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0023

1 P R O C E E D I N G S

2 JUDGE MOSS: My name is Dennis Moss, and I'm
3 an administrative law judge for the Washington
4 Utilities and Transportation Commission. We are
5 convened this morning in the hearing of the Complaint
6 by the Commission staff brought against Boots, Inc.,
7 doing business as Brooks A&A Moving, Complaint
8 concerning the various alleged violations of statute
9 and rule, considering cancellation of the Company's
10 certificate, and penalties, about \$25,500.

11 We haven't really discussed our plan of
12 action, so we will need to do that. I assume you will
13 be calling live witnesses?

14 MS. CAMERON-RULKOWSKI: Yes.

15 MR. TRI: Yes.

16 JUDGE MOSS: Let's do take appearances then
17 and decide how we are going to proceed. So
18 Ms. Cameron-Rulkowski as the complaining party?

19 MS. CAMERON-RULKOWSKI: Jennifer
20 Cameron-Rulkowski representing Commission staff.

21 JUDGE MOSS: We've had prior appearances, so
22 the short form is sufficient today. Mr. Tri?

23 MR. TRI: I'm William Tri representing the
24 Company.

25 JUDGE MOSS: Whom do you intend to call?

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1 MS. CAMERON-RULKOWSKI: Ms. Carlene Hughes
2 and Mr. Leon Macomber.

3 JUDGE MOSS: In that order?

4 MS. CAMERON-RULKOWSKI: Correct.

5 JUDGE MOSS: Mr. Tri, who will you be
6 calling?

7 MR. TRI: Michelle and Richard Brooks.

8 JUDGE MOSS: In that order?

9 MR. TRI: Most likely.

10 JUDGE MOSS: Have you exchanged exhibits?

11 MS. CAMERON-RULKOWSKI: No, we have not, Your
12 Honor.

13 JUDGE MOSS: I imagine most of the exhibits
14 today will be papers from the Company and perhaps the
15 audit by Staff. Why don't we call our first witness
16 and get started, unless there is some preliminary
17 business we need to take care of.

18 MS. CAMERON-RULKOWSKI: Yes, Your Honor, I
19 believe there is. I did want to discuss how we are
20 going to -- given the different burdens of proof, I
21 wanted to discuss how we are going to proceed in terms
22 of which issue we are going to talk about first and can
23 I do direct on both?

24 JUDGE MOSS: I think that would be most
25 efficient is have the witness up at one time and cover

0025

1 everything and we'll sort it out later. The evidence
2 will be what it will be.

3 MS. CAMERON-RULKOWSKI: All right. Then I
4 also wanted to discuss waiving briefing and to give
5 argument at close of testimony.

6 JUDGE MOSS: That's your preference?

7 MS. CAMERON-RULKOWSKI: That's correct.

8 JUDGE MOSS: Mr. Tri?

9 MR. TRI: That's fine by me.

10 MS. CAMERON-RULKOWSKI: Then I had just a
11 couple of notes before I called my first witness. The
12 notes are about the exhibits that I will be offering.
13 Some of the exhibits contain duplicate documents, and
14 that's done simply for convenience.

15 So, for example, during the audit, the
16 Company sent to the Commission 70 bills of lading, and
17 we will be talking about the format of the bill of
18 lading, so I have one exhibit that has all of those 70
19 bills of lading, and then I have another exhibit that
20 has the same 70 bills of lading for the discussion of
21 the completion of the bill of lading. I wanted to
22 disclose that.

23 Then also, Household Goods Tariff No. 15-B
24 replaced Tariff 15(A) effective June 1st, 2006. The
25 Complaint was filed under 15(A) and that is what I will

0026

1 be referring to in argument. There are no relevant
2 changes to the tariff items at issue.

3 JUDGE MOSS: I do have a question about the
4 duplicate exhibits. Why is that necessary? Why can't
5 we refer to the same exhibits for both purposes?

6 MS. CAMERON-RULKOWSKI: Because the second
7 set of exhibits is marked up to show the various
8 problems with the completion.

9 JUDGE MOSS: So just highlights those points?

10 MS. CAMERON-RULKOWSKI: That's correct.

11 JUDGE MOSS: Why can't we just have that one
12 then?

13 MS. CAMERON-RULKOWSKI: We could.

14 JUDGE MOSS: I don't really want 140 pieces
15 of paper in the record if you don't need them. If we
16 need them, we need them. I'm not saying we can't do it
17 that way. It just strikes me we've got them in there
18 in whatever form.

19 MS. CAMERON-RULKOWSKI: Then I would add we
20 also have two sample pages in that first exhibit that
21 show the format problems, so I could simply add that
22 and combine the exhibits.

23 JUDGE MOSS: That works for me.

24 MS. CAMERON-RULKOWSKI: Then my plan would be
25 to go ahead and discuss the items for which Staff is

0027

1 recommending penalties and then move on to the sales
2 tax issue.

3 JUDGE MOSS: I'm at your disposal.

4 MS. CAMERON-RULKOWSKI: Then I would like to
5 proceed.

6 MR. TRI: I have a couple of things. I was
7 informed by counsel Friday that Staff is no longer
8 seeking cancellation of the license but instead has
9 changed their request to be a maximum 90-day
10 suspension.

11 MS. CAMERON-RULKOWSKI: That's correct.

12 JUDGE MOSS: Thank you.

13 MR. TRI: Procedurally, that has been the
14 biggest issue of conflict between the two parties and
15 is a significant change in the position of the Staff,
16 and although we are here to go on with the hearing, I
17 wonder -- it kind of undercuts where we were at with
18 respect to the settlement conference.

19 JUDGE MOSS: I'm not sure what you mean when
20 you say it undercuts it.

21 MR. TRI: Frankly, I would think that given
22 that that's a significant change that it seems as if
23 the settlement conference procedure didn't get a full
24 chance to see if it could be resolved, and I frankly
25 wonder if the Court would consider moving to allow us

0028

1 to attempt to resolve the conflict given the change of
2 the Staff.

3 JUDGE MOSS: Is that something that you think
4 you could accomplish this morning?

5 MR. TRI: I think we could find out fairly
6 quickly.

7 JUDGE MOSS: Is Staff interested in having
8 any further discussions with this party concerning
9 settling this case?

10 MS. CAMERON-RULKOWSKI: Your Honor, I believe
11 that I could answer that question after a five-minute
12 discussion with Mr. Tri.

13 JUDGE MOSS: Want me out of the room?

14 MS. CAMERON-RULKOWSKI: That would be
15 helpful, Your Honor.

16 JUDGE MOSS: I'll leave the room. We'll be
17 off the record.

18 (Discussion off the record.)

19 JUDGE MOSS: I understand that the parties
20 have decided that we will proceed and not proceed to
21 settlement discussions, so we will go ahead with the
22 hearing I suppose. Anything else, Mr. Tri,
23 preliminary?

24 MR. TRI: No.

25 JUDGE MOSS: Are we ready now?

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1 MS. CAMERON-RULKOWSKI: At this time, I would
2 like to call Carlene Hughes.

3 JUDGE MOSS: Please rise and raise your right
4 hand.

5

6 Whereupon,

7

CARLENE HUGHES,

8 having been first duly sworn, was called as a witness
9 herein and was examined and testified as follows:

10

11

DIRECT EXAMINATION

12

BY MS. CAMERON-RULKOWSKI:

13

Q. Good morning. Please state and spell your
14 first and last name.

15

A. Carlene Hughes, C-a-r-l-e-n-e, H-u-g-h-e-s.

16

Q. Who is your employer?

17

A. The Washington Utilities and Transportation
18 Commission.

19

Q. What is your position with the Commission?

20

A. I'm a transportation program coordinator in
21 the business practices section.

22

Q. How long have you been employed at the
23 Commission?

24

A. A little over 21 years.

25

Q. Would you please describe your duties as they

0030

1 relate to this case?

2 A. My responsibilities include conducting
3 investigations regarding the business practices of
4 utility and transportation companies, and as part of
5 those duties, I investigate regulated household goods
6 carriers that may be operating in violation of the
7 Commission rules and the laws.

8 Q. Are you familiar with Boots, Inc., doing
9 business as Brooks A&A Moving?

10 A. Yes.

11 Q. Would you please describe how you are
12 familiar with Brooks A&A Moving?

13 A. I conducted an audit of Brooks A&A Moving's
14 business practices. My audit resulted in a Staff
15 report entitled, "Business Practices Audit Report of
16 Boots, Inc., Doing Business as Brooks A&A Moving."
17 That was dated November of 2005.

18 Q. Would you please describe the process of
19 auditing Brooks A&A Moving?

20 A. Initially, business practices reviews
21 information received about household goods carriers
22 through their informal complaint process at the
23 Commission. We determine which carriers appear to have
24 compliance problems and then schedule those companies
25 for audits. This is how the Brooks A&A Moving

0031

1 investigation began.

2 They were identified as a possible audit
3 candidate when the business practices section reviewed
4 consumer complaints from 2004 and found that a
5 complaint had been filed against Boots in December of
6 2004 indicating the Company was not completing the bill
7 of lading in compliance with our Tariff 15(A) and WAC
8 480-15 and was charging customers rates and charges not
9 allowed by the tariff. The business practices section
10 sent a data request to the Company asking the Company
11 to furnish us with specific documents.

12 We asked for, for example, bills of lading,
13 estimates, supplemental estimates. In the original
14 data request, we asked for the documents for June
15 through April of 2005. I later asked for additional
16 documents for the month of June, 2005 --

17 Q. Could you repeat again which months you
18 initially asked for documents?

19 A. I initially asked for the documents of
20 January through April of 2005, and then later I asked
21 for the June 2005 documents, which I used for my audit
22 report.

23 I reviewed those documents for areas of
24 noncompliance with the rules in the tariff and then
25 provided technical assistance in the form of the audit

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1 report where I went over all the rules and laws
2 regarding household goods moves.

3 The audit report explains its violation and
4 provides the text of the rule so the companies can
5 correct their practices. That's a standard for our
6 audit reports. In those instances where I found the
7 Company had been given prior technical assistance --

8 MR. TRI: Your Honor, excuse me. This is
9 narrative and nonresponse to the question.

10 JUDGE MOSS: I think it's just fine. We will
11 go ahead with it.

12 THE WITNESS: In those instances where I find
13 the company has been given prior technical assistance
14 to a rule violation, in my report, I recommended the
15 Company be penalized for each occurrence for those that
16 I found during the June 2005 audit period.

17 The Company was sent a copy of that audit
18 report also. I received a written response from the
19 Company, and then Staff responded to their response to
20 the report.

21 Q. (By Ms. Cameron-Rulkowski) Could you please
22 refer to the exhibit that I have labeled as Exhibit 8,
23 and I will pass that around.

24 JUDGE MOSS: That's the Staff audit report?

25 MS. CAMERON-RULKOWSKI: That's correct.

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1 THE WITNESS: (Witness complies.)

2 JUDGE MOSS: While you are looking through
3 your documents there, I assume that these two stacks
4 here are all your exhibits?

5 MS. CAMERON-RULKOWSKI: They are, and those
6 are for you.

7 Q. (By Ms. Cameron-Rulkowski) Is this a true and
8 correct copy of the audit report that you authored?

9 A. Yes, it is.

10 MS. CAMERON-RULKOWSKI: At this time, I would
11 like to move to admit Exhibit No. 8.

12 JUDGE MOSS: Mr. Tri, any objection?

13 MR. TRI: I'll object that it contains
14 references to hearsay. It contains legal conclusions.
15 It's being offered in lieu of testimony with respect to
16 specific knowledge of facts of the witnesses.

17 JUDGE MOSS: Your objection is overruled. Go
18 ahead.

19 Q. Now I'm going to address the four areas of
20 the alleged violations for which the Complaint requests
21 penalties. First let's discuss cargo insurance. When
22 did Brooks A&A Moving receive temporary authority?

23 A. June 21st, 2004, in Docket No. TV-040671.

24 Q. Please turn to the cargo insurance exhibit
25 labeled Exhibit No. 1.

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1 A. (Witness complies.)

2 JUDGE MOSS: I'm just going to follow your
3 premarked numbers for purposes of our formal exhibit
4 list. I'm not going to identify exhibit numbers as we
5 go along. I'm just going to use yours, so everybody
6 knows.

7 MR. TRI: Which exhibit was this; No. 1?

8 MS. CAMERON-RULKOWSKI: Yes.

9 Q. (By Ms. Cameron-Rulkowski) Would you please
10 identify Exhibit No. 1?

11 A. This is Boots, Inc., doing business as Brooks
12 A&A Moving's insurance agreement for their cargo
13 insurance.

14 Q. How did you obtain this document?

15 A. It was in response to the Staff's data
16 request.

17 Q. Is this a true and accurate copy of the
18 document you received?

19 A. Yes, it is.

20 Q. What is the start date listed on the policy?

21 A. The effective date is listed as November 9,
22 2004.

23 MS. CAMERON-RULKOWSKI: At this time I would
24 like to move for the admission of Exhibit 1.

25 MR. TRI: No objection.

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1 JUDGE MOSS: It will be admitted as marked.

2 Q. To your knowledge, did Brooks A&A Moving have
3 cargo insurance between June 21, 2004, and November 9,
4 2004?

5 A. No.

6 Q. What is the basis of this conclusion?

7 A. I looked in the Commission records and found
8 no other insurance documents on file for Brooks's
9 insurance.

10 Q. Now, the Complaint alleged that Brooks A&A
11 Moving operated without cargo insurance for 110 days.
12 How did you calculate the number of days?

13 A. I counted calendar days between the June 24th
14 issuance of their permit date to November 9 of 2004,
15 the date they obtained their cargo insurance. I
16 originally calculated 110 days. However, in error, I
17 left out one month.

18 Q. Now, you just referred to the June 24. You
19 just testified that the temporary authority began on
20 June 21st. Was June 21st the date that you meant?

21 A. I meant to say June 21st.

22 Q. What rules, in your understanding, did Brooks
23 A&A Moving allegedly violate?

24 A. WAC 480-15-550 from one requires household
25 goods carriers to have cargo insurance sufficient to

0036

1 protect all the household goods the carrier transports.

2 JUDGE MOSS: Let me just interrupt. These
3 various references to the statute and the rules, these
4 are all included in the audit report, aren't they?

5 MS. CAMERON-RULKOWSKI: I believe they are.
6 They are summarized, at any rate.

7 JUDGE MOSS: I asked the question for two
8 reasons. One, I'm not going to make notes of them
9 since I have a record of them already, and the other is
10 since they are part of our record in this exhibit, you
11 don't need to go through that with the witness each
12 time. It's up to you. I won't stop you from doing it.
13 I'm trying to shorten things up. I realize you are
14 following a form of questions. The WAC's and the
15 statutes are what they are.

16 MS. CAMERON-RULKOWSKI: Okay.

17 Q. (By Ms. Cameron-Rulkowski) If the Commission
18 finds that these violations occurred, do you have a
19 recommendation for Commission action?

20 A. Staff recommendation would be to impose a
21 penalty of \$11,000 based on \$100 per day for the 110
22 days.

23 Q. Thank you.

24 JUDGE MOSS: I'm going to interrupt here.
25 You said you left a month out in calculating the 110

0037

1 days?

2 THE WITNESS: Yes, I did.

3 JUDGE MOSS: Why has Staff not changed its
4 position to encompass the full period of the
5 noncompliance?

6 MS. CAMERON-RULKOWSKI: Your Honor, the error
7 was recently discovered, and it was felt that it would
8 not be fair to change the number of days that the
9 penalty was based on this late in the game.

10 JUDGE MOSS: Okay. Go ahead.

11 Q. (By Ms. Cameron-Rulkowski) Did the
12 Commission provide Brooks A&A Moving with information
13 about the cargo insurance requirement before granting
14 the temporary permit?

15 A. Yes. It's listed on the cover sheet of the
16 application form.

17 Q. Please refer to the exhibit labeled as
18 Exhibit No. 2.

19 A. (Witness complies.)

20 Q. Would you please identify Exhibit No. 2?

21 A. This is the Commission's household goods
22 carrier permit application form that is in use now and
23 has been in use since July of 2003 before Brooks
24 applied for authority.

25 Q. Is this a true and accurate copy of the

0038

1 application?

2 A. Yes, it is.

3 Q. Please identify the location of information
4 about cargo insurance?

5 A. Cargo insurance is mentioned on the cover
6 sheet for the application, and it's also mentioned on
7 Page 4 of the application.

8 Q. Please read the text concerning the cargo
9 insurance requirement on both of these pages.

10 A. In the paragraph in the middle of the page,
11 the second sentence reads: "All vehicles must also be
12 covered by cargo insurance. Cargo insurance does not
13 need to be filed with the Commission. However, proof
14 of coverage must be kept in your main office and must
15 be available for inspection by Commission staff.
16 Insurance minimum limits are...", and then the box
17 below lists the amount of cargo insurance depending on
18 the size of the vehicle the Company operates.

19 JUDGE MOSS: We don't need to have that read
20 into the record. The document speaks for itself. Did
21 you want to move its admission?

22 MS. CAMERON-RULKOWSKI: Yes, I would, Your
23 Honor.

24 MR. TRI: No objection.

25 JUDGE MOSS: It's admitted as marked.

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1 Q. (By Ms. Cameron-Rulkowski) Please turn to
2 the Exhibit labeled Exhibit No. 3. Would you please
3 identify Exhibit No. 3?

4 A. This is the household goods carrier permit
5 application filed by Boots, Inc., Brooks A&A Moving,
6 and it was received by the Commission on April 13th,
7 2004.

8 Q. Is this a true and accurate copy of the
9 application?

10 A. It's the completed application without any
11 attachments, yes.

12 Q. Thank you.

13 MS. CAMERON-RULKOWSKI: At this time, I would
14 like to move for the admission of Exhibit No. 3.

15 MR. TRI: No objection.

16 JUDGE MOSS: It is marked. I'm going to note
17 with respect to both Exhibits 2 and 3 that portions are
18 highlighted, and to that extent, they do deviate from
19 the forms as filed. At least my copies have
20 highlighting on them showing the insurance requirements
21 language, so I wanted to note that for the record.

22 Q. Now I would like to discuss the bill of
23 lading format. Regarding the bill of lading form,
24 please turn to what's been marked as Exhibit No. 4.

25 MS. CAMERON-RULKOWSKI: Your Honor, this is

0040

1 where I'm going to combine exhibits. I'm taking the
2 first two pages of Exhibit 4 and I'm adding them to the
3 top of Exhibit 7.

4 Q. Would you please identify Exhibit 4?

5 A. These are copies of Brooks A&A Moving's bills
6 of lading for the month of June 2005.

7 Q. How did you obtain the documents?

8 A. In addition to the data request documents of
9 January through April, Staff asked Brooks for the June
10 2005 bills of lading. I received these 70 copies of
11 bills. (Witness indicating.)

12 Q. Are these documents true and accurate copies
13 of the bills of lading that you received?

14 A. Yes.

15 Q. Please refer now to the first and second
16 page, which are copies of a bill of lading for a move
17 performed June 1, 2005, for customer Nancy Bushmen.
18 Can you explain the markups on the page?

19 A. Yes --

20 MR. TRI: My copy does not show a customer
21 name, perhaps because of the mark up on top.

22 JUDGE MOSS: Compare it to Page 2 of what was
23 premarked Exhibit 7. I think you will see there the
24 address information of the customer.

25 MR. TRI: Why don't we refer to it as the

0041

1 Bill of Lading No. 8341.

2 JUDGE MOSS: That would be fine. Mr. Tri has
3 made a good point. To the extent these may have begun
4 as true and correct copies of what the Commission
5 received, this highlighting was added.

6 MS. CAMERON-RULKOWSKI: Correct.

7 JUDGE MOSS: And I believe also the driver's
8 license information has been deleted from these
9 consistent with the requirements of privacy protection
10 that are imposed on the Commission's records.

11 MS. CAMERON-RULKOWSKI: That's correct, Your
12 Honor. Throughout, the driver's license number and the
13 credit card information has been redacted.

14 JUDGE MOSS: And we are required to do that
15 as a matter of law, aren't we?

16 MS. CAMERON-RULKOWSKI: I believe so, Your
17 Honor. If it's not Commission-specific law, I believe
18 we are required to do that ethically.

19 JUDGE MOSS: We are required to do that.

20 THE WITNESS: Would you repeat the question?

21 Q. (By Ms. Cameron-Rulkowski) Apart from the
22 markups, is the top two pages of the Bill of Lading No.
23 8341 an identical copy of the second bill of lading in
24 this exhibit for customer Nancy Bushmen, No. 8341?

25 A. Yes, it is.

0042

1 Q. Can you explain the markups on the first two
2 pages briefly?

3 A. The areas that are marked on the bill of
4 lading are the rules or tariff violations I found for
5 the format for the bill of lading.

