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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
PROTECTIVE PARKING SERVICE)
CORPORATION d/b/a LINCOLN)
TOWING SERVICE,)
Respondent.) Docket No.
HEARING ON FITNESS TO HOLD A) 92 RTV-R Sub 17
COMMERCIAL VEHICLE RELOCATOR'S)
LICENSE PURSUANT TO SECTION)
401 OF THE ILLINOIS COMMERCIAL)
RELOCATION OF TRESPASSING)
VEHICLES LAW, 625 ILCS)
5/18A-401.)

Chicago, Illinois
January 17th, 2018

Met, pursuant to notice, at 11:00 a.m.

BEFORE:
MS. LATRICE KIRKLAND-MONTAQUE,
Administrative Law Judge

SULLIVAN REPORTING COMPANY, by
Kristin C. Brajkovich, CSR
License No. 084-003810.

1 APPEARANCES:

2

3 ILLINOIS COMMERCE COMMISSION, by

4 MR. MARTIN BURZAWA

5 160 North LaSalle Street

6 Suite C-800

7 Chicago, IL 60601

8 (312) 814-1934

9 on behalf of ICC Staff;

10

11 PERL & GOODSYNDER, LTD., by

12 MR. ALLEN R. PERL

13 MR. VLAD V. CHIRICA

14 14 North Peoria Street

15 Chicago, IL 60607

16 (312) 243-4500

17 for Protective Parking.

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I N D E X

| WITNESS | DX | CX | RDX | RCX |
|----------------|----|-----|------|------|
| SCOTT KASSAL | | | | |
| By Mr. Perl | | 903 | | 1024 |
| By Mr. Burzawa | | | 1011 | |

E X H I B I T S

| NUMBER | MARKED FOR ID | RECEIVED |
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| NONE. | | |

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call for a hearing,
4 92 RTV-R Sub 17. This is in the matter of Protective
5 Parking Service Corporation doing business as Lincoln
6 Towing Service, and this is a hearing on fitness to
7 hold a commercial vehicle relocator's license.

8 May I have appearances, please. Let's
9 start with Protective Parking.

10 MR. PERL: Thank you, your Honor. For the
11 record, my name is Allen Perl, P-e-r-l, from the law
12 firm of Perl & Goodsnyder. Our address is 14 North
13 Peoria Street, Suite 2C, Chicago, Illinois 60607.
14 Telephone is 312-243-4500.

15 And we are here today representing
16 Protective Parking Service Corporation doing business
17 as Lincoln Towing Service.

18 MR. CHIRICA: Good morning, your Honor. My
19 name is Vlad Chirica from the law firm of Perl &
20 Goodsnyder. We represent Protective Parking Service
21 Corporation doing business as Lincoln Towing Service.
22 Our address is 14 North Peoria Street, Suite 2C in
23 Chicago, Illinois 60607. Our phone number is
24 312-243-4500.

1 JUDGE KIRKLAND-MONTAQUE: Mr. Burzawa.

2 MR. BURZAWA: Good morning, your Honor. My
3 name is Martin Burzawa. I'm appearing on behalf of
4 the Staff of the Illinois Commerce Commission. My
5 address is at 160 North LaSalle Street, Suite 800,
6 Chicago, Illinois 60601. My telephone number is
7 312-814-1934.

8 JUDGE KIRKLAND-MONTAQUE: Thank you. All
9 right. Mr. Perl, you are going to cross-examine
10 Investigator Kassal today?

11 MR. PERL: Yes, your Honor.

12 JUDGE KIRKLAND-MONTAQUE: Mr. Kassal, why don't
13 you come over here and have a seat. Mr. Kassal,
14 remember you were sworn in before, so you are still
15 under oath. Okay?

16 THE WITNESS: Yes.

17 JUDGE KIRKLAND-MONTAQUE: Okay. You may
18 proceed, Mr. Perl.

19 SCOTT KASSAL,
20 called as a witness herein, having been previously
21 duly sworn, was examined and testified as follows:

22 CROSS-EXAMINATION

23 BY MR. PERL:

24 Q Good morning, Investigator Kassal. Just

1 for the record, could you state your name and spell
2 your last name.

3 A Yes. Scott is the first name. Kassal,
4 last name, K-a-s-s-a-l.

5 Q And you recall giving testimony in this
6 matter a couple months ago?

7 A Yes.

8 Q Did you review any documents between then
9 and now for your testimony this morning?

10 A Yes, yesterday afternoon and then this
11 morning with our attorney.

12 Q So I don't want to know what you and your
13 attorney discussed, but tell me what documents you
14 reviewed.

15 A The testimony from I believe it was 7/26 or
16 7/27, to refresh my memory.

17 Q Anything else?

18 A No.

19 Q Did you look at any of the citations that
20 you wrote during the relevant time period?

21 A No.

22 Q Did you speak about your testimony today,
23 other than your attorneys, to anyone else?

24 A Yes. I spoke with Officer Strand on the

1 way in, but it did not have anything to do with the
2 testimony. I just asked him generally how long he
3 was here yesterday, so I had an idea on how to plan
4 the rest of my day for scheduling. But we did not
5 get into any of the testimony.

6 Q And what is your current employment?

7 A Illinois Commerce Commission Police.

8 Q And you are an investigator?

9 A Yes, Transportation Investigator II.

10 Q I think we cleared it up last time, there's
11 a difference between an investigator and an officer?

12 A Yes.

13 Q And you can write citations but not
14 tickets?

15 A Yes, correct.

16 Q And an officer can write either one?

17 A Yes.

18 Q And you began working for the Commerce
19 Commission in 1996?

20 A Yes, correct.

21 Q So you have been there a little over
22 20 years?

23 A Yes.

24 Q And during that time have your duties

1 changed at all?

2 A No.

3 Q The relevant time period that we are here
4 discussing today, I think you might know this, but is
5 July 24, 2015, through March 23, 2016, correct?

6 A Yes.

7 Q So whenever I ask you a question, you can
8 assume that it's for the relevant time period, unless
9 I says otherwise.

10 A Yes.

11 Q Just like I'm asking you generically, how
12 long have you worked for the Commerce Commission.
13 Okay?

14 A Yes.

15 Q During the relevant time period, were your
16 duties the same as they are today?

17 A Yes.

18 Q And the same as they were when you
19 basically were hired to the Commerce Commission?

20 A Yes.

21 Q Prior to the relevant time period, you did
22 not specifically write citations for Lincoln Towing,
23 did you?

24 A Yes, I did.

1 Q Well, were you assigned -- so was there an
2 investigator assigned to Lincoln Towing prior to the
3 relevant time period?

4 A It switched around. But I started in '96,
5 and I want to say roughly from '97 or '98 until about
6 2002 or '03, I was strictly doing -- handling Lincoln
7 Towing complaints, so I'm sure that I wrote some
8 citations during that time frame.

9 Q To shortcut it, I think in your deposition
10 you stated that you were comfortable stating that
11 over your 20-year career at the Commerce Commission,
12 you wrote maybe between five and 100 citations to
13 Lincoln Towing?

14 A Yes.

15 Q So you were not -- strike that.

16 Prior to Investigator Carlson going on
17 medical leave, was Investigator Carlson assigned to
18 Lincoln Towing?

19 A Yes.

20 Q And what were you assigned to at that
21 period of time?

22 A I want to say Rendered Services and then an
23 assortment of smaller towing companies in the west
24 and northwest suburbs.

1 Q Did you have any specific training for your
2 job?

3 A On-the-job training when I started with
4 various investigators and officers.

5 Q Who do you report to directly? Who is your
6 superior?

7 A Sergeant Timothy Sulikowski.

8 Q What about for the relevant time period?

9 A Sergeant Timothy Sulikowski.

10 Q Do you ever open up investigations on your
11 own?

12 A No.

13 Q So when an investigation comes in, tell me
14 how that happens.

15 A It is received by U.S. Mail in our office
16 in Des Plaines. It's then processed by office staff
17 and then assigned to the officers and me as an
18 investigator.

19 Q Who is the office staff that you are
20 referring to?

21 A Well, Blanche Weigand, Kathy Wozniak, and
22 I'm going to try this one. Nabosha Barjrectovich.
23 Serbian boy. Everybody calls him Neshco. I'm
24 probably butchering his last name.

1 Q And did Neshco work for the Commerce
2 Commission during the relevant time period?

3 A He did not.

4 Q So for the purpose of the relevant time
5 period, it would have just been Blanche and Kathy?

6 A Yes, correct.

7 Q Do Blanche and Kathy make a determination
8 as to whether a complaint gets investigated, or when
9 a complaint comes in, does it automatically get
10 investigated, they just give it to the person to
11 investigate it?

12 A Well, if it comes in and it's just strictly
13 a damage complaint, Oh, the towing company damaged my
14 car, then they send insurance information. If it's
15 an illegal practice like, Oh, I went to pick up my
16 car and the guy at the window was swearing at me,
17 they might send a letter saying that you have to
18 pursue this in small claims court, Circuit Court.

19 All of the other ones, if it involves
20 a towing complaint or a violation of the IVC or 1710,
21 it will be assigned to an investigator or an officer.

22 Q During the relevant time period, do you
23 know how it was determined who would be investigating
24 a Lincoln Towing complaint?

1 A As you said, at that time Investigator
2 Carlson was assigned to Lincoln complaints.

3 Q And not yourself, correct?

4 A Correct.

5 Q So standard procedure would have been for
6 Blanche or Kathy, if they received a complaint about
7 Lincoln, to funnel that to Investigator Carlson?

8 A Yes.

9 Q At some point in time, Investigator Carlson
10 went on sick leave, correct?

11 A Yeah, correct.

12 Q Do you recall when that was approximately?

13 A Let's see. Well, he has been gone since I
14 want to say April of '16, so almost two years he has
15 not been back. Prior to that he had a few other
16 instances where he was off.

17 Q So there were a couple times that I think I
18 recall, that he was gone for a while and then would
19 come back and then gone and come back, correct?

20 A Correct.

21 Q And during that period of time, he was the
22 only investigator or officer assigned to Lincoln
23 Towing complaints, correct?

24 A Correct.

1 Q And based upon that, I think we covered
2 this at your dep, but there was no need to have more
3 than one investigator assigned to Lincoln Towing
4 complaints at the time, was there?

5 A Correct.

6 Q So it was not like some huge stockpiling --
7 strike that.

8 There was not a huge amount of
9 complaints coming in against Lincoln that
10 Investigator Carlson needed help, until he started
11 missing work?

12 A Correct.

13 Q And then when he was missing work for
14 medical leave, then the Lincoln complaints were
15 getting stockpiled because he was not getting to
16 them, correct?

17 A Correct.

18 Q But they were not getting stockpiled
19 because there were so many, they were getting
20 stockpiled because he was not at work, correct?

21 A Well, they were getting stockpiled because
22 he was not at work, and they were also getting
23 stockpiled because he was not keeping up on the cases
24 himself. But they were stockpiled more when he was

1 off, yes, and building up more.

2 Q Can you explain for us the difference
3 between a citation and a ticket.

4 A An administrative citation is issued to the
5 towing company by the ICC, and it's sent to the
6 towing company and they can either -- there's a fine
7 that goes along with it. They can either pay the
8 fine or request an administrative hearing. Whereas,
9 the court ticket would be -- I'm not sure of the
10 whole procedure with that since I don't write them,
11 but it's for Circuit Court, for city court.

12 Q And is there a difference in the types of
13 violations citations cover versus tickets?

14 A I believe so, but I'm not sure.

15 Q You have never written a ticket, correct?

16 A I have not.

17 Q Are you aware of Lincoln Towing ever
18 receiving a ticket that you are aware of? I know
19 that you have not written any, but are you aware of
20 any?

21 A No.

22 Q When an investigation comes in, it's not
23 automatic that it's going to be a citation, correct?

24 A Correct.

1 Q Why is that?

2 A You have to read the complaint and see what
3 the investigation entails. It could be an issue of
4 signage. My car got towed, there was no signs
5 posted. Whereas, then we would have to go look to
6 see, or improper signage or the driver -- I came up
7 to the driver with my keys. He would not release the
8 car.

9 I lost my train of thought. Could you
10 repeat the question, please?

11 Q Sure. I'm just trying to figure out when
12 an investigation comes in, it's not automatically a
13 citation is written?

14 A Correct.

15 Q And that is because you need to do an
16 investigation, correct?

17 A Yes, yes.

18 Q You are not going to assume that it's
19 accurate just by reading it?

20 A Right.

21 Q So before you would actually write a
22 citation, you would do an investigation?

23 A Yes.

24 Q What does an investigation entail?

1 A Right. Reading the complaint form and
2 seeing what you would need to investigate, what the
3 consumer is complaining about, and also to look at
4 the invoice to see if any of the data fields on the
5 relocation tow invoice are not accurately completed.

6 Q Is it safe to say when a consumer, the
7 person whose vehicle was relocated, makes a
8 complaint, pretty much the first thing you do is, you
9 grab the invoice, correct?

10 A Yes.

11 Q You look at the underlying complaint from
12 the consumer, correct?

13 A Yes.

14 Q Let's say the consumer says there was no
15 sign there.

16 A Yes.

17 Q And you do an investigation, correct?

18 A Yes.

19 Q You are investigating to see if there was a
20 sign there or not, correct?

21 A Yes.

22 Q But also at the same time, you have to look
23 at the invoice to make sure it's filled out properly?

24 A Yes.

1 Q Because you are not limited in the scope of
2 your investigation at that point in time to just what
3 the consumer is complaining about?

4 A Correct.

5 Q You can actually then investigate the whole
6 tow itself to determine if anything else was improper
7 as well?

8 A Correct.

9 Q So if the consumer says there was no sign
10 but you determine that there was, but you look at the
11 invoice and there's a number left off of something,
12 you can then write a citation for an improper
13 invoice, correct?

14 A Correct.

15 Q And you do that, don't you?

16 A Yes.

17 Q And so if you were to find that there was a
18 violation, based upon the complaint that you
19 received, and it was something other than what the
20 consumer is complaining about, you would write a
21 citation for that, correct?

