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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

February 13, 2018

Met, pursuant to notice, at 1:30 p.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

BRYAN STRAND

By Mr. Perl 1533

E X H I B I T S

NUMBER MARKED FOR ID RECEIVED

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 of  
4 Docket No. 92 RTV-R Sub 17. This is in the matter of  
5 Protective Parking Service Corporation doing business  
6 as Lincoln Towing Service, and this is a hearing on  
7 fitness to hold a commercial vehicle relocater's  
8 license.

9                   May I have appearances, please. Just  
10 state your name and who you represent for the record.  
11 Let's start with Lincoln.

12           MR. PERL: Thank you, your Honor. For the  
13 record, my name is Allen Perl, P-e-r-l, from Perl &  
14 Goodsnyder on behalf of Protective Parking Service  
15 Corporation doing business as Lincoln Towing Service.

16           MR. CHIRICA: Good afternoon, your Honor. Vlad  
17 Chirica from Perl & Goodsnyder, also here on behalf  
18 of Protective Parking Service Corporation doing  
19 business as Lincoln Towing Service.

20           MR. BURZAWA: Good afternoon, your Honor.  
21 Martin Burzawa for the Staff of the Illinois Commerce  
22 Commission.

1 THE COURT: Okay. Mr. Perl, you are going to  
2 ask additional questions of Officer Strand; is that  
3 correct?

4 MR. PERL: Yes. I believe, your Honor, that  
5 the only thing that we are here to do today is to  
6 recross Officer Strand on some citations that were  
7 not presented earlier because we had moved to strike  
8 them, and now they are admitted and we are going to  
9 be going over -- I think there's ten different  
10 investigations encompassing 30 or so citations.

11 JUDGE KIRKLAND-MONTAQUE: Okay. Officer  
12 Strand, remember you are sworn under oath and you  
13 continue to be so -- to do so today.

14 THE WITNESS: Yes.

15 JUDGE KIRKLAND-MONTAQUE: I'll give you the  
16 floor, Mr. Perl.

17 MR. PERL: Thank you, Judge.

18 BRYAN STRAND,  
19 called as a witness herein, having been previously  
20 duly sworn, was examined and testified as follows:

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RECROSS EXAMINATION

BY MR. PERL:

Q Officer Strand, do you recall giving testimony the last time we were here regarding some citations that you wrote to Protective Parking?

A Yes.

Q During the relevant time period?

A Yes.

Q And do you recall the relevant time period we defined as the time between July 24, 2015, and to March 23, 2016?

A That sounds right.

Q And I want to show you now -- I'll go through some citations that we did not go through last time today and try to make this as streamlined as possible.

A Okay.

Q I'm going to show you now what --

MR. PERL: So, your Honor, as opposed to going back into the exhibit book, I have the actual citations themselves pulled out. If you would like, I can go through them by the citation number because

1 Mr. Burzawa was nice enough to send us a list of the  
2 new ones.

3 JUDGE KIRKLAND-MONTAQUE: Okay.

4 MR. PERL: And I have them in order from when  
5 he gave them to us, and that is kind of how I was  
6 going to go. If you want, we can try -- I will try  
7 to locate them in the exhibit book so you can kind of  
8 read along with them.

9 JUDGE KIRKLAND-MONTAQUE: Is there any way that  
10 they are indicated by Bates stamp or anything like  
11 that?

12 MR. PERL: No. When they were sent over, they  
13 are just by investigation number, so, you know, I  
14 think maybe Vlad can find them while we are doing it.

15 JUDGE KIRKLAND-MONTAQUE: Okay.

16 MR. PERL: Because they were not sent over with  
17 the actual exhibits. These are intertwined in the  
18 exhibits, the ones that we had moved to strike prior  
19 because they fell outside of the date that we were  
20 going through the relevant time period.

21 JUDGE KIRKLAND-MONTAQUE: I understand. Why  
22 don't you just go ahead and I'll try to follow.

1 Mr. Burzawa, you confirmed that those are actually in  
2 the exhibits?

3 MR. BURZAWA: Yeah, they are. They were within  
4 the relevant time period, and I guess they are being  
5 readmitted into evidence. If you are going to go by  
6 the list that I sent, the first citation is in  
7 Exhibit M towards the end. The pages are not  
8 numbered, but the citations are kind of in sequential  
9 order.

10 MR. PERL: Which exhibit is it?

11 MR. BURZAWA: M. It's towards the middle of  
12 Exhibit M. Citation 8001397 is the first one on the  
13 list.

14 JUDGE KIRKLAND-MONTAQUE: Okay. 800 --

15 MR. PERL: 1397.

16 JUDGE KIRKLAND-MONTAQUE: Okay. I'm there.

17 BY MR. PERL:

18 Q Okay. So, Officer Strand, I'm going to  
19 show you now what has been marked as Exhibit M, as in  
20 Mary, 8001397. Take a look at that and let me know  
21 if you know what that is.

22 A It's another incomplete invoice citation.



1 Q And without looking at the exhibit, do you  
2 have any independent recollection of this citation?

3 A Not really.

4 Q And would this refresh your recollection to  
5 take a look at this?

6 A Yes.

7 Q So go ahead and take a look at this.

8 A Okay.

9 Q And this is an invoice for an incomplete  
10 invoice, correct?

11 A Correct.

12 Q And was the underlying complaint from the  
13 motorist an incomplete invoice?

14 A Unlikely.

15 Q Do you know what the underlying complaint  
16 was?

17 A Not on this one. This was '15.

18 Q But it would not be likely that it would be  
19 an incomplete invoice?

20 A I mean, occasionally people do complain  
21 about it but unlikely.

22 Q So that would mean that this incomplete

1 invoice was not written specific to a complaint from  
2 the motorist?

3 A Correct.

4 Q And what was the incomplete invoice? What  
5 about the invoice was incomplete?

6 A There was missing some fields on this one,  
7 it looks like, a VIN, contract number, and a tow  
8 plate.

9 Q And we have been over this before, and I  
10 don't want to get too deep into it. You did not do  
11 any investigation to determine how it is that the  
12 invoice was incomplete, did you?

13 A No.

14 Q You did not contact Lincoln Towing to find  
15 out if there was an error with the computer?

16 A No.

17 Q Or when it printed, it did not get printed  
18 out?

19 A No.

20 Q You did no further investigation, correct?

21 A Correct.

22 Q You do not know whether it was done

1 intentionally or accidentally, correct?

2 A I do not, correct.

3 Q Was there -- take a look at 8001398, as  
4 well. This is a citation written in the same -- for  
5 the same motorist?

6 A Correct.

7 Q And what was that for?

8 A For no e-filed contract for a particular  
9 address.

10 Q And when you say no e-file, could you  
11 explain to the Court -- we have been through this  
12 before, but what does that mean?

13 A Yeah. Meaning that while the relocation  
14 towing company had a written contract between  
15 themselves and a particular address, it was not on  
16 file or at least found in our MCIS system as being a  
17 contract between the two entities.

18 Q Now, you don't input any information into  
19 the MCIS system yourself, do you?

20 A No.

21 Q And you are not the keeper of records for  
22 the Commerce Commission, are you?

1           A     No.

2           Q     And your area of expertise that you deal  
3 with is not MCIS, is it?

4           A     No.

5           Q     And you don't know whether or not Lincoln  
6 Towing actually e-filed the contract, do you?

7           A     I do not.

8           Q     You just know that when you looked on the  
9 system, you did not see the contract, correct?

10          A     Correct.

11          Q     Did you do anything after that to determine  
12 if the contract had been e-filed?

13          A     Unlikely.

14          Q     Did you contact anybody at Lincoln Towing  
15 to see if they actually had e-filed the contract but  
16 somehow it was not on the system?

17          A     I don't remember. Unlikely.

18          Q     Did you contact anybody at the Commerce  
19 Commission to determine whether or not Lincoln had  
20 e-filed the contract but it had not made the system?

21          A     No.

22          Q     Without doing any of that, you don't really

1 know if the contract was e-filed, do you?

2 A No.

3 Q And then if you look at the next page,  
4 Citation 8001399, that's the third citation written  
5 on this investigation, correct?

6 A Correct.

7 Q And what was that?

8 A It looks like relocating an authorized  
9 vehicle.

10 Q And do you know what the basis for that  
11 was?

12 A If I remember correct -- let me see. I  
13 think the issue was the area in which the person was  
14 relocated was not either -- was not governed by a  
15 Lincoln contractor. I don't remember offhand without  
16 looking at the report.

17 Q You did not write a citation for no  
18 contract, correct?

19 A No.

20 Q Had there been no contract, you would have  
21 written a citation for no contract, correct?

22 A Correct.

1 Q And that was not written, was it?

2 A No.

3 Q Do you know what the outcome of these three  
4 citations was?

5 A I think that one might have been a refund  
6 voluntarily, but I think that was Dean Marinakis or  
7 something. Yeah, not offhand.

8 Q Okay. I'm going to show you now what is  
9 your case file, 15-1218, Administration Citation  
10 8001400, the next one. Do you see that?

11 A Yes.

12 Q What is that?

13 A That is for an old dispatcher without an  
14 active permit.

15 Q And we realized subsequent to that that you  
16 don't need to have a dispatcher's license to release  
17 a vehicle, do you?

18 A No.

19 Q So knowing that, would you have still  
20 written a citation today?

21 A No.

22 Q Now we'll take a look at Investigation

1 No. 16-0039, Administrative Citation 8001802. It's  
2 the page after this one. Do you see that?

3 A Right here?

4 Q Yes, it's 1802.

5 A I do see that.

6 Q And what is that, if you know?

7 A It's another dispatcher citation.

8 Q This is for an expired dispatcher permit?

9 A Yeah.

10 Q Or used dispatcher without an active  
11 permit?

12 A Same, yeah.

13 Q Two things. We now know you don't need to  
14 have a dispatcher's license to release a vehicle,  
15 correct?

16 A Correct.

17 Q So you would not have written this ticket  
18 anyway?

19 A No.

20 Q Even when you look at the system, you don't  
21 know whether or not a dispatcher has a permit, you  
22 just know what the system shows you, correct?

1           A     Correct.

2           Q     So you don't look into it and see maybe the  
3 paperwork was filed but somehow it did not make it  
4 into the system?

5           A     Correct.

6           Q     You are not the keeper of records for MCIS,  
7 are you?

8           A     No.

9           Q     You are not?

10          A     No, I'm not.

11          Q     And you don't put the information into  
12 MCIS, do you?

13          A     No.

14          Q     And you didn't inquire as to anyone at the  
15 Commerce Commission whether or not the information  
16 was properly uploaded into the MCIS, did you?

17          A     No.

18          Q     There's a second citation written in this  
19 investigation, 8001803. Do you see that?

20          A     I do.

21          Q     And what was that written for?

22          A     For an incomplete invoice.



1           Q     What was incomplete about the invoice, if  
2 you recall?

3           A     Recall, nothing.  But if I look, it was the  
4 contract number was off, missing.

5           Q     So the Illinois Commerce Commission  
6 contract number was missing, correct?

7           A     Correct.

8           Q     We had previous conversations about  
9 citations that directly impact the public and those  
10 that are just administrative, correct?

11          A     Correct.

12          Q     And this one that is merely administrative,  
13 correct?

14          A     Correct.

15          Q     Because the individual who illegally parked  
16 their car on private property would not know at the  
17 time it would be okay to do that if they leave off  
18 the contract number, would they?

19          A     No, that's correct.

20          Q     And you did not write -- strike that.

21                    So this citation has nothing to do  
22 with impacting the public, correct?

1           A     Correct.

2           Q     And you don't know whether or not there was  
3     a computer error or not as to why the contract number  
4     was left off?

5           A     No.

6           Q     And there's no benefit to Lincoln Towing to  
7     leave off the contract number on the invoice, is  
8     there?

9           A     No.

10          Q     In fact, it's the opposite because they get  
11     a citation for doing it, correct?

12          A     Correct.

13          Q     Now, I want to show you Citation 80018 --  
14     okay.  Strike that.

15                     Let's take a look now at Investigation  
16     No. 15-235, which is Administrative Citation 8001809.  
17     Take a look at that, if you would.

18          A     Okay.

19          Q     What was the citation written for?

20          A     Incomplete invoice, no tow truck plate.

21          Q     And it's not likely that the motorist  
22     complained of that to Lincoln Towing, did they?

1           A     No.

2           Q     It's just something that you found when you  
3     were looking up the underlying complaint from the  
4     motorist, correct?

5           A     Correct.

6           Q     And this is one of those citations that has  
7     no direct impact on the motorist, correct?

8           A     Correct.

9           Q     And did you do anything to determine how it  
10    is that the plate -- I'm sorry -- the plate was left  
11    off of the invoice?

12          A     I did not.

13          Q     You don't know whether or not it was a  
14    computer error or something when it printed did not  
15    show up?

16          A     I do not.

17          Q     It's possible that the dispatcher or  
18    whoever inputted it into the system actually input  
19    the plate but it did not print?

20          A     That's possible.

21          Q     If you could take a look at the next page,  
22    it's Citation 8001810.

1           A     Okay.

2           Q     What was this citation written for?

3           A     It's an expired dispatcher.

4           Q     And this is for the same investigation,  
5 correct?

6           A     It appears to be, yes.

7           Q     And, once again, even if the dispatcher was  
8 expired, you don't need to have a dispatcher license  
9 to release a vehicle, correct?

10          A     Correct.

11          Q     As you stand here today, knowing that, you  
12 would not have written a citation, would you?

13          A     Correct.

14          Q     And even if you did need it, you don't know  
15 whether or not Lincoln Towing or anybody input the  
16 information into MCIS, you just know it was not there  
17 when you looked at it?