6 Q. Do the remaining 69 bills of lading -- that
7 is, apart from No. 8341 -- in this exhibit contain
8 exactly the same alleged violations concerning bill of
9 lading format?

10 A. Yes. They all have the same violations
11 because it appears that the same format bill was used
12 for the entire month.

13 Q. And that would be the entire month of June,
14 2005?

15 A. Correct.

16 Q. Regarding the allegation that the Company
17 failed to include the required information on its bill
18 of lading form, which rule or tariff item do you
19 understand to be at issue?

20 A. Both WAC 480-50 and 730, which requires
21 household goods carriers to use the bill of lading
22 format shown in the household goods tariff, and also
23 the Commission's Tariff 15(A), Item 95, which describes
24 the information that is required to be on the bill of
25 lading.

0043

1 Q. Please turn to Exhibit 12.

2 JUDGE MOSS: Were you going to offer this?

3 MS. CAMERON-RULKOWSKI: I will. We'll be
4 using both of them throughout the following discussion,
5 both exhibits.

6 JUDGE MOSS: By the way, I'm going to mark
7 your reconstituted exhibit as four and we will just not
8 have seven, so you want to wait for four.

9 MS. CAMERON-RULKOWSKI: I think I'll wait.

10 JUDGE MOSS: We are looking at 12 now?

11 MS. CAMERON-RULKOWSKI: That's correct.

12 Q. (By Ms. Cameron-Rulkowski) Please identify
13 Exhibit No. 12.

14 A. This is from the Commission's Tariff 15(A),
15 Item 95, bills of lading.

16 Q. Is this a true and accurate copy of Tariff
17 15(A), Item 95?

18 A. Yes, it is.

19 Q. Now we are going to walk through each of the
20 alleged violations from top to bottom of the bill of
21 lading. Regarding names, addresses, and telephone
22 numbers, which rule or tariff item do you understand to
23 be at issue in the violations alleged?

24 A. The Tariff 15(A), Item 95(2)(b) through (d),
25 which requires the bill of lading to have the name,

0044

1 address, and phone number of the customer, the name,
2 address, and telephone number of the consignee, plus
3 the exact locations of the pickup point, split pickup
4 point, additional stops to load or unload, and the
5 final destination point of the shipment of goods.

6 Q. Which of these requirements are missing from
7 this form?

8 A. The bills of lading do not include space for
9 a telephone number, the customer, the name and address
10 of the consignee, or the origin pickup point or any
11 stops in transit to pick up or load additional goods.

12 Q. Turning to "payment method," which rule or
13 tariff item do you understand to be at issue in the
14 violations alleged?

15 A. Item 95(2)(p), which require household goods
16 bills of lading to include the method of payment for
17 the charges for the move. The section of the bill must
18 use the language from the tariff and also include a
19 spot for the customer to acknowledge the type of
20 payment.

21 Q. Thank you. And what is your understanding of
22 the alleged violation?

23 A. The bill of lading that Brooks uses includes
24 a credit card processing fee. While carriers can
25 include only those types of payment that they allow,

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1 they are not authorized to add charges for the type of
2 payment they are processing. The Company's form is
3 also missing the language on the bill of lading that
4 notes that the customer must initial the choices made
5 on the item.

6 Q. Please turn to Page 8 of Exhibit No. 12, and
7 this is Item 95.

8 JUDGE MOSS: When you say "this is Item 95,"
9 I don't follow you.

10 MS. CAMERON-RULKOWSKI: This is Tariff
11 Item 95. I'm simply identifying Exhibit 12.

12 Q. (By Ms. Cameron-Rulkowski) Now, about midway
13 down on the sample bill of lading, there is text there
14 that starts out with, "note." Would you please read
15 that text?

16 A. Yes. It states: "Note: The customer must
17 indicate choices made on the items shown below by
18 initialing the appropriate line."

19 Q. Is this text something that household goods
20 carriers need to include on their bills of lading?

21 A. Yes, it is.

22 Q. Regarding recording interruption times, which
23 rule or tariff item do you understand to be at issue in
24 the violations alleged?

25 A. Item 95(2)(j) of Tariff 15(A) requires that

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1 the bills of lading for shipments moving under hourly
2 rates include the time where the carrier left its
3 terminal, the time it returned to the terminal was
4 released to another customer, and the start, stop, and
5 interruption times for each person involved in the
6 shipment.

7 Q. What is your understanding of the violation
8 here?

9 A. That Brooks A&A Moving's bill of lading does
10 not include a location to record the interruption
11 times.

12 Q. Regarding the estimate declaration, which
13 subsection of Item 95, under your understanding, is at
14 issue?

15 A. The Section (2)(g) of Item 95, the section
16 that includes requesting the customer to show whether
17 or not they didn't ask for a written estimate or if
18 received a written estimate whether it was binding or
19 nonbinding. There is specific language that must be
20 included on the bill.

21 Q. Please refer to Page 3 of Exhibit No. 12. At
22 the top of the page there under "g," is that the
23 required language you were referring to in the box?

24 A. In the box, yes.

25 Q. You may wish to refer to Exhibit 12 along

0047

1 with Exhibit 4 to respond. What is your understanding
2 of the violation?

3 A. The third type of estimate listed in the box
4 in Item 95(g) states that the customer is acknowledging
5 that they understand that the shipment is moving under
6 nonbinding estimate, and the violation is that the bill
7 of lading used by Brooks does not contain the language
8 -- would you like me to read the language?

9 Q. Yes, please.

10 A. "And will extend credit for 30 days in which
11 I must pay the remainder due. In no case will I be
12 required to pay more than 115 percent of the estimate
13 plus any supplement for mileage shipment nor more than
14 125 percent of the estimate plus supplements for
15 hourly-rated shipment." That is not on their bill of
16 lading and is a requirement.

17 Q. Moving on to the valuation declaration, which
18 rule or tariff item do you understand to be at issue?

19 A. Item 95(2)(h) from Tariff 15(A), which
20 requires household goods carriers to include a section
21 where the customer must select the type of valuation
22 coverage under which the shipment is moving. This
23 section must contain the language that's in the tariff.

24 Q. Again, you may want to refer to the tariff
25 item exhibit. Could you please point to the

0048

1 differences between the tariff language and the
2 language on Brooks's bill of lading?

3 A. Yes. The correct language for the
4 replacement cost coverage, which is the bottom two,
5 with or without deductible, requires the customer to
6 declare the lump sum valuation for the entire shipment
7 and show the declared value must be at least \$3.50
8 times the weight of shipment.

9 Brooks's bill states that if the customer
10 chooses a replacement cost, the customer is releasing
11 the goods to an exact \$3.50 per pound for the value of
12 the shipment.

13 Q. Regarding the storage declaration, which rule
14 or tariff item do you understand to be at issue?

15 A. Item (2)(f), which requires carriers to
16 include a declaration of the length of time the shipper
17 wishes the property to be stored, meaning permanent
18 storage, storage in transit, or the third option is
19 storage in vehicle. The sample bill of lading shows
20 the storage and vehicle option.

21 Q. Does the Brooks A&A Moving bill of lading
22 contain the required storage declaration?

23 A. It has no storage declaration.

24 Q. Regarding the terms and conditions language,
25 which rule or tariff item do you understand to be at

0049

1 issue?

2 A. Item 95(3) requires carriers to include on
3 the back of the bill of lading the terms and conditions
4 printed in the tariff.

5 Q. Please refer to Exhibit 12 as well as the
6 second page of Exhibit 4. This shows the back side of
7 Brooks's bill of lading. What is your understanding of
8 the alleged violation?

9 A. Brooks added or deleted language from the
10 terms and conditions. Specifically, it added to
11 Section (1)(a) the words, "including storage and
12 vehicles" to the liability section, and Section
13 (1)(b)(1), it added, "or for cargo damaged on a rental
14 container or once the container or vehicle leaves the
15 load site," and deleted, "unless it can be proven that
16 the breakage resulted from negligence by the carrier in
17 handling the articles from the section that describes
18 what the carrier is not liable for.

19 Section (1)(b)(5), it added particle board
20 furniture to what the carrier is not liable for, and
21 finally, in Section 4, it changed the word "shipper" to
22 "customer."

23 MS. CAMERON-RULKOWSKI: At this time, I would
24 like to move for the admission of Exhibits 4 and 12.

25 MR. TRI: No objection.

0050

1 JUDGE MOSS: They will be admitted as marked.

2 Q. (By Ms. Cameron-Rulkowski) If the Commission
3 find these violations occurred, do you have a
4 recommendation for Commission action?

5 A. Yes. Staff recommends imposing a penalty of
6 \$7,000 based on \$100 per use of bill of lading that did
7 not comply with the rules or tariff items.

8 Q. Now we will be discussing completion of the
9 bill of lading. Regarding the allegations that Brooks
10 A&A Moving failed to properly complete the bill of
11 lading, what rules or tariff items do you understand to
12 be at issue?

13 A. In general, WAC 480-15-740, which requires
14 carriers to list on the bill of lading all the
15 information necessary to determine the tariff rates and
16 charges, including eight specific items listed in the
17 subsections of that rule, and Item 95, again, which
18 describes the information that household goods carriers
19 must include on their bill of lading.

20 Q. Please turn to Exhibit No. 18. Please keep
21 out Exhibit No. 4. Please identify Exhibit No. 18.

22 A. This is a chart I prepared to show which
23 bills of lading violations are present on each of the
24 70 June 2005 bills of lading for Brooks Moving.

25 Q. Is this exhibit a true and accurate copy of

0051

1 that chart?

2 A. Yes.

3 Q. I'll ask you to keep it handy for further
4 reference. Regarding filling in names, addresses, and
5 telephone numbers on the bill of lading, which rule or
6 tariff item do you understand to be at issue?

7 A. Both WAC 480-15-740(3), which requires
8 household goods carriers to list on the bill of lading
9 the exact address at which the shipment or any part of
10 the shipment is loaded or unloaded, and Tariff 15(A)
11 Item 95(2)(b) through (c), which requires the bill of
12 lading to include the name, address, and telephone
13 number of the customer, and the name, address, and
14 telephone number of the consignee.

15 Q. I'll ask you to refer to Exhibit 4, and refer
16 to Bill of Lading No. 8340 for customer Elizabeth
17 Roberts for a move dated June 1, '05. Is the consignee
18 listed anywhere?

19 A. No.

20 Q. Could you please explain where you would
21 expect to find that information on the bill of lading?

22 A. The customer's name, address, and phone
23 number, and the consignee, who is the person who
24 receives the goods, name, address, and phone number are
25 usually listed at the top of the bill of lading.

0052

1 Q. And how many of the bills of lading in
2 Exhibit No. 4 are missing the consignee name?

3 A. I believe all of them.

4 Q. Would that be 70?

5 A. That would be all 70.

6 Q. On that same bill of lading, please look at
7 the "delivery address" field. Please read what has
8 been filled into that field.

9 A. The city name, "Kirkland."

10 Q. That's it?

11 A. That's it.

12 Q. Please turn to the Bill of Lading No. 8356
13 for Tamara Potter dated June 5, '05. Please read what
14 it says in the "delivery address" field.

15 A. The name "Woodinville."

16 Q. Please turn to the Bill of Lading No. 8380
17 for Devon Cobb, dated June 8, '05, and please read what
18 appears in the "delivery address" field.

19 A. The name "Kenmore."

20 JUDGE MOSS: I don't think we really need to
21 go through all of these. If you want to offer up an
22 illustration of each type, that would be fine, but I
23 could go through these if I need to.

24 MS. CAMERON-RULKOWSKI: Certainly.

25 Q. (By Ms. Cameron-Rulkowski) Then I would ask

0053

1 you to refer to your chart. Do the bills of lading for
2 the following bills of lading number and customer's
3 contain a complete delivery address, and I will read
4 you a list.

5 MS. CAMERON-RULKOWSKI: Is that sufficient,
6 Your Honor?

7 JUDGE MOSS: Isn't that what's in this table?

8 MS. CAMERON-RULKOWSKI: Not exactly, Your
9 Honor.

10 JUDGE MOSS: All right. Go ahead.

11 MS. CAMERON-RULKOWSKI: I'll proceed as
12 before.

13 JUDGE MOSS: Again, in terms of these
14 individual assertions of violation, if I need to go
15 through these things, they are what they are, and I can
16 see if an address is complete or not, so I don't see
17 the need to go through it painstakingly. All I'm
18 trying to do is save some time, because the information
19 is here and we can look at it if we need to.

20 MS. CAMERON-RULKOWSKI: Certainly.

21 Q. (By Ms. Cameron-Rulkowski) Then the following
22 bills of lading numbers and customers exhibits referred
23 to would be No. 8407 for Monty Grave; 8417 for Beth
24 Luwig; 8418 for Mike Hone; 8434 for Connie Gless; 8451
25 for Mark Dorn; 8463 for Chris Jay.

0054

1 A. Okay.

2 Q. 8464 for Darren Arthur.

3 A. Okay.

4 Q. Do any of these contain complete delivery
5 addresses?

6 A. No, they don't.

7 Q. One more bill of lading, No. 8375 for Morgan.
8 Is this customer's address listed on the bill of
9 lading?

10 A. I don't believe it is. The address on the
11 bill for the customer is listed as Bulldog Storage.

12 Q. Now, please turn back to No. 8340 for
13 Elizabeth Roberts. Are there telephone numbers listed
14 for both the shipper and consignee?

15 A. There is only one telephone number on this
16 bill of lading.

17 Q. Does the telephone number belong to the
18 shipper or the consignee?

19 A. I don't know. It's not clear.

20 Q. Turning now to filling in the customer's
21 choice of payment method on the bill of lading, which
22 rule or tariff item do you understand to be at issue?

23 A. Tariff Item 95(2)(p), which requires carriers
24 to include the method of payment of the total tariff
25 charges on the bill of lading.

0055

1 Q. Please turn to Bill of Lading No. 8344 for
2 Brent Revert, dated June 3, '05. Is there a selection
3 of payment method indicated in the field entitled
4 "payment"?

5 A. No.

6 Q. Now I have another list for you to check, and
7 the question is, do any of the bills of lading in this
8 list include a selection of payment method? The first
9 one is 8345.

10 A. No.

11 Q. The second is 8346.

12 A. No.

13 Q. 8351?

14 A. No.

15 Q. 8352?

16 A. No.

17 Q. 8355?

18 A. No.

19 Q. 8356?

20 A. No.

21 Q. 8378?

22 A. No.

23 Q. 8379?

24 A. No.

25 Q. 8380?

0056

1 A. No.

2 Q. 8391?

3 A. No.

4 Q. 8393?

5 A. No.

6 Q. 8397?

7 A. No.

8 Q. 8409?

9 A. No.

10 JUDGE MOSS: I'm going to stop you there. We
11 don't really need to do this. Again, these documents
12 show what they show. I'm looking at it. I can see
13 there the payment section is blank. You have given me
14 this table that shows under the column "payment
15 choice," so it's easy enough for me to check if there
16 is any dispute about whether or not this is the case or
17 not.

18 MS. CAMERON-RULKOWSKI: That's fine.

19 JUDGE MOSS: I'm mindful that Mr. Tri is
20 seeing this table for the first time today, so he may
21 dispute some of these or he may not, but I just don't
22 think we need to go through it painstakingly like that.

23 Q. (By Ms. Cameron-Rulkowski) Regarding having
24 the customer initial to show he or she received or was
25 offered the Consumer Rights and Responsibilities guide

0057

1 on the bill of lading, which rule do you understand to
2 be at issue?

3 A. WAC 480-15-740(8) requires that any shipments
4 where the customer did not receive a written estimate,
5 the carrier must make a notation on the bill of lading
6 that the customer was given a copy of the brochure.
7 The customer must initial on or near that notation on
8 the bill acknowledging receipt of that Rights and
9 Responsibilities guide information.

10 Q. Now I will ask you to refer to your chart in
11 Exhibit No. 18. Do the X's there indicate bills of
12 lading on which the proper customer initial or the
13 Company notation is not found?

14 A. By the "X" in the "R&R guide" column, yes.

15 Q. Regarding recording the start, stop, and
16 interruption times on the bill of lading, which rule or
17 tariff item do you understand to be at issue?

18 A. WAC 480-15-740(7), and Tariff 15(A), Item
19 95(2)(j), which requires household goods carriers to
20 record stop, start, and interruption times for both the
21 move as a whole and for the individual employees
22 involved in the move.

23 Q. Now, please refer to Bill of Lading No. 8344
24 for Brent Revert, dated June 3, '05. Please refer to
25 the section headed "time record" and read what is

0058

1 filled in on the start and stop times.

2 A. Start says 8:30. Stop says six o'clock,
3 equals 9.5.

4 Q. Are there any times filled in for
5 interruptions?

6 A. No.

7 Q. Are there any additional times filled in at
8 all?

9 A. No.

10 Q. What is your understanding of the alleged
11 violation here?

12 A. My understanding of the violation is that if
13 employees work between 8:30 and six o'clock, they
14 should be accorded a meal and break time according to
15 Washington Department of Labor and Industries laws.
16 There are no times recorded on this bill of lading, and
17 of course the break and interruption times are those
18 times which the customer is not billed for the move.

19 Q. So any break should be subtracted from the
20 final hour of the bill; is that right?

21 A. Correct.

22 Q. Now please refer to Bill of Lading No. 8345
23 for Lisa Smith, dated June 3, '05. Are there any
24 employee hours filled in here?

25 A. No.

0059

1 Q. Are there any employee names filled in?

2 A. No.

3 Q. Were you provided any other records
4 containing the individual hours worked by the employees
5 involved in this move?

6 A. No.

7 JUDGE MOSS: As before,
8 Ms. Cameron-Rulkowski, if you could just ask your
9 witness if the column marked "employee hours" as
10 footnoted for what it covers, which I see where you are
11 going here, if that column indicates her findings with
12 respect to the 70 bills of lading.

13 MS. CAMERON-RULKOWSKI: That's exactly what I
14 was going to do next.

15 JUDGE MOSS: I'm just trying to save us a
16 little time.

17 Q. (By Ms. Cameron-Rulkowski) Please refer to
18 your chart at Exhibit 18, and do the X's marked in the
19 "employee hours" column illustrate similar problems to
20 those we just discussed on the bills of lading
21 referenced here?

22 A. Yes, it does.

23 Q. Regarding insuring that the customer and
24 company representative sign the bill of lading, which
25 rule or tariff item do you understand to be at issue?

0060

1 A. WAC 480-15-710 defines that the bill of
2 lading is a shipping document issued by the carrier and
3 signed by both the shipper and the carrier that
4 establishes the legal contract terms and conditions for
5 the movement of the household goods.

6 Q. Now please turn to Bill of Lading No. 8345
7 for Lisa Smith, dated June 3, '05. Please refer to the
8 lower left-hand portion of the bill of lading to the
9 spaces for signature. Is there a signature on the
10 customer line?

11 A. No, there isn't.

12 Q. Please turn to Bill of Lading No. 8352 for
13 Kim Ahern, dated June 4, '05. Do any signatures appear
14 on either the receipt for goods, driver line, or on the
15 customer line?

16 A. There are no signatures on this bill.

17 Q. I would like you to refer to your chart at
18 Exhibit 18. Do the X's in the column titled
19 "signatures" represent missing signatures on the bills
20 of lading that they are next to?

21 A. Yes.

22 Q. Regarding obtaining the customer initials on
23 the bill of lading for the type of estimate received,
24 which rule or tariff item do you understand to be at
25 issue?

0061

1 A. Both WAC 480-15-740, which requires household
2 goods carriers to list on the bill of lading all
3 information necessary to determine rates and charges,
4 and Item 95(2)(g) of Tariff 15(A), which provides that
5 the customer must initial on the bill of lading the
6 type of estimate selected, whether it was a written
7 binding, nonbinding or if no estimate was done at all.

8 Q. Please refer to Bill of Lading No. 8392 for
9 Bob Browning, dated June 11, '05.

10 A. (Witness complies.)

11 Q. Under the section headed "estimates," are any
12 of the options initialed?

13 A. The option initialed is that the shipment is
14 moving under a binding estimate.

15 Q. To your knowledge, is that selection
16 accurate?

17 A. No. I received no estimates for this move
18 from the documents I received from the Company.

19 Q. So you don't know if there was an estimate
20 associated with the move at all.

21 A. Correct.

22 Q. Please refer to Bill of Lading No. 8397 for
23 Jin Yi, dated June 13, '05. Are any of the estimate
24 options initialed?

25 A. Yes, all three.

0062

1 Q. Please turn to Bill of Lading No. 8000, dated
2 June 28, '05. Are any of the estimate options
3 initialed?

4 A. Two of the options are initialed. One that
5 the customer did not request, the written estimate, and
6 also initialed that the shipment was moving under a
7 nonbinding estimate.

8 Q. Now please refer to one more, Bill of Lading
9 No. 8464 for Darren Arthur, dated June 29, '05. Are
10 any of the estimate options initialed?

