

Docket No. TV-170747 - Vol. II

In the Matter of: Tara Chila d/b/a Moves for
Seniors

December 19, 2017



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

3

4 In the Matter of Determining) DOCKET NO. TV-170747
 5 the Proper Carrier Classification)
 6 of, and Complaint for Penalties)
 against,)
)
 7 TRANSIT SYSTEMS, INC.,))
 8 d/b/a MOVES FOR SENIORS))

9 BRIEF ADJUDICATIVE PROCEEDING, VOLUME II

10 Pages 34-121

11 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

12

13 9:11 a.m.

14 December 19, 2017

15

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18

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1 OLYMPIA, WASHINGTON; DECEMBER 19, 2017

2 9:11 A.M.

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

5
6 JUDGE PEARSON: So let's go ahead and be on
7 the record. Today is Tuesday, December 19th, 2017. The
8 time is a little after 9:10 a.m. This is Docket
9 TV-170747, which is captioned, In the Matter of
10 Determining the Proper Carrier Classification of, and
11 Complaint for Penalties against, Transit Systems, Inc.
12 d/b/a Moves for Seniors.

13 My name is Rayne Pearson. I'm the
14 administrative law judge presiding over today's brief
15 adjudicative proceeding. We'll start by taking short
16 appearances from the parties. Both Mr. Beattie and
17 Mr. Shafer and Mr. Roberson, I believe, have all entered
18 notices of appearance, so if you can just state your
19 name and who you represent. And we will begin with
20 Commission Staff. I'll start with Mr. Beattie since
21 he's in the room.

22 MR. BEATTIE: Thank you, Judge Pearson.
23 Julian Beattie, Office of the Attorney General,
24 appearing on behalf of Commission Staff. And with me on
25 the bridge line is my colleague, Jeff Roberson, also the

1 Office of the Attorney General.

2 JUDGE PEARSON: Thank you.

3 Mr. Shafer?

4 MR. SHAFER: Thank you, Your Honor. Andrew
5 Shafer, Attorney at Law, Simburg Ketter Sheppard &
6 Purdy. We represent Transit Systems, Inc. d/b/a Moves
7 for Seniors.

8 JUDGE PEARSON: Great. Thank you.

9 So this is a classification hearing that was
10 brought by the Commission based on Staff's findings that
11 Moves for Seniors is conducting a household goods moving
12 company without the required permit from the Commission.
13 If we determine here today that Moves for Seniors is
14 engaging in such conduct, we will issue an order
15 requiring the company to cease and desist all operations
16 unless and until it obtains a permit from the
17 Commission.

18 We also have a complaint for penalties
19 that's somewhat of a separate issue. The complaint for
20 penalties alleges that Moves for Seniors has, in fact,
21 engaged in activities as a household goods mover.

22 Today is an evidentiary hearing to consider
23 whether Moves for Seniors should be classified as a
24 household goods carrier and whether the recommended
25 penalties are appropriate.

1 So Staff will present its case first today
2 followed by the company, and before we get started, I
3 would like to request that the parties, to the extent
4 they are willing, stipulate to the admission of the
5 exhibits that have been submitted.

6 So, Mr. Beattie, I will let you address that
7 first and then I'll ask Mr. Shafer about that.

8 MR. BEATTIE: I guess, Judge, Commission
9 Staff is willing to stipulate to the admission of all
10 exhibits.

11 JUDGE PEARSON: Okay. Thank you.

12 So, Mr. Shafer, that means --

13 MR. SHAFER: Your Honor, we can stipulate to
14 Exhibits 2, 3, and 4. We object to Exhibit 5 as being
15 irrelevant. And also with regard to Exhibit 1, which is
16 the declaration of a Staff investigator who's not
17 available, as I understand it, for cross-examination, we
18 object to the declaration on that basis. We do not
19 object to the exhibits -- we don't object to the
20 exhibits contingent to the declaration other than
21 Exhibits 11 and 12 to the Jones declaration.

22 JUDGE PEARSON: Okay. Well, we will take
23 that up when we get to those. Right now what I will do
24 is I will admit the exhibits that you offered,
25 Mr. Shafer. What -- can you give me the name of your

1 witness?

2 MR. SHAFER: Yes, Chris Pienkowski,

3 P-i-e-n-k-o-w-s-k-i.

4 JUDGE PEARSON: Did you say P as in Peter?

5 MR. SHAFER: P as in Peter.

6 JUDGE PEARSON: Okay. So what are his

7 initials?

8 MR. SHAFER: C.P. Charles Peter.

9 JUDGE PEARSON: Oh, Paul Peter.

10 MR. SHAFER: Charles Peter, C. C as in

11 Christmas.

12 JUDGE PEARSON: Okay. So C.P.

13 MR. SHAFER: Yes.

14 JUDGE PEARSON: All right. So I will admit
15 the exhibits that you offered and number them at CP-1,
16 through CP-14.

17 (Exhibits CP-1 through CP-14 admitted.)

18 MR. SHAFER: Thank you, Your Honor.

19 JUDGE PEARSON: And with respect to
20 Ms. Paul's exhibits, I will admit SP-2 through SP-4, and
21 we will take up SP-1 and SP-5 when they're offered,
22 okay?

23 MR. SHAFER: Very good.

24 (Exhibits SP-2 through SP-4 admitted.)

25 JUDGE PEARSON: We're back to everyone

1 echoing again, including myself.

2 MR. SHAFER: That's what we're picking up on
3 our end.

4 JUDGE PEARSON: Okay. So, Mr. Beattie, if
5 you would like to get started. Hopefully you won't
6 echo.

7 Does anyone have any questions before we
8 proceed?

9 MR. SHAFER: No questions from Moves for
10 Seniors.

11 JUDGE PEARSON: All right. So, Mr. Beattie,
12 whenever you're ready.

13 MR. BEATTIE: Thank you. Commission Staff
14 would like to begin this morning with its witness, Susie
15 Paul.

16 JUDGE PEARSON: All right. Ms. Paul, if you
17 would please stand and raise your right hand, I will
18 swear you in with the oath of witness.

19 MR. SHAFER: Your Honor --

20

21 SUSIE PAUL, witness herein, having been
22 first duly sworn on oath,
23 was examined and testified
24 as follows:

25 //

EXAMINATION OF PAUL / BEATTIE

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1 JUDGE PEARSON: Sorry, Mr. Shafer --

2 MR. SHAFER: We have our volume turned up
3 all the way, and I apologize, but I cannot hear. I
4 couldn't hear Mr. Beattie and I can't hear Ms. Paul.

5 JUDGE PEARSON: Okay. So Mr. Beattie just
6 offered Ms. Paul as his witness and I just swore her in.
7 That's all you missed. I will make sure that she speaks
8 very loudly and clearly into the microphone.

9 And you too, Mr. Beattie.

10 MR. SHAFER: Thank you, Your Honor.

11

12 EXAMINATION

13 BY MR. BEATTIE:

14 Q. Would you please state your name and spell your
15 last name for the record?

16 **A. My name is Susie Paul. My last name is spelt**
17 **P-a-u-l.**

18 Q. What is your position at the Washington
19 Utilities and Transportation Commission?

20 **A. I am the lead investigator for compliance**
21 **investigations in the consumer protection program.**

22 Q. And can you give us a little bit more about what
23 your duties entail and what you do in that capacity?

24 **A. Yes, we investigate regulated companies, it also**
25 **includes nonregulated companies. We look at the**

EXAMINATION OF PAUL / BEATTIE**44**

1 business practices of those of the utilities and
2 transportation.

3 Q. And does that include household goods carriers?

4 **A. Yes, it does.**

5 Q. Are you familiar with the statutes and
6 regulations governing household goods transportation in
7 the state of Washington?

8 **A. Yes, it involves the RCWs and the WACs and**
9 **Tariff 15-C, which are all related to household goods**
10 **carriers.**

11 Q. Okay. Can you just tell us a little bit more
12 about your level of familiarity with those statutes,
13 rules, and tariff provisions?

14 **A. Well, I use them on a daily basis. I have been**
15 **with the Commission since 2013 and it's --**

16 MR. SHAFER: Your Honor, I'm sorry, we just
17 had an interruption in signal. Can the witness repeat
18 her answer?

19 JUDGE PEARSON: Sure. There was someone
20 beeping in on the bridge line. That's fine.

21 Go ahead, Ms. Paul, if you could repeat
22 that.

23 THE WITNESS: I'm trying to think of where I
24 was at.

25 BY MR. BEATTIE:

EXAMINATION OF PAUL / BEATTIE

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1 Q. You were describing your level of familiarity
2 with the household goods carrier regulations.

3 **A. Okay. Thank you. Yes, I have been with the**
4 **Commission since 2013, and it's a daily basis that I**
5 **deal with the different utilities, particularly with**
6 **household goods movers. I'm also part of the training**
7 **that is held here at the Commission four times a year**
8 **for household goods industries.**

9 Q. Part of it how?

10 **A. I have been in the training and I attend the**
11 **training.**

12 Q. Okay. Thank you.

13 I would like to turn to Staff's investigation in
14 this docket. The subject of this hearing is an entity
15 known as Transit Systems, Inc. d/b/a Moves for Seniors.
16 So just a housekeeping item, Ms. Paul, can we all agree
17 that when I say "Moves for Seniors," that's shorthand
18 for the entity that is formally known as Transit
19 Systems, Inc. d/b/a Moves for Seniors?

20 **A. Yes.**

21 Q. Okay. So my question is has the Commission
22 issued a household goods carrier permit for Moves for
23 Seniors?

24 **A. No, it has not.**

25 Q. And when is the last time you checked?

EXAMINATION OF PAUL / BEATTIE

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1 **A. Well, I attempted to check this morning, but it**
2 **was not available. I did go to licensing section to**
3 **determine that, and they have not applied for an**
4 **application or submitted an application.**

5 Q. Let's turn now to the evidence that Staff is
6 presenting today. I'd ask you to turn to Exhibit SP-1.

7 **A. Okay. I'm there.**

8 Q. And can you please identify this exhibit?

9 **A. This is the declaration of Rachel Jones, former**
10 **investigator with the Utilities and Transportation**
11 **Commission.**

12 Q. You say "former," can you tell us where
13 Ms. Jones went?

14 **A. Yes, she was an investigator here until the end**
15 **of October of this year, and then she took a position**
16 **with the Department of Social and Health Services.**

17 Q. You said you were a supervisor in the consumer
18 protection section, does that mean you supervised
19 Ms. Jones?

20 **A. Yes, I did. I am the lead worker and I review**
21 **her work.**

22 Q. Did you specifically review this declaration?

23 **A. Yes.**

24 Q. Would you say you were familiar with its
25 contents?

EXAMINATION OF PAUL / BEATTIE

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1 **A. I'm very familiar with it.**

2 Q. Did you discuss Rachel's findings with Rachel
3 before she left the Commission?

4 **A. Yes, I did.**

5 Q. Do you believe you are prepared to discuss
6 Ms. Jones' findings here in this hearing today?

7 **A. Yes.**

8 Q. Let's, please, turn first to pages 14 and 15 of
9 Exhibit SP-1.

10 MR. SHAFER: Your Honor, I beg your pardon,
11 we haven't stipulated to Exhibit SP-1, and so it's
12 inappropriate to refer to the exhibit until it's
13 admitted. I also request the opportunity to voir dire
14 the witness about this exhibit.