18          A     Correct.

19          Q     Or even look at it?

20          A     Correct.

21          Q     You did not do any inquiry to find out  
22 whether or not the dispatcher actually timely either

1 renewed or applied for the license, correct?

2 A Correct.

3 Q And you are aware that for renewals, as  
4 long as you get your renewal in timely, you can  
5 continue working until you get renewed, correct?

6 A Correct.

7 Q And you don't know whether or not this is a  
8 renewal or an initial application, do you?

9 A I think it was -- I don't remember offhand.  
10 No, I don't know.

11 Q And then the next citation in this group is  
12 8001811. Do you see that as well?

13 A Yes.

14 Q And what was this citation for?

15 A Relocating an authorized vehicle, resident  
16 with sticker displayed will appear.

17 Q So did you see the vehicle at the time it  
18 was towed?

19 A No.

20 Q Do you know whether or not the vehicle had  
21 a sticker on it at the time it was towed?

22 A I do not know that.

1           Q     You only know what -- potentially what the  
2 motorist told you, correct?

3           A     Correct.

4           Q     And how do you decide whether or not you  
5 are going to write this particular citation, just  
6 based on what the motorist tells you? Is it because  
7 they say that they'll appear in court?

8           A     No, because everybody says that they'll  
9 appear in court. There has to be at least enough  
10 evidence to support a burden for this Court.

11          Q     But other than the individual telling you  
12 the sticker was there, what else did you have to go  
13 on?

14          A     I don't know on this case. I would have to  
15 look at the case file.

16          Q     If I showed you the case file, would that  
17 refresh your recollection?

18          A     It would.

19          Q     I'm going to show you now your case file,  
20 and let me know if there's something in there that  
21 led you to believe, other than what the motorist told  
22 you?

1           THE WITNESS:  Hey, Martin, do you have the rest  
2 of this, like the whole file jacket?

3 BY MR. PERL:

4           Q     I just want to know from your --

5           A     Yeah.  Based on this, I don't recall  
6 offhand, and this is not very helpful to answer your  
7 question.

8           Q     This is your investigative report though,  
9 correct?

10          A     Yeah.  But usually I have a whole -- I  
11 don't know if there was -- I don't know if there's  
12 anything else in here.

13          Q     Does it --

14          A     I just want to give you a better answer.

15          Q     Let's say there was a photograph that was  
16 time stamped and it showed the sticker, that would  
17 help you, correct?

18          A     That would be helpful, but in here I'm not  
19 seeing that.

20          Q     You are not, are you?

21          A     Just written here, no, so I can't help you  
22 on this one.

1           Q     Well, I don't want you to help me. I just  
2     want you to tell me what you based it on. It might  
3     not help the Commerce Commission.

4                     Based upon your investigative report,  
5     there's nothing actually in there that states that  
6     you had any extraneous evidence other than the  
7     motorist telling you that the sticker was in the car  
8     at the time, right?

9           A     Not based on what I wrote here.

10          Q     And I'm going to at least assume for the  
11     moment that you base your decisions to write a  
12     citation or not on your investigative report?

13          A     That is just a summary.

14          Q     Yes. Your summary?

15          A     Yeah.

16          Q     But if there was relevant information --

17          A     It would have been in there.

18          Q     -- it would be in there, correct?

19          A     Yeah.

20          Q     And it's not?

21          A     Not in that one, no.

22          Q     And you don't know what the resolution was



1 on any of these tickets, do you?

2 A No.

3 Q Take a look at now, if you would,  
4 Investigation No. 15-1239, Citation 8001812. The  
5 next page.

6 A Okay.

7 Q And what is that, if you recognize it?

8 A It's an incomplete invoice citation, no  
9 VIN, incomplete contract number information.

10 Q And safe to say that the individual  
11 motorist who complained to the Commerce Commission  
12 did not complain about an incomplete invoice,  
13 correct?

14 A Safe to say that, correct.

15 Q You would have had to have done an  
16 investigation, determined that the underlying  
17 complaint was unfounded, but then you did find that  
18 the invoice was not completely filled out, correct?

19 A Correct.

20 Q By the way, the same holds for any of these  
21 other citations that I went over with you. If you  
22 did not write a citation for what the motorist

1 complained about, then you determined it to be  
2 unfounded, correct?

3 A Yeah, correct.

4 Q So on this one, the only thing that you  
5 wrote a citation for was an incomplete invoice. Do  
6 you know what was incomplete about the invoice?

7 A There was no VIN and the contract number  
8 was incomplete.

9 Q So do you remember exactly what about the  
10 contract number was incomplete?

11 A No.

12 Q So is there anything that I could show you  
13 to refresh your recollection about that?

14 A My report or the invoice.

15 Q How about if I show you your report and the  
16 invoice?

17 A All right.

18 Q Okay.

19 A So invoice -- VIN was just not on there,  
20 and then the contract number was missing a digit at  
21 the end.

22 Q So without talking about the name of the

1 individual, because we want to keep that off the  
2 record.

3 A Sure.

4 Q So the contract number says, 2418, correct?

5 A Correct.

6 Q And you determined it was missing one  
7 number, correct?

8 A I did.

9 Q And if that were the only thing that was  
10 the issue on this invoice, would you still write a  
11 citation?

12 A Probably.

13 Q And you did not do anything to contact  
14 Lincoln Towing to find out how it is that one number  
15 got left of the invoice, did you?

16 A No, I didn't.

17 Q And so it's possible that the dispatcher or  
18 whoever created the invoice typed in all five numbers  
19 but for some reason only four of the numbers appear;  
20 is that correct?

21 A That's correct.

22 Q And where it says, VIN number, it's

1 possible that the VIN number could have been covered,  
2 correct?

3 A Yes, it is.

4 Q And it's possible there could have been  
5 stuff on the dashboard so the driver could not have  
6 seen the VIN number?

7 A That's correct.

8 Q Without actually going into the vehicle and  
9 checking for the VIN number, the only way to see it  
10 would be to look through the dashboard to see it on  
11 the driver's side; is that correct?

12 A That's correct.

13 Q And I think it also appears potentially on  
14 the driver's side door sometimes?

15 A It should, yeah.

16 Q But then you have to go into the vehicle?

17 A Correct.

18 Q It might appear somewhere if you open the  
19 hood? I don't know.

20 A There's many places on a vehicle that you  
21 can find it, but not in plain sight, no.

22 Q And you did not check to see how it is that

1 the VIN was left off, did you?

2 A No, I did not.

3 Q Again, that is a citation that is  
4 administrative in nature and does not affect the  
5 public, does it?

6 A Correct.

7 Q Now, let's take a look now at Investigation  
8 No. 15-1275 which corresponds to Administrative  
9 Citation 8001801, and this might be in a different.  
10 It actually shows it's along with 8001815, so let's  
11 take a look at 8001815. What is that?

12 A Administrative citation for an incomplete  
13 invoice.

14 Q And do you know what about the invoice in  
15 this case was --

16 A No ILCC contract number and no police  
17 personnel contact information.

18 Q Did you do anything to actually find out  
19 whether or not Lincoln Towing contacted the police on  
20 this tow?

21 A I don't remember on this one. Unlikely.

22 Q So it does not mean that the police were

1 not contacted, it means that the invoice left off who  
2 at the Chicago Police Department was contacted,  
3 correct?

4 A Correct.

5 Q And that would not have been something that  
6 the motorist would have complained about, would it  
7 be?

8 A No.

9 Q That would be more administrative in  
10 nature, correct?

11 A Correct.

12 Q It doesn't impact the tow, does it?

13 A No, unless they cannot find their vehicle,  
14 and I don't believe that was the complaint.

15 Q If you look at 8001816, which is a  
16 corresponding citation written on this investigation,  
17 what was that written for?

18 A Relocating an authorized vehicle, customer  
19 in bathroom on premises at the time of tow.

20 Q Without getting into the hearsay element --

21 A Sure.

22 Q -- of the matter --

1           A     Yeah.

2           Q     -- do you know if the customer was on the  
3 location of the premises at the time of the tow?

4           A     Oh, I don't know that.

5           Q     Were you there or present for the tow?

6           A     No.

7           Q     Do you have any information other than what  
8 the motorist told you to indicate that the customer  
9 was on the premises at the time of the tow?

10          A     I would have to look at the case file.

11          Q     Let me show you your case file, and let me  
12 know if there's anything in your case file other than  
13 what the motorist told you to corroborate that the  
14 motorist was in the premises at the time of the tow?

15          A     No. No, I could not even follow up on this  
16 one with anything there.

17          Q     With anybody?

18          A     At the location of the tow, when I went to  
19 go actually do a follow-up on this one.

20          Q     And although I don't see in Exhibit M  
21 Citation 8001801, I do have a copy of it.

22                JUDGE KIRKLAND-MONTAQUE: What is the number

1       again?

2               MR. PERL:   8001801.

3               JUDGE KIRKLAND-MONTAQUE:   1801.

4               MR. PERL:   Marty, do you have it?

5               JUDGE KIRKLAND-MONTAQUE:   It's in here.

6               MR. PERL:   It's not in mine, but I do have a  
7       copy of it.

8               JUDGE KIRKLAND-MONTAQUE:   I think I just saw  
9       it.  Yeah, I have it.  Is it the same one I have,  
10      Mr. Perl?

11              MR. PERL:   That is.

12      BY MR. PERL:

13              Q       And do you know what that is?

14              A       It was an administrative citation for no  
15      written authorization to relocate on file.

16              Q       Could you explain to the Court what that  
17      means?

18              A       I think in this situation, MCIS indicated  
19      that Rendered Services Incorporated was the contract  
20      holder for the particular address.

21              Q       Did you do anything to check that out?

22              A       I contacted Rendered Services to verify.



1           Q     Now, without telling me what someone told  
2     you, which would be hearsay, do you have any  
3     documentation or evidence with you here today to show  
4     that Lincoln Towing did not have a contract at that  
5     lot?

6           A     No.

7           Q     And you actually didn't write them a ticket  
8     for not having a contract, you wrote them a ticket  
9     for relocating an authorized vehicle, didn't you?

10          A     It looks like it. Is that the same case?

11          Q     I'm sorry. No contract e-filed.

12          A     Okay.

13          Q     But not that they did not have a contract.  
14     You wrote a contract for not being e-filed. That is  
15     the difference, correct?

16          A     That is different.

17          Q     So had Rendered had a contract, you would  
18     have written them a ticket or a citation for not  
19     having a contract, correct?

20          A     Correct.

21          Q     So does that refresh your recollection?

22          A     I remember what happened, yeah.

1 Q It was not that Rendered had a contract.

2 It was that Lincoln's contract was not e-filed?

3 A Correct.

4 Q Did you do anything to determine how it is

5 that MCIS did not have Lincoln's contract filed?

6 A No, I don't remember. I just briefly

7 looked at that. I don't remember offhand.

8 Q The reason I'm asking you is that, you did

9 do an investigation and you determined there was a

10 contract for the lot by Lincoln Towing?

11 A I must have contacted Lincoln then.

12 Q And you must have found they had a contract

13 because you did not write a citation for no contract?

14 A Right.

15 Q You don't control MCIS, correct?

16 A No.

17 Q And you don't input any information on

18 MCIS?

19 A No.

20 Q You just look at a screen?

21 A Correct.

22 Q Prior to writing the citation, did you

1 contact anybody at MCIS to determine whether or not  
2 Lincoln actually had e-filed their contract?

3 A I don't even know who I could contact at  
4 MCIS.

5 Q And you did not contact anybody at Lincoln  
6 Towing either?

7 A I think I must have. I must have done  
8 something to get ahold of them because otherwise it  
9 doesn't make a lot of sense.

10 Q Let me ask you this. If you take a file  
11 like this and you investigate it and you look at the  
12 screen in MCIS and you don't see a contract filed,  
13 would you write a citation or do more investigation  
14 to determine if Lincoln actually had e-filed it?

15 A If they had e-filed or they had a contract.

16 Q So you did find they had a contract because  
17 you did not write a citation for that?

18 A Correct.

19 Q If you find out that the relocater has a  
20 contract but somehow it's not e-filed, do you do any  
21 investigation?

22 A No, I don't follow up.

1 Q Hold on. It's going to be hard for the  
2 court reporter.

3 A Sorry.

4 Q Do you do any investigation to determine  
5 whether or not the relocater actually e-filed it  
6 properly but somehow the system messed up?

7 A No, I don't.

8 Q And you did not do that in this case  
9 either?

10 A No.

11 Q So you don't really know whether or not  
12 Lincoln Towing ever e-filed this contract, do you?

13 A I do not.

14 Q It's possible they did?

15 A It's possible.

16 Q Turning your attention now to Investigation  
17 No. 16-0041, corresponding Administrative Citation  
18 8001823. Do you know what that is?

19 A Citation for no written authorization on  
20 file because it was cancelled or at least apparently  
21 in MCIS.

22 Q And you wrote a citation for no e-filed

1 contract in this case, didn't you? Let me do this,  
2 let me show you -- would it refresh your  
3 recollection --

4 A Yes.

5 Q -- if I showed you your case file?

6 A Yeah.

7 Q Let me show you that.

8 A Okay.

9 Q So the citation that you wrote and the only  
10 citation that you wrote on this investigative file  
11 was No. 8001823, correct?

