

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: A-00113673 Butchco, Inc., t/d/b/a Thomas Gerrity Moving & Storage. For the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, between points in the City of Scranton, Lackawanna County, and within three (3) miles of the limits of said city, and household goods in use, from points in use, from points in the City of Scranton, Lackawanna County, and within three (3) miles of the limits of said city to other points in Pennsylvania, and vice versa, which is to be a transfer of all of the rights issued to Fratco, Inc., t/d/b/a Thomas Gerrity Moving & Storage, under the certificate issued at A-00109996, subject to the same limitations and conditions. Further Telephone Hearing.

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Stenographic report of hearing held in
Hearing Room 1, State Office Building,
Lackawanna Avenue, Scranton, Pennsylvania,

Tuesday,
September 16, 1997
at 10:00 a.m.

- - - - -

BEFORE

RICHARD M. LOVENWIRTH, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

KENNETH ZIELONIS, ESQUIRE
Suite 370
208 North Third Street,
Harrisburg, Pennsylvania 17101
Appearing on behalf of Butchco, Inc.

1 APPEARANCES: (Cont'd.)

2 CHRISTOPHER B. JONES, ESQUIRE
3 406 Jefferson Avenue
4 Scranton, Pennsylvania 18510
5 Appearing on behalf of Santoro Enterprises, Inc.

6 SCOTT W. POHLMAN, ESQUIRE
7 Robinson & Geraldo
8 P.O. Box 5320
9 Harrisburg, Pennsylvania 17110
10 Appearing on behalf of WGM Transportation, Inc.

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1 JUDGE LOVENWIRTH: Good morning, everyone. We
2 will now commence a further hearing concerning the
3 application of Butchco, Inc., t/d/b/a Thomas Gerrity
4 Moving and Storage, which has been assigned Docket Number
5 A-00113673.

6 An initial hearing in this case was convened on
7 July 25th, 1997. At that time, I spread upon the record a
8 complete history of these proceedings. Because there was
9 some lack of communication between counsel prior to the
10 initial hearing, the procedure which was followed
11 was Mr. -- the applicant's witness, applicant's sole
12 witness, perhaps some rebuttal witnesses, who's name is
13 Paul Bobersky, B-o-b-e-r-s-k-y, examined.

14 His direct examination was completed. He was
15 partially cross-examined. However, this hearing was
16 reserved for the following purposes so that he may
17 continue to be cross-examined, especially with regard to
18 Applicant's Exhibits 1 and 2.

19 Applicant's Exhibit 2 being a, I think, copy of
20 the registration of the fictitious name. And Applicant's
21 Exhibit 1 being financial data of the applicant.

22 Now, the primary purpose of today's hearing is to
23 afford to the attorney for the protestant and, as I said,
24 back in July, I will -- because both the protestant and
25 the applicant have fictitious names, which are similar, so

1 that the record won't be confused; I will refer to the
2 applicant as Santoro. And I will refer to -- I mean, to
3 the Protestant as Santoro. Although the protestant's real
4 name is Thomas Gerrity, Junior Moving and Storage Company.
5 And I will refer to the applicant as Butchco. Although,
6 I've already identified for the record the applicant's
7 name as set forth in the application.

8 Now, there was going to be a late-filed exhibit
9 filed by -- not exhibit. But there was going to be,
10 pursuant to an on-the-record-request, there was going to
11 be a document provided to the protestant by the applicant.
12 I suppose that's been done. I haven't heard anything.
13 So, I'm just assuming it's been done.

14 I haven't heard anything to the contrary. I
15 haven't received a motion for sanctions or motion to
16 compel or anything else.

17 So, if my recitation on the record this morning is
18 accurate, we will begin with the further cross examination
19 of Mr. Bobersky by the attorney for Santoro. The record
20 will indicate that here on behalf of Butchco, the
21 applicant, is its attorney, Kenneth Zielonis, Esquire, who
22 is participating telephonically. Good morning, Mr.
23 Zielonis.

24 MR. ZIELONIS: Good morning, Your Honor.

25 JUDGE LOVENWIRTH: And here on behalf of the

1 protestant, Santoro, also participating telephonically, is
2 its attorney, Christopher B. Jones. Good morning, Mr.
3 Jones.

4 MR. JONES: Good morning, Your Honor.

5 JUDGE LOVENWIRTH: All right. Is Mr. Bobersky,
6 Paul Bobersky there?

7 MR. BOBERSKY: Yes, Your Honor.

8 JUDGE LOVENWIRTH: Are there any preliminary
9 matters before we commence with the evidentiary portion of
10 this hearing?

11 MR. JONES: You made reference to --

12 JUDGE LOVENWIRTH: Excuse me. Pardon me, please.
13 Pardon me. Unfortunately, the Court Reporter doesn't know
14 who's talking. Would we identify ourselves? I think that
15 was Mr. Jones, was it not?

16 MR. JONES: Your Honor, you made reference to the
17 Applicant's Exhibits 1 and 2.

18 JUDGE LOVENWIRTH: Also Protestant's Cross
19 Examination Exhibit Number 1 was made part of the record.

20 MR. JONES: Your Honor, are you in possession of
21 Applicant's exhibit 2 which is the alleged filing of the
22 fictitious name with the Department of State for the
23 Commonwealth.

24 JUDGE LOVENWIRTH: I will look. Yes, I am.

25 MR. JONES: The reason being, I am not in

1 possession. I only have Applicants 1, which is the
2 financial data.

3 JUDGE LOVENWIRTH: Well, I thought I photocopied
4 it. Maybe I made a mistake and forgot to do so. I
5 thought I photocopied it at the end of the hearing and
6 gave the copy to everybody. But I may have. I said I was
7 going to do this. But I may have forgotten to do it.
8 Would you like me to fax it to you now?

9 MR. JONES: I would appreciate that, Your Honor.

10 JUDGE LOVENWIRTH: What is your fax number,
11 please?

12 MR. JONES: 342-6011.

13 MR. ZIELONIS: Your Honor, I could have my
14 secretary here send that over now.

15 JUDGE LOVENWIRTH: Would you do that, please?
16 342-6011. All right. Are there any other preliminary
17 matters?

18 MR. JONES: I'd like the record to reflect, Your
19 Honor, that you are correct in that we made
20 on-the-record-requests for discovery, which we only
21 received partial discovery.

22 Only yesterday was the management agreement that
23 we requested sent to us by fax transmission. Late
24 yesterday, we received the insurance information that was
25 requested by the applicant.

1 JUDGE LOVENWIRTH: You mean by the protestant?

2 MR. JONES: By the applicant. Yes, the
3 protestant is the one who requested it. As a matter of
4 fact, the insurance information was just sent to us by fax
5 transmission today.

6 But, in addition, we made requests for the
7 corporation dockets that should be on file with the
8 Department of State, which we did not receive. And the
9 only reason I was requesting that I get a copy of
10 Applicant's Exhibit 2, the fictitious name, because a
11 telephonic check with the Department of State, as of 15
12 minutes ago, indicated that there is no Thomas Gerrity
13 Moving and Storage on file and authorized to do business
14 within the Commonwealth.

15 JUDGE LOVENWIRTH: All right. Well, you're
16 saying concerning the latter statements that you made,
17 you're saying that is not evidence?

18 MR. JONES: I'm not offering it as evidence at
19 all. I wanted the Court to be aware that my discovery
20 requests were not accurately complied with.

21 JUDGE LOVENWIRTH: What does this have to do with
22 me? It's now 20 minutes after 10. The hearing was to
23 commence at 10:00. Maybe we were 5 minutes late or so.
24 First I called Mr. Zielonis in Harrisburg and I couldn't
25 reach him.

1 But this being as it may, nobody filed a motion
2 to compel answers to on-the-record-data-requests. Nobody
3 pursuant to Commission's regulations at 52 Pennsylvania
4 Code, nobody filed a motion to compel or motion for
5 sanctions or anything else. I don't deal with discovery
6 matters at the hearing.

7 The matters have to be brought to my attention
8 within a reasonable time before the hearing so that I can
9 try to bring the parties together.

10 I'm sure that you're correct, Mr. Jones. But the
11 only on-the-record-data-request that I remember being made
12 on the record in July was the management agreement. I
13 don't remember any.. It could be that you engage in
14 discovery and asked for, which I said you could continue
15 to do, even though the initial hearing was concluded. And
16 you asked for the other things.

17 But I don't have any recollection of your asking
18 for the other things. But let's assume for the sake the
19 record that you asked for all three of these things. I
20 don't deal with these discovery motions on the day of the
21 hearing.

22 MR. JONES: Understood, Your Honor. I just
23 wanted the record to reflect it because you did indicate
24 that discovery would be open until the end of the
25 proceeding. And in good faith, I did make further

1 discovery requests on opposing counsel.

