

1 record, Mr. Krueger and I discussed just a couple more
2 questions that I wanted to ask Mr. Pleus. I think we agreed
3 to put him back up.

4 JUDGE JONES: You want to put him up now?

5 MR. HARRISON: Yes, please.

6 JUDGE JONES: Mr. Pleus.

7 Mr. Higgenbotham, you can step down.

8 MR. HARRISON: It won't be long.

9 JUDGE JONES: I'll remind you that you remain
10 under oath. You may have a seat

11 MR. HARRISON: Do you want to proceed without
12 Commissioner Davis being in the room?

13 JUDGE JONES: Yes.

14 FURTHER CROSS-EXAMINATION BY MR. HARRISON:

15 Q. Mr. Pleus, I'm sorry. I need to ask you just a
16 few more things. Thank you for your indulgence here.

17 You don't have any knowledge of what the
18 Higgenbothams actually paid for the home that they actually
19 bought, do you?

20 A. Other than what I saw in the Form 500, the
21 sales contract.

22 Q. But you don't know that that's what they paid?

23 A. No. That's my answer.

24 Q. I've handed you what's been marked Exhibit 15.
25 Can you identify that?

1 A. Yes. That's a -- states at the top Duplicate
2 Manufactured Home, state of Kansas, which appears to be a
3 title.

4 Q. Certificate of Title?

5 A. Certificate of Title, I'm sorry.

6 Q. And the vehicle identification number on that
7 is -- near the top of the first page is 01510412MAB. Did I
8 read that correctly?

9 A. Yes, sir.

10 Q. And it shows that title to the property that's
11 described in the Certificate of Title is vested in A&G
12 Commercial Trucking, Inc. Is that what that shows?

13 A. Yes, sir.

14 Q. If you look at the second page, please.

15 JUDGE JONES: I realize you're standing there
16 because you want to retrieve that and submit it into evidence,
17 but in the meantime can you ask the questions from the
18 microphone, please?

19 MR. HARRISON: I will, Judge. Sorry about
20 that.

21 BY MR. HARRISON:

22 Q. Look at the second page, please.

23 A. Yes.

24 Q. You have that in front of you?

25 A. Yes, sir.

1 Q. It's the assignment of title -- portion of the
2 title. Is that a fair statement?

3 A. Yes.

4 Q. It shows that the purchasers are Don A. and
5 Terri Higgenbotham. Correct?

6 A. Yes.

7 Q. It shows the purchase price of \$38,321.63?

8 A. Yes.

9 Q. Which is not the same as the amount shown on
10 the Form 500 that you were testifying about earlier?

11 A. That's correct.

12 Q. Exhibit 15 also has a signature block on the
13 second page for A&G Commercial Trucking, Inc. Do you see
14 that?

15 A. Yes.

16 Q. Have you seen this document before today?

17 A. I don't think so. I know I saw the front of
18 this document.

19 Q. Oh, okay.

20 A. Okay.

21 Q. All right. Before the hearing today you did?

22 A. I don't recall seeing the back, no, sir.

23 Q. Okay. Well, in fact --

24 A. I think -- go ahead.

25 Q. In fact, you don't have any evidence or

1 knowledge that the home described in the Form 500 that you
2 testified about earlier is in, fact, the home that the
3 Higgenbothams bought, do you?

4 A. I'd have to compare the vehicle identification
5 number to the numbers on the other documents that we
6 discussed.

7 Q. On the Form 500 there is no vehicle
8 identification number.

9 A. That's correct.

10 Q. In fact, in Exhibit 15, the Certificate of
11 Title that you have in front of you, it says that the year of
12 the home -- on the first page it says the year is a 1999,
13 doesn't it?

14 A. Yes.

15 MR. HARRISON: I'm going to offer Exhibit 15.

16 JUDGE JONES: Mr. Krueger?

17 MR. KRUEGER: No objection.

18 JUDGE JONES: Exhibit 15 is admitted into the
19 record.

20 (Exhibit No. 15 was received into evidence.)

21 MR. HARRISON: May I approach?

22 JUDGE JONES: Yes, you may.

23 MR. HARRISON: I apologize. I apparently made
24 an insufficient number of copies. I only have five and I
25 guess I should have made six, at least of this particular

1 exhibit.

2 JUDGE JONES: That will be fine.

3 MR. HARRISON: During a break perhaps we can
4 take care of the copies.

5 JUDGE JONES: I'll take care of it myself.
6 Thank you.

7 MR. HARRISON: I'm sorry. I did make a copy.
8 I already gave a copy to counsel.

9 MR. KRUEGER: I do have a copy.

10 MR. HARRISON: I haven't messed up after all.
11 I was thinking I hadn't given a copy to counsel.

12 BY MR. HARRISON:

13 Q. In your experience, Mr. Pleus, it sometimes
14 happens that when people are looking to buy a manufactured
15 home, they look at more than one. You've heard of that
16 happening?

17 A. Yes.

18 Q. And you've heard of people signing contracts on
19 more than one home, haven't you?

20 A. Have I heard of that?

21 Q. Yes.

22 A. No.

23 Q. You've never heard of somebody signing more
24 than one contract?

25 A. Not an actual contract, no.

1 Q. Okay. A Form 500?

2 A. Not on more than one home.

3 Q. Well, in other words, they might sign a Form
4 500 for one home and they might sign a separate Form 500 for
5 another home and those kinds of things may happen. You've
6 heard of that happening?

7 A. Simultaneously?

8 Q. Not necessarily.

9 A. Okay. Yes.

10 Q. That's possible. Right?

11 A. That's possible.

12 Q. Okay. So it's just as possible, isn't it, that
13 the Form 500 you have that's in evidence might, in fact,
14 relate to a 2001 home that was new that the Higgenbothams
15 purchased that was a separate home than the one they actually
16 purchased. That might have happened. Right?

17 MR. KRUEGER: Objection, asks for the witness
18 to speculate.

19 MR. HARRISON: I'm asking based on his
20 experience whether that's a possibility.

21 JUDGE JONES: I'll overrule the objection.
22 Mr. Pleus, you may answer the question.

23 THE WITNESS: I assume so, yes.

24 BY MR. HARRISON:

25 Q. And it's also possible that that Form 500 was

1 signed with respect to a home that they were looking at that
2 they didn't ultimately purchase. That's a possibility as
3 well, isn't it?

4 A. Possibility.

5 Q. The purchase price number on the Form 500 is
6 some \$70,000, isn't it?

7 A. Yes.

8 Q. We just had testimony here and evidence in the
9 form of Exhibit 15 that, in fact, the consideration for the
10 home that the Higgenbothams actually purchased was only a
11 little more than \$38,000. Right?

12 MR. KRUEGER: Objection. The document states
13 that number, but that's not proof that that's the amount that
14 was actually paid.

15 JUDGE JONES: Did you say Exhibit 15?

16 MR. HARRISON: Yes. The Certificate of Title
17 that was just admitted.

18 JUDGE JONES: I don't see any price on this.

19 MR. HARRISON: It's on the second page, Judge.

20 JUDGE JONES: What's your objection,
21 Mr. Krueger?

22 MR. KRUEGER: I believe he stated -- the way
23 the question was phrased was that was the amount that was paid
24 as the purchase price; whereas, in fact, it's only the amount
25 that's shown on the back of the title of which is not proof of

1 the amount that was actually paid.

2 JUDGE JONES: Mr. Harrison?

3 MR. HARRISON: Let me rephrase the question.

4 BY MR. HARRISON:

5 Q. The amount shown on page 2 of Exhibit 15 is
6 some \$38,000 -- a little more than \$38,000. Right?

7 A. Yes.

8 Q. Okay. And that number -- that \$38,000 number
9 doesn't appear anywhere on the Form 500 in Exhibit 1, does it?

10 A. No.

11 MR. HARRISON: No more questions.

12 JUDGE JONES: Thank you.

13 Chairman Gaw, do you have questions?

14 CHAIR GAW: Yeah. Thank you, Judge.

15 QUESTIONS BY CHAIR GAW:

16 Q. Mr. Pleus, what was the -- what is your
17 understanding of the time when this sale took place,
18 approximate date? Do you know?

19 A. Based on the prior exhibits that were submitted
20 and what I've seen, it was May 2nd, 2002.

21 Q. 2002?

22 A. Yes, sir.

23 Q. You're sure of that?

24 A. Based on the evidence and documents that I've
25 seen, yes.

1 Q. What is the date on the exhibit -- on the title
2 that you were just referring to earlier?

3 CHAIR GAW: I forget the exhibit number, Judge.

4 JUDGE JONES: Fifteen.

5 BY CHAIR GAW:

6 Q. Fifteen. The date of the transfer, what's the
7 date there?

8 A. On the front of --

9 Q. On the back, on the transfer. The date of the
10 signature.

11 A. 3/19/03.

12 Q. Does the serial number appear on this title?

13 A. On the front of the title it has vehicle
14 identification number.

15 Q. Is that the same thing as the serial number --

16 A. I'm --

17 Q. -- if you know?

18 A. No, I do not know for sure.

19 Q. Have you ever seen that number on anything
20 relating to the manufactured home that is the one that's
21 actually placed at the Higgenbothams' residence, or do you
22 know?

23 A. The inspection reports we did on the lot before
24 it was sold to the Higgenbothams and the inspection reports
25 later, those serial numbers are on those documents.

1 Q. Let me ask you this. Was there a serial number
2 that was observed in the records that you keep of the
3 manufactured home on the lot that you refer -- that you refer
4 to as the home that is the subject of this case? Was there a
5 serial number written down, recorded when it was on the lot?

6 A. Yes.

7 Q. And what was that serial number?

8 A. I don't have that in front of me at this time.

9 Q. Well, why don't you get it if you have it in
10 your records?

11 MR. KRUEGER: Your Honor, Mr. Higgenbotham is a
12 witness and because the rule has been invoked, he should not
13 be present in the hearing room at this time and should wait
14 until he's called.