12 A That's correct.

13 Q And in your investigative report, you  
14 wrote, No e-filed contract, correct?

15 A Correct.

16 Q Not to go over it again.

17 A Yeah, go ahead.

18 Q You don't know whether Lincoln actually  
19 e-filed this contract, do you?

20 A No. I only know it was e-filed later or  
21 showed up later because I completed this later. But,  
22 yes, go on.

1 Q You don't know how it came about that the  
2 MCIS did not show this contract as e-filed, do you?

3 A No, I don't.

4 Q And are you aware that -- strike that.

5 Do you know when e-filing came about?

6 I think we might have talked about this last time.

7 A I think the bulk of it started in '07,

8 before my tenure here.

9 Q In '07, safe to say that probably hundreds  
10 of thousands of contracts had to get e-filed because  
11 prior to that none of them were e-filed, correct?

12 A Correct.

13 Q So there were mass filings done, if you  
14 know, back in '07-'08, correct?

15 A Correct.

16 Q And there were many mistakes made by  
17 relocators and the Commerce Commission because there  
18 were thousands and thousands of contracts filed,  
19 correct?

20 A I suppose.

21 Q And you don't know whether or not -- if  
22 Lincoln Towing were to e-file a contract and then

1 later on somehow either the Commerce Commission or  
2 somebody takes it out of the MCIS system, Lincoln  
3 Towing has no way of knowing that, do they?

4 A Out of the MCIS system? I don't think that  
5 they would.

6 Q So it's possible that Lincoln Towing can  
7 properly e-file a contract, think that everything is  
8 fine, but for some reason they won't show up on MCIS,  
9 correct?

10 A Yes, correct.

11 Q Because when Lincoln Towing goes to look at  
12 their screen, they are not looking at the same screen  
13 that you are, are they?

14 A I don't think so.

15 Q Because you have a different screen and  
16 different password and access code to look at,  
17 correct?

18 A Correct.

19 Q Turning your attention to 16-0088,  
20 Corresponding Citation 8001822. Do you know what  
21 that citation is for?

22 A For no equipment lease on file.

1           Q     So this is also another citation that we  
2 would call an administrative citation, correct?

3           A     Correct.

4           Q     No one in the public would complain, or  
5 would they, that someone did not have an equipment  
6 lease on file, would they?

7           A     No, they would not.

8           Q     And to streamline things, an equipment  
9 lease is when Lincoln Towing uses a tow truck that  
10 they don't own, but their independent contractor  
11 does, and then Lincoln Towing has what they call an  
12 equipment lease with that independent contractor to  
13 use that tow truck?

14          A     Correct.

15          Q     You are not in charge of MCIS or inputting  
16 any information regarding equipment leases, are you?

17          A     No, I'm not.

18          Q     Do you know whether or not anybody at  
19 Lincoln Towing actually did file the equipment lease  
20 with MCIS during the relevant time period?

21          A     They are not filed through MCIS.

22          Q     The e-Relocator?



1           A     They are not filed through e-Relocator.

2           Q     How do they do it?

3           A     Paper.

4           Q     And where does it go?

5           A     To Blanche.

6           Q     And then what happens?

7           A     It gets copied and put in a paper file and

8     then she puts it in MCIS.

9           Q     Exactly.

10          A     Yes.

11          Q     You don't know whether or not Lincoln

12     Towing sent the contract in to Blanche and then

13     Blanche forgot to e-file, do you?

14          A     I do not.

15          Q     It's possible, isn't it?

16          A     Yes, it is possible.

17          Q     And you did not ask Blanche if that

18     happened in this case, did you?

19          A     I don't remember.

20          Q     There's nothing in your investigative

21     report stating that you spoke to Blanche, is there?

22          A     Let's see.

1           Q     For the record, I'm showing Officer Strand  
2 his investigative report to refresh his recollection.

3           A     No. No, it doesn't say anything about  
4 talking to Blanche.

5           Q     Also, corresponding to this investigation  
6 is Invoice 8001825. Do you see that citation?

7           A     Yes, sir.

8           Q     And that is for incomplete invoice,  
9 correct?

10          A     Correct.

11          Q     And it says, No ILCC contract number, no --

12          A     Police personnel contacted.

13          Q     So that means they did not check a box for  
14 the police personnel contact?

15          A     They did not write it in or type it in.

16          Q     But you don't know whether or not they  
17 actually contacted the police?

18          A     No. That would be another citation  
19 altogether.

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

21          A     No.

22          Q     It's probable that Lincoln Towing did

1 contact the police and somehow it got left off the  
2 invoice, correct?

3 A Very probable.

4 Q Also, a corresponding citation to this  
5 investigative report is 8001826. I'll show you that  
6 now. And do you see that?

7 A Yes.

8 Q And that was written for --

9 A No. Do you want me to read it?

10 Q Go ahead. Yes.

11 A No written authorization to relocate via  
12 patrol between 7:01 a.m. and 11:00 p.m., no call log  
13 record per Munyon.

14 Q So this is what you would commonly refer to  
15 as call versus patrol or patrol versus call?

16 A Yeah, I believe so.

17 Q And, again, just to kind of move it along,  
18 there are maybe three different ways that you can  
19 have a lot designated. One would be a patrol lot,  
20 correct?

21 A That's correct.

22 Q And that means that Lincoln Towing or any

1       relocator has the authority to patrol a lot and  
2       remove vehicles that are illegally parked, correct?

3             A       Correct.

4             Q       And then there's a call lot where Lincoln  
5       Towing would have to receive a call from somebody  
6       authorized before towing the vehicle, correct?

7             A       That's correct.

8             Q       And then sometimes it's a combination.  It  
9       could be patrol lot during the day and call lot at  
10      night or vice versa, correct?

11            A       Correct.

12            Q       And in this particular case, the citation  
13      was written because the MCIS records show this as  
14      a --

15            A       I don't think it was an issue with MCIS.  I  
16      think it was an issue of the original contract that  
17      was on file with Lincoln.

18            Q       It was originally on file as a call lot?

19            A       I don't know.  I got a copy from Ethel, I  
20      think.  I don't remember what the status was.

21            Q       Have I shown you your report?

22            A       Just briefly.

1           Q     Take a look at that and see if that  
2 refreshes your recollection.

3           A     Okay.  Vaguely refreshed.

4           Q     So I think now we were talking about the  
5 call versus patrol lot?

6           A     Yes.

7           Q     Were you able to refresh your recollection?

8           A     Just vaguely.  I'm guessing it was marked  
9 call.  I would have to look.

10          Q     So you are not sure?

11          A     No, not offhand.  There's obviously some  
12 more to it.

13          Q     That is fine.  I don't want you to guess.  
14 If you are not sure, you are not sure.

15          A     Yeah.

16          Q     And I believe there was one more citation  
17 listed on this investigation report, 8001827.  Take a  
18 look at that if you would.

19          A     Okay.

20          Q     This was for an overcharge, correct?

21          A     Correct.

22          Q     So signs were properly located, correct,

1 but they had the wrong amount on them?

2 A I believe so.

3 Q Well, you did not write a citation for  
4 improper signage?

5 A No, I did not. Yeah, it was solely based  
6 on the amount.

7 Q The amount of the sign showed \$170 and the  
8 amount charged was \$218.50?

9 A Correct.

10 Q At the time of the relocation of the tow,  
11 do you know what the sign said?

12 A I don't know.

13 Q Is it possible that there was a sticker on  
14 the sign that somebody tore off?

15 A Absolutely.

16 Q Is it possible there was a different sign  
17 there that day?

18 A Could have been.

19 Q Did do anything to investigate or determine  
20 what the sign looked like on the date of the tow  
21 other than what the motorist told you?

22 A I don't know. Is there a photograph

1 included in this one?

2 Q I'll show you the complete file. For the  
3 record, to refresh Officer Strand's recollection, I'm  
4 giving him the complete file that we received from  
5 the Illinois Commerce Commission.

6 A There's no timestamp on here. I don't  
7 know.

8 Q So there's no photos that you reviewed --

9 A No.

10 Q -- that have timestamps on them, is there?

11 A No, because that was contained within  
12 another Word document, I think, that she sent.

13 Q But there's nothing in here even on your  
14 report that says that you have time stamped photos?

15 A No.

16 Q Turning your attention now to Investigation  
17 15-1299, corresponding Administrative Citation  
18 8001828. Do you know what this citation is?

19 A It was -- there was no written  
20 authorization to patrol a lot.

21 Q It says, Call only, correct?

22 A Correct.

1           Q     And, again, the difference between patrol  
2     and call means that a driver, before relocating a  
3     vehicle on a call lot, would need for someone  
4     authorized to call them and tell them to tow the  
5     vehicle as opposed to just patrolling and towing?

6           A     Correct.

7           Q     Did you speak to anybody, like the owner of  
8     the lot, to determine whether it was call or patrol?

9           A     I don't remember.

10          Q     And you are aware that sometimes lots can  
11     change --

12          A     Sure.

13          Q     -- if the owners decide to change from a  
14     call to patrol, correct?

15          A     Correct.

16          Q     Did you check to see if that happened in  
17     this case?

18          A     I don't know. I would have to look at this  
19     file.

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

22          A     My case report.



1 Q Okay. Take a look at your case report.

2 A Okay. Yes.

3 Q Does that refresh your recollection?

4 A It does.

5 Q And what happened in this case?

6 A In this case, I followed up with Ethel at  
7 Lincoln to obtain the original -- or the written  
8 service agreement that they had on file for the  
9 contract.

10 Q And that showed call lot, correct?

11 A It did. It indicated a call lot.

12 Q Was there anything that you were shown that  
13 would have led you to believe that the owner either  
14 changed or attempted to change it to a patrol lot?

15 A No.

16 Q And the next citation in this investigation  
17 is 8001829. Please take a look at that one.

18 A Okay.

19 Q And that is for an incomplete invoice,  
20 correct?

21 A That is correct.

22 Q Can you tell me what about the invoice was

1 incomplete?

2 A There was no VIN number and no police  
3 personnel contact information.

4 Q I'm going to show you the invoice for this  
5 particular tow, which was contained within the  
6 exhibits given to us by the Commerce Commission. Can  
7 you tell me if your handwriting is on this document  
8 anywhere, if you recognize it?

9 A No. None of that is -- none of this is my  
10 handwriting.

11 Q Okay. So it says, Name of police  
12 department, CPD?

13 A Right.

14 Q Then it says, Police personnel contacted  
15 157367?

16 A I see that.

17 Q So there is the Chicago Police  
18 Department --

19 A Sure.

20 Q -- and the police personnel on there,  
21 right?

22 A All right. That doesn't look like -- all

1 right.

2 Q An dit looks like the same handwriting that  
3 wrote in the \$218.50, doesn't it?

4 A It does.

5 Q In fact, there was the name of the police  
6 department, although it's abbreviated CPD?

7 A Oh, yeah. I agree.

8 Q And police personnel contacted is right on  
9 there, isn't it?

10 A It sure is, yeah. Do we have our original  
11 here?

12 Q This is the one that I received from the  
13 Commerce Commission that is Bates stamped from them  
14 000535.

15 A This seems awfully -- hmm. Yeah, because I  
16 would not know the police personnel information.

17 Q So knowing what you know now, would you  
18 have still written the citation?

19 A Yes, for the VIN.

20 Q For the VIN?

21 A Yeah, not for the other one. That is odd.

22 Q The VIN number is the only thing missing

1 from this invoice, correct?

2 A Yeah, based on what I'm seeing.

3 Q And we have been through this before. Of  
4 all of the things, it's entirely possible that  
5 someone could have something on their windshield?

6 A Oh, sure.

7 Q There could be snow, mud, some other reason  
8 why you could not read the VIN number, correct?

9 A Absolutely.

10 Q And do you believe or do you know to be the  
11 fact that if the operator, the dispatcher, the  
12 relocater makes all of the reasonable effort to  
13 ascertain the information to put on the invoice but  
14 they can't get some information, would that be enough  
15 to put on the invoice itself?

16 A Yeah. If they just write "covered" or  
17 "blocked." I see it all of the time.

18 Q So the real issue is not that the VIN  
19 number is not on here, it's that they did not write on  
20 there that it was covered or blocked, correct?

21 A Yeah. Correct, that would suffice.

22 Q Again, that does not directly impact the

1 public or the tow?

2 A No.

3 Q Let's take a look now at 8001820.

4 A That is 183.

5 MR. PERL: You know, for some reason, your  
6 Honor, my book may be missing a couple things. 1820  
7 and 1821 don't appear in my book.

8 JUDGE KIRKLAND-MONTAQUE: Are they in another  
9 section?

10 MR. PERL: You know what, they are not within  
11 this investigation. That is what it is.

12 JUDGE KIRKLAND-MONTAQUE: Do you want to take  
13 your jacket off?

14 THE WITNESS: No. Thank you. I'm hoping we  
15 are done soon.

16 MR. PERL: I think it should have been, Judge,  
17 when Mr. Burzawa sent me over the list, 15-1299 had  
18 four citations listed under it, but there's really  
19 only two. The other two should be 15-1299.

20 JUDGE KIRKLAND-MONTAQUE: 99. The last two are  
21 29?

22 MR. PERL: 1299 were the last two, and then

1 1820 and 1821 would be 15-1229. I'll need a moment  
2 to look those up. Okay. I have them.

3 BY MR. PERL:

4 Q I'm going to show you now Citation  
5 Nos. 8001820 and 1821.

6 A Okay.

7 Q Tell me if you recognize those citations.

8 A Okay. Yes.

9 Q And what are they?

10 A The last -- 1820 is for an expired  
11 dispatcher, and 1821 is for incomplete invoice, no  
12 contract number or police personnel listed.