2 MR. ZIELONIS: Your Honor, this is Mr. Zielonis,
3 if I could speak.

4 JUDGE LOVENWIRTH: Yes, sir.

5 MR. ZIELONIS: I received a letter from Mr.
6 Jones back to me September 5th, 1997, asking for the
7 Department of State information, asking for a number of
8 employees, also asking for the insurance policy. As you
9 know, Commission regulations provide me with 20 days or
10 September 25th to file those.

11 We sent to Mr. Jones the -- the employee
12 information was already in the transcript -- copies of the
13 insurance, the insurance declaration and the articles of
14 incorporation, Your Honor are already on file with the
15 PUC. And Mr. Jones has the ability to take those from the
16 official file.

17 Mr. Jones asked for a certificate of good
18 standing. That's going to cost my client some money to
19 receive that. If Mr. Jones wants to have his clients
20 spend that money, that's fine.

21 JUDGE LOVENWIRTH: Listen, I don't want to get
22 involved with discovery matters at a hearing.

23 MR. ZIELONIS: I wanted the record to show that
24 we complied early, Your Honor.

25 JUDGE LOVENWIRTH: Well, maybe you did. But it

1 was
2 way back in July that the management agreement was
3 requested. And Mr. Jones says he didn't get it until the
4 last day or two. And that certainly wasn't timely,
5 nonetheless.

6 MR. JONES: We're willing to move forward, Your
7 Honor.

8 JUDGE LOVENWIRTH: Okay. Any other preliminary
9 matters?

10 MR. JONES: No, sir.

11 MR. ZIELONIS: No, Your Honor.

12 JUDGE LOVENWIRTH: Very well. Mr. Bobersky, your
13 name is Paul Bobersky?

14 MR. BOBERSKY: Correct

15 PAUL BOBERSKY, having been duly affirmed, was
16 examined and testified as follows:

17 JUDGE LOVENWIRTH: All right. Mr. Jones, you may
18 cross-examine the witness.

19 CROSS EXAMINATION

20 BY MR. JONES:

21 Q. Mr. Bobersky, the management agreement that your
22 counsel made available to me, would you indicate when that
23 agreement was, in fact, effectuated between you and as
24 president of Butchco Inc. and indicate who executed it on
25 behalf of Fratco Inc. and what date the document was

1 effectuated, please?

2 A. May 30th.

3 JUDGE LOVENWIRTH: Which year?

4 THE WITNESS: 1997. And it was with Frank
5 Fratzola.

6 BY MR. JONES:

7 Q. Who is Frank Fratzola?

8 A. President of Fratco Incorporated.

9 JUDGE LOVENWIRTH: Do you want to spell Fratzola?

10 THE WITNESS: F-r-a-t-z-o-l-a.

11 BY MR. JONES:

12 Q. Okay. And dated May 30, 1997; correct?

13 A. Yes.

14 Q. And when did you --

15 JUDGE LOVENWIRTH: Wait a minute. Now, Mr.
16 Jones, for some reason, the first words of your question
17 was cut off. Neither the Court Reporter nor I could hear
18 it. Would you be kind enough to repeat the question?

19 BY MR. JONES:

20 Q. Mr. Bobersky, when did you first commence your
21 business operation or begin doing business as Thomas
22 Gerrity Moving and Storage?

23 A. When I originally contracted with Fratco
24 Incorporated, as the manager, we had a verbal agreement in
25 November.

1 Q. November of what year?

2 A. November of '96.

3 Q. When did you first begin to operate and when did
4 you do your first move under contract as Thomas Gerrity
5 Moving and Storage?

6 A. That would be November of '96.

7 Q. That's prior to the effective date of the
8 management agreement; is that correct?

9 A. Yes.

10 JUDGE LOVENWIRTH: Of the written management
11 agreement?

12 BY MR. JONES:

13 Q. You began your business operation in November of
14 '96, correct?

15 A. Excuse me?

16 JUDGE LOVENWIRTH: You began your business
17 operation in November '96, correct?

18 THE WITNESS: Yes.

19 BY MR. JONES:

20 Q. When was Butchco Incorporated filed with the
21 Department of State for the Commonwealth?

22 A. I'm not sure. Give me one second.

23 JUDGE LOVENWIRTH: Take your time.

24 THE WITNESS: December 14th, 1996.

25 BY MR. JONES:

1 Q. Is after you commenced your business operation;
2 would that be correct?

3 A. Yes.

4 Q. Is Thomas Gerrity Moving and Storage on file with
5 the Department of State to do business within the
6 Commonwealth under the fictitious name Thomas Gerrity
7 Moving and Storage?

8 A. Yes.

9 Q. When was that filed?

10 MR. ZIELONIS: Your Honor, we'll have to go get
11 that from my secretary.

12 JUDGE LOVENWIRTH: Well, I have one in front of
13 me. Do you want to know this witness's answer to the
14 question? Or do you want to know the real answer to the
15 question? Which?

16 MR. JONES: Your Honor, if you have the document
17 in front of you, I'm satisfied.

18 JUDGE LOVENWIRTH: It says June 4th, 1997.

19 MR. JONES: 1997?

20 JUDGE LOVENWIRTH: June 4th, 1997, yes, sir.

21 BY MR. JONES:

22 Q. Would you indicate as to why the fictitious
23 name, Thomas Gerrity Moving and Storage was not filed
24 until June 4 of 1997?

25 A. I'm not sure.

1 Q. What's your title with Butchco Inc, that trades
2 as Thomas Gerrity Moving and Storage?

3 A. I am a manager.

4 Q. President?

5 JUDGE LOVENWIRTH: Are you president?

6 THE WITNESS: I am president of Butchco
7 Incorporated not of Thomas Gerrity Moving.

8 BY MR. JONES:

9 Q. Who is the principal of Thomas Gerrity Moving
10 and Storage?

11 A. Fratco Incorporated.

12 Q. Fratco Incorporated. And they didn't file it.
13 It's Fratco Incorporated that filed then on June 4, 1997?

14 A. Butchco Incorporated.

15 MR. JONES: Your Honor, I'm confused with his
16 answers.

17 JUDGE LOVENWIRTH: He said Butchco Incorporated
18 on June 4th, 1997. And he's taking my word for the date,
19 filed an application for amendment, cancellation or
20 withdraw of a fictitious name, and what really is an
21 application for amendment of the fictitious name. And
22 says that the address of the principal place of business
23 is 629 Wheeler Avenue, Scranton, Pennsylvania 18508. The
24 fictitious name as heretofore registered is Thomas Gerrity
25 Moving and Storage.

1 And it says the last preceding filing with
2 respect to this fictitious name was made with the
3 Department of State on December 17th, 1996. And it says
4 that the following parties have been added to the
5 registration. And their signatures appear at the end of
6 this application.

7 And then it says Butchco, Inc. 1252 Philo Street,
8 Scranton, Pennsylvania 18508. And then it says the
9 following parties have withdrawn from the business or
10 other activity carried on under or through the fictitious
11 name and their signatures appear at the end of this
12 application.

13 And then it says Paul Bobersky and LEEANNE Bobersky.
14 And it's signed where it says withdrawn partner signature.
15 It's signed by Paul Bobersky and LEEANNE Bobersky. And
16 where it says all current party signatures, it's signed by
17 Paul Bobersky or Butchco, president of Butchco, Inc.

18 JUDGE LOVENWIRTH: Would you like me to repeat
19 any of those things?

20 MR. JONES: No, Your Honor. That fax document
21 that you just made reference to was just presented to me.

22 JUDGE LOVENWIRTH: Very good.

23 BY MR. JONES:

24 Q. Mr. Bobersky, the insurance document that was
25 provided to me by your counsel, Mr. Zielonis, would you

1 indicate as to how much liability coverage Butchco Inc.
2 is currently carrying?

3 A. 500,000.

4 Q. And your uninsured and underinsured?

5 A. Uninsured is 35,000, under insured is 35,000.

6 Q. What vehicles is this policy insuring?

7 A. 1984 GMC truck and 1989 Ford truck.

8 Q. Okay. At the last hearing, you testified you had
9 a 1989 Ford diesel 18-foot truck in operation. Is that
10 the '89 Ford truck listed?

11 A. Yes.

12 Q. Okay. You testified at the last hearing that you
13 had a 24-foot moving van in operation?

14 A. Yes.

15 Q. Is that the 1984 GMC truck?

16 A. That's the 1984 truck. GMC, it's supposed to be
17 GM.

18 Q. Why was it listed as a truck and not a van?

19 A. I don't know.

20 MR. JONES: You indicated that discovery would be
21 allowed until the end of the proceeding. I would like to
22 reserve the right to request copies of the registration of
23 the vehicles that are listed here since this document was
24 just presented to me this morning.