15 JUDGE JONES: That's true. Mr. Higgenbotham,
16 can you step out, please? Thank you.

17 MR. HARRISON: Thanks for pointing that out.

18 THE WITNESS: Ready?

19 BY CHAIR GAW:

20 Q. Yes. I'm ready.

21 A. The vehicle identification number on the state
22 of Kansas title is 01510412MAB. The serial numbers on the
23 inspections that we did was 0151-0412-MA/B.

24 Q. Is that the same?

25 A. Yes.

1 Q. When was that inspection done?

2 A. The inspection of the home on-site at the
3 Higgenbothams where it's currently located --

4 Q. Wait a minute. Hold it. I want to know when
5 did you the inspection -- or observed the manufactured home on
6 the lot. When was that done?

7 A. I think that was March 8th, 2002.

8 Q. All right. And who did that, according to your
9 records?

10 A. Tim Haden.

11 Q. Who is he?

12 A. The field inspector.

13 Q. For who?

14 A. For the Manufactured Housing and Modular Units
15 Program. He works for our program.

16 Q. All right. And when that was done, do your
17 records indicate who was the owner of the home?

18 A. It was on Amega sales lot at the time of that
19 inspection.

20 Q. All right. It was on their sales lot?

21 A. Yes.

22 Q. Is there anything else referenced in the record
23 about who actually owned it or is that even a proper phrasing?
24 Was there an owner that would have been able to be designated
25 when it was on the lot?

1 A. The lot inspection was of homes on Amega sales
2 lot. Okay?

3 Q. So are all the homes on Amega sales lot owned
4 by Amega, to your knowledge, or do you know?

5 A. It -- no. In most cases, yes, but it may --
6 may not be.

7 Q. All right. Do you know who owned that home at
8 that point in time?

9 A. Of the lot inspection?

10 Q. Yes.

11 A. No, sir. I just know it was on Amega sales
12 lot.

13 Q. All right. And what else do you have in regard
14 to information from that inspection about the manufactured
15 home in your records?

16 A. Okay. We have the home was a Skyline home,
17 what address it came from, the HUD label number that was taken
18 off the data plate, model number and the problems with the
19 home that were identified during the lot inspection such as
20 loose marriage walls and other things of that nature. The HUD
21 labels were missing.

22 Q. The HUD labels were missing, which means what?

23 A. The HUD labels are required to be on any new
24 home that's sold to a consumer to prove that it's built to the
25 proper safety standards and codes as promulgated or published

1 by Department of Housing and Urban Development.

2 Q. Is there anything on that inspection report, or
3 whatever you call it that you've been referring to, that
4 indicates whether the home was new or used?

5 A. No, sir. Not that I -- not that I can see.
6 The inspector would have to answer more of those questions.

7 Q. Is he available?

8 A. Yes.

9 Q. Is he going to testify later?

10 A. Yes.

11 Q. All right. Do your records -- now, let's go
12 the time when it was inspected at the Higgenbothams'
13 residence.

14 A. Yes.

15 Q. I hope I'm not mispronouncing their name. If I
16 am, somebody can correct me.

17 JUDGE JONES: Higgenbotham.

18 BY CHAIR GAW:

19 Q. Higgenbotham; is that correct?

20 A. I think that's correct, yes.

21 Q. Do you have records on that inspection?

22 A. Yes.

23 Q. Okay. Was there a serial number that was
24 recorded at that time?

25 A. Yes.

1 Q. What was that serial number?

2 A. 0151-0412-MA/B.

3 Q. Now, there's some dashes in there that I don't
4 see on this state of Kansas title. Is that significant?

5 A. I don't -- I don't think so, other than maybe
6 Kansas titling system doesn't allow for dashes in a title.

7 Q. But the numbers are the same?

8 A. Yes, sir.

9 Q. Was there other information recorded at that
10 time?

11 A. At the inspection?

12 Q. Yes.

13 A. On-site, yes.

14 Q. All right. And are those included in your
15 records?

16 A. Yes.

17 CHAIR GAW: All right. I'm going to ask the
18 Judge. Judge, are the records that we've been referring to,
19 are they admitted into evidence?

20 JUDGE JONES: Yes, they are.

21 CHAIR GAW: What's the exhibit number?

22 JUDGE JONES: Exhibit 7. Were you asking him?

23 CHAIR GAW: I'm asking you if you know.

24 JUDGE JONES: It's 7.

25 CHAIR GAW: I just want whether it is or isn't.

1 MR. HARRISON: I don't think some of the
2 documents he's looking at are in evidence.

3 THE WITNESS: They haven't been admitted into
4 evidence yet. They will be. Is that --

5 CHAIR GAW: Ask counsel. Are they going to be
6 admitted into -- offered?

7 MR. KRUEGER: I hope they'll be admitted.
8 They'll be offered.

9 CHAIR GAW: Offered. Are they marked as an
10 exhibit number?

11 MR. KRUEGER: Yes, they are.

12 CHAIR GAW: Okay. What exhibit number is it or
13 should I refer to?

14 THE WITNESS: What I have --

15 CHAIR GAW: Counsel, if you know what exhibit
16 number --

17 MR. KRUEGER: I don't know the number. The
18 marks that I put them on them are in his hands.

19 CHAIR GAW: Would you check? I'm just trying
20 to --

21 JUDGE JONES: Tell us the number.

22 THE WITNESS: Twelve --

23 JUDGE JONES: I'm sorry?

24 THE WITNESS: Twelve is written and circled in
25 red.

1 MR. HARRISON: I believe that's the report that
2 was made when it was inspected on the Higgenbothams' home
3 site.

4 MR. KRUEGER: That's correct.

5 CHAIR GAW: Is that correct?

6 THE WITNESS: Yes, sir.

7 MR. HARRISON: I don't know why I'm talking.

8 CHAIR GAW: Well, it's helpful to me. Thanks.

9 MR. HARRISON: And I think Exhibit 11 is the
10 report that was made when the home was on the lot.

11 CHAIR GAW: Okay.

12 MR. HARRISON: Is that correct, Mr. Pleus?

13 THE WITNESS: I think so.

14 MR. HARRISON: I don't want to horn in on
15 your --

16 CHAIR GAW: That's fine. I just want to get it
17 cleared up. Thank you.

18 BY CHAIR GAW:

19 Q. So there is information in both of these
20 records that you have in your files about both of those
21 inspections?

22 A. Yes.

23 Q. And is there anything to indicate to you that
24 the home that was inspected that's referred to in Exhibit
25 11 -- in your records in Exhibit 11 and the home that you

1 inspected as shown when it was in the Higgenbothams'
2 possession is the same home?

3 A. Yes.

4 Q. And the numbers match; is that correct?

5 A. Yes.

6 Q. Does the manufacturer match?

7 A. Yes.

8 Q. All right.

9 CHAIR GAW: I think that's all I have right
10 now, Judge. Thanks.

11 JUDGE JONES: Commissioner Murray?

12 COMMISSIONER MURRAY: Thank you.

13 COMMISSIONER MURRAY: first, I'd like to ask
14 the Judge, was Exhibit 15 admitted into evidence?

15 JUDGE JONES: Yes, it is admitted.

16 COMMISSIONER MURRAY: And the copy of the
17 exhibit I have shows on page 2 no notary. Is that correct?

18 JUDGE JONES: Doesn't appear to be any seal
19 there.

20 COMMISSIONER MURRAY: And there is Void stamped
21 across the page 1 and page 2 of the exhibit; is that right?

22 JUDGE JONES: Yes, that is correct.

23 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Mr. Pleus, do you know -- well, first of all,
25 I'd like to just ask you a little bit about the dates here.

1 What we've been given in the form of Exhibit 15 indicates an
2 application date of June 28, 2002. Do you see that on the
3 first page?

4 A. On Exhibit 15?

5 Q. Yes.

6 A. Yes.

7 Q. And an issue date of August 9, 2002?

8 A. Yes.

9 Q. But we were talking about a sale to the
10 Higgenbothams that occurred -- what date did that occur?

11 A. Pursuant to the Form 500, or sales contract we
12 have, it was May 2nd, 2002.

13 Q. Do you have occasion in your role to do title
14 searches on manufactured homes?

15 A. No.

16 Q. So in your normal course of business, do you
17 observe the Certificates of Title?

18 A. Normally, no

19 COMMISSIONER MURRAY: I think that's all I
20 have. Thank you.

21 JUDGE JONES: Thank you, Commissioner Murray.
22 Commissioner Appling, do you have any
23 questions?

24 COMMISSIONER APPLING: No questions at this
25 point.

1 JUDGE JONES: Redirect, Mr. Krueger?

2 MR. KRUEGER: Yes, your Honor, thank you.

3 JUDGE JONES: Well, just a moment.

4 Mr. Harrison, will you have more questions for
5 Mr. Pleus?

6 MR. HARRISON: I will have a few more.

7 JUDGE JONES: Why don't you go first and,
8 Mr. Krueger, you can go last.

9 FURTHER CROSS-EXAMINATION BY MR. HARRISON:

10 Q. Sir, I've handed you Exhibit 16. Do you have
11 that in front of you?

12 A. Yes.

13 Q. Is that a Manufacturer's Statement --
14 certificate of Origin?

15 A. I'm sorry. Did you say Exhibit 16?

16 Q. Yes.

17 A. Okay. I have -- okay, yes, I do.

18 Q. Okay. It's titled -- or the title of the
19 document is Manufacturer's Certificate of Origin?

20 A. Yes.

21 Q. About midway through it's got a serial number
22 on it. Do you see that about halfway down the page?

23 A. Yes.

24 Q. Serial number is 0151-0412-MA/B?

25 A. Yes.

1 Q. It says date of manufacture, November 1999
2 right below that; is that correct?

3 A. Yes.

4 Q. Right below that it says, Other data, 2000
5 model?

6 A. Yes.

7 Q. Near the bottom it shows the manufacturer as
8 being Skyline Corporation?

9 A. Yes.

10 Q. As far as you can tell, is that the
11 Manufacturer's Certificate of Origin for the home that is
12 described in Exhibit 15, which is the Certificate of Title?