22 A Yes.

23 Q Have you ever -- during the relevant time
24 period, did you ever determine that there was a

1 violation that Lincoln committed but you did not
2 write a citation?

3 A Not that I'm aware of.

4 Q And you write the citations yourself,
5 correct?

6 A Yes.

7 Q You don't need approval from a supervisor
8 to do that, do you?

9 A Correct.

10 Q During the relevant time period, do you
11 recall ever doing an investigation, writing a
12 citation, and then your supervisor overriding you
13 saying, I don't believe this was really a violation,
14 during the relevant time period only?

15 A No.

16 Q During the relevant time period, do you
17 ever recall terminating the investigation, not
18 writing a citation, but your supervisor overrode you
19 and wrote a citation during the relevant time period?

20 A No.

21 Q During the relevant time period, you never
22 initiated any investigations of Lincoln Towing on
23 your own, did you?

24 A No.

1 Q It always came -- flowed through a
2 complaint coming from the Commerce Commission,
3 correct?

4 A Correct.

5 Q During the relevant time period, did you
6 receive any complaints which you did an investigation
7 on where you did not issue a citation to Lincoln
8 Towing?

9 A Yes.

10 Q Do you know how many?

11 A Not offhand.

12 Q Back up for a second. Do you recall how
13 many investigations you were given for Lincoln Towing
14 during the relevant time period?

15 A No.

16 Q Would it be less than 1,000?

17 A Yes.

18 Q Less than 100?

19 A Yes.

20 Q Less than 50?

21 A Well, let's use 50 as the number, yeah.

22 Q So if we use 50 as the number, does that
23 help you at all -- and I'm not putting words in your
24 mouth. Does it help you at all in terms of recalling

1 how many cases you were assigned where you did not
2 write a citation?

3 A No, because I don't remember how many
4 citations I wrote. Let's say it was roughly 45,
5 50-ish cases that I was assigned.

6 Q So if, in fact, you only wrote 15
7 citations -- let's stop for a second.

8 There's a difference between a case
9 and a citation, correct? Because you could get a
10 complaint and you write three citations for that one
11 case?

12 A Correct.

13 Q So if you got 50 cases in and you only
14 wrote citations on 15 of them, that would mean on
15 35 of those cases you didn't write any citations,
16 correct?

17 A Correct.

18 Q That means you went through the
19 investigation and you determined there was no
20 violation at all?

21 A Correct.

22 Q Okay. As you sit here today -- and we'll
23 go over the specific citations -- do you recall how
24 many times you received the complaint, you didn't

1 write a citation for the underlying complaint, but
2 you did write a citation for something more like an
3 administrative complaint?

4 A Rephrase it maybe.

5 Q You receive a complaint from a consumer
6 saying there was no sign.

7 A Right, uh-huh.

8 Q You determined there was a sign.

9 A Right.

10 Q But you determined they left off the
11 operator's ID number.

12 A Right.

13 Q So you write a citation for that?

14 A Yes.

15 Q Do you know how many times you received a
16 complaint for the underlying complaint but you did
17 not write a ticket for that or a citation for that
18 but you did write it for something else?

19 A I don't recall offhand.

20 Q Okay. During the relevant time period, did
21 you write any citations to Lincoln Towing for not
22 properly or completely filling out an invoice?

23 A I think I did.

24 Q And I'm not going to ask you the specific

1 ones because I'll show them to you later. You don't
2 recall any specifically, do you?

3 A No.

4 Q Like the names of the individuals or the
5 addresses or anything like that?

6 A No.

7 Q Do you recall, as you sit here, what other
8 types of citations you issued to Lincoln Towing
9 during the relevant time period?

10 A No.

11 Q I'm not going to show it to you now, but is
12 there any documents that I could show you to refresh
13 your recollection regarding how many citations you
14 wrote or what they were for?

15 A Yes.

16 Q If I showed you your investigative reports,
17 would that help?

18 A Oh, absolutely.

19 Q And if I showed you the citations, would
20 that help?

21 A Yes.

22 Q I want to see -- I know we went over this
23 at your deposition kind of extensively, so you might
24 be prepared for it.

1 I like to say there's a difference
2 between a citation written for something that affects
3 the tow specifically, like no signage, I was not
4 parked there, the tow is illegal versus there's a
5 field on the invoice not filled out correctly. Do
6 you recall that conversation that we had?

7 A Yes.

8 Q I like to call the one where the invoice is
9 improperly filled out as an administrative citation.
10 Do you recall?

11 A Yes.

12 Q And the other ones, I say they directly
13 impact the public. Do you remember that?

14 A Yes.

15 Q And the reason -- my reasoning for it, and
16 let me know if you agree with me, is that when an
17 individual drives into the Walgreens lot and there's
18 a clear sign from Lincoln Towing saying, You can't
19 park here or you will towed. And the specific one
20 where there's a Hard Rock on one side of the street
21 and there's a Portillo's on the other side of the
22 street, correct?

23 A Yes.

24 Q And people will often park at Walgreens and

1 they will walk off the lot and go to one of those
2 places, correct?

3 A Correct.

4 Q And then Lincoln Towing tows the vehicles?

5 A Yes.

6 Q Let's assume for the moment all of the
7 signs are perfect, within 4 to 8 feet above the
8 ground, they have all of the relevant information,
9 and the person parks illegally and they leave. We
10 tow their vehicle. Everything is perfect. We give
11 them their invoice back, they pay for it, but we
12 leave off -- we don't leave off, we leave off one
13 number from the contract. It's 74823, we have 7482.
14 You then write a citation for leaving off that one
15 number in the citation, correct?

16 A Correct.

17 Q Do you agree with me, that is a little bit
18 different than if we had no signs up at all and we
19 just towed the car and the person had no idea they
20 were not supposed to park there. They are both
21 citations. I'm not saying that they are not. But
22 one of them directly impacts the consumer because the
23 consumer says, Hey, how would I have known not to
24 park there, there was no sign there at all, right?

1 A Right.

2 Q The first one, the person parked wrong,
3 they knew what they did was wrong, and they are
4 looking around, they are checking, and they leave,
5 versus when the person gets the invoice back, they
6 don't know whether or not there's one number missing
7 off of the contract, do they?

8 A No. But can I use a different example or
9 not?

10 Q Yes.

11 A Let's say that the operator number -- that
12 is, the tow truck driver, the operator number on the
13 invoice is on there. The public just sees that
14 number. They don't know if the guy or the person is
15 expired or revoked.

16 We can look in our system and see
17 maybe the driver was revoked because he was convicted
18 of criminal sexual assault. That is a threat to the
19 public that the public would not know about.

20 Q Agreed.

21 A In that case, I would say that that is
22 something that we need to investigate. Your example,
23 I don't see how that would affect the public. It's
24 more an administrative error.

1 Q Let me ask you a question. During the
2 relevant time period, did you ever come across
3 anybody who was convicted of criminal sexual assault
4 who was towing for Lincoln Towing?

5 A I don't recall.

6 Q Well, you probably would recall that?

7 A Yeah.

8 Q You probably would have written a citation
9 for it?

10 A I did not come across it.

11 Q I understand that is one kind of out-there
12 example. I'm just saying in general, the public is
13 not harmed when one number is left off of a contract,
14 are they? I mean, they parked illegally. It does
15 not mean that they can park illegally just because
16 the invoice was not filled out properly, does it?

17 A No, but all of the towing companies have to
18 be held to the same standard.

19 Q This is where we went at the deposition.

20 A Right.

21 Q I'm asking you one question, you are
22 answering another. I know they are both citations.

23 A Okay.

24 Q And I used the example with you at your

1 deposition, somebody steals a pack of gum and they
2 get arrested for a crime.

3 A Yes.

4 Q If somebody murders somebody and they get
5 arrest for a crime, same thing?

6 A No.

7 Q No, of course not. There's a degree, a
8 continuum, right?

9 A Yes.

10 Q But they are both crimes?

11 A Right.

12 Q But same thing with the Commerce
13 Commission, they are not the same statute that is
14 violated when you illegally tow a car versus when you
15 don't fill out the invoice properly, is it?

16 A Correct.

17 Q It's a different part, right?

18 A Yes.

19 Q So do you understand or agree with me that
20 there is a distinction on this continuum of
21 culpability when a driver goes to a lot that Lincoln
22 does not even have a contract for and just pulls the
23 car off the lot and tows it, correct?

24 A Yes.

1 Q Versus a driver tows the car, there's a
2 sign, he or she does everything proper, but when they
3 print out the invoice, there's one number left off of
4 it. You do see the difference, right?

5 A Yes.

6 Q And you think the ones where I call these
7 administrative are a little bit less culpable, aren't
8 they?

9 A Yes.

10 Q Because one of them is almost intentional,
11 right?

12 A Right, yes.

13 Q So when we talk about the citations, I'm
14 going to refer to the ones where there's just a
15 problem with the invoices as administrative. Okay?

16 A Yes.

17 Q And the other ones that I'll talk about
18 that affect the public.

19 A Yes.

20 Q How does a consumer go about filing a
21 complaint with the Commerce Commission?

22 A Well, when they pick up their vehicle and
23 pay for it, they are given a receipt. On the reverse
24 side of the receipt is a complaint form.

1 Q So it's pretty easy?

2 A Yes, it's pretty easy.

3 Q It's right there?

4 A Yes.

5 Q They don't have to go get a document
6 online, correct?

7 A Correct.

8 Q They don't have to go to the Commerce
9 Commission to get a document?

10 A Correct.

11 Q In fact, they never have to go to the
12 Commerce Commission, do they?

13 A Correct.

14 Q In fact, isn't it true that you hardly ever
15 meet the consumers that complain?

16 A Correct.

17 Q You talk to them on the phone?

18 A Right.

19 Q And there's no step that would prohibit or
20 inhibit a consumer from complaining?

21 A Correct.

22 Q Do you know how many cars Lincoln Towing
23 tows on the average per year, let's say in 2015 and
24 '16?

1 A Let me see. I'm going to say 80,000.

2 Q So let's -- 80,000 is a lot, but let's say
3 they tow like 13,000.

4 A Oh, that is a lot, gosh.

5 Q It is still a lot?

6 A Yes.

7 Q 13,000 is still a lot?

8 A Okay.

9 Q We talked about this at your dep. The
10 reason we know this is because Lincoln pays the
11 Commerce Commission \$10 per invoice?

12 A Yes.

13 Q Is that your understanding?

14 A Yes.

15 Q So literally when Lincoln Towing gives an
16 invoice to a consumer, they have paid the Commerce
17 Commission \$10 for that invoice?

18 A Yes.

19 Q And that is one of the ways that we keep
20 track of it. At the end of the year, we have our tax
21 return, we paid the Commerce Commission \$130,000 that
22 we submitted, that means we towed 13,000 vehicles?

23 A Yes.

24 Q I think I asked you if that is a number

1 that is important to you in general. Does it matter
2 to you that Lincoln Towing tows 13,000 vehicles in
3 general?

4 A Not to me as an investigator, no. I'm more
5 concerned with the complaints that come in.

6 Q We also talked about the fact that -- and I
7 think you brought it up in your dep, that the city
8 relocation numbers are much larger than the suburb
9 relocation numbers, correct?

10 A Yes.

11 Q Because there's more lots to patrol in the
12 city, correct?

13 A And more quantity of cars.

14 Q More quantity of cars. And in the suburbs,
15 and you can tell me if I'm wrong, most places where
16 you park, there's ample parking everywhere?

17 A Correct.

18 Q So you don't have to worry about if other
19 people come and park in your parking lot?

20 A Correct.

21 Q Versus the Walgreens lot that we talked
22 about, if they did not have towing there, nobody
23 would be able to park, the Walgreens customers,
24 because the Hard Rock customers would park there,

1 Portillo's customers would park there. I might even
2 park there overnight and just leave my car there?

3 A Correct.

4 Q So that is kind of why we need towing in
5 the city, correct?

6 A Correct.

7 Q Because these businesses have to have their
8 customers be able to participate in their store?

9 A Yes.

10 Q And condominium buildings or where you
11 live, if it's your parking spot, you don't want
12 people parking in your lot, correct?

13 A Correct.

14 Q Okay. The reason I brought up the 13,000
15 number is because we were also talking about at your
16 deposition whether or not a certain number of tows is
17 a lot based upon the number that you tow, correct?

18 A Correct.

19 Q So if I were to say to you that Lincoln
20 towed 100 cars a year but they received 79 citations,
21 that is a pretty lot, isn't it?

22 A Yes.

23 Q That is a big percentage, 79 percent of the
24 cars. Something is wrong?

1 A Right.

2 Q But if you towed 13,000 vehicles and let's
3 say during the nine-month period you tow 10,000
4 vehicles, and you are only written 28 citations on
5 10,000 vehicles, not guilty but written citations,
6 that is not a lot?

7 A Correct.

8 Q That is a really small number?

9 A Correct.

10 Q And if it turns out that you are only found
11 liable on seven of those, that is a really small
12 number on 10,000 tows, isn't it?

13 A Correct.

14 Q It does not seem problematic to you, does
15 it?

16 A No.

17 Q You are familiar with Lincoln Towing?

18 A Yes.

19 Q You have been familiar with them since
20 probably 1996 at least?

21 A Yes.

22 Q And maybe even before then?

23 A Well, from the Steve Goodman song before
24 that.

1 Q That is everyone.

2 A No. Basically from when I started with the
3 Commission.

4 Q Okay. Do you know how many vehicles
5 Lincoln towed in 2012?

6 A 13,000.

7 Q Give or take. And I don't want you to
8 guess.

9 A No, I have no -- I don't know.

10 Q Do you know how many citations Lincoln
11 Towing received in 2011?

12 A I do not.

13 Q Do you know how many citations Lincoln
14 Towing received in 2012?

15 A I do not.

16 Q 2013?

17 A I do not.

18 Q 2014?

19 A I do not.

20 Q 2015?

21 A I do not.

22 Q 2016?

23 A I do not.

24 Q 2017?

1 A I do not.

2 Q You don't know whether or not Lincoln
3 Towing was receiving more or less citations in the
4 relevant time period than in the previous nine
5 months, do you?

