want to be clear. On C, are you
8 withdrawing C?

9 MR. SMITH: C would be the ---

10 MR. EMMI: "Information For Shippers not retained in
11 Respondent's file"?

12 MR. SMITH: We're looking at Barb --- so, we're --- we --
13 - we'll withdraw prosecution. And since the Complaint
14 doesn't, we'll just withdraw it totally.

15 JUDGE PORTERFIELD: Okay. 13C's withdrawn.

16 So, that moves us up to 14, correct?

17 MR. SMITH: 14, Darcy Kish, undated phone estimate.

18 We'll stipulate that there was a phone estimate. There again,
19 the same scenario here, dated for the day of the move. The
20 day of the phone estimate not appearing on the document.

21 JUDGE PORTERFIELD: And 14's is the font problem? 14B?

22 MR. SMITH: 14 ---

23 MR. EMMI: 14B is again, Information For Shippers Form,
24 which I think you'll find in the file and the correct Form for
25 Information For Shippers, which they have withdrawn.

1 MR. SMITH: Wait a minute. We're in Kish, right?

2 JUDGE PORTERFIELD: Right.

3 MR. SMITH: Kish?

4 MR. EMMI: Right.

5 MR. SMITH: We have no estimate. It's a phone estimate.

6 The stipulation on 14B again, the Form --- the Form was
7 proper, but it was dated the day of the move in the file.

8 15A has been stipulated to.

9 MR. EMMI: 15B we'll also stipulate to.

10 MR. SMITH: Okay.

11 JUDGE PORTERFIELD: That's Tracy --- 15B is Tracy
12 Harasyn, H-a-r-a-s-y-n.

13 MR. SMITH: So, we're stipulated already as to 15A.
14 We're stipulated.

15 JUDGE PORTERFIELD: To 15B. And that 15C is dated ---
16 the information is dated the day of the move, and it's ---

17 MR. SMITH: And it was in the file and it was a proper
18 form.

19 JUDGE PORTERFIELD: Okay. So, that disposes of 15? Is
20 that correct?

21 MR. SMITH: Mr. and Mrs. ---

22 JUDGE PORTERFIELD: Pless, P-l-e-s-s, paragraph 15.

23 15A's been stipulated to, and that it was not charged in
24 accordance with the Tariff?

25 MR. EMMI: Correct.

1 JUDGE PORTERFIELD: Improper Estimated Cost of Services
2 Form, 16B?

3 MR. EMMI: Fonts again.

4 JUDGE PORTERFIELD: Font size. And 16C?

5 MR. EMMI: Withdrawn.

6 JUDGE PORTERFIELD: Is withdrawn by BT&S.

7 That puts us to paragraph 17, Gino Satore, S-a ---

8 MR. SMITH: That was stipulated to, Your Honor.

9 JUDGE PORTERFIELD: --- (Continuing) --- S-a-t-o-r-e.

10 17A is Respondent concedes that allegation, improper
11 written Estimate Form.

12 Is the font problem --- that's B sub part.

13 C, Information Shipper. Same thing. It's dated --- it
14 was there, and it was dated the day of the service, is that
15 correct, Miss Hawthorne?

16 THE WITNESS: That's correct.

17 JUDGE PORTERFIELD: Okay. That does away with 17.

18 18. Paragraph 18 is --- pertains to Ron Safran move, S-
19 a-f-r-a-n.

20 A has been conceded by the Respondent.

21 B, that's the font size issue.

22 C is Information To Shipper --- same issue, Miss
23 Hawthorne? The Form was in the file and dated the day of the
24 move. And no quarterly report of underestimates filed. It's
25 conceded ---

1 MR. EMMI: That's correct, Your Honor.

2 JUDGE PORTERFIELD: --- (Continuing) --- by the
3 Respondent. Okay. That does away with paragraph 18.

4 MR. EMMI: Correct, Your Honor.

5 JUDGE PORTERFIELD: Paragraph 19 has been conceded, I
6 think, by the Respondent.

7 MR. EMMI: That's correct, Your Honor.

8 JUDGE PORTERFIELD: Paragraph 20, again, this is out of -
9 -- service --- that, that relates back to the specific
10 allegations, is that correct?