25 JUDGE LOVENWIRTH: Any objections, Mr. Zielonis?

1 MR. ZIELONIS: Yes, I do, Your Honor. I'm hoping
2 that this hearing ends today. I didn't have to provide
3 this information until the 25th of September, which is
4 after the hearing scheduled for today. Mr. Jones could
5 have requested this so that the information would have
6 been provided before the hearing and it was provided
7 before the hearing, Your Honor.

8 MR. JONES: You asked for that 56 minutes before
9 the hearing.

10 MR. ZIELONIS: And 10 days, Your Honor, before it
11 was due.

12 JUDGE LOVENWIRTH: Well, supposing, Mr. Jones, we
13 finish today, supposing we close the evidentiary record
14 today, what good is that information going to do? Are you
15 going to file a petition to reopen the record; is that it?

16 MR. JONES: I want to make sure that they're
17 satisfying the standard of being fit to operate as a
18 carrier within the Commonwealth, Your Honor. And I wanted
19 to verify that the testimony of Mr. Bobersky is true and
20 correct.

21 JUDGE LOVENWIRTH: Then the fact that Butchco
22 owns the vehicles?

23 MR. JONES: And the vehicles he indicated in
24 current use are properly insured by the Commission.

25 JUDGE LOVENWIRTH: Well, that's between the

1 Commission and the proposed transfer or --

2 MR. JONES: That's correct, Your Honor. But
3 we're protesting this proposed transfer.

4 JUDGE LOVENWIRTH: Well, that's within -- whether
5 or not there's certificates of insurance on file with the
6 Commission is information which is just as available to
7 you as it is to anybody else. So, as far as that request
8 is concerned, it's denied. Mr. Zielonis, please provide
9 him with a certificate of some kind. I think it costs a
10 dollar, at least a dollar when I practiced law, which was
11 a long time ago, to get that information from the
12 Department of Transportation. Please provide it within 10
13 days.

14 MR. ZIELONIS: And that's the registration cards,
15 Your Honor?

16 JUDGE LOVENWIRTH: What do you want the
17 registration cards or the title? Wouldn't the
18 registration cards do just as well, Mr. Jones? Maybe you
19 have the title. Are they incumbered, Mr. Zielonis?

20 MR. ZIELONIS: Yes, that's my understanding,
21 Your Honor. And the registration card will have the VIN
22 number as well as the title number.

23 JUDGE LOVENWIRTH: I think the registration card
24 is good enough, don't you, Mr. Jones? Are you still
25 there, Mr. Jones?

1 MR. JONES: Yes, yes. I'm content with the
2 registration card, Your Honor. That will satisfy my
3 needs.

4 JUDGE LOVENWIRTH: Okay. You can photocopy that
5 and send it to Mr. Jones, please. Thank you, Mr.
6 Zielonis, as part of that discovery. Very good. Thank
7 you. You may continue, Mr. Jones.

8 MR. JONES: Mr. Bobersky, back to the management
9 agreement, page 1 of the agreement, the whereas clause,
10 would you please read on the record what it is that Thomas
11 Gerrity Moving and Storage referred to in the document as
12 the operator is desirous of acquiring from?

13 MR. ZIELONIS: Your Honor, I'm going to object.
14 The document speaks for itself.

15 JUDGE LOVENWIRTH: Document doesn't speak for
16 itself. It's not part of the record. The thing of it is,
17 first of all, first things first, I didn't understand your
18 question. Did you reference the witness's attention to
19 the first whereas clause or to the third whereas clause?
20 I couldn't hear you.

21 MR. JONES: The third whereas clause, Your Honor.
22 You want him to read it into the record. Objection
23 overruled. It doesn't speak for itself unless somebody
24 makes it part of the record, which hasn't yet been done.
25 So, Mr. Zielonis, would you be kind enough to read it into

1 the record very slowly instead of Mr. Bobersky? That way,
2 I'll make sure that the Court Reporter gets it accurately.

3 MR. ZIELONIS: This is the third whereas clause,
4 Your Honor. Whereas, all capitals, OPERATOR, is desirous
5 of acquiring the consulting and management services of
6 MANAGER, all capitals, to oversee the conduct of this
7 transportation business. And that's it, Your Honor.

8 JUDGE LOVENWIRTH: Thank you very much, Mr.
9 Zielonis. Mr. Jones.

10 MR. JONES: Your Honor, I'd like to move for the
11 entry of the management agreement into the record as, I
12 believe, Protestant's 3.

13 JUDGE LOVENWIRTH: Well, the transcript indicates
14 that there have been two protestant's exhibits. I said
15 earlier that Protestant's Cross Examination Exhibit Number
16 1 was admitted into the record. I'm not so sure that it
17 was. The Court Reporter says it's not. This was a copy
18 of the Yellow Page ad. So, do you want to move that into
19 the record to make sure? Or don't you want that in the
20 record?

21 The transcript says it was never admitted. It
22 was marked. Let's start, and then we'll get back to this
23 management agreement.

24 MR. JONES: Simply move to admit it. And if
25 there was some sort of oversight, I'd like to move for the

1 admittance of that document.

2 JUDGE LOVENWIRTH: Any objections?

3 MR. ZIELONIS: No, Your Honor.

4 JUDGE LOVENWIRTH: Protestant's Exhibit 1 is made
5 part of the record.

6 (Protestant's Exhibit 1 was admitted in
7 evidence.)

8 JUDGE LOVENWIRTH: The transcript references a
9 Protestants Exhibit 2, but it doesn't reference a page
10 number. So I don't know what it was. Can you refresh my
11 memory, please, Mr. Jones?

12 MR. JONES: In one minute, Your Honor.

13 MR. ZIELONIS: Your Honor, this is Mr. Zielonis.
14 I don't have Protestant's Exhibit Number 2 either.

15 JUDGE LOVENWIRTH: I don't either. I think the
16 Court Reporter maybe made a mistake because she didn't put
17 down a page number. So, unless you have something to tell
18 me that would change my mind, I would suggest that you
19 asked that this document, this management agreement be
20 marked as Protestant's Exhibit Number 2.

21 And if you do that, it will be all right with me
22 just to mark it. Is that what you want to me to do first?

23 MR. JONES: I would like to have it admitted.

24 JUDGE LOVENWIRTH: I don't have it, and nor does
25 the Court Reporter. You have to make a late-filed

1 exhibit. You have to file it with the Court Reporter,
2 whose name and address I have given to you today, copies
3 of this management agreement marked Protestant Exhibit
4 Number 2. You'll please send me a copy today. And I
5 suppose Mr. Zielonis already has it.

6 He just read from it. Is there any objection to
7 the admission of the exhibit, Mr. Zielonis?

8 MR. ZIELONIS: No, Your Honor.

9 JUDGE LOVENWIRTH: There being none, then it's
10 made part of the record. But you'll do the things I
11 mentioned today.

12 (Protestant's Exhibit Number 2 was admitted in
13 evidence.)

14 MR. JONES: Is fax transmission okay?

15 JUDGE LOVENWIRTH: It's all right with me. If
16 you can get three copies to me now marked Protestant's
17 Exhibit Number 2, I'll give two to the Court Reporter.
18 But if you're not going to fax now, mail it to the Court
19 Reporter, please.

20 BY MR. JONES:

21 Q. Mr. Bobersky, the Butchco Inc., are you aware as
22 to whether or not that corporation is currently in good
23 standing?

24 A. Yes.

25 Q. All taxes due and owing the Commonwealth and the

1 federal taxing authorities paid?

2 A. Yes.

3 JUDGE LOVENWIRTH: Just a moment, please. We
4 weren't able to hear the first word of your question.
5 Would you be kind enough, Mr. Jones, to repeat it?

6 MR. JONES: Mr. Bobersky, did you recently have
7 occasion to engage in a contract for the move of a family
8 by the last name of Bills, B-i-l-l-s?

9 THE WITNESS: The name doesn't ring a bell.

10 JUDGE LOVENWIRTH: He didn't say bill, b-i-l-l,
11 doesn't ring a bell, b-e-l-l. Okay.

12 BY MR. JONES:

13 Q. B-i-l-l-s. Mr. Bobersky, you have no
14 recollection of moving a family named Bills?

15 A. No.

16 Q. On or around last Friday, which would be
17 September 12th?

18 MR. ZIELONIS: Your Honor, I'm objecting. He
19 already asked and answered the question.

20 JUDGE LOVENWIRTH: He's trying to refresh his
21 memory. Does that date and time refresh your memory?

22 THE WITNESS: September 12th, no, Your Honor.

23 MR. JONES: Very good, Mr. Bobersky. Mr.
24 Bobersky, can I ask, have you ever had any complaints from
25 the general public or from anyone with whom you have

1 contracted with who thought they may have been contracting
2 with Mr. Santoro's company?