15 JUDGE PEARSON: Mr. Beattie, do you want to
16 respond to that?

17 MR. BEATTIE: Well, I haven't offered it for
18 admission yet, so I don't understand the nature of the
19 objection.

20 MR. SHAFER: Counsel's beginning to refer to
21 a document that's not been admitted. That's the
22 problem.

23 JUDGE PEARSON: So --

24 MR. BEATTIE: That's -- I don't understand.

25 JUDGE PEARSON: Mr. Shafer, this is

EXAMINATION OF PAUL / BEATTIE

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1 routinely how we conduct our hearings. We typically
2 review the document before it's offered for admission.
3 So I'm going to allow Mr. Beattie to proceed.

4 MR. SHAFER: Okay.

5 MR. BEATTIE: Thank you, Judge Pearson.

6 BY MR. BEATTIE:

7 Q. Ms. Paul, if you could please turn to pages 14
8 and 15.

9 **A. I'm there.**

10 Q. Would you please tell us what we're looking at
11 and how Staff obtained these two pages?

12 **A. These are advertisements --**

13 MR. SHAFER: Your Honor, I'm going to object
14 to the questioning until I can voir dire the witness.
15 The witness hasn't established that she did any of this.
16 This was all apparently done by a former employee who is
17 not available for cross-examination. That's the basis
18 for the objection and for our not stipulating to the
19 admissibility of Exhibit 1. Ms. Paul has no more
20 knowledge about what Rachel Jones did than I do. Even
21 though she may have been her supervisor, she can't
22 testify about this document because she's not the one
23 who pulled it off the website.

24 JUDGE PEARSON: So, Mr. Shafer, if you would
25 just please stop interrupting, allow Mr. Beattie to

EXAMINATION OF PAUL / BEATTIE

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1 proceed, perhaps he will get --

2 MR. SHAFER: Your Honor, I would object.

3 The objections are appropriate with all due respect.

4 JUDGE PEARSON: Okay --

5 MR. SHAFER: When Counsel is referring to a
6 document that has not been admitted, he's trying to
7 authenticate it, I appreciate that, but this isn't a
8 witness who can authenticate this document because she's
9 not the one who went to the Internet.

10 JUDGE PEARSON: Perhaps she did go to the
11 Internet and verify whether these were there. We
12 haven't gotten to that part yet, and I think that's
13 where Mr. Beattie is going, and I'm going to allow him
14 to proceed with that line of questioning if, in fact,
15 that is where he's going with this.

16 BY MR. BEATTIE:

17 Q. Okay. Ms. Paul, my question was what is this
18 document and how did Staff obtain it?

19 **A. This document is an advertisement off of Moves**
20 **for Seniors' website, and I actually have gone to the**
21 **website, I've thoroughly researched it, and this was**
22 **printed out by myself.**

23 Q. Okay. So are you saying that -- well, let me
24 ask you this, Ms. Paul. Is this document as we see it
25 printed here the same as when you viewed it online?

EXAMINATION OF PAUL / BEATTIE

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1 **A. Yes, it is.**

2 Q. Okay. Ms. Paul, do you consider this document
3 to be an advertisement for household goods
4 transportation in the state of Washington?

5 **A. Yes, there are numerous things on this document
6 that shows that it is advertising as a household goods
7 mover, and the first part says, (as read) We make moving
8 simple, stress free, comforting and pleasant. It also
9 provides a link to get a quote for a move, and it also
10 says, (as read) Get a free consultation now.**

11 **It further says, (as read) Moves for Seniors is
12 not your traditional moving company. We are a resource
13 for all of the moving needs that people may find
14 essential when they choose to relocate from their
15 long-time family home to a new residence that better
16 suits them. And it goes on further about talking about
17 Moves for Seniors and its -- and its moving business.**

18 Q. Let's turn to Exhibit SP-2.

19 MR. SHAFER: I'm sorry, what was the next
20 exhibit?

21 MR. BEATTIE: SP-2.

22 MR. SHAFER: Thank you.

23 JUDGE PEARSON: So before we move on, since
24 we've already stipulated to the admission of SP-2, why
25 don't we take up his objections with SP-1.

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1 MR. SHAFER: Your Honor, we continue to
2 object to Exhibit SP-1. First of all, I object again to
3 the witness reading into the record the salient portion
4 of the pages that she read when the document's not been
5 admitted. If the document is admitted, it speaks for
6 itself. If it's not admitted, it's inappropriate for
7 her to have put into the record what would otherwise be
8 inadmissible.

9 JUDGE PEARSON: Okay. And so --

10 MR. SHAFER: Witness further has not -- she
11 hasn't verified that this web page was up and online at
12 the time the investigation was done. She testified that
13 she checked it recently, and it may be so recently, but
14 it's not part of the evidence upon which it's based.

15 JUDGE PEARSON: So what's the basis of your
16 objection to the declaration first of all? Let's take
17 this one thing at a time.

18 MR. SHAFER: Well, we object to -- we don't
19 think the document's authenticated. I don't have an
20 objection based on relevance, I don't have an objection
21 based on hearsay, the objection is based on
22 authentication.

23 JUDGE PEARSON: Of its contents?

24 MR. SHAFER: Of its contents.

25 JUDGE PEARSON: Okay. So when I'm looking

EXAMINATION OF PAUL / BEATTIE

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1 at the contents of the declaration, it's fairly
2 straightforward, it's fairly short. The matter of the
3 email tip that Moves for Seniors is operating as a
4 household goods carrier is a matter of Commission
5 record. I imagine that's stored in the system down in
6 consumer protection. The rest has to do with searches
7 of websites for information about Moves for Seniors, and
8 the quote that was received from Staff, which is also a
9 Commission record and in our files, so I'm not quite
10 sure -- I don't think anything in here is particularly
11 controversial. So I'm unclear -- it may be disputing
12 the truth of any of these statements that these websites
13 would produce different results?

14 MR. SHAFER: Well, as I indicated earlier,
15 our objection to Exhibit 1, first of all, we object to
16 use of an affidavit when the witness is unavailable and
17 have not had an opportunity to cross-examine her about
18 anything. Now, the cross-examination that would be most
19 relevant is the cross-examination that would pertain to
20 Exhibits 11 and 12, which is the request for moving
21 quote and the quote that was received.

22 And so with regard to Exhibit 1, we can
23 stipulate, frankly, to Exhibits 1 through 10 to Exhibit
24 SP-1 simply because these are I won't say
25 self-authenticating, but my client's reviewed them, and

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1 he's confirmed that these are documents from their
2 website at least today. Whether they were in effect at
3 the time Ms. Jones did her investigation in January
4 almost a year ago, we can't say one way or the other.
5 And so we -- I'm pretty sure you'll admit them anyway,
6 but we're going to put our objection on the record
7 because there's no way to authenticate that these are
8 current documents.

9 Now, we do object to 11 and 12 because we
10 have no basis, and we have no way to determine what was
11 done to get the quote, and that's the basis for
12 objecting to Exhibits 11 and 12 to Exhibit SP-1. I
13 can't cross-examination Ms. Jones about them.

14 JUDGE PEARSON: Okay. Mr. Beattie, do you
15 want to respond to that?

16 MR. BEATTIE: Yes. First of all, with
17 respect to the term "authentication," is this
18 declaration what it purports to be, of course it is.
19 There's no -- there can be no argument about that, and
20 Mr. Shafer has not made any. It's signed by the
21 witness.

22 Now, I think what Mr. Shafer's really
23 getting at is that -- that this is a hearsay document.
24 But in the Commission's rules, this situation is
25 covered, hearsay documents are allowed as long as

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1 there's a reasonable basis to rely on them, and in this
2 case, Ms. Paul has already testified that she supervised
3 this investigation, that she personally reviewed
4 Ms. Jones' work, that she's familiar with Ms. Jones'
5 work, that she's prepared to discuss those findings
6 today. So I would say that that meets the test, and
7 there is no basis on which to exclude this document.

8 MR. SHAFER: Well, Your Honor, if I can't
9 cross-examine the person who did the investigation about
10 the two things that concern me, which is the request for
11 the quote and receipt of the quote. My client is being
12 un -- ridiculously prejudiced, quite frankly. I've
13 never been in an adversary proceeding before where an
14 affidavit was used, there was no opportunity to
15 cross-examination the affiant. Now, we can let a lot of
16 this go by because counsel's right, it's kind of pro
17 forma except for Exhibits 11 and 12. We strenuously
18 object to that. If the Commission wants to remove those
19 pages and strike those portions of Ms. Jones'
20 declaration, we can get beyond this.

21 JUDGE PEARSON: Okay. So the basis for the
22 objection, then, I -- what I'm gathering is these two
23 documents form the foundation for part of Staff's
24 penalty recommendation?

25 MR. SHAFER: Well, I'm assuming it is, but

EXAMINATION OF PAUL / BEATTIE

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1 once again, that will be revealed later on, I guess.

2 But my objection just fun- -- it's just fundamental.

3 You don't put evidence in if there's no opportunity to

4 cross-examine, and I can't -- because there are

5 penalties involved, my client has an absolute right to

6 cross-examine that witness. And if she's not

7 available -- we've had no opportunity to cross-examine,

8 we couldn't take her deposition. We got this thing on

9 the 12th of December. Didn't even know about Rachel

10 Jones as far as being involved in this case until then.

11 So we've had no opportunity to examine her.

12 MR. BEATTIE: Well, once again, Your Honor,

13 I would suggest that Mr. Shafer spend some time with the

14 rules that govern this particular administrative

15 proceeding. We are not in a superior court, so this

16 is an -- again, this is an APA proceeding, and the

17 process that is due to the parties is actually spelled

18 out in a rule, again, as I've already covered the rule

19 on hearsay. I believe that this is the type of document

20 that routinely comes into these proceedings, and so I

21 would rest on that, Your Honor.

22 JUDGE PEARSON: Yes, and I agree --

23 MR. SHAFER: The rules require that the

24 rules of evidence be applied to the extent feasible.

25 And what we're suggesting is since Ms. Jones still lives

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1 in Olympia, still works for the State, there's really no
2 reason to offer why the Utilities Commission couldn't
3 have had her appear today and testify about those
4 subjects under 11 and 12.

5 JUDGE PEARSON: Mr. Shafer, your objection
6 is noted; however I'm going to overrule it and admit
7 this exhibit. Whether or not she's available, I think
8 that Ms. Paul is well-versed in this and perfectly
9 qualified to testify to its contents. And as
10 Mr. Beattie pointed out, this is the type of document we
11 routinely see in these proceedings. It's a Commission
12 record, I imagine that Ms. Paul has access to the email
13 account that this was sent through and has probably
14 reviewed it herself inside the email account. So I'm
15 going to allow it, and I will admit SP-1 into the
16 record.

17 (Exhibit SP-1 admitted.)