13 A. It appears to be, yes

14 MR. HARRISON: I'm going to offer Exhibit 16.

15 JUDGE JONES: Mr. Krueger?

16 MR. KRUEGER: No objection.

17 JUDGE JONES: Exhibit 16 is admitted into the
18 record.

19 (Exhibit No. 16 was received into evidence.)

20 MR. HARRISON: And you have a copy, right,
21 counsel?

22 JUDGE JONES: Mr. Krueger?

23 MR. KRUEGER: Yes, I do.

24 BY MR. HARRISON:

25 Q. Near the top of Exhibit 16, the Manufacturer's

1 Certificate of Origin, is there a date? I think it's a date.
2 I don't have it in front of me. Dated November, I think it
3 is, of 1999?

4 A. Yes.

5 Q. Now, you testified under questioning a moment
6 ago about the date of sale of the Higgenbotham home. And I
7 think your testimony was that your information was that that
8 was on May 2, 2002?

9 A. Yes. I would need to verify that again because
10 I don't have that sales document in front of me or Form 500,
11 whatever you're talking about.

12 Q. That was my next question. You're basing that
13 solely on the Form 500?

14 A. Yes.

15 Q. You don't know when the home that the
16 Higgenbothams actually bought was delivered to them, do you?

17 A. The date it was delivered? I think it's in one
18 of those inspection reports as recorded by the consumer.

19 Q. But it wasn't May 2 of 2002, was it?

20 A. I don't recall a date.

21 Q. Do you know the date when the Higgenbothams
22 paid the purchase price?

23 A. No.

24 Q. So the point I'm trying to make is your
25 testimony earlier about the date of sale is based strictly and

1 solely on what the Form 500 showed, Exhibit 1?

2 A. Yes.

3 Q. That said May 2, 2002?

4 A. As I recall, yes.

5 Q. Which again, by its terms, refers to a 2001
6 home?

7 A. Yes.

8 MR. HARRISON: Okay. Nothing further.

9 JUDGE JONES: Thank you.

10 Mr. Krueger?

11 REDIRECT EXAMINATION BY MR. KRUEGER:

12 Q. Mr. Pleus, do you know how the information
13 about the model year comes to be entered on the Certificate of
14 Title?

15 A. On the Certificate of Origin, Exhibit 16?

16 Q. I'm asking you about the Certificate of Title,
17 Exhibit 15.

18 A. From Kansas.

19 Q. It states a year, 1999, on that document. Do
20 you see that?

21 A. Yes.

22 Q. Do you know where that information comes from?

23 A. Well, it -- it normally I think comes from the
24 Certificate of Origin.

25 Q. But in this case the Certificate of Origin

1 states that it's a 2000 model, does it not?

2 A. Yes.

3 Q. And the Certificate of Title states that it's a
4 1999?

5 A. Yes.

6 Q. And the vehicle identification number shown on
7 the two documents is identical, is it not?

8 A. Yes.

9 Q. Do you know who provides that information to
10 the entity that issues the Certificate of Title?

11 A. I -- I -- it's my understanding it's the -- the
12 Certificate of Origin comes from the manufacturer and the
13 dealer would provide information for the Certificate of Title
14 in this type of transaction.

15 Q. And who would provide the model year?

16 A. The model year --

17 Q. For -- the model year for entry onto the
18 Certificate of Title.

19 A. The manufacturer.

20 Q. And that would be provided on the Certificate
21 of Origin?

22 A. Yes.

23 Q. So there's a discrepancy there. Do you have an
24 explanation other than just an error of some sort?

25 A. It -- well, I don't have an explanation as to

1 why the year on the Kansas Certificate of Title is 1999.
2 However, it's my understanding that on the Certificate of
3 Origin, it's not unusual at all to have a manufacturing date
4 of one year specifically at the end of a calendar year and the
5 home is a model year for the next year, just like a vehicle.
6 You'll be able to purchase a vehicle in 2004 -- a 2005 vehicle
7 at the end of 2004.

8 Q. So you have no opinion as to which is correct,
9 whether it's 1999 or 2000?

10 A. Well, I -- I -- based on this Manufacturer's
11 Certificate of Origin, it appears to be a 2000.

12 Q. Okay.

13 A. And my understanding of how those things are
14 titled and dated by model.

15 Q. You were asked a couple of questions about the
16 back side of the Certificate of Title, which is the second
17 page of Exhibit 15. You recall those questions?

18 A. Yes.

19 Q. Do you know who provides the information
20 regarding the purchase price that goes on the back there?

21 A. I -- I think that's provided by the dealer.

22 Q. The one who transferred the title?

23 A. Yes.

24 Q. And who is shown as the transferer on the back
25 here of this document?

1 A. A&G Commercial Trucking.

2 Q. So that information on the purchase price of
3 38,321.63 would have been provided by A&G Commercial Trucking?

4 A. That's my understanding, yes.

5 Q. Is it the customary practice of the
6 Manufactured Housing and Modular Units Program to inspect used
7 homes when it inspects -- when it performs lot inspections?

8 A. Normally, no.

9 Q. Would it be part of Mr. Haden's duties as an
10 employee of the program to inspect used homes?

11 A. No.

12 Q. Why not?

13 A. Because we normally do not have jurisdiction
14 over used homes once they are titled and received by the first
15 consumer, which is defined in Chapter 700.

16 Q. If Mr. Haden knew that the home that he
17 inspected on the lot of Amega Sales was a used home, would
18 there be any reason for him to inspect that?

19 A. No.

20 MR. KRUEGER: That's all my questions, your
21 Honor.

22 JUDGE JONES: Thank you.

23 Commissioner Murray?

24 COMMISSIONER MURRAY: I'm sorry, but I just
25 want to follow up a little bit here.

1 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

2 Q. With Exhibit 16, the Manufacturer's Certificate
3 of Origin, I just wanted to ask a couple of questions about
4 that. Earlier when I was asking you about a new home without
5 a HUD seal, you said a new home without a HUD seal could only
6 be sold for salvage. Am I remembering that correctly?

7 A. In that specific example, that was my answer,
8 yes.

9 Q. In what specific example?

10 A. Where a home is -- is -- has -- must have
11 damage or something and the -- and the HUD labels are removed.

12 Q. And you said it would not be able to be sold
13 for habitation without violating the law; is that right?

14 A. If -- if sold as a new home, yes, when it is
15 indeed damaged and has no HUD labels.

16 Q. If sold as a new home. But you've told me that
17 a new home could not be sold as a used home. I believe I
18 heard you say that.

19 A. Well, I -- I think that's correct, but in
20 this -- this transaction, you know, we're -- part of the issue
21 here is we're saying it's new and the -- and the Respondent is
22 saying it's used.

23 Q. Are they saying it's actually used or that it
24 was sold as used?

25 A. I think they're saying they sold it as used.

1 Q. And I thought you said it would be a violation
2 of the law to sell a new home as used.

3 A. I don't recall that.

4 Q. Maybe I misunderstood you.

5 Let me ask you about this Certificate of
6 Origin. There is stamped on that notice that the manufacturer
7 sells it as-is and refuses to assume any responsibility for
8 defects. The purchaser must accept it with all defects and
9 take the entire risk.

10 Do you see that?

11 A. Yes.

12 Q. Now, is there anything on this Certificate of
13 Origin that indicates anything other than a new home is being
14 sold?

15 A. Not that I can see.

16 Q. So it appears from this Certificate of Origin
17 that the manufacturer is attempting to sell a new home with
18 defects, and I would assume that means without a HUD seal.
19 Would that be the logical assumption?

20 A. I think in this case, yes.

21 Q. So was the manufacturer in violation of any law
22 by selling this home with defects as a new home?

23 A. It's my understanding -- I don't think so,
24 because it wasn't being sold to the consumer. It was being
25 sold, pursuant to this document, to A&G Commercial Trucking,

1 who is not the first consumer who is going to use the home for
2 purposes other than for resale.

3 Q. A&G is not a dealer; is that correct?

4 A. That's correct.

5 Q. So how are you making that distinction? What
6 are you considering A&G to be when you say it was not sold to
7 the consumer?

8 A. A&G Commercial Trucking is a trucking company.
9 And I wouldn't -- you know, all I can say is I don't think
10 that A&G Commercial Trucking used this as a home.

11 Q. Anything on this document that indicates that?

12 A. No.

13 Q. But is it your position that neither a
14 manufacturer nor a dealer can sell a new home with defects
15 and, therefore, without a HUD seal for anything other than
16 salvage?

17 A. That's basically correct, yes.

18 Q. Is there anything on this Certificate of Origin
19 that indicates that this home was being sold for salvage?

20 A. I don't see anything that says that,
21 Commissioner.

22 Q. Anything that --

23 A. Except it does say that -- you know, not
24 assuming any responsibility.

25 Q. Does it say anything about not being sold for

1 habitation?

2 A. No.

3 COMMISSIONER MURRAY: Thank you.

4 JUDGE JONES: Commissioner Appling?

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. The stamp on there -- coming from a new home
7 builder, would that stamp be on a Certificate of Origin? If
8 it's a new modular home, why would the manufacturer put on
9 there assumes no responsibility for it?

10 A. It's my understanding that the reason this was
11 put on here is that this home was damaged in transit somewhere
12 between the time the HUD labels were put on at the factory or
13 the plant and its arrival at the dealer's location. And
14 because of that damage, the HUD labels were removed and this
15 Certificate of Origin was stamped in that manner.

16 COMMISSIONER APPLING: Okay. Thank you. No
17 further questions, Judge.

18 JUDGE JONES: Thank you.

19 Mr. Krueger?

20 Let me ask Mr. Harrison, do you have more
21 questions for Mr. Pleus?

22 MR. HARRISON: Can I look at an exhibit real
23 quick, please?

24 JUDGE JONES: Yes, you may.

25 MR. HARRISON: The MSO.

1 FURTHER CROSS-EXAMINATION BY MR. HARRISON:

2 Q. One thing I want to clarify because I didn't
3 quite understand from your testimony. Exhibit 16, the
4 manufacturer's certificate, is there anywhere on the face of
5 that document that says the home was transferred to A&G new,
6 used? There's no statement whether it's new, used or anything
7 else, is there?