6 A No, I do not.

7 Q And you don't know how many citations
8 Lincoln Towing received during the relevant time
9 period?

10 A No, I do not.

11 Q That was July 24, 2015, until March 23,
12 2016.

13 A I do not.

14 Q And you don't recall how many citations you
15 wrote during the relevant time period?

16 A I do not.

17 Q Do you know how many investigations were
18 opened regarding Lincoln Towing in 2011?

19 A I do not.

20 Q 2012?

21 A I do not.

22 Q For any year?

23 A No.

24 Q Do you know how many investigations were

1 opened against Lincoln Towing in the relevant time
2 period?

3 A I do not.

4 Q I'm going to show you now what was marked
5 as Exhibit 3 in the Lincoln Towing binder. Take a
6 look at Exhibit 3 for a moment. Let me know when you
7 have had an opportunity to review it.

8 And for the record, Exhibit 3 has
9 already been admitted into evidence. It's a copy of
10 an order dated February 24, 2016, from the Illinois
11 Commerce Commission.

12 Have you had a chance to read it?

13 A Yes.

14 Q Are you aware, independent of this order,
15 that on or about July 24, 2015, Protective Parking
16 Service Corporation doing business as Lincoln Towing
17 Service had a fitness hearing in front of the
18 Commerce Commission and they were deemed to be fit
19 and their license was renewed?

20 A Yes.

21 Q You are aware of that, correct?

22 A After reading this, yes.

23 Q And I think at your deposition you said you
24 were aware because you -- while you were doing your

1 investigations, you looked up online and they had a
2 valid license?

3 A Okay. Correct then, yes.

4 Q Does that give you any information about
5 whether or not Lincoln Towing was fit to hold a
6 license on or about July 24, 2015?

7 A Yes.

8 Q Does that tell you that the Commerce
9 Commission deemed that they were fit to hold a
10 license --

11 A Yes.

12 Q -- on or about July 24, 2015?

13 A Yes.

14 Q And you don't have an opinion otherwise, do
15 you?

16 A No.

17 Q And if the order of this Commerce
18 Commission was that they were fit, do you agree with
19 that?

20 A Yes.

21 Q And you have nothing else to say or an
22 opinion that they were not fit?

23 A Correct.

24 Q Same thing for the relevant time period?

1 A Correct.

2 Q Do you have an opinion as to whether they
3 were fit or not yet?

4 A No.

5 Q Let's talk about the next part of this
6 letter. This is a -- not letter, order. This order
7 came down from the Commerce Commission and it states
8 here they reviewed Commission records to ascertain
9 Lincoln's compliance with the Commission regulations.
10 Do you see that?

11 A Yes.

12 Q Since this July 24, 2015, renewal of
13 Lincoln's operating authority, the Commerce Police
14 Department has opened 166 investigations into Lincoln
15 Towing's relocation operations. Do you see that?

16 A Yes.

17 Q If there's 9,000 or 10,000 tows during that
18 time, there's 166 investigations open, correct?

19 A Correct.

20 Q About 1.5 percent of the tows, correct?

21 A Correct.

22 Q The next part says, 28 of which have been
23 completed and resulted in administrative citations
24 against Lincoln. Do you see that?

1 A Yes.

2 Q So taken as truthful, because we do believe
3 this order, that during the relevant time period only
4 28 citations were written on 9,000 or 10,000 tows?

5 A Correct.

6 Q Do you think that is a high number or a low
7 number?

8 A Low number.

9 Q This does not tell you that these citations
10 were actually found liable, right?

11 A Correct.

12 Q Do you know why the Commerce Commission
13 decided to have a fitness hearing to determine
14 Lincoln's fitness when six months earlier or seven
15 months earlier they had been deemed fit?

16 A I do not.

17 Q You did not bring it to anyone's attention
18 at the Commerce Commission that you thought that
19 Lincoln Towing was not fit, did you?

20 A No.

21 Q You did not suggest to have a fitness
22 hearing, did you?

23 A No.

24 Q And nobody asked you if there should be a

1 fitness hearing, correct?

2 A No. Yes, correct, I was not asked.

3 Q I guess I should have said, did anybody ask
4 you?

5 A Yes. Right.

6 Q During the relevant time period, did you
7 ever tell anybody at Lincoln Towing they were getting
8 too many citations?

9 A Not that I recall.

10 Q During the relevant time period, did you
11 ever suggest to Lincoln Towing they could do
12 something different so they would not get so many
13 citations?

14 A No.

15 Q During the relevant time period, you did
16 not even know they were getting too many citations,
17 did you? They were getting citations?

18 A Right.

19 Q You didn't think there was too many, did
20 you?

21 A I just go on a case-by-case basis, so, no,
22 I did not think they were getting too many citations.

23 Q Okay. The renewals for the Commerce
24 Commission are good for two years, correct?

1 A Yes.

2 Q Are you aware of anything specifically or
3 generally that occurred between July 24, 2015, and
4 March 23, 2016, that was different from the prior
5 period?

6 A No.

7 Q Do you know who Bob Munyon is?

8 A Yes.

9 Q And Bob Munyon is sitting here today,
10 correct?

11 A Yes, he is.

12 Q He's the general manager for Lincoln
13 Towing, correct?

14 A Yes.

15 Q I'm assuming that you have had interaction
16 with Mr. Munyon before?

17 A Oh, yes.

18 Q How did you find him to be?

19 A Oh, an amiable fellow.

20 Q Responsive when you asked questions?

21 A Yes.

22 Q Does not duck you or hide?

23 A No.

24 Q Or give you false information?

1 A No.

2 Q Pretty attentive to whatever you ask of
3 him, correct?

4 A Correct.

5 Q You have never complained to anybody about
6 Mr. Munyon, have you?

7 A No.

8 Q Any other management of Lincoln Towing that
9 you have had any other problems with? I'm talking
10 about management. I'm not sure if you deal with
11 anybody other than Mr. Munyon.

12 A Hmm.

13 Q I'm talking about during the relevant time
14 period.

15 A Okay. No, I did not have any problems with
16 anybody.

17 Q Do you have any idea how it would be
18 possible for Lincoln Towing to be fit and proper to
19 hold a license in July of 2015 but not fit in
20 February of 2016?

21 A No.

22 MR. BURZAWA: Objection, calls for speculation.

23 JUDGE KIRKLAND-MONTAQUE: What was the
24 question?

1 MR. PERL: Does he know how it's possible that
2 Lincoln Towing could be fit to hold a license in July
3 of 2015 but not fit in February of 2016.

4 BY MR. PERL:

5 Q And I'm not asking you to guess. I'm
6 asking you based upon your 21 years as an
7 investigator at the Commerce Commission, and my guess
8 is that you have written a fair amount of citations,
9 correct?

10 A Correct.

11 Q And you only do relocations, correct?

12 A Correct.

13 Q So for 21 years you have done nothing but
14 relocation towing for the Commerce Commission?

15 A Correct.

16 Q You are the most senior person there,
17 aren't you?

18 A At the Commerce Commission?

19 Q Well, in terms of investigators or
20 officers.

21 A No.

22 Q Who is more senior than you?

23 A Regina Swanson. She's an officer. She's
24 been there 26 or 27 years.

1 Q Relocation?

2 A Well, she used to be relo. She's an
3 officer.

4 Q But she doesn't do relo anymore, does she?

5 A No.

6 Q So for relocation --

7 A Oh.

8 Q -- you are the most senior person, correct?

9 A I'm the most senior, correct.

10 JUDGE KIRKLAND-MONTAQUE: I'm going to overrule
11 the objection. It's based on his experience.

12 BY MR. PERL:

13 Q So I think my question was, do you know how
14 it's possible, if it's possible, that Lincoln Towing
15 was fit in July of 2015 to hold a license but not fit
16 February 24, 2016?

17 A I do not.

18 Q You are aware that on more than one
19 occasion Lincoln Towing's attorneys, which I am one,
20 have asked the ICC to meet to determine what Lincoln
21 could be doing differently, what the problem was.
22 You have heard me and Lincoln's attorneys ask that
23 question, right?

24 MR. BURZAWA: Objection, irrelevant.

1 JUDGE KIRKLAND-MONTAQUE: Because?

2 MR. BURZAWA: One, it's not limited in time or
3 scope, so I presume that Mr. Perl is referring to
4 conversations -- again as he did yesterday, to
5 conversations during the status hearing. That was
6 already after the Commerce Commission order that the
7 fitness hearing be held, so it's irrelevant for the
8 purposes of why the Commerce Commission ordered the
9 fitness hearing to be held and it's irrelevant for
10 the standard that is going to apply in terms of
11 determining whether or not Lincoln is fit.

12 MR. PERL: Well, of course it came after they
13 determined they were going to hold a hearing. Why
14 would I ask it before that? I never knew there was a
15 problem because there wasn't. And it's true I only
16 brought that up in status hearing after February 24,
17 2016, because that was the first time we learned
18 there was any problem. We had just gotten renewed.

19 So I would agree and stipulate to the
20 fact that my conversation did not happen during the
21 relevant time period. My conversation was about the
22 relevant time period, and the reason that I believe
23 it is relevant -- and I have said this yesterday and
24 every time I have talked to you -- I still don't know

1 why we are here, I have no clue except that I believe
2 there's an underlying improper purpose for doing
3 this. My claim is bolstered by the fact that I have
4 asked on a dozen occasions prior to this hearing of
5 anybody that I could, could you meet with me at the
6 Commerce Commission and tell me what we are doing
7 wrong and we will fix it. So I think that goes to
8 the fact that this is an improper purpose.

9 There's nothing here other than
10 there's an order stating that we are going to have a
11 fitness hearing. It does not even tell you in here
12 why they are doing it. So I am trying to figure out
13 why, and I think I have figured it out. It's an
14 improper purpose, and that is why we are doing what
15 we are doing. I'm making the record because I
16 believe that -- I actually believe at the deposition
17 you did recall me making the request.

18 THE WITNESS: Okay.

19 MR. PERL: You don't recall them denying it,
20 but you recall -- I made the request. I made the
21 request today.

22 MR. BURZAWA: Are we still on my objection,
23 Judge?

24 MR. PERL: So that is why I think it is

1 relevant.

2 JUDGE KIRKLAND-MONTAQUE: I'm going to overrule
3 the objection. I don't know how the answer would --

4 MR. PERL: I'm not going to ask any follow-ups
5 on it anyway.

6 JUDGE KIRKLAND-MONTAQUE: Go ahead. What was
7 the question? And then I'll allow him to answer it.

8 BY MR. PERL:

9 Q Do you recall on occasion when myself, as
10 attorney for Lincoln Towing, had requested of the
11 Commerce Commission staff to meet with me to
12 determine what Lincoln is doing wrong?

13 A I don't recall now, but apparently I did at
14 the time of the deposition, you are saying, almost a
15 year ago, so I'll say yes.

16 Q I'm not going to do any follow-up on it.
17 You don't remember those exact conversations?

18 A No, I don't.

19 Q During the relevant time period, did you
20 ever ask Lincoln Towing or Mr. Munyon for any
21 documentation on anything that he refused to give to
22 you?

23 A Not that I recall.

24 Q Are you aware that in or about October of

1 2016, Lincoln Towing installed a new computer system
2 in order to help resolve any issues that they might
3 have with invoices being printed?

4 A Yes.

5 Q You are aware of that, correct?

6 A I am because I would see some of the
7 complaints -- sometimes I would open the mail and the
8 complaints would come in and I noticed there was a
9 different font and different typeset. And I believe
10 Mr. Munyon -- I mentioned it to Bob and he said,
11 Yeah, we have a new computer system.

12 MR. PERL: So I think now, your Honor, I'm
13 going to do what I did yesterday with Officer Strand
14 and go over the actual relocations and citations that
15 Mr. Butler went through -- Mr. Barr went through on
16 direct.

17 MR. BURZAWA: I found another copy, if you want
18 it.

19 MR. PERL: That would be great. Thank you.

20 BY MR. PERL:

21 Q So I'm going to direct your attention to
22 Exhibit L.

23 A L here. Okay.

24 Q Calling your attention to Citation 8001274.

1 A I do not -- I have nothing in L.

2 Q Your L is missing? It's going to be easier
3 if I come over there, so let's use this book. That
4 is okay.

5 MR. BURZAWA: That's fine. I thought it was a
6 complete copy.

7 BY MR. PERL:

8 Q Okay. I'll just come over here. What is
9 8001274?

10 A It's an administrative citation that was
11 issued to Lincoln Towing -- Protective Parking d/b/a
12 Lincoln on December 1, 2015.

13 Q So within the relevant time period?

14 A Yes.

15 Q And is it correct to state that the
16 consumer did not complain to you about the use of an
17 operator without a valid permit?

18 A Correct.

19 Q And so the consumer came in with a
20 complaint other than this, correct?

21 A Correct.

22 Q Do you recall what the consumer's complaint
23 was?

24 A I do not.

1 Q Is there anything that I could show you to
2 refresh your recollection?

3 A Perhaps the relocation tow report.

4 Q How about your investigator report?

5 A There you go.

6 Q Let's take a look at your investigative
7 report. This is for that.

8 A Yes.

9 Q And I'm not going to mention the
10 individual's name at any point in time. It would
11 probably be a better idea if we do not do that.

12 So this individual sent a complaint in
13 and you did an investigative report. You checked the
14 address and operator permit in MCIS, correct?

15 A Correct.

16 Q You found they were in violation of one
17 thing, employing an operator that did not have a
18 permit at the time, correct?

19 A Correct.

20 Q No other violations, correct?

21 A Correct.

22 Q The individual who complained actually
23 complained that their vehicle was illegally towed?

24 A Correct.

1 Q You did an investigation, correct?

2 A Correct.

3 Q And you found that they were not illegally
4 towed?

5 A Correct.

6 Q But you did find a violation regarding the
7 operator permit?

8 A Correct.

9 Q How did you find that violation for the
10 operator permit? What did you do?

11 A We have a system, MCIS, Motor Carrier
12 Information System, we refer to as MCIS. It's where
13 all of the contracts and permits and dates are
14 entered into our system, and I can put in the
15 driver's number. I don't have it right on here, but
16 it was Ron Phillips. I think on the report he had,
17 it shows he expired on August 15th and the tow was
18 done on August 29th.