3 MR. ZIELONIS: I'm going to object.

4 JUDGE LOVENWIRTH: Sustained. Already asked and
5 answered in the last hearing. It's repetitive.

6 MR. JONES: Since the last hearing, Your Honor,
7 I'd like to ask that question and see Mr. Bobersky's
8 response.

9 MR. ZIELONIS: I'm going to object, Your Honor.
10 It's not relevant to this proceeding.

11 JUDGE LOVENWIRTH: Overruled. I'm not so sure
12 that it is either relevant in this proceeding. I'm not so
13 sure. It's a legal issue. The answer to which I don't
14 have. I don't know whether that's something that I have
15 to take into account.

16 I don't know if that's an issue that I have to
17 take into account in deliberating upon the merits of the
18 application of the transfer of certificate. Given the
19 fact that the Department of State and the PUC have each
20 given their consent to the issuance of separate
21 certificates by entities trading under those names, I just
22 don't know what the answer to that question is.

23 But in an abundance of caution, I'm going to
24 overrule your objection. So, the question was, since July
25 25th, have you ever encountered what you perceive to be

1 confusion by a customer who thought they were dealing with
2 the Santoro Enterprises and which also trades under the
3 name of Gerrity?

4 MR. JONES: Did I get a response?

5 JUDGE LOVENWIRTH: I don't know what the response
6 is. I'm waiting for the witness.

7 THE WITNESS: As much as I remember, no, Your
8 Honor.

9 MR. ZIELONIS: Your Honor, did you hear that
10 answer?

11 JUDGE LOVENWIRTH: I did.

12 BY MR. JONES:

13 Q. Mr. Bobersky, are you currently in compliance
14 with the management agreement that you entered into with
15 Fratco Inc?

16 A. Yes.

17 Q. Fratco Inc. is still serving as a manager
18 providing consulting business to you?

19 JUDGE LOVENWIRTH: What was the question again?

20 MR. JONES: I asked if Fratco Inc. is continuing
21 its consulting and management services to the applicant.

22 JUDGE LOVENWIRTH: I thought it was the other way
23 around. I thought the applicant was providing services to
24 Fratco.

25 MR. ZIELONIS: Your Honor, that's correct. I

1 think Mr. Jones meant to say Butchco.

2 MR. JONES: Excuse me, Your Honor. It should be
3 Butchco.

4 JUDGE LOVENWIRTH: So the question is, Is Butchco
5 still consulting and managing the operations currently
6 owned by Fratco?

7 THE WITNESS: Yes.

8 MR. JONES: Who is it you would be dealing with
9 Fratco?

10 THE WITNESS: Frank Fratzola.

11 JUDGE LOVENWIRTH: Wait a minute. Excuse me,
12 please. The witness said Frank Fratzola. Would you be
13 kind enough to spell it again for the Court Reporter?

14 THE WITNESS: F-r-a-t-z-a-l-a.

15 JUDGE LOVENWIRTH: Now, would you repeat the
16 question, Mr. Jones?

17 MR. JONES: I was looking for the last date on
18 which Mr. Bobersky and Mr. Fratzola would have conducted a
19 business meeting in connection with the underlying
20 management agreement?

21 THE WITNESS: Well, usually speak on the phone, I
22 mean.

23 JUDGE LOVENWIRTH: When was the last time you
24 spoke on the phone?

25 THE WITNESS: Two weeks.

1 MR. JONES: Two weeks ago you last spoke with Mr.
2 Fratzola for management services?

3 THE WITNESS: To my best knowledge.

4 MR. JONES: And how often do you consult with Mr.
5 Fratzola?

6 THE WITNESS: Sometimes twice a week. Sometimes
7 once a month. It varies.

8 MR. JONES: Okay. I have nothing further with
9 Mr. Bobersky, Your Honor.

10 JUDGE LOVENWIRTH: Is there any redirect?

11 MR. ZIELONIS: Yes, Your Honor, I do.

12 REDIRECT EXAMINATION

13 BY MR. ZIELONIS:

14 Q. Now, do you recall -- strike that. This morning
15 during cross examination by Mr. Jones there was a
16 discussion regarding fictitious name registration. Do you
17 recall that, Mr. Bobersky?

18 A. Yes.

19 Q. Now, there was mention of a December 16th, 1996
20 fictitious name registration. Could you tell the Court
21 what that registration was for?

22 A. At that time, the application was for Paul and
23 Leeanne Bobersky.

24 Q. Was that for Paul and Leeanne to receive the
25 fictitious name?

1 A. Yes.

2 Q. And what was the June 4th, 1997 filing for?

3 A. That was when we became a corporation, which was
4 Butchco Incorporated.

5 Q. And was that for Butchco to receive the
6 fictitious name?

7 A. Yes.

8 MR. ZIELONIS: Your Honor, that's all I have.

9 JUDGE LOVENWIRTH: Thank you. Mr. Bobersky, I
10 would like very much to draw your attention to
11 Protestant's Exhibit Number 1 being the Yellow Pages of
12 the Bell Atlantic Directory for Scranton Metropolitan
13 Area. Do you have that with you, sir?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE LOVENWIRTH: It says on that that you, I
16 believe, at the last hearing you weren't sure who placed
17 the ad. You remember paying but not placing it. There
18 were two numbers. There was a PUC number 104423. Whose
19 PUC number is that?

20 THE WITNESS: I'm not sure, Your Honor. I do
21 have Fratco's original number. I'm not sure which number
22 that is.

23 JUDGE LOVENWIRTH: Well, according to your
24 application, Fratco's number was Folder Docket Number
25 A-0010996.

1 MR. ZIELONIS: Your Honor, that should be 109996.
2 There was a typo on the application.

3 JUDGE LOVENWIRTH: All right. Do you want to
4 amend the application?

5 MR. ZIELONIS: No, Your Honor, it was published
6 in -- the correct number was published in the PA Bulletin.

7 JUDGE LOVENWIRTH: Good. All right. At any
8 rate, do you stipulate to that, Mr. Zielonis?

9 MR. ZIELONIS: Yes, I do, Your Honor.

10 JUDGE LOVENWIRTH: And that the present
11 application number is A-00113673. That is to say, the
12 application which is before the Commission right now. So
13 you don't know whose PUC number 104423 is, is that
14 correct, Mr. Bobersky?

15 THE WITNESS: Yes, Your Honor.

16 JUDGE LOVENWIRTH: I heard you. Well, if this
17 application is granted, Mr. Bobersky, you're going to have
18 to rectify that.

19 THE WITNESS: Yes, Your Honor.

20 JUDGE LOVENWIRTH: All right. Is there anything
21 else of Mr. Bobersky?

22 MR. JONES: Limited recross, Your Honor.

23 RE CROSS EXAMINATION

24 BY MR. JONES:

25 Q. Following one question that Mr. Zielonis

1 addressed on his redirect --

2 JUDGE LOVENWIRTH: Go ahead.

3 BY MR. JONES:

4 Q. Mr. Bobersky, you indicated the fictitious name
5 that was filed on behalf of you and your wife LEEANNE was
6 filed December 19, 1996; is that correct?

7 A. It was December 17th, 1996.

8 Q. Okay. And I believe you testified earlier that
9 you began your business operation as early as November; is
10 that correct?

11 A. Yes.

12 Q. Okay. So you were operating without properly
13 filing for a business entity with the Commonwealth. Would
14 you agree to that?

15 MR. ZIELONIS: I'm going to object.

16 JUDGE LOVENWIRTH: Calls for a legal conclusion.
17 Objection sustained.

18 MR. JONES: Thank you, Your Honor.

19 MR. ZIELONIS: Your Honor, this is Mr. Zielonis.
20 I have nothing further.

21 BY MR. JONES:

22 Q. Your Honor, with respect to Protestant's 1 and
23 the Yellow Page advertisement that you inquired of Mr.
24 Bobersky, I'd like to ask Mr. Bobersky, why is it that you
25 are filing for a certificate to operate as Thomas Gerrity

1 Moving and Storage and you're holding yourself out in the
2 Yellow Page ad as Thomas A. Gerrity Household and
3 Commercial Moving and Storage?

4 A. As far as I know, this was a previous ad. I'm
5 not sure who actually made up this ad.

6 Q. Mr. Bobersky, this was in the current 197 Bell
7 Atlantic phone directory for the Scranton Metropolitan
8 Area; isn't that correct?