11 A. No.

12 MS. CAMERON-RULKOWSKI: At this time, I would
13 like to move for the admission of Exhibit No. 18.

14 MR. TRI: No objection.

15 JUDGE MOSS: Admitted as marked.

16 Q. (By Ms. Cameron-Rulkowski) If the Commission
17 finds that these violations occurred, do you have a
18 recommendation for Commission action?

19 A. Staff would recommend a penalty of \$7,000
20 based on \$100 per bill of lading that was not completed
21 in compliance with one or more rule or tariff items.

22 Q. Regarding charging customers a credit card
23 processing fee, which rule or tariff item do you
24 understand to be at issue?

25 A. WAC 480-15-490(5), which requires all

0063

1 household goods carrier to charge the rates and charges
2 and comply with the rules contained in Tariff 15(A).

3 Q. Is a credit card processing fee a charge that
4 is contained in the tariff?

5 A. No.

6 Q. What is your understanding of the violation?

7 A. Brooks A&A Moving charged customers who paid
8 by credit card a processing fee of four percent of the
9 moving charges. There is no authorization in the
10 tariff for a credit card fee.

11 Q. Please turn to Exhibit No. 9.

12 JUDGE MOSS: Are we moving away from 4 and
13 12?

14 MS. CAMERON-RULKOWSKI: This is a compilation
15 of five bills of lading that are repeats.

16 Q. (By Ms. Cameron-Rulkowski) Would you please
17 identify Exhibit No. 9?

18 A. Yes. These are copies of five Brooks A&A
19 Moving's bills of lading from the month of June 2005.

20 Q. How did you obtain the documents?

21 A. These were the documents I asked for in
22 addition to the original January through April of 2005
23 bills of lading.

24 Q. These are part of the 70 bills of lading for
25 June 2005 that you received?

0064

1 A. That's correct.

2 Q. Are the documents in this exhibit true and
3 accurate copies of the documents that you received?

4 A. Yes, they are.

5 Q. Please turn to Page 1. Does this bill of
6 lading contain a credit card processing fee?

7 A. Yes, it does.

8 Q. Do the subsequent four bills of lading
9 contain a credit card processing fee?

10 A. Yes, they do.

11 MS. CAMERON-RULKOWSKI: At this time, I would
12 like to move for the admission of Exhibit No. 9.

13 MR. TRI: No objection.

14 JUDGE MOSS: It will be admitted as marked.

15 Q. (By Ms. Cameron-Rulkowski) If the Commission
16 finds that these violations occurred, do you have a
17 recommendation for Commission action?

18 A. Yes. Staff recommends a penalty of \$500
19 based on \$100 per bill of lading that reflects the
20 credit card processing fee.

21 MS. CAMERON-RULKOWSKI: That concludes my
22 discussion of the four issues for which Staff is
23 recommending penalties be imposed.

24 JUDGE MOSS: Excellent time to take a break
25 then.

0065

1 (Recess.)

2 JUDGE MOSS: Let's continue.

3 Q. (By Ms. Cameron-Rulkowski) Proceeding now to
4 the sales tax issue. Regarding the sales tax charges,
5 which rule or tariff item do you understand to be at
6 issue?

7 A. WAC 480-15-490(5) requires household goods
8 carriers to charge the rates and charges contained in
9 the tariff only.

10 Q. Is sales tax for moving services a charge
11 that is contained in the tariff?

12 A. No.

13 Q. What is your understanding of the violation?

14 A. Brooks A&A Moving charged customers sales tax
15 on moving services, a charge that the tariff doesn't
16 authorize.

17 Q. Would you please turn to the exhibit that is
18 labeled Exhibit No. 10? Would you please identify
19 Exhibit No. 10?

20 A. Yes. These are copies of Brooks A&A Moving's
21 bills of lading for the month of January, February,
22 March, and April 2005.

23 Q. How did you obtain the documents?

24 A. These were the documents from the original
25 data request that Staff sent to them.

0066

1 Q. Do you have a sense of how many bills of
2 lading you received in response to that data request?

3 A. Probably over 160.

4 Q. Are the documents in Exhibit 10 true and
5 accurate copies of the bills of lading that you
6 received?

7 A. Yes, they are.

8 Q. On the first page of the exhibit, is there a
9 sales tax charge for moving services?

10 A. Yes.

11 Q. Do the remaining bills of lading in
12 Exhibit 10 reflect a sales tax charge for moving
13 services?

14 A. Yes. There are 45 bills of lading from
15 January, 40 bills of lading from February, 42 bills of
16 lading from March, and 39 bills of lading from April
17 that all show a sales tax charge for moving services.

18 MS. CAMERON-RULKOWSKI: At this time, I would
19 like to move to admit Exhibit No. 10.

20 MR. TRI: No objection.

21 JUDGE MOSS: It will be admitted as marked.

22 Q. (By Ms. Cameron-Rulkowski) Please turn to
23 Exhibit No. 5.

24 MR. TRI: I was handed two exhibits. Which
25 one are you referring to?

0067

1 MS. CAMERON-RULKOWSKI: I'll be talking about
2 No. 6 in just a moment, so I passed both 5 and 6 down.

3 Q. Please identify Exhibit No. 5.

4 A. This is a letter that Commission staff sent
5 to Brooks Moving on March 25th, 2005.

6 Q. Could you turn to Page 4, please?

7 A. (Witness complies.)

8 Q. Who signed the letter?

9 A. Carol Washburn, the executive secretary for
10 the Commission.

11 Q. What was the purpose of the letter?

12 A. To inform Brooks that its bill of lading was
13 out of compliance.

14 Q. Did the letter also provide technical
15 assistance?

16 A. Yes.

17 Q. How were you familiar with this letter?

18 A. When I began the audit, Betty Young, the
19 compliance specialist who sent this letter, gave it to
20 me. She also works in the business practices section.

21 Q. Is this a true and accurate copy of the
22 letter that you received from Ms. Young?

23 A. Yes.

24 Q. Please turn to Page 3.

25 A. (Witness complies.)

0068

1 Q. Please read from Section 3, rates and
2 charges, down to the bottom of the page.

3 JUDGE MOSS: Let's save time. I can read
4 that.

5 MS. CAMERON-RULKOWSKI: Certainly.

6 Q. (By Ms. Cameron-Rulkowski) Could you
7 summarize the content of these paragraphs very briefly?

8 A. These paragraphs inform Brooks that the four
9 percent credit card processing fee and 8.9 percent
10 sales tax fee are not allowed to be charged.

11 Q. Please turn to Exhibit 6 and identify Exhibit
12 No. 6.

13 A. This is a response Staff received by e-mail
14 from Michelle Brooks on March 28th in response to the
15 Carol Washburn letter.

16 Q. Was that also March 28, 2005?

17 A. Yes.

18 Q. How did you obtain this e-mail?

19 A. Ms. Young, business practices staff, gave me
20 a copy of this.

21 Q. Is this a true and accurate copy of the
22 e-mail response that you received from Ms. Young?

23 A. Yes, it is.

24 Q. I was going to ask you to read the first
25 three paragraphs starting, "This is Michelle from

0069

1 Boots," but perhaps I could remark that those are the
2 three paragraphs I'm interested in having in the record
3 with emphasis in the first three paragraphs.

4 JUDGE MOSS: Read it, and read slowly for the
5 court reporter.

6 A. Starting with, "This is Michelle"?

7 Q. Yes.

8 A. "This is Michelle from Boots, Inc., d/b/a
9 Brooks A&A Moving. I received a letter from Carol
10 Washburn today with your e-mail address on it. Could I
11 get a copy of your original complaint? The reason I am
12 asking is because the issues that are being brought up
13 were resolved in our temporary licensing last year by
14 Leon. We drafted new bills and estimates last year
15 with the appropriate language and charges. It sounds
16 very funny to us that someone is complaining about old
17 bills and estimates that were changed over a year ago
18 and maybe used for ten customers, if that."

19 Q. Thank you. If you will just read the last
20 sentence, please.

21 A. "We would be happy to accommodate any further
22 changes needed. However, the ones mentioned were done
23 a year ago."

24 Q. Would you please turn to Exhibit No. 17?

25 A. (Witness complies.)

0070

1 Q. Please identify Exhibit No. 17.

2 A. This is the narrative of a consumer complaint
3 for a move performed by Brooks November 20th of 2004,
4 and consumer affairs section staff's correspondence
5 with the Company regarding this complaint.

6 Q. How are you familiar with this complaint
7 file?

8 A. During my audit, I examined all Commission
9 records relating to Brooks Moving.

10 Q. Is this a true and accurate copy of the
11 complaint file?

12 A. Yes, it is.

13 Q. Please refer to Page 9, and this is the April
14 correspondence between Michelle Brooks and consumer
15 affairs staff, Mike Meeks. Please read the two e-mails
16 at the bottom of the page from Mike Meeks and Michelle
17 Brooks respectively.

18 A. The April 25th, 9:38 a.m., from Mike Meeks to
19 Brooks: "Hi, Michelle. We worked this complaint some
20 time back. It has been brought to my attention that
21 the sales tax should not be added on the account, that
22 the rates for movers includes the tax. Please advise.
23 Thanks, Mike."

24 On April 25th, 2005, at 11:52 a.m., from
25 Brooks Moving to Mike Meeks: "Our bill of lading has

0071

1 been revised to exclude taxes. However, Department of
2 Revenue states we can itemize state taxes. We have
3 dropped this issue and revised our bill of lading per
4 your other department. Customer was credited her tax.
5 MB."

6 Q. Please turn the page and read the e-mail at
7 the bottom of Page 10.

8 A. From Mike Meeks to Brooks?

9 Q. That's correct.

10 A. April 26th, 1:20 p.m., Mike Meeks to Brooks:
11 "Hi, Michelle. I have to issue a violation, WAC
12 480-15-490(5), which states that all household goods
13 carriers must charge the rates and charges and comply
14 with the rules contained in the tariff unless the
15 Commission has approved in writing deviations from the
16 tariff. Sales tax isn't an approved charge in the
17 tariff. This complaint is closed, but I want you to
18 know that I have issued the viol. Let me know if you
19 dispute."

20 Q. Do you understand "viol" there to mean
21 "violation"?

22 A. That's correct.

23 Q. Please turn to Page 11 and read the first
24 paragraph in the Company's response to Mike Meeks.

25 A. "I do dispute this since the Department of

0072

1 Revenue allows companies to itemize their expenses, and
2 our rates when tax was charged was below the regulated
3 rate."

4 Q. Thank you. Then the e-mail from the Company
5 continues. It references Tax Facts, Department of
6 Revenue, 3/2003. Could you read those next two
7 paragraphs to yourself and tell me if they contain any
8 mention of sales tax?

9 A. (Witness complies.) This does not refer to
10 sales tax.

11 MR. TRI: I missed that reference. What were
12 you reading from?

13 MS. CAMERON-RULKOWSKI: The second and third
14 paragraph of the 4/26/05 e-mail from the Company to
15 Mike Meeks on Page 11.

16 MR. TRI: Thank you.

17 Q. (By Ms. Cameron-Rulkowski) Please turn to
18 Page 12 and read the first e-mail from Michelle Brooks
19 and then the final response from consumer affairs
20 staff. It's dated April 28, '05, and sent at 8:38
21 a.m..

22 A. "Hi, Michelle. Thanks for getting back to me
23 with your thoughts regarding the B&O sales tax issue
24 and the alleged violation. I'm having Staff take
25 another look at the issue and will be getting back to

0073

1 you as soon as I have more input. My intention is not
2 to make it hard on you. My job is to interpret and
3 apply the rules fairly. Mike Meeks".

4 Q. Please read his response. This is his final
5 response on this issue.

6 A. April 28th at 1:15 p.m.: "Hi, Michelle. I
7 have received a response back from the attorney general
8 section regarding the application of B&O or any other
9 tax to the rates. Quote, 'Taxes are a legitimate cost
10 of business, and public service companies are entitled
11 to recover them. However, the rates listed in Tariff
12 15(A) have those costs imbedded. In other words, the
13 Company is recovering the tax costs in the tariffed
14 rate. They should not charge extra amounts over their
15 rates to recover the tax as this would be double
16 recovery,' closed quote. I hope this information is
17 helpful to you. Mike Meeks."

18 Q. Thank you. Now, please refer back to
19 Exhibit 4. This the 70 bills of lading from June 2005.
20 Do these bills of lading reflect a sales tax charge for
21 moving services?

22 A. Yes, they do.

23 Q. Do all 70 of them reflect a sales tax charge?

24 A. 69 of the 70 June 2005 bills of lading show a
25 sales tax charge. Only one bill of lading, Bill 8348,

0074

1 bill of lading for Mr. Bob Trimble, does not show a tax
2 was charged on that bill.

3 Q. To your knowledge, has Brooks A&A Moving
4 stopped charging sales tax on their moving services?

5 A. Yes.

6 Q. When did the Company stop charging sales tax?

7 A. In August of 2005.

8 Q. What is the basis of this knowledge?

9 A. I examined the bills of lading provided to me
10 by the Company for all of its moves from June of 2004
11 through May of 2006. As of August, the bills of lading
12 no longer reflected a sales tax charge.

13 Q. Is that August of 2005?

14 A. Correct.

15 Q. If the Commission decides these violations
16 occurred, do you have a recommendation for Commission
17 action?

18 A. Yes. Staff would require that the Company
19 refund all the sales tax charged on moving services
20 since the Company obtained its authority in June of
21 2004.

22 Q. Do you have any idea what the total amount of
23 these sales tax charges is?

24 A. I have asked for and still not received bills
25 of lading for July of 2004 or all of the bills of

0075

1 lading for May of 2005, but for the remaining bills
2 that I looked at, the sales tax exceeds \$30,800.

3 Q. Please refer to the exhibit labeled as
4 Exhibit 19. Please identify Exhibit No. 19.

5 A. This is a summary of all the bills of lading
6 and the sales tax charged which I put together.

7 Q. And what's the date span of this chart?

8 A. This is June 2004 through August 1st of 2005.

9 Q. And excluding those two months for which you
10 don't have complete bills of lading?

11 A. That's correct.

12 Q. Is this a true and correct copy of the
13 documents that you authored?

14 A. Yes, it is.

15 Q. Do you have any further recommendations for
16 Commission action?

17 A. Commission staff would further recommend that
18 the Company's operations be suspended for a period of
19 up to 90 days.

20 Q. In the Complaint, the Commission also
21 requests cancellation. Is Staff requesting
22 cancellation at this time.

23 A. No, we are not. After reviewing the
24 evidence, Staff believes that suspension is a more
25 appropriate remedy.

0076

1 MS. CAMERON-RULKOWSKI: At this time, I would
2 like to move for the admission of Exhibits 10, 5, 6, 17
3 and 19.

4 MR. TRI: No objection.

5 JUDGE MOSS: They will be admitted as marked.

6 MS. CAMERON-RULKOWSKI: At this time, Your
7 Honor, I have no further questions for Ms. Hughes.

8 JUDGE MOSS: Let's get started at least on
9 cross-examination.

10

11

12

CROSS-EXAMINATION

13 BY MR. TRI:

14 Q. Ms. Hughes, do you have as part of your audit
15 report, which I believe is Exhibit 8, the report from
16 Mr. Macomber of his meetings with the Brooks?

17 A. Yes. I believe they are in the appendices.

18 MS. CAMERON-RULKOWSKI: May I interject?

19 JUDGE MOSS: If you can help us find it.

20 MS. CAMERON-RULKOWSKI: I do have those
21 documents in separate exhibits if that might be
22 helpful.

23 MR. TRI: That might be helpful, yes. It
24 does appear they were attached as Appendix B to
25 Exhibit 8.

0077

1 Q. (By Mr. Tri) First of all, can you tell me,
2 who is Leon Macomber?

3 A. Mr. Macomber is an investigator in our motor
4 carrier safety section.

5 Q. What is your understanding of why he met with
6 Mr. and Mrs. Brooks?

7 A. I don't know if I have an understanding of
8 why he met with the Brooks. I'm not sure, since I
9 don't supervise him, what his exact duties are.

10 Q. Have you spoken to him as part of your audit?

11 A. A couple of times, yes, on specific issues.

12 Q. What was the purpose of speaking to him with
13 respect to your audit of the Brooks's Company?

14 A. To get copies of the bills of lading that he
15 marked up when he had talked to the Company, and I
16 asked him for clarification on some issues in the
17 response to the Company's response to the report.

18 Q. Are you referring to the response from
19 Michelle Brooks?

20 A. My response to that. I asked for some
21 clarification from Investigator Macomber.

22 Q. In preparing your response to Michelle
23 Brooks's response to your audit report.

24 A. Correct.

25 MR. TRI: Counsel, did you also make that a

0078

1 copy of the exhibit, her response?

2 MS. CAMERON-RULKOWSKI: I believe I did.

3 JUDGE MOSS: Brooks's response is premarked
4 as 13, and Staff's response to Brooks's response is
5 premarked as 14.

6 MS. CAMERON-RULKOWSKI: That's correct. I
7 wasn't certain whether or not I was going to offer
8 these exhibits.

9 JUDGE MOSS: He can offer them.

10 MS. CAMERON-RULKOWSKI: You may need to
11 authenticate them.

12 JUDGE MOSS: I think we can stipulate they
13 are authentic, can't we?

14 MR. TRI: Yes. I would just as soon cut
15 through it. I'd just as soon have a copy of each of
16 these exhibits. I'll move to admit them each now for
17 purposes of this cross-exam as well as the documents
18 prepared by Mr. Macomber would be helpful, and I don't
19 have those numbers.

20 JUDGE MOSS: Is that okay with you?

21 MS. CAMERON-RULKOWSKI: I would stipulate to
22 all of those documents.

23 JUDGE MOSS: So that would be 13 and 14 we
24 are going to mark as exhibits. And Mr. Macomber's
25 material?

0079

1 MS. CAMERON-RULKOWSKI: That's on a separate
2 list.

3 JUDGE MOSS: It's already in the record as
4 part of Exhibit 8.

5 Q. (By Mr. Tri) Isn't it your understanding
6 that the Brooks asked for technical assistance on how
7 to properly operate their Company under the use of the
8 UTC rules?

9 A. I don't know that.

10 Q. Are you unaware that Ms. Brooks requested
11 technical assistance from your agency?

12 A. I'm not aware of that.

13 JUDGE MOSS: I think these questions are
14 really for Mr. Macomber, who is going to appear later.

15 Q. Isn't it your understanding that Mr. Macomber
16 did, in fact, meet more than once with Ms. Brooks and
17 other Company representatives to provide technical
18 assistance?

19 A. Yes.

20 Q. And he provided reports to the Agency with
21 respect to his meetings with the Brooks?

22 A. Correct.

23 Q. And wasn't the initial process with the
24 Brooks initially applied for permit they had to obtain
25 or sought a temporary permit before they got a

0080

1 permanent license?

2 A. The rules require that, correct.

3 Q. So when Mr. Macomber first met with them,
4 wasn't that with respect to technical assistance in
5 reviewing their overall operations and to make a
6 recommendation back to the Agency as to whether the
7 Brooks should or shouldn't be granted a temporary
8 permit?

9 A. Correct.

10 Q. In Appendix B to Exhibit 8 are documentation
11 pertaining to two separate meetings that Mr. Macomber
12 held with the Brooks; correct?

13 A. Correct.

14 Q. And he reported back with it looks like a
15 routing slip and related documentation first dated
16 August 9 of 2004 related to his first initial meeting
17 with the Brooks; is that correct?

18 A. That's an e-mail, yes.

19 Q. The routing slip?

20 A. I'm sorry. Yes, there is a routing slip.

21 Q. Then in addition to the routing slip, he had
22 a household goods technical assistance and records
23 review checklist?

24 A. Correct.

25 Q. It appears from his records review checklist

0081

1 that he had checked records from June 21 of '04 through
2 August 5 of '04 with a total number of bills of 100;
3 correct?

4 A. That's what the checklist says, yes.

5 Q. In this checklist in an initial report back,
6 doesn't it indicate that he had reviewed the Company's
7 bills of lading?

8 A. Yes.

9 Q. And what did he say in his checklist with
10 respect to whether the carrier was using a uniform
11 household goods bill of lading that meets the
12 requirements of Tariff 15(A)?

13 MS. CAMERON-RULKOWSKI: Your Honor, I'm going
14 to object. I think these questions would be better
15 asked of Mr. Macomber. Mr. Macomber has specific
16 things to say about these record reviews and technical
17 assistance visits.

18 JUDGE MOSS: Where are you going with this,
19 Mr. Tri?

20 MR. TRI: I think this information must have
21 been known to this person who has issued violations and
22 made recommendations based on them.