13 Q So it was one citation for incomplete  
14 invoice, correct?

15 A Correct.

16 Q And one for expired dispatcher permit,  
17 correct?

18 A Correct.

19 Q The one for expired dispatcher permit, we  
20 spoke about before?

21 A Correct.

22 Q You don't need a dispatcher permit to

1 release a vehicle, and this citation you would not  
2 have written today, would you?

3 A No.

4 Q But the one for incomplete invoice, you  
5 would, correct?

6 A Ye s.

7 Q And what about this invoice was incomplete,  
8 if you recall?

9 A No contract number listed or police  
10 personnel listed.

11 Q Now, I'm going to show you this invoice as  
12 well, which was contained within the Commerce  
13 Commission's filings. Do you see where it says the  
14 police personnel?

15 A Yeah.

16 Q It's on this one, isn't it?

17 A No. It was the wrong police department  
18 they wrote on here. That is the issue. It was  
19 Evanston Police Department, not Chicago PD. That  
20 was --

21 Q So there is a Police Personnel Contact  
22 No. 1693?

1           A     Right.  That is -- kind of the way that I  
2 wrote it on here was kind of botched.

3           Q     Based upon the Chicago numbers and the  
4 Evanston numbers, wouldn't this 1693 lead you to  
5 believe it's an Evanston number and not Chicago?

6           A     Not really, because sometimes they just  
7 write the person's name on there.

8           Q     But the Chicago ones are longer numbers,  
9 aren't they?  They are more than four digits, aren't  
10 they?

11          A     Honestly, I don't know offhand.

12          Q     So knowing that -- so actually someone  
13 typed in Chicago, then 1693, correct?

14          A     Yes.

15          Q     And the address is 619 Howard, and that is  
16 in Evanston, correct?

17          A     Correct.

18          Q     But there's also a Howard Street in  
19 Chicago, correct?

20          A     Yeah, depending on what is the border  
21 street.

22          Q     There is definitely a Howard Street?



1           A     Yeah.

2           Q     And then it borders Evanston as well,  
3 correct?

4           A     Correct.

5           Q     So it's possible that somebody did call in  
6 the Evanston police but when they created the  
7 invoice, mistakenly typed in Chicago?

8           A     Oh, sure, yeah.

9           Q     Did you check to see if that happened?

10          A     I did. I think I called the dispatch.

11          Q     Take a look at your investigative report,  
12 and let me know if that is in there.

13          A     This is not even the right address. It's a  
14 different complaint. That's for Brendan -- I'm  
15 sorry. I won't say the name. That one does not  
16 correspond with that one. That one was a Walgreens  
17 one.

18          Q     Here we go. Okay. So this one has Chicago  
19 Police, but it does not have the personnel contacted?

20          A     Hold on. We are looking at two different  
21 cases here.

22          Q     What do you have in front of you?

1           A     This one is for -- what is the case number?  
2     I don't know. I would have to --  
3           Q     15-1229. Let me have these.  
4           A     One is for Evanston and one is a Clark  
5     address.  
6           Q     I think one -- 1820 and 1821 are for the  
7     Clark address?  
8           A     Okay.  
9           Q     So take a look at that.  
10          A     Where is the invoice -- where is the  
11     complaint or stuff for this one?  
12          Q     Here is the invoice?  
13          A     Oh.  
14          Q     It has Chicago Police but it does not have  
15     the personnel number?  
16          A     Okay. So we are back -- so at least we are  
17     on the same page.  
18          Q     Yes.  
19          A     I said, No ILCC contract number and no  
20     police personnel. This matches up now.  
21          Q     Did you do anything to determine whether or  
22     not Lincoln actually -- or someone at Lincoln

1 actually contacted the Chicago Police Department?

2 A No.

3 Q And do you know how it is the Illinois  
4 Commerce Commission contract number got left off the  
5 invoice?

6 A I don't.

7 Q And you did not check up to see how that  
8 occurred, did you?

9 A No.

10 Q Let's put these back in order.

11 A Okay.

12 Q Finally, Investigation No. 160053,  
13 corresponding Administrative Citation 8001830. Can  
14 you tell me what that citation is for?

15 A That was for an inaccurate or incomplete  
16 invoice. No contract number and wrong police  
17 department listed.

18 Q So that was the invoice that I showed you  
19 accidentally --

20 A Yes, that's correct.

21 Q -- where they typed in Chicago and Police  
22 Personnel 1693, and you handwrote in Evanston,

1 correct?

2 A Correct.

3 Q Did you contact the Evanston Police  
4 Department to see if Lincoln Towing actually  
5 contacted them?

6 A I think I did.

7 Q Let's take a look at this investigative  
8 report, if that would refresh your recollection.

9 A Okay. That is just a cover sheet. I don't  
10 have the report.

11 Q You don't recall specifically contacting  
12 Evanston, do you?

13 A I believe I did. This is the only time I  
14 have ever had this issue. I just wanted to make sure  
15 that I called the right department and not Chicago?

16 Q Versus Evanston?

17 A Right.

18 Q And the other item was the Illinois  
19 Commerce Commission contract number being left off?

20 A Correct.

21 Q And we have seen that a couple times now?

22 A Yes.

1           Q     Do you know whether or not there was a  
2     problem with Lincoln's computer system that was  
3     causing the contract not to be entered into a couple  
4     of these invoices?

5           A     I don't.

6           Q     You didn't check into that, did you?

7           A     I did not.

8           Q     And did you know that in October of 2016,  
9     Lincoln Towing put a new computer system in?

10          A     Only because you told me.

11          Q     And, finally, there's 8001831, and that  
12     citation was for a call only contract, no written  
13     authorization to patrol?

14          A     Correct.

15          Q     So same situation where you determined that  
16     there was a contract but it said, Call lot and  
17     Lincoln was patrolling, correct?

18          A     Correct.

19          Q     And there would be no way for an individual  
20     parked illegally to know that, would there?

21          A     No, not based on just parking there. No.

22          Q     If you see signs up that say, Unauthorized

1 parkers will be towed, all of the correct  
2 information, the sign is what it is supposed to be,  
3 it does not directly impact the public, does it?

4 A It doesn't.

5 Q And there's 8001835, and that is the last  
6 one for today, and that is an overcharge, correct?

7 A Correct.

8 Q Where the posted sign said 196, and the  
9 charge was \$218.50, correct?

10 A Correct.

11 Q Same set of questions on this one. You  
12 were not there when the vehicle was towed, correct?

13 A No.

14 Q And you don't know what the sign said on  
15 the date and time it was towed, do you?

16 A No.

17 Q And you don't have any time stamped photos  
18 to show what the sign said on the date of the tow, do  
19 you?

20 A I would have to look at that case file. Is  
21 it the same one?

22 Q It's not the same one. So you don't know

1 as you stand here today --

2 A Not based on a contract number or complaint  
3 number. I would have to see it.

4 MR. PERL: Your Honor, I believe that these are  
5 all of the investigation and corresponding  
6 administrative citations that we initially did not  
7 allow in and then you did let in after it was  
8 determined that there was an exception made for these  
9 ten investigations, so I think I have now exhausted  
10 my cross-examination of Officer Strand on this issue  
11 and I had already terminated him last time, so I have  
12 nothing further at this time.

13 JUDGE KIRKLAND-MONTAQUE: Okay. Any redirect?

14 MR. BURZAWA: No redirect, Judge.

15 JUDGE KIRKLAND-MONTAQUE: Just for clarity of  
16 the record, I am admitting all of the citations that  
17 we have gone over today and rescinding the earlier  
18 ruling regarding those being eliminated from the  
19 hearing, so those are back in. And, Officer Strand,  
20 you are free to go.

21 THE WITNESS: Thank you.

22 JUDGE KIRKLAND-MONTAQUE: So is that it for

1 today?

2 MR. PERL: It is. Mr. Munyon has a medical  
3 issue today, so he'll be here tomorrow. He was not  
4 able to be here today.

5 JUDGE KIRKLAND-MONTAQUE: I think we scheduled  
6 10:00 o'clock for tomorrow.

7 MR. PERL: Can we just say 10:30 because I have  
8 a 9:30. I might be here at 10:00 but I don't want to  
9 keep everyone waiting. Safely 10:30. I'll try to  
10 get out of there. It's a 9:30 at the Daley Center.  
11 I should be here by 10:00.

12 JUDGE KIRKLAND-MONTAQUE: So how long do you  
13 think that he will take?

14 MR. PERL: Can we go off the record for a  
15 moment?

16 JUDGE KIRKLAND-MONTAQUE: Off the record.

17 (WHEREUPON, discussion was had  
18 off the record.)

19 JUDGE KIRKLAND-MONTAQUE: Let's go back on the  
20 record. So go ahead.

21 MR. PERL: Judge, when we were off the record,  
22 I was having a discussion with the Court and opposing



1 counsel regarding the fact that respondent is making  
2 an oral motion for a directed finding regarding  
3 anything to do with Exhibits A through F. Some of  
4 them are in evidence and some of them aren't.  
5 Clearly, your Honor, even if a document is in  
6 evidence, the burden is on the movant, in this case  
7 the petitioner, in this case the Commerce Commission,  
8 to prove their case beyond something, either a  
9 preponderance of the evidence or something.

10 They have to prove their case, and  
11 they have not even told you what their case is. So  
12 the reason that a directed finding is warranted is,  
13 they have not even said to you in their opening  
14 arguments, Here is what we are going to prove, which  
15 is what you normally do. You say, We are going to  
16 present this evidence to you and here is what we  
17 believe the evidence will show. Right? They did not  
18 do that.

19 Now you are presented with some  
20 evidence or some documents that can't possibly  
21 substantiate their verdict because they don't have  
22 any -- in other words, in a negligence case, you have

1 to prove that there was a duty, there was negligence,  
2 there was damages. You would know going into the  
3 case all of the elements of negligence and whether or  
4 not the plaintiff sustained that or not.

5 Before the defendant puts on their  
6 case at all, if the plaintiff fails to allege or  
7 prove one of their elements, you ask for a directed  
8 finding. The Court can then determine whether or not  
9 they actually did meet all of the elements.

10 You can't even do that in your case  
11 because you don't know what the elements are because  
12 they have not told you what their case is yet. We  
13 still don't know after -- and I'm assuming now, since  
14 we are doing our stipulations with Mr. Munyon, that  
15 at this time the Commerce Commission is actually  
16 finished, they have no more witnesses, no more  
17 documentation other than what is in their book, and  
18 at some point they'll move to introduce their  
19 evidence. This is it. They are done. You are not  
20 going to hear any more from them.

21 That being said, Judge, you have to  
22 sustain our directed finding because you don't even

1 know as you sit here, if you were to ask you, Judge,  
2 What is the Commerce Commission's allegations? What  
3 is their case? Why are we here? I don't think you  
4 would know because I know I don't know, and I have  
5 been doing this case as long as you have and I have  
6 no idea.

7                   How can they have sustained their  
8 burden, when they haven't told you what it is we have  
9 done wrong or how it is that we have done it wrong,  
10 and they have not gone down the line. Counsel -- I  
11 would say to you that the documents contained in  
12 Exhibits A through F, there was one witness and only  
13 one witness that they used to testify to those  
14 documents, only one, Sergeant Sulikowski.

15                   Sergeant Sulikowski said every single  
16 question, I have no opinion about these documents. I  
17 have no opinion whether there's any violations or  
18 not. I didn't create these documents. I don't know  
19 who created them. I don't know when they created  
20 them. I don't know how they created them. I don't  
21 know where they created them from. And then he said,  
22 I don't know whether they are accurate or not, but I

1 do know that some of it is not accurate because we  
2 clearly proved it at least 15 or 16 times the year  
3 1899 comes in and that can't be accurate. And it  
4 also showed you that they had -- one of the times  
5 they had on file two different applications within a  
6 month from somebody, which is impossible. It has to  
7 be inaccurate. He said that was inaccurate.

8           So I know that counsel argues that A  
9 through F are some kind of -- I think they are  
10 arguing that they are public records, which they  
11 aren't, because the public can't access them, they  
12 can't find them. You can FOIA them and they might  
13 give them to you, or in our case they don't give them  
14 to you anyway. So I guess they are public records  
15 when they want them to be, and they are not when they  
16 don't want them to be.

17           All the individual whose certification  
18 that they put down there said was, This is the way a  
19 screen shot looks of the documents. That individual  
20 did not testify here. You don't know when that looks  
21 like that, and then clearly there's no certification  
22 that that is the way that the screen looked like

1 during the relevant time period. This is something  
2 that I think the Commerce Commission does not want  
3 you to really look at too closely because the only  
4 thing that we are looking at here, Judge, is the  
5 relevant time period, and that is it.

6 And none of those records in A through  
7 F are from the relevant time period, not one of them.  
8 So if they are not from the relevant time period and  
9 you don't know what time period they are from and you  
10 don't know who created them and you don't know when  
11 they were created or how they were created but you do  
12 know that parts of them are inaccurate and the only  
13 witness they have in the world, because Officer  
14 Strand, Officer Geisbush, and Investigator Kassal,  
15 did not testify to A through F. They did not say a  
16 word about them. No one from the Commerce Commission  
17 actually came in to testify about A through F.

18 You did not get the keeper of the  
19 records for the Commerce Commission. You didn't get  
20 the person who inputs the information into MCIS. You  
21 got nobody. So I understand that I can make this  
22 argument under closing argument, and I usually do.

1 And I apologize, my back is killing me -- and I  
2 usually do, but only if the plaintiff or petitioner  
3 sustains their burden and puts on a prima facie case,  
4 then the burden shifts to me. There is no burden  
5 shifting in this case.