9 A. Yes.

10 Q. And, generally, do you know when the ad was
11 placed?

12 A. That I am not sure of.

13 Q. Okay. But it's placed for the 1997/98 fiscal
14 year; is that accurate?

15 A. I'm not sure if this was made up for that or if
16 they just copied it.

17 Q. But someone would have had to authorize the ad in
18 the '97/'98 Bell Atlantic book; do you agree?

19 MR. ZIELONIS: I'm going to object. That calls
20 for speculation.

21 JUDGE LOVENWIRTH: I'm not sure -- do you know
22 whether or not the telephone company automatically renews
23 an ad?

24 MR. JONES: No, they do not.

25 JUDGE LOVENWIRTH: I don't know what the answer

1 is. Maybe the witness does.

2 MR. JONES: Your Honor, I similarly advertise in
3 the Yellow Pages. And I know they require an annual
4 executed contract.

5 JUDGE LOVENWIRTH: Yes. But that's not the
6 point. The point is, does the executed contract say
7 reinstate last year's ad? Or does it say, what do you
8 want us to put on there? Do you know the answer to that
9 question is, Mr. Bobersky?

10 THE WITNESS: No, Your Honor.

11 MR. JONES: Nothing further, Your Honor.

12 JUDGE LOVENWIRTH: By the way, the record will
13 indicate that the applicant here is Butchco, Inc., trading
14 as Thomas Gerrity Moving and Storage. So there's an A in
15 there that is on the application. That is to say, there's
16 an A in the phone book. Is there anything else of this
17 witness, Mr. Bobersky?

18 MR. ZIELONIS: Your Honor, the applicant has
19 nothing and we rest.

20 JUDGE LOVENWIRTH: Very good. Mr. Jones, do you
21 have any witness?

22 MR. JONES: Yes, Your Honor, I have Christopher
23 Santoro, the principal for the Protestant, as well as
24 Nicholas Corridoni.

25 JUDGE LOVENWIRTH: All right. So, what we'll do

1 is, how long do you anticipate the examination of those
2 witnesses will take?

3 MR. JONES: Five minutes for both, Your Honor.

4 JUDGE LOVENWIRTH: In that case, why don't we
5 give the Court Reporter a 5-minute recess. Please, just
6 hang on the line. We'll return to the record in 5
7 minutes. Which, according to my clock, would be 11:05.

8 (A brief recess was taken.)

9 JUDGE LOVENWIRTH: We'll reopen the record.
10 Please call a witness, Mr. Jones.

11 MR. JONES: Santoro, S-a-n-t-o-r-o.

12 JUDGE LOVENWIRTH: What's his first name?
13 For some reason, the first word of your sentences seem to
14 get cut off. There's probably something wrong with my
15 speaker phone. What is Mr. Santoro's first name?

16 MR. JONES: Christopher.

17 JUDGE LOVENWIRTH: Christopher?

18 MR. JONES: Correct.

19 JUDGE LOVENWIRTH: Good morning, Mr. Santoro.

20 CHRISTOPHER SANTORO, having been duly sworn, was
21 examined and testified as follows:

22 JUDGE LOVENWIRTH: Mr. Santoro, did you hear my
23 question?

24 MR. SANTORO: Yes, Your Honor.

25 JUDGE LOVENWIRTH: Do you so affirm?

1 MR. SANTORO: Yes, Your Honor.

2 JUDGE LOVENWIRTH: Mr. Jones.

3 DIRECT EXAMINATION

4 BY MR. JONES:

5 Q. Would you please state your name and address once
6 again for the record?

7 A. My name is Christopher Santoro. My address, my
8 home address or business address? Home address, 1630
9 Summit Lake Road, Clark Summit, Pennsylvania.

10 Q. And do you currently operate a business entity
11 within the Commonwealth? Would you please identify the
12 name of that entity?

13 A. It's Thomas Gerrity Junior Moving and Storage
14 Company located in 801 William Street, Dunmore,
15 Pennsylvania.

16 Q. And are you properly registered with the Public
17 Utility Commission? And do you have a certificate of
18 operating authority?

19 A. Yes, I do.

20 Q. Okay. And are you in compliance with all the
21 rules and regulations of the Public Utility Commission?

22 A. Yes, I am.

23 Q. As well as state and federal agencies?

24 A. Yes, I am.

25 Q. And do you have proper insurance coverage for

1 vehicles that are in use for your business entity?

2 A. Yes, I do.

3 Q. What is the minimum liability coverage on your
4 vehicles that are in operation?

5 A. 1 million dollars.

6 Q. Okay. Mr. Santoro, has the competing applicant
7 entity that is operating within the same jurisdictional
8 confine as you cause, if you are aware, any confusion to
9 the general public?

10 A. Absolutely.

11 Q. Would you describe that, please?

12 MR. ZIELONIS: Your Honor, I'm going to object.
13 I don't think that confusion is relevant to this
14 proceeding. And I don't know if we have any factual
15 evidence, actual witnesses coming in. Mr. Santoro's
16 testimony will be hearsay. And I don't think opinion
17 evidence is appropriate.

18 MR. JONES: Mr. Santoro is offering direct
19 testimony under oath, Your Honor.

20 JUDGE LOVENWIRTH: I know he is. Your question
21 asks for a conclusion. It doesn't ask for a statement of
22 fact. It asks if other people have been confused. And
23 that's a conclusion.

24 MR. JONES: Asked if he was aware of any, Your
25 Honor.

1 JUDGE LOVENWIRTH: Still asks for a conclusion.
2 I always look confused. It doesn't mean that I am
3 confused. So, I'm going to sustain the objection.

4 MR. JONES: I'll rephrase it, Your Honor. Mr.
5 Santoro, would you describe your daily duties with your
6 moving company, please?

7 THE WITNESS: I handle all the operations,
8 managerial, labor related, office, dealing with the
9 customers, everything that's involved with running the
10 company in the state of Pennsylvania.

11 MR. JONES: Have you ever received any complaints
12 from the general public concerning your entity, Thomas
13 Gerrity Junior Moving and Storage and the entity, the
14 applicant's entity -- Your Honor, for the record, what
15 those complaints consist of.

16 JUDGE LOVENWIRTH: Wait a minute. I didn't hear
17 the question. And the applicant's entity and then there
18 was a break in the question. I don't know about the Court
19 Reporter, but I have no idea. She has the same problem.
20 It must be my speaker. I'm getting a new speaker.

21 I apologize. If you'd be kind enough to rephrase
22 the question, Mr. Jones. Not rephrase it, but re-ask it.

23 MR. ZIELONIS: Your Honor, this is Mr. Zielonis,
24 I don't think it's your phone. Mine cut out too.

25 JUDGE LOVENWIRTH: All right. So, whoever's

1 phone it is isn't important to me. As long as we have an
2 accurate transcript. If you would be kind enough, please,
3 Mr. Jones, to rephrase the question. Not rephrase it, but
4 re-ask it.

5 MR. JONES: In your capacity as business manager
6 of Thomas Gerrity Junior Moving and Storage, have you ever
7 received complaints from the general public concerning
8 your business operation and the operation currently in use
9 of the applicant?

10 MR. ZIELONIS: Your Honor, I'm going to object.
11 That's going to call for hearsay testimony.

12 MR. JONES: Direct testimony, Your Honor.

13 JUDGE LOVENWIRTH: Pardon me. What did you say,
14 Mr. Jones?

15 MR. JONES: Mr. Bobersky's direct testimony under
16 oath. It's not hearsay.

17 MR. ZIELONIS: It will be responses, Your Honor,
18 received from a third party that I have no right to
19 cross-examine.

20 JUDGE LOVENWIRTH: I understand.

21 MR. JONES: I'm not identifying any third
22 parties, Your Honor, nor are we offering the testimony of
23 any third parties into the record to constitute hearsay.

24 JUDGE LOVENWIRTH: Objection sustained. But I'll
25 be honest with you, gentlemen, if I needed or if I

1 required the services of a household mover, I wouldn't
2 know which company is which. I can almost take judicial
3 notice of the fact that Thomas Gerrity Moving and Storage
4 sounds striking similar to --

5 MR. JONES: Your Honor, I'd like to request --

6 JUDGE LOVENWIRTH: Excuse me. Excuse me, please.
7 Just a moment. Sounds strikingly familiar to Thomas
8 Gerrity Junior Moving and Storage Company. The two sound
9 strikingly similar.

10 And I can almost take judicial notice of the fact
11 that someone who is not conversant in the transportation
12 business, as most shippers are not, when it comes to the
13 moving of household goods, wouldn't know the difference
14 between one company and the other.

15 The problem I have is I have a couple of
16 products. First of all, is that for me to decide? Is
17 that one of the issues upon which I must deliberate in
18 disposing of this application?