8 A. No.

9 Q. There's no express statement?

10 A. Normally a Certificate of Origin from a
11 manufacturer represents a new home.

12 Q. But there's nothing on there that says that?

13 A. That's correct.

14 Q. Plus, there's a stamp on there that you've
15 testified?

16 A. Yes.

17 Q. One that says notice -- or whatever it is,
18 notice to owner, but even that stamp doesn't say whether the
19 home is new, used or anything else?

20 A. No. As I stated, the Certificate of Origin for
21 a manufacturer usually represents a new home.

22 Q. Well, but in this case that document doesn't
23 say new, used --

24 A. That's correct.

25 Q. -- salvage?

1 Doesn't say anything in that regard, does it?

2 A. That's correct.

3 MR. HARRISON: Okay.

4 JUDGE JONES: Mr. Krueger?

5 FURTHER REDIRECT EXAMINATION BY MR. KRUEGER:

6 Q. Mr. Pleus, I may be mistaken, but I think you
7 answered one question two different ways, so I'd like to
8 clarify what your position is on it. Do you have an opinion
9 on whether it is a violation of the law to sell a new home as
10 used?

11 MR. HARRISON: I'll object. He's not been
12 disclosed as an expert, invades the province of the
13 Commission, it's calling for a legal conclusion.

14 JUDGE JONES: Mr. Pleus has been giving
15 opinions like this most of his testimony now.

16 MR. HARRISON: I don't think he's been asked --
17 the record will speak for itself, I guess. I don't think he
18 was asked this direct question.

19 MR. KRUEGER: I think he was asked this
20 question twice. I believe on one occasion he said yes, on the
21 other occasion he said no and I'm just asking for
22 clarification of what his position is.

23 JUDGE JONES: I'll allow the question. The
24 objection's overruled.

25 THE WITNESS: Could you restate the question?

1 MR. KRUEGER: Would you read it back, please?

2 THE COURT REPORTER: "Question: Do you have an
3 opinion on whether it is a violation of the law to sell a new
4 home as used?"

5 THE WITNESS: To sell a new home as a used
6 home, it -- it appears that the statutory definitions of new
7 home would require a new home to be sold as a new home unless
8 it's sold to someone other than the first consumer that's
9 going to use it for purposes other than resale.

10 MR. KRUEGER: Thank you.

11 JUDGE JONES: Commissioner Gaw, any questions
12 of Mr. Pleus? Commissioner Murray?

13 COMMISSIONER MURRAY: No.

14 JUDGE JONES: Commissioner Appling?

15 COMMISSIONER APPLING: No further questions.

16 JUDGE JONES: All right. You may step down,
17 Mr. Pleus.

18 MR. KRUEGER: Staff calls Don Higgenbotham.

19 (Witness sworn.)

20 JUDGE JONES: Thank you.

21 DON HIGGENBOTHAM testified as follows:

22 DIRECT EXAMINATION BY MR. KRUEGER:

23 Q. State your name and address for the record,
24 please.

25 A. My name is Don Higgenbotham. And my address is

1 PO Box 1115, Camdenton, Missouri.

2 Q. What is the street address there?

3 A. We don't have one yet.

4 Q. Do you live in a manufactured home?

5 A. Yes.

6 Q. Do you recall when you purchased that home?

7 A. As far as exact date?

8 Q. Yes.

9 A. No. I can tell you the year.

10 Q. What year did you purchase it?

11 A. 2002.

12 Q. Do you know when you made the agreement to
13 purchase it?

14 MR. HARRISON: I'll object to the question as
15 being vague. Do you mean signed a contract, made an oral
16 agreement?

17 BY MR. KRUEGER:

18 Q. Signed a contract. Do you know when you signed
19 a contract to purchase the home?

20 JUDGE JONES: Do you withdraw your objection?

21 MR. HARRISON: I think he's withdrawn the
22 question, hasn't he?

23 MR. KRUEGER: I will.

24 BY MR. KRUEGER:

25 Q. Do you know when you signed a contract to

1 purchase the home?

2 A. No, sir, I don't.

3 Q. Do you know when you took delivery of the home?

4 A. No, sir.

5 Q. Do you know when you paid for the home?

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

7 Q. Do you know what kind of a home it is, who the
8 manufacturer is?

9 A. It's a Skyline.

10 Q. Do you know the model name?

11 A. No, I don't.

12 Q. Do you know the model year?

13 A. 2000, I think. I don't know for sure. I don't
14 know. I think it's a 2000.

15 Q. Okay. Do you recall where you went to purchase
16 the home?

17 A. Amega.

18 Q. And where is that located?

19 A. Columbia.

20 Q. It's Amega Sales, Inc.?

21 A. Yes.

22 Q. Do you recall whom you dealt with there?

23 A. No, sir, I don't.

24 Q. Now, Mr. Higgenbotham, I understand that you
25 were involved in an accident and suffered a head injury; is

1 that correct?

2 A. Yes, sir.

3 Q. And as a result of that accident, your
4 long-term memory is not very good?

5 A. Yes, sir.

6 Q. When did that accident occur?

7 A. July of last year.

8 Q. Was that after you purchased and took delivery
9 of the home and paid for it?

10 A. Yes, sir.

11 Q. So the circumstances surrounding the
12 transaction occurred before your accident?

13 A. Yes, sir.

14 MR. KRUEGER: Okay. May I approach the
15 witness, your Honor?

16 JUDGE JONES: Yes, you may.

17 BY MR. KRUEGER:

18 Q. I'm going to show you a copy of a document that
19 was previously entered into evidence as Exhibit 1 and ask if
20 you can identify that document?

21 A. It's a sales contract.

22 Q. Calling your attention to the signature in the
23 lower right-hand corner of that document, do you recognize
24 that signature?

25 A. Yes. That is my signature.

1 JUDGE JONES: I'm going to interrupt you just
2 briefly. Mr. Higgenbotham, while you're looking at that
3 document, why don't you lower the microphone closer to your
4 mouth. Thank you.

5 BY MR. KRUEGER:

6 Q. Mr. Higgenbotham, did you prepare that form?

7 A. I don't remember.

8 Q. Do you know who prepared it?

9 A. No, sir, I don't.

10 Q. Do you know when it was prepared?

11 A. Only by the date that's on it.

12 Q. Or the purpose of the form?

13 A. Trying to buy a home.

14 Q. But you're sure that is your signature?

15 A. Yes, sir.

16 Q. Okay. Calling your attention to the lower
17 left-hand corner of the document, there's part of a signature
18 there. Do you know whose signature that is?

19 A. No, sir, I don't.

20 Q. Okay. Do you know whether you paid sales tax
21 on this home?

22 MR. HARRISON: Objection. On which home? I
23 think the question's vague and argumentative. Are you talking
24 about the home that he actually bought?

25 MR. KRUEGER: Well, I'll ask it in two parts.

1 BY MR. KRUEGER:

2 Q. With regard to that home that is described in
3 that document you're looking at, do you know whether you paid
4 sales tax with regard to that home?

5 A. It says there's sales tax on this one. On this
6 form it says sales tax.

7 Q. With regard to the tax -- with regard to the
8 home that you're living in, do you know if you paid sales tax?

9 A. I don't believe so, but I couldn't be for sure.

10

11 MR. KRUEGER: May I approach the witness, your
12 Honor?

13 JUDGE JONES: Yes, you may.

14 BY MR. KRUEGER:

15 Q. I'm going to show you another document that's
16 been marked for identification as Exhibit 2 and ask if you can
17 identify that document?

18 A. It says it's a Consumer Complaint Form.

19 Q. Do you see the signature at the bottom
20 left-hand side of that document?

21 A. Yes, sir.

22 Q. Is that your signature?

23 A. Yes, sir.

24 MR. KRUEGER: I'd offer Exhibit 2, your Honor.

25 JUDGE JONES: Mr. Harrison, any objection?

1 MR. HARRISON: I don't think there's been a
2 sufficient foundation laid as to what it is, what home it
3 relates to, whether it has anything to do with this case.
4 Also object on basis of relevance.

5 MR. KRUEGER: He's identified the document as a
6 Consumer Complaint Form. He's indicated that that is his
7 signature on it. There's been some objections previously
8 about the document speaking for itself and there are -- so the
9 information with regard to the home that is referred to is
10 covered by that.

11 JUDGE JONES: I'll overrule the objection.
12 Exhibit 2, Mr. Krueger, is it?

13 MR. KRUEGER: Yes, your Honor.

14 JUDGE JONES: Is admitted into the record.

15 (Exhibit No. 2 was received into evidence.)

16 BY MR. KRUEGER:

17 Q. With respect to that document, you see the date
18 in the lower right-hand corner of the document?

19 A. Yes, sir.

20 Q. What date is shown there?

21 A. 10/23/02.

22 Q. Do you recall preparing this form?

23 A. No, sir, I don't.

24 Q. Do you recall signing the form?

25 A. No, sir, I don't.

1 Q. But you're sure that is your signature?

2 A. Yes, sir, I am.

3 Q. Do you see your name and address in the top
4 left part of this form?

5 A. Yes, sir.

6 Q. Is that where you now live?

7 A. Yes, sir.

8 Q. And is that where you lived on October 23rd,
9 2002?

10 A. Yes, sir.

11 Q. Okay.

12 MR. KRUEGER: May I approach the witness, your
13 Honor?

14 JUDGE JONES: Yes, you may.

15 BY MR. KRUEGER:

16 Q. I'm going to show you now a document that's
17 been marked for identification as Exhibit 3. Can you identify
18 that document?