23 JUDGE MOSS: As I understand it, this
24 document that we are looking at is an appendix to her
25 report.

0082

1 MR. TRI: Yes.

2 JUDGE MOSS: So I think we can safely assume
3 that she's familiar with the materials attached to her
4 report. Any concern or question about that?

5 MS. CAMERON-RULKOWSKI: I believe she's
6 familiar with it, that's true.

7 MR. TRI: I should be allowed to
8 cross-examine her on it.

9 JUDGE MOSS: If you have specific questions
10 about this and are concerned about particular aspects
11 that tie back to the report where you think there is an
12 inconsistency or something, I can see the value of
13 that. Is that where you are going?

14 MR. TRI: Yes. I am going there.

15 JUDGE MOSS: Show me quickly.

16 Q. (By Mr. Tri) Let's put it this way: After
17 his initial report of August of '04, he stated on his
18 checklist that the Company was not using a uniform bill
19 of lading form; isn't that correct?

20 A. No. What it says is that he was not using a
21 bill of lading that meets the requirements of the
22 tariff.

23 Q. That's what he initially indicated; correct?

24 A. Yes.

25 Q. But despite that, he did indicate that he

0083

1 provided technical assistance and recommended that
2 their temporary application be approved, did he not?

3 A. Yes.

4 Q. And he recommended that there be a follow-up
5 meeting with the Brooks within a short period of time
6 to see how they were doing within a month or two;
7 correct?

8 JUDGE MOSS: Page 91. It would be helpful if
9 you would give her references to page numbers.

10 THE WITNESS: I don't believe the August
11 routing slip indicates that he was recommending the
12 issuance of a permit. It states that he will continue
13 to contact the carrier as required.

14 Q. (By Mr. Tri) He also indicated there would be
15 a recheck within one month, what he's recommending;
16 correct?

17 A. Correct.

18 Q. He did not recommend that the temporary
19 permit application be denied, did he?

20 A. No.

21 Q. He was aware when he first met them that the
22 Company did not yet have cargo insurance, was he not?

23 A. I wouldn't know.

24 Q. It says so right in his report, didn't he?

25 JUDGE MOSS: I'm having a hard time seeing

0084

1 how these questions are appropriate for Ms. Hughes.
2 You have not shown me that there is any conflict
3 between the contents of this and something that's
4 stated in her report. That's the only reason I can
5 think of that it would be relevant to go through
6 questions about Mr. Macomber's report with her.

7 Mr. Macomber is here. You can ask him what
8 he found and what he didn't find. Why ask her? She
9 doesn't know. To that extent, the document speaks for
10 itself. Really, these questions are being misdirected.

11 MR. TRI: Your Honor, I would ask that you
12 grant me a little bit of leeway at this point.

13 JUDGE MOSS: I offered you some leeway and I
14 asked you to please tie it in somehow to Ms. Hughes'
15 testimony.

16 MR. TRI: Could I follow-up with a couple
17 more questions?

18 JUDGE MOSS: All right. I'll give you --

19 Q. (By Mr. Tri) Are you telling me that you were
20 unaware the Mr. Macomber did not report to the Agency
21 that the Brooks did not have cargo insurance when he
22 met with them both in August and again in October of
23 '04?

24 A. I believe your question was when was he aware
25 of their not having any cargo insurance, and I wouldn't

0085

1 have an answer to that.

2 Q. My question now is when you prepared your
3 audit report, were you unaware that Mr. Macomber knew
4 that the Brooks did not have cargo insurance when he
5 met with them both times in October and August of '04?

6 A. Was I unaware that he didn't know --

7 Q. No; that he absolutely knew they didn't have
8 cargo insurance both times in August and October. Were
9 you unaware of that when you did your audit report?

10 A. I believe when I read his checklist and
11 summary, I believe that he became aware when he audited
12 the Company in August that they did not have insurance.

13 Q. And again in October as well.

14 A. Yes.

15 Q. Both times though, he recommended that their
16 temporary application be approved; isn't that correct?

17 A. The temporary is not -- he doesn't do that
18 until he has finished all of his compliance visits.

19 Q. Are you aware that he reviewed their bill of
20 lading again in October and found it to be in
21 compliance?

22 A. That is what his checklist dated 10/14 of
23 2004 states, yes.

24 Q. Based on his reports back to the Agency
25 following his meetings and assessments of the Company,

0086

1 the Company was, in fact, issued a temporary permit,
2 were they not?

3 A. Correct.

4 Q. And the Agency knew when it issued the
5 temporary permit that the Company did not have cargo
6 insurance; isn't that correct?

7 A. I don't know what the Commission knew when
8 the Order was written. I don't know.

9 Q. Once they were issued the temporary permit,
10 they were entitled to begin operation, were they not?

11 A. Correct.

12 Q. It's my understanding your issuance of
13 violations though is that the Company should not have
14 operated without cargo insurance.

15 A. Correct.

16 Q. Even though they were granted a permit.

17 A. Correct.

18 Q. And even though their investigator knew they
19 didn't have cargo insurance when you met with them both
20 times.

21 A. Correct.

22 Q. Did Mr. Macomber tell you that he informed
23 the Brooks that they could not operate without cargo
24 insurance?

25 A. I believe he did.

0087

1 Q. Did you discuss with Mr. Macomber why he
2 believed the Brooks's bill of lading form was in
3 compliance with the tariff, which is inconsistent with
4 your allegation that it is not in compliance with the
5 tariff?

6 A. I don't believe I did.

7 Q. On Exhibit 12, there is attached to it what
8 appears to be a sample bill of lading. Can I direct
9 your attention to that, please?

10 A. Yes.

11 Q. As I understand your testimony, this is a
12 sample bill of lading that does comply with Tariff
13 15(A).

14 A. I believe it does.

15 Q. As I understand, one of your complaints about
16 the Brooks's bill of lading is that it doesn't include
17 the name, address, and telephone number of the
18 customer; is that correct?

19 A. Correct.

20 Q. Where on your sample is there a spot for the
21 name, address, and telephone number for the customer?

22 A. There isn't one.

23 Q. So the sample is not in compliance with the
24 tariff with respect to that aspect?

25 A. Correct.

0088

1 Q. Another complaint you have with the Brooks
2 bill of lading format is that it doesn't have the name,
3 address, and telephone number of the consignee.

4 A. Correct.

5 Q. Where on the sample bill of lading is there a
6 spot for the name, address, and telephone number of the
7 consignee?

8 A. Not all of them are on there.

9 Q. So the sample is deficient in that regard as
10 well; isn't that correct?

11 A. Correct.

12 Q. Your investigation was commenced by, as I
13 understand it, by a complaint from one customer?

14 A. Correct.

15 Q. And what was the nature of the customer's
16 complaint?

17 A. I would have to read the complaint to
18 understand that.

19 Q. The customer did not complain about the fact
20 that she was being charged sales tax, was she?

21 A. I don't know.

22 Q. She wasn't complaining about the form of the
23 bill of lading being used by the Company, was she?

24 A. I don't know.

25 Q. How many other customer complaints did the

0089

1 Agency receive with respect to the Brooks's operation?

2 A. I haven't checked that section's records for
3 other complaints.

4 Q. Does every company that receives a complaint
5 from a customer get audited?

6 A. No.

7 MR. TRI: That's all the questions I have for
8 now, Your Honor.

9 JUDGE MOSS: Thank you. You may step down.

10 MS. CAMERON-RULKOWSKI: Your Honor, may I ask
11 a question on redirect?

12 JUDGE MOSS: I apologize.

13

14

15 REDIRECT EXAMINATION

16 BY MS. CAMERON-RULKOWSKI:

17 Q. Now, you were just asked about the sample
18 bill of lading in Tariff Item 95. In order for a
19 Company's bill of lading to be in compliance, they have
20 to comply with that sample bill of lading and also with
21 the rules and other tariff items; is that correct?

22 A. Correct. Item 95 also has a list of items
23 throughout the item that are required on the bill of
24 lading, in addition to the sample. The sample is a
25 sample of a bill of lading.

0090

1 Q. So a company must be careful to follow all of
2 the rules in addition to including the information on
3 the sample bill of lading; is that correct?

4 A. Correct. The rules in the Tariff Item 95 and
5 the WAC rules that govern what needs to be on the bill
6 of lading.

7 Q. When the Commission grants temporary
8 authority to a household goods moving company, has the
9 Commission performed a thorough audit at that point of
10 the company's records and business practices?

11 A. No, not to my knowledge.

12 Q. Has the Commission performed any type of
13 audit of the business practices and the records at the
14 time of the grant of temporary authority?

15 A. No.

16 MS. CAMERON-RULKOWSKI: Thank you. No
17 further questions.

18 JUDGE MOSS: Are we finished with this
19 witness for now?

20 MR. TRI: Yes.

21 JUDGE MOSS: Now you may step down. We will
22 take lunch recess now.

23 (Lunch recess taken at 11:50 a.m.)

24

25

0091

1

AFTERNOON SESSION

2

(12:48 p.m. - 3:30 p.m.)

3

4 Whereupon,

5

LEON MACOMBER,

6

having been first duly sworn, was called as a witness

7

herein and was examined and testified as follows:

8

9

DIRECT EXAMINATION

10 BY MS. CAMERON-RULKOWSKI:

11

JUDGE MOSS: Before you get started, you've

12

handed me another exhibit list, and are these all

13

Mr. Macomber's exhibits?

14

MS. CAMERON-RULKOWSKI: That's correct.

15

Q. Could you please state and spell your first

16

and name?

17

A. My name is Leon Macomber, L-e-o-n,

18

M-a-c-o-m-b-e-r.

19

Q. Who is your employer?

20

A. Washington Utilities and Transportation

21

Commission.

22

Q. What is your position with the Commission?

23

A. Special investigator with the motor carrier

24

safety section.

25

Q. About how long have you been employed at the

0092

1 Commission?

2 A. Over 30 years.

3 Q. Would you please describe your duties as they
4 relate to this case?

5 A. Actually, I was assigned to do technical
6 educational assistance, both economic and safety
7 recordkeeping assistance to Brooks A&A Moving shortly
8 after they received their temporary, which was June
9 21st of 2004.

10 I basically spent several occasions meeting
11 with both Mr. Brooks and Mrs. Brooks at their home in
12 Lynnwood going over economic laws, rules, and operating
13 regulations with regards to economic items such as
14 bills of lading, estimates, rates and charges, claims.
15 We also went over safety issues in regards to driver's
16 qualifications files, hours of service requirements,
17 maintenance records on equipment, and insurance
18 requirements.

19 Q. Now I would like to talk a little bit more
20 about the specific instances of review and technical
21 assistance. When was the first incident of technical
22 assistance that you provided to Brooks?

23 A. It was on August the 5th, 2004.

24 Q. To your knowledge, did Brooks A&A Moving have
25 cargo insurance on August 5th, 2004?

0093

1 A. No, they did not.

2 Q. What is the basis of that conclusion?

3 A. While I was doing an economics records
4 checklist on their economic operation, one of the items
5 on there under WAC 480-14-550, they were required to
6 have \$20,000 worth of cargo insurance, and at this
7 time, there was no cargo insurance binder or policy on
8 file.

9 Q. I would like you to refer to the checklist
10 now, which is Exhibit No. 2.

11 JUDGE MOSS: We are going to have to renumber
12 these. We had gone through 19 with the earlier list,
13 even though you didn't offer them all, so I'm just
14 going to start Mr. Macomber's with 21, so it will be 21
15 through 27 for reference.

16 MS. CAMERON-RULKOWSKI: Okay.

17 JUDGE MOSS: So we are looking at 22?

18 MS. CAMERON-RULKOWSKI: Correct.

19 Q. (By Ms. Cameron-Rulkowski) Did you discuss
20 the cargo insurance requirement with the Company at
21 that time?

22 A. Yes, we did. Both Michelle and Mr. Brooks
23 were told about the cargo insurance and the requirement
24 they did have to have cargo insurance in order to have
25 a household goods permit with the commission.

0094

1 Q. I would like you to refer to the last page of
2 the checklist, and is that your signature there?

3 A. Yes, it is.

4 Q. Do you recall who signed for the Company?

5 A. Yes. Michelle Brooks signed the "received
6 by" section for the Company.

7 Q. Did you provide the Company with a copy of
8 this checklist?

9 A. Yes, I did.

10 Q. Now, you made a follow-up technical
11 assistance visit to A&A Moving. When was that?

12 A. The follow-up for economic was done on
13 October the 14th, 2004.

14 Q. To your knowledge, did Brooks A&A Moving have
15 cargo insurance on October 14, 2004?

16 A. No, they did not.

17 Q. What is the basis of that?

18 A. The basis was my economic records check that
19 was done at that time under the same WAC 480-14-550.
20 There was no cargo insurance on file at that time.
21 They informed me that their insurance broker was still
22 shopping for the insurance, cargo insurance.

23 Q. Could you refer now to the second checklist,
24 which is Exhibit No. 25, and on the last page of the
25 October checklist, is that your signature?

0095

1 A. Yes, it is.

2 Q. And on the "received by" line below where the
3 text reads, " I as a representative of this Company
4 acknowledge receipt of this records review form and
5 understand the findings stated therein," do you recall
6 who signed for the Company?

7 A. Yes. That was Michelle Brooks's signature.

8 Q. Did you provide the Company with a copy of
9 this checklist?

10 A. Yes, I did.

11 Q. Now I would like you to refer, please, to
12 Exhibit No. 27.

13 MS. CAMERON-RULKOWSKI: We should all have
14 copies of these exhibits. I didn't pass down packets.

15 MR. TRI: I didn't get a set. I'm sorry.

16 MS. CAMERON-RULKOWSKI: When I had passed
17 down the checklist copies, I passed down the entire
18 packets. They are much thinner.

19 JUDGE MOSS: It should look like this on the
20 front page. (Indicating.)

21 MR. TRI: I don't think we got a set.

22 MS. CAMERON-RULKOWSKI: You should have two
23 so you could both follow along.

24 MR. TRI: All right. 21 through 27; right?

25 JUDGE MOSS: That's correct, and we are

0096

1 looking at 27.

2 Q. (By Ms. Cameron-Rulkowski) Please identify
3 Exhibit No. 27.

4 A. Exhibit No. 27 is the insurance binder
5 coverage for Boots, Incorporated, d/b/a Brooks A&A
6 Moving, and it shows the effective date of 11/9/2004
7 with an expiration date of 12/9/2004, so it's basically
8 a 30-day binder of cargo insurance.

9 Q. How did you obtain this document?

10 A. This document was faxed to me on November the
11 9th.

12 Q. Who was the sender of the fax?

13 A. It was sent to me via Chadwick Insurance
14 Company at Michelle Brooks. She's the one that
15 notified them to send me the binder.

16 Q. Is this a true and accurate copy of the
17 document you received?

18 A. Yes, it is.

19 Q. And what is the coverage amount?

20 A. The coverage amount was \$25,000.

21 MS. CAMERON-RULKOWSKI: At this time, I would
22 like to move for the admission of Exhibit No. 27.

23 MR. TRI: I thought they were already
24 admitted. Otherwise, I have no objection.

25 JUDGE MOSS: We'll just admit it to save

0097

1 time.

2 MS. CAMERON-RULKOWSKI: So far as I know, we
3 have the two checklists admitted.

4 JUDGE MOSS: Actually, we haven't had them
5 offered. 22 and 25?

6 MS. CAMERON-RULKOWSKI: We stipulated, I
7 believe, to 22 and 25, and now I've just had Exhibit
8 No. 27 admitted, but that's it from this list to my
9 knowledge.

10 MR. TRI: I'm sorry. I thought that earlier
11 when we talked about this being the date of insurance,
12 November 9, that it had been admitted.

13 MS. CAMERON-RULKOWSKI: That was a different
14 document. That was the document that Ms. Hughes had
15 obtained. The point of this document is that it shows
16 that the coverage is an inadequate amount.

17 JUDGE MOSS: Is an inadequate amount.

18 MS. CAMERON-RULKOWSKI: That's correct.

19 Q. (By Ms. Cameron-Rulkowski) When you go out
20 to perform a records review and technical assistance
21 visit, about how many items do you review during that
22 process?

23 A. We basically take a sample when we are doing
24 a technical assist, but when I do an economic technical
25 assist, we basically go through a specific checklist,

0098

1 such as our Exhibit 22 there is a really good example
2 of one of our checklist forms, and I basically go
3 through each particular rule and the requirements for
4 that particular rule and the form necessary to provide
5 that information.

6 So this is kind of a nice way of not
7 forgetting what you are dealing with at the particular
8 time you are doing the checklist. It's hard to
9 remember every single rule necessary to keep a
10 household goods operation going, so we use the
11 checklist to go over the various areas, such as bills
12 of lading requirements, estimate requirements, claims
13 forms requirements, insurance requirements. It's a
14 very nice tool that we use when we do a technical
15 assist.

16 Q. I would like you to refer to Exhibit No. 23.

17 MS. CAMERON-RULKOWSKI: Your Honor, I may
18 need your assistance on this one in that you have the
19 original that is highlighted, and the yellow
20 highlighting does not show up on the copies, and I'm
21 happy to pass that around.

22 JUDGE MOSS: That's fine. Just be sure I get
23 the copy back.

24 Q. (By Ms. Cameron-Rulkowski) Could you please
25 identify Exhibit No. 22?

0099

1 A. This is a Brooks A&A Moving bill of lading
2 form that Michelle Brooks handed me at the time of the
3 first technical assist, which was on August 5th, 2004.

4 Q. Is this a true and accurate copy of that
5 document?

6 A. Yes, it is.

7 Q. Now, the document is highlighted. Could you
8 explain the highlighting?

9 A. Yeah. When Michelle and I sat down to
10 discuss the bill of lading and the format that she was
11 using, she decided not to use our bill of lading format
12 in our economic manual and to develop her own, and so
13 there was a few things that she put on the form here
14 that I made issue with and told her she needed to
15 remove.

16 The first one that's highlighted here is the
17 four percent processing fee on credit cards. The
18 second one was in the estimate section on the bill of
19 lading. The third one down in the estimate section
20 where it says, "I understand the shipment is moving
21 under a nonbinding estimate," and then there is a
22 little note after it which says: "If the charges shown
23 on this bill exceed the charges on the nonbinding
24 estimate given to me, the carrier must release the
25 shipment upon payment of no more than 110 percent of

0100

1 the estimate plus any supplemental estimates."

2 This particular note was cut short from the
3 note that's required on the bill of lading form. There
4 is some additional information that needs to be on
5 there with regards to giving the customary 30-day time
6 after payment of charges. They have an additional 30
7 days to finish payment, and also that they can't be
8 charged over 125 percent of the written estimate.
9 That's left off, so I let her know that she needed to
10 extend that to include those items.

11 There is also a section where it says "tax"
12 over here on the lower right-hand corner of the bill of
13 lading that says "tax." I informed her again that she
14 certainly could not charge sales tax; that the only
15 time she would be allowed to charge sales tax is on
16 retail sales, such as packing material that they would
17 sell to a customer on a retail invoice, and also that
18 they should not be putting a tip on the bill of lading.
19 That's not a valid charge according to the Tariff
20 15(A).

21 MS. CAMERON-RULKOWSKI: I would like to move
22 for admission of Exhibit No. 23.

23 MR. TRI: No objection.

24 JUDGE MOSS: It will be admitted as marked.

25 Q. (By Ms. Cameron-Rulkowski) Turning more

0101

1 specifically now to the sales tax charges, when was the
2 first time that you discussed the sales tax issue with
3 the Company?

4 A. It was on my first visit on August the 5th,
5 2004.

6 Q. Let's go ahead and take a look at that
7 checklist, and that is Exhibit No. 22. Did you
8 identify a sales tax issue on this checklist? Let's
9 speed this up a little bit. Look at Page 2 of the
10 checklist.

11 A. I believe you are looking at the second
12 checklist.

13 Q. I am. Did you make any notations concerning
14 sales tax on the first checklist?

15 A. I did not.

16 Q. Did you discuss sales tax with the Company?

17 A. Yes, I did.

18 Q. That is shown on Exhibit No. 23, the bill of
19 lading that you discussed with the markups; is that
20 correct?

21 A. That's correct.

22 Q. Did you discuss the sales tax issue on the
23 second technical assistance visit and records check?

24 A. Yes, I did, on October the 14th, 2004.

25 Q. Please turn to Exhibit No. 25, the second

0102

1 checklist, and turn to Page 2, please. You have a
2 notation there that says "sales tax." Can you explain
3 what that notation means to you?

4 A. That sales tax notation is basically just a
5 working notation that I put on there indicating that
6 indeed they were still charging sales tax at this time.

7 Q. And you discussed it with them at that time?

8 A. Yes. I rediscussed it with them at that
9 time.

10 MS. CAMERON-RULKOWSKI: At this time, Your
11 Honor, I have no further questions for Mr. Macomber.

12 JUDGE MOSS: Any cross-examination, Mr. Tri?
13
14

15 CROSS-EXAMINATION

16 BY MR. TRI:

17 Q. When you first met with the Brooks, was it
18 your understanding that they had fairly recently just
19 started this moving business on their own?