19 Q Do you know whether or not Mr. Phillips had
20 applied to have his license renewed?

21 A I don't now, but I could look in the
22 system.

23 Q But you don't know as you sit here today,
24 correct?

1 A Correct.

2 Q So it's possible that Mr. Phillips actually
3 had tried to renew his license and it was pending?
4 The system would not show that, would it?

5 A It would. That is why I'm hesitating. I
6 would say it is highly improbable. If I saw that it
7 was pending, I don't think that I would have issued
8 the citation.

9 Q The MCIS information, you do not put that
10 into the system?

11 A I do not.

12 Q And you are not in charge of that, correct?

13 A Correct.

14 Q Did you go to anybody that does input the
15 information into the system and ask them about Ron
16 Phillips?

17 A No.

18 Q Who actually handles the license renewals
19 for operators?

20 A I'm not sure offhand.

21 Q But it's not you?

22 A It's not me.

23 Q So when an operator goes to renew their
24 license, they don't come to you, correct?

1 A Correct.

2 Q And whoever they go to does not report to
3 you that an operator is trying to renew their
4 license, correct?

5 A Correct.

6 Q And there's no list anywhere that says
7 these operators are in the attempt of trying to renew
8 their license, correct?

9 A Not at the time, not in the relevant time
10 period.

11 Q Do you know what an operator has to do in
12 order to renew their license, what things they have
13 to do?

14 A They have to fill out an application. They
15 have to get fingerprinted. We used to fingerprint at
16 the office in the relevant time period. We did not.
17 They have to go through biometrics, I believe. They
18 are a floating location to get printed.

19 First of all, they have to get the
20 fingerprint card from Springfield, and then they have
21 to go get printed and send that back to Springfield.

22 Q Are you aware of whether or not
23 Mr. Phillips did that prior to his license expiring?

24 A I'm not.

1 Q But it's possible he did, correct?

2 A It's possible.

3 Q Because when you go to a place like

4 biometrics and a third party, it's possible -- and it

5 has happened, hasn't it, where someone goes for their

6 fingerprint test and it gets messed up and they have

7 to do that again?

8 A That -- I can't testify to that.

9 Q But that could happen?

10 A It could happen.

11 Q Did you do any outside independent

12 investigation regarding Mr. Phillips prior to writing

13 the citation?

14 A No.

15 Q Do you know the outcome of the citation

16 that you wrote?

17 A Not offhand, no.

18 Q I'm going to show you -- I won't show you.

19 8001274 --

20 A Is that the invoice or the ticket?

21 Q One second. Take a look at 8001294 now.

22 A Oh, okay.

23 Q And do you recognize 8001294?

24 A Yes.

1 Q And what is that?

2 A That is an administrative citation that I
3 wrote to Protective Parking d/b/a Lincoln Towing on
4 3 -- March 8th of 2016.

5 Q And would you agree with me that when we
6 looked at 8001274, that citation was not for the
7 underlying charge?

8 A Correct.

9 Q And you found them not to be liable on that
10 one because you didn't write a citation?

11 A On the underlying case, correct.

12 Q And there's no way that the public, the
13 person who complained, could have known whether or
14 not the person who towed his vehicle had a valid
15 permit, correct?

16 A Correct.

17 Q And it did not affect where they parked,
18 did it?

19 A No.

20 Q In other words, a person drives into a lot,
21 they park illegally. They don't say, Well, I know
22 the person who is going to tow me does not have a
23 license, so I can park here. They don't say that, do
24 they?

1 A No.

2 Q So this particular citation did not affect
3 the public, did it? They parked illegally, knowingly
4 even though the signs were there, correct?

5 A Correct.

6 Q I know what you are saying. What if the
7 driver -- but they weren't.

8 A Or had an issue, yes.

9 Q But they did not have an issue?

10 A Right.

11 Q Mr. Phillips eventually got his license
12 renewed?

13 A Yes, renewed.

14 Q So there was no issue?

15 A Uh-huh.

16 Q So this particular citation did not affect
17 the public, did it?

18 A Correct.

19 Q 8001294. Tell me what that was again.

20 A The administrative citation that I issued
21 to Protective Parking d/b/a Lincoln Towing on
22 March 8, 2016.

23 Q And what was the citation for?

24 A Invoice not accurately completed.

1 Q This is one of those ones that we talked
2 about, that this has no impact on the public,
3 correct?

4 A I have to review the file.

5 Q The invoice part, correct?

6 A Okay.

7 Q The person could not possibly have parked
8 illegally thinking, Well, they won't do my invoice
9 properly so I can park here?

10 A Correct.

11 Q Do you know what the underlying complaint
12 was?

13 A I do not.

14 Q Is there anything that I could show you to
15 refresh your recollection?

16 A The relocation investigation report.

17 Q So let me show you that. Without
18 mentioning the person's name.

19 The complainant states in this report
20 he left the property before shopping at the above
21 address, correct?

22 A Uh-huh.

23 Q The underlying complaint was not for an
24 improper invoice, correct?

1 A Correct.

2 Q And you did an investigation, correct?

3 A Correct.

4 Q And you determined that everything was in
5 order?

6 A Correct.

7 Q The signs were there, the contracts were
8 signed, the licenses were all perfect, correct?

9 A Yes.

10 Q No citation for that, correct?

11 A Uh-huh.

12 Q But you did -- just say yes or no.

13 A I'm sorry. Yes.

14 Q But you did determine that the invoice was
15 not properly filled out, correct?

16 A Correct.

17 Q Do you recall what about the invoice was
18 not properly filled out? And I'll let you show that.

19 A Let's see. Yes. Dispatcher 238, permit
20 expired on 11/5/15, however he released the vehicle
21 on 12/12/15.

22 Q So you --

23 A That is for one of them.

24 Q I think there's --

1 A That is just for this one. I'm sorry.

2 Q So the only citation you wrote was that the
3 individual who released the vehicle did not have a
4 license?

5 A Correct.

6 Q Are you aware now -- and we have discussed
7 this with Officer Strand yesterday -- that you don't
8 need a license to release a vehicle?

9 A Yes, I'm aware of that now.

10 Q So actually this citation, knowing what you
11 know now, you would not have written it, would you?

12 A Correct. I would not have issued this
13 citation today.

14 Q So it's your belief that this citation
15 would be not founded?

16 A Correct.

17 Q Okay. Take a look at 8001295.

18 JUDGE KIRKLAND-MONTAQUE: Excuse me. If I
19 could just ask a question. I'm sorry. We are
20 looking at 8001294?

21 MR. PERL: That was.

22 JUDGE KIRKLAND-MONTAQUE: And it was invoice
23 not accurately completed?

24 MR. PERL: Yes.

1 JUDGE KIRKLAND-MONTAQUE: And that was based on
2 the dispatcher not having a valid permit?

3 MR. PERL: There's two. I think there's two
4 citations because, here, the second part says --

5 JUDGE KIRKLAND-MONTAQUE: Which citation?

6 MR. PERL: The 1294.

7 JUDGE KIRKLAND-MONTAQUE: Okay.

8 MR. PERL: The permit expired, however he
9 released the vehicle on 12/12.

10 JUDGE KIRKLAND-MONTAQUE: 1294 at the bottom,
11 the remarks -- do you see that remarks?

12 MR. PERL: You know what, Judge, there are two
13 citations here. That's correct. 1294 actually was
14 for the invoice not being properly filled out. 1295
15 was the one that is not valid.

16 JUDGE KIRKLAND-MONTAQUE: Okay. We have not
17 gotten to 1295.

18 MR. PERL: Let me correct the record.

19 BY MR. PERL:

20 Q 8001295, what is that?

21 A That is an administrative citation that I
22 issued to Protective Parking Corporation d/b/a
23 Lincoln Towing on March 8th of 2016.

24 Q And this is for no valid dispatcher permit

1 at the time of release?

2 A Correct.

3 Q And this is a citation that we both now
4 agree, that you agree that this is not a valid
5 citation, correct?

6 A Correct.

7 Q Because you don't need to have a permit to
8 release a vehicle?

9 A Correct.

10 Q Let's go back to 1294. 1294 was written
11 for?

12 A The ILC contract number data field on the
13 relocation tow record has been left blank.

14 JUDGE KIRKLAND-MONTAQUE: The what data field?

15 MR. PERL: That one is March 8 of 2016.

16 JUDGE KIRKLAND-MONTAQUE: Which data field was
17 not complete?

18 THE WITNESS: Oh, the contract number was
19 not -- right? Yeah, contract number was not entered
20 on the invoice, was left blank, I believe.

21 BY MR. PERL:

22 Q And do you know how it is that that
23 contract number ended up being left blank?

24 A I do not.

1 Q Did you ever call Lincoln Towing to ask
2 them what happened?

3 A No.

4 Q You did not inquire as to whether or not
5 the possibility of the person who input it into the
6 system did it correctly but somehow it did not get
7 printed out correctly?

8 MR. BURZAWA: Judge, I'm going to object to
9 this line of questioning. Mr. Perl is changing or
10 shifting the burden of proof. All of these
11 possibilities are kind of raised as affirmative
12 defenses to these administrative citations.

13 So if it's Lincoln's position that
14 somehow somebody mis-input the information, they
15 actually have to present that affirmative matter into
16 their burden to prove it. Whether or not that is a
17 possibility that occurred, it is shifting the burden
18 of proof and is irrelevant to these proceedings.

19 MR. PERL: That is not a proper objection
20 anyway, because there's no such thing as it's an
21 affirmative defense and so I'm objecting. You can
22 object as to relevance, foundation, hearsay. I have
23 never heard that objection, but I'll respond to it.

24 The reason I'm making the objection is

1 because we have had hearings on this before, and I'm
2 not sure if counsel was present, where we have
3 determined that you don't have to fill out all of the
4 fields all of the way. You have to use your best
5 efforts to do that. We had a hearing on that and we
6 prevailed because of it. So if, in fact, I can prove
7 that we used our best efforts and a field still go
8 left off, then it's really not a citation. And the
9 reason that I'm doing it is because I told everybody
10 at the beginning, if Ben was going to get into these
11 things, I'm going to have to almost try them, each
12 one of them, which I'm doing it quickly but I'm doing
13 it.

14 So if this witness does not know how
15 it got left off and never even thought to ask
16 Lincoln, What happened here, but Lincoln did use
17 their best efforts -- and I'll bring in my witness to
18 come in and testify to that. I'm allowed to
19 cross-examine their witness. And even if it is an
20 affirmative matter in defending, why can't I do it on
21 cross-examination? I don't understand why I would
22 not be able to do that. Why can't I just prove their
23 case through their own witness under
24 cross-examination? That is what we do. So I can ask

1 him a question.

2 By the way, I'm not implying anything
3 by it. I'm asking questions. I am asking him, Did
4 you do this? If counsel thinks it's an affirmative
5 defense, I appreciate that. I'm not even sure that
6 is what I was doing, but thank you very much. I'm
7 allowed to cross-examine him on this thing. I just
8 asked him the question. I did not say, And doesn't
9 that mean X or Y? I didn't do that. I just said,
10 Did you do it? And he said no. How is that
11 possibly --

12 MR. BURZAWA: He was asking about speculative
13 possibilities in addition to that line of
14 questioning, whether or not it's possible there could
15 have been a computer error and that is why this digit
16 was left off in the invoice.

17 MR. PERL: Here is why I'm doing it. 21 years
18 of working for the Commerce Commission, only doing
19 relocation tows. He has probably seen it all, so I
20 can ask hypotheticals on cross. He can ask
21 hypotheticals on direct. I'm asking a hypothetical.
22 It's not an improper hypothetical. It is totally
23 relevant to the case. It goes right to my defense,
24 which it is. You don't -- for some reason the

1 Commerce Commission -- and they have said this --
2 believes that you have to fill out every single box
3 correctly. That is not what the statute says. You
4 have to use your best efforts to do it.

5 So if a mistake is made because my
6 client types into the computer but there's a computer
7 error but let's just say the sun shines so much on it
8 that it erases it, whatever, it's not intentional.
9 We used our best efforts. You actually ruled on this
10 already as best efforts. That is where I'm doing
11 with it.

12 I don't know that it matters, but
13 certainly I'm allowed to pose a hypothetical.
14 Counsel can say it's an improper hypothetical, if he
15 wants to, which he did not say, because it isn't, and
16 then the witness can testify. He can say, I don't
17 know, Mr. Perl, or he could say, Yeah, that could
18 happen and that is the answer. I don't know how that
19 is improper.

20 JUDGE KIRKLAND-MONTAQUE: I'm going to overrule
21 the objection. Go ahead.

22 BY MR. PERL:

23 Q Is it possible that the Lincoln Towing
24 individual who typed the information into the

1 computer actually typed in the invoice number or the
2 contract number and somehow there was an error with
3 the printing of their computer? Is it possible?

4 A It's possible.

5 Q Did you check into that possibility?

6 A I did not.

7 Q You did not call Lincoln Towing to find
8 out, did you?

9 A No.

10 Q Prior to writing the citation?

11 A No.

12 Q Is it your -- strike that. Let's look at
13 8001298. What is that?

14 A That is an administrative citation that I
15 issued to Protective Parking Corporation d/b/a
16 Lincoln Towing on March 15, 2016.

17 Q And is there also a companion ticket at
18 1299, so we don't have the same?

19 A Yes, there is.

20 Q So 1298 is for not accurately filling out
21 the invoice, correct?

22 A Correct.

23 Q Do you recall what about the invoice was
24 not filled out?

1 A I do not.

2 Q If I showed you a document to refresh your
3 recollection, would that help you?

4 A Yes.

5 Q What would you need to see?

6 A My report, my relocation investigation
7 report.

8 Q Let's take a look at your relocation
9 investigation report. Start with this. Can we agree
10 that the complainant did not complain about the
11 invoice not being properly filled out?