18 Go ahead, Mr. Beattie.

19 MR. BEATTIE: Thank you.

20 BY MR. BEATTIE:

21 Q. I believe we were at Exhibit SP-2?

22 A. I'm there.

23 Q. And this is a five-page document, correct?

24 A. Yes, it is.

25 Q. Can you please identify this document?

EXAMINATION OF PAUL / BEATTIE

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1 **A. This is part of Moves for Seniors' website, and**
2 **this section deals with consumer services for seniors**
3 **and their families, and it lists the services in full**
4 **detail. It covers how your moving needs can be met**
5 **anywhere in the U.S., and it provides a map that --**
6 **although this copy is not colored, it's blue and white**
7 **on the website, and it shows that they provide local**
8 **moving services specialized for seniors and their**
9 **family, and Washington State is depicted as blue on the**
10 **website meaning that they provide local moving services.**

11 Q. In Washington State?

12 **A. In Washington State, correct.**

13 Q. Ms. Paul, you personally visited this website?

14 **A. Yes, I have.**

15 Q. Do you consider this website printout to be an
16 advertisement for household goods transportation in
17 Washington State?

18 **A. Yes, I do. As I stated earlier, it shows that**
19 **they provide local moves in Washington State, and then**
20 **there are some reviews also and it says, (as read) I**
21 **used Moves for Seniors to move my mother a few weeks ago**
22 **and it could not have gone better.**

23 **It also says, (as read) Long distance moving**
24 **services specialized for seniors and their families.**

25 **And to me that is an advertisement for household goods**

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1 moving.

2 Finally, on -- there's a review from Ken and
3 Sharon B. in Tacoma, Washington, and said, (as read) I
4 just want to thank you for helping us make our move so
5 much easier. And that's directed to Moves for Seniors.

6 Q. Let's please move to Exhibit SP-3.

7 **A. I'm there.**

8 Q. Same question, what is this document and how did
9 Staff obtain it?

10 **A. This is also off of Moves for Seniors. It's a**
11 **section that they call the blog, and it's -- it provides**
12 **information about the company, Moves for Seniors, and it**
13 **states that, (as read) Moves for Seniors is a premiere**
14 **moving services provider for seniors, caregivers, and**
15 **senior living communities.**

16 It also states that, (as read) While we may have
17 started out as a simple moving company, the services
18 that we have continued to add have helped us become much
19 more than just a moving company.

20 It goes further to state that, (as read) We are
21 a completely senior-focused moving provider that has had
22 thousands of successful moves over the past ten years.
23 Moves for Seniors takes the stress and frustration out
24 of the moving process because of our streamlined
25 approach.

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1 Q. And do you consider those statements you just
2 read to form an advertisement for household goods
3 transportation in Washington State?

4 **A. Yes --**

5 MR. SHAFER: Objection --

6 JUDGE PEARSON: I'm sorry, what?

7 MR. SHAFER: The objection is it calls for
8 the witness's opinion. She's not been qualified as an
9 expert, she's an investigator, and counsel is asking for
10 her opinion about what this denotes.

11 JUDGE PEARSON: Mr. Beattie?

12 MR. BEATTIE: She -- she is an expert as far
13 as that term is used in this setting. And further, I
14 have asked the same question already on other exhibits
15 and that has not been objected to.

16 JUDGE PEARSON: Yes, I agree. I'm going to
17 overrule the objection insofar as she is qualified as an
18 investigator to determine what type of conduct violates
19 Commission rules and applicable statutes. She is an
20 expert within that meaning.

21 So go ahead.

22 BY MR. BEATTIE:

23 Q. The question was does Staff consider this blog
24 post to be an advertisement for household goods
25 transportation in the state of Washington?

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1 **A. Yes. As I pointed out, it has numerous**
2 **different places where it talks about moving services,**
3 **and it only talks about Moves for Seniors. It does not**
4 **talk about any other company. So the reader would**
5 **understand that Moves for Seniors is providing a**
6 **household goods moves.**

7 Q. Please turn to page 4 of SP-3.

8 **A. I'm there.**

9 Q. There's a blog post titled "Display Stands,"
10 exclamation point. Do you see that?

11 **A. Yes, I do.**

12 Q. I believe we actually have a blown-up version of
13 that imagine, so if you could turn to Exhibit SP-4,
14 please.

15 **A. Yes.**

16 Q. And can you tell us what we're looking at here?

17 **A. This is a display that Moves for Seniors is**
18 **using, they partner with Holiday Retirement community,**
19 **and they state that they put this in hundreds of**
20 **different facilities. It states that, (as read) Moves**
21 **for Seniors can handle all the logistics for you such as**
22 **packing and preparing furniture, moving items to your**
23 **new home, distributing items to family and loved ones**
24 **across the country, delivering donations, and cleaning**
25 **out remaining items. They state that their mission is**

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1 to make moving simple, stress-free, comforting and
2 pleasant.

3 Q. Does Staff consider this display stand to be an
4 advertisement for household goods transportation in the
5 state of Washington?

6 **A. Yes, this is --**

7 MR. SHAFER: Object that that states undue
8 request for a -- and for calls for an opinion.

9 JUDGE PEARSON: Overruled.

10 **A. This definitely is an advertisement. It is**
11 **placed in senior retirement facilities and Moves for**
12 **Seniors is the only name on this display board, and it**
13 **states that it provides moves.**

14 BY MR. BEATTIE:

15 Q. Ms. Paul, you talked about Holiday Retirement,
16 can you tell us again what -- what you understand that
17 to be?

18 **A. That is a retirement facility for senior**
19 **citizens. There are numerous of those branches in**
20 **Washington State.**

21 Q. Let's turn to Exhibit SP-1 pages 3 through 13.

22 **A. Okay.**

23 Q. And here we do see the Holiday Retirement logo,
24 can you just tell us what we're looking at here?

25 **A. Yes, Holiday Retirement logo, it's -- it is a**

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1 retirement facility and it partners with Moves for
2 Seniors.

3 Q. Now, how did Staff obtain this printout?

4 **A. This printout was first obtained by Rachel**
5 **Jones. It was at a website -- in her report, she did**
6 **list the website address, which was incorrect.**

7 Q. Okay. Tell us more about that, please.

8 **A. Okay. The correct address to get to this page**
9 **is <http://www.holidaytouch.com/retirement/101/>**
10 **partnerships/moves-for-seniors, and that will pull up**
11 **the page that is listed as attachment 8.**

12 Q. And I take it you visited that page?

13 **A. Yes, I did.**

14 Q. And does it look the same as you see it printed
15 here?

16 **A. Yes.**

17 Q. Do you consider this -- excuse me. Does Staff
18 consider this website to be an advertisement for
19 household goods transportation in Washington State?

20 **A. Yes, it clearly does and the photograph, it has**
21 **the Moves for Seniors logo, and it says, (as read) Let**
22 **us take care of the move.**

23 **And then it talks about, (as read) Moves for**
24 **Seniors, a company that specializes in simplifying the**
25 **senior move experience.**

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1 It says, (as read) Simple package pricing for
2 local moves. Residents who choose to use Moves for
3 Seniors will receive a free move estimate, a free senior
4 moving checklist, and the options of adding other
5 services such as sorting and packing.

6 It says, (as read) Moves for Seniors movers will
7 move all furniture and boxes into the new resident's
8 apartment, assemble the furniture, and remove all the
9 packing materials. Moves for Seniors can pack, label,
10 deliver and unpack all belongings for new residents at a
11 Holiday community. And we consider this an
12 advertisement because all of these functions would
13 require a permit to perform a household goods move in
14 the state of Washington.

15 Q. Please turn now to page 17 of Exhibit SP-1.

16 **A. Okay. I'm there.**

17 Q. And please tell us what we're looking at here
18 and how Staff obtained this printout.

19 **A. This is a page from LinkedIn. It's a Moves for**
20 **Seniors advertisement, and it's says, (as read) Moves**
21 **for Seniors is a division of Transit Systems, Inc.**
22 **offering a wide array of specialized moving services for**
23 **anyone -- sorry, for seniors, their families and --**
24 **sorry, this is really small print -- and organizations**
25 **in senior community.**

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1 It says, (as read) We safely ship any of the
2 following: Furniture, antiques, large appliances, boxes
3 of any size, and house full of items.

4 Q. "We" being?

5 **A. "We" being Moves for Seniors.**

6 Q. Okay. And did you personally visit this web
7 page?

8 **A. Yes, I did.**

9 Q. Does it look the same to you when you visited as
10 you see it here printed?

11 **A. Yes.**

12 Q. And do you consider this document to be an
13 advertisement for household goods transportation in
14 Washington State?

15 **A. Yes, I do.**

16 Q. Let's turn now, please, to Exhibit SP-1 pages 29
17 through 31.

18 **A. Okay. I'm there.**

19 Q. Okay. I see (as read) Your quote number is, and
20 then some numbers. Can you tell us what's going on
21 here, please?

22 **A. Yes, investigators will attempt to get moves on**
23 **a suspected non-permitted company, and we use assumed**
24 **names. Ms. Jones did that in this case under the name**
25 **of Abby Wood, and she requested a quote from Moves for**

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1 Seniors' website.

2 Q. And before you go on, Ms. Paul, how did
3 Ms. Jones know to make that inquiry?

4 **A. Well, it's right on their website "Get a free**
5 **quote," and so she selected that, and then she asked for**
6 **a move within two points of Washington, so it would be a**
7 **local move.**

8 Q. Did you ask her to take this action?

9 **A. No, but I did review her action. It's a routine**
10 **part of our investigative process to obtain a quote for**
11 **a move.**

12 Q. On page 30, I see the name Abby Wood in the top
13 right corner. Is that what you mean when you say
14 Ms. Jones used an assumed name?

15 **A. Yes, that was Rachel Jones using an assumed name**
16 **and a different email address than her business address.**

17 Q. Okay. Staying with page 30, this is attachment
18 J, please tell us about this email.

19 **A. This is an email from Susan Osborne from Moves**
20 **for Seniors, and it's thanking Ms. Jones for the**
21 **opportunity to provide the estimate, and she gives the**
22 **quote number, and she attached the quote proposal for**
23 **moving and shipping the items that had been requested.**
24 **And she talks about the hourly rate and -- and anything**
25 **about the -- estimating the time of the move. She**

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1 offered to answer any questions that may come up for
2 assistance.

3 Q. As far as you can tell, Ms. Paul, did Ms.
4 Osborne tell Ms. Wood or Ms. Jones, if you will, that a
5 company other than Moves for Seniors may show up and
6 actually perform the move?

7 **A. No, there's no indication of that.**

8 MR. SHAFER: Objection. Hearsay. And
9 there's no way for me to examine Ms. Jones about what
10 was or was not said by Ms. Osborne. I understand the
11 rules of evidence are lax before the Commission, but we
12 haven't burned them yet and this goes beyond.

13 Objection.

14 JUDGE PEARSON: So it sounds like she --
15 like you said earlier, the contents of the email speak
16 for themselves. I have it right here in front of me. I
17 don't think that Ms. Paul is trying to go beyond the
18 scope of what's in front us or testify to the contents
19 of any conversation that might have occurred between
20 Ms. Osborne and Ms. Jones, so I'm going to overrule the
21 objection.

22 BY MR. BEATTIE:

23 Q. Perhaps you could just give your answer again,
24 Ms. Paul?

25 **A. Can you restate the question?**

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1 Q. Sure. I was just asking if you see anything in
2 this email that leads you to believe that Ms. Osborne
3 indicated a moving company other than Moves for Seniors
4 would show up to perform the move.