19 And the other question is, supposing it is
20 confusing, who had it first? I don't know who had it
21 first. I suspect that neither Mr. Santoro or his
22 corporation, nor Butchco had it first, I think,
23 historically.

24 And I only know this because I've been doing this
25 for a living for a long time. It was father and son.

1 The father had one certificate and the son had the other.
2 And I don't know which is which. So, okay.

3 Now, there was an objection on the basis of
4 hearsay. I'm going to sustain the objection. But I'm
5 going to take official notice of the fact that the two
6 names are similar. And it could be confusing. And you
7 have an exception, Mr. Zielonis, of me taking judicial
8 notice of that fact. And you gentlemen can brief this
9 issue.

10 You can brief the question of whether or not the
11 issue is part of this proceeding. You can brief the
12 question of whether or not I should have taken judicial
13 notice of it. You can brief all the issues or some issues
14 attended upon this issue.

15 But because it calls for a hearsay answer, I'm
16 going to sustain the objection. You can move along now.

17 MR. JONES: I was going to ask you for the
18 opportunity to present a post hearing brief. And I
19 appreciate you allowing us an opportunity to do so. I
20 also appreciate the fact you're taking official notice of
21 the issue of similarity in the name for lack of use of the
22 term confusion.

23 JUDGE LOVENWIRTH: Every damn fool knows Thomas
24 Gerrity and Thomas Gerrity Junior sound the same. And
25 that's what they taught me in law school. You take

1 official notice of something that every damn fool knows.

2 BY MR. JONES:

3 Q. Thank you, Your Honor. Mr. Santoro, would you
4 indicate as to when you purchased your business operation?

5 A. I bought it from Thomas Gerrity Junior in 1991.

6 Q. Okay. And at the time you bought it, were you
7 operating under the approval of the Public Utility
8 Commission?

9 A. I did not. It took some time for my license to
10 be transferred into my business name. So, throughout that
11 course of time, I operated under a management agreement,
12 which was put on file with the Pennsylvania Utility
13 Commission in December of '91.

14 Q. Who was the management agreement executed by,
15 what parties?

16 JUDGE LOVENWIRTH: Me and Thomas Gerrity Moving
17 and Storage Company was the witness's answer as I heard
18 it. Wasn't that your answer, sir? Mr. Santoro, was that
19 not your answer?

20 THE WITNESS: Yes, Your Honor.

21 BY MR. JONES:

22 Q. How long, if you have any recollection, did you
23 operate under this management agreement?

24 A. Approximately, four months.

25 Q. And this agreement was on file with the

1 Commission?

2 A. Yes, it was.

3 Q. Is it your understanding that it was a
4 requirement for this agreement to be on file with the
5 Commission?

6 A. Yes, it was.

7 MR. ZIELONIS: Your Honor, objection. It calls
8 for a legal --

9 JUDGE LOVENWIRTH: Wait a minute. There's an
10 objection to the question. Was it your understanding that
11 it had to be on file with the Commission?

12 MR. ZIELONIS: Calls for a legal conclusion, Your
13 Honor.

14 JUDGE LOVENWIRTH: Yes, it does. Sustained.

15 MR. JONES: Doesn't call for a legal conclusion.

16 JUDGE LOVENWIRTH: Well, it does.

17 MR. JONES: Calls for his understanding.

18 JUDGE LOVENWIRTH: What difference does it make
19 to me what his understanding was?

20 MR. JONES: Makes a lot to me.

21 JUDGE LOVENWIRTH: Why?

22 MR. JONES: As to what he felt his requirements
23 were of him to operate under a management agreement.

24 JUDGE LOVENWIRTH: His fitness isn't in question.
25 It's the applicant's fitness which is in question.

1 MR. JONES: The applicant's fitness that we are
2 attempting to attack, Your Honor.

3 JUDGE LOVENWIRTH: I know. But what his opinion
4 is as to whether or not the management agreement has to be
5 on file is not the -- the objection to that subject is
6 meritorious. And I sustained it.

7 MR. JONES: Fine. We wanted to get on the record
8 the fact that it was filed. I'll move on.

9 BY MR. JONES:

10 Q. Mr. Santoro, did you, in the last 10 days,
11 receive a telephone call from a person who identified
12 himself as a Mr. Bills?

13 A. Actually, it was a Miss Bills who I received a
14 phone call from.

15 Q. Would you describe what it is you discussed with
16 Mrs. Bills?

17 MR. ZIELONIS: Objection, Your Honor. Again,
18 requires hearsay again.

19 JUDGE LOVENWIRTH: Sustained.

20 MR. JONES: The telephone call you received from
21 Mrs. Bills was it to commend you for the business you
22 provided to her?

23 MR. ZIELONIS: Objection, Your Honor. Calls for
24 a hearsay.

25 JUDGE LOVENWIRTH: Not only that, but it's

1 leading. This is direct examination. Sustained.

2 BY MR. JONES:

3 Q. Do you believe that the similar name that the
4 applicant is attempting to seek PUC approval has caused
5 you any loss of business?

6 A. Yes.

7 Q. In what capacity?

8 A. It causes confusion amongst the general public as
9 to what person they're actually contacting to do a service
10 of moving their household goods.

11 MR. ZIELONIS: Your Honor, I would want to
12 request that it be stricken, summarily, that this is his
13 opinion only and not a factual matter of evidence.

14 MR. JONES: Direct testimony is our offer of
15 proof, Your Honor, to get to the facts of this case.

16 JUDGE LOVENWIRTH: Is there something that I have
17 to do? Is there something I have to rule upon? Ask
18 another question, please, Mr. Jones. There's no objection
19 before me.

20 BY MR. JONES:

21 Q. Do you currently advertise in the Bell Atlantic
22 Yellow Pages?

23 A. Yes, I do.

24 Q. And what is it that was required of you to place
25 your ad with Bell Atlantic?

1 A. Every year, which I've been advertising in the
2 Bell Atlantic since I purchased my business back in 1991,
3 every year, their representative visits my office with any
4 change I may want to put into my ad or whether I want to
5 keep it the way it is.

6 Whatever my decision is, he must go back to his
7 place of business, redo my ad, whether it's the same or
8 with the changes. Bring it back for my written signature
9 approval. That is done every year in the month of
10 February.

11 Q. You said you purchased your business in 1991.
12 Have you been operating the business continuously since
13 that date?

14 A. Yes.

15 Q. Is this the only business you operate?
16 Only source of --

17 JUDGE LOVENWIRTH: Do you do anything else for a
18 living besides operate the business, sir?

19 THE WITNESS: No, Your Honor.

20 JUDGE LOVENWIRTH: You said no? Okay.

21 MR. JONES: Nothing further of Mr. Santoro, Your
22 Honor.

23 JUDGE LOVENWIRTH: Do you have any cross
24 examination, Mr. Zielonis?

25 MR. ZIELONIS: I do, Your Honor.

CROSS EXAMINATION

1
2 BY MR. ZIELONIS:

3 Q. Mr. Santoro, you indicated you purchased a
4 business in 1991. What did you purchase?

5 A. I purchased Thomas Gerrity Junior Moving and
6 Storage Company.

7 Q. And what was it that you actually purchased, hard
8 assets that you purchased?

9 A. One moving truck and I purchased the PUC license
10 and the ICC license.

11 Q. And do you have the day upon which you signed
12 that purchase agreement?

13 A. The date I do not have, but it was in December of
14 1991.

15 Q. And can you tell me when did you receive your PUC
16 certificate, what year and date?

17 A. '97. And I'm going to say it was March of '97.
18 I'm not a hundred percent sure on the date.

19 JUDGE LOVENWIRTH: What was the question again,
20 please? What happened in March of '97?

21 MR. ZIELONIS: Your Honor, I asked Mr. Santoro
22 when he received his certificate to operate from the PUC.
23 And he indicated March 1997. Is that correct, Mr.
24 Santoro?

25 THE WITNESS: That's the approximate date. I'm

1 not a hundred percent sure on the exact date.

2 JUDGE LOVENWIRTH: So it was within the last
3 year?

4 THE WITNESS: My best guess is March of 1992.

5 JUDGE LOVENWIRTH: You made a mistake the first
6 time you meant 1992. Did you mean 1992 or 1997?

7 THE WITNESS: '92, Your Honor.

8 JUDGE LOVENWIRTH: Okay.

9 BY MR. ZIELONIS:

10 Q. And, Mr. Santoro, can you tell me what your A
11 Number is, PUC application number?

12 A. Yes, it's A-00113019.

13 Q. When you placed your -- when did you place the ad
14 that is currently in the Bell Atlantic 1997/1998 phone
15 book?