12 A Correct.

13 Q So the complainant complains about
14 something to do with the tow?

15 A Correct.

16 Q They state that their car was improperly
17 towed or illegally towed, correct?

18 A Correct.

19 Q You looked into that, didn't you?

20 A Yes.

21 Q And you determined that that was not the
22 case?

23 A Yes.

24 Q So all you wrote was a citation for

1 something administrative, correct?

2 A Correct.

3 Q So let's look at what you wrote them for.

4 A 1298 was written because the contract
5 number data field on the relocation tow record was
6 left blank and the operator's ID number is incorrect.

7 Q And was that for 1299?

8 A No. I believe that was just for 1298.
9 That is the invoice. Let's see. Yeah, wrong number.
10 2961 is employed by Rendered Services, so that was
11 the wrong -- it was filled out incorrectly.

12 Q Let's go to the 2961. You went into your
13 system and found out that was an operator employed by
14 Rendered, correct?

15 A Correct.

16 Q And certainly there is a possibility there
17 that that is a typo, correct?

18 A Correct.

19 Q There would be no reason that Lincoln would
20 be saying that the dispatcher -- or the operator was
21 somebody that worked at Rendered, would they?

22 A Unless they used to work for Lincoln and
23 they still had the number in the system.

24 Q Possibility also.

1 A Yeah.

2 Q So it's possible that -- I'm not sure about
3 your system, but sometimes you start typing something
4 and the computer just types in the rest of it because
5 it's common, correct?

6 A Yes.

7 Q So they could have typed in 29, the
8 computer puts in 61, the person does not realize it,
9 they put it on the invoice, correct?

10 A Correct.

11 Q Did you check into that possibility?

12 A No.

13 Q If you had determined that Lincoln Towing,
14 the individual that typed it up actually meant to
15 type in 2861, but the computer auto-corrected it to
16 2961, would you still have written a citation?

17 A I would have had to have spoken with my
18 superior about that.

19 Q So you may or may not have?

20 A Correct.

21 Q So let's look at the other one, the --

22 A 1299?

23 Q Yes. No valid dispatcher permit with
24 release?

1 A Right.

2 Q This is one that we could agree that you
3 would not have written today because you know that
4 you don't need to have a license to release?

5 A Correct.

6 Q So 1299 is not a valid ticket?

7 A Correct.

8 Q Or valid citation, I mean?

9 A Yes.

10 Q Let's look now at 8001272.

11 A This is 1272.

12 Q And I apologize. This is now Exhibit M so
13 keep going that way.

14 A This is M here.

15 Q That should be M. Now 8001272.

16 A What is it, 172?

17 Q Yes. You might have to keep going. I
18 think you have to keep going?

19 A 1272?

20 Q Yeah. Keep going.

21 A Yeah, I thought you said 7.

22 Q There we go.

23 A Okay. Got it.

24 Q This is a citation that you wrote, correct?

1 A Correct.

2 Q This is for improper signage, correct?

3 A Correct.

4 Q So this citation actually would be one of

5 the ones that I referred to that does have the direct

6 impact on the public?

7 A Correct.

8 Q Because if a person is complaining there

9 was no sign, that would be why they would park there,

10 correct?

11 A Correct, yes.

12 Q And that is what this person complained of,

13 correct?

14 A Uh-huh.

15 Q I'm sorry. You have to say yes or no.

16 A I'm sorry. Yes.

17 Q Did you see whether or not there was a sign

18 on the day of the tow?

19 A Well, can I review the report?

20 Q Sure.

21 A Thanks. What was the question again?

22 Q Did you actually see -- not looking at any

23 pictures, but did you actually see if there was a

24 sign on the date of the tow?

1 A Yes.

2 Q So you went out there on the day the car
3 was towed?

4 A Yes -- no, not on the day the car was
5 towed. No.

6 Q How would that be possible?

7 A Right. I did not see it on the day the car
8 was towed. No, I did not.

9 Q What day was the car towed?

10 A Let see. This one was opened -- all right.
11 The vehicle was towed on September 25th of 2015.

12 Q Okay. And when did you see the lot?

13 A On October 28th of 2015. The complaint was
14 filed with our office on October 1st of 2015.

15 Q And when you went out there, were there any
16 signs out there?

17 A Yes.

18 Q And why is it that you wrote the citation
19 then?

20 A Because there's enclosed photos that show
21 no sign at the time of the tow or right after the
22 tow, and when I went to look -- when I looked at --
23 visually inspected the lot approximately a month
24 later, there was a new Lincoln Towing sign on this

1 inside fence right here.

2 Q How do you know it was not there the day of
3 the tow?

4 A That I don't know. I'm going by the
5 pictures.

6 Q Do the pictures actually -- you did not
7 take the pictures, correct?

8 A I did not.

9 Q The pictures that you looked at are not
10 dated, are they? There's no date stamp on them, are
11 there?

12 A No.

13 Q So you don't know who took the pictures, do
14 you?

15 A Correct.

16 Q You don't know the date of the pictures, do
17 you?

18 A Correct.

19 Q And you don't know if they accurately
20 depict the lot on the date of the tow, do you?

21 A Correct.

22 Q Do you know what the final outcome was on
23 this particular citation?

24 A I do not.

1 Q Let's take a look at 8001273.

2 A Okay. Yes.

3 Q What is 1273?

4 A That is an administrative citation that I

5 issued to Protective Parking Corporation d/b/a

6 Lincoln Towing on November 17th of 2015.

7 Q And what was this for?

8 A No signage posted.

9 Q And, again, this is a citation that I had

10 referred to as something that directly affects the

11 public, correct?

12 A Correct.

13 Q Because the person who parked there, if

14 there was not a sign, they would know that you could

15 not park there?

16 A Correct.

17 Q Did you observe the lot on the day of the

18 tow?

19 A I did not. That would be impossible.

20 Q Well, it's not quite impossible but

21 improbable?

22 A Improbable, given the process.

23 Q Because you could have been investigating

24 some other complaints?

1 A Sure.

2 Q Did that ever happen, by the way, during
3 the relevant time period, where you were
4 investigating another complaint and actually observed
5 a sign not being there and then coincidentally
6 somebody else complained about that same day?

7 A No.

8 Q Okay. Take a look -- do you recall where
9 this tow was from?

10 A I do not.

11 Q Would anything that I could show you
12 refresh your recollection?

13 A My investigation report.

14 Q Let's take a look at your investigation
15 report. Where was this tow from?

16 A 2710 West Saint Georges.

17 Q Do you know what that is? Is it a lot? Is
18 it a street? Is it a CTA --

19 A I don't know.

20 Q Take a look at the picture.

21 A Okay. Well, it's under the "L" tracks.
22 It's CTA.

23 Q It's CTA property, correct?

24 A Correct.

1 Q Do you believe that the Illinois Commerce
2 Commission has the authority to write tickets or
3 citations on CTA property?

4 A Not anymore.

5 Q Did they at the relevant time period?

6 A Yes.

7 Q Are you sure?

8 A I'm not 100 percent.

9 Q So it's possible that the Illinois Commerce
10 Commission did not have the authority to write a
11 citation during the relevant time period, correct?

12 A Correct.

13 Q Next question is, I think you already
14 answered it, you don't know whether or not there was
15 a sign there on the date of the tow anyway?

16 A Correct.

17 Q You did not take these pictures, did you?

18 A I did not.

19 Q And there's no dates on the pictures, are
20 there?

21 A Correct.

22 Q So you don't know who took the picture, do
23 you?

24 A Correct.

1 Q And you don't know when the picture was
2 taken, do you?

3 A Correct.

4 Q And you don't know if it accurately depicts
5 the scene on the date and time of the tow, do you?

6 A Correct.

7 Q And you would not write that citation
8 today, correct?

9 A Correct.

10 Q Because as of today, you certainly know
11 that the ICC does not have the authority to write
12 citations on CTA property?

13 A Correct.

14 Q Let's take a look at now 8001297.

15 A Okay.

16 Q What is that?

17 A That is an administrative citation that I
18 issued to Protective Parking Corporation d/b/a
19 Lincoln Towing on 3 -- March 8th of '16 for not
20 accurately completing the invoice.

21 Q What about the invoice was not accurately
22 completed, if you recall?

23 A I do not recall.

24 Q Is there anything that I could show you

1 that would refresh your recollection?

2 A Yes, my investigative report.

3 Q So take a look at the report.

4 A Uh-huh.

5 Q And, first of all, the underlying complaint
6 on this one was not that the invoice was not
7 accurately completed, was it? Or was it?

8 A Repeat the question, please.

9 Q Sure. What was the underlying complaint?

10 A That the car was towed while he was up in
11 his apartment getting supplies or something.

12 Q And you did not write Lincoln a citation
13 for that, did you?

14 A No.

15 Q So you did an investigation and you
16 determined that the consumer complaint was not
17 founded, correct?

18 A Correct.

19 Q But when you looked further into the
20 invoice, you determined the invoice was not
21 accurately completed, correct?

22 A Correct. The contract number was not
23 entered.

24 Q Now, we can certainly agree that not having

1 a contract number entered on an invoice does not
2 directly impact the public, correct?

3 A Correct.

4 Q When you say the contract number was
5 improperly --

6 A Not accurately completed.

7 Q In what way?

8 A Sorry. Let me look at this. No contract
9 number was entered on the contract number date of
10 this, on the invoice.

11 Q Not to belabor it, but we have been through
12 this before. You don't know how that happened, do
13 you?

14 A No, I do not.

15 Q You don't know whether it was a computer
16 error or not, do you?

17 A I do not.

18 Q And you don't whether or not the person at
19 Lincoln actually put the contract number in there and
20 somehow it did not get printed?

21 A Correct.

22 Q And you did not do an investigation to
23 determine that before writing the citation, did you?

24 A No.

1 Q And, actually, you never did an
2 investigation to determine that, correct?

3 A I am not the manager of Lincoln Towing. I
4 figure if Mr. Munyon was given enough tickets for the
5 same issue, that he would speak with his employees
6 and take care of it on his end.

7 Q You never spoke to him again?

8 A No, I did not.

9 Q Let's take a look at 8001299.

10 A Okay.

11 Q Do you recognize that?

12 A I do.

13 Q And what is that?

14 A It's an administrative citation that I
15 issued to Protective Parking Corporation d/b/a
16 Lincoln Towing on March 15 of 2016.

17 Q And this is for no valid dispatcher at the
18 time of the release of the vehicle, correct?

19 A Correct.

20 Q And we agreed before that this ticket is
21 not valid, correct?

22 A Correct.

23 Q Because you don't need to have an operator
24 permit to release a vehicle, correct?

1 A Dispatcher.

2 Q Dispatcher.

3 A Correct.

4 Q So 1299 -- and I apologize. You know what,
5 I have asked you about this one already. It's
6 showing up twice on here. It's because it's in L and
7 M. Somehow it ended up in both of them.

8 A Okay.

9 Q Let's now move to 1902.

10 A Got it.

11 Q And what is 8001902?

12 A An administrative citation that I issued to
13 Protective Parking Corporation d/b/a Lincoln Towing
14 on March 17th of 2016 for improper signage.

15 Q So this is another one of those citations
16 that I have talked about that -- the differentiation
17 being it would have an impact on the public, correct?

18 A Correct.

19 Q Do you recall the underlying complaint?

20 A I do not.

21 Q Anything that I could show you to refresh
22 your recollection?

23 A An investigation report.

24 Q So let me show you your investigation

1 report.

2 A Thank you. Okay. What was the question
3 again?

4 Q Sure. What was -- the underlying complaint
5 was for what?

6 A There were no -- the complainant stated
7 there were no warning signs, no relocation towing
8 signs posted at the time of the tow.

9 Q And were you present at the time of the
10 tow?

11 A I was not.

12 Q Do you know whether or not there were signs
13 present at the time of the tow?

14 A I do not. Where is the tow? The tow was
15 January 14th of 2016. This was with the new
16 computers and --

17 Q Actually, it was October of '16.

18 A Okay. I'm saying this is when they had the
19 one.

20 Q The computers did not go in until October
21 of 2016. This is January of 2016.

22 A That is what I get for being funny. So the
23 complainant's vehicle was towed on -- what did I
24 say -- January 14th of 2016. I did not go out there

1 until March 1st of '16.

2 Q And what did you find on March 1st of 2016?

3 A That there were no relocation towing signs
4 posted.

5 Q Do you know what this lot was? Was it a
6 Walgreens that had closed, if you know?

7 A No. I'm sure there is pictures. Yeah.
8 This is a Walgreens that was closed down on Diversey,
9 and I don't remember the cross street, no.

10 Q So you were not present at the time of the
11 tow?

12 A Right.

13 Q The pictures from the complainant are not
14 dated?

15 A Right.

16 Q You don't know who took the pictures?

17 A Right.

18 Q And you don't if the pictures depict the
19 property accurately at the time of the tow?

20 A Correct.

21 Q Let's take a look at 1903. Is that a
22 companion? No.

23 A I think it might be. It seems like there's
24 more in there.

1 Q Different location.

2 A You are right.

3 Q I'm sorry. What is 1903 for? What is the
4 date there?

5 A Invoice not accurately completed, but the
6 ticket was written to the west lot on Armitage so
7 something onsite.

8 Q Okay.

9 A I don't recollect what it was.

10 Q And I think it's the same thing as the
11 1902. I think there was two citations. Yes. So
12 this is a companion ticket to 1902?

13 A Right.

14 Q One was for the sign and then one was for
15 the invoice not properly completed?

16 A Correct.

17 Q And what was the invoice not completed,
18 what was it about the invoice not completed?

19 A There was no contract number and there was
20 no tow truck license plate number entered.

21 Q So this is one of those citations that we
22 agreed is an administrative citation, correct?

23 A Correct?

24 Q It does not directly impact the public?

1 A Correct.

2 Q And same question. Did you try to
3 determine how it is that the contract number was left
4 off?

5 A I did not.

6 Q Because it seems that of the three or four
7 or five citations that you wrote to Lincoln, most of
8 them are for the contract number being left off,
9 correct?

10 A Correct.

11 Q What contract is that, by the way, that
12 this is referring to? Is that between the lot owner
13 and Lincoln Towing?