6 And I'm sure counsel will make a  
7 counterargument to this. What he won't tell you is  
8 what their case is, what they are alleging that we  
9 did wrong, how they are alleging that we are not fit,  
10 and how they actually sustained that burden. They  
11 are not going to tell you that because they have not  
12 in over two years, and we have never heard it up  
13 until now.

14 So since they have never done that,  
15 how can you know that they sustained their burden,  
16 when you don't know what their burden is? So A  
17 through F, yes, I guess you could say, Well,  
18 Mr. Perl, just make that in your closing argument and  
19 I could. But then why do we have burden shifting in  
20 cases? Why do we have burdens of proof? Why not  
21 just say, Plaintiff comes into court, respondent  
22 comes into court. State comes in, defendant comes

1 in, same for criminal cases.

2 Hey, Criminal, you just put your case  
3 on. It doesn't matter if there's a prime facie case  
4 against you or not. It doesn't matter if the  
5 allegations are sustained or not, just put your  
6 defense on because you might get unlucky and maybe a  
7 jury convicts you anyway, even though there was no  
8 case. Or you might get unlucky and a judge might  
9 say, Well, you know, I believe this might be the case  
10 anyway, even though the evidence was not presented at  
11 the hearing and they did not sustain their burden.

12 In this particular case, I can't  
13 imagine why I would have to do a closing argument on  
14 anything having to do with Exhibits A through F when  
15 I still don't even know what they are saying. This  
16 is what they are telling people. There is  
17 inconsistencies. This is the only thing that they  
18 have ever said about those documents, ever up until  
19 now, there's inconsistencies in those documents.

20 Well, inconsistencies doesn't mean  
21 anything with the Commerce Commission. I don't of  
22 know any ICC statute, rule, or finding that says,

1 Inconsistencies means you are not fit. They don't  
2 even tell you whose inconsistencies they are except  
3 for one thing. Here is what we know for sure, on  
4 direct examination and on cross, Sergeant Sulikowski  
5 admitted there's inconsistencies. It's at 1899.  
6 Those are the only inconsistencies we know of.

7 Well, we know one thing. Lincoln  
8 Towing did not put that in there. The Commerce  
9 Commission, since they want to take ownership of it,  
10 since they say, Those are Commerce Commission  
11 records, then they're their inconsistencies, not  
12 ours. So what they really want to say to you is, We  
13 want you to hold Lincoln accountable because the  
14 Commerce Commission made mistakes on MCIS because  
15 those are inconsistencies because the only ones that  
16 we could find that this witness could testify to were  
17 those because everything else that may or may not be  
18 an inconsistency, this witness says, I have no  
19 opinion and I don't even know if -- he actually  
20 testified that it's possible that Lincoln puts the  
21 information in there and the Commerce Commission just  
22 does not get it in there.



1                   So that could be an inconsistency, but  
2 they did not have one witness say to you -- I guess I  
3 would not argue this, Judge, if they brought in  
4 anyone from the Commerce Commission that has anything  
5 to do with MCIS or inputting any documents into  
6 anything. I would be sitting down now saying, Okay.  
7 Probably not because what they really would tell you  
8 and why you are not hearing from them is, they would  
9 tell you the Commerce Commission makes -- I  
10 apologize.

11                   The Commerce Commission makes mistakes  
12 all of the time. There's hundreds of thousands of  
13 contracts in the MCIS. They get messed up all of  
14 time. In fact, Blanche would probably tell you, I  
15 talked to Bob Munyon and Ethel all of the time  
16 because there's always mistakes made. It's not  
17 Lincoln's fault. Maybe it's not the Commerce  
18 Commission's fault. It's no one's fault. It  
19 happens.

20                   But you did not even hear that. You  
21 heard from one witness that said, I have no idea what  
22 these documents mean. I don't even know -- again, I

1 can stand up here until I'm blue in the face.

2 Mr. Burzawa was not in the case earlier anyway.

3 For two years I have said to you, in  
4 front of the Commerce Commission, What are your  
5 allegations? And their answer has been every time,  
6 The statute says we can bring you up for a hearing,  
7 so we are. At the eleventh hour, after my argument,  
8 after discovery was closed in February, in May they  
9 finally said, There's some inconsistencies. But they  
10 don't know what that means, and they don't tell you  
11 what it means. They just say there's inconsistencies  
12 on the Documents A through F, and we are going to  
13 show you these inconsistencies.

14 I defy opposing counsel to show you in  
15 the statute or anywhere that inconsistencies means  
16 anything regarding the license. Show me where  
17 there's a code and show me where it says that if the  
18 Commerce Commission causes those inconsistencies,  
19 it's a basis to have a fitness hearing. Because  
20 really what we are trying to figure out is, why are  
21 we having this fitness hearing? What are we doing  
22 here?

1                   And if A through F don't come in, we  
2     have nothing.  If A through F do come in, we have  
3     nothing because no one testified to them.  Nobody  
4     knows what they really mean.  And if you don't have a  
5     dispute of fact and it's a matter of law and the  
6     charges can't be identified, how is that due process  
7     to my client?  The client has to come here -- and I  
8     told you this before, and the reason that I asked for  
9     a continuance this way, what I didn't get is because  
10    I don't what defense to make because I don't know  
11    what their case is.

12                   Basically when I see A through F two  
13    weeks before, three weeks before the hearing, and I  
14    have to scramble to take one deposition, I am  
15    still -- I thought maybe there would be some light  
16    shed on it, Judge.  Maybe they would say, We have  
17    this other witness to call and they are going to talk  
18    about A through F, they are the one that input the  
19    information.

20                   You have to say to yourself, Why isn't  
21    the person who created A through F here testifying?  
22    Where are they?  The individual that actually -- if

1 they are screen shots, which I will tell you they  
2 aren't because I will make my argument at closing, if  
3 I have to. They are not even screen shots anyway.  
4 If they were, why don't you have on this witness  
5 stand the individual that created the documents? You  
6 want to know why? Because those documents don't  
7 exist that way. Those documents they created just to  
8 streamline their case. If you look on the MCIS  
9 yourself, they don't appear like that anywhere, and  
10 they know that. So Sergeant Sulikowski can't testify  
11 to that, so it's very safe to put no one in that  
12 chair so I can't say, Show me on the screen this  
13 document. They will say, I can't.

14                   Someone went in -- and my guess is  
15 it's the attorneys. Somebody went in and just  
16 created those documents and then printed them or  
17 something. I don't know because they are not on MCIS  
18 like that.

19                   Beyond that, for the closing, Judge,  
20 there's no way that they have sustained their burden  
21 of proof in a case where they have not told you what  
22 their case is yet. So if the case is over, we are

1 finished, I have not heard it sitting here for  
2 15 days of hearings. They only have one witness for  
3 A through F anyway, and I did not hear him testify to  
4 anything. So there's no way due process would be had  
5 for my client if you allow this case to go to -- we  
6 have to put on our case, and we have to then defend  
7 ourselves not knowing what the burden is for us  
8 because I don't know what they have proven, which is  
9 basically nothing.

10 I think it would be horrible, when my  
11 client's license is at stake, to force us to do a  
12 closing argument and present witnesses and testimony,  
13 especially on everything having to do with A through  
14 F.

15 The testimony of the officers, I  
16 believe I am seeking a directed finding on as well  
17 because every one of them told you to a person, we  
18 don't even know if these are violations or not. We  
19 write the citations. We don't really do  
20 investigations, and we don't have an opinion on them.  
21 They don't even have an opinion.

22 This is the part that really the case

1 should get a directed, and this is why. If the  
2 question is whether we are fit or not, you bring the  
3 witness here to testify to that. Every one of them  
4 said they have no opinion as to whether Lincoln is  
5 fit or not. Not one of them said Lincoln is not fit,  
6 and not one of them said Lincoln is not fit in the  
7 relevant time period. So how do you have a burden  
8 sustained when you don't bring one witness?

9 I mean, they have known about this  
10 case for two years. They don't bring one witness to  
11 testify that Lincoln is not fit or how we are not  
12 fit. Even for one of them to say, Okay -- put on  
13 your case. Here is how you sustain your burden. You  
14 put one witness on there to say, Here is the elements  
15 of fitness, here is what you did not comply with. I  
16 know what witnesses to call. I know how to call  
17 them. I know what documents you need to see. They  
18 did not do that, so I don't have any of that because  
19 they did not do any of that. Surprise, surprise.  
20 Every one of the witnesses I deposed before, and I  
21 knew what they were going to say and they did not  
22 really surprise me. They don't know. They don't

1 know whether we are fit or not. They don't know what  
2 it means to be fit, and they are not claiming we are  
3 not fit. And they don't even know if the citations  
4 that they wrote are a lot or a little.

5 As a matter of fact, most of them  
6 said, based upon the number of tows that we tow --  
7 and by the way, for the record, since they are  
8 seeking to admit our 24-hour tow sheets and they  
9 Bates stamped them, there is 9,470 during the  
10 relevant time period. How do I know that?

11 JUDGE KIRKLAND-MONTAQUE: How many?

12 MR. PERL: 9,470. I told you 10,000 before.  
13 How do I know that? Because they Bates stamped their  
14 documents, and there's ten per page. So we towed  
15 9,470 vehicles during the relevant time period. That  
16 is how many? Each one of them, when I said 9,000 or  
17 10,000 -- I used 9,000 or 10,000. Either I knew,  
18 which I think I did, or I got lucky. 9,470 is right  
19 in the middle of 9,000 to 10,000.

20 Each one said, No, that is not a lot  
21 of citations to get based upon those number of tows,  
22 and it's even a lower percentage of the number of

1 citations that we were found guilty on. All their  
2 witnesses said to you is, No, it's not a lot.

3                   So how do you sustain your burden for  
4 fitness when your own witnesses say that Lincoln  
5 Towing did not get a lot of citations based upon the  
6 number of tows and didn't get a lot of guilties based  
7 upon the number of tows. How in the world did they  
8 sustain their burden that I have to even have a  
9 closing argument on that? There's no way that  
10 there's any issue here. They did not present one  
11 witness to you to say to you, You know what, Judge,  
12 Lincoln Towing is not fit. Not one.

13                   But you know who is going to tell you  
14 that? The lawyers. Because they want to testify in  
15 this case so badly that they created Exhibits A  
16 through F themselves, which they can't testify to,  
17 and the only thing that you are going to hear ever  
18 from them, because it's been this way all of the way  
19 through, not just with Mr. Burzawa, every lawyer that  
20 they have had in this case just wants to argue to you  
21 without presenting to you any evidence, any  
22 testimony, or documentation.



1                   Why did we not just have oral argument  
2 with the lawyers at the beginning of the case? We  
3 could have saved two years and hundreds of thousands  
4 of dollars of the taxpayers' money and my client's  
5 money. We just let the lawyers say, You know, Judge,  
6 we just think that they are not fit. We don't have  
7 any documentation to prove it. As you know, of those  
8 9,470 in A through F, not one citation was written,  
9 not one during the relevant time period or ever to  
10 this day. You know that because you have said to  
11 them, Counsel, you have not written any citations.

12                   I asked Sergeant Sulikowski, Not one  
13 citation was written? And he even said to you, the  
14 only way to know if it's a violation is to do an  
15 investigation. This is why there's no genuine issue.  
16 Sergeant Sulikowski said to you, The only way that  
17 you could hold Lincoln Towing accountable for  
18 anything in A through F is to do an investigation,  
19 and they did not do one. How is it that counsel  
20 could say to you with a straight face that the  
21 24-hour tow sheets combined with A through F mean  
22 anything, when his own witness says they don't mean

1 anything? How do you sustain the burden then, Judge?  
2 What am I doing? What am I missing here?

3 In this 32 odd years that I have been  
4 practicing law, I don't know how many trials I have  
5 done. What am I missing that I need to know that I  
6 did not learn along the way, when the plaintiff does  
7 not sustain their burden and even their witnesses  
8 helped my case? Every one of their witnesses helped  
9 my case. I don't even know -- I have never been  
10 involved in a case where I am calling their  
11 witnesses.

12 Officer Strand today said it again, I  
13 don't know, I have no idea. I don't know if it's a  
14 violation. He even said to you, I would not even  
15 write some of these tickets. I know they are not  
16 proper. He even told you he did not do an  
17 investigation. Sergeant Sulikowski told you, their  
18 own witness -- if it was my witness, there would be a  
19 genuine issue. I agree. Since these are not my  
20 witnesses, there's no genuine issue created. They  
21 are his witnesses. They are Commerce Commission  
22 witnesses. That are telling you we didn't do

1 anything wrong. They don't know whether we are fit  
2 or not. They have no opinion, and what they do know  
3 is that without doing an investigation, you can't  
4 glom anything from it.

5                   So I need to know somehow for the  
6 record, one, what they are claiming that we did  
7 wrong, two, what the elements of those allegations  
8 are, and, three, how they sustained that burden, so  
9 then they would provide a prima facie case to me so  
10 that I could then defend it. Because right now as I  
11 am sitting here, I might need five more days of  
12 testimony if, in fact, you are going to allow them to  
13 make the allegations that counsel made off the  
14 record, which is that somehow these documents mean  
15 something. If he's going to make that argument to  
16 you and he's going to be allowed to, presenting you  
17 no evidence, then I will tell this Court right now,  
18 I'm not finishing tomorrow. There's not a chance.  
19 I'm going to have to probably -- I'm going to have to  
20 bring in rebuttal witnesses. I'm going to have to  
21 bring in all of the lot owners for every one of these  
22 lots to say to you, Yeah, we had a contract with

1 Lincoln during the time. I don't know what you are  
2 talking about. MCIS might be wrong. Because right  
3 now they have not proved to you that we have a  
4 contract. They have not.