19 A. It says Stipulation of Settlement.

20 Q. And I call your attention to the second page of
21 that document.

22 A. Yes, sir.

23 Q. Do you see your signature in the lower
24 right-hand corner of the document?

25 A. Yes, sir.

1 Q. Are you familiar with your wife's signature?

2 A. Yes, sir.

3 Q. And what is her name?

4 A. Terri.

5 Q. Do you see her signature there as well?

6 A. Yes, sir.

7 Q. And do you see the signatures in the lower
8 left-hand corner of the document?

9 A. Yes, sir.

10 Q. Do you know whose signatures those are?

11 A. Only by the printed underneath. I can't read
12 the signature.

13 Q. Okay. Do you recall signing this Stipulation
14 of Settlement?

15 A. No, sir, I'm sorry. I don't.

16 Q. But you are sure that is your signature?

17 A. Yes, sir.

18 Q. You understand that this is a legal document?

19 A. Yes, sir.

20 Q. Would you sign such a document if you did not
21 agree with what it said?

22 A. I don't believe I would, sir.

23 Q. Do you recall if you had an attorney when you
24 signed this document?

25 A. Yes, sir.

1 Q. And what is that attorney's name?

2 A. Greg Williams.

3 Q. And where is his office?

4 A. Sunrise Beach, Missouri.

5 Q. Do you know if you consulted with your attorney
6 before you signed this document?

7 A. Yes, sir.

8 Q. Call your attention to the paragraph numbered 1
9 on the first page. Do you see where it states, Purchasers and
10 seller do hereby agree that the fair value of the home as
11 delivered and installed by seller to purchasers is \$38,321.63?

12 A. Yes, sir, I see that.

13 Q. Do you know if you agree with that?

14 A. Yes, sir.

15 Q. And you do?

16 A. Yes. It says I did, so --

17 Q. Okay. And the date of this document is
18 March 17th, 2003; is that correct?

19 A. Yes.

20 Q. And there's also a provision -- there's also a
21 paragraph there numbered 3 entitled Refund of Sales Tax. Do
22 you see that?

23 A. Yes, sir.

24 Q. And that states that sales tax in the amount of
25 \$2,578.37 has heretofore been paid by purchasers to seller.

1 Do you see that?

2 A. Yes.

3 Q. It's at the top of page 2.

4 A. I see that.

5 Q. So based upon that, do you believe that you
6 paid sales tax on the home that you now live in?

7 A. According to this document, I assume I did, I
8 guess.

9 Q. Do you have any reason to doubt it?

10 A. No, I don't, sir.

11 MR. KRUEGER: Okay. I'd offer Exhibit 3, your
12 Honor.

13 JUDGE JONES: Mr. Harrison?

14 MR. HARRISON: No objection.

15 JUDGE JONES: Exhibit 3 is admitted into the
16 record.

17 (Exhibit No. 3 was received into evidence.)

18 MR. KRUEGER: That's all the questions I have
19 for this witness, your Honor.

20 JUDGE JONES: Thank you.

21 Chairman Gaw?

22 QUESTIONS BY CHAIR GAW:

23 Q. Mr. Higgenbotham, may I ask, is your wife here
24 today?

25 A. No, sir, she's not.

1 Q. And was she asked to be here?

2 A. No, sir, she wasn't.

3 Q. Does she have knowledge of the events in regard
4 to this transaction and the subsequent matters that occurred?

5 A. No, sir. I dealt with most of it.

6 Q. You did yourself?

7 A. Yes.

8 CHAIR GAW: I'm going to pass right now, Judge.

9 Thank you.

10 JUDGE JONES: Commissioner Murray, do you have
11 questions?

12 COMMISSIONER MURRAY: Maybe a couple. Thank
13 you, Judge.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Mr. Higgenbotham, did you say that you do not
16 recall who you purchased the home from?

17 A. As far as the salesman or --

18 Q. Who was the seller, do you know?

19 A. Amega Homes is all I really remember. I mean,
20 I don't, like, per se, know exact person I dealt with, no.

21 Q. But it's your testimony that you purchased the
22 home from Amega Sales?

23 A. Yes.

24 Q. And let's see. I haven't really had a chance
25 to look closely at this Exhibit No. 3, but it's called a

1 Stipulation and Settlement. And I'm having -- I'm a little
2 bit confused about what this actually represents. But on
3 page 2 of that exhibit that is your signature and your wife's
4 signature; is that right?

5 A. Yes.

6 Q. And then there was a signature line for Amega
7 Sales and that looks like you said -- I believe you said you
8 couldn't identify that except from the printed line; is that
9 right?

10 A. Yes.

11 Q. And that's Greg DeLine, president of Amega
12 Sales --

13 A. Yes.

14 Q. -- as the seller?

15 And then below that Greg DeLine, president of
16 A&G Commercial Trucking, Inc. as the seller?

17 A. Yes.

18 Q. So when you purchased this home, was it your
19 understanding that you were purchasing a new home or a used
20 home?

21 A. I don't -- I don't remember.

22 Q. And do you have any record of any money that
23 changed hands, any documentation that shows anything about any
24 checks written or anything of that nature?

25 A. No, I don't. Not on me or nothing, no.

1 Q. Have you discussed this with your wife?

2 A. As far as?

3 Q. Whether you have any documentation.

4 A. No, I haven't talked to her about it.

5 COMMISSIONER MURRAY: I think that's all I
6 have. Thank you.

7 JUDGE JONES: Commissioner Davis?

8 QUESTIONS BY COMMISSIONER DAVIS:

9 Q. Mr. Higgenbotham, how many homes have you --
10 how many manufactured houses have you purchased since your
11 first meeting at Amega or when you went to Columbia -- since
12 your first trip to Columbia?

13 A. One.

14 Q. One in total?

15 A. I bought and paid for?

16 Q. Right.

17 A. Yes. Just the one I'm in.

18 Q. So the one you went and picked out in Columbia
19 is the one you're living in now?

20 A. Yes.

21 COMMISSIONER DAVIS: Okay. I'm going to pass
22 for now.

23 JUDGE JONES: Commissioner Appling?

24 COMMISSIONER APPLING: No questions.

25 JUDGE JONES: I just -- go ahead, Commissioner

1 Murray.

2 COMMISSIONER MURRAY: Just one more.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Do you have a loan on this home?

5 A. We have a loan on the property.

6 Q. Does that include the home --

7 A. Yes.

8 Q. -- or just --

9 A. But -- it's a real estate/home, it's not the
10 home, per se, by itself, but it's the whole piece.

11 Q. And the lender is -- the name of the lender?

12 A. Central Bank, my bank. It's -- it's a
13 commercial loan.

14 COMMISSIONER MURRAY: Thank you.

15 QUESTIONS BY JUDGE JONES:

16 Q. Mr. Higgenbotham, I want to try to jog your
17 memory. It looks like you entered into a contract for a new
18 home and a used home was delivered which resulted in this
19 Stipulation and Agreement?

20 A. We'd looked at several. I mean, we looked at a
21 lot.

22 Q. A lot of new homes?

23 A. A lot of homes. We looked -- we looked all
24 over. My wife and I discussed that this morning and she
25 thought the same thing, that maybe when we first went there we

1 were looking at used homes when we first went there and then
2 we went all over.

3 Q. Well, do you have this Stipulation in front of
4 you?

5 A. Yes.

6 Q. In the second paragraph it says that you
7 entered into a contract for the purchase of a new 2001 Skyline
8 home for 66,000 and that a 1999 was delivered, which I suppose
9 you entered into a contract for one thing and you got
10 something else and then you all agreed to settle on the
11 difference in prices. Do you remember that? I'm not trying
12 to put words in your mouth, but do you remember those facts as
13 are reflected in this agreement?

14 A. As what I see here reflected with -- yes, I do
15 remember this way here, but not as far as just, say, free-term
16 memory, no.

17 Q. I understand.

18 JUDGE JONES: Okay. I don't have any other
19 questions.

20 Commissioner Gaw?

21 CHAIR GAW: No.

22 JUDGE JONES: Commissioner Appling?

23 QUESTIONS BY COMMISSIONER APPLING:

24 Q. Do you remember ever signing -- let me get this
25 thing working here.

1 Do you remember ever signing a contract for
2 homes before you purchased this last one? Was there contracts
3 ever prepared and you, in fact, signed a contract for a home?
4 Can you remember that?

5 A. No, I don't. I'm sorry, I don't remember that.

6 COMMISSIONER APPLING: Okay.

7 JUDGE JONES: Commissioner Davis?

8 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

9 Q. Mr. Higgenbotham -- am I on? To the best of
10 your recollection, do you ever recall meeting with anyone from
11 A&G Trucking?

12 A. No, sir, I don't. As far as I can remember,
13 no, but I might have and I just don't remember it. I'm sorry.

14 Q. Let me ask you this. To the best of your
15 knowledge, all of your dealings were with Amega; is that
16 correct?

17 A. To the best of my knowledge, yes.

18 Q. And when you first purchased this home, did you
19 think it was a new home?

20 A. It looked new, but I don't remember really what
21 we thought at the whole time. There was a lot going on at
22 that time. We were clearing property, I was building a new
23 shop, you know. So, no, I can't say -- you know, I assumed it
24 was, but I didn't know.

25 Q. So you did assume that it was a new home.

1 Correct?

2 A. I can't honestly say one way or another. I
3 would assume just because you would think that, but I don't
4 remember because we had looked at lot. So I don't know, you
5 know, per se. That one, I don't know.

6 Q. Do you believe that is an assumption that you
7 made at the time?

8 A. I'd hate to say one way or the other. I
9 don't -- you know, by looking at paperwork, you would -- it
10 would look like I did, but as memory, I can't say that I do
11 remember that at the time, if we did agree to a used home or a
12 new home at the time. I assumed it was, you know, I -- by the
13 paperwork it looks like it would have been. As far as my own
14 memory, no, I can't say that I do.

15 Q. Have you ever had any contact with Mr. DeLine?

16 A. As far as?

17 Q. Since you purchased the home.

18 A. No. No, sir.

19 COMMISSIONER DAVIS: No further questions.

20 JUDGE JONES: Okay. Mr. Harrison, do you have
21 questions of Mr. Higgenbotham?

22 MR. HARRISON: I do. I'll try to be as brief
23 as I can.

24 CROSS-EXAMINATION BY MR. HARRISON:

25 Q. Sir, I think you testified that when you were

1 shopping for homes, you looked at several. Is that a fair
2 statement?