5 **A. There is no indication that anyone else would be**
6 **performing the move and, in fact, on page 31, Ms. Susan**
7 **Osborne provides a quote of \$638 based on a four-hour**
8 **move and that includes two men, a truck, and travel fee.**
9 **And it's for moving household items, furniture, and**
10 **packed boxes.**

11 Q. Okay. Now, Ms. Paul, I ask my question
12 carefully, notwithstanding anything Ms. Jones may have
13 thought, when you view these documents, do you on behalf
14 of Staff consider them, pages 29 through 31,
15 collectively to be an offer for households goods
16 transportation in the state of Washington?

17 **A. Yes, I would consider this an offer for a move.**
18 **It has provided a dollar quote and lists items that will**
19 **be moved.**

20 Q. Okay. Thank you, Ms. Paul. I'm going to
21 conclude with the evidentiary submission and just ask
22 you a few questions to follow up on what we've just
23 discussed.

24 Based on everything that you have just reviewed
25 in this hearing today, does Staff find that Moves for

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1 Seniors committed any violations of state law or
2 regulations?

3 **A. Yes.**

4 MR. SHAFER: Objection, Your Honor, that
5 calls for a legal conclusion, and with all due respect
6 to counsel, that's the administrative law judge's job to
7 come to that conclusion one way or the other based upon
8 the totality of the evidence. The witness's opinion,
9 the Staff's opinion frankly is not determinative, and it
10 is just absolute opinion that's inadmissible. It's
11 inappropriate because it reaches the ultimate conclusion
12 of law as to whether or not Moves for Seniors operated
13 as a for hire household goods carrier within the state
14 of Washington.

15 JUDGE PEARSON: Mr. Beattie, do you want to
16 respond to that before I rule?

17 MR. BEATTIE: Maybe I can rephrase and try
18 one more formulation, Your Honor?

19 JUDGE PEARSON: Sure.

20 BY MR. BEATTIE:

21 Q. Okay. Ms. Paul, does Staff recommend that the
22 Commission find any violations in this docket?

23 **A. Yes.**

24 Q. What is Staff's recommendation as to the
25 violations?

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1 **A. Well, Staff recommends that the Commission find**
2 **Moves for Seniors in violation for advertising to**
3 **transport household goods within the state of Washington**
4 **without the required permit from the Commission and find**
5 **Moves for Seniors in violation for offering to transport**
6 **household goods moves within the state of Washington**
7 **without having the required permit.**

8 Q. How many total violations is that?

9 **A. Two.**

10 Q. Let's move on to Staff's penalty recommendation.

11 Is Staff proposing a monetary penalty in this docket?

12 **A. Yes, Staff is recommending a penalty.**

13 Q. So for two violations, what total penalty would
14 Staff recommend?

15 **A. Staff recommends that the Commission impose the**
16 **maximum financial penalty of \$10,000 with a \$5,000**
17 **portion of the penalty suspended for a period of two**
18 **years and then waived if the company permanently**
19 **refrains from operating as a household goods mover in**
20 **the state of Washington without the required permit.**

21 Q. I want to ask you about your recommendation for
22 the maximum statutory penalty. What factors would lead
23 Staff to recommend the maximum penalty, understanding
24 that Staff is also recommending a suspension? What
25 public harm does Staff perceive in this case?

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1 **A. Well, Staff finds public harm to this -- the**
2 **advertising is deceptive. It's targeting a very**
3 **vulnerable group in the state of Washington, which is**
4 **the seniors. They advertise as a specialized senior**
5 **moving company. I did personally go to each website of**
6 **the moving companies that Moves for Seniors says they**
7 **partner with and not one of them had any indication on**
8 **their website that they specialize in household goods**
9 **moves for senior citizens. Also, on the household goods**
10 **training that we provide, you know, I've been a part of**
11 **the training for years, and there is no training**
12 **specialized for senior citizens.**

13 Q. Why, then, is Staff proposing that the
14 Commission suspend half of the penalty on condition of
15 compliance, in essence, for two years?

16 **A. Well, Staff believes the suspended 5,000 portion**
17 **is appropriate because these violations are the first**
18 **violations known to Commission Staff and as such, there**
19 **is no prior compliance history.**

20 MR. BEATTIE: Judge Pearson, we have no
21 further questions.

22 JUDGE PEARSON: Okay. Thank you. So with
23 respect to SP-5, did you just decide not to offer that?

24 MR. BEATTIE: I appreciate that, Your Honor.
25 No, we would offer SP-5, and if we need to have a

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1 discussion about the admissibility, I'm prepared to do
2 that now.

3 JUDGE PEARSON: Well, I believe Mr. Shafer
4 had an objection to it.

5 So, Mr. Shafer, if you wanted to explain
6 your objection to SP-5.

7 MR. SHAFER: Well, yes, the objection -- the
8 objection to SP-5 pertains to a statement on page 5 of
9 that exhibit, which is labeled "Competitive Rates," and
10 it talks about price being based upon weight and
11 distance. And to the extent that this is an inter --
12 this is a snapshot of the website, which is available
13 nationally, and it involves long distance moving as well
14 as local moving as well as some moves, which we'll get
15 into today, that don't even go on the public roadways,
16 so they're not regulated regardless.

17 But in any event, in Washington State, this
18 is -- it's materially inaccurate, and I suppose we'll
19 just bring that -- you know what, I'm going to withdraw
20 my objection to 5. You can go ahead and put it in, and
21 we'll just deal with that on my -- the examination of
22 Moves for Seniors.

23 JUDGE PEARSON: Okay. That sounds good.
24 Then I will go ahead and admit that and mark it as SP-5
25 with the understanding -- I understand your concerns,

1 Mr. Shafer. And so when we get to that and you make
2 those arguments, I will afford it the weight as I see
3 fit given the caveat that it's not necessarily specific
4 to Washington.

5 (Exhibit SP-5 admitted.)

6 JUDGE PEARSON: So is that all?

7 MR. BEATTIE: Yes.

8 JUDGE PEARSON: Okay. So before we move on,
9 Mr. Shafer, to your cross-examination of Ms. Paul, I
10 would like to take a two-minute recess just very
11 quickly. So we will --

12 MR. SHAFER: Can I hang up and dial back in?

13 JUDGE PEARSON: No, no, no, just stay on the
14 line. I just need a quick break, so two minutes and I
15 will be back.

16 MR. SHAFER: That's fine. So will I.

17 (Pause in the proceedings.)

18 JUDGE PEARSON: All right. So, Mr. Shafer,
19 you may proceed with your cross-examination.

20 MR. SHAFER: Thank you.

21

22 E X A M I N A T I O N

23 BY MR. SHAFER:

24 Q. Ms. Paul, how many investigations of this sort
25 have you conducted in the four years you've been with

1 the Commission approximately?

2 **A. I really don't know the count. I have been the**
3 **lead since I have been here, and I don't know the count.**
4 **Many.**

5 Q. What did you do before you came to the
6 Commission?

7 **A. I have been in the regulatory field as an**
8 **investigator since 2004, and I have a degree in criminal**
9 **justice from a university, and I have been an**
10 **investigator this entire time.**

11 Q. Now, in doing your investigation of Moves for
12 Seniors, did you subpoena any of the records of my
13 client?

14 **A. I did a data request for the companies that you**
15 **listed for -- as partners.**

16 Q. You never went to Moves for Seniors and asked
17 them for any of their documentation; is that correct?

18 **A. That is correct.**

19 Q. Okay. And you -- so did you issue subpoenas to
20 the moving companies that Moves for Seniors partners
21 with in Washington?

22 **A. I asked for documents, which is allowed for**
23 **regulated companies. Companies that are regulated by**
24 **UTC provide --**

25 Q. Just answer my question. Did you get what you

1 asked for?

2 **A. Yes.**

3 Q. Okay. And looking at the -- at the
4 documentation -- no, let me ask you this. Did you ask
5 for all of the -- all of the paperwork or all of the
6 moves that those five or six household goods carriers
7 performed?

8 **A. Yes.**

9 Q. So do you know approximately how many regulated
10 moves were involved?

11 **A. Not many. I requested for a time frame and many
12 did not have records.**

13 Q. Okay. And -- but let me ask you this. Of the
14 carriers that you requested information from, did they
15 all have household goods permits?

16 **A. Yes.**

17 Q. Did you have any reason to believe those
18 licensed goods carriers didn't provide the services of
19 performing the physical moves on these regulated moves?

20 **A. I believe that they performed the physical move.**

21 Q. Did you look at the pricing to determine whether
22 or not the prices charged to the customer were
23 consistent with Tariff 15-C?

24 **A. No, because the companies could not provide the
25 pricing. They said they were not allowed to know the**

1 **cost of the move because Moves for Seniors did not want**
2 **the client to know the true cost of the move. The**
3 **companies did --**

4 Q. Did you contact Moves for Seniors to ask them
5 for copies of their billings to their customers to
6 determine whether or not the prices charged were
7 consistent with Tariff 15-C?

8 **A. We don't typically ask for records for companies**
9 **that are not regulated.**

10 Q. Do you have any reason to believe that the --
11 that the customers in Washington State who hire carriers
12 through Moves for Seniors were charged more than the
13 maximum rate allowed by Tariff 15-C?

14 **A. No, I do not know if the charges were correct or**
15 **not.**

16 Q. So as you sit here today, you're not accusing my
17 client of charging anything outside the band of rates
18 under 15-C; is that correct?

19 **A. That's correct.**

20 Q. Now, I noticed in -- let's go, if we can, to
21 Exhibit 1. I want to draw your attention to page 31,
22 which is the email quote to Ms. Abby Wood. Do you have
23 that in front of you?

24 **A. I'm getting there.**

25 Q. Okay.

1 **A. Okay.**

2 Q. I want to draw your attention to the provision
3 under "SPECIAL INSTRUCTIONS." It's in all caps.

4 **A. Yes.**

5 Q. The second line says, (as read) This is inside
6 pickup and delivery.

7 Do you know what that means?

8 **A. No.**

9 Q. Okay. Let me ask you this. If an -- if a
10 resident of a Holiday Retirement community is moving
11 from one apartment to another within that retirement
12 community, is it your contention or is it the
13 Commission's contention that that's a regulated move?

14 **A. No, there needs to be a truck involved and moved**
15 **over public roads; however, this request was for two**
16 **separate addresses in Bellevue, Washington, so...**

17 Q. Where do I see that in the request? I don't see
18 any addresses other than -- all I see is Bellevue to
19 Bellevue. Tell me where I know I'm moving from one
20 street to another.

21 **A. Well, it doesn't show it on the document that --**

22 Q. So then it's just your words against the
23 document; is that right?

24 **A. It's not listed on the document. I have had**
25 **discussions with Ms. Jones and she requested two**

1 **separate points, which is typical. We know that it**
2 **needs to be within two points of Washington.**

3 Q. But you don't know for a fact that that was the
4 case because why isn't that reflected in the -- in your
5 exhibit?

6 **A. These exhibits were performed by Rachel Jones.**
7 **I have thoroughly reviewed the attachments.**

8 Q. But you don't know, do you? All of your
9 testimony is just based upon what you can see; isn't
10 that right?

11 **A. I'm sorry, can you repeat that?**

12 Q. Yeah, strike that. I'll get another question.

13 This says that the hourly rate for a truck and
14 two workers is \$132 for a local move. Now, under Tariff
15 15-C, that's within the band of rates permitted; is it
16 not?