5           But if you are going to allow them to  
6 try to make that argument to you by closing  
7 arguments, then I'm going to tell you, Judge, I have  
8 no choice, my hands are tied. I'm going to bring in  
9 the lot owners, the dispatchers, the drivers, and I'm  
10 going to bring in people from -- I mean, these are  
11 rebuttal witnesses. By the way, all of these people  
12 either work for the Commerce Commission or they have  
13 notice of them because they are claiming now in the  
14 eleventh hour that somehow or another these  
15 inconsistencies mean something. If they don't mean  
16 anything, I don't need it, I don't know. But if you  
17 are going to allow them to say the 24-hour tow sheets  
18 coupled with A through F mean something, I am  
19 bringing in witnesses to tell you that we don't  
20 because they shouldn't be allowed to do that because  
21 their own witness said they don't.

22           JUDGE KIRKLAND-MONTAQUE: Excuse me. The

1 evidence that has been presented with -- you know, as  
2 it stands, you are able to make your arguments, just  
3 as you are right now, about the weight, the  
4 credibility, all of that. You can make that in your  
5 brief. If Staff is done presenting witnesses and  
6 this is what we have on the record, then this is what  
7 we have. This is what we have to go with, and let's  
8 go back to the beginning of that order dated -- I  
9 think two years ago they said this is a hearing on  
10 fitness basically, and a hearing on fitness is like  
11 fitness as you have in a new application. We have  
12 standards, the fitness standards. There is something  
13 that we have to direct us.

14 MR. PERL: But we don't have that in this case.  
15 You want to know why, Judge? They are stipulating to  
16 the fact that none of those elements are here. So  
17 counsel has already stipulated with me that all of  
18 those things that you just said which are --

19 JUDGE KIRKLAND-MONTAQUE: Most of them.

20 MR. PERL: No, all of them. If you look at  
21 1710.22, the fitness test, they are not contesting  
22 any of it.

1 JUDGE KIRKLAND-MONTAQUE: Listen, this is --

2 MR. PERL: They are not.

3 JUDGE KIRKLAND-MONTAQUE: This is what I have  
4 to go with.

5 MR. PERL: You thought they were because you  
6 don't really know what they are claiming because no  
7 one does.

8 JUDGE KIRKLAND-MONTAQUE: Listen, the point of  
9 the matter is, you have to go by the fitness  
10 standard. Even if you stipulated to that there's no  
11 problem, then there's a section, staff's evidence,  
12 and then you go through it and it is what it is. The  
13 officer testified that he doesn't know or that -- my  
14 point is, what we have is what we have, and if there  
15 are holes in it that you want to attack, then you are  
16 free to do that.

17 MR. PERL: But that is like saying in a breach  
18 of contract case, you don't have to prove  
19 consideration, just -- it's offer, acceptance,  
20 consideration. You just made up a new rule, which  
21 said, you don't need consideration. In your closing  
22 argument, just say that they did not have

1 consideration. The plaintiff can still bring a case  
2 for breach of contract, which you can't bring without  
3 consideration or at least alleging it. You cannot.

4 JUDGE KIRKLAND-MONTAQUE: I think you are  
5 arguing, obviously, the fitness elements are met and  
6 the evidence presented against -- I mean, you would  
7 have --

8 MR. PERL: But we determined at the beginning  
9 of the case, Judge, that was not my burden to do  
10 that. That is in a fitness hearing every two years,  
11 you are right, but we are not doing that here. You  
12 want to know why we are not going first and they are?  
13 Because we determined this is not a fitness hearing.  
14 The burden is on them. So when the burden is on you  
15 and you have to have your allegation out there for  
16 the public, every two years I agree with. Every two  
17 years, I can look at 1710.22 and I know exactly what  
18 I have to do. I go through the list. I can do it.

19 This is not a fitness hearing for  
20 that. We have already determined that. Otherwise, I  
21 would be going first. We argued successfully to you  
22 that they go first. So the party that goes first has

1 to tell you what it is that we did wrong. I should  
2 not have to sit here and wonder. The regular  
3 elements, they are stipulating -- hang on. We have  
4 exclusive possession of a written lease for both  
5 properties for at least one year. Check. We  
6 employed sufficient full-time employees pursuant to  
7 1710.30. Check. We own or have other exclusive  
8 lease of at least two trucks dedicated to use for  
9 relocater's license. Check. We employ at least two  
10 individuals who work as relocater operators. Check.  
11 We have all of the insurances regarding Illinois  
12 Workers' Compensation Act. Check. We have all of  
13 those things. I know that already. They are  
14 stipulating to it. What I don't know is what we  
15 don't have.

16                   Since the burden is on them, shouldn't  
17 I know why I'm here? Judge, based upon what you just  
18 said, you don't know why we are here because you  
19 are -- I'm not saying this in a bad way, but you are  
20 thinking, Hey, this is a fitness hearing. It isn't.  
21 This is not a standard every-two-year hearing. This  
22 is a very rare one, which I doubt you have done ever.



1 I know I have never done one because literally six,  
2 seven, eight months after we got our license, we are  
3 having some kind of hearing, so the burden is on  
4 them. Why can't they just tell us what it is that we  
5 did wrong? What did we do?

6 JUDGE KIRKLAND-MONTAQUE: Basically, what I'm  
7 saying is, the evidence is what it is.

8 MR. PERL: But as you sit there, do you know  
9 what the evidence is, what the burden is, what they  
10 are claiming? Did they give you a prima facie case?  
11 Did they? Because it doesn't just go to, the  
12 evidence is what it is. Otherwise, I'm telling you,  
13 Judge, in a breach of contract case, you have a  
14 plaintiff. You don't have to prove the elements  
15 then. You just say, Well, you know what, your Honor,  
16 I came home, I saw this guy in the street, he said he  
17 was going to paint my house, and he didn't. Okay.  
18 Defendant speak. I go, Hold on, I'm defense counsel.  
19 They did not meet their burden. They did not claim  
20 they offered or paid him any money.

21 Counsel, don't worry. Just argue what  
22 the evidence is, and we'll have a closing argument.

1 I would say, No, Judge. I don't have to go forward  
2 as a defendant. They did not meet their burden.  
3 They don't have offer, acceptance, consideration.  
4 They have offer. They don't have acceptance or  
5 consideration. You would say, Don't worry, just make  
6 your closing argument, and we'll see what the  
7 evidence shows. The evidence shows that there's a  
8 tape recording of Mrs. Smith saying to you, Mr. Perl,  
9 will you please paint my house and you didn't say a  
10 word to her. So we would argue at the closing there  
11 was no contract, but I should not have to do that.  
12 They should have to make their burden first and prove  
13 their case first, then I go.

14                   Otherwise, why have the rules of  
15 evidence, which I don't know why we have sometimes  
16 from what they do. Why have elements of cases, if we  
17 don't need them. You talk, I talk, and then we'll  
18 just figure it out. That is not the way it usually  
19 goes in a courtroom. I just am dumbfounded every  
20 time I walk in here because I am always perplexed as  
21 to what I'm supposed to be doing because it's not  
22 what I do in the normal world. Because in the normal

1 world, there's real rules of evidence that get  
2 applied to the case and get adhered to, and you don't  
3 get to bring things in the eleventh hour and then  
4 have no one testify to them anyway and somehow they  
5 want to mistake things by saying, Well, they are  
6 admitted into evidence. So what? It does not mean  
7 that they are authenticated or they are reliable or  
8 they are accurate or they are truthful. They are in  
9 evidence.

10 I could give you a business record of  
11 Lincoln's that's in evidence. It doesn't mean it's  
12 accurate or truthful. I have to prove that to you,  
13 but they don't do that in here. They just want to  
14 admit a document into evidence, without anyone  
15 testifying that it's accurate or truthful. And by  
16 the way, the only witness they have said it is not  
17 accurate and truthful because in his deposition he  
18 clearly says, It's not accurate. Then he tries to  
19 back away from it here, but then he kind -- at the  
20 very end he kind of actually says, it was not  
21 accurate anyway.

22 MR. BURZAWA: Mr. Perl is mischaracterizing

1 Sergeant Sulikowski.

2 MR. PERL: Oh, no, I'm not.

3 MR. BURZAWA: Sergeant Sulikowski always  
4 qualified his testimony that the particular item was  
5 inaccurate, not that the documents as a whole were  
6 inaccurate. He clearly stated that he relied on  
7 MCIS, on the information contained therein, and he  
8 reviewed the system as accurate, but if there is not  
9 a particular instance where there is a field input as  
10 1899, that raised a red flag for Sergeant Sulikowski  
11 that that particular field was inaccurate, not the  
12 document in general.

13 MR. PERL: And I said to Sergeant Sulikowski,  
14 Show me any information on here that is accurate.  
15 You know what he said? I can't. I said to him  
16 specifically, Show me one piece of information on  
17 here that is actually accurate, and he said, I don't  
18 know.

19 JUDGE KIRKLAND-MONTAQUE: Okay. Let's get back  
20 to the point.

21 MR. PERL: By the way, Judge, Section 200-100  
22 of the administrative code, contents of pleadings and

1 documents -- this is rules of evidence, Part 200.  
2 Rules of practice, I'm sorry, Part 200,  
3 Section 200-100, contents of pleadings and documents.  
4 All pleadings and documents in proceedings before the  
5 Commission to which a docket number has been assigned  
6 shall display the docket number.

7                   Then if you look at C, it says, All  
8 pleadings shall also include the following  
9 information: C, the specific relief sought. The  
10 specific relief sought. I don't know what relief  
11 they are seeking here and neither do you because just  
12 ten minutes ago you basically said, Well, you just  
13 have to go through the administrative code. That is  
14 not what we are here for. I know that. Because we  
15 already stipulated that we have all of these things  
16 under 1710.22 of the fitness test. We have those.

17                   So I think since they did not tell you  
18 specifically what they are doing here,  
19 inconsistencies are not a specific relief sought.  
20 They could not possibly -- and a plain and concise  
21 statement of any facts upon which the pleadings are  
22 based. You never got that ever. I know you don't

1 have that because in the eleventh hour, they said to  
2 you there's some inconsistencies. That is not a  
3 plain and concise statement of any facts upon which  
4 the pleadings are based, and I'm sorry, Judge, but at  
5 some point in time, they have been allowed to  
6 practice in a way. This is just the way it is that  
7 would not hold anywhere else, not in state court, not  
8 in federal court. You can't do the things that they  
9 do and get away with them, and I understand this is a  
10 little bit different standard and I get that. I do  
11 get that, but at some point in time, you have to look  
12 at them. There has been 10 or 20 times when you have  
13 asked them questions and they have never answered  
14 you. Like you have asked them before, What are you  
15 alleging? And then when they say to you something  
16 like, Well, the statute says that we can do it.

17                   Mr. Barr even said to you, Even one  
18 citation means we could take your license away. And  
19 we kind of all chuckled. Really? Where does it say  
20 that and who does it anyway? Because they never  
21 wanted to tell you that because they don't even know  
22 because in reality, none of these -- Mr. Burzawa has

1 only been here a few months, so he was not part of  
2 anything in the beginning. He doesn't know why we  
3 are here. No one knows why we are here, except to  
4 say that, we want to take your license away. That  
5 they know. They know they want to take our license  
6 away, and I guess if that is the only thing that they  
7 have to tell me is they want my license, then they  
8 have sustained their burden. I agree.

9 But that is not the only thing they  
10 have to tell me. They have to tell me how it is that  
11 nine months, ten months after they gave me my  
12 license, they say I'm not fit. They have never told  
13 me that.

14 And by the way, Judge, this is the  
15 problem. If you are going to consider -- with  
16 fitness, if you are telling me, Mr. Perl, I have to  
17 at least consider the 24-hour tow sheets and  
18 A through F, then I have to put on a lot of witnesses  
19 because I can't -- even if it's only a 1 percent  
20 chance, because I think that is all it would be, that  
21 you would give them any weight at all or any  
22 credibility at all based upon the testimony, but

1 still I can't play with my client's license like  
2 that. I would literally need to bring in I don't  
3 know how many people to rebut the fact that this  
4 evidence is ridiculous.

5 I mean, literally, I don't know what  
6 it means when they tell me there is an inconsistency.  
7 Judge, rhetorical question, do you know what it means  
8 when they say "inconsistencies"? What does that even  
9 mean? I mean, inconsistencies that you are going to  
10 construe against me, my client, against the Commerce  
11 Commission, or there's just inconsistencies? So  
12 what? There's inconsistencies in every day life. It  
13 doesn't mean that I get arrested for it. There's  
14 inconsistencies in every day life. That doesn't mean  
15 I lose my law license for it. These are  
16 inconsistencies that they are trying to claim mean  
17 something.

18 They are trying to say to you -- and I  
19 know what they are trying to say, but none of the  
20 witnesses said that, so you can't just say something  
21 and make it so. You need to actually have an opening  
22 statement, and then you make your case. Then you



1 have a closing argument. You don't get to do a  
2 closing argument if you don't make your case. That  
3 is the problem. A lot of attorneys think that an  
4 opening statement is really an argument, and it's  
5 not, and they argue mostly in their opening  
6 statements.

7                   Opening statements are just facts.  
8 Opening statements are to say, The facts will show  
9 the following: You'll hear testimony from John, from  
10 Sue, from Pete, and Wendy, you'll hear this. And in  
11 the closing you say, Remember when I told you you  
12 would hear that? You did.