20 A. Absolutely. Their permit was issued on June
21 the 21st of 2004, and the first visit was August 5th,
22 so they had probably been in business a month and a
23 half.

24 Q. And when you met with them, you were aware
25 that they were operating a couple of trucks and doing

0103

1 some jobs. In fact, I think you reviewed, according to
2 your note, 100 bills of lading that had already been
3 performed.

4 A. Correct.

5 Q. Did it appear to you that Mr. and Mrs. Brooks
6 were interested or sincere in their efforts to operate
7 properly according to the regulations of the UTC?

8 A. Yes. Initially, I do believe they were
9 showing a good effort.

10 Q. Did they express to you some frustration in
11 trying to understand the myriad of the regulations and
12 whatnot that were required in order to be in full
13 compliance?

14 A. I don't really remember too many
15 frustrations. Most of the time that I spent there I
16 spent with Michelle. She was basically the office
17 manager at the time and did almost all the
18 recordkeeping, and she was, I thought, pretty handy
19 with the computer and pretty good with making up forms
20 on her own, and she had had some previous experience
21 doing a lot of formats and that kind of thing with the
22 previous job she'd held, and she seemed rather
23 efficient, I thought.

24 The only real question she had or problem
25 that was ongoing and seemed to be a bit of frustration

0104

1 was the sales tax issue. She apparently had been
2 talking to her accountant, and apparently, he didn't
3 agree with what I was telling her that she couldn't
4 charge sales tax. So there was some frustration there
5 between her accountant and certainly what we were
6 telling her.

7 Q. Didn't she also inform you that another state
8 agency had informed her that it was okay to charge
9 sales tax?

10 A. She did mention that she had talked to the
11 Department of Revenue, but I don't really remember
12 everything she discussed about that.

13 Q. But one of the other things I wanted to get
14 at is didn't she actually have you meet with some of
15 the Company's drivers and employees to kind of talk
16 about problems they were having in getting them to
17 properly fill out the forms and things of that nature?

18 A. No, I don't remember doing that. I know that
19 she had meetings, certainly, with them to do that. In
20 fact, I remember her saying she was going to highlight
21 some of the sections on the bill of lading that she
22 wanted her drivers to make sure they got signatures on,
23 but as far as me having a meeting with the drivers, I
24 don't remember that.

25 Q. You don't remember that?

0105

1 A. I don't, no.

2 Q. At any rate, when you first met with them in
3 August of 2004, they had been operating since June
4 21st, and you knew they didn't have cargo insurance; is
5 that correct?

6 A. Yes.

7 Q. And you reference that as "none yet";
8 correct?

9 A. Absolutely.

10 Q. Didn't Mrs. Brooks relay to you the fact that
11 she was having trouble in actually finding a Company
12 that would actually offer it to their small operation?

13 A. Yes, she did.

14 Q. If I remember right, one of the exhibits here
15 later is dated October as an exhibit you prepared and
16 sent to her was a list of names suggesting she contact
17 to get the insurance; correct?

18 A. That's correct. Like you said, she did tell
19 me she was having difficulty, and it was my job to be
20 there to assist her, so I contacted our licensing
21 section at that point in time and was able to come up
22 with, I think, 12 insurance companies that she could
23 possibly call and make some inquiries as to cargo
24 insurance.

25 I did tell her at that time that I was not

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1 allowed to turn her in a particular direction. In
2 other words, I couldn't tell her what companies to
3 call. She had to make that choice herself. We are not
4 allowed to do that, but she was grateful at that time
5 that I could give her some assistance with the
6 insurance companies that could possibly give her
7 coverage.

8 Q. Did you tell her in August that they had to
9 stop operating until she got cargo insurance?

10 A. I did not tell her that. I did tell her that
11 she was required to have cargo insurance initially.
12 The actual application for permit authority requires
13 cargo insurance and liability coverage before they
14 start business or even deal with us. They are supposed
15 to have that stuff already on file.

16 Q. I know that, but you knew in August that they
17 were operating without it, and you were there to
18 provide technical assistance. Did the issue come up
19 where you just said, Look, you've got to stop until you
20 get it?

21 A. No. I was there to assist here. I wasn't
22 there to tell her to stop. I wasn't there in an
23 enforcement mode. I was there in a technical
24 assistance mode. I wasn't there to shut her down. I
25 basically reported what I found, and that was my job

0107

1 during this technical assistance was to report all the
2 pluses and minuses with regards to their operation so
3 that they could make corrections.

4 Q. And you did report back, obviously, with your
5 checklist that they didn't yet have cargo insurance,
6 and I think you also reported back that their bill of
7 lading wasn't in compliance with the tariff.

8 Even though you say you had a discussion with
9 Mrs. Brooks, your first checklist did not mention any
10 problems with charging anything not authorized by the
11 tariff, such as a credit card fee or sales tax.

12 A. It said that they didn't have all the
13 information on the bill of lading required. I did mark
14 that on the checklist.

15 Q. I understand that.

16 A. And that's basically what that was all about.
17 We had quite a large number of things we discussed that
18 day, so I didn't elaborate all that on the checklist.
19 That checklist is a working document mostly for me so I
20 know what to go back and talk to her about.

21 Q. Is it fair to say that it appeared to you
22 that they were doing fairly well in complying with most
23 of the things needed to comply with for a company just
24 getting started?

25 A. In most areas, I felt they were doing a

0108

1 fairly good job, especially in the safety areas. Half
2 of what I'm there to do is also safety recordkeeping
3 requirements with regards to setting up driver files,
4 maintenance records on equipment, and they were doing
5 an excellent job on the safety end at the time.

6 Q. It's also fair to say that Mrs. Brooks
7 disagreed with what you were telling her about whether
8 she could collect on sales tax; correct?

9 A. That's correct.

10 Q. Did she also express disagreement about
11 charging the credit card fee?

12 A. I don't remember her disagreeing with me on
13 that one.

14 Q. I saw somewhere when you reported back
15 something about submitting the assignment foreclosure.
16 What did that mean?

17 A. That is basically a statement we just put on
18 the bottom of all of our assignments stating that we
19 finished that particular assignment at that time.

20 Each one of my visits was monitored with an
21 assignment number, and that just closed that particular
22 assignment. It didn't close the six-month provisional
23 period. I was assigned to them for the first six
24 months of their operation, and then at the end of that
25 six months, I would probably at that time, if

0109

1 everything was up to speed, make some kind of
2 recommendation as to whether I felt they could probably
3 start on their permanent process, getting their
4 permanent authority, or whether they should be denied.

5 Q. And you did recommend going back in about a
6 month to recheck on how they were doing with respect to
7 that six-month overall process and to make a
8 recommendation to give or not give a permanent license;
9 correct?

10 A. Right. Initially after that first technical
11 assist on 8/5/2004, I went about a month after that,
12 and we did a safety compliance review of all the safety
13 records, and on October 14th of 2004, I went back for
14 the recheck on the economic side, and at that
15 particular point in time, we still had a few issues,
16 the sales tax and a few bills of lading issues.

17 Q. Let's take a look, please, at your checklist
18 from the October visit.

19 MR. TRI: I think that's 25, isn't it?

20 JUDGE MOSS: That's right.

21 Q. (By Mr. Tri) On your checklist on Page 2,
22 under the heading "bill of lading," it says, "Bill of
23 lading is the carrier using a uniform household goods
24 bill of lading that meets the requirement of Tariff
25 15(A)," and you checked off "yes", did you not?

0110

1 A. Yes, I did.

2 Q. Same thing below where it says, "Does each
3 bill of lading contain all the required information,"
4 and you checked off "yes" as well for that; correct?

5 A. Uh-huh, yes.

6 Q. As an outsider reading it, it gives the
7 impression that she's made the changes on the bill of
8 lading that previously was deficient, at least
9 sufficient for you to mark off and report back to the
10 Agency that the bill of lading they were using was at
11 that time adequate and met the requirements of the
12 tariff; correct?

13 A. Yes.

14 Q. The question had been were they charging for
15 any services not authorized, and the time rates, that's
16 when you marked "yes" and then referenced the sales
17 tax; correct?

18 A. Yes.

19 Q. It is true at this time that they still, if
20 you look at Page 1, did not have cargo insurance.

21 A. Correct.

22 Q. And you marked that down and still wrote down
23 "attempting to purchase," and I think after this was
24 when you went back and provided that list of the 12
25 companies that they might contact.

0111

1 So you knew then that they were still having
2 trouble, at least according to Mrs. Brooks, getting
3 cargo insurance?

4 A. Correct. The very next day I sent her that
5 list of insurance companies.

6 Q. Again, after this meeting, did you at this
7 time tell Mrs. Brooks, Well, look, now it's been since
8 like August and you don't have cargo insurance. You've
9 got to stop until you get it.

10 A. I did not tell her that, no.

11 Q. In fact, didn't your recommendation to the
12 Agency as contained in Exhibit 24, Page 2, didn't you
13 state that on Page 1 that, down towards the bottom,
14 third line from the bottom, "carrier is now using the
15 appropriate house goods bill of lading." There is a
16 typo there.

17 A. Yes.

18 Q. You did say that?

19 A. Yes.

20 Q. And the next line said that the bills of
21 lading do contain the required information; correct?

22 A. Correct.

23 Q. And then on the next page, you say on the
24 second-to-the-last line that as soon as you receive
25 confirmation of cargo insurance coverage from

0112

1 Mrs. Brooks, you would be recommending issuance of
2 their permanent authority; correct?

3 A. Correct.

4 Q. Did you tell that information to Mrs. Brooks,
5 that once they got proof of cargo insurance that you
6 would be recommending that their permanent application
7 be granted?

8 A. Yes, I did.

9 MR. TRI: That's all the questions I have.

10 JUDGE MOSS: I have a follow-up question,
11 Mr. Macomber. On the checklist -- it looked like you
12 looked at 84 in that second -- do you retain those?

13 THE WITNESS: No.

14 JUDGE MOSS: You don't have an example of any
15 of those?

16 THE WITNESS: No.

17 MS. CAMERON-RULKOWSKI: Your Honor, if I may?
18 I believe that we have copies of those currently.
19 Staff had requested to you all of the bills of lading
20 since the Company began its operating authority, and I
21 believe we have those. They are being copied as we
22 speak. We could quite possibly get those.

23 JUDGE MOSS: I would like to see at least a
24 sample. I would like to see the bill of lading that
25 was being used at the time of this inspection. So give

0113

1 me a sample, maybe half a dozen of them. I don't need
2 all of them. The bills of lading do not seem to be
3 controversial in terms of their exhibits, so I'll just
4 reserve a number for that. Is that agreeable to
5 everyone? I will make that Exhibit 28. That's all I
6 have. Any redirect?

7 MS. CAMERON-RULKOWSKI: None, Your Honor.

8 JUDGE MOSS: All right. Then we are ready
9 for you to put on your direct case, Mr. Tri, if you are
10 ready.

11 MR. TRI: I will call Michelle Brooks.

12 JUDGE MOSS: Ms. Brooks, will you join us at
13 the table?

14

15 Whereupon,

16

MICHELLE BROOKS,
17 having been first duly sworn, was called as a witness
18 herein and was examined and testified as follows:

19

20

DIRECT EXAMINATION

21 BY MR. TRI:

22 MR. TRI: I had asked for Mr. Macomber to be
23 here. He can be excused as far as I'm concerned.

24

25

JUDGE MOSS: You are excused, Mr. Macomber.
We appreciate your testimony.

0114

1 Q. (By Mr. Tri) Would you state your name,
2 please?

3 A. Michelle Brooks, B-r-o-o-k-s.

4 Q. You are the wife of Hong or Richard Brooks?

5 A. I am.

6 Q. And you are one of the persons involved in
7 the operation of Brooks A&A Moving during the time that
8 the alleged violations occurred?

9 A. Yes.

10 Q. Were you involved in the formation of this
11 company?

12 A. Yes, I was.

13 Q. Tell us what you did in the formation.

14 A. I had met with Mr. Macomber. I had designed
15 the forms for bills of lading, our estimates. We
16 originally had -- before he come out, we had different
17 invoices, we called them. We weren't quite sure of the
18 rules at that time, and we had a technical assistance
19 meeting, and we come to the conclusion with him that
20 these forms were okay, that we created the forms. I
21 set up our bookkeeping, all of our recordkeeping,
22 basically the whole operation of the moving company.

23 Q. Even before meeting with Mr. Macomber, didn't
24 you have a significant involvement in forming the
25 business in and of itself when you first formed the

0115

1 business?

2 A. Yes. The funding came from my retirement
3 system or my cash from my retirement from everything
4 from purchasing the trucks to hiring the drivers to the
5 studying of the rules for which this was not my
6 original career. It was my husband's, so there was
7 quite a learning curve for me, and everything we had to
8 set up from bookkeeping to the bank accounts to the
9 movers to accounting to everything, every aspect of the
10 Company.

11 Q. When did you begin forming the Company?

12 A. August of 2002 we started working on getting
13 this going. It took some time.

14 Q. Didn't you meet with an accountant to get a
15 license and a corporate name and things of that nature?

16 A. We became incorporated, and we did that
17 through an accountant, yes.

18 Q. How was it that you met with Mr. Macomber?

19 A. We had requested a temporary license, and a
20 couple of months later, he called me and set up the
21 first appointment. I think it was August of '04 we had
22 our original appointment to start the licensing
23 process.

24 Q. But you had already been granted a temporary
25 permit, had you not?

0116

1 A. Yes. I believe in the first part of April we
2 sent in for our temporary license, and it took us
3 awhile to get our binder in for our truck insurance, so
4 finally, I believe, on April 21st, our insurance
5 company finally got the original binder right for our
6 truck insurance.

7 Q. Did you request technical assistance from the
8 Commission?

9 A. I believe it's part of the licensing process.
10 I can't remember. It was a couple of years ago. There
11 were several times I had extra questions and e-mailed
12 Mr. Macomber, but I don't recall.

13 Q. At any rate, tell us what you remember about
14 your first meeting with Mr. Macomber.

15 A. Quite a learning curve. He dropped a set of
16 papers on my desk that was about six inches thick, and
17 he went over the check sheet with me and went over the
18 invoices that we were using that were incorrect.

19 Q. When you say "invoices," is that a way of
20 saying "bill of lading"?

21 A. We were using invoices then instead of bills
22 of lading so everything was incorrect. It was quite a
23 learning curve. It was a new career for me, and in the
24 book, we had gone over Tariff 15(A) in the rule book
25 what we needed to set up. He said I could create a

0117

1 bill of lading for myself or get one from the
2 Washington Truckers Association.

3 We discussed what I could delete from the
4 bill of lading in the rule book, because we are a small
5 company that just does local moves, and we discussed
6 what had to be there, and by the next meeting, I had
7 the bill of lading designed and printed up by Costco,
8 and we were using the bill of lading.

9 He had another modification or two. I
10 believe I left off something about the estimate, and I
11 believe we were that quick to get things going. I
12 thought at that time he was impressed about how I was
13 able to go through the rules.

14 Q. When Mr. Macomber testified, he was talking
15 about a sample bill of lading that he had looked at,
16 and he referenced that one of the things it didn't have
17 was language on the estimate that was sufficient. Are
18 you saying that that was actually what you showed him?

19 A. Yes. The one at the second meeting he
20 actually took back because he was impressed that it
21 wasn't -- as you see in the rule book, it's legal size,
22 and the one that I created was a smaller regular sheet
23 of 8-by-11 paper, so I thought it was much more user
24 friendly, and he thought he would use it as an example
25 for other small companies. There were several things

0118

1 on it that he was impressed that it was modified to be
2 shorter and more user friendly, and he actually took it
3 back and I did e-mail it to him.

4 Q. Did he, in fact, tell you at the second
5 meeting there were still some problems with your bill
6 of lading?

7 A. I don't think so. There was three meetings.
8 The first one was we were using an invoice. The second
9 one he had corrected my bill of lading to what he
10 thought it would be after we had the truck. He came
11 out and checked the trucks, and after that time, he had
12 taken a look at the bill of lading again, and by the
13 third meeting, they were absolutely correct, I thought.

14 Q. Then who started telling you that there were
15 problems with your bill of lading?

16 A. Another Commission staff. It was December of
17 '04 we had our one and only complaint, and at that
18 time, our bill of lading was looked at by somebody
19 else.

20 Q. Betty Young?

21 A. Betty Young or Meeks or one of those people,
22 and they said there was something wrong with it at that
23 time. It was looked at again and torn apart, and each
24 time we were told that we had to fix it. We fixed it
25 again, and now since then from the audit, it was torn

0119

1 apart again, and we've remodified it totally.

2 Q. How many times would you say you have changed
3 your bill of ladings?

4 A. I would say four to six times, a lot. It
5 seems like every time somebody picks it up, they have a
6 problem with it. Everyone from the Commission that
7 looks at our forms, from Mr. Macomber, who had helped
8 us originally develop the form and okayed it, and then
9 whoever did the complaint in December of '04, I think
10 Betty, and then from -- I don't know their names now,
11 but to the audit, it was torn apart again.

12 Q. But each time you were contacted by someone
13 from the Commission, you made the requested changes to
14 your form?

15 A. Yes. It was reprinted several times from
16 Costco, and that's why when we got to the audit I was
17 so upset, because it costs \$350 every time we have to
18 reprint the form, and not to mention all the time I
19 have to redo the whole form and then have to throw away
20 thousands of forms that we have reprinted.

21 Q. Tell us about your discussion with
22 Mr. Macomber regarding the cargo tax.

23 A. Cargo insurance?

24 Q. Yes.

25 A. He had mentioned at the first meeting that

0120

1 that was one major thing we didn't have, and he had
2 said that we needed to get it, and he had said that he
3 would check back on it on his next visit, and I hit the
4 Internet and I e-mailed every insurance company in
5 town. I talked to our current insurance company that
6 we had. Everybody pushed me to the next person, to the
7 next person. Nobody could get us cargo insurance.

8 By his second visit, I told him what was
9 going on. I was still working with the one insurance
10 finder. Everything that came up was zero, that nobody
11 could get me cargo insurance, not enough trucks, too
12 small of a company. At one time, I had even discussed
13 with him being self-insured. I said, "What if we put
14 \$20,000 in some kind of bond or something to create
15 this insurance?" It was that hard for me to get, and
16 he said he was going to go back and look and try to get
17 a list.

18 On the third visit, I believe, he had
19 e-mailed me the list of companies. Nobody on the list
20 would give it to me, but I did contact the Washington
21 Truckers Association, which was also on the list, and
22 they referred me to Chadwick Truck Insurance, and they
23 finally got me cargo insurance. I had them fax over
24 that day an insurance binder, and he said that was the
25 one thing that would clean us up.

0121

1 Q. Did Mr. Macomber ever tell you that you had
2 to stop operating until you got the insurance?

3 A. No. He had said that he wouldn't be able to
4 recommend us for permanent authority without it.

5 Q. He knew you were operating?

6 A. Absolutely. He had seen my drivers come into
7 my office. He had seen me book jobs when I was there
8 with him. I was the one person in the office
9 controlling everything while he was doing his audits.

10 Q. So did it surprise you when you received the
11 Complaint from the Commission seeking to fine you for
12 operating without cargo insurance for the period of
13 time you had been working with Mr. Macomber?

14 A. It was really hard to see that because it was
15 a huge accomplishment for me to get that, and it took
16 so much time and I saw it as an accomplishment, and for
17 somebody to fine me for something that was such a piece
18 of -- it was so difficult, and for somebody to fine me
19 for that was really hard.

20 Q. I'm going to hand you what I believe is
21 Exhibit 4, and I'm referencing the first two pages of
22 Exhibit 4, and I'm also referencing --

23 MR. TRI: Off the record.

24 (Discussion off the record.)

25 Q. In Exhibit 4 are numerous copies of your

0122

1 Company's bills of lading that you were using at one
2 point in time. The date on the one I'm looking at is
3 June 1st of '05. Do you see that?

4 A. Yes.

5 Q. My first question is, is this a copy of a
6 bill of lading that you showed Mr. Macomber?

7 A. By '05, it had been modified several times,
8 so I can't tell you if it was the original one, but it
9 was manifested from the original. So upon request of
10 Commission staff, everytime we were asked to change, we
11 changed what we were asked, so I don't know if this is
12 the exact one, but it was along the same lines.

13 Q. You anticipated my next question. I was
14 going to ask you if this is the same format that you
15 had shown Mr. Macomber in October of 2004, but you are
16 saying it had since been changed at least once.
17 Because if I recall your previous testimony, you had
18 been contacted by someone around December from the
19 staff and told that there was a problem with your bill
20 of lading at that time; correct?