17 **A. Well, Mr. Shafer, I'm confused because the**
18 **violations are actually for advertising and for offering**
19 **a move. We don't discuss the rates that were charged.**

20 Q. So let me see if I understand this correctly,
21 then. So you're not accusing my client of actually
22 acting as a mover without a license, all you're saying
23 is they advertised in an ambiguous way; is that right?

24 **A. They advertised Moves for Seniors in the state**
25 **of Washington, and they advertised local moves.**

1 Q. And it's your opinion, is it not, that this was
2 ambiguous because it was unclear whether they were
3 offering services as a broker or as a carrier; is that
4 correct or not?

5 **A. It was not ambiguous.**

6 Q. I'm sorry?

7 **A. It was not ambiguous. It was an advertisement**
8 **for moves in the state of Washington.**

9 Q. Ms. Paul, in conducting your investigation, did
10 anybody reach out to my client to find out what they did
11 in Washington?

12 **A. Ms. Jones had conversations with Moves for**
13 **Seniors. I did not.**

14 Q. But you don't know what Ms. Jones said?

15 **A. Well, Ms. Jones and I thoroughly discussed this,**
16 **even while she was conducting the investigation, it**
17 **was --**

18 Q. Who did Ms. Jones speak with from Moves for
19 Seniors; do you know?

20 **A. No, I would have to go back and look at the**
21 **record.**

22 Q. Okay. But why is there -- but there's no
23 evidence of that in this record, is there?

24 **A. It's not necessary. We have the quote offered**
25 **from the company.**

1 Q. That's fine.

2 This investigation was triggered by complaints,
3 was it not?

4 **A. Yes.**

5 Q. And were those complainants consumers or were
6 they competitive carriers?

7 **A. It was from the industry.**

8 Q. So was it the Washington Movers Conference that
9 filed the complaint against Moves for Seniors?

10 **A. No.**

11 Q. Was it individual carriers that did it?

12 **A. Yes.**

13 Q. Did those carriers provide the Commission with
14 any information about what my client was doing?

15 **A. Yes.**

16 Q. And what was the nature of that information?

17 **A. It was just a tip, which is typical. We have an**
18 **email address that people can send in information about**
19 **companies they believe are non-permitted.**

20 MR. SHAFER: I don't think I have anything
21 else for Ms. Paul, Your Honor.

22 JUDGE PEARSON: Okay. Thank you.

23 Mr. Beattie, did you have any redirect?

24 MR. BEATTIE: No.

25 JUDGE PEARSON: Okay. All right. So,

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1 Mr. Shafer, you may present your first witness when
2 you're ready.

3 MR. SHAFER: We will call Mr. Pienkowski.

4 JUDGE PEARSON: Okay. Hold on just one
5 second. I need to know if the court reporter needs a
6 spelling for that name.

7 THE COURT REPORTER: I've got it.

8 JUDGE PEARSON: You've got it? Okay.

9 Can you tell me his last name again so I can
10 say it back? I can't quite hear you.

11 MR. SHAFER: It's P-i-e-n-k-o-w-s-k-i.

12 JUDGE PEARSON: Pienkowski?

13 MR. SHAFER: Yes.

14 JUDGE PEARSON: All right. So,
15 Mr. Pienkowski, if you can please stand and raise your
16 right hand, I will swear you in at this time.

17

18 CHRIS PIENKOWSKI, witness herein, having been
19 first duly sworn on oath,
20 was examined and testified
21 as follows:

22

23 JUDGE PEARSON: All right. You may be
24 seated.

25 MR. PIENKOWSKI: Thank you.

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1 JUDGE PEARSON: And, Mr. Shafer, you can
2 proceed when you're ready.

3

4 EXAMINATION

5 BY MR. SHAFER:

6 Q. Mr. Pienkowski, please, for the record just
7 state and spell your last name.

8 **A. Last name is Pienkowski, P-i-e-n-k-o-w-s-k-i.**

9 Q. And what is your affiliation with Transit
10 Systems, Inc.?

11 **A. I am the vice president of business development**
12 **at Moves for Seniors, which is a division of Transit**
13 **Systems, Inc.**

14 Q. Do you have any familiarity with what Transit
15 Systems does?

16 **A. Yes.**

17 Q. And can you tell us in broad terms the business
18 of Transit Systems, Inc.?

19 **A. Transit Systems, Inc. is a broker of long**
20 **distance specialty moving and shipping services within**
21 **the United States.**

22 Q. Is it -- does it transport general commodities
23 or does it transport household goods or some
24 combination?

25 **A. We transport a combination of goods, goods and**

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1 items.

2 Q. So would that include household goods?

3 **A. That would.**

4 Q. Now, does Moves for Seniors have any operating
5 licenses from the federal government?

6 **A. Yes, we do.**

7 Q. Okay. I would like to draw your attention to
8 Exhibit 2, please.

9 JUDGE PEARSON: Can I just clarify real
10 quickly for the record, so Mr. Pienkowski's first name
11 is Chris, C-h-r-i-s?

12 MR. SHAFER: Yes.

13 MR. PIENKOWSKI: Correct.

14 JUDGE PEARSON: Okay. Thank you. Go ahead.

15 BY MR. SHAFER:

16 Q. So looking at Exhibit 2, and that's CP-2, and,
17 Mr. Pienkowski, how long have you been with Transit
18 Systems?

19 **A. Since August 2014.**

20 Q. Okay. And were you hired specifically for Moves
21 for Seniors?

22 **A. No.**

23 Q. You were hired to do what?

24 **A. I was hired originally as director of strategic**
25 **initiatives for Transit Systems, which included**

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1 identifying ways to improve our operations and to grow
2 the company.

3 Q. Now, does Transit Systems operate as a motor
4 carrier?

5 **A. No.**

6 Q. How does it operate?

7 **A. As a broker of moving services.**

8 Q. Tell me how -- generally how the company
9 operates.

10 **A. In general, a customer will contact us either**
11 **online or by phone and describe their moving or shipping**
12 **needs, providing to and from locations and inventory.**
13 **From that, we are able to determine pricing and offer a**
14 **quote.**

15 Q. And is that based upon the services that would
16 be provided by Moves for Seniors?

17 **A. For Transit Systems, no.**

18 Q. So Transit Systems will hire a for hire carrier
19 to provide the physical move?

20 **A. Correct.**

21 Q. And for Moves for Seniors, does it provide the
22 same type of service?

23 **A. Same type of service, yes, brokerage.**

24 Q. Okay. So if I'm moving from Seattle to Spokane
25 because I'm moving to a retirement community in Spokane

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1 and it's a Holiday community, this is a hypothetical,
2 and I refer to you because I've seen that Exhibit 4,
3 who's going to be moving me?

4 **A. One of our licensed and insured moving partners**
5 **in the state of Washington.**

6 Q. Okay. And what efforts do you make to determine
7 whether the carriers you used are licensed?

8 **A. We require our moving partners to provide us**
9 **with copies of their licensing documentation. We then**
10 **go onto the WUTC website to verify that the information**
11 **that they have given us is correct and up-to-date.**

12 Q. And have you had instances in the past where
13 you've done business, regulated business, with companies
14 that didn't have proper licensing?

15 **A. No.**

16 Q. Okay. And other than -- or I should say in
17 addition to what Moves for Seniors does, does anyone
18 else, that the carriers that you do with business with?

19 **A. Yes, we have a third-party verification who is**
20 **our insurance underwriter, and they also perform the**
21 **same type of verification and provide that -- their**
22 **findings back to us.**

23 Q. I want to talk a little bit about the estimating
24 process, and I would like you to just describe, if you
25 would, how you go about providing customers with

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1 estimates.

2 **A. Estimates are provided by phone when a**
3 **customer -- a customer may submit a quote request online**
4 **or by calling in. At that point, one of our**
5 **representatives will actually speak to the person**
6 **requesting a quote to get the particulars of addresses**
7 **to and from. They will verify information that was**
8 **entered into our online quoting system and they will**
9 **ascertain the inventory of items that need to be moved.**

10 **At that point, a nonbinding quote is offered to**
11 **the customer. When the customer accepts the nonbinding**
12 **quote, we will then send one of our local moving -- our**
13 **licensed local moving partners to the address of the**
14 **person requesting a quote to gain an actual eyes-on**
15 **inventory and provide them a binding quote for service**
16 **to be rendered.**

17 Q. And to your knowledge, when the carrier that's
18 going to do the move goes on-site to provide the quote,
19 do they provide any information to the consumers?

20 **A. They provide all required documentation**
21 **regarding consumer protection and anything else that may**
22 **be required by the Commission because they are licensed**
23 **through the Commission to perform these moves.**

24 Q. So you don't ask them to do anything that's not
25 required by law, do you?

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1 **A. Correct, no.**

2 Q. Now, when they provide the customer with a -- I
3 want to have you turn to Exhibit 13, if you would. Can
4 you tell us what Exhibit 13 is?

5 **A. Exhibit 13 is an on-site estimate through one of**
6 **our licensed moving partners that would correspond with**
7 **a phone or online quote that we have received.**

8 Q. Okay. Now, as I'm looking at -- now, is this
9 typical of what the moving companies provide the
10 customers?

11 **A. Yes.**

12 Q. And this shows the customer is Moves for
13 Seniors. Can you explain why it shows Moves for Seniors
14 and not Mary Jones?

15 **A. Yes, because Moves for Seniors is the broker in**
16 **this case. We are the ones who collect payment from the**
17 **senior who is being moved. They are our customers. We**
18 **then remit payment to the licensed carrier who performs**
19 **the actual moving services.**

20 Q. When the estimated costs come in, and you get
21 this document, this Exhibit 13, is anything done to
22 verify that the estimate is consistent with the tariff?

23 **A. Yes.**

24 Q. Do you have somebody in your office to verify
25 that?

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1 **A. Correct.**

2 Q. Now, at the time the mover visits the customer
3 to provide the on-site estimate, do they identify
4 themselves as the carrier who's going to be doing the
5 move?

6 **A. Yes, they do.**

7 Q. So if I were hiring you, and I believe All Star
8 Moving & Storage is one of your carriers?

9 **A. Yes.**

10 Q. Would I know when I meet with that individual
11 that All Star Moving & Storage is going to be
12 transporting my shipment?

13 **A. Yes, the person requesting the quote is told**
14 **that at the time that the on-site survey is scheduled**
15 **that our partner from, in this case, All Star Moving &**
16 **Storage will be at your home to perform your estimate.**

17 Q. And at the time that the estimate is done -- let
18 me strike that.

19 I would like you to look at Exhibit 14, which is
20 entitled "Uniform Household Goods Bill of Lading," and
21 there's a logo in the upper left-hand corner of that
22 page that says "Movers Conference."

23 Do you know what the Movers Conference, what
24 that all is?

25 **A. I believe that's an organization that movers**

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1 belong to, it's a trade organization.

2 Q. Is that the Washington Movers Conference?

3 **A. Yes.**

4 Q. Is this form a Washington Movers Conference form
5 to your knowledge?

6 **A. I am unaware.**

7 Q. And exactly when is the Uniform Household Goods
8 Bill of Lading, when is that given to the -- to the
9 consumer?

10 **A. At the conclusion of the move.**

11 Q. Okay. So as I'm looking at -- and now, is this
12 typical of every move?

13 **A. Yes.**

14 Q. So as I'm looking at Exhibit 14, I see the --
15 the consumer is Anna Mahoney; is that right?

16 **A. She would be our customer in that case.**

17 Q. Right.

18 Okay. And there's a signature in the right --
19 lower right-hand corner, and you agree with me that that
20 looks like Anna Mahoney?