13                   That is not this case at all. They  
14 don't have an opening statement what they are going  
15 to say. They did not do any of that with their  
16 witnesses, but they want to get to a closing argument  
17 anyway. All they have ever wanted to do is try to  
18 argue to you that they should take our license away  
19 with no evidence at all, no documentation, nothing,  
20 and my argument to you is, Judge -- and the more I'm  
21 thinking about it, the more I'm arguing it, it's  
22 incredible to me that I have to even take this long

1 to argue it.

2 They did not sustain their burden.

3 They could not tell you what their burden is. They  
4 could not even tell you, Here is the elements that we  
5 are trying to prove, here is the elements that we  
6 proved to you. They are not going to tell you that  
7 right now. They are not. I know they are not.

8 All they are going to do is say to you  
9 something like, We are allowed to have this hearing  
10 pursuant to the code. We have the hearing. We think  
11 there's inconsistencies. We want you to construe  
12 them -- by the way, I'm making this up because they  
13 have never said this. I want you to construe them  
14 against Lincoln or something. I guess they could say  
15 that. They have never done it before. They have put  
16 that -- in all of the pleadings that we have here and  
17 all of the documentation that we have there, they  
18 never once gave you a plain and concise statement of  
19 the facts on which the pleadings are based or the  
20 specific relief sought or how they are going to get  
21 to that so they can meet their burden so that I would  
22 know what witnesses to bring to counter them, how to

1 prepare for cross-examination, which is why I got  
2 some extra time to do the cross-examination because  
3 they never did it. So at least I got to look at the  
4 documents. I still don't know.

5           You know, we ended this hearing today  
6 on February 13th. As I sit here, I still don't know  
7 what my client did wrong, how that would make them  
8 not fit. I mean, nothing. They don't say to you --  
9 and I don't want to give them their argument, but  
10 they don't say to you -- they don't say to you that  
11 based on the number of tows Lincoln did, the number  
12 of citations they get is crazy. They don't say that  
13 because they know it's not because the numbers are  
14 literally -- I did the numbers today again.  
15 Three-tenths of 1 percent of the time did we actually  
16 get found liable. Three-tenths of 1 percent. Per  
17 1,000 tows, maybe three times we were liable per  
18 1,000.

19           But they don't even tell you that. I  
20 have to tell you that. They don't want to tell you  
21 that because they know it hurts their case, so you  
22 don't even have anything from them. So how can you

1 let them proceed in their case when they have not  
2 proven anything to you? I know it's easy to say to  
3 me, Just do it on closing argument. And I get it,  
4 and maybe we will even win. Probably we will because  
5 they presented nothing, but I should not have to do  
6 that. I should not have to take the chance to do  
7 that.

8                   Otherwise, why have courtroom  
9 procedures? Why have elements in cases? Why not  
10 just say, You can sue anyone for anything. You come  
11 in as a plaintiff saying, I'm suing you. Judge, I'm  
12 just suing you, and then you'll hear what I'm saying  
13 and then you present your defense. That is what they  
14 did.

15                   If you want them to go forward, not  
16 giving you their basis or a clear and concise  
17 statement of what we did wrong, not knowing what the  
18 elements of this are, not knowing if they met their  
19 elements, I guess we will go forward, but I think it  
20 would be wholly improper to do that and it would  
21 violate my client's due process.

22                   JUDGE KIRKLAND-MONTAQUE: Do you want to

1 respond?

2 MR. BURZAWA: I'll try to be brief because  
3 there were a few inconsistencies in Mr. Perl's  
4 argument there. And it's an interesting strategy  
5 that Mr. Perl was using, to threaten the Court to  
6 drag the proceedings out unless you rule in his  
7 favor. You know, I have never seen that either.

8 MR. PERL: Because that is not what I did.

9 MR. BURZAWA: Yeah.

10 MR. PERL: Okay.

11 MR. BURZAWA: And Mr. Perl's argument about the  
12 plain, concise statement, I think that is a little  
13 bit untimely. If that argument held any water, that  
14 would be, I guess, a basis for a motion to dismiss at  
15 the beginning of the case, but we are already past  
16 that point.

17 And that rule that Mr. Perl alluded to  
18 about a plain and concise statement in the complaint  
19 does not really pertain to this situation because  
20 this is a fitness hearing. And I know you have  
21 already made your ruling about whose burden it is and  
22 who goes first, but with all due respect, I think

1 that was in error because Section 401 refers back to  
2 a fitness hearing. And in a fitness hearing, the  
3 applicant has the burden, so I think that was decided  
4 wrong. But we are here, we are past that point, so  
5 we are moving forward.

6 And the one big inconsistency in  
7 Mr. Perl's argument is, he keeps going on and on  
8 about how he still does not know why we are here.  
9 But then he says, I know what they are trying to say.  
10 Quote-unquote, I know what they are trying to say.  
11 So which is it, he doesn't know why he's here or he  
12 does know why we are here?

13 He received all of these documents  
14 beforehand, and if there was a problem with their  
15 timeliness, I'm sure he would have raised that  
16 earlier. He didn't. And these documents taken  
17 together, by using one exhibit, one piece of evidence  
18 in conjunction with another piece of evidence -- yes,  
19 Staff will argue that there's a reasonable inference  
20 from those two pieces of evidence. For instance, the  
21 Exhibits A through F, information contained in MCIS,  
22 showed dates where on operators did not have their

1 permits and showed dates where --

2 MR. PERL: Objection.

3 MR. BURZAWA: Contracts were -- you argued  
4 about the merits.

5 MR. PERL: I'm objecting that that is not what  
6 the documents showed because their witness said, I  
7 don't know what they showed. This is what I'm  
8 reading.

9 MR. BURZAWA: That is what they show.

10 JUDGE KIRKLAND-MONTAQUE: Okay. Let him make  
11 his point.

12 MR. BURZAWA: A through F are public documents,  
13 it's public information. There was nobody that --  
14 this information is kept in a computer-generated  
15 format in a database. It has to come into this world  
16 into in court in some type of physical form. Does  
17 Mr. Perl want me to bring in the Commerce  
18 Commission's servers and plant them here and show  
19 everybody what information is contained in MCIS? No.  
20 They have to be printed out.

21 But the information itself is not kept  
22 in the physical form, it's kept on a computer, and

1 when a computer-generated printout comes out, that is  
2 considered an original under the Illinois Rules of  
3 Evidence. Those are certified public documents or  
4 certified public information, certified by the head  
5 of process, so the foundation for those documents, A  
6 through F, has been laid.

7 My point about the reasonable  
8 inference from the evidence, the Exhibits A  
9 through F, the public information from MCIS shows a  
10 few things. Certain documents show that an operator  
11 did not have a permit on a particular day. Other  
12 printouts show a contract may not have been e-filed  
13 or there was no contract on that property.

14 Then taken in conjunction with  
15 Lincoln's 24-hour tow logs, if you compare those same  
16 dates, it shows that Lincoln actually towed vehicles  
17 on those dates, so they were unauthorized tows in  
18 general for one reason or another. There was about,  
19 I think, close to 500 unauthorized tows, if you  
20 compare the information in MCIS with Lincoln's  
21 24-hour tow sheets. That is precisely what the  
22 Commerce Commission ordered, a fitness hearing to



1 inquire about Lincoln's relocation towing operations,  
2 its business operations. So the evidence suggests  
3 that there's a pattern and practice of unauthorized  
4 tows and proved up in part by its own business  
5 records, 24-hour tows -- tow logs.

6 So everything that Mr. Perl has said  
7 goes to the weight of that evidence. He said that he  
8 knows what we are trying to say, so, again, he's on  
9 notice about what he has to defend and he pointed out  
10 some inconsistencies with the information, but that,  
11 again, goes to the weight and not to the  
12 admissibility.

13 Mr. Perl kept referring to in general  
14 that we have not met our burden of proof, but at this  
15 point, in the directed verdict stage, Staff doesn't  
16 have to meet a burden. They have to show a prima  
17 facie case, and the evidence taken together shows a  
18 prima facie case that Lincoln Towing is involved in a  
19 pattern and practice of unauthorized tows.

20 Now, Mr. Perl has a defense to that,  
21 and he raised the defense about the inaccuracies and  
22 that he could do that during his closing arguments

1 and in his closing briefs. Again, he keeps referring  
2 to these documents being created by counsel or staff.  
3 Again, I touched on that. That is the only way that  
4 we could bring those documents into this physical  
5 realm and be introduced, but the information itself  
6 is certified. It is a public record. It's  
7 FOIA-able. Mr. Perl FOIA's this information all of  
8 the time. Just because they have to go through some  
9 type of process, the public could get it, and  
10 certainly there has to be some personal identifying  
11 information that has to be redacted but it's public  
12 information because this is a public agency which is  
13 open to the public and the information is open to the  
14 public.

15                   So, again, at this point, Judge, you  
16 know, staff has met its prima facie burden, based on  
17 the reasonable inference from the evidence that  
18 Lincoln has a pattern and practice of unauthorized  
19 touts, so there's enough to move forward. And  
20 Mr. Perl has been on notice of that argument. We set  
21 a very lengthy hearing schedule based on Mr. Perl  
22 indicating how much time he needed to present his

1 case. Most of the hearing dates have been his  
2 cross-examination of the witnesses, him going beyond  
3 the scope of cross-examination and introducing  
4 argument and evidence from the witnesses in favor of  
5 his client. So he has been able to rebut in general  
6 or at least attempt to rebut in general the argument  
7 or the inferences raised by the evidence that has  
8 been introduced by staff.

9                   So he's been on notice of the  
10 argument, of the allegations, the assertions, so  
11 there's no reason to grant the directed verdict and  
12 there's no reason to delay the completion of this  
13 hearing. Any request to extend the hearing would be  
14 untimely and unnecessary.

15               MR. PERL: Well, Judge, I'm not requesting to  
16 extend the hearing. We don't have it -- we have  
17 estimated some dates for what we are doing. We never  
18 had -- we estimated dates. I actually told you that  
19 I would need five days to cross-examine Sergeant  
20 Sulikowski, and I did not take five days. I know I  
21 told you that.

22                   I'm glad that counsel is finally

1 committing to something because in the over two years  
2 that I have been here, no one has ever said to me  
3 that Lincoln Towing has a pattern and practice of  
4 unauthorized tows. Have you ever heard that before?  
5 Because I know you have not. Counsel now tells you,  
6 Well, of course we are here because Lincoln Towing  
7 has a pattern and practice of unauthorized tows. I  
8 have never heard that before today. This is the  
9 first time in over two years that I have heard that  
10 statement made ever.

11 MR. BURZAWA: Because Mr. Perl forced a closing  
12 argument essentially here. That would be the  
13 argument in the closing argument.

14 MR. PERL: So they don't have to tell you until  
15 their closing argument what their case is, and that  
16 is what I love about this whole theory. This is  
17 wonderful. Counsel just said to you, I was not going  
18 to tell you until the closing what my real case is  
19 because it's trial by ambush. I have used that word  
20 in my life never in a trial before except this one  
21 because this never happens.

22 In this particular case, I have said

1 trial by ambush probably 50 times. I'll say it for  
2 the 51st time. Counsel literally just said to you on  
3 the record, admitted that he was not going to tell  
4 you that until his closing argument.

5 MR. BURZAWA: That is a misstatement of what I  
6 said.

7 MR. PERL: No, it's not a misstatement because  
8 he said, He forced me to do it before my closing  
9 argument. And you know what that mean, Judge?

10 MR. BURZAWA: That is not what I said, Judge.

11 MR. PERL: Well, let's read back from the  
12 record what he said.

13 JUDGE KIRKLAND-MONTAQUE: No. Let's just go  
14 ahead. Make your point. I heard it. It was just a  
15 second ago. Let's just keep going.

16 MR. PERL: You heard what he said. So  
17 counsel's argument that he gets to wait until the  
18 closing to tell you that Lincoln had a pattern and  
19 practice of unauthorized tows is so improper, I can't  
20 even believe I'm standing here arguing it. I can't  
21 believe it's not 137 sanctions against the Commerce  
22 Commission, by the way.

1           MR. BURZAWA: That's going a little bit too  
2 far.

3           MR. PERL: It's not going too far.

4           MR. BURZAWA: It's a reasonable inference from  
5 the evidence. That is what a closing argument is.

6           MR. PERL: Judge, I don't want to argue with  
7 counsel.

8           JUDGE KIRKLAND-MONTAQUE: Go ahead. Let's make  
9 your closing point.

10          MR. PERL: It's not a reasonable inference from  
11 the evidence, and here is why. Counsel tells you  
12 again -- somehow counsel misconstrues what I say  
13 every time and ignores his own witnesses. His own  
14 witnesses said the following: At the very end when  
15 Sergeant Sulikowski had no choice but to relent,  
16 because he said in his dep he did say it, the  
17 information is not accurate, not just one thing, it's  
18 not accurate. When I said to him, Sergeant  
19 Sulikowski, here is Exhibits A through F, show me one  
20 piece of information that is accurate. You know what  
21 he said? I can't. I don't know. So his witness  
22 tells you that they don't know anything that is

1 accurate, but he does know the ones that aren't.  
2 Obviously, there's 15 or 16 times that they know it's  
3 not accurate.