14 A Yes -- no, no, no, between the Illinois
15 Commerce Commission and Lincoln Towing.

16 Q For the contract between Lincoln Towing and
17 its customer?

18 A Yes. I misunderstood.

19 JUDGE KIRKLAND-MONTAQUE: Excuse me. Question.
20 These are companion, 1902 and 1903?

21 MR. PERL: By the way, there's two more.

22 JUDGE KIRKLAND-MONTAQUE: The question is, is
23 the address different because the ticket occurred at
24 the lot, the 46 -- if you look at the address --

1 MR. PERL: The 4601, that is our lot.

2 THE WITNESS: Yes. I wrote the ticket to the
3 west lot actually for the dispatcher not putting
4 those data fields on the invoice.

5 JUDGE KIRKLAND-MONTAQUE: Okay. That was my
6 confusion just because the addresses are different,
7 but it's the same event.

8 THE WITNESS: Yes.

9 JUDGE KIRKLAND-MONTAQUE: Got you. Thank you.

10 THE WITNESS: Sure.

11 BY MR. PERL:

12 Q It almost looks like, Investigator Kassal,
13 that you wrote two more tickets as well?

14 A I did. It was another complaint. There
15 were two complaints together. Towed from the same
16 lot, so I wrote two of the same ticket.

17 Q So 8001904 and 8001905 --

18 A I don't see 05.

19 JUDGE KIRKLAND-MONTAQUE: Where is 5, Mr. Perl.

20 MR. PERL: 5 was never brought up.

21 JUDGE KIRKLAND-MONTAQUE: Let's go off the
22 record.

23 (WHEREUPON, discussion was had
24 off the record.)

1 BY MR. PERL:

2 Q 8001904 is also for improper signage,
3 correct?

4 A Correct.

5 Q Same lot?

6 A Yes.

7 Q Different person that was relocated?

8 A Yes.

9 Q You were not there when it was towed,
10 correct?

11 A Correct.

12 Q You didn't -- you don't know who took the
13 pictures, correct?

14 A Correct.

15 Q You don't know if the pictures accurately
16 depict the scene at the time of the tow?

17 A Correct.

18 Q And you don't know the date of the
19 pictures?

20 A Correct.

21 Q Let's take a look in Exhibit N now,
22 8001290.

23 A Okay.

24 Q And what is 1290?

1 A It's an administrative citation that I
2 issued to Protective Parking Corporation d/b/a
3 Lincoln Towing on March 22, 2016, for not having a
4 contract electronically filed with the Commission.

5 Q So the individual -- by the way, do you
6 know what the underlying complaint was?

7 A I do not.

8 Q If I showed you the investigative report,
9 would that refresh your recollection?

10 A Yes.

11 Q Let me show you that.

12 JUDGE KIRKLAND-MONTAQUE: Sorry. Off the
13 record.

14 (WHEREUPON, discussion was had
15 off the record.)

16 JUDGE KIRKLAND-MONTAQUE: Okay. Back on the
17 record. Go ahead.

18 BY MR. PERL:

19 Q The underlying complaint was not -- the
20 consumer was not complaining that the contract was
21 not electronically filed, were they?

22 A They were not.

23 Q So the consumer was complaining that they
24 were illegally towed, correct?

1 A Yes.

2 Q And you did an investigation, correct?

3 A Yes.

4 Q And you determined that the consumer was
5 legally towed, correct?

6 A Yes.

7 Q But then you found out that by looking at
8 the invoice, you determined that the contract was not
9 electronically filed, correct?

10 A Correct.

11 Q You don't operate the MCIS system yourself,
12 do you?

13 A I do not.

14 Q Do you know who inputs the information into
15 the MCIS for contracts?

16 A No, I do not.

17 Q All you did was, you looked on a screen to
18 see whether or not it was showing it was e-filed,
19 correct?

20 A Yes.

21 Q Now, you don't know whether or not Lincoln
22 Towing actually e-filed it, but somehow it was not
23 showing up as e-filed?

24 A Correct.

1 Q Do you know when e-filing started
2 approximately?

3 A 2007, I believe.

4 Q Before that everybody was just paper
5 filing?

6 A Paper, right.

7 Q At some point in time, they did what was
8 called that bulk e-filing, do you recall?

9 A Yes, I do.

10 Q When everybody was given time and thousands
11 and thousands of contracts were e-filed right around
12 the same time, correct?

13 A Yes.

14 Q Do you know how many contracts during the
15 relevant time period were on file with the MCIS for
16 the Commerce Commission?

17 A I do not.

18 Q 100,000?

19 A Could be in that range.

20 Q You have Lincoln Towing, Rendered, and all
21 of the other companies, correct?

22 A Correct.

23 Q Did you check with anybody at the Commerce
24 Commission to see whether or not Lincoln had actually

1 e-filed it and there was a mistake in the computer
2 system?

3 A I did not.

4 Q Did you check with anyone at Lincoln
5 Towing?

6 A No, I did not.

7 Q Do you actually know whether or not Lincoln
8 Towing e-filed this contract?

9 A I do not.

10 Q Let's take a look now at 8001292.

11 A Yes.

12 Q And what is that?

13 A It's an administrative citation that I
14 issued to Protective Parking Corporation d/d/a
15 Lincoln Towing on March 4, 2016, for not accurately
16 completing the relocation tow invoice.

17 Q Do you know what the underlying complaint
18 was from the consumer?

19 A I do not.

20 Q Is there anything that I could show you to
21 refresh your recollection?

22 A My investigation report.

23 Q Take a look at your investigation report.

24 What is the nature of this complaint?

1 A Theft.

2 Q So the consumer was claiming that Lincoln
3 Towing stole their vehicle?

4 A Well, took money and personal items out of
5 the car.

6 Q And you did an investigation?

7 A Yes.

8 Q And you did not write a citation for that?

9 A No. It's a matter that would need to be
10 pursued in civil court.

11 Q So you did not write a citation for that,
12 but you did write a citation for invoice not
13 accurately completed, correct?

14 A Correct.

15 Q What about the invoice was not accurately
16 completed?

17 A There was no contract number entered nor
18 the tow truck license plate number.

19 Q Same line of questioning. Did you do any
20 investigation with Lincoln Towing to determine how
21 that happened?

22 A No.

23 Q And, again, this is a contract number
24 again, correct?

1 A Yes.

2 Q Did you tell anybody at Lincoln Towing at
3 that point in time that, The contract number was left
4 off, what happened?

5 A No.

6 Q Okay. Do you know whether or not this was
7 an issue with a computer or an individual or it was
8 intentionally left off?

9 A I do not.

10 Q You don't know -- by the way, on all of
11 these, you are not alleging that Lincoln Towing
12 intentionally left these things off, are you? You
13 are not alleging that, are you?

14 A No, but there was a pattern. It just seems
15 suspicious.

16 Q So four or five contract numbers were left
17 off, right?

18 A Right.

19 Q You did an investigation and you determined
20 there actually was a contract for that lot?

21 A Right.

22 Q Otherwise, you would have written a
23 citation, correct?

24 A Correct.

1 Q The difference is this, if I have a
2 contract with a consumer to tow from the Walgreens
3 lot, correct?

4 A Correct.

5 Q But somehow it does not get e-filed,
6 correct?

7 A Correct.

8 Q How would not e-filing it benefit Lincoln?
9 It actually hurts them, doesn't it?

10 A Sure. They are going to get citations.

11 Q They are going to get a citation for it?

12 A Right.

13 Q And somebody else might say, Hey, there's
14 no lot here, let me go see if I can get that
15 contract?

16 A Correct.

17 Q So when you say there's a pattern, how
18 would it possibly help Lincoln of these four or five
19 contracts that are not entered, how would that help
20 them?

21 A It wouldn't help them.

22 Q It would hurt them?

23 A Yes.

24 Q So by a pattern, do you mean that someone

1 was trying to sabotage Lincoln Towing possibly?

2 A I am not insinuating that at all. I'm just
3 saying that I saw a pattern, as I'm looking at the
4 relocation tow invoices, that there was a pattern of
5 the tow truck number being left off and the contract
6 number.

7 Q Well, mostly we are seeing the contract
8 number. Let's talk about that now.

9 A Okay.

10 Q If there was a pattern, is it possible that
11 somebody was trying to get Lincoln Towing in trouble
12 and doing it purposely?

13 A I can't answer that. That is speculative.
14 I don't know.

15 Q Can you think of a reason why Lincoln
16 Towing would purposely -- somebody at Lincoln Towing
17 would purposely leave off the contract number?

18 A No.

19 Q Now, maybe if you found out that there was
20 no contract at all, that would be a reason for
21 leaving it off, correct?

22 A Correct.

23 Q But in each one of these times where the
24 contract number was left off, you determined that

1 there was a contract?

2 A Correct.

3 Q Let's take a look now at 8001293. What is
4 1293?

5 A This is an administrative citation that I
6 issued to Protective Parking Corporation d/b/a
7 Lincoln Towing on March 7, 2016, for not accurately
8 completing the invoice.

9 Q Do you know what the underlying complaint
10 was in this matter?

11 A I do not.

12 Q Is there anything that I could show you to
13 refresh your recollection?

14 A My investigation report.

15 Q Let me show you that. Is it safe to say
16 that the consumer did not complain about the invoice
17 being incorrectly filled out, correct?

18 A Correct.

19 Q But they did state that they believed their
20 vehicle was illegally towed?

21 A Yes.

22 Q And you did an investigation, correct?

23 A Correct.

24 Q And you determined that the tow was legal

1 and proper?

2 A Yes.

3 Q Because you did not write a citation for
4 it?

5 A Right. The complainant admits that he left
6 the property.

7 Q So there was nothing wrong with the tow,
8 correct?

9 A Correct.

10 Q So if the Commerce Commission uses this
11 investigative report in Exhibit 3 that I showed you,
12 where they say, We opened up 166 investigations,
13 correct?

14 A Correct.

15 Q And if this is one of them, this one was
16 found to be not founded, correct? Well, you at
17 least --

18 A To the consumer.

19 Q Yes.

20 A Correct.

21 Q So in your opinion, would it be proper to
22 state that Lincoln Towing was getting too many
23 investigations occurring, when, in fact, some of the
24 times the investigations were not founded? Do you

1 want me to restate that?

2 A Yes, if you could.

3 Q Just because an investigation is open does
4 not mean that Lincoln Towing did anything wrong?

5 A No.

6 Q Because we are finding on a lot of these
7 things, you did not write tickets for these things or
8 citations for these things, right?

9 A Correct.

10 Q So it would not be fair to judge Lincoln
11 Towing, based upon the number of investigations that
12 they get, would it?

13 A On the quantity of investigations?

14 Q The number of them.

15 A Yes.

16 Q That is not fair because what if they are
17 found not liable?

18 A Correct.

19 Q It would not tell you anything, would it?

20 A Correct.

21 Q The only thing that would tell you anything
22 is how many times they are found liable, correct?

23 A Correct.

24 Q And actually even writing a citation does

1 not mean that they did anything wrong, does it?

2 A Yes. I am enforcing the IVC and the
3 Illinois Administrative Code 1710.

4 Q But by writing it, I'm not guilty, am I?

5 A No.

6 Q I will have my day in court, right?

7 A No, right. Correct, you are not guilty.

8 Q So just by writing the citation does not
9 mean that Lincoln did anything wrong?

10 A Correct.

11 Q I'm not questioning you. You wrote the
12 citation in good faith believing that they did commit
13 a violation, correct?

14 A Correct.

15 Q But sometimes it turns out that they
16 didn't, correct?

17 A Correct.

18 Q You have gone to hearings that we have had
19 where it's determined -- the judge determined they
20 were not liable?

21 A Correct.

22 Q So really it would not even be fair to
23 judge Lincoln based on how many citations they
24 receive, would it?

1 A Not by how many they receive. How many
2 they have to pay or are found guilty on.

3 Q How many they are found guilty on, right?

4 A Yes.

5 Q That would be the more appropriate thing?

6 A Correct.

7 Q So when you are looking at Lincoln Towing
8 in totality and you see that they have 13,000
9 vehicles towed, wouldn't it be more fair to take a
10 look at how many times they were found guilty after a
11 hearing to determine whether or not -- what their
12 status is with the Commerce Commission, correct?

13 A That is not for me to say. I'm not a
14 lawyer.

15 Q Not being a lawyer --

16 A Yeah.

17 Q -- but the most senior person at the
18 Commerce Commission doing relocation towing. You
19 have done nothing but relocation towing in 21 years?

20 A Yes.

21 Q And this is what you do day in and day out?

22 A Yes.

23 Q Don't you think it would be more fair to
24 judge Lincoln Towing or any relocater during the

1 relevant time period for the number of times they
2 were found liable, not the number of citations issued
3 or investigations opened?

4 A Correct.

5 Q Let's look at 8001296. What is that for?

6 A That is an administrative citation that I
7 issued to Protective Parking Corporation d/b/a
8 Lincoln Towing on March 8, 2016, for not accurately
9 completing the relocation tow invoice.

10 Q Do you recall what the underlying complaint
11 was from the consumer?

12 A I do not.

13 Q Is there anything that I could show you to
14 refresh your recollection?

15 A My investigative report.

16 Q Let me show you that. Isn't this another
17 situation where the consumer complained that the tow
18 was illegal?

19 A Yes.

20 Q And I'm just going --

21 A Going by that, yes.

22 Q And you did not write a ticket or a
23 citation for an improper or illegal tow?

24 A Correct.

1 Q And so you must have determined that the
2 tow was proper?

3 A Yes.

4 Q This is why I asked you the follow-up
5 question. If the Commerce Commission goes and uses a
6 basis for a hearing saying, Look at all of these
7 complaints Lincoln has been -- is getting on illegal
8 tows. Do you see that?

9 A Yes.

10 Q And they are getting them, right?

11 A Yes.

12 Q But they are not liable, are they?

13 A Correct. For the illegal tow, yes.

14 Q So you would not really want to use that
15 information against Lincoln, would you?

16 A No.

17 Q But you did write a ticket for an improper
18 invoice, correct?

19 A Right.

20 Q What about the invoice was not --

21 A Once again, the tow truck -- on this one,
22 the tow truck license plate number was entered as an
23 R and not a valid plate number.