21 **A. Yes.**

22 Q. And also on the left-hand side where there's an
23 ability to choose valuation and carrier liability, that
24 she signed off on basic value protection?

25 **A. Yes.**

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1 Q. And she signed that off at the time the load was
2 booked?

3 **A. This would be at the time that it was being**
4 **loaded.**

5 Q. Okay. So at the time that the mover came to the
6 house to load the goods onto the truck, that's when she
7 was given the opportunity to elect the value of -- the
8 carrier liability election?

9 **A. Correct.**

10 Q. And once again, is that typical of how
11 everything is done?

12 **A. We have a conversation with the customers at the**
13 **time of quoting where we talk about the different**
14 **protection options that are available to them, being**
15 **your basic movers liability along with replacement or**
16 **depreciated coverage.**

17 Q. So is there anything in the process of booking a
18 move that would mask the identity of the carrier
19 actually doing the work?

20 **A. No.**

21 Q. Would you agree that -- that the way your
22 advertising on the website is presented is less than
23 clear as to your role as a broker?

24 **A. Less than clear, I believe it is clear what our**
25 **role is.**

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1 Q. Is this website the one you're currently using?

2 **A. Yes.**

3 Q. And are there any plans to change it?

4 **A. Yes, we have a new site in development**
5 **currently.**

6 Q. And is that site going to do anything to -- in
7 light of this proceeding to do anything to further
8 clarify your role in the moving process?

9 **A. Yes.**

10 Q. Okay. And do you know how that's going to work?

11 **A. Yes.**

12 Q. Tell us about it.

13 **A. The way that's going to work is as we've heard**
14 **already through our website that we've already often**
15 **talked about, that we are a moving services provider and**
16 **that we are not a traditional moving company. What we**
17 **are doing is clarifying what that means because we do**
18 **have now a variety of additional services that are used**
19 **during the downsizing process of seniors. That would**
20 **include specialized -- the planning of downsizing,**
21 **removal of unwanted goods. So the clarifications being**
22 **made on our new website goes into greater details of**
23 **variety of services available from the physical moving**
24 **of household goods.**

25 Q. And have you seen any considerations of the new

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1 website yet?

2 **A. Yes.**

3 Q. And does it indicate that your role in the
4 moving process is to be the liaison between the mover
5 and the consumer?

6 **A. Yes, it does.**

7 Q. So do you make it clear in the new website that
8 you will not be -- you are not the licensed household
9 goods carrier physically doing the work, you're acting
10 on the shipper's behalf?

11 **A. Yes, we make it very clear that we are the**
12 **coordinator of the services.**

13 Q. And is that something that's part of your sales
14 process now even though the website may not say that?

15 **A. Yes, it is.**

16 Q. Have you ever had occasion -- well, let me ask
17 you this. If a customer complained and said, I thought
18 Moves for Seniors was moving me, instead it was All Star
19 Moving & Storage, who are these guys? Are you familiar
20 with whether you had any complaints like that in the
21 time you've been involved in this process where the
22 consumer called and they were confused about who was
23 doing the work?

24 **A. Not to my knowledge.**

25 Q. Now, have you ever had any freight claims filed?

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1 **A. Freight claims?**

2 Q. Cargo damage?

3 **A. Yes.**

4 Q. And you're a broker?

5 **A. Correct.**

6 Q. As a broker, do you know whether you have legal
7 liability for cargo damage?

8 **A. We do not have legal liability for cargo damage.**

9 Q. So explain to me what happens if my \$17,000
10 antique grandfather clock is dropped off the tailgate of
11 the truck at destination and is turned into a
12 quarter-million toothpicks.

13 MR. BEATTIE: Objection. Relevance.

14 MR. SHAFER: Well, it's all really relevant,
15 Your Honor. This all goes to the issue of whether or
16 not there's any consumer deception in the process and
17 any harm to the consumer, because that -- that seems to
18 be the gist of the complaint that -- as Ms. Paul said,
19 the most vulnerable market for moving services is being
20 confused by what my client does. Cargo claims are all
21 part of that. It's highly relevant.

22 JUDGE PEARSON: All right. I'll allow it.

23 I see the point that you're trying to make that it's the
24 carrier ultimately who has the responsibility, which is
25 reflected in the -- both the bill of lading and the

EXAMINATION OF PIENKOWSKI / SHAFER

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1 estimate. Is that where you were going with this?

2 MR. SHAFER: Well, yeah, we'll get to that.

3 I just want to lay it out so the record's clear.

4 JUDGE PEARSON: Go ahead.

5 **A. In the event that a customer experiences damage,**
6 **we, acting in our coordinator role, we are the ones who**
7 **will deal with the carrier to have those damages**
8 **reconciled, again, making it easier for the customer to**
9 **have one single point of contact. And we then take on**
10 **the burden of working with the carrier to resolve those**
11 **issues.**

12 BY MR. SHAFER:

13 Q. So who pays the customer for the broken
14 grandfather clock?

15 **A. The carrier.**

16 Q. Directly?

17 **A. Directly or sometimes it could be a case where**
18 **we issue a refund to the customer and the carrier pays**
19 **us because we've issued a refund on their behalf.**

20 Q. So in other words, you pay the claim and then
21 collect from the carrier?

22 **A. Correct.**

23 Q. Have you ever had any consumers who complained
24 about that process?

25 **A. No.**

EXAMINATION OF PIENKOWSKI / SHAFER**94**

1 Q. I want to have you take a quick look at Exhibit
2 5 and 6 if you would.

3 **A. Okay.**

4 Q. Please tell us what Exhibit 5 is.

5 **A. Exhibit 5 is a list of intrastate regulated**
6 **moves performed by our moving partners from January**
7 **through September of this year.**

8 Q. And these were all booked through your company?

9 **A. Correct.**

10 Q. Do you know whether these household goods
11 carriers have sources of business other than Moves for
12 Seniors?

13 **A. They do.**

14 Q. So they're not exclusive to you?

15 **A. No, they are not.**

16 Q. Okay. And they're all licensed?

17 **A. Correct.**

18 Q. And we'll get to the invoicing in a minute, but
19 I want you to take a look at Exhibit 5 -- Exhibit 6
20 next.

21 **A. Okay.**

22 Q. And ask you to identify what Exhibit 6 is.

23 **A. Exhibit 6 is a list of on-site unregulated moves**
24 **that we would have performed within the retirement**
25 **communities moving goods from one location to another**

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1 within the building.

2 Q. Now, I'm going to show you page 31 of SP-1.

3 **A. Okay.**

4 Q. And I'm going to ask you the same question I
5 asked Ms. Paul about the notation that this is an inside
6 pickup and delivery; do you see that?

7 **A. Yes.**

8 Q. What does that mean?

9 **A. To my knowledge, that means that we are**
10 **relocating furniture from one unit to another within a**
11 **building.**

12 Q. To your knowledge, does a licensed mover have to
13 provide that service?

14 **A. They do not.**

15 Q. And do you often use unlicensed movers to
16 provide physical labor within a community when a tenant
17 is moving from one unit to another?

18 **A. We do.**

19 Q. Exhibit 1, which is your certificate of
20 registration, is dated December 8th, 2017, correct?

21 **A. Yes.**

22 Q. Can you tell us why you registered to do
23 business in Washington this month when you've been here
24 for two years?

25 **A. Yes, originally, we were advised by our counsel**

EXAMINATION OF PIENKOWSKI / SHAFER**96**

1 in Pennsylvania that because we have no employees in the
2 state of Washington, we were not required to file as a
3 foreign corporation in the state of Washington; however,
4 upon receiving a second opinion, we chose to do so.

5 Q. And is the company now registered with all of
6 the agencies having jurisdiction over the corporations
7 in the state to your knowledge?

8 **A. I'm not 100 percent certain. I believe that**
9 **that is all in process.**

10 Q. Thank you.

11 Next, I would like you to look at Exhibit 3,
12 which is the on on-site services agreement.

13 **A. Okay.**

14 Q. And ask you to explain the relationship between
15 Moves for Seniors and the various company participants
16 listed.

17 **A. Okay. The various company participants listed**
18 **in aggregate make up Holiday Retirement, which is the**
19 **largest operator of independent living communities in**
20 **the United States. We are the nationwide moving partner**
21 **of Holiday Retirement. In this instance, what we do is,**
22 **under the contract, relocate furniture within their**
23 **retirement community from one location to another for**
24 **the purpose of not having employees subject themselves**
25 **to injuries by carrying heavy items.**

EXAMINATION OF PIENKOWSKI / SHAFER**97**

1 Q. So that's a risk, an operations risk, they
2 outsource to your company, correct?

3 **A. That's correct.**

4 **(Brief interruption.)**

5 MR. SHAFER: Excuse me, Your Honor.

6 BY MR. SHAFER:

7 Q. And with regard to the on-site services moves
8 that you provide, who pays for those services, is that
9 Holiday or is that the consumer?

10 **A. That is Holiday.**

11 Q. So Holiday -- so if a resident in a particular
12 project is moving from apartment one to apartment nine,
13 Holiday pays for that?

14 **A. Well, it depends, it's a mix. Sometimes**
15 **depending on the circumstances, Holiday will pay for**
16 **those services or the consumer themselves may pay for**
17 **the services. All depending on the circumstance.**

18 Q. And then what circumstances have the consumer
19 pay versus Holiday?

20 **A. When a consumer pays, it would be circumstance**
21 **where they have moved into the community and later**
22 **identified a different apartment where they would like**
23 **to live. So by making that choice on their own, most**
24 **times they would pay for our services to perform that**
25 **move.**

EXAMINATION OF PIENKOWSKI / SHAFER**98**

1 Q. Next, I would like you to take a look at Exhibit
2 4, which is the local moving partner service agreement.

3 **A. Okay.**

4 Q. Is this the form of agreement that all of the
5 Washington carriers have signed?

6 **A. Yes.**

7 Q. And is it still in full force and effect?

8 **A. Yes.**

9 Q. Next, I would like to just draw your attention
10 to Exhibit 12, which is the invoice for moving services.

11 **A. Yes.**

12 Q. Okay. In the period of time that you've been
13 providing this -- now, let me ask, first of all, this
14 invoice for moving services, as you look at this, can
15 you determine whether these are on-site inside moves or
16 whether these are regulated moves?

17 **A. From this, I cannot.**

18 Q. Would the invoice for inside moves, in
19 appearance at least, be the same as this?

20 **A. Yes.**

21 Q. Okay. And as you -- as you reviewed this
22 exhibit, there's a listing of the hourly rate for the
23 services. Are those rates the same as you would charge
24 for an inside move, these hourly rates?

25 **A. No.**

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1 Q. Would the inside move rates be less?

2 **A. It would be slightly less.**

3 Q. And I'm going to just ask you this, to look
4 through the 33 moves that are listed that are identified
5 in exhibit -- I should say in Exhibit 12, and compare
6 that with the spreadsheet of regulated moves in Exhibit
7 5.