21 A. Yes. The general format is the same. I
22 believe there is a couple of -- I don't know even know
23 where they were, but there is a couple of sections that
24 we were requested to add, and that's the only thing
25 that we had been asked to change.

0123

1 We had never been notified at any point to
2 have where the top says name, address, telephone number
3 of the customer and consignee. We had never been asked
4 to add or split the addresses. We had never been asked
5 to change the start and stop times. We had been asked
6 to add or delete some text, but that was all done. But
7 this is the general format of the same that came from
8 the same Word document that kept being modified.

9 Q. Prior to the Complaint being issued by
10 Commission staff that led to today's hearing, had
11 anyone from the Commission staff ever told you that
12 your bill of lading was deficient with respect to the
13 name, address, and telephone number of the customer?

14 A. No.

15 Q. Had anyone from the Commission staff told you
16 that your bill of lading format was deficient with
17 respect to name, address, and telephone number of the
18 consignee?

19 A. No.

20 Q. Had anyone from the Commission staff told you
21 that your bill of lading format was deficient with
22 respect to the origin pickup point, split pickups,
23 stops to load or unload, or destination point?

24 A. No.

25 Q. To your knowledge, do you believe that the

0124

1 bill of lading format that we are looking at in Exhibit
2 4, specifically Bill of Lading No. 8341, does it have a
3 spot for the name, address, and telephone number of the
4 customer?

5 A. Yes. That's what is up on the left-hand
6 topside. It says "customer" on 8341. Nancy Bushmen is
7 the customer. That's who is receiving the goods.
8 That's who asked us to move them.

9 Q. Where is the spot for her phone number?

10 A. Her phone number is to the right of her name.
11 Right below that is "contact." If she has another
12 phone number or another person that needs to be
13 contacted, we put that in that place. That's
14 multipurpose.

15 Q. Now, what about a similar spot for name,
16 address, telephone number for a consignee?

17 A. It's the same person. We are a small
18 operated moving company, and she's the one that's going
19 to be receiving her goods. She called us to have us
20 move her. That's her phone number, and if she has
21 another person to contact, we put it down below where
22 it says "contact."

23 Q. To your knowledge, did that format have a
24 spot for the origin pickup point?

25 A. The address is the pickup. The delivery is

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1 the drop, delivery address. Initially, our customer is
2 going to live at either address, so we don't have
3 another slot for another address. It's the same
4 address.

5 Q. To your knowledge, does this form have a spot
6 to show interruption times if there are?

7 A. Yes. Under "date," there is a date start,
8 stop, equal, date, start, stop, equal. If they take
9 breaks, they put another one on the start, stop, equal,
10 so they can break down the time they move between those
11 two slots.

12 Q. Prior to your receiving the Complaint from
13 the Commission, did anyone from staff ever say that
14 your bill of lading was deficient with respect to not
15 showing interruption times?

16 A. No.

17 Q. Did your employees have problems in properly
18 filling out that aspect of the form?

19 A. Occasionally they had -- not had the customer
20 sign in a particular place or check a particular box.
21 They work really hard. They move people's furniture,
22 and they move about ten thousand pounds a day, and
23 occasionally they forget to mark a box.

24 Mr. Macomber on his second visit had noticed
25 there was some forms that weren't signed in the correct

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1 box, and while he was there, one of my movers had come
2 in, my lead driver, and we discussed with him about the
3 boxes not being signed and filled out properly. It's
4 just something that happens. It's human error.

5 Q. What about extended periods of, like working
6 from eight in the morning until six at night without
7 listing food breaks or things like that?

8 A. That's at the mover's discretion. They take
9 their breaks. If they take their lunch, they clock out
10 and either put it on their time card or note it on
11 here. It's not my discretion to tell the movers to
12 take a lunch break.

13 Q. Now, what about the credit card fee issue?

14 A. It was my understanding from the Department
15 of Revenue that you can itemize your expenses as a
16 company. The credit cards are not listed in the tariff
17 as something we have to offer to a customer. We don't
18 have to provide the customer with the ability to use
19 their credit card.

20 So it was my understanding that we could pass
21 the fee for the credit card only to those customers who
22 were selecting to use their credit card. That's why we
23 charged the four percent credit card fee.

24 Q. Had anyone from the Commission told you that
25 you could not charge that fee?

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1 A. Leon had told us we could not charge the fee.

2 Q. So did you disagree with Mr. Macomber?

3 A. Yes, I did.

4 Q. Did you tell him that?

5 A. Yes. I referenced the Department of Revenue
6 to him, and he said he didn't know about that.

7 Q. What about the sales tax?

8 A. Mr. Macomber had told us that we could not
9 pass on the tax to the customer either.

10 Q. Did you disagree with that?

11 A. Yes.

12 Q. Did you tell him that?

13 A. Yes.

14 Q. What was the basis of your disagreement?

15 A. The Tax Facts Guide about itemizing your
16 expenses as a company published by the Department of
17 Revenue, and I had even shown him the reference at that
18 time.

19 Q. Did you have discussion with anyone else from
20 the staff about either of these issues?

21 A. In the complaint from December of 2004, it
22 was brought up with Mr. Meeks, and we had e-mailed back
23 and forth about it.

24 Q. And that is one of the exhibits...

25 MS. CAMERON-RULKOWSKI: It's Exhibit No. 17.

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1 Q. Do you recall e-mailing back and forth with
2 Mr. Meeks in regard to this issue?

3 A. Yeah. I was surprised because the complaint
4 had happened in December, and it was the next spring we
5 got correspondence from him about remodifying our forms
6 again.

7 Q. Mr. Meeks indicated that he was going to
8 discuss the issue of you charging the tax with his
9 staff and get back to you. Do you recall that?

10 A. Yes.

11 Q. He did get back to you according to this
12 exhibit. Do you recall that?

13 A. Yes, he did.

14 Q. You responded apparently by saying that the
15 tariff doesn't allow, but you still dispute it because
16 the Department of Revenue allows the companies to
17 itemize that expense?

18 A. Yes.

19 Q. And you had a lengthy response to him dated
20 April 26th of '05. Did you get any other response back
21 on that issue from him?

22 A. Yes. I believe this was going on at the same
23 time as the audit.

24 Q. So after he responded back to you, did your
25 company soon stop charging the sales tax?

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1 A. Within three months, yes.

2 Q. Has the Company charged any sales tax since
3 then?

4 A. Not since August 1st of last summer.

5 Q. Of '05?

6 A. Of '05.

7 Q. You received Exhibit 8. That would be the
8 Staff's audit report; correct?

9 A. Yes, I did.

10 Q. And you prepared a detailed response to that
11 audit report, did you not?

12 A. I did.

13 Q. That is Exhibit 13; is that correct?

14 A. That is correct.

15 Q. This is your opportunity to tell the judge.
16 Other than what you've put in writing, can you think --
17 let's summarize. Did you put in writing essentially
18 what you've testified to today with respect to your
19 response to their allegation regarding operating
20 without cargo insurance?

21 A. I think that part of it, the cargo insurance
22 part is a double-edged sword because we weren't
23 informed at the time of the provisional period that we
24 were being helped to gain compliance, and at the same
25 time, it looked like the clock was ticking on

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1 monitoring us and starting to take up fees and fines.

2 Mr. Macomber had come out and said he was
3 there to help us, that it was important for us to be
4 licensed and that he was to help us gain compliance,
5 and after the report had come out from the in-depth
6 audit, it seemed like it was just a time to start
7 monitoring us to be able to start assessing fees from
8 the beginning of our company starting, which is
9 contrary to what Mr. Macomber said.

10 I think we tried very hard from the beginning
11 to remodify and modify our forms, to get the cargo
12 insurance that was important to become licensed and to
13 become a legitimate company, and now it looks like all
14 these -- it was just a way to within a couple of months
15 audit us again and to tell us that everything we had
16 been taught in the first place was incorrect, and even
17 if we were to question any part of it, like the
18 itemizing our B&O taxes and passing on the four percent
19 credit card fee, it was just a way of fining us for
20 everything instead of helping us to become within the
21 licensing provisions.

22 Q. Does your written response summarize your
23 testimony today with respect to your response to the
24 charges about you have the format of your bill of
25 lading?

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1 A. Yes. I think they both coincide that we had
2 been more than willing to modify our bill of lading and
3 then remodify our bill of lading and then remodify it
4 again, and now it's being looked at by another person
5 under a microscope, and we are being told for the
6 fourth time that it's incorrect; although the person
7 before that had found it to be correct and the person
8 before that had found it to be correct with
9 modifications.

10 I feel that everytime somebody picks it up at
11 the Commission they find error with it, and it's
12 unjust. Another person can approve it and another
13 person can say it's not approved.

14 Q. Did anyone, either Mr. Macomber or anyone
15 else from the Commission staff tell you that you had to
16 use the sample form bill of lading that the Commission
17 had published as part of their tariff?

18 A. No. I was told if I didn't use one of those,
19 it had to be Commission approved, and it was my
20 understanding that the technical assistance audits done
21 by Mr. Macomber, he was approving our bill of lading at
22 that time; so therefore, it was Commission approved.

23 The Staff had come out and approved our bill
24 of lading that we were using, so it was my
25 understanding that fit the Washington Administrative

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1 Code for a bill of lading.

2 Q. Then after that, if once someone else from
3 the Commission asked you to modify your form, you did
4 so in response to the request, did you not?

5 A. I did.

6 Q. Did you believe that then your modified forms
7 had been approved by the Commission?

8 A. Once again, I had assumed that it had been
9 approved until the next person picked it up.

10 Q. What is your response to the testimony that
11 Ms. Hughes gave about the deficiencies not with the
12 format of the bill of lading but rather with respect to
13 the filling out of the bill of lading by your
14 employees?

15 A. I think there is human error involved in this
16 business. We don't have college graduates working for
17 us. We don't have attorneys working for us that follow
18 our movers around telling them to sign in particular
19 places.

20 We've taken measures to try to help our staff
21 to be able to fill out the forms correctly, but there
22 is human errors. Most of our movers aren't college
23 graduates. Our movers are hard workers. They work
24 every day. They move furniture, and they move ten
25 thousand pounds of furniture a day, and by the end of

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1 the day, they are exhausted, and if they have the
2 customer sign the wrong place of the bill, it just
3 wraps it up to human error.

4 We've provided highlighters for our workers
5 to be able to try to get the bills filled out
6 correctly. We've had meetings, but human error is part
7 of this job, and I think that's reflected in my written
8 response too.

9 Q. Do you have anything to add with respect to
10 the delivery addresses?

11 A. I think that we've cleared up part of this in
12 an e-mail with the Commission staff about we have
13 contracts with the State of Washington to move some
14 clients that are in particularly bad adult protective
15 services, and it's important to not include the
16 delivery addresses on moves like that. If a client
17 requests to not have their delivery address put on
18 their forms, it's not put on.

19 If a client is in a divorce or in some kind
20 of situation where they don't want that address put on
21 there, we will not put it on there for their safety.
22 We've moved people out in the middle of the evening
23 after their abuser has gone to work, and if they ask to
24 not have that address put on there, we won't do it.

25 Q. Are you able to look at the various--

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1 A. I can't discern one client from the next, but
2 we had come to an agreement that we will in the future
3 attach all invoices from when we get paid from DSHS or
4 whatnot to invoices in the future, but that doesn't
5 help us with the past.

6 Q. With respect to letting me finish my question
7 for the record, I was referencing Exhibit 18, which was
8 more or less the illustrative exhibit prepared by
9 Ms. Hughes as to the various deficiencies that she
10 found with filling out the bill of lading forms.

11 If I understand your testimony, you would not
12 be able to go back and look at a particular invoice
13 that might not have an address on it, the destination
14 address, and state whether or not that happened to be a
15 move where you were requested by the customer not to
16 put the address on it.

17 A. I wouldn't be able to discern it at this
18 time, no.

19 Q. These are looking at June 2005 bills of
20 lading. Does that predate the time you reached some
21 agreement with someone at the staff?

22 A. Yes. It predates that agreement.

23 Q. So June of 2005 is when -- and I see
24 Ms. Hughes shaking her head. Is she the one you made
25 the agreement with?

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1 A. Yes.

2 Q. So June of 2005 would have been a period of
3 time when you might not have put a delivery address on
4 a form if a customer asked you not to.

5 A. That is correct.

6 Q. Because that was a problem, apparently, for
7 the Commission, you've reached some agreement with them
8 to rectify that problem from their aspect?

9 A. Yes. If it's a DSHS client, like an Adult
10 Protective Services, Richard has a contract with DSHS
11 Adult Protective Services, to move vulnerable adults
12 from vulnerable situations, and we had made an
13 agreement that if one of those situations had arose, we
14 would attach the social service payment system slip to
15 those invoices in the future so we would be able to
16 discern that type of client from another one. We
17 didn't come to an agreement on what we would do if it
18 was an everyday adult that requested to keep their
19 address off.

20 Q. Are there times when a customer doesn't know
21 an address they want you to deliver to when they fill
22 out the forms?

23 A. Yes. Several estimates are done before a
24 person has even sold their home. A lot of customers
25 will call up and ask for an estimate on their house,

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1 and they haven't sold their house. They don't where
2 they are moving. They just know this particular group
3 of furniture needs to be moved, and they can roughly
4 have an idea where they are moving to. That's why some
5 of the estimates say Lynnwood to Lynnwood or Lynnwood
6 to Kirkland. They know about where they are moving.
7 They just don't know when and precisely the address.

8 Q. I have forgotten from her testimony what she
9 was referring to by R and R guide.

10 A. Rights and Responsibilities Guide. This
11 guide is a brochure that the Commission publishes, and
12 we are required to give it out to every customer, and
13 they sign saying that they've received it.

14 Q. I take it then there must have been some
15 times on some of these forms when the customer didn't
16 sign for that.

17 A. Every morning, we've tried to remedy this by
18 having a copy of the Rights and Responsibilities Guide
19 on every piece of bill of lading that goes out. The
20 customer gets it, but not always is it signed due to
21 worker error, and so that's why on some of these guides
22 or some of these forms, it's not signed completely.
23 It's human error.

24 Q. Is that the same with respect to the issue
25 about where payment choice might not be checked off?

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1 A. Yes.

2 Q. Are there times when they know in advance
3 when they fill out the form what their payment choice
4 will be?

5 A. There are times that they don't know how they
6 are going to pay at the end of a job because it's
7 dependent on what the bill is going to be at the end of
8 the job. So if they are just working at an hourly
9 rated shipment and they don't know, I have this much in
10 my checkbook, and I may charge some of it to my credit
11 card. Some people don't decide until later. It's at
12 the discretion of the customer.

13 Q. You've already told me you haven't charged
14 sales tax for basically a year. Have you stopped
15 charging for credit card fees?

16 A. Yes.

17 Q. When is the last time you charged for a
18 credit card fee?

19 A. It was August 1st or before. I don't recall.

20 Q. What is your response to the Department's
21 recommendation that your company be suspended?

22 A. I think that if the Company was suspended
23 that then if they want to get their fines paid, if
24 there was no revenue to pay the fines, the Company
25 would go under, basically. I think it's unjust. I

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1 think it's not -- I don't think it's a fair
2 recommendation for what's happened here.

3 MR. TRI: I don't have other questions for
4 Ms. Brooks.

5 JUDGE MOSS: Thank you. Is there any
6 cross-examination?

7 MS. CAMERON-RULKOWSKI: I do have a few
8 things.

9

10

11 CROSS-EXAMINATION

12 BY MS. CAMERON-RULKOWSKI:

13 Q. Mrs. Brooks, you had testified that each time
14 you were told by Commission staff that you changed the
15 bill of lading; is that correct?

16 A. Yes. There was modifications several times
17 since 2004 for the bill of lading, yes.

18 Q. Now, do you recall -- perhaps it would help
19 you to refer to Exhibit No. 5. Do you recall that
20 letter from the Commission that set out various
21 problems with the bill of lading, including charging a
22 credit card processing fee, charging sales tax, and
23 having an incorrect valuation statement on the bill of
24 lading?

25 A. I don't know what you are referring to. I

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1 don't have 5 in front of me, and these aren't numbered.

2 Q. Look in the top right-hand corner.

3 A. Here it is. If I recall, this was in
4 response to the December complaint when the bill of
5 lading was reviewed by the second person, I believe.

6 Q. You see there on Page 3 -- Ms. Hughes had
7 testified about this, I believe -- the Commission had
8 informed you that you should not be charging the four
9 percent credit card processing fee for the sales tax?

10 A. We were disputing that, yes.

11 Q. And then if you would look at Exhibit No. 6,
12 and you had said that you had drafted new bills and
13 estimates the last year. You were confused about the
14 old bill, which must have been part of the November
15 complaint, and then I would like you to take a look at
16 --

17 A. At some point, yes --

18 Q. I don't have a question yet. Then I would
19 like you to take a look at Exhibit 15, and I will pass
20 that down.

21 JUDGE MOSS: That's not yet been admitted?

22 MS. CAMERON-RULKOWSKI: That's correct.

23 Q. (By Ms. Cameron-Rulkowski) Then presumably,
24 in response to your e-mail to Ms. Young on Exhibit 6,
25 Ms. Young had replied to you, and this is Exhibit 15,

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1 Page 1, and in that second paragraph, she said in your
2 e-mail you state that Brooks revised its bill of lading
3 over a year ago. However, the bill of lading in this
4 complaint was issued only four months ago, November.
5 This bill of lading contains all of the errors
6 referenced in the letter, and she's referring to the
7 letter from the Commission in March.

8 Then you e-mail her back on Page 2, and you
9 say, "I'm attaching our electronic file of our current
10 bill of lading," and then attached to that is a bill of
11 lading. Then there is some additional discussion about
12 the valuation and you attached another bill of lading,
13 and the bill of lading finally on Page 8 and 9 is
14 attached to an e-mail dated April 5th from you to
15 Ms. Young. I would like you to take a look at that
16 bill of lading.

17 MR. TRI: Which one?

18 MS. CAMERON-RULKOWSKI: This is on Page 8,
19 Exhibit 15. Then I would like you to also take a look
20 at Exhibit 4. We can look at pretty much any bill of
21 lading from Exhibit 4, but let's look at 8340, which is
22 Elizabeth Roberts, since this is the first clean bill.

23 Q. (By Ms. Cameron-Rulkowski) Now, on Page 8 of
24 Exhibit 15, you sent to Ms. Young a bill of lading
25 saying that this is your new bill of lading?

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1 A. One of the many, yes.

2 Q. I don't see a charge on this bill of lading,
3 on Page 8 of Exhibit 15, I don't see a charge here for
4 sales tax, and I also don't see a charge in the payment
5 block for the four percent credit card processing fee,
6 and then when we go ahead and we look at the June bills
7 of lading, suddenly those things are back on the bill
8 of lading form.

9 A. This one hadn't been printed yet; that's
10 correct.

11 Q. This was in early April. Are you telling me
12 that it took April, May, June, July, August, four
13 months to get the new bill of lading printed?

14 A. If you reference the e-mails from Mr. Meeks,
15 we were still disputing the tax during that time
16 period.

17 Q. Let's go ahead and take a look for the third
18 time now at Exhibit 17, which is the consumer
19 complaint. On Page 10 at the bottom of the page in the
20 e-mail from Mike Meeks on 25th of April, 2005, he
21 issued you a violation for charging sales tax; is that
22 correct?

23 A. He said he was going to, but we never
24 received anything. I don't know what a violation looks
25 like. We haven't received anything formal for that,

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1 but he talked about it in his e-mail.

2 Q. Then in his final communication on Page 12,
3 he had consulted with the attorney general's office and
4 had come back with a definitive answer about charging
5 sales tax explaining that sales tax cannot be charged.

6 Now, this was the end of April. This was
7 April 28th at this point, and there still was no
8 correction on the bills of lading in June. How do you
9 explain that?

10 A. You are saying March, not June? Are you
11 referring to these? (Witness indicating.)

12 Q. I'm referring back to Exhibit 4, to all the
13 bills of lading that this hearing is based on.

14 A. Oh, back to the --

15 Q. That's correct. You can see that it's
16 puzzling that the Company would be informed that at the
17 end of April definitively that it cannot charge sales
18 tax, so wouldn't the conclusion be that the Company
19 decided not to do it?

20 A. August 1st we stopped charging the tax. We
21 did have to meet and discuss it and create more forms
22 and have them printed off, and that's when we stopped
23 charging the tax was August 1st, but there is more
24 people involved than just me.

25 Q. And then I would like to ask a clarifying

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1 question, and that is when you are referring to the
2 destination addresses, you had talked about sometimes
3 on the estimate there isn't a complete destination
4 address because the customer does not know where they
5 are going to be moving.

6 A. That's correct.

7 Q. You were referring to an estimate and not a
8 bill of lading; correct?

9 A. Sometimes when they call up to schedule a
10 move, they are scheduling a move before they know the
11 particular address or something hasn't closed. So
12 there is a house being sold, a house being bought.
13 Closing hasn't gone through yet. There is a lot of
14 reasons why we don't have the delivery address.