3 A. Yes.

4 Q. And when you were at the sales lot there that
5 you testified about earlier in Columbia, did you look at
6 several there?

7 A. Yes.

8 Q. Is it possible that you entered into more than
9 one written contract to purchase?

10 MR. KRUEGER: Objection, asks the witness to
11 speculate.

12 JUDGE JONES: You've had some leeway on that
13 objection in your favor, Mr. Krueger, and in the interest of
14 justice, I'll overrule your objection.

15 You may answer the question, Mr. Higgenbotham.

16 THE WITNESS: Yes, I'm sure we did. I mean --

17 BY MR. HARRISON:

18 Q. All right. And the home that you ultimately
19 bought you took title jointly with your wife. Right?

20 A. Yes.

21 Q. Her name's Terri, just for the record?

22 A. Yes.

23 Q. All right. Now, I'd like you to look at
24 Exhibit 3 there that I think you have, that's the Stipulation
25 of Settlement. And then somewhere on your desk there there

1 should be an Exhibit 1, which is the Form 500 that you were
2 asked questions about. Do you have that also?

3 A. Yes.

4 Q. I'd like to ask you some questions sort of
5 comparing the two. All right?

6 A. Okay.

7 Q. On the Stipulation of Settlement, Exhibit 3, in
8 the second paragraph it describes -- it says the total
9 purchase price was 66,478,37. Do you see that?

10 A. Yes.

11 Q. That number appears nowhere on the Form 500
12 though, does it?

13 A. No, sir.

14 Q. Also on the Stipulation of Settlement it's got
15 a sales tax number of \$2,578.37. Do you see that?

16 A. Yes, sir.

17 Q. That number does not appear anywhere in the
18 Form 500?

19 A. No, sir.

20 Q. I'm right? My statement's correct?

21 A. Yes, you are. It's --

22 Q. So do those differences lead you to believe
23 that the document referenced in Exhibit 3 is not the same as
24 the Form 500?

25 A. Yes.

1 Q. All right. It's not the Form 500 --

2 A. Yes.

3 Q. -- in Exhibit 1 anyway. Right?

4 A. Exactly.

5 Q. Okay. Now, you testified earlier that with
6 respect to the Stipulation of Settlement, paragraph 1 says
7 that the cash purchase price was \$38,321.63. Do you see that?

8 A. Yes, sir.

9 Q. So as far as you know, is that the amount that
10 you paid actually for the home that you live in?

11 A. Yes, sir.

12 Q. Paragraph 2 of the Stipulation of Settlement,
13 I'd like to ask you some questions about that. You
14 acknowledge the -- I'm going to read the first sentence,
15 Purchasers and seller do hereby agree that the home delivered
16 to purchasers is not a, quote, new, closed quote, manufactured
17 home and is a, quote, used, closed quote, manufactured home
18 for which a, quote, salvage, closed quote, title will be
19 transferred from A&G Commercial Trucking, Inc. to purchasers
20 contemporaneously with the execution of this settlement
21 agreement.

22 Did I read that correctly?

23 A. Yes, sir.

24 Q. Is it true, therefore, that you acknowledged
25 and recognize -- and as you sit here today you acknowledge,

1 that the home you bought was a used home?

2 A. Yes, sir.

3 Q. All right. Paragraph 2 also says, reading
4 further, that you agree to purchase -- to accept the home
5 as-is and where-is; is that correct?

6 A. Yes, sir.

7 Q. You acknowledge that you've had the home
8 inspected to your satisfaction; is that correct?

9 A. Yes, sir.

10 Q. And was that correct at the time you signed
11 Exhibit 3?

12 A. According to the paperwork, yes, it had to have
13 been.

14 Q. You don't have any reason to think it wasn't?

15 A. No. I wouldn't have any reason to disagree.

16 Q. Reading on in paragraph 2 it says, Purchaser
17 does further agree to accept the installation of the home by
18 seller, quote, as-is, closed quote, and, quote, where-is,
19 closed quote.

20 Do you see that?

21 A. Yes.

22 Q. All right. Reading on, I think it's the last
23 sentence, I won't quote, I'll paraphrase for the most part,
24 Purchasers agree to accept any non-conformities.

25 Do you see that?

1 A. It's the last --

2 Q. Fifth line up.

3 A. Yes, I see.

4 Q. Purchasers agree to accept any non-conformities
5 to federal, state or local regulations that may exist with
6 respect to the home.

7 Did I read that correctly?

8 A. Yes.

9 Q. And that was your agreement?

10 A. Yes.

11 Q. And you acknowledge that neither seller has any
12 more or additional service set-up or warranty liability with
13 respect to the home whatsoever.

14 Did you read that?

15 A. Yes.

16 Q. Or did I read that correctly?

17 A. Yes.

18 Q. And that was the agreement you made when you
19 signed the stipulation. Correct?

20 A. Yes.

21 Q. Now, with respect to sales tax, you've already
22 testified that the sales tax number referenced in this
23 stipulation of 2,578.37 is not the same as the sales tax
24 number in the Form 500. Do you remember that testimony?

25 A. Yes, sir.

1 Q. And, in fact, with respect to the home that you
2 actually purchased, this stipulation says that no sales tax
3 was due, according to the stipulation?

4 A. Yes, sir.

5 Q. So is it, in fact, your testimony that you did
6 not pay sales tax on the home -- ultimately on the home that
7 you purchased?

8 A. According to this, yes.

9 Q. And do you have any reason to disagree with
10 that?

11 A. No. I have no reason to disagree with it.

12 Q. All right. The stipulation also says in
13 paragraph 4 that the actual seller of the home was A&G
14 Commercial Trucking, Inc.

15 Did I read that correctly?

16 A. Yes, sir.

17 Q. As far as you know, did you take title to your
18 home from A&G Commercial Trucking, Inc.?

19 A. As far as I know according to this, yes.

20 Q. All right. There's another exhibit I'd like to
21 show you.

22 A. Okay.

23 MR. HARRISON: Judge, do you know where Exhibit
24 15 is?

25 BY MR. HARRISON:

1 Q. Sir, I've handed you Exhibit 15. Do you have
2 that in front of you?

3 A. Yes, sir.

4 Q. That's a Certificate of Title that's in
5 evidence in this case. On page 1 does it show A&G Commercial
6 Trucking, Inc. as the owner of the manufactured home?

7 A. Yes, sir.

8 Q. I don't suppose -- as far as you know, is that
9 the Certificate of Title for the home that you purchased from
10 A&G Commercial Trucking?

11 A. As far as I know, yes, sir.

12 Q. If you'd look at page 2, please, at the top
13 there under the assignment part, your name and your wife's
14 name appear?

15 A. Yes, sir.

16 Q. And there's a dollar amount of 38,321.63?

17 A. Yes, sir.

18 Q. Which is also exactly the same amount
19 referenced in paragraph 1 of the Stipulation of Settlement.
20 Correct?

21 A. Yes, sir.

22 Q. Now, when you were dealing with -- when you
23 were engaging in the negotiations that led up to your purchase
24 of this home, that was going on on the Amega lot, sales lot?
25 I think that was your testimony earlier.

1 A. Yes, sir.

2 Q. Looking at the documents that I've shown you,
3 namely the Stipulation of Settlement and the Certificate of
4 Title, you'd agree, wouldn't you, that the actual seller of
5 the home was A&G Commercial Trucking?

6 MR. KRUEGER: Objection. Counsel is leading
7 the witness and calling for legal conclusion.

8 MR. HARRISON: Cross-examination.

9 JUDGE JONES: It is cross-examination, but it
10 seems like you've asked that question, haven't you?

11 MR. HARRISON: I don't think I've come to the
12 crescendo here. I'm trying to make a point.

13 JUDGE JONES: Go ahead and ask the question,
14 Mr. Harrison.

15 BY MR. HARRISON:

16 Q. In fact, the seller of the home was A&G
17 Commercial Trucking, Inc.?

18 A. According to this document, yes.

19 Q. You don't have any reason to disagree with
20 that?

21 A. No, I don't.

22 Q. More to the point, I think you were asked a
23 question earlier of who the seller of the home was and I think
24 your testimony was it was Amega Sales?

25 A. Yes.

1 Q. And that is not your testimony, in fact.

2 Correct? Your testimony is that the seller was A&G --

3 A. Yes.

4 Q. -- based on the documents?

5 A. Based on the documents, yes.

6 Q. All right. I don't want there to be any
7 confusion about this. As I said, I think your testimony
8 previously with respect to that question was that it was Amega
9 Sales and you're saying that that is not correct based on
10 these documents?

11 A. What I was referring to was I'd looked at it
12 there.

13 Q. Right. That's --

14 A. Yeah. I mean, who I actually got it from --
15 until this, no.

16 Q. All right. Thank you.

17 Look again at the Certificate of Title, if you
18 would, please. Do you have that in front of you?

19 A. Yes, sir.

20 Q. Do you know -- well, do you know that your home
21 that you actually live in is not a model -- is not a 2001
22 model. Correct?

23 A. Yes. Now with the Certificate of Title, yes.

24 Q. All right. The Form 500 that's in -- well,
25 I've already asked you that. Never mind.

1 The Form 500 that's Exhibit 1 -- I'm sorry to
2 jump around between exhibits here, but do you have that in
3 front of you?

4 A. Yes, sir, I do.

5 Q. It's correct, isn't it, that that does not
6 describe the home that you ultimately purchased from A&G
7 Trucking?

8 A. Yes. According to the documents, no.

9 Q. The home that you bought is not a 2001?

10 A. No, sir.

11 Q. My statement is correct?

12 A. Yes.

13 Q. Yeah. As you sit here today, are you and, as
14 far as you know, your wife satisfied with the transaction that
15 we're talking about here?