16 A. I place that ad in February of 1997.

17 Q. Was that February of 1997?

18 A. Correct.

19 Q. In 199 -- year of 1996, calendar year 1996?

20 JUDGE LOVENWIRTH: I'm sorry. When, Mr.
21 Zielonis? The Court Reporter and I were unable to hear
22 you. Would you be kind enough to repeat the question?

23 BY MR. ZIELONIS:

24 Q. Yes, Your Honor. In 1996, calendar year 1996,
25 Mr. Santoro, did you move your business location?

1 A. Yes, I did.

2 Q. Where was your first business location in 1996?

3 A. I moved -- actually, I made --

4 Q. Did you make two moves in 1996 or three moves?

5 A. I moved from the rear of 433 Lawrence, Old Forge.

6 JUDGE LOVENWIRTH: Did you say Large, l-a-r-g-e
7 or Lawrence, L-a-w-r-e-n-c-e, in Old Forge. I moved from
8 there in May of 1996 to Rocky Glenn Road in Moosic. I
9 moved from Moosic in October of 1996 to my present
10 location in Dunmore.

11 BY MR. ZIELONIS:

12 Q. So your ad in the 1996/1997 Yellow Pages would
13 have had either the Old Forge or Moosic address?

14 A. That's correct.

15 Q. So that's one reason why you would have had a
16 Bell person come to your office or you would have signed a
17 new agreement with Bell to change the address in the ad;
18 isn't that correct?

19 A. No, it's an annual requirement.

20 Q. Is it correct that you would have had to have a
21 change of address in your ad?

22 A. Yes.

23 Q. How many employees do you have, Mr. Santoro?

24 A. At present?

25 Q. Yes.

1 A. At present, I have six, not including myself.

2 Q. And do you know, would you agree with me that
3 when you purchased your current company December 1991,
4 that you purchased the trade name Thomas Gerrity Junior?

5 A. Yes, I did.

6 Q. And do you know how long that trade name had been
7 utilized by the seller of your PUC authority?

8 MR. JONES: Objection to the relevancy, Your
9 Honor.

10 MR. ZIELONIS: Your Honor, Mr. Jones and his
11 witness keep claiming confusion. You had raise this at an
12 earlier point. This confusion has been around for quite a
13 while. I'm merely trying to develop the record so if the
14 Commission decides to make an issue of this, that it's a
15 long-standing issue.

16 JUDGE LOVENWIRTH: Objection overruled.

17 THE WITNESS: I have no idea.

18 JUDGE LOVENWIRTH: All right. We're going to
19 take a 1 or 2 minute recess, please.

20 (A brief recess was taken.)

21 JUDGE LOVENWIRTH: All right. Gentlemen, I think
22 that the Commission's regulations allow me to take
23 official notice of the official records of this Commission
24 pursuant --

25 MR. JONES: Hello.

1 JUDGE LOVENWIRTH: Did you hear me, Mr. Jones?

2 MR. JONES: No, I didn't, Your Honor. One
3 second, please. Your Honor?

4 JUDGE LOVENWIRTH: Yes, I'm here. Are you there,
5 Mr. Jones?

6 MR. JONES: Yes, Your Honor.

7 JUDGE LOVENWIRTH: And you, Mr. Zielonis?

8 MR. ZIELONIS: Yes, Your Honor.

9 JUDGE LOVENWIRTH: All right. There was an
10 application filed on March 6th, 1985 at Docket Number
11 A-00100754, Folder 2.

12 MR. JONES: Docket number, please, Your Honor.

13 JUDGE LOVENWIRTH: I'll repeat it again.
14 A-00100754, Folder 2. And the name of the case is
15 application of Thomas Gerrity Junior; transfer of rights
16 held under the certificate issued to Clarence Heil,
17 t/d/b/a Henry Heil and Son at A-00082603.

18 That application was granted by the Commission by
19 order entered March 5th, 1986. And I will take official
20 notice of that.

21 BY MR. ZIELONIS:

22 Q. Mr. Santoro, would you agree with me that since
23 at least March of 1992, that the Scranton Bell Atlantic or
24 Bell Telephone Yellow Pages have had one ad for Thomas
25 Gerrity Junior and another ad for Thomas A. Gerrity?

1 A. That's precisely what's causing the mass
2 confusion amongst the public, yes, there is.

3 Q. And those ads have been there since 1992?

4 A. And they've been continuously.

5 JUDGE LOVENWIRTH: Wait a minute. He didn't ask
6 you if they're continually causing confusion, Mr. Santoro.
7 Sir, let me explain something to you. Everybody here has
8 their different function, the Court Reporter's function is
9 to accurately reproduce the things that are said. The
10 lawyers' functions are to ask questions. But the
11 witness's function is to answer the questions not to make
12 them up.

13 Now, the question was, since 1992, at least, is
14 it not true that two ads, one for Thomas Gerrity and one
15 for Thomas Gerrity Junior have appeared in the Yellow
16 Pages of the Bell Atlantic directory? I think that was
17 the question. Do you agree with that?

18 THE WITNESS: I'm sorry, Your Honor. Yes, it
19 had.

20 JUDGE LOVENWIRTH: All right.

21 MR. ZIELONIS: Mr. Santoro, have you purchased
22 any vehicles in calendar year to date, 1997?

23 THE WITNESS: I purchased any vehicles in 1997?

24 MR. ZIELONIS: Yes. Have you?

25 THE WITNESS: No.

1 MR. ZIELONIS: That's all the questions I have
2 for the witness.

3 JUDGE LOVENWIRTH: Any redirect, Mr. Jones?

4 MR. JONES: I'm through with Mr. Santoro.

5 JUDGE LOVENWIRTH: Thank you very much. Mr.
6 Santoro, you're excused. Do you want to call another
7 witness, Mr. Jones?

8 MR. JONES: I'd like to call Nick Corridoni,
9 C-o-r-r-i-o-n-i.

10 JUDGE LOVENWIRTH: Would you spell it again for
11 me? C-o-r-r-i-d, what's the rest?

12 MR. JONES: -o-n-i.

13 JUDGE LOVENWIRTH: Corridoni. Wait a minute.
14 Now, hold it. Mr. Corridoni, is that how you pronounce
15 it, Corridoni?

16 JUDGE LOVENWIRTH: I'm very confused. All right.
17 Sir, what is your first name, Nicholas? The individual
18 who is to be the next witness. Good afternoon. Good
19 morning, sir. What is your first name, please? I
20 couldn't hear the witness.

21 MR. CORRIDONI: Nicholas Corridoni. Nice to have
22 you with us.

23 NICHOLAS CORRIDONI, having been duly sworn, was
24 examined and testified as follows:

25 MR. ZIELONIS: Your Honor, I'm going to object to

1 this witness's testimony. It was not re-laid to me
2 through your Prehearing Order or Judge Weismandel's
3 Prehearing Order who the Protestant's witnesses would be.
4 We've had the principal testify. I don't know what this
5 witness will add.

6 JUDGE LOVENWIRTH: I don't know either. It could
7 be he's going to say in rebuttal to what was already said
8 and rebuttal witnesses are of such nature that they can't
9 be disclosed in advance.

10 MR. ZIELONIS: This is their direct case, Your
11 Honor.

12 JUDGE LOVENWIRTH: But their direct case can
13 rebut your direct case.

14 MR. ZIELONIS: Your Honor, I'll withdraw.

15 JUDGE LOVENWIRTH: Okay. Thank you.
16 Mr. Jones.

17 DIRECT EXAMINATION

18 BY MR. JONES:

19 Q. Would you state your name and address for the
20 record?

21 A. Nicholas Corridoni, 171 Haferford Drive, Laflin.

22 Q. And where are you employed, Mr. Corridoni?

23 A. Thomas Gerrity Junior Moving and Storage.

24 Q. In what capacity?

25 JUDGE LOVENWIRTH: I didn't hear you, sir. In

1 what capacity, please? I still didn't hear you. I'm very
2 sorry. Please repeat the answer.

3 THE WITNESS: I am his foreman.

4 JUDGE LOVENWIRTH: As a foreman. Thank you.

5 BY MR. JONES:

6 Q. Do you have knowledge of the day-to-day business
7 operation of the Protestant?

8 A. Yes.

9 Q. And do you have knowledge of the business entity
10 that is filing today or that we're in hearing at today
11 who's seeking PUC approval?

12 A. Yes.

13 Q. You testified or -- excuse me. Strike that. You
14 heard the testimony on this day of Mr. Bobersky; is that
15 correct?

16 A. Yes, it is.

17 Q. And you further heard the testimony of your
18 principal, Mr. Santoro; is that correct?

19 A. Yes, it is.

20 Q. Are you aware of whether or not Mr. Santoro, the
21 Protestant's entity, is in compliance with all the rules
22 and regulations of the PUC?