24 Q So it looks to you like somebody, if you

1 know, entered an R, correct?

2 A Correct.

3 Q Now, is it possible that there's a default
4 system at Lincoln and somebody typed something in and
5 somehow an R -- because nobody has a plate of R,
6 right?

7 A Correct.

8 Q Do you know how it is that an R came about
9 on the invoice?

10 A I do not.

11 Q Certainly Lincoln Towing was not trying to
12 tell the Commerce Commission that they had a license
13 plate with a letter R, correct?

14 A Not likely.

15 Q I mean, they did not put R 723536 to try to
16 trick the Commerce Commission?

17 A Correct.

18 Q So probably a mistake was made, correct?

19 A Correct.

20 Q Did you check into Lincoln Towing about
21 what happened?

22 A No.

23 Q And this was in March of 2016, correct?

24 A Yes.

1 Q And you stated before on cross that you are
2 aware that Lincoln Towing did install a new computer
3 system to address glitches with the invoices,
4 correct?

5 A Yes.

6 Q And I think the last one I have to review
7 with you is 8001300. Take a look at that one.

8 A This is an administrative citation that I
9 issued to Protective Parking Corporation d/b/a
10 Lincoln Towing on March 15, 2016, again for not
11 accurately completing the relocation tow invoice.

12 Q Do you recall what the underlying complaint
13 was from the consumer?

14 A I do not.

15 Q Is there anything that I could show you to
16 refresh your recollection?

17 A My investigation report.

18 Q Let me show you that.

19 A Thank you.

20 Q Take a look at that and tell me what it is
21 that the consumer complained about, just --

22 A I have to get to the complaint, peruse it
23 briefly. Okay. There were signs. The complainant
24 left the property, left his vehicle on the property.

1 JUDGE KIRKLAND-MONTAQUE: I'm sorry. What was
2 that?

3 THE WITNESS: Oh, the complainant left his
4 vehicle on the property and then walked off the
5 property but there were signs posted.

6 BY MR. PERL:

7 Q So Lincoln Towing is permitted to tow in
8 that case?

9 A Yes.

10 Q So the consumer -- in your investigative
11 report, nature of complaint, illegal tow?

12 A Right.

13 Q This is another case where if the Commerce
14 Commission just used their statistics and numbers
15 saying, Oh, my gosh another complaint for an illegal
16 tow, wow, that is horrible, right?

17 A Yes.

18 Q Except they did not do it, did they?

19 A Correct.

20 Q So we can't judge Lincoln based upon this
21 complaint, can we?

22 A Correct.

23 Q We can say that this tow was proper,
24 correct?

1 A Other than --

2 Q The tow.

3 A Yes, the tow was correct.

4 Q The tow was correct. The public was not
5 harmed in any way, were they?

6 A Correct.

7 Q And in this particular invoice -- I'm
8 sorry. An invoice what was not on there?

9 A Again, they had not entered the contract
10 number data field on the relocation tow record. It
11 was left blank.

12 Q From my memory -- and I'll go over in
13 detail the numbers, almost all or most of the
14 invoices that were improperly done, the contract
15 number was left off?

16 A Correct.

17 Q We have been over this before, but there's
18 really no reason Lincoln would do that purposely
19 because it does not help them. It only gets them a
20 citation that they have to pay for, correct?

21 A Correct.

22 Q So if of these eight or so citations you
23 wrote for improper invoices, almost all of them had
24 no contract in there, there's no financial gain for

1 Lincoln to do that, is there?

2 A No.

3 Q You can't even think of a reason, could
4 you?

5 A No.

6 Q So if we go over a brief summary -- by the
7 way, these are all of the citations that you wrote
8 during the relevant time period, correct? This is
9 it?

10 A Sure.

11 Q I'm going off of what Mr. Barr questioned
12 you on direct exam.

13 A Okay. Yes.

14 Q This is it?

15 A These would be the citations that I issued
16 during the respective time period.

17 Q So it appears that there are 16 really
18 different cases that you opened, correct?

19 A If that is what I said, sure.

20 Q Of that, only three of them were for signs
21 which directly affected the public, correct?

22 A Correct.

23 Q And in each one of those cases, you
24 testified that you don't know if the signs were there

1 the date of the tow, correct?

2 A Correct.

3 Q You don't know who took the pictures,
4 correct?

5 A Correct.

6 Q You don't know the date of the pictures,
7 correct?

8 A Correct.

9 Q And you don't know if the lot in question
10 was accurately depicted from the picture that you
11 were given on the date and time of the tow?

12 A Correct.

13 Q We have one CTA property tow?

14 A Correct.

15 Q That may or may not have been proper at the
16 time, but it didn't -- ICC does not govern them now?

17 A Correct, for sure.

18 Q And you have one, two -- two citations that
19 are gone because you know now that you don't need a
20 license to release a vehicle for dispatch --

21 A Correct.

22 Q -- correct?

23 A Correct.

24 Q And for the record, I believe there were 12

1 open cases and 16 citations?

2 A Okay. Correct.

3 Q We can count that up.

4 JUDGE KIRKLAND-MONTAQUE: You mean --

5 MR. PERL: What happens, Judge, is they opened
6 up 12 investigations and wrote 15 total citations
7 because sometimes there was more than one written for
8 an investigation.

9 BY MR. PERL:

10 Q Let me ask you this, Investigator --

11 A Yes.

12 Q And you have been doing this longer than
13 anybody by far?

14 A Yes.

15 Q 21 years of doing this?

16 A Yes.

17 Q Doing nothing but relocation tows?

18 A Yes.

19 Q You had an opportunity to look at all of
20 your citations from the relevant time period?

21 A Okay.

22 Q What they were for, correct?

23 A Yes.

24 Q And also how many -- approximately how many

1 vehicles Lincoln towed during that same time period,
2 correct?

3 A What was the question again?

4 Q I don't have the question yet.

5 A Okay.

6 Q We talked about the 9,000 or 10,000 number
7 of vehicles towed during the relevant time period,
8 correct?

9 A Yes.

10 Q Of all of the citations that you wrote in
11 the relevant time period, we determined that only
12 three of them had a direct impact on the public,
13 correct?

14 A Correct.

15 Q And you don't really even know if the signs
16 were there on that date in question, correct?

17 A Correct.

18 Q Do you have an opinion, based upon all of
19 that, as to whether or not Lincoln Towing was fit to
20 hold a relocater's license during the relevant time
21 period?

22 A I do not.

23 MR. BURZAWA: Objection, calls for a legal
24 conclusion, improper lay opinion.

1 MR. PERL: I think he's going to say he doesn't
2 have an opinion anyway, but I think that he's
3 absolutely -- I don't know who could be more expert
4 of any of their witnesses in relocation towing. 21
5 years, only relocation towing day in and day out. He
6 goes out there, he writes the citations, they rely on
7 him and his expertise every single day to protect the
8 public, the Commerce Commission, and actually Lincoln
9 Towing.

10 I believe he is an expert in the
11 field. I also believe that he's going to say that he
12 doesn't know anyway because I asked him the same
13 question in the dep. I think I'm entitled to ask him
14 the question because, as I stated earlier, Judge,
15 they only have four witnesses, and none of them are
16 going to tell you that Lincoln was not fit and they
17 know that. Actually, one told you that Lincoln was
18 fit, and I think he actually did testify if the
19 Commerce Commission gave them a license, they think
20 they are fit.

21 So I don't understand how I can't
22 question their witness, who is an expert in this
23 area, as to whether or not he thinks Lincoln was fit
24 or not. By the way, only based upon the citations, I

1 agree, nothing to do with their financials or their
2 insurance or anything else because we are only having
3 a hearing on citations, so the only thing that is
4 relevant are the citations.

5 So when I ask this witness, based upon
6 the number of citations that you wrote during the
7 relevant time period and the number of vehicles towed
8 and the types of citations and what we have learned
9 today, like some of them are not even valid, it's not
10 casting an aspersion on him --

11 THE WITNESS: No.

12 MR. PERL: -- this investigator because we all
13 did not determine that until later, but some of the
14 arguments are valid. I can ask him.

15 BY MR. PERL:

16 Q Do you really think that Lincoln Towing
17 should lose their license based on what you are
18 seeing?

19 A I have no opinion on the matter. I have no
20 opinion how many were written altogether.

21 JUDGE KIRKLAND-MONTAQUE: I'm going to allow
22 the question. It's based solely on his experience in
23 the time period.

24 MR. PERL: It's based upon that.

1 JUDGE KIRKLAND-MONTAQUE: So what is your
2 answer?

3 THE WITNESS: I have no opinion.

4 JUDGE KIRKLAND-MONTAQUE: No opinion. There
5 you go.

6 BY MR. PERL:

7 Q Okay. Did you -- when I asked you that
8 question -- I have nothing further, your Honor.

9 MR. BURZAWA: Just a couple follow-up, Judge.

10 JUDGE KIRKLAND-MONTAQUE: Sure.

11 REDIRECT EXAMINATION

12 BY MR. BURZAWA:

13 Q Investigator Kassal, I just want to ask you
14 about the citations but limiting these questions to
15 the citations that you issued for an improper
16 signage.

17 What standard do you utilize in
18 deciding to issue an administrative citation for an
19 improper signage situation?

20 A Well, in these cases we looked at the
21 complainant's all enclosed pictures, and I believe
22 there were three of them that -- I did not get out
23 there until three to four weeks later to look at the
24 locations and there were still no signs up. To me

1 that says that there probably were not signs posted
2 at the time because I think the tow truck driver,
3 when he brought the car in, should say, I towed the
4 car but we have no signs on this lot. We should get
5 signs up.

6 Q So is it the standard that you utilize, is
7 it more probably true than not at the time there was
8 no proper signage?

9 A Could you rephrase that?

10 Q I'm looking kind of for you to summarize or
11 give me an idea about the kind of standard that you
12 utilize. Did you utilize a probable cause standard
13 or a preponderance of the evidence when conducting
14 your investigation, when deciding to issue an
15 administrative citation or in laymen's terms --

16 A Laymen's terms how about.

17 Q If you decide that it's probably more true
18 than not that there was no sign, then you would issue
19 a citation?

20 A Correct. I mean, let's say Mr. Perl showed
21 me the pictures or I was in the case files and there
22 were no signs. If I would go out and look at the lot
23 and Lincoln in the last three or four weeks had
24 posted signs, I would not write tickets then. I

1 would say, Hey, there were signs up when they were
2 here. Therefore, there would be more of a burden of
3 proof on the complainant.

4 Q Even if you find -- if you find that there
5 are no signs later on when you physically visit the
6 lot in question, even though it could be four to six
7 weeks later, if there are no signs at that time, it
8 leads you to believe that probably more true than not
9 there were no signs on the day of the tow?

10 A Correct.

11 Q And generally when a complainant submits
12 photographs to you, do you follow up with them about
13 the photographs and ask them when they were taken or
14 who they were taken by?

15 A Yes.

16 Q And generally do they tell you that the
17 photographs were taken the day of the tow?

18 MR. PERL: Objection, hearsay. First of all,
19 it's improper to say generally. We are talking about
20 specific instances in a relevant time period. Second
21 of all, it's hearsay.

22 MR. BURZAWA: This is information that the
23 investigator reasonably relies on in conducting an
24 investigation.

1 JUDGE KIRKLAND-MONTAQUE: But the truth of the
2 matter is what you are trying to get and whether
3 they --

4 MR. BURZAWA: Not necessarily, Judge, because
5 it goes to the effect on the listener. What the
6 complainant actually tells the officer is the
7 motivating factor in determining how the officer
8 conducts his investigation and whether or not he
9 issues a citation, so it's actually not hearsay.

10 MR. PERL: Actually, the only exception would
11 be state of mind. He's not talking about state of
12 mind. He's going to the truth of the matter
13 asserted, so when you are trying to skirt around the
14 hearsay exception and say, They always do, I'm not
15 sure how it is that the Commerce Commission attorneys
16 don't know what hearsay is, but they don't --

17 MR. BURZAWA: Judge, there's no need for these
18 personal attacks constantly. I stated my -- I stated
19 the law on --

20 MR. PERL: That is not the law.

21 MR. BURZAWA: The effect on the listener. That
22 is a non-hearsay. That is in the rule.

23 JUDGE KIRKLAND-MONTAQUE: Affect on the
24 listener.

1 MR. BURZAWA: But there is it no cause for
2 personal attacks.

3 MR. PERL: I'm not personally attacking. Every
4 single time we discuss hearsay, it's like nobody went
5 to law school. I apologize because they always try
6 to say that it's not going for the truth of the
7 matter asserted. Okay. What is it for, his mind?

8 If he did an investigation, based upon
9 what they told him, and it's absolutely going to the
10 truth of the matter asserted. I don't see how you
11 can get anything else.

12 JUDGE KIRKLAND-MONTAQUE: I'm sorry. What was
13 the question? Can you read it back to me, please?

14 (WHEREUPON, the record was read
15 by the reporter.)

16 MR. PERL: That absolutely goes to the truth of
17 the matter asserted as to the when the photographs
18 were taken. I mean, that is the whole basis for it,
19 and it's hearsay.

20 MR. BURZAWA: That is information that the
21 investigator relies on. If the complainant says, No,
22 I did not take the photographs until three or four
23 weeks later, that may lead him to the conclusion that
24 those are not fair and accurate depictions of the

1 lot. This actually goes to whether or not he decides
2 that it is probably more true than not to issue a
3 citation.

4 MR. PERL: But he is relying on hearsay to do
5 it. They are tell him something. That's hearsay. I
6 can't cross-examine that. By the way, just because
7 you rely on something does not make it not hearsay.

8 MR. BURZAWA: Hearsay is inadmissible at trial,
9 okay, it's not inadmissible for the purposes of an
10 investigation conducted by an investigator and a
11 police officer and how he conducts his investigation.

12 MR. PERL: This is trial. What are you talking
13 about? This is a trial right now. That is why I'm
14 says it's inadmissible. It is admissible everywhere
15 else in the world but not at trial. I agree. This
16 is a trial.