16 A. Yes, sir.

17 Q. Are you happy with the way the transaction
18 turned out?

19 A. Yes, sir.

20 Q. Are you happy with and satisfied with the
21 physical condition of the home?

22 A. Yes, sir.

23 Q. Are you happy with the set-up and delivery of
24 the home --

25 A. Yes, sir.

1 Q. -- as you sit here?

2 I'm sorry?

3 A. Yes.

4 Q. Are you happy with the financial terms of the
5 transaction?

6 A. Yes.

7 Q. And specifically are you happy with the
8 financial terms not necessarily with your loan but as between
9 you and A&G Trucking; in other words, the purchase price?

10 A. Yes. We're happy.

11 Q. And as you sit here today, are you happy with
12 all aspects of the transaction, all things considered?

13 A. Yes. Everything's fine with us. We're happy
14 with the whole situation the way it worked out.

15 Q. Would it be a correct, true and fair statement
16 that Mr. DeLine and his companies did what they said they
17 would do with regard to your transaction?

18 A. Yes.

19 Q. You don't have any claim against them?

20 A. No, sir.

21 Q. You don't have any reason to have them
22 prosecuted?

23 A. No, sir.

24 Q. You don't have any reason to sue them?

25 A. No, sir.

1 Q. You don't have any --

2 JUDGE JONES: This is going on. He's happy.
3 He's not unhappy about anything.

4 MR. HARRISON: Yes, he is. He's absolutely
5 happy.

6 JUDGE JONES: Okay. Don't ask any more
7 questions along that line.

8 BY MR. HARRISON:

9 Q. Ultimately, Mr. DeLine and his company said
10 they would get you in a home and that's what they did?

11 A. Yes, sir.

12 Q. All right.

13 MR. HARRISON: No more questions right now.

14 JUDGE JONES: Mr. Krueger?

15 MR. KRUEGER: Thank you, your Honor.

16 REDIRECT EXAMINATION BY MR. KRUEGER:

17 Q. Mr. Higgenbotham, do you know how much you
18 finally paid for the purchase of the home in which you're now
19 living?

20 A. Just what's on this piece of paper right here.

21 Q. Do you have a recollection of how that payment
22 was made?

23 A. I assume through the bank.

24 Q. Did you write a check?

25 A. No, sir.

1 Q. Did you sign a note?

2 A. Yes, sir.

3 Q. Was that note for the purchase of the
4 manufactured home or was it for the purchase of the lot on
5 which the home now sits?

6 A. The note?

7 Q. You said you signed a note.

8 A. Yes. It was for everything.

9 Q. Do you know when you signed that note?

10 A. No, sir. Not without going to the bank and
11 finding the records on it to find the exact date, no.

12 Q. I believe you testified that, to your
13 knowledge, you didn't have any dealing with A&G. Did you so
14 testify?

15 A. Yes.

16 Q. No one ever identified themselves to you as
17 representing A&G Commercial Trucking?

18 A. No, sir. From the best of my knowledge, no, I
19 don't really remember that specific thing, no.

20 Q. Did the name of A&G Commercial Trucking ever
21 come to your attention before the time that this lawsuit was
22 settled?

23 A. I don't remember.

24 Q. It states in Exhibit 3, the Stipulation of
25 Settlement, paragraph 3, that the seller agreed to refund

1 sales tax in the amount of \$2,578.37?

2 A. Yes, sir.

3 Q. And was that refund made?

4 A. Yes, sir. Best of my knowledge, I guess it
5 was.

6 Q. So you did pay the sales tax and then it was
7 refunded; is that correct?

8 A. I assume so, yes.

9 Q. The Stipulation of Settlement states that you
10 agreed that the fair value of the home as delivered was
11 \$38,321.63 --

12 A. That is --

13 Q. -- as stated in paragraph 1. Do you see that?

14 A. This is what it says, yes.

15 Q. Do you know how that number was arrived at?

16 A. No, sir, I don't.

17 Q. Was that price reduced as a part of the
18 settlement of a claim against Amega?

19 A. I don't remember all that, sir.

20 Q. Did you make a claim against Amega?

21 A. I contacted an attorney.

22 Q. Did you file a lawsuit?

23 A. The attorney took care of all of that. I don't
24 know what all took place. I don't remember any of that.

25 Q. And this Stipulation of Settlement was a

1 settlement of your claims against Amega?

2 A. Apparently so, yes, sir.

3 Q. Do you know why you filed claims against Amega?

4 MR. HARRISON: Assumes facts not in evidence.

5 I think he said he didn't know if he filed any claims. Object
6 to the question.

7 JUDGE JONES: Objection sustained.

8 BY MR. KRUEGER:

9 Q. Do you know why you contacted an attorney?

10 A. No. I don't remember why the exact cause was
11 we contacted him.

12 Q. Do you recall if at the time you contacted the
13 attorney, you were happy with the home?

14 A. I have no reason to doubt that I wasn't. I
15 don't know.

16 Q. Do you know if there were HUD labels on the
17 home?

18 A. I did-- no, sir, I don't.

19 Q. Do you remember signing any document other than
20 the document that was marked as Exhibit 1 for the purchase of
21 a home from Amega?

22 A. Not without having a copy of it here, no.

23 Q. You don't remember signing any other document?

24 A. No, sir.

25 Q. I believe you testified it was possible that

1 you may have signed more than one document?

2 A. It -- yes, it could have been.

3 Q. But you don't recall signing more than one?

4 A. No, I don't.

5 Q. Do you have any other documents for the
6 purchase of a home from Amega other than the home that you're
7 now living in?

8 A. No, I don't. I don't believe so.

9 Q. When you agreed to buy the home that you're now
10 living in, was it sitting on Amega's lot or was it somewhere
11 else?

12 A. I assumed it was on Amega's lot.

13 MR. KRUEGER: Thank you. That's all the
14 questions I have.

15 JUDGE JONES: Chairman Gaw? Commissioner
16 Murray?

17 COMMISSIONER MURRAY: I don't think so. Thank
18 you.

19 JUDGE JONES: Commissioner Davis?

20 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

21 Q. Mr. Higgenbotham, how long have you lived in
22 your current residence?

23 A. Two years. I guess it will be two years --
24 yeah, probably be two years. 2002, so yeah, that would be two
25 years.

1 Q. Okay. Do you remember at approximately what
2 point in 2002 you actually took possession?

3 A. Of the house, the lot or --

4 Q. Of the house.

5 A. No, I don't.

6 Q. Okay. Do you ever recall at any time being
7 unhappy with the house?

8 A. No. I really can't say I remember any -- a lot
9 of that. I just don't remember any of that. I'm sorry.

10 Q. Okay. If you moved into the house in 2002,
11 doesn't it seem a little bit unusual to you that you would
12 actually be signing a contract on it in March of 2003?

13 A. It was through my attorney. I don't know.

14 COMMISSIONER DAVIS: No further questions.

15 JUDGE JONES: Thank you.

16 Commissioner Appling -- oh, Commissioner
17 Murray? Commissioner Appling?

18 COMMISSIONER APPLING: Go ahead.

19 COMMISSIONER MURRAY: I'm so used to there not
20 being this many Commissioners that -- thank you.

21 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

22 Q. I wanted to ask a couple more questions about
23 Exhibit No. 3, which is the Stipulation and Settlement. First
24 of all -- and the second paragraph there it says, Whereas,
25 purchasers entered into a contract with Amega Sales, Inc. on

1 May 2nd, 2002 for the purchase of a new Skyline, is that -- do
2 you see that?

3 A. Oh, yes.

4 Q. And then do you still have Exhibit 1?

5 A. This (indicating)?

6 Q. The Amega --

7 A. This one (indicating)?

8 Q. Yes. And is that also dated May 2nd, 2002?

9 A. Yes.

10 Q. Now, it appears that there's some discrepancy
11 in the purchase price there and the sales tax amount in that
12 paragraph when you compare it with Exhibit 1; is that right?

13 A. Yes.

14 Q. And as I calculate that, it's a difference of
15 \$82.45, which appears in the sales tax portion. And my
16 question to you I suppose is, is it your understanding from
17 looking at Exhibit 3 that both parties, both you and Amega
18 Sales -- and I should say all three parties, I guess, and A&G
19 Commercial Trucking agreed by signing that document that you
20 had entered into a contract with Amega on May 2nd, 2002 to
21 purchase a new Skyline manufactured home; is that right?

22 A. This is what it states, yes.

23 Q. Okay. And then the next paragraph on that
24 exhibit says, Whereas, the manufactured home delivered to and
25 installed on purchaser's property is a 1999 Skyline which had

1 been damaged and for which salvage title had been issued to
2 A&G Commercial Trucking.

3 Do you see that as well?

4 A. Yes, I do.

5 Q. So in signing this agreement, was it your
6 understanding that you were saying we signed a contract to
7 purchase a home -- a new home on May 2nd, 2002, we took
8 delivery of a used home instead of the new home?

9 A. Yes. According to this document, that is what
10 it stipulates.

11 Q. And that you had paid something like in the
12 neighborhood of \$66,000 for that new home; is that right?

13 A. This says the sale price was that.

14 Q. And then in this agreement, this Stipulation
15 and Agreement, you both agreed -- you all agreed that the
16 purchase price should have been 38,000?

17 A. Yes.

18 Q. Approximately \$38,000?

19 A. To this document, yes.

20 Q. And this contract relieved you from any further
21 obligation under the -- to pay under that contract?
22 Apparently you had satisfied that amount by that time. Is
23 that your understanding?

24 A. Yes. that is correct.

25 Q. But there's nothing in this document, as I read

1 it, that indicates that you said that you did not agree to
2 purchase a new home or that you had not entered into a
3 contract to purchase a new home from Amega Sales back in
4 May of 2002. You did agree to purchase a new home from Amega
5 Sales in 2002 according to this document; is that right?