23 A. Yes, I am.

24 Q. And is it your position that the business is in
25 compliance?

1 A. Yes, it is.

2 Q. Are you aware of or have you any personal
3 knowledge of any confusion between the two entities within
4 the general public domain?

5 MR. ZIELONIS: I'm going to object. . These were
6 the same questions asked of Mr. Santoro. Again, it's
7 going to be opinion testimony as well as hearsay.

8 JUDGE LOVENWIRTH: Sustained.

9 MR. JONES: Your Honor, are you still there?

10 JUDGE LOVENWIRTH: I said sustain.

11 MR. ZIELONIS: I didn't hear anything from Mr.
12 Jones.

13 BY MR. JONES:

14 Q. I'm getting a question right now. I'm looking
15 at a document here for a minute. Mr. Corridoni, have you
16 ever had occasion to serve, by contract with your
17 corporation, any person where in the competing applicant's
18 company also arrived on the scene?

19 A. Yes, I was.

20 Q. Would you describe that, please?

21 A. It was a confusion, a mass confusion. We had two
22 trucks in a zone where you're only allowed to have one.
23 And until we got it all settled, we were blocking traffic,
24 which there's elderly people there. And until we got it
25 all settled, and they moved their vehicle, you know, to

1 figure out who was in there and who was getting moved at
2 this time.

3 Q. And what business entity did the actual move?

4 A. We did.

5 Q. We being the Protestant company, Mr. Santoro
6 business?

7 A. Thomas Gerrity Junior Moving and Storage.

8 Q. Do you have any idea why the applicant's business
9 entity arrived at that job site?

10 A. No.

11 Q. And did you have a contract with the people you
12 were moving from this site?

13 A. Yes, we did.

14 Q. And you were the ultimate successful moving
15 party?

16 A. Yes, we were.

17 Q. Were there ever any complaints by the party that
18 you moved?

19 A. No, there wasn't.

20 MR. JONES: Nothing further, Your Honor.

21 JUDGE LOVENWIRTH: Cross-examine, please.

22 CROSS EXAMINATION

23 BY MR. ZIELONIS:

24 Q. Do you know, Mr. Corridoni, whether there were
25 two households to be moved at that location or in that

1 area?

2 A. No, I don't. But they did leave.

3 MR. ZIELONIS: Your Honor, that's all the
4 questions I have.

5 JUDGE LOVENWIRTH: All right. Thank you very
6 much, Mr. Corridoni. Do you have any other witnesses, Mr.
7 Jones?

8 MR. JONES: No, Your Honor. We rest. But I
9 respectfully request that you give us a time frame.

10 JUDGE LOVENWIRTH: All right. I'll take care of
11 that. Do you have any rebuttal witnesses, Mr. Zielonis?

12 MR. ZIELONIS: Your Honor, just Mr. Bobersky.

13 JUDGE LOVENWIRTH: You're still under oath, Mr.
14 Bobersky. You may proceed.

15 DIRECT EXAMINATION

16 BY MR. ZIELONIS:

17 Q. Did you hear Mr. Corridoni's testimony regarding
18 where there were two -- your company and Mr. Santoro's
19 company at the same location?

20 A. Yes.

21 Q. Did you perform a job at that location on that
22 day?

23 A. Yes. Mulberry Towers had usually scheduled the
24 movers where only one company can show up at a time. We
25 had a moving job scheduled for that day. As far as I

1 know, Gerrity Junior had a job scheduled the day before,
2 which, as far as I understood, they could not make it for
3 some reason. And that they had to schedule it for them
4 the next morning without Mulberry Towers knowing it.

5 As far as I know, we left the building. We went
6 and proceeded on another job and then came back and moved
7 our person. I believe it was the 9th floor, the same day.
8 But we left, did another job and came back with the
9 ingredients of the other man, which I thought there was no
10 problem at all.

11 MR. ZIELONIS: Your Honor, that's all the
12 testimony.

13 JUDGE LOVENWIRTH: Cross-examine.

14 CROSS EXAMINATION

15 BY MR. JONES:

16 Q. Mr. Bobersky, what was the name of the party
17 that you moved at Mulberry Towers on that date?

18 A. As of the moment, I do not know the name. But if
19 this is the same job I was thinking about, it was two jobs
20 from two given Gerrity's and there at the same time but
21 both scheduled and different people to move.

22 Q. I was asking you who you were there contracted to
23 move?

24 JUDGE LOVENWIRTH: He said he doesn't remember.

25 BY MR. JONES:

1 Q. Do you know the date?

2 A. Not exactly. It is on file.

3 Q. Can you give me an approximation?

4 A. Within a month. Maybe -- I'm not exactly sure.

5 I said it's the one only I recall and it was at Mulberry
6 Towers.

7 JUDGE LOVENWIRTH: Anything else, Mr. Jones?

8 MR. JONES: Nothing further, Your Honor.

9 JUDGE LOVENWIRTH: All right. Thank you very
10 much, Mr. Bobersky. All right. That will conclude the
11 evidentiary portion of this proceeding. I mentioned
12 earlier that the Commission's regulations either allow me
13 or require me to take official notice of the other actions
14 which are part of this Commission's records.

15 Now, I have no idea, Mr. Jones, what your
16 client's operating authority is. You're to please insert
17 it in your brief. I want a copy of the Commission Order
18 so that I know if you have any conflicting authority.

19 And I do not know, Mr. Zielonis, when Thomas
20 Gerrity Moving and Storage Company first started trading
21 under that name. I'm not sure it matters to me. I'm not
22 sure it's relevant.

23 You gentleman will have to brief that. However,
24 if it is relevant to me, then I would like to know whether
25 or not the applicant traded under the name of Gerrity

1 before March 5th, 1986, which was when Thomas Gerrity
2 Junior received his certificate at the docket number which
3 I indicated earlier.

4 I don't know when he received the certificate,
5 but which was when the Commission entered an Order
6 authorizing the granting of the certificate. So, would
7 you gentlemen comply with those two requests, please?

8 MR. JONES: Certainly, Your Honor.

9 JUDGE LOVENWIRTH: Mr. Zielonis?

10 MR. ZIELONIS: Yes, Your Honor.

11 JUDGE LOVENWIRTH: So that information will be
12 supplied to me in the brief and I'll take official notice
13 of it. Now, Mr. Jones, I will get a transcript from Miss
14 Smith, the Court Reporter, in approximately three weeks.
15 When I get a transcript, I will then know that everyone
16 else who has ordered one also got it because I always get
17 it last.

18 And that's because it's sent from to the
19 Harrisburg office and then from the Harrisburg office of
20 the Public Utility Commission to me. So, always takes me
21 a couple days longer. At that time, I will get a briefing
22 letter out which will set a time for the filing of briefs
23 and for the filing of reply briefs.

24 So, I don't have to establish a schedule now. Is
25 there any other business with which we should transact at

1 this time?

2 MR. ZIELONIS: Applicant has none, Your Honor.

3 MR. JONES: Nor does the Protestant, Your Honor.

4 JUDGE LOVENWIRTH: All right. Has everybody
5 moved all their exhibits in? I think so. Was
6 there -- oh, the Applicant's Exhibit 2, I think, has been
7 moved into the record. And you will get that to me. Mr.
8 Zielonis, I think, already has it. But you'll get two
9 copies to the Court Reporter and one to me.

10 Unless you're going to go fax it to me within the
11 next 5 minutes, in which okay, case, I will give the Court
12 Reporter two copies. But, if you're unable to do that,
13 she'll be out of here and you'll have to mail it to her.
14 Did you write down the address of the Court Reporter?

15 MR. ZIELONIS: Did you say Applicant's Exhibit 2?

16 JUDGE LOVENWIRTH: No, I probably did. But I
17 meant Protestant, Protestant's Exhibit Number 2 was the
18 management agreement.

19 MR. JONES: Your Honor, I will fax it over now.

20 JUDGE LOVENWIRTH: Very good. 963-3310.
21 Very good. And I'll make copy for the Court Reporter. Is
22 there any other business we should transact?

23 MR. ZIELONIS: None for us.

24 JUDGE LOVENWIRTH: There being none, then we
25 stand -- this record will not close till the conclusion of

1 the briefing schedule. There being no further business,
2 we stand adjourned. Thank you very much, gentleman.

3 (Whereupon, at 11:52 a.m, the hearing was
4 adjourned.)
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause, and
4 that this is a true and correct transcript of the same.

5 
6 JANET E. SMITH
7 Court Reporter
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13 reproduction of the same by any means unless under the
14 direct control and/or supervision of the certifying
15 reporter.
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