8 **A. Okay.**

9 Q. And ask whether these are the invoices for the
10 33 moves that are identified in Exhibit 5.

11 **A. They appear to be.**

12 Q. Once again, just to confirm for the record, the
13 hourly rates are all based upon the tariff, are they
14 not?

15 **A. Correct.**

16 Q. Thank you.

17 Within Washington State, do Moves for Seniors
18 have any relationship with other senior communities
19 similar to its relationship with Holiday?

20 **A. Not at this time.**

21 Q. Have you in the past?

22 **A. No.**

23 Q. And do you have relationships with other senior
24 communities elsewhere in the country?

25 **A. Yes.**

EXAMINATION OF PIENKOWSKI / SHAFER**100**

1 Q. And the agreement with Holiday, is that similar
2 to the kinds of agreements that you have with other
3 companies?

4 **A. Yes.**

5 Q. And I will ask you also about the service level
6 agreement, is that basically how you do business
7 everywhere?

8 **A. Yes.**

9 Q. Nothing special about Washington?

10 **A. No.**

11 Q. With regard to your federal brokerage license,
12 have you ever been penalized for violations with federal
13 law with regard to your operation as a broker?

14 MR. BEATTIE: Objection. Relevance.

15 BY MR. SHAFER:

16 Q. Have you ever been investigated?

17 **A. Not that I'm aware of.**

18 Q. Have you ever been investigated --

19 MR. BEATTIE: Objection. Relevance.

20 JUDGE PEARSON: Mr. Shafer?

21 BY MR. SHAFER:

22 Q. Is it fair to say Washington is the first and
23 only state that has been [inaudible] in this
24 investigation?

25 JUDGE PEARSON: Mr. Shafer, can you hear me?

EXAMINATION OF PIENKOWSKI / SHAFER

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1 MR. SHAFER: Yes, I can.

2 JUDGE PEARSON: Okay. Mr. Beattie objected
3 twice on the ground of relevance to these questions
4 about federal investigations. Do you want to respond?

5 MR. SHAFER: It's relevant to the entire
6 question of whether or not there was any consumer
7 deception in the advertising, Your Honor. And, you
8 know, I think it's fair for you to accord whatever
9 weight you deem appropriate to it, but I think it's
10 relevant overall to painting an accurate picture of
11 Moves for Seniors and how it does business everywhere.

12 JUDGE PEARSON: Okay. Well, I don't -- I
13 don't see that there's a connection between that and the
14 advertisements, which speak for themselves, so I'm going
15 to ask you to move on.

16 MR. SHAFER: Very well.

17 BY MR. SHAFER:

18 Q. Mr. Pienkowski, have you had occasion to
19 determine whether any Washington customers are --
20 regulated moves have presented any cargo claim?

21 **A. I'm sorry, can you -- I didn't understand the**
22 **question.**

23 Q. Sure. Are you aware of any cargo claims filed
24 with regard to regulated moves in Washington State?

25 **A. I'm not.**

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1 Q. Is that something that would normally be brought
2 to your attention?

3 **A. Not always.**

4 Q. Just one final question.

5 Exhibit 12, which is the invoicing, just to
6 clarify, are these the prices charged to the consumer?

7 **A. Yes, they are.**

8 Q. Okay. And then when the consumer pays you, you
9 remit the carrier its portion of the move?

10 **A. That's correct.**

11 Q. Is there anything unusual from a broker-carrier
12 standpoint in your business relationship with the
13 exercise of your business relationship with the
14 carriers?

15 **A. Nothing unusual.**

16 MR. SHAFER: Nothing further, Your Honor.

17 JUDGE PEARSON: Okay. Thank you. I have a
18 couple of questions.

19

20 **EXAMINATION**

21 **BY JUDGE PEARSON:**

22 Q. First, with respect to the changes being made to
23 the website that were represented will make the website
24 more clear in the relationship between Moves for Seniors
25 and the other carriers clear, Mr. Pienkowski, when do

EXAMINATION OF PIENKOWSKI / PEARSON

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1 you anticipate those changes will be made?

2 **A. In the month of January.**

3 Q. Okay. And can you be a little bit more specific
4 as to what those changes will say or do you have a
5 written document perhaps that you can send to me that
6 will show what those changes will say?

7 **A. We are currently in the final editing phase of**
8 **our content, and to my knowledge, the marketing team of**
9 **our company has a deadline of having their content**
10 **edited and completed by the first week of January. I**
11 **have seen some of their edits, but that -- that**
12 **information is not finalized yet.**

13 Q. Okay. But generally speaking, do I understand
14 your testimony that the website will change so the
15 consumers are aware that they are working with a
16 regulated mover rather than Moves for Seniors as the
17 mover?

18 **A. That's right. We make more clear that we are a**
19 **coordinator and a central point of contact for a variety**
20 **of services that may be needed by a senior or their**
21 **loved ones.**

22 Q. Do you intend to still be the party that enters
23 into the contract for the move and collects the payment
24 for the move?

25 **A. Yes.**

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1 Q. Okay. So that part won't change, it's just the
2 transparency about who is actually performing the move?

3 **A. That is correct.**

4 Q. Okay. And then my next question is it appears
5 that Moves for Seniors charges the customer more than
6 what the carrier would charge to do the move; is that
7 correct?

8 **A. That is --**

9 Q. Yes?

10 **A. No, no, we charge what the mover would charge**
11 **the customer.**

12 Q. So there's no up charge?

13 **A. There is no up charge.**

14 Q. It's a passed through charge?

15 **A. Correct.**

16 Q. Okay. So if the carrier charges \$110 an hour,
17 that's what you charge?

18 **A. That's correct.**

19 Q. Okay.

20 JUDGE PEARSON: All right. I don't have any
21 further questions.

22 Mr. Beattie, do you have any
23 cross-examination?

24 MR. BEATTIE: Yes.

25 /////

EXAMINATION OF PIENKOWSKI / BEATTIE

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1 EXAMINATION

2 BY MR. BEATTIE:

3 Q. Thanks for being on the line, Mr. Pienkowski. I
4 have a couple questions starting with Exhibit 12,
5 please.

6 **A. Okay.**

7 Q. Let's just take this first invoice, Patricia
8 Weberg. Now, if I understand you correctly,
9 Ms. Weberg would pay Moves for Seniors, would remit
10 payment for this move to Moves for Seniors, correct?

11 **A. Yes.**

12 Q. Now, I will represent to you that I did a
13 Control F search of this entire -- all of these invoices
14 and I do not see the word "broker" in here anywhere.
15 Can you contradict me on that?

16 **A. I cannot.**

17 Q. If you could turn to Exhibit 13, please.

18 **A. Okay.**

19 Q. And, again, same question, Ms. Jones, Mary
20 Jones, would remit payment to Moves for Seniors,
21 correct?

22 **A. That is correct.**

23 Q. I want to shift gears briefly. I want to ask
24 you about the basis for your knowledge of Washington
25 regulations. Now, you're not physically located or

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1 you're not -- your place of employment is not in
2 Washington, correct?

3 **A. That is correct.**

4 Q. And you're located in Pennsylvania?

5 **A. Yes.**

6 Q. Okay. Have you ever traveled to Washington
7 State to meet with any of the movers that Moves for
8 Seniors uses?

9 **A. I have not.**

10 Q. Have you ever attended the Commission's
11 quarterly household goods training?

12 **A. No.**

13 Q. Do you know if anybody at Moves for Seniors has
14 ever attended that training?

15 **A. Nobody from Moves for Seniors has attended that
16 training.**

17 Q. If you could please turn to Exhibit 5.

18 **A. Okay.**

19 Q. Here we have listed the -- what I think you
20 would call your local partners for these moves, correct?

21 **A. Yes.**

22 Q. Ms. Paul testified earlier that none of these
23 movers has any specialized training in moving senior
24 citizens as a -- as a segment of the population; do you
25 agree with that?

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1 **A. No.**

2 Q. You do not agree with that.

3 So then tell me what is the basis for saying
4 that these particular movers do have specialized
5 training.

6 **A. Because in certain instances, these movers have**
7 **either presented us -- presented to us their expertise**
8 **in working with seniors. In other instances, these**
9 **movers have been referred to us by the Holiday**
10 **Retirement communities that we service as their**
11 **preferred moving companies due to the level of service**
12 **that they have provided in the past to their residents.**

13 Q. Do you agree with Ms. Paul's statement that the
14 Commission does not offer any specialized training in --
15 for senior moves?

16 **A. I'm sorry, I don't understand the question.**

17 Q. Well, I think I'm hearing you say that the basis
18 for this purported expertise of these companies is
19 you're saying just due to their experience?

20 **A. Okay, yes.**

21 Q. Okay. And there's no specialized certification
22 or training that you're aware of that these companies
23 obtain, correct?

24 **A. There is not.**

25 Q. Okay.

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1 MR. BEATTIE: Thank you. I don't have any
2 further questions.

3 JUDGE PEARSON: I just have --

4 MR. SHAFER: I just have --

5 JUDGE PEARSON: Hold on, Mr. Shafer.

6 MR. SHAFER: -- the witness's testimony, and
7 I'd ask him to take a look --

8 JUDGE PEARSON: Mr. Shafer.

9 MR. SHAFER: -- at Exhibit 12 again.

10

11

E X A M I N A T I O N

12

BY MR. SHAFER:

13

Q. If you could just look at the first page of
14 Exhibit 12.

15

A. Okay.

16

Q. When Ms. Weaver paid \$1246 to Moves for Seniors,
17 did Moves for Seniors remit \$1246 to whichever carrier
18 provided the service?

19

A. No.

20

Q. What did it -- can you -- can you describe what
21 would have been paid to the carrier?

22

A. We have agreements in place with our carriers

23

where they effectively provide us with a wholesale rate,

24

which is, you know, within the tariff band of Tariff

25

15-C, and we then remit or accept payment also within

EXAMINATION OF PIENKOWSKI / PEARSON**109**

1 that tariff band and we pay the movers their contracted
2 rate.

3 Q. So in other words, as a broker, you're charging
4 a fee?

5 **A. Correct.**

6 Q. And it's not the hundred percent of what the
7 customer pays, you're charging a fee of X percent to the
8 carrier who then gets whatever that is?

9 **A. Correct.**

10 Q. So if the -- as an example, if the carrier gets
11 10 percent of the total rate, you would remit a
12 hundred -- you would keep \$124.60 for yourself and remit
13 the balance to the carrier, right?

14 **A. Correct.**

15 MR. SHAFER: Thank you. Nothing further.

16 JUDGE PEARSON: Okay. Mr. Pienkowski, I
17 have another question.

18

19 **EXAMINATION**

20 **BY JUDGE PEARSON:**

21 Q. What is the percentage that you retain?

22 **A. The percentage is not a fixed formula. The**
23 **charges are really based on geography and market rates.**
24 **So there are some areas where we make less of a margin**
25 **percentage than others.**

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1 Q. What is it in Washington?

2 **A. Well, again, it's different where in, let's say,**
3 **Seattle versus somewhere maybe in the middle of the**
4 **state where there may be market change differences than**
5 **there's -- there isn't a fixed percentage.**

6 Q. What is it in Seattle?

7 **A. I don't know off the top of my head.**

8 Q. Can you give me a range?

9 **A. Between 12 and 17 percent.**

10 Q. Okay. And my other question is you represented
11 earlier that you only use permitted carriers to conduct
12 these moves, but I'm looking at CP-5 that shows these
13 were all point-to-point moves, so there were distance
14 between the two destinations, they weren't in-house
15 moves or on-site moves. You used a number of carriers
16 that didn't -- that don't have household goods permits
17 from the Commission.