11 MR. SMITH: Yes, they're stipulating to four of the five,
12 so ---

13 JUDGE PORTERFIELD: 5A is the only one that's argued, the
14 North Versailles, New Brighton move, New Brighton to North
15 Versailles.

16 21, Estimated Cost of Services, that's the font issue.

17 Information To Shippers in --- I think in all cases,
18 there was a document of ---

19 MR. SMITH: The Forms were in the file, but all the Forms
20 ---

21 JUDGE PORTERFIELD: --- (Continuing) --- dated the day of
22 the move?

23 MR. SMITH: Correct.

24 JUDGE PORTERFIELD: Okay. It's conceded that the
25 quarterly report wasn't filed. Respondent charging --- on the

1 Tariff issues, those were conceded by the Respondent?

2 MR. SMITH: Conceded as paragraph 24.

3 JUDGE PORTERFIELD: Geez! We finished up. Okay.

4 Go ahead, Mr. Smith.

5 MR. SMITH: Well, a couple of the issues consistent in
6 this Case, the one regarding the Form not being consistent
7 with or in compliance with the Regulations, 31.122, paragraph
8 2, Form of Estimate For Charges, the Regulations reads,
9 "Across the top of each Form, there shall be imprinted in
10 letters, not less than one half inch high, the words
11 'Estimated Cost of Services.'" And it's the Bureau's position
12 that this is a technical violation because the letters do not
13 amount to one half inch, as required by the Regulation.

14 As --- as we had mentioned before we got going in the
15 hearing, the Bureau's position is, all the documents regarding
16 the Information For Shippers Statements, the Form used by the
17 carrier are consistent with 52 PA Code. The Bureau's position
18 is they are not in compliance with 31.121 because the carrier
19 has to establish that the inspectors ship --- the prospective
20 shipper received the statement entitled Information For
21 Shippers Statement prior to the order for service. All the
22 documents that make the Bureau's case in this are all dated
23 and have been conceded to, are dated the day of the movement.
24 We believe the Respondent failed to comply with the
25 Commission's Regulation.

1 in evidence.)

2 MR. SMITH: But the phone estimates, if the movement was
3 the day of the move, I think the carrier would be in
4 compliance, if it was --- if they requested service the very
5 day, it would be hard to come and do a written estimate. I
6 mean, there would be no time. But we don't know, from the
7 documents that have been provided Officer Hawthorne and
8 Coliari, when these telephone estimates were provided. And if
9 they were prior to the day of the move, they should have been
10 written estimates, according to the Regulations of the
11 Commission.

12 That's all the testimony we have at this time.

13 (Witness excused.)

14 JUDGE PORTERFIELD: Do you want to introduce testimony as
15 to the policy of dating the ---

16 MR. EMMI: Please, Your Honor.

17 JUDGE PORTERFIELD: Okay.

18 Whereupon,

19 DONALD FIX, JR.

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. EMMI:

23 Q State your name for the record, please?

24 A Donald Fix, Jr.

25 Q Who are you employed by?

1 A Don Farr Moving and Storage.

2 Q And how long have you been employed by them?

3 A 16 years.

4 Q You're familiar with the Complaint pending currently
5 today?

6 A Yes.

7 Q Have you been sent as the agent of the company
8 handling this Complaint?

9 A Correct.

10 Q Mr. Fix, let me direct your attention quickly to the
11 one issue that we have stipulated, related to your Information
12 For Shippers Form. What is your company's policy related to
13 the Information For Shippers Form?

14 A The policy is to make sure the customer receives the
15 Form prior to taking getting an order for service and the
16 move.

17 Q And when do you have them sign the Form?

18 A As soon as they get it. They sign it, and give it
19 back to us on the day of the move.

20 Q Now, when is the Form dated for?

21 Q The day of the move.

22 A You send this Form to them prior, so they have an
23 opportunity to review it?

24 A Yes.

25 Q And you sent --- what is the purpose of dating it

1 the date of the move?

2 A It's just to be a reference that they know what date
3 their move is.

4 Q And for your records, also?

5 A And for our records, also.

6 Q Do you date all of your records for the date of the
7 move?

8 A Mostly, yes.

9 Q It's your testimony today, related to these cases,
10 have you had an opportunity to review all these cases?

11 A Yes.

12 Q Have you had an opportunity to make a determination
13 through your investigation, that these Information For
14 Shippers Forms were sent to these people prior to the move?