15 Q. But at any rate, your prior testimony was
16 referring to estimates.

17 A. It refers to both estimates and the bill of
18 lading, the question of why we didn't have delivery
19 addresses on our forms.

20 MS. CAMERON-RULKOWSKI: That's the only
21 questions.

22 JUDGE MOSS: Any redirect?

23 MR. TRI: No.

24 JUDGE MOSS: You may call your next witness.

25 MS. CAMERON-RULKOWSKI: May I take a recess?

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1 JUDGE MOSS: Yes.

2 (Recess.)

3

4 Whereupon,

5 RICHARD BROOKS,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. TRI:

11 MS. CAMERON-RULKOWSKI: Your Honor, I had not

12 moved for admission of Exhibit 15.

13 JUDGE MOSS: Any objection?

14 MR. TRI: No.

15 JUDGE MOSS: It will be admitted as marked.

16 Q. (By Mr. Tri) Would you state your name,

17 please?

18 A. Richard Brooks, B-r-o-o-k-s.

19 Q. You are married to Michelle Brooks?

20 A. Yes.

21 Q. And you are also one of the co-owners of

22 Brooks A&A Moving Company?

23 A. Yes, I am.

24 Q. And you were as such throughout the entire

25 period of time we were talking about today for which

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1 the alleged violations occurred; you are the co-owner?

2 A. Yes.

3 Q. Do you have anything to add to your wife's
4 testimony about the cargo insurance issue?

5 A. Not really. She basically covered it.

6 Q. She handled more of the discussions with
7 Mr. Macomber about that issue?

8 A. She did. I know she was upset that we got
9 penalized for it because Mr. Macomber should have told
10 us at the time we were doing the move.

11 Q. Were you aware though that she was trying to
12 get cargo insurance?

13 A. Yes. She was working on it like every single
14 day.

15 Q. Expressing frustration at being able to get
16 it?

17 A. Oh, yes. Running a small business is kind of
18 frustrating.

19 Q. Did you have anything to do with the
20 formation of the bill of lading form?

21 A. A little bit. A sales tax was actually my
22 idea, and same with the four percent credit card fee.

23 Q. Why is that?

24 A. Because I learned it from another moving
25 company when I worked there before.

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1 Q. Your wife testified that before you guys
2 started this company that she had not worked in the
3 moving business.

4 A. No, she has not.

5 Q. Had you?

6 A. Yes, I have.

7 Q. What experience did you have from working in
8 the past?

9 A. I ran Mike the Movers office for several
10 years. I worked for him for seven, eight years --

11 JUDGE MOSS: Let me interrupt for a few
12 seconds here. I appreciate the crisp pace, but you are
13 beginning to step on your counsel's questions, so just
14 take a pause and make sure he's finished with his
15 question so we get a good transcript. I appreciate
16 that. I'm sorry. I interrupted you. Go ahead.

17 Q. Is Mike the Mover a household goods moving
18 company?

19 A. He is.

20 Q. Interstate-type moves such as what you are
21 doing now?

22 A. Yes.

23 Q. Is that the bulk of what his business is?

24 A. Yes. He does local moves and out-of-state
25 moves.

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1 Q. Had you worked for other companies in
2 addition to Mr. Mover's company?

3 A. I have.

4 Q. Such as...

5 A. Hansen Brothers, and a really small, small
6 outfit was Budget, and then I started another company,
7 which is Mike's brother, Action Moving.

8 Q. And in all of the other companies that you
9 worked for, to your knowledge, did they charge sales
10 tax?

11 A. Yes, Hansen Brothers.

12 Q. Did they also charge for credit card fee?

13 A. Yes. Action Moving did.

14 Q. To your knowledge, had any of these other
15 companies told you that according to the WUTC, you were
16 not allowed to charge for either of these items?

17 A. No. All the years I have worked in the
18 moving industry, I did not know that.

19 Q. When is the first time you became aware that
20 was an issue with respect to the Commission here?

21 A. When Mr. Macomber, the field staff agent,
22 came out to our place.

23 Q. And so even after that, did you have
24 discussions with your wife about whether that should
25 continue to be a charge for which your company would

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1 charge?

2 A. Yes.

3 Q. What was your position?

4 A. Well, since we were such a low rate, that's
5 part of the reason why we did that.

6 Q. What do you mean by a "low rate"?

7 A. We charge \$75 an hour, and \$75 an hour with
8 tax comes out to like \$82 dollars or so.

9 Q. Did you ask your wife to check in to whether
10 it was, in fact, a charge that you were entitled to add
11 on with other agencies?

12 A. I didn't really. I didn't really think
13 anything of it.

14 Q. Did she inform you that she had discussed it
15 with her CPA and/or the Department of Revenue?

16 A. Yes, she has. Apparently, the Department of
17 Revenue said it was okay to minimize the tax on that.
18 I don't know the ins and outs.

19 Q. What do you mean "minimize"?

20 A. I don't know.

21 Q. You mean itemize?

22 A. Yes. I don't know much about the bill of
23 waiting. I'm just good at sales and moving furniture.

24 Q. Other than those two items, did you have
25 anything else to do with the format issue of the bill

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1 of lading for your company?

2 A. Not really. Michelle did most of the legwork
3 on bills of waiting.

4 Q. Is it true that the bill of lading has been
5 changed several times over the past few years?

6 A. It's been kind of frustrating, yeah. It
7 seems like every time we did something to it, it was
8 wrong, so we would have to change it again.

9 Q. With respect to filling out the bill of
10 lading by either customers or your employees, you've
11 heard testimony and evidence submitted today about
12 those problems. What is your response to those issues?

13 A. I told the guys I would fire every single one
14 of them if they didn't do it. Just kidding. It's just
15 mistakes, same thing that Michelle said. It's kind of
16 tough to fill all this out, I guess.

17 Q. What about sometimes not having the delivery
18 address?

19 A. Well, as far as the delivery address,
20 customers don't memorize their new address right
21 offhand. Sometimes they will get back to us on it, and
22 what our boys should do if the delivery address isn't
23 on there, they should get it off the customer on the
24 day of the move, which sometimes they don't, and I like
25 the delivery address just in case their check does

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1 bounce and I have a door I can go knock on.

2 Q. But you've instructed your employees to try
3 and make sure all the aspects of the format --

4 A. They are kind of burnt out because they do it
5 five days a week. It's hard work to carry furniture.
6 Sometimes they don't have it totally filled out.

7 Q. What about their breaks and lunches and meal
8 times and whatnot?

9 A. Such as this invoice here, it says four
10 hours, but a full days worth of work, I know on the old
11 invoices -- it's been changed now, but the old invoices
12 would say how many hours they worked and what the
13 amount was, and sometimes they will actually work an
14 hour more than what's on the invoice itself, and I've
15 learned that from working at other moving companies.
16 If they are going to take an hour lunch break, take it
17 off the bill. Instead of charging them six hours, they
18 will charge five hours on the bill, and that's the way
19 we've been doing it from the beginning, until recently
20 we had to clock in and out and take breaks and all
21 that.

22 Q. So you are saying rather than if they work
23 actually --

24 A. If they worked a full eight-hour day, instead
25 of putting eight hours, they will bill them for seven.

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1 Q. And that's something you were taught from
2 other companies.

3 A. Exactly.

4 Q. But you've now tried to rectify that problem
5 with listing stop times.

6 A. Exactly.

7 Q. But at any rate, for instance, if there is a
8 six-hour time or even an eight-hour time on a bill of
9 lading does not necessarily mean you were charging the
10 customer for break time.

11 A. No. They take it off the bill. If it says
12 eight hours, that means they were probably there for
13 nine hours and they knocked off an hour from the bill
14 for lunch.

15 Q. Do your employees also give you a time card
16 of their actual time?

17 A. No. Their actual time is whatever they spent
18 at the customer's home.

19 Q. So you use that to pay your employees?

20 A. Yes. If it says 5.5, they get that written
21 down on their time card.

22 Q. Did you eventually decide to stop charging
23 sales tax and credit card fees?

24 A. Yes.

25 Q. Why?

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1 A. Because the Commission asked us to. We had
2 to raise our rate and stop charging tax.

3 Q. When is the last time you did that charge for
4 a tax?

5 A. I don't recall. Probably last summer when
6 the invoices were changed out. We are in the business
7 to make the customer happy, which most of them are,
8 except the one that complained.

9 Q. Are you aware of anyone else who has made
10 complaints to the Commission against you?

11 A. I had one lady that complained -- both of the
12 ladies that did complain, we gave them deals. We
13 actually took off hours off of their -- I guess the
14 first complaint about this lady, which I guess we could
15 have charged her stair carry, which I really don't know
16 anything about, she said, Oh, my access is really easy
17 and it should only take a couple of hours. Instead,
18 it's 50 stairs up to the lady's house, and it was
19 pretty nightmarish, and we knocked off two hours of the
20 bill, and she still complained.

21 Q. I was referring to other than the customer,
22 are you aware of anyone that has made a complaint to
23 the Commission?

24 A. Mike the Mover.

25 Q. Did you and Mr. Mover become involved in

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1 litigation after you left his company to start your
2 company?

3 A. Yes.

4 Q. During that litigation, did you become aware
5 that Mr. Mover had contacted the Commission claiming
6 you were not operating properly or legally and things
7 of that nature?

8 A. Yes, he has.

9 Q. Do you think that's somehow motivated the
10 action Staff has taken against you?

11 A. I truly believe that's part of the reason.

12 Q. Anyway, there is reference to Mr. Mover
13 having contacted Staff and your response to some of the
14 documents that are submitted before the judge today; is
15 that correct?

16 A. Yes.

17 Q. There is also reference that you believe
18 there is other competitors of local moving companies in
19 your area that are operating without being licensed
20 with the Commission.

21 A. Yes. When I left Mike the Mover, we had four
22 other people that broke off and started our own moving
23 company, and we are the only one that got licensed with
24 the UTC, and we are the only one being fined by the
25 UTC, and all the other guys are still charging taxes

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1 and a four percent charge, whatever they want to
2 charge. To me, I think it's truly unfair.

3 Q. At any rate, you haven't charged the sales
4 tax for nearly a year?

5 A. Yes.

6 Q. Or credit card fee?

7 A. Yes, sir.

8 Q. And you don't intend to in the future?

9 A. No.

10 Q. Do you think it's necessary to protect future
11 customers or the public to suspend your operating
12 license at this time?

13 A. I don't see how. We take care of our
14 customers. Most of them are referrals and repeats, and
15 we hardly get any complaints besides the one that you
16 folks got.

17 MR. TRI: I don't have any other questions.

18 JUDGE MOSS: Any cross?

19

20

21 CROSS-EXAMINATION

22 BY MS. CAMERON-RULKOWSKI:

23 Q. Mr. Brooks, did anyone from Commission staff
24 ever respond to your suspicions about any Commission
25 action being motivated by contact from Mike the Mover?

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1 A. No. She mentioned something about it, but
2 that's about it.

3 JUDGE MOSS: "She" being Ms. Hughes?

4 THE WITNESS: Yes. She said no, it's not
5 true. That was it.

6 Q. (By Ms. Cameron-Rulkowski) I would like you
7 to take a look at Exhibit No. 11. This is an exhibit
8 we haven't looked at yet. Please flip through it, and
9 can you identify what these documents are?

10 A. They look like bills of lading.

11 Q. And can you help us along a little bit? It
12 should be about the first five bills of lading for all
13 of the bills of lading that Commission staff received
14 from you for 2006.

15 A. Okay.

16 Q. Does that seem consistent with what you've
17 got in front of you?

18 MR. TRI: The front one I look at says --

19 THE WITNESS: 2005. They are all 2005. 2006
20 is later.

21 MS. CAMERON-RULKOWSKI: They may be dated
22 incorrectly.

23 JUDGE MOSS: I note, in fact, as we look down
24 the exhibit, we see the date recorded by the mover does
25 indicate '06. I suspect looking also at the bill of

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1 lading numbers and assuming those are assigned
2 sequentially...

3 MR. TRI: It may be a mistake.

4 JUDGE MOSS: I understand.

5 MR. TRI: Where are you seeing that, Your
6 Honor?

7 JUDGE MOSS: If you look further down in the
8 right-hand column, there is a date reported by the
9 person who did the move. The first one is actually
10 '05, but then you look at the next one and you see
11 1/2/06, and those bills of lading do have sequential
12 numbers.

13 MR. TRI: I see.

14 JUDGE MOSS: Those were just mislabeled at
15 the time. The rest in the packet seem to be bearing
16 the '06.

17 MS. CAMERON-RULKOWSKI: They are supposed to
18 be bills from '06, and I understand from Commission
19 staff that she prepared other records against these to
20 determine that they were, in fact, from '06, but I'm
21 not addressing this for the purpose of dates. It looks
22 like only the first two.

23 JUDGE MOSS: I think we are okay on that.

24 Let's move on.

25 Q. (By Ms. Cameron-Rulkowski) So it should be

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1 the first five bills of lading, at any rate, from the
2 all the months of 2006 for which Commission staff
3 received records from you.

4 A. Sure.

5 Q. These have been marked up to show ongoing
6 problems.

7 A. What's the problem with the bill of waiting?

8 Q. Can you see the highlighting on each one?

9 A. Yes, sure.

10 Q. You received a copy of the audit report
11 sometime in November or December?

12 A. I don't know.

13 Q. It's dated November, so I assume you received
14 it shortly thereafter.

15 A. Okay. What's wrong with it?

16 JUDGE MOSS: Just respond to questions,
17 Mr. Brooks.

18 Q. I would like you to look at Paragraph 5377.
19 That's Page 3.

20 A. The one that's in '05?

21 Q. It says '05 up at the date, but the date they
22 filled in at the time record is '06.

23 A. Where is the time record?

24 Q. See the time record?

25 A. I don't. Then that's probably a typo on

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1 their part. Is that what you are complaining about?

2 Q. No, I'm not. Ms. Hughes compared this with
3 payment records, I believe, and this should be an '06
4 bill of lading --

5 A. But it actually says '05.

6 JUDGE MOSS: Just go ahead and ask your
7 question, please.

8 Q. So my question, down here under subtotal,
9 there is something that looks like a 4. Can you
10 explain what that is?

11 A. I can't.

12 Q. And it looks like it says "cc"?

13 A. Josh, he's a gentleman that worked for us a
14 few years back, and he came back to us from Texas, and
15 it looks like he put "4cc," whatever that could
16 possibly be.

17 Q. The first thing that springs to mind is a
18 four percent credit card processing fee.

19 A. So it could have been Josh's mistake, yes,
20 surely not mine.

21 Q. Was he working for you in 2006? Is he
22 working for you now?

23 A. No.

24 Q. Was he working for you earlier in the year?

25 A. He came back, yes. He worked -- I don't

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1 recall. I got so many workers. He took off for a
2 little while and then came back, and now he's gone
3 again.

4 Q. Let's just go ahead and flip forward to 5462.
5 This is Page 6.

6 A. Okay.

7 Q. And if you look in the payment section block,
8 do you see any indication of a payment method there?

9 A. Do you see the check number down on the lower
10 right-hand corner?

11 Q. I do, but again, do you see anything in the
12 payment block?

13 A. That's an honest mistake on my boys.

14 Q. Then also, if you would see the highlighted
15 section above, do you see that where it says you've got
16 the "from, to", and that's highlighted?

17 A. Hold on. Let me ask you something. So if
18 they didn't check this out --

19 Q. This is not your opportunity to ask a
20 question.

21 A. Okay.

22 Q. Do you see the highlighted portion in the
23 boxes "from, to"?

24 A. Yes.

25 Q. Now, the audit report went into depth about

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1 including the customer and consignee name, address, and
2 telephone numbers on the bill of lading; correct?

3 A. Yes.

4 Q. And now if you would just flip through this
5 exhibit, it appears that the "from" and "to" boxes are
6 exactly the same as the June '05 bills that were
7 referred to in the audit report; is that correct?
8 Would you agree with that?

9 A. I will have to say not because I didn't
10 really read the audit report.

11 Q. Why don't you take a look at Exhibit No. 4,
12 and if you would refer to that first clean bill of
13 lading, No. 8340 for customer Elizabeth Roberts?

14 JUDGE MOSS: Do you need this for some kind
15 of foundation, because I can compare it to documents if
16 that's all you are trying to show is they are the same.

17 MS. CAMERON-RULKOWSKI: What I'm trying to
18 show, Your Honor, is they are the same kinds of
19 problems that were detailed in the audit report are
20 still appearing through May of 2006.

21 JUDGE MOSS: But you can make that out on the
22 basis of the documents themselves, can't you?

23 MS. CAMERON-RULKOWSKI: Yes. You can read
24 through and --

25 JUDGE MOSS: So let's move on to the next

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1 topic.

2 MS. CAMERON-RULKOWSKI: That's fine. I would
3 like to admit 11.

4 MR. TRI: No objection.

5 JUDGE MOSS: All right.

6 MS. CAMERON-RULKOWSKI: No further questions.

7 JUDGE MOSS: Any redirect?

8 MR. TRI: None. I would like to recall
9 Ms. Brooks for just a couple of questions.

10

11

12 REDIRECT EXAMINATION

13 BY MR. TRI:

14 Q. With respect to the bills of lading in
15 Exhibit 10, has the Company since revised its format?

16 A. We have. I had asked Mrs. Hughes for her to
17 personally approve our final bill of lading, and she
18 did e-mail me later on earlier this year with the final
19 approval of that and we are now using that one, so this
20 is showing our old form, because I wanted to make sure
21 that one final bill of lading was approved before we
22 published, once again, our bill of lading, so that is
23 not the form we are currently using for that purpose.

24 MR. TRI: That's all the questions I have.

25 MS. CAMERON-RULKOWSKI: May I ask a question

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1 then?

2 JUDGE MOSS: Yes. Follow-up on that topic.

3

4

5 FURTHER CROSS-EXAMINATION

6 BY MS. CAMERON-RULKOWSKI:

7 Q. The bill of lading that was approved by
8 Ms. Hughes, the most recent approval, when did that
9 approval take place?

10 A. I don't recall offhand. I don't know when it
11 was, but I know it was after the New Year.

12 Q. Would that have been before February of 2006?

13 A. I don't know. It was before April of 2006
14 for certain.

15 Q. Thank you.

16 JUDGE MOSS: Ms. Brooks, while you are still
17 on the stand testifying, I have one question. Was the
18 tax that was charged ever remitted to the state?

19 THE WITNESS: We didn't pay sales tax. That
20 was an adding up of all the other taxes.

21 JUDGE MOSS: That was my only question.

22 MS. CAMERON-RULKOWSKI: I do have an exhibit
23 on that if you would like more information.

24 JUDGE MOSS: That's all I wanted to know. If
25 you have something else to put in the record, you can

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1 certainly do so, but I learned what I needed. Let's be
2 off the record.

3 (Discussion off the record.)

4 JUDGE MOSS: We have decided off the record
5 that we will proceed with oral argument. I'm giving
6 both sides 20 minutes, and Staff is going to go first.
7 Go ahead.

8 MS. CAMERON-RULKOWSKI: Thank you, Your
9 Honor. Regarding the requirement that household goods
10 companies carry cargo insurance, WAC 480-15-550(1)
11 provides you must have cargo insurance coverage
12 sufficient to protect all household goods that you
13 transport under your permit. The Company knew about
14 the cargo insurance requirement from at least the date
15 that they filled out the application because the cargo
16 insurance requirement was listed on the cover sheet of
17 the application.

18 They did not obtain cargo insurance for at
19 least 110 days, and therefore, the Company violated WAC
20 480-15-550(1) at least 110 times, and the Commission
21 should impose a penalty of \$11,000.

22 Now, the Company has argued that it didn't
23 know it was going to be fined for its failure to obtain
24 cargo insurance. Just because a company is not fined
25 doesn't mean that it doesn't need to comply with the

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1 requirements of the Commission, and it is not an
2 argument to say that the Company did not know it was
3 going to be punished. That does not excuse the Company
4 from the requirement to obtain cargo insurance, and
5 therefore, the Commission should impose the \$11,000
6 penalty.

7 Regarding the bill of lading format, WAC
8 480-15-730 provides, you must use the bill of lading
9 format shown in our published tariff, and Tariff 15(A),
10 Item 95, and now Tariff 15(B) as well, describes the
11 information that must be included on all household
12 goods carriers bills of lading.

13 Brooks's bill of lading forms did not comply
14 with WAC 480-15-730 or with various parts of Tariff
15 15(A), Item 95. Specifically, the bill of lading form
16 used throughout June of 2005, which is the basis for
17 the violations in this complaint, contain violations in
18 the following areas: Failure to include all required
19 names, addresses, and telephone numbers, as well as all
20 required stops; failure to include exact language of
21 the tariff for payment method, and inclusion of a
22 credit card processing fee, which is not authorized by
23 the tariff; failure to include space for interruption
24 times; failure to use all language required in the
25 estimate declaration; failure to use the required exact

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1 language in the valuation declaration; failure to
2 include a storage declaration, if required; failure to
3 use the required terms and conditions.