17 JUDGE KIRKLAND-MONTAQUE: I'm trying to think
18 of a way to ask the question without information
19 about the date. I mean, if you want to say, What do
20 you do once you get a photo, I think that goes toward
21 what you are saying.

22 MR. PERL: First of all, it's improper to say
23 generally. That is number one. That is my
24 objection. You can't say generally what happens.

1 You can say to this officer, Do you recall a specific
2 conversation with regard to this? I doubt he does.
3 But you can say to Investigator Kassal, Do you recall
4 speaking to this complainant about this? Okay. If
5 he says no, you go no further because it doesn't
6 matter in general what you do. It only matters
7 specifically for this particular relocation during
8 the relevant time period only. That is what we are
9 limited to, not in the world what do people generally
10 tell you.

11 JUDGE KIRKLAND-MONTAQUE: You can rephrase the
12 question, if you would like to not specifically --
13 unless you want to say regarding each citation.

14 MR. BURZAWA: One, I don't understand the
15 objection to hearsay. So are you saying that an
16 investigator cannot rely on statements from
17 complainants to determine how he conducts his
18 investigation?

19 JUDGE KIRKLAND-MONTAQUE: He definitely can,
20 but he can't come in here and say what people said.

21 MR. PERL: Exactly.

22 MR. BURZAWA: I'll rephrase the question.

23 BY MR. BURZAWA:

24 Q When you receive complaints from motorists,

1 do they occur at or near the time of the actual tow?

2 MR. PERL: Objection, many of them. Leading,
3 foundation, and relevance. We are talking about the
4 relevant time period for three tows. It's improper
5 to say generally what do people do. The proper way
6 is to ask about the tow.

7 MR. BURZAWA: I don't need a legal education,
8 Judge.

9 MR. PERL: Objection.

10 MR. BURZAWA: He made the objection. You can
11 rule on that.

12 MR. PERL: My objection is not to counsel. It
13 was to you, your Honor.

14 JUDGE KIRKLAND-MONTAQUE: What is your
15 objection?

16 MR. PERL: Leading. It's absolutely leading.
17 Foundation, relevance. How is it relevant what
18 people generally do? It's only relevant what
19 actually happened in this particular tow.

20 JUDGE KIRKLAND-MONTAQUE: Well, I think we
21 started out with the testimony about the description
22 of what he does generally.

23 MR. PERL: What he does generally. Now we are
24 into the -- this is redirect, by the way, based upon

1 my cross. I did not ask him generally about
2 policies, tows, and signs. I specifically asked him,
3 Do you know when the picture was taken? He said no.
4 Do you know who took it? He said no. Do you know if
5 it accurately depicts the property at the same time
6 of the tow? He said no. Those are the questions. I
7 don't to get --

8 JUDGE KIRKLAND-MONTAQUE: Okay. I'm sorry.

9 MR. PERL: How does it matter if four years ago
10 somebody said to him something about a picture and he
11 is generally going to talk about it? Well, one time
12 four years ago, someone told me the picture was the
13 same date. How would that be relevant? It's only
14 relevant for these.

15 JUDGE KIRKLAND-MONTAQUE: Well, I'm going to
16 sustain the objection, but if you want to ask the
17 question, let's make it within the scope of the
18 cross-examination.

19 MR. PERL: There you go.

20 BY MR. BURZAWA:

21 Q Investigator Kassal, I believe that you
22 were shown by Mr. Perl your investigation summary,
23 15-0999, and that was in regards to Ticket 8001272.

24 A Okay.

1 Q Now, do you remember --

2 JUDGE KIRKLAND-MONTAQUE: Can you hold on and
3 let me get there? Is that in M or N? I see it.
4 It's in M.

5 BY MR. BURZAWA:

6 Q With regard to Investigation 15-0999, do
7 you remember when that complaint came in?

8 A I would have to look at the file.

9 Q If you look at the file, that will refresh
10 your recollection?

11 A Yes, it will.

12 Q Okay.

13 A I have it here. All I have is the report.
14 Wait a second. Let's see. No, that is not it.
15 Okay. When did we receive the complaint?

16 Q Yes.

17 A On October 1, 2015.

18 Q And do you remember whether or not the
19 photographs were included in that complaint?

20 A Yes, they were.

21 Q And do you remember what the day of the tow
22 was?

23 A The date of the tow was September 25th of
24 2015.

1 Q So the complaint was submitted
2 approximately a month later?

3 A Six to seven days later.

4 Q Six to seven days. I apologize. I
5 misheard.

6 So does that lead you to believe that
7 those photographs were taken at or near the time of
8 the actual date of the tow?

9 MR. PERL: Objection, foundation. How would he
10 know that? How could it lead him to believe when the
11 pictures were taken? How could that lead anybody --

12 JUDGE KIRKLAND-MONTAQUE: You know what, you
13 can address that.

14 MR. PERL: The objection would be foundation
15 and it's leading. First of all, it's a leading
16 question. This is not cross-examination. How could
17 he ask that question? It's leading. You have to say
18 to him, What can you gather from that? He can't say,
19 Would that lead you to believe.

20 MR. BURZAWA: Again, Judge, I don't need a
21 legal education.

22 MR. PERL: I'm not trying to, Counsel.

23 MR. BURZAWA: Mr. Perl can make his objections.
24 They are supposed to be short and concise and then we

1 can move on.

2 MR. PERL: I'm not speaking to counsel at all.
3 I'm speaking to your Honor. I'm not giving him any
4 advice on what to do. I'm speaking to the Court, and
5 for the Court, I'm saying, Objection, leading. This
6 is his witness. I'm allowed to do it on cross. That
7 is why I could say, Would that lead you to believe.
8 He can't do that. That is leading questions to his
9 witness. Objection.

10 JUDGE KIRKLAND-MONTAQUE: Okay. Let's rephrase
11 the question. You may have to ask a couple more
12 questions to get there.

13 BY MR. BURZAWA:

14 Q What was the date of the tow, Investigator?

15 A September 25, 2015.

16 Q And when did the complaint come in?

17 A On October 1st of 2015. That is when it
18 was received in the Des Plaines office.

19 Q And you said that was probably six to seven
20 days later?

21 A Right. Which means it would have been sent
22 in earlier than that, if that is the date that it was
23 received in our office.

24 Q And the photographs were included?

1 A Yes.

2 Q And the fact that the photographs were
3 included at the time that the complaint was
4 submitted, does that lead you to form an opinion as
5 to whether or not those photographs were taken on
6 date of the tow?

7 MR. PERL: Objection, leading. It's suggesting
8 an answer to the witness. There's another way to ask
9 the question.

10 MR. BURZAWA: I'll rephrase, Judge.

11 BY MR. BURZAWA:

12 Q What conclusion can you draw from the fact
13 that photographs were submitted to the Illinois
14 Commerce Commission with a complaint six to seven
15 days after the tow?

16 A That they were probably taken within a day
17 or two of the tow occurring.

18 MR. BURZAWA: All right. That is all of
19 questions that I have on that.

20 JUDGE KIRKLAND-MONTAQUE: Okay. Now, you hold
21 off until -- are you done?

22 MR. BURZAWA: Just one second, Judge. That is
23 all of the questions that I have, Judge.

24 MR. PERL: Follow up on that.

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RECROSS-EXAMINATION

BY MR. PERL:

Q Investigator Kassal --

A Yes.

Q -- you don't know when these pictures were taken, do you?

A No, not specifically.

Q What time of the day was the tow?

A I would have to look at the invoice.

Q Let's take a look at the invoice.

A Yes. The tow occurred at 10:03 -- yes, 10:03:10 p.m.

Q That is the nighttime, correct?

A Yes, correct.

Q Take a look at the picture. Nighttime or daytime?

A Daytime.

Q So it certainly was not taken at the time of the tow, we know that for sure?

A Correct.

Q Can you really form a conclusion on when a picture was taken by when you receive it?

A One more time.

Q Can you really form an opinion on when a

1 picture was taken by when you see it?

2 A No.

3 Q If I show you a picture from my phone right
4 now of one of my daughters, do you know when I took
5 it?

6 A Well, if it has a date stamp on it.

7 Q What if it doesn't?

8 A Then I don't know.

9 Q And these don't have date stamps, do they?

10 A Correct.

11 Q But what if I tell you I took it yesterday.
12 Did I take it yesterday?

13 A I don't know.

14 Q So even if you remembered what the consumer
15 told you, it's only what they tell you, correct?

16 A Correct.

17 Q You don't know it to be accurate or not?

18 A Correct.

19 Q And isn't it true that when you went to
20 this location, there was a sign there?

21 A Yes, there was a sign.

22 Q And that was within three or four weeks of
23 the tow, correct?

24 A Correct.

1 Q And you don't know when the sign was put
2 up, do you?

3 A I do not.

4 Q Do you know whether the consumer took the
5 sign down after the vehicle was towed, the next day,
6 and then took a picture?

7 A I don't know.

8 Q And you don't even know who took the
9 picture, do you?

10 A Correct.

11 MR. PERL: Nothing further, your Honor.

12 THE WITNESS: You did not show me the picture
13 of your daughter.

14 MR. BURZAWA: I don't have any redirect on
15 that, Judge.

16 JUDGE KIRKLAND-MONTAQUE: Okay. Are you done
17 with this witness?

18 MR. PERL: Yes, Judge.

19 JUDGE KIRKLAND-MONTAQUE: Nothing further for
20 him?

21 MR. BURZAWA: No, Judge.

22 JUDGE KIRKLAND-MONTAQUE: It's your cross. So
23 this witness can be excused for day and we are done
24 for the day?

1 MR. PERL: Please, yes.

2 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

3 MR. BURZAWA: Before we go off the record,
4 Judge, I think there's something that we need to
5 address because I think Mr. Perl and I think maybe
6 even the Court misremembered the Court's order on
7 limiting the relevant time period because I went
8 through the transcript from February 1, 2017. And
9 your order -- this can be found on page 158 of the
10 February 1st, 2017, transcript, and this was the
11 ruling how you summarized it.

12 "Okay. We have got to resolve this
13 one way or the other. I think that the time frame
14 being established between July 24, 2015, and
15 March 22, 2016, that is the period of time that
16 events may have occurred. And if citations were
17 written after that but by no later than today and
18 staff has them, then he can supplement his answer
19 with any of those citations."

20 So you were cutting off discovery as
21 of February 1, 2016, but -- excuse me -- 2017 but if
22 there were still citations in the possession of staff
23 prior to that date, we could still disclose them to
24 Mr. Perl and use them for the purposes of this

1 hearing. And, in fact, you allowed staff to
2 supplement his discovery answers to provide Mr. Perl
3 with more investigation files.

4 JUDGE KIRKLAND-MONTAQUE: As of that date.

5 MR. BURZAWA: Correct.

6 JUDGE KIRKLAND-MONTAQUE: If they had them in
7 hand on that --

8 MR. BURZAWA: As of February 1st you gave them
9 14 days to provide them to Mr. Perl. I suspect that
10 is why in the exhibit folders there were citations
11 issued in April of 2016 and subsequent to this
12 March 22nd date because they were still related to
13 conduct that occurred during that period but then
14 provided to Mr. Perl after this February 1, 2017,
15 date.

16 JUDGE KIRKLAND-MONTAQUE: Okay. Let me just
17 give you my understanding. We have the two dates.
18 And I thought on that date, and I would have to look
19 at the transcript, I was saying that you can't give
20 them anything else after that date. What was it,
21 February -- what was the transcript?

22 MR. BURZAWA: February 1st, 2017, but you
23 specifically gave staff the opportunity to supplement
24 investigation files. You gave staff an additional 14

1 days from February 1st, 2017, to supplement their
2 discovery answers and provide Mr. Perl with those
3 additional investigation files.

4 MR. PERL: I don't see where in the transcript
5 it says they get 14 days.

6 MR. BURZAWA: It's on page 167.

7 JUDGE KIRKLAND-MONTAQUE: I think that was
8 supplementing --

9 MR. PERL: So I made the same argument to you,
10 that discovery closed as of February 1, 2017, if you
11 recall. You did not agree with me, and they were
12 allowed to supplement. This was date that we gave
13 for the invoices because at some point in time it was
14 like a moving ball, it never stopped. That is what
15 we did.

16 JUDGE KIRKLAND-MONTAQUE: Right, right.

17 MR. PERL: So the reason that we had that date
18 was because I had to prepare for trial. That is the
19 date we did. I'm sorry that counsel was not there at
20 the time, but the discussion was just that, if you
21 don't have them done by then and it was not that they
22 had to write the tickets by then. If we did not have
23 them, they were barred.

24 JUDGE KIRKLAND-MONTAQUE: Can I look at the

1 transcript? You can go off the record.

2 (WHEREUPON, discussion was had
3 off the record.)

4 JUDGE KIRKLAND-MONTAQUE: Back on the record.
5 Okay. So off the record we had a discussions about
6 whether or not staff could produce documentation on
7 February 1st of 2016 that -- for events that occurred
8 within the relevant time period but for which
9 citations may have been written subsequent to the
10 time period. So we are going to allow Mr. Burzawa
11 the opportunity to determine whether in fact any
12 additional documentation was provided from staff
13 to --

14 MR. PERL: Judge, just a correction. You said,
15 February 1, 2016. I think it was 2017.

16 JUDGE KIRKLAND-MONTAQUE: '17. Pardon me.
17 Thank you for the correction. It was '17.

18 So if Mr. Burzawa can track any
19 information that I allowed at that particular -- I
20 this it was a status hearing.

21 MR. PERL: Yes.

22 JUDGE KIRKLAND-MONTAQUE: Then we will correct
23 the record to that extent, if it affects any of the
24 citations that we did not look at. So we will allow

1 staff the opportunity to do that, and we will
2 reconvene for another hearing in this matter on
3 Thursday, January 25th, at 10:00 a.m. here in
4 Chicago. Thank you. That is all for today.

5 (WHEREUPON, the hearing was
6 adjourned until 10:00 a.m.,
7 01/25/18.)

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