15 A Yes.

16 Q And were they all sent?

17 A Yes.

18 Q I'd like to direct your attention now to various
19 moves that indicate that there was no written Estimate For
20 Service given. I'll direct your attention to number nine, Mr.
21 Harvey Baughman. On Mr. Harvey Baughman, how many pieces did
22 he move?

23 A Four.

24 Q And, how was that order given?

25 A Over the phone.

1 Q What is the policy, or what is the financial
2 procedure when someone only has a couple pieces?

3 A We move approximately, 5000 people a year, so, when
4 someone calls with two, four pieces, something of that sort,
5 we don't deem it necessary to go out to the house and write an
6 estimate up physically. We feel over the phone, it's usually
7 a flat rate within our Tariff to charge them, so that it's
8 pretty much as far we usually take a small movement of that
9 sort.

10 Q I move your attention to number 11, another
11 telephone estimate. That would have been Richard Wisser.

12 A Correct.

13 Q How many pieces did Mr. Wisser move?

14 A I believe he only moved two.

15 Q And again, I'll direct your attention to Darcy Kish,
16 which is number 14 on the Complaint. How many pieces did she
17 move?

18 A She moved three.

19 Q And these are all flat rate estimates given over the
20 phone?

21 A Within our Tariff, yes, and the charges we quoted
22 over the phone fell right into accordance with what they are
23 actually charged.

24 Q Now, on the other issues related to the other cases
25 that had telephone estimates, which were mostly all of them,

1 what is your company's procedure related to dating the
2 documents?

3 A Well, the phone quotes, when they come in, such as
4 Ann Walker is one of them, it was five days prior to the move.
5 The reason being, we didn't send an estimator out prior to the
6 move, most likely because she called back a couple days later,
7 I'm not sure. But in such short notice, we see 12 people a
8 day we schedule. With such short notice, it's kind of hard
9 within five days to send a guy out, give an estimate, because
10 within a few days, they have to move in two days after their
11 decision's already made. So, they usually make the decision
12 over the phone. Being they're so busy, they just avoid having
13 the problem.

14 Q Do you provide them the estimate on the day of
15 arrival so they can review it before you begin working?

16 A Yes. We show them the rates, the hour --- you know,
17 the hourly rate, the men, the truck and how long we felt it
18 was going to take, as we told them over the phone.

19 Q And that's prior to them signing any contracts with
20 you?

21 A Correct.

22 Q How --- do you know how many of the complaints are
23 complaints that are initiated by this Complaint, for the same
24 day moves the day you got the call, the day you moved?

25 A I can't tell you that, to be honest with you.

1 Q Okay. One last question. On all of these moves,
2 has your company ever received a complaint related to
3 dissatisfaction with those moves?

4 A Not a single one of them.

5 Q Thank you.

6 MR. EMMI: I have nothing further.

7 CROSS-EXAMINATION

8 BY MR. SMITH:

9 Q Okay. Mr. Fix, on these phone quotes, you concede
10 that none of them that was introduced in this proceeding was
11 dated, correct?

12 A Actually, I have to look. There's one here
13 (indicating), Ann Walker, was dated the 17 of October. Evie
14 Cameron was dated the 17 of October. Probably a few more.
15 So, no, I can't concede that. The ones that weren't dated, we
16 conceded to already, I believe.

17 Q Are you familiar with 52 PA Code, 31.122, "Shall
18 prepare an estimate of charges"?

19 A No. What do you mean, am I "familiar with?" "Shall
20 prepare an estimate --- "

21 Q Yes.

22 A --- (Continuing) --- "for the charges"?

23 Q Yes.

24 A Yes.

25 Q And the reason you give for doing a phone quote is,

1 if it's your criteria, if there are only a few pieces, you
2 don't send an estimator out?

3 A Well, some people call like the day before, if they
4 have a couple pieces they might need moved, so, timewise, it's
5 not warranted to send someone out. Some don't want us out
6 there because they only have a couple pieces, and they ask us
7 our rates over the phone.

8 MR. SMITH: I don't have any further questions for the
9 witness.

10 MR. EMMI: No rebuttal.

11 JUDGE PORTERFIELD: Okay.

12 MR. SMITH: We request that our documents that have been
13 marked for identification be accepted into the record?

14 JUDGE PORTERFIELD: We already did that.

15 MR. SMITH: Oh, okay. We already did that.

16 JUDGE PORTERFIELD: Thank you, Mr. Fix, you're excused.

17 (Witness excused.)