18 **A. Yes, Your Honor, I believe the only one is**
19 **College Hunks, and that was -- that was a**
20 **misunderstanding, a misrepresentation of their license**
21 **to us, and we didn't catch the distinction during our**
22 **due diligence. They no longer perform any regulated**
23 **moves for us.**

24 Q. What's Ohana Moving?

25 **A. Ohana Moving is based out of Oregon and that**

EXAMINATION OF PIENKOWSKI / PEARSON**111**

1 was -- that was an oversight in the use of that partner
2 in those two instances.

3 Q. And then how come there's no permit number next
4 to Iron Man Moving & Storage?

5 **A. I don't know why that's missing, Your Honor.**

6 Q. Okay. So your statement earlier that you ensure
7 that all of the carriers are in good standing and have a
8 certificate from the Commission is actually not true,
9 correct?

10 **A. In the case of these two movers, that's correct.**

11 Q. Okay. And I also feel like your answer earlier
12 was a little bit deceptive when I was trying to get at
13 whether Moves for Seniors retains a portion of the money
14 made for the move, and although I didn't phrase the
15 question that way, you weren't forthcoming with that
16 information, which would have been in your best
17 interest.

18 JUDGE PEARSON: All right. Do we have
19 anything further?

20 MR. BEATTIE: My colleague, Jeff Roberson,
21 on the line is prepared to address the law surrounding
22 the claim of preemption, and if the Company wants to
23 proceed with, you know, something that came to oral
24 argument on that, he is prepared to give Staff's
25 position on that. If the Company does not wish to make

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1 that argument or is not prepared to do that, then we
2 will also not make that, and we'll -- I guess our
3 argument would be that it's waived at that point.

4 JUDGE PEARSON: Mr. Shafer?

5 MR. SHAFER: I'm more than happy to submit
6 the legal argument on preemption in writing. I don't
7 think we need to have oral argument on that. But I'm
8 not sure based on today's hearing that the Commission is
9 concerned with anything other than the advertising not
10 being clear that my client was operating as a broker
11 rather than as a carrier. If the Commission's -- if
12 that's really what the Commission's complaint is, then
13 I'm not sure that the preemption argument is even
14 relevant.

15 JUDGE PEARSON: Well, it's up to you whether
16 you want to make that argument.

17 MR. SHAFER: I'm sorry?

18 JUDGE PEARSON: I can't advise you one way
19 or the other. It's up to you whether you want to make
20 that argument.

21 MR. SHAFER: I'm just trying to understand
22 what the Commission's -- what the gravamen of this
23 concern is, and if it's advertising, then whether my
24 client is a broker whose activities are exempt from
25 regulation under 49 U.S.C. 14501(b)(1) is irrelevant,

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1 because the issue here isn't that, that my client's
2 operating as an illegal broker. The allegation appears
3 to be that my client was promoting itself as a carrier
4 without having a license.

5 And then it would seem to me the issue is
6 does my client's operations constitute brokerage or is
7 it carriage, and if it's brokerage, then the Commission
8 can make an argument as to whether or not the
9 advertising is in some way deceptive to the consuming
10 public. I'm just trying to understand, because that's
11 not what I understood the thrust of the Staff's concern
12 to be. But if that's what the Staff's concern is, first
13 of all, it's readily accommodated by revising the
14 website and other advertising materials. So I'm not
15 even sure what the Commission's concern is at this
16 point.

17 JUDGE PEARSON: Mr. Beattie?

18 MR. BEATTIE: Well, just so there is no
19 misunderstanding and claims that -- that the nature of
20 this proceeding was unclear, what Staff is alleging,
21 based on the Commission's complaint, is that Moves for
22 Seniors is operating as a household goods carrier in the
23 state of Washington without the required permit. And
24 the basis for that is twofold as laid out in the
25 complaint. One, that Moves for Seniors advertised for

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1 the transportation of household goods in the state of
2 Washington and two, that Moves for Seniors offered to
3 conduct a household goods move in the state of
4 Washington.

5 Now, if those allegations are found to be
6 proven, then as Your Honor already laid out at the
7 beginning of the proceeding, the next step would be for
8 the Commission to order Moves for Seniors to cease and
9 desist from any -- any operation of household goods
10 carrier in the state of Washington, and that includes
11 advertising, and to do so until it obtains a permit.

12 And should it decide not to obtain a permit, the cease
13 and desist would be in operation indefinitely.

14 Further, Staff considers there to be
15 violations of state law in this case. Again, based on
16 the allegations of advertising and offering to conduct a
17 move, and Staff has requested a monetary penalty and
18 Susie Paul, Staff's witness, has already laid out the
19 basis for that.

20 So, you know, just to be clear to
21 Mr. Shafer, this isn't just about changing the website
22 there, this is about a cease and desist, this is about a
23 coming into compliance, this is about paying a monetary
24 penalty. And, again, Staff's position is that, you
25 know, theoretically, we could just stay silent on the

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1 preemption issue and then later on try to say gotcha,
2 you didn't say anything, so it's waived. Staff is
3 trying to make sure that all the issues are aired out in
4 this proceeding.

5 So at this point, that's a defense that the
6 company would have to raise, and I've heard just a lot
7 of ambiguity about whether that defense is actually
8 being raised here. I think that the company needs to
9 speak to that.

10 MR. SHAFER: To the extent that the
11 Commission seeks to prevent my client from engaging in
12 brokerage services, which is all it does. We certainly
13 aren't waiving the preemption defense, and I would draw
14 the Commission's attention to 49 U.S.C. 14501(b)(1),
15 which says in no uncertain terms, no state shall enact
16 or enforce any law or regulation or having -- or
17 anything else having the effect of law or regulation
18 with respect to the rates, routes, or services of
19 brokers, and my client has a brokerage license. The
20 operation of brokerage operations within a state is not
21 something the State can regulate.

22 The State can regulate the operations of
23 motor carrier under 14501(c) -- I believe it's (c)(2) if
24 I'm not mistaken. The economic regulation of the moving
25 and storage business was preserved. That was all that

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1 was preserved when Congress sun- -- did not only sunset
2 the interstate commerce commission, but also enacted the
3 preemption provision in the statute I just cited.

4 I can give you a thousand cases off the --
5 but not off the top of my head with regard to the
6 analysis of the enactment of the federal preemption, a
7 state regulation generally. But in general, the State
8 can't regulate the operations of the carrier with regard
9 to the movement of property except for the operations of
10 a household goods carrier. And so I guess what the
11 administrative law judge is going to have to decide is
12 whether my client is, in fact, a household goods carrier
13 or whether it's a broker whose operations are exempt
14 from State regulation.

15 MR. ROBERSON: Staff disagrees with the
16 Company's analysis, Judge Pearson, and I'm prepared to
17 offer legal argument if you want to hear it or as
18 Mr. Shafer just mentioned, we can do this by brief.
19 It's up to you.

20 JUDGE PEARSON: I would like to do it by
21 brief. I actually thought of that before coming in here
22 this morning just because it's difficult even from a
23 transcript to summarize the parties' statements,
24 particularly when there's case law that's being cited to
25 and federal regulations and things of that nature. So

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1 it would be helpful to me if the parties are open to it,
2 could the parties file simultaneous one round of briefs?

3 MR. ROBERSON: Absolutely.

4 JUDGE PEARSON: Okay.

5 MR. SHAFER: Yeah, that's acceptable for
6 Moves for Seniors.

7 JUDGE PEARSON: Okay. And how much time
8 would you like? I mean, this is not time-sensitive, so
9 I understand there's holidays coming up and other
10 demands.

11 MR. SHAFER: You know, I have a couple of
12 things on a very short fuse that have to be filed before
13 the end of the year, and I have a trial that's set for
14 the third week in February. And can we have until --
15 pardon me, until the last business day in January,
16 whatever that day is, to file our simultaneous brief?

17 JUDGE PEARSON: I would be fine with that.
18 That would accommodate my schedule quite well.

19 MR. SHAFER: Okay.

20 JUDGE PEARSON: Mr. Roberson, is that okay
21 with you?

22 MR. ROBERSON: I believe I have jury duty
23 the last week in January, but Staff is ready. A brief
24 will be in by then.

25 JUDGE PEARSON: Okay. So in that vein,

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1 then, I will need -- obviously need the parties to waive
2 the requirement that I issue an order within ten days.

3 MR. SHAFER: Yeah, Moves for Seniors
4 certainly waives that.

5 MR. BEATTIE: Agreed. Waive.

6 JUDGE PEARSON: Okay.

7 MR. BEATTIE: Do I need to say the magic
8 word?

9 JUDGE PEARSON: Okay.

10 MR. BEATTIE: Do you envision a page limit?
11 Up to you, Your Honor.

12 JUDGE PEARSON: Do you have a
13 recommendation? I would like them to be brief.

14 MR. BEATTIE: Sure. I will let Mr. Roberson
15 speak to that.

16 JUDGE PEARSON: Okay.

17 MR. ROBERSON: I don't imagine -- I think
18 the normal brief limit is 20 pages. We're certainly not
19 going to exceed, maybe half that.

20 JUDGE PEARSON: Okay. Does that sound
21 reasonable, Mr. Shafer?

22 MR. SHAFER: I'm sorry, 20-page limit?

23 JUDGE PEARSON: Yes.

24 MR. SHAFER: Yeah, I think that's fine.

25 JUDGE PEARSON: Okay. And so the last day

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1 in January, let me just take a look at my calendar so
2 that we can --

3 MR. SHAFER: I was just looking at it.

4 January 31st is a Wednesday.

5 JUDGE PEARSON: Okay. Does that work for
6 everyone, close of business by January 31st?

7 MR. SHAFER: Very good.

8 JUDGE PEARSON: Okay. Then we will set that
9 as the due date for both hearing simultaneous briefs,
10 and then you can expect to see my order most likely
11 within ten days after that.

12 MR. SHAFER: Very good.

13 JUDGE PEARSON: Okay. Is there anything
14 else before we go off the record?

15 MR. BEATTIE: No, thank you.

16 MR. SHAFER: Nothing further from Moves for
17 Seniors.

18 JUDGE PEARSON: Okay. I just want to thank
19 everyone for being patient and willing to do this
20 telephonically today. I know it wasn't ideal, but I do
21 think that it worked out pretty well, and I'm glad we
22 were able to go forward.

23 MR. SHAFER: As the person who would have
24 otherwise been forced to drive an extra two and a half
25 hours to Olympia, I truly appreciate being able to do

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1 this telephonically.

2 JUDGE PEARSON: Yes, absolutely.

3 MR. ROBERSON: As do I. Thank you.

4 JUDGE PEARSON: Yeah.

5 Mr. Pienkowski, thanks for coming out for

6 this.

7 MR. PIENKOWSKI: Oh, my pleasure. Thanks

8 for accommodating the phone call.

9 JUDGE PEARSON: All right. Well, if that's

10 all we have, then we are adjourned. Thanks again,

11 everyone.

12 (Adjourned at 11:01 a.m.)

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CERTIFICATE

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill, and ability.

Tayler Garlinghouse, CCR 3358