4                   How am I misstating any of the facts?  
5 And counsel says to you all he has to do is prove a  
6 prima facie case. Okay. Well, did he do that? What  
7 prima facie case did he give to you because his own  
8 witnesses told you, all four of them, they have no  
9 opinion as to whether we are fit or not. They don't  
10 know whether we get a lot of tows. Most of them said  
11 to you we don't have an inordinate -- he said pattern  
12 and practice of unauthorized tows. The witnesses  
13 don't say that though. See, the witnesses testified.  
14 They are the only ones that can testify because  
15 documents really don't speak for themselves. They  
16 don't even talk. You can put your ear really close  
17 to them. They don't say a word, but the witnesses  
18 spoke loud enough for you to hear. They did not  
19 provide you a prima facie case because until just now  
20 they did not have a case. They just finally told you  
21 what their case is, which is, a pattern and practice  
22 of unauthorized tows.

1                   Now, if I knew that was their case --  
2   and, by the way, Judge, guessing at what their case  
3   is, because I'm pretty good at what I do, does not  
4   mean that they have sustained their burden.

5                   Now, if I say to you, I can guess what  
6   they are doing, offer, acceptance, consideration. I  
7   could say, Well, I guess that you are saying it but  
8   you did not say it, it doesn't mean they did it  
9   because they didn't do it. You know what, doing  
10   something wrong for 20 or 30 years, like they do,  
11   does not make it right. Just because maybe I'm the  
12   first attorney that complains about certain things,  
13   when we have the citations, and I'm the first  
14   attorney that complains about certain things here and  
15   I get them sustained. No one else does it because  
16   they don't have the time or the effort or inclination  
17   to do it. So when I try to hold their feet to the  
18   fire, they fail every time. And when counsel says to  
19   you stuff like, The documents are  
20   self-authenticating, show me where it says this.

21               MR. BURZAWA: We went over this. Rule 902.

22   Okay?



1           MR. PERL: Show me where it says that they  
2 speak for themselves. That does not mean that they  
3 are accurate and truthful. It just means that the  
4 documents --

5           JUDGE KIRKLAND-MONTAQUE: Okay.

6           MR. PERL: By the way, Judge, it's truly  
7 incredulous for counsel to make these arguments that  
8 I'm misstating the facts. You heard all of the  
9 facts. They don't have one fact in their favor. Not  
10 one of their witnesses testified to any of those  
11 things, so what do I sit here and do, cross-examine a  
12 document?

13                         Then counsel says to you that these  
14 are screen shots. You don't know what they really  
15 are. You think that counsel really could not bring a  
16 person in from the Commerce Commission to testify to  
17 when the documents were created, who created them.  
18 Do you really believe -- do you really believe that  
19 somehow those documents appeared, like Menta came  
20 down from heaven? Somebody printed them. I know you  
21 don't know who. I know you don't know when they  
22 printed them. I know you don't know who printed

1     them, how they are printed. I know you still don't  
2     even know if that was a copy of a copy or a print  
3     because that is what their own witnesses stated, so  
4     you don't know any of that.

5                     And they didn't sustain their burden  
6     of establishing a prima facie case because until just  
7     ten minutes ago, none of us even knew what their case  
8     was. Now for the first time ever, they are finally  
9     committing to something in two years that Lincoln  
10    Towing has a pattern and practice of unauthorized  
11    tows. Even though we did not write any citations for  
12    them, we want you to say it's a pattern and practice.  
13    They want to say to you that they have their prima  
14    facie case to you even though they don't have one  
15    documentation or one piece of evidence that shows it.

16                    So I think what we would like to do,  
17    if you want, Judge, I'll do a written motion for  
18    directed, if you want, prior to my closing because I  
19    really believe -- well, first of all, I believe that  
20    you should sustain them right now. They have not  
21    given you a prima facie case. They haven't made any  
22    elements. You don't even know what the elements are

1 for a pattern and practice of unauthorized tows. Is  
2 it one, two, five, seven? What is the pattern and  
3 practice that we did? If they had told you that  
4 before, if they said, Judge, we believe that -- and  
5 by the way, we didn't get A through F until May of  
6 2017, just for the record.

7           So when counsel tells you that we knew  
8 about it, well in February of 2016, Exhibit 3 from  
9 our trial book, I want you to go look in there and  
10 show me where it says, Based upon Lincoln Towing's  
11 pattern and practice of unauthorized tows, we are  
12 going to have a fitness hearing. It's not in there,  
13 and we know it's not in there. And up until  
14 May 2017, A through F were not in their book, and  
15 even then they did not say that. They just said  
16 there's some inconsistencies. Up until today,  
17 February 13, 2018, is the first time they have told  
18 this Court that they are trying to prove that Lincoln  
19 Towing has a pattern and practice of unauthorized  
20 tows.

21           That is the first time you have ever  
22 heard it. It's a little bit late in the game to do

1 that, but if it's not late in the game, then maybe we  
2 should start the hearing all over again. So I can  
3 now bring you documentation and witnesses, because if  
4 this is what they are saying for the first time  
5 ever -- and by the way, argument that I can't tell  
6 you that I want you to have a directed finding  
7 because they did not comply with 200-100, that does  
8 not fly. You can bring it any time you want. I can  
9 bring it right now for a directed saying that you did  
10 not do those things. I did not waive it because I  
11 did not bring it before.

12 By the way, when counsel says I should  
13 have argued they were not admissible, do you know how  
14 many times I have argued before this Court, even in  
15 writing, that A through F should not come in? You  
16 know it. Ad nauseam. I have given you two different  
17 writings on them saying they are late and should not  
18 come in. I asked for a continuance of the hearing  
19 which was denied. So how can counsel say to you that  
20 I should have argued this before? I argued it before  
21 every time I could.

22 MR. BURZAWA: Then it's the law of the case, so

1 that argument is denied.

2 JUDGE KIRKLAND-MONTAQUE: All right.

3 MR. PERL: One last thing, Judge. There's no  
4 rule that I have to finish tomorrow. I can try to  
5 finish tomorrow.

6 JUDGE KIRKLAND-MONTAQUE: Okay.

7 MR. PERL: And I'm not threatening anybody.  
8 I'm just saying that due process says that my client  
9 should be afforded the right to know. If they are  
10 really allowed to go forward making this ridiculous  
11 allegation that we have a pattern and practice of  
12 unauthorized tows, when three-tenths of 1 percent of  
13 all of our tows are actually found reliable.  
14 Three-tenths of 1 percent, that is a pattern and  
15 practice of unauthorized towing? In what book?  
16 Where did they have that come from?

17 Because they want to somehow slide in  
18 A through F to you and somehow they want you to  
19 consider that when it would not be proper to consider  
20 it regarding -- other than the fact that it's sitting  
21 there in a book, they did not present any evidence to  
22 you that it's factual or a basis for it for a prime

1     facie case that -- there's no prima facie case for  
2     you that there's a pattern and practice of  
3     unauthorized towing and there isn't.

4                     So now if he wants to hold to that and  
5     that is what his whole case is, they certainly did  
6     not sustain the burden of proving a prime facie case  
7     on that.

8             MR. BURZAWA: One last thing, Judge. According  
9     to Mr. Perl's 213 disclosures, the only witnesses  
10    that he disclosed were Mr. Munyon and Mr. Dennis, so  
11    he's kind of limited in what witnesses he can now  
12    present.

13            MR. PERL: Because I did not have the pattern  
14    and practice of unauthorized towing then. All I had  
15    back then was what they gave me in the -- by the way,  
16    Judge, when I gave them my 213s, A through F were not  
17    even in existence. When I gave them my 213s, all  
18    they had was the officers that were testifying. That  
19    is why I don't have them. Then in May, when you  
20    allowed them to bring in A through F, my 213s were  
21    done a year and a half before that.

22            JUDGE KIRKLAND-MONTAQUE: Well, Mr. Perl, you

1 know you could have requested to amend that because I  
2 was allowing you the opportunity to redepose the  
3 witness so you could have easily -- so I'm not going  
4 to even consider that stuff right now.

5 MR. PERL: Judge, look at one thing for me then  
6 because I want one time in this courtroom for counsel  
7 to have to actually answer to what he just said to  
8 you. In Staff's eighth answer to our request --  
9 Protective Parking's request, which they filed on  
10 April 25, 2017, Interrogatory No. 5, Identify why the  
11 ICC is conducting this hearing on fitness to hold  
12 commercial relocators license against Lincoln Towing  
13 at this time. That is the eighth time I have asked  
14 this question.

15 And here is what they said, Staff's  
16 decision to recommend the matter for a fitness  
17 hearing at this time is based upon the following  
18 statutory language, and then they literally just cite  
19 the statute. It says, The Commission may at any time  
20 during the term of the license make inquiry into the  
21 management, conduct of business, or otherwise to  
22 determine the provisions of this Chapter 18A and the

1 regulations are being observed.

2 I would love for you to show me where  
3 they, after the eighth time, said to me that they say  
4 we have a pattern and practice of unauthorized  
5 towing, that they put me on notice for that. Where  
6 am I put on notice? This is the eighth time that  
7 they have given me that answer in April of 2017. I  
8 would just love to see where they put me on notice.

9 And by the way, Counsel loves to make  
10 my case for me. He just did it again. The only  
11 reason that I only have Mr. Munyon and Mr. Dennis is  
12 because of that, because they did not say that I have  
13 a pattern and practice of unauthorized towing. They  
14 never told me that.

15 MR. BURZAWA: You deposed Sergeant Sulikowski  
16 about all of this information, and Sergeant  
17 Sulikowski is the one who compared exhibits.

18 MR. PERL: Sergeant Sulikowski says he has no  
19 opinion. By the way, I have to respond to that.  
20 Sergeant Sulikowski told you he has no idea if we got  
21 a lot of tickets or not.

22 JUDGE KIRKLAND-MONTAQUE: I was here.



1           MR. PERL:    So how can I -- I don't know why --  
2    why do we have any rules, any pleadings?    Why do I  
3    write anything?    Why do I write motions?    What am I  
4    doing here?

5           MR. BURZAWA:   Woe is me.

6           MR. PERL:    Woe is you for the way that you  
7    practice law.

8           JUDGE KIRKLAND-MONTAQUE:   Listen, I'm going to  
9    put an end to this.

10          MR. PERL:    Look at this.    Show me where it says  
11    that.    Counsel is so flippant with my client's  
12    license.    He doesn't really care if they live or die.  
13    It doesn't matter to him.

14          JUDGE KIRKLAND-MONTAQUE:   Listen to me.    You  
15    got your motion for a directed verdict.    I'm going to  
16    deny it.    We have a hearing scheduled for tomorrow,  
17    if you want to take advantage of that.    I don't know.

18          MR. PERL:    Judge, I have to tell you the truth  
19    now.    If you are letting them -- are you allowing  
20    them to go forward based on the fact that they are  
21    claiming this pattern and practice of unauthorized  
22    towing from Lincoln Towing.    I need to know.

1           JUDGE KIRKLAND-MONTAQUE:  Whatever he said,  
2           obviously that is his plan.  I don't know what his  
3           plan is.

4           MR. PERL:  You have to know.  You are the  
5           Court.  You are the trier of fact.  How could you not  
6           know?

7           JUDGE KIRKLAND-MONTAQUE:  As the Court, what I  
8           plan to do -- I can tell you what I plan to do.  I  
9           plan to look at all of the testimony and the  
10          cross-examination of the witnesses and summarize what  
11          has been presented, including the strengths and  
12          weaknesses or even if something should be included or  
13          not, and then determine whether or not there are  
14          any -- are we looking at violations, are we looking  
15          at allegations.  We are looking at whatever is in the  
16          record.  If there were no violations presented in the  
17          record, then there were not any violations presented  
18          in the record.

19          MR. PERL:  I understand what you are saying, if  
20          we didn't have rules and procedures.  Yes, I agree  
21          with you, whatever is in the record.  You just  
22          literally said my case -- I don't know.  I'm just

1 going to look at -- you should know at this point in  
2 time what their case is, and you don't. How can you  
3 go forward?

4 JUDGE KIRKLAND-MONTAQUE: I'm going to look at  
5 the records and determine whether or not --

6 MR. PERL: For what? To determine what?

7 JUDGE KIRKLAND-MONTAQUE: -- you meet the  
8 fitness requirement.

9 MR. PERL: But that is not what this case is  
10 about.

11 JUDGE KIRKLAND-MONTAQUE: It is.

12 MR. PERL: They have admitted that we meet the  
13 fitness requirements. You are missing the point.

14 JUDGE KIRKLAND-MONTAQUE: I'm not missing the  
15 point. I think you are missing the point.

16 MR. PERL: They are stipulating we meet the  
17 fitness requirements.

18 MR. BURZAWA: The statute allows for rebuttal  
19 evidence. Even if a relocater presents all of those  
20 requirements, the standard requirements, there's  
21 still a section -- I don't have it handy right now --  
22 that allows for rebuttal evidence.

1 MR. PERL: Rebuttal evidence of what?

2 JUDGE KIRKLAND-MONTAQUE: Rebuttal evidence of  
3 not meeting the fitness standard? Is that what you  
4 are saying?

5 MR. PERL: What are you talking about?

6 MR. BURZAWA: Yes.

7 MR. PERL: The fitness standards, they have  
8 already stipulated to we meet them. All they are  
9 saying now is the pattern and practice of  
10 unauthorized towing. Here is the thing, you are not  
11 going to look and see if we have the proper  
12 insurance, are you?

13 JUDGE KIRKLAND-MONTAQUE: Let's go off the  
14 record.

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

17 JUDGE KIRKLAND-MONTAQUE: This hearing will be  
18 continued to tomorrow morning at 10:30 a.m. here in  
19 Chicago.

20 (WHEREUPON, the hearing was  
21 adjourned until 10:30 a.m.,  
22 02/14/18.)