18 MR. EMMI: I have no other witnesses at this point, Your
19 Honor. I would have brief closing, if you're prepared to take
20 that?

21 JUDGE PORTERFIELD: Okay. If you'd do that now?

22 MR. EMMI: Thank you, Your Honor.

23 Your Honor, first I'd like to address the issue of the
24 Information For Shippers Form. Again, the Form is in every
25 single file. It is dated the date of the move. There's been

1 testimony by Mr. Fix that those Forms are sent out prior to
2 the move and that they're executed the day of the move, when
3 all the other documents are signed. Again, there's nothing in
4 the Regulations that say, number one, they can't sign at the
5 day of the move, or that it can't be sent and dated the day of
6 the move. And in this particular instance, Your Honor, we
7 would argue that, that whole section, which would be paragraph
8 22 of the Complaint, for fines for \$1500, be dismissed.

9 The second issue I would like to take is section 31-
10 122.2, and that's the font size of the Estimated Cost Of
11 Services. The paragraph says that there will be letters in
12 the size of one half inch. It doesn't say that it can't be
13 blocked, that the whole thing is over one half inch. If you
14 review that document, it will say, "Estimated Cost Of
15 Services" on it, and it's blocked, so that it's more than a
16 half inch, the whole size. The purpose of that, as the Court
17 knows, is to give the people knowledge of what they're
18 executing and signing. When it's blocked off at the center of
19 the page, offset by no other type, and over a half inch in
20 size, we would argue that it does fulfill the obligation of
21 that statute. And again, we would ask that the \$2850 fine for
22 that be dismissed.

23 The next issue I would like to take is that of the Tariff
24 or the mileage determination. Through Mr. Dove's testimony,
25 he admitted there are other ways to go that could be shorter.

1 He doesn't know. They used the computer program. I don't
2 know if the Court's ever used one of the computer programs to
3 get directions to anyplace, when you go onto the internet,
4 I've done that, myself, and find that I get directions
5 sometimes way out of the way, because they just use courses
6 and directions and roads that are most closest. Mr. Dove also
7 testified that he doesn't know from what point in Braddock to
8 what point in Venango the computer does the measurements. So,
9 again, those issues have to be looked at. I don't believe
10 that they've met their burden there, and we would argue that
11 that one count related to that should be dismissed.

12 Again, Your Honor, I believe what the issues are here, do
13 the movers provide a service, and is the consumer protected,
14 in the sense that they know what they are getting for their
15 money? These documents are in the files. They have it in
16 their file. They performed the services. Not one complaint
17 levied on any of these 14 or 15 paragraphs. I believe that
18 that goes to the quality of the mover and the documentation
19 that they provide. And we would like you to take that into
20 account when you make your determination.

21 Thank you.

22 JUDGE PORTERFIELD: Mr. Smith? You get the last bite of
23 the apple.

24 MR. SMITH: Yes, just really quick, Your Honor. 31-121
25 states, "When a prospective shipper requests service and

1 before an order for services is prepared, the household goods
2 shall furnish prospective --- " we believe the --- the --- the
3 idea that the documents are dated the day of the move would
4 not be consistent with this requirement of the Regulation, and
5 also, it may sound technical, but a clear reading of 31-122-2,
6 the letters, themselves, have to each be one half, not just
7 the group ---

8 MR. EMMI: I'm going to object because he's paraphrasing.
9 That's not what it says.

10 MR. SMITH: Well, that --- that --- the Judge will decide
11 that.

12 JUDGE PORTERFIELD: I'll take a look at 122 and see what
13 it says.

14 MR. SMITH: I believe the Judge understands the issues.

15 JUDGE PORTERFIELD: Okay. Thank you very much.

16 MR. EMMI: Thank you, Your Honor.

17 MR. SMITH: Thank you.

18 (Whereupon, at 11:30 a.m., the hearing was adjourned.)
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C E R T I F I C A T E

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I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically by
me, and thereafter reduced to typewriting by me or under my
direction; and that this transcript is a true and accurate
record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: *James R. Obringer*
James R. Obringer

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