4 These violations are present on the bill of
5 lading form that the Company used for 70 moves in June.
6 Brooks A&A Moving violated WAC 480-15-730 and Tariff
7 15(A), Item 95, 70 times, and the Commission should
8 impose a penalty of \$7,000.

9 Now, the Company can dispute the fact or the
10 extent of technical assistance regarding the bill of
11 lading format, but the Company knew, at least as of
12 March 2005 from the Commission letter dated in March
13 2005, that the credit card processing fee was not
14 allowed on the bill of lading form, and yet, the credit
15 card processing fee still appeared on all of the June
16 bill of lading forms, as did the omission of payment
17 method language.

18 Regardless of the practicality of some of the
19 Commission rules and the sample tariff, and I'm
20 thinking here of the discussion in testimony about the
21 customer and consignee name, address, and telephone
22 numbers, this is not the place to discuss the
23 practicality of the rules. Here we are talking about
24 whether or not the Company complied with the rules and
25 the tariff item, and irrespective of some of the other

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1 items of violation, because the credit card processing
2 fee was included on all of the forms used in June of
3 2005, that alone could be the basis for a bill of
4 lading format violation.

5 Regardless of the arguments about technical
6 assistance on other violations, there is a basis
7 because of the credit card processing fee for a bill of
8 lading format violation for all 70 bills of lading in
9 August of 2005.

10 JUDGE MOSS: Did you mean June of 2005?

11 MS. CAMERON-RULKOWSKI: Yes, June of 2005.

12 Regarding completion of the bill of lading, WAC
13 480-15-740 requires household goods carriers to include
14 on the bill of lading all information necessary to
15 determine rates and charges. Tariff 15(A), Item 95,
16 describes the information that household goods carriers
17 must include on their bills of lading. Brooks did not
18 complete all of its bill of lading in compliance with
19 WAC 480-15-740 and Tariff 15(A), Item 95.

20 Specifically, the Company violated the rule
21 and tariff item in the following areas: Failure to
22 fill in the consignee name, the complete destination
23 address, the customer address, and either the shipper
24 or the consignee telephone number; failure to insure
25 that the customer's choice of payment method was

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1 reported; failure to insure the customer initial to
2 confirm offer or receipt of the Rates and
3 Responsibilities Guide; failure to record all starts,
4 stops, and interruption times; failure to sign, and
5 failure to obtain customer signature; failure to insure
6 customer initial the estimate type.

7 All 70 of the Company's June 2005 bills of
8 lading contained one or more of these types of
9 violations. The Company violated WAC 480-15-740 and/or
10 Tariff 15(A), Item 95, 70 times, and the Commission
11 should impose a penalty of \$70,000.

12 JUDGE MOSS: Did you mean \$7,000?

13 MS. CAMERON-RULKOWSKI: I'm sorry; \$7,000.
14 Regarding charging the credit card processing fee, WAC
15 480-15-490(5) provides that all household goods
16 carriers must charge the rates and charges and comply
17 with the rules contained in the tariff. The credit
18 card processing fee is not authorized by the household
19 goods tariff. Brooks A&A Moving charged five customers
20 a credit card processing fee for June 2005 moves.
21 Therefore, the Company violated WAC 480-15-490(5) five
22 times, and the Commission should impose a penalty of
23 five hundred dollars.

24 JUDGE MOSS: That's section 490,
25 Subsection 5.

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1 MS. CAMERON-RULKOWSKI: 490, Subsection 5,
2 correct. The Company received multiple instances of
3 technical assistance about the credit card processing
4 fee, not the very least of which was a formal
5 notification from the Commission in March 2005 stating
6 that the Company could not charge a credit card
7 processing fee, and yet in the June bills of lading,
8 the credit card processing fee was still being
9 included.

10 I'll now address charging sales tax on moving
11 services. As I had just cited, all household goods
12 carriers must charge the rates and charges and comply
13 with the rules contained in the tariff, and that is WAC
14 480-15-490(5). Sales tax charges on moving services
15 are not authorized by the household goods tariff.

16 Mr. Macomber told Brooks A&A Moving in August
17 of 2004 and in October of 2004 that the Company was not
18 allowed to charge sales tax on moving services.
19 Nonetheless, the Company continued to charge sales tax
20 on moving services up to August of 2005.

21 Staff communicated via letter or e-mail to
22 the Company multiple times during spring of 2005 that
23 the Company was violating Commission rules by charging
24 sales tax. Brooks A&A Moving must have known by at
25 least April 28th, 2005, that charging sales tax was a

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1 violation of Commission rule.

2 April 28th, 2005, was the date on which
3 consumer affairs staff responded to the Company with an
4 analysis from the attorney general's office that
5 addressed the Company's arguments and confirmed that
6 charging sales tax violated Commission rule. Not
7 withstanding the e-mail from consumer affairs, the
8 Company continued to charge for sales tax throughout
9 June 2005. In fact, Brooks A&A Moving charged sales
10 tax on all but one of the 70 June 2005 bills of lading.

11 The Company's persistent violations in
12 January, February, March, April, and June of 2005,
13 despite numerous acts of technical assistance by
14 Commission staff, constitute the repeated violation of
15 Commission rules that justifies cancelling or
16 suspending a permit as provided by RCW 81.80.280.

17 In addition, the fact that Brooks A&A Moving
18 knew definitively at the end of April 2005 that
19 charging sales tax violated Commission rule yet
20 continued throughout June to charge sales tax
21 constitutes willful violation of legal requirements for
22 which cancellation and suspension represent remedies as
23 provided by WAC 480-15-150.

24 In a case considering willful violation in
25 the context of the Age Discrimination and Employment

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1 Act, the US Supreme Court approved the standard that a
2 violation is willful if a employer either knew or
3 showed reckless disregard for the matter of whether its
4 conduct was prohibited. The citation there is
5 Transworld Airlines, Inc., v. Thurston, 105 Supreme
6 Court, 613 at 623 to 26, 1985.

7 In a 9th Circuit case considering the meaning
8 of "willfully" in the Fair Credit Reporting Act, the
9 Court held that "willfully" entails a conscious
10 disregard of the law. A quote that starts at
11 willfully, "willfully entails a conscious disregard of
12 the law, which means either knowing that that policy or
13 action to be in contravention of the rights possessed
14 by consumers pursuant to the FCRA, or in reckless
15 disregard of whether the policy or action contravened
16 those rights," end quote. The cite there is Reynolds
17 v. Hartford Financial Services Group, 435 F-3rd, 1081
18 at 1098299, 2006.

19 In both of these cases that I've cited, the
20 companies consulted, researched, and then took action,
21 and it wasn't until they got to court that they
22 received an answer about the programs that they had
23 instituted. Here in contrast, the information that the
24 Company's act of charging sales tax constituted a
25 violation came directly from the Agency. For example,

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1 see the letter from the Commission of March 2005 signed
2 by Carol Washburn.

3 Brooks A&A Moving had an answer regarding its
4 sales tax charges straight from the horses mouth, if
5 you will. Consequently, when the Company decided to
6 disregard the clear direction from the Commission to
7 stop charging sales tax, the Company took a conscious
8 risk, and its decision constituted a willful violation
9 of WAC 480-15-490(5).

10 The Commission should require Brooks A&A
11 Moving moving to refund to all of its customers the
12 sales tax charges. In addition, the Commission should
13 suspend the Company's operations for up to 90 days.

14 Thank you.

15 JUDGE MOSS: Just to be sure I understand the
16 relief you are asking for, when you say refund all
17 sales taxes, are you talking about going back to the
18 beginning of operations, or are you talking about June?

19 MS. CAMERON-RULKOWSKI: Going back to June
20 21, 2004, when the Company received its temporary
21 operating authority.

22 JUDGE MOSS: All right. Mr. Tri?

23 MR. TRI: That request right there is broader
24 than the request in the Complaint, which asks that a
25 refund be limited to the moves performed in January,

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1 February, March, April and June of 2005. Before I get
2 to sales tax, I want to address a couple of the other
3 issues first. Estoppel applies in this case, I
4 believe, to some of the relief requested. Estoppel can
5 apply to governmental agency. In this case here, I
6 think estoppel should apply to the issues with respect
7 to cargo insurance and bills of lading.

8 Mr. Macomber and Staff here in their argument
9 wants to use Mr. Macomber in support of its claim with
10 respect to the credit card and sales tax by saying he
11 informed the Brooks that they couldn't collect those
12 fees, so that information should be used against their
13 decision to continue doing so.

14 But on the other hand, Mr. Macomber also was
15 well aware that they were operating without cargo
16 insurance, was well aware they were having trouble
17 getting cargo insurance. He was there to provide that
18 technical assistance. He admits he did not tell them,
19 You've got to stop operating until you get it. In
20 fact, the implication would be that without not telling
21 them that that so long as they were making good-faith
22 efforts to get it, he was giving them his blessing to
23 continue operating, and even what he said with respect
24 to his report, Well, once they get the cargo insurance,
25 he will recommend permanent approval.

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1 For the Staff to come back now and say, We
2 are going to fine you \$100 each and every day that you
3 operated without insurance from the time you got your
4 temporary permit on June 21st through the date you got
5 your binder on November 9 is just -- well, they should
6 be estopped from that based on the actions or nonaction
7 and the indications given them clearly by Mr. Macomber.

8 Frankly, had Mr. Macomber said on August 5th
9 that, Well, you don't have that. You can't operate
10 until you get it, we would have limited their damages,
11 so to speak, at that point, but I don't think
12 Mr. Macomber felt that. He admitted here candidly he
13 didn't tell them that, and I think my clients relied on
14 it, and I think estoppel should apply.

15 Same with respect to the bill of lading
16 format. Mr. Macomber approved the format in his final
17 report of October. Each and every time after that when
18 someone else from the Commission had a problem with the
19 bill of lading format, my client changed it to try and
20 correct the deficiencies being identified for them by
21 the staff. I think estoppel should apply in that case.

22 And frankly and candidly, if you followed
23 this illustrative Exhibit No. 18 to a "T" and had my
24 clients done what is suggested in Item 95, Exhibit 12,
25 which attaches the sample bill of lading and which says

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1 right on the front, "A sample bill of lading form
2 follows the text of this item. Carriers are invited to
3 have this sample bill of lading reproduced in
4 triplicate for use in Washington intrastate household
5 goods moves."

6 Had my clients used this form -- they have 70
7 violations because, as Ms. Hughes admitted, that form
8 does not satisfy all the complaints that she had with
9 respect to the Brooks form. It doesn't have the name,
10 address, and phone number of the consignee or the
11 customer. There is not even a phone number spot
12 anywhere on that form. At least there is one on my
13 client's form, and I would think that, Gee, my clients
14 had come in and said, We did exactly what you said. We
15 copied it in triplicate and used it for all intrastate
16 goods, and now you want to fine us \$7,000 for all 70
17 times we used it in the month of June when you invited
18 us to use it? Estoppel would clearly apply.

19 Why should it apply when Mr. Macomber looks
20 at their bill of lading, says it's fine, says in his
21 report back to the Commission it's fine, and then they
22 work with the Commission each and every time on a
23 problem with the format as identified to fix it. I
24 think estoppel should apply on the bill of lading
25 format issue, and there should be no fine for the cargo

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1 insurance allegation, no fine on the bill of lading
2 format allegation.

3 With respect to the bill of lading
4 filling-out aspect, I think there is a failure of proof
5 by the Department with respect to each and every
6 allegation alleged. It's conceded that at times, a
7 customer doesn't want the address put down because of
8 personal reasons. They followed that and even made an
9 agreement with the Department to address that issue
10 after the alleged violations occurred.

11 With respect to the other allegations they
12 seem -- well, human error is the source of them, most
13 likely, and were done by their workers on that. The
14 majority of them are relatively minor and just simply
15 don't warrant a hundred dollar fine for each and every
16 minor violation found on every bill of lading for the
17 month of June 2005.

18 I want to point out to the Court that it is a
19 very factually intense case here with a lot of
20 documentation, and I'm going to ask the Court that at
21 any time you have any question about what our response
22 with respect to some of the allegations that you
23 referred to Mrs. Brooks' detailed response to the
24 audit, and you can refer to the original audit in and
25 of itself, which is Exhibit 8, her detailed response to

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1 the allegations, which is Exhibit 13, and then the
2 Commission staff responds to her response, which is
3 Exhibit 14, and I think that will provide a lot of
4 guidance to the Court on the factual positions of each
5 side with respect to the many documents that were
6 submitted.

7 Now, the other two other issues are the
8 credit card and the sales tax. Frankly, when I look at
9 the Tariff, I don't see that the credit card fee is not
10 allowed or disallowed, and my client was told by their
11 CPA and the Department of Revenue that they can itemize
12 these charges, and they made it clear to the customer
13 that that would be a charge that if they wanted to use
14 a credit card, they would have that fee passed on to
15 them.

16 It's a minor thing. It's only five
17 allegations here, but it's certainly not a willful
18 violation, I don't believe, from my client. The Court
19 can make its own decision with respect to whether there
20 was or was not a violation there.

21 The sales tax issue is the one I want to
22 address. I think my clients have a legitimate dispute
23 with the Commission about whether that was a charge
24 they could charge to the customer. It was historically
25 learned by Mr. Brooks from working with other companies

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1 in the past, and none of those companies had ever been
2 apparently told by the Commission, at least to his
3 knowledge, that that was not a charge they couldn't
4 use.

5 Even when Mr. Macomber met with them, as he
6 candidly admitted, that was the one issue of dispute
7 really or disagreement with what he was telling them,
8 the Brooks, that was a concern and was a dialogue, and
9 if you will see even in his reports back to the
10 Commission, that wasn't really something he
11 highlighted.

12 He did say on the second worksheet that the
13 sales tax was being charged and shouldn't be, and he
14 admitted that's what he told them, and he did say that
15 was something they did disagree on, but you can see the
16 real issue he was concerned with whether there should
17 be recommendation for approval wasn't the sales tax
18 issue, was the obtaining of the cargo insurance was his
19 biggest issue at that time.

20 The sales tax issue was a subject of ongoing
21 debate between the two because they were -- it's really
22 not clearly set out in the tariff that you can't charge
23 it. Then when the Staff says that you are not supposed
24 to charge it, and they say, Well, we've been told by
25 our CPA and the Department of Revenue that we can, and

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1 it's something other companies have taught us we can
2 do, and we charge a low rate anyway to help make up for
3 that, they indicated it was in their form and they were
4 continuing to do it.

5 Counsel would say that when we e-mail back
6 saying we got an opinion from the AG that you can't do
7 it, that that should be definitive. I don't agree.
8 AG's do give out opinions at times, but in all honesty,
9 at times, their opinions aren't upheld when they are
10 tested. It's really just another opinion, and it's not
11 definitive.

12 It certainly made for the fact that it was
13 rather clear that the Commission disagreed with them
14 doing that, and I can tell that Your Honor is probably
15 bothered by the fact that it was collected and not paid
16 over to the Department of Revenue, and that has been in
17 my analysis of the thing that's kind of odd as well,
18 but my clients, incorrectly or not, believe that by
19 paying the B&O tax over on what they collected was in a
20 way of paying over the tax they were collecting, and
21 frankly, even though I understand that that's not
22 correct, and I think they do now, I would think that if
23 you were going to require them to refund the sales tax
24 that they collected, then they are probably entitled to
25 an overpayment on the B&O tax that they paid on that

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1 percentage of what they ended up paying on because they
2 counted it as revenue, if you understand my drift
3 there.

4 But what I really want to argue is this: If,
5 in fact, it's found to be a violation, that does not
6 lead to the conclusion, I think, that there should be a
7 suspension of their license for several reasons.
8 Because getting to a cancellation or suspension changes
9 things in the legal analysis and the burdens. As I
10 understand, first of all, in order to have a suspension
11 or cancellation, you've got to have willful.

12 I'll accept for sake of argument that
13 counsel's citations of how you should construe what
14 "willful" means. That's a conscious disregard or
15 reckless disregard. I don't think that happened here.
16 My client's had a legitimate, good-faith belief that
17 they could charge this, even though they were being
18 told by the Commission they couldn't.

19 They let them know from the get-go they
20 disagreed with that, and they had a basis for the
21 disagreement. If it turns out it was wrong, that their
22 position on what they could or couldn't legitimately
23 charge, doesn't make it a willful or knowing violation
24 of something when they in good faith believe they
25 could.

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1 Second of all, there is kind of a dispute in
2 Washington law what is the correct burden of proof, but
3 I think the best analysis is when an administrative
4 agency is coming in and seeking to take away a person's
5 license or permit to operate that the burden of the
6 agency is clear, cogent, and convincing, and I think
7 that would be the proper burden to apply here, and I
8 think they had a burden of showing by clear, cogent,
9 and convincing evidence that the Brooks knowingly,
10 intentionally, or in conscious disregard of a knowledge
11 that what they were doing was wrong, yet continued to
12 charge a sales tax in violation of law, and I don't
13 think they've met that burden.

14 Finally, the contention that a cancellation
15 but now a suspension is necessary to serve the public
16 interest; that being that we need to suspend their
17 business operations to protect the public, I don't
18 think they have met their burden of showing that with
19 respect to the sales tax issue or any of the other
20 issues put forth for that matter, Your Honor, because
21 they haven't charged a sales tax for a year, almost a
22 year, and they won't be charging the sales tax in the
23 future, and a suspension would be for this small
24 couple's operation and their very few employees be
25 almost the equivalent of a death sentence. They would

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1 not be able to survive, and it's not necessary to serve
2 the public interest, and I don't really think that the
3 Department really has proven that the sales tax issue
4 by clear, cogent, and convincing was a willful
5 violation by the Brooks, and I don't think that you can
6 use other things, particularly in light of what I think
7 are really strong estoppel arguments where they were
8 trying to work with the Commission, for God's sake, and
9 now fine them for all that and pile it up to look like
10 a really bad thing to take away their license. You
11 should see through that, and that concludes my
12 argument.

13 JUDGE MOSS: Thank you very much. Two
14 minutes.

15 MS. CAMERON-RULKOWSKI: Thank you. First of
16 all, I would like to clarify one thing, and that is
17 that the willful violation is based on sales tax
18 charged in June of 2005. The fact that the tariff does
19 not say you cannot charge sales tax does not excuse the
20 Company from charging sales tax.

21 Household goods carriers operate in a
22 regulated industry, and the tariff provides a level
23 playing field for all of the companies for household
24 goods carriers, and the rules simply say, you can only
25 charge what's in the tariff, and the tariff provides

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1 allowed charges for packing materials and a rate band
2 of charges. It provides all kind of charges, and if
3 the charge isn't in there, it can't be charged, and
4 that's why there is a Commission rule that states that
5 household goods carriers can only charge the rates in
6 tariffs listed in the tariff.

7 Now I would like to address the argument
8 about the sample bill of lading form. Had the Company
9 used the sample bill of lading form, then they would
10 not have included a credit card processing fee space
11 and they would not have included a sales tax charge.
12 The sales tax charge is the most serious violation
13 here, and I think it's one of the primary reasons that
14 the Company was audited, and it was seen as the most
15 serious violation. So had the Company used that sample
16 bill of lading form, I don't think that they would have
17 been audited.

18 JUDGE MOSS: You need to wrap up.

19 MS. CAMERON-RULKOWSKI: And again, this is
20 also not form to change the household goods rules.
21 This is about whether or not the Company complied with
22 rules when direction was given by Staff, and Staff told
23 the Company over and over that it was not allowed to
24 charge sales tax. The Company persisted. Commission
25 Staff does not have to convince household goods

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1 carriers in order for them to comply with Commission
2 rules and tariff items. Thank you.

3 JUDGE MOSS: Any final word, Mr. Tri?

4 MR. TRI: No, Your Honor.

5 JUDGE MOSS: Thank you very much. I
6 appreciate your work today. You were all very
7 efficient, and I think we have a good record on which
8 decision can be based.

9 I will await the transcript in this case,
10 particularly since I don't have the benefit of written
11 briefs. That's a two-week waiting period, so it will
12 be after that before you see an order from me. It will
13 be an order from me. It will be an initial order, and
14 you will have the right to review, so that will be the
15 next event will be the initial order. Anything final
16 before we go off the record?

17 MS. CAMERON-RULKOWSKI: I would like to
18 confirm that you would like to receive sample bills of
19 lading from September 2004; is that correct?

20 JUDGE MOSS: Yes, just a few. I'm not sure I
21 need them anymore, but I'll take them anyway. Thank
22 you all very much. I appreciate your being here today.

23 (Hearing concluded at 3:30 p.m.)

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