6 A. According to this document, yes.

7 Q. And Amega Sales agreed to sell you a new home
8 on May 2nd, 2002, according to this document?

9 A. According to this document.

10 Q. But according to this document, Amega Sales did
11 not deliver to you and install a new home?

12 A. According to this document.

13 COMMISSIONER MURRAY: Okay. Thank you. I
14 think that's all I have.

15 JUDGE JONES: Any other questions from the
16 Bench?

17 Seeing none, at this time we will break for
18 lunch and any questions you all may have for Mr. Higgenbotham
19 will be taken up thereafter. We'll return here at quarter
20 after 2:00. Is that a problem, Mr. Higgenbotham?

21 THE WITNESS: I'm just self-employed and it's
22 hard to be here.

23 MR. HARRISON: I have about two questions for
24 him and I could probably get my part done. I don't want to
25 inconvenience the witness, but it's up to the --

1 JUDGE JONES: Mr. Krueger, do you have any
2 other questions of Mr. Higgenbotham?

3 MR. KRUEGER: Can I have a moment?

4 JUDGE JONES: Yeah. A very, very brief moment.

5 MR. KRUEGER: I'll have just one question, your
6 Honor.

7 JUDGE JONES: Well, if he asks two questions,
8 that elicits three from you. I think we'll wait until after
9 the break.

10 MR. HARRISON: I was just trying to get the
11 witness out of here rather than making the witness wait.

12 JUDGE JONES: Well, okay. Mr. Harrison, go
13 right ahead.

14 FURTHER CROSS-EXAMINATION BY MR. HARRISON:

15 Q. Now, you were asked about whether you dealt
16 with anybody at A&G Trucking. Mr. Krueger asked you that
17 question?

18 A. Yes, I assume.

19 Q. Nobody came out and said, I'm with A&G
20 Trucking. Right?

21 A. I don't remember any of it, so I don't know.

22 Q. You didn't make any distinctions -- you dealt
23 with Mr. DeLine at some point. Correct?

24 A. I don't remember who I dealt with.

25 Q. All right.

1 A. I'm sorry.

2 Q. You're not saying -- as you sit here now, are
3 you, you're not saying that you were misled as to the
4 condition of the home you bought? I want to make clear that's
5 not what you're saying. You're not saying you were misled?

6 A. We were just trying to get in a home. That's
7 all we were doing. We were homeless, we were sleeping on the
8 floor, we were trying to get in a home. He was trying to get
9 us financing, so whatever we could get.

10 Q. I'm saying --

11 A. No. I don't remember.

12 Q. You're not saying --

13 A. No. I don't remember that.

14 Q. You're not saying you were misled in any way as
15 to the condition of the home, either the home you bought or
16 any home you looked at --

17 A. Not to the best of my memory, no.

18 Q. -- correct?

19 Okay. Now, the Stipulation of Settlement says
20 that the sale price for this 2001 was home \$66,478.37. It
21 doesn't say that you paid that amount, it just says that was
22 the price. Right?

23 A. Yes.

24 Q. And you don't have any recollection and it's
25 not your testimony that you, in fact, paid that amount?

1 A. No. I don't believe so. I don't know.

2 Q. All right.

3 A. No.

4 MR. HARRISON: No further questions.

5 JUDGE JONES: Mr. Krueger?

6 FURTHER REDIRECT EXAMINATION BY MR. KRUEGER:

7 Q. In the Stipulation of Settlement it states that
8 you agreed to buy a new home for the sales price of
9 \$66,000-plus and that you agreed that the home had a fair
10 value of 38,000-plus?

11 A. Yes.

12 Q. Do you agree with that?

13 A. That's what it says, yes.

14 Q. Do you know how you determined -- that's a
15 difference in value of approximately \$28,000. Correct?

16 A. Yes. Something like that.

17 Q. Do you know how you determined what that
18 difference in value was?

19 MR. HARRISON: Question's been asked and
20 answered, your Honor.

21 THE WITNESS: No, sir, I don't.

22 JUDGE JONES: I'll allow it. Objection
23 overruled.

24 THE WITNESS: No, sir, I don't know.

25 BY MR. KRUEGER:

1 Q. Do you know what factors were considered in
2 that?

3 A. No, sir, I don't.

4 MR. KRUEGER: Thank you. That's all.

5 JUDGE JONES: Thank you.

6 Mr. Higgenbotham, you may be excused, which
7 means you can leave.

8 THE WITNESS: Thank you, sir.

9 JUDGE JONES: Take care of the witness.

10 With that, we'll adjourn for lunch and return
11 at -- let's go ahead and make it 20 after 2:00, give us a
12 little more time.

13 (A RECESS WAS TAKEN.)

14 JUDGE JONES: We are back on the record with
15 Case No. MC-2004-0079, the record of Manufactured Housing Unit
16 versus Amega Sales.

17 Mr. Krueger, will you call your next witness,
18 please?

19 MR. HARRISON: Could I ask a question before we
20 do that?

21 JUDGE JONES: Yes, you may.

22 MR. HARRISON: Back on the thing we were just
23 discussing. So it's my understanding that you're telling me,
24 Judge, that the rules are that a quorum needs to be present
25 only when the Commission votes as opposed --

1 JUDGE JONES: Well, it's probably better I put
2 it this way. A quorum doesn't need to be present in order for
3 a hearing to proceed.

4 MR. HARRISON: I don't profess to be an expert
5 on Commission rules and procedure, but I just -- I would like
6 the record to reflect that at the moment there are only two
7 Commissioners here and that Commissioner Clayton has been
8 absent throughout the hearing.

9 JUDGE JONES: Yes.

10 MR. HARRISON: That's fine. I just want the
11 record to be clear on that.

12 JUDGE JONES: Mr. Krueger?

13 MR. KRUEGER: Director calls Tim Haden.

14 (Witness sworn.)

15 JUDGE JONES: Thank you.

16 Mr. Krueger.

17 TIM HADEN testified as follows:

18 DIRECT EXAMINATION BY MR. KRUEGER:

19 Q. State your name and address for the record,
20 please.

21 A. Tim Haden, PO Box 360, Jefferson City, Missouri
22 65102.

23 Q. By whom are you employed and in what capacity?

24 A. Missouri Public Service Commission as a
25 manufactured housing inspector for the Manufactured Housing

1 and Modular Units Program.

2 Q. When did you begin work as an inspector for the
3 Manufactured Housing and Modular Units Program?

4 A. August 1st, 1994.

5 Q. What are your duties as an inspector?

6 A. My primary duties are to respond to consumer
7 complaints and conduct site inspections regarding those
8 consumer complaints, report to the manufacturer of the home
9 and the dealer and the Director. I also conduct routine lot
10 inspections of dealer sales lots.

11 Q. And in these lot inspections you inspect the
12 manufactured homes that are found on the lots?

13 A. I do.

14 Q. New homes or used?

15 A. New homes.

16 Q. What do you look for when you perform these lot
17 inspections?

18 A. Primarily we look for any kind of transit
19 damage to the homes, obvious nonconformances that we may
20 observe on the home, HUD labels, data plates, any problems
21 that we find with the new homes on the sales lots.

22 Q. Do you prepare any kind of report about the
23 inspections?

24 A. We have a lot inspection form that we use to
25 fill out on each home that we look at.

1 MR. KRUEGER: May I approach the witness?

2 JUDGE JONES: Yes, you may.

3 BY MR. KRUEGER:

4 Q. I'm going to show you a copy of a document
5 that's been marked for identification as Exhibit 11 and ask if
6 you can identify that document?

7 A. This is one of my lot inspection reports that I
8 prepared at Amega sales lot in Ashland, Missouri. And I
9 prepared this on March 8th, 2002.

10 Q. Did you prepare that document in the normal
11 course and scope of your employment?

12 A. Yes. This was during a routine lot inspection
13 conducted at this sales lot.

14 Q. Is that your signature in the bottom right-hand
15 side of the document?

16 A. Yes, it is.

17 Q. I'm going to call your attention to the center
18 of the page where it says, Make, Skyline Corporation, 0125.
19 Do you see that?

20 A. Yes.

21 Q. Can you tell me the meaning of that entry?

22 A. This is a home that I looked at during this lot
23 inspection. The make of the home is -- indicates that it was
24 manufactured by Skyline Corporation.

25 Q. Does that document show the serial number for

1 that Skyline home?

2 A. Yes, it does.

3 Q. What is that serial number?

4 A. 01510412MA/B.

5 Q. Can you tell me what you found at the time of
6 the inspection of this home?

7 A. The first thing I noticed was that there were
8 no HUD labels displayed on the exterior of the home. I went
9 inside the home, appeared to be a new home to me, had the
10 appearance of a new home, there were still labels inside the
11 home. I made a few observations of problems that I found
12 walking through the home and I listed those problems here.

13 Q. What kind of labels did you find inside the
14 home?

15 A. I did find a data plate inside the home and I
16 did find some -- when I say "labels," I meant like a health
17 warning notice and some appliance labels that indicated to me
18 that there were new appliances and that the labels had not
19 been removed from the appliances.

20 Q. But there were no HUD labels?

21 A. There were no HUD labels at all.

22 Q. I believe the last line of that portion of the
23 lot inspection form reads, Lot labels missing, front drilled,
24 back not drilled. Did I read that correctly?

25 A. Yes. It says HUD labels missing, front

1 drilled, back not drilled.

2 Q. Did you write that?

3 A. Yes, I did.

4 Q. What did you mean by "front drilled, back not
5 drilled"?

6 A. The HUD labels are applied to the exterior or
7 siding of the home. There's four holes, one on each corner of
8 the HUD label. And I noticed that the front side of the home
9 had been drilled where the HUD label had previously been
10 installed, appeared to have been removed. The back side, the
11 vinyl siding had apparently been changed and there were no
12 drill holes in the vinyl siding.

13 Q. Now, calling your attention to the second line
14 of that portion of the report on the right-hand side it says,
15 HUD label number. Do you see that? That's printed on the
16 form.

17 A. Yes, I do.

18 Q. What does it say to the right of those words?

19 A. These are the HUD label numbers that were
20 originally installed on this home. It's ULI 499319 and 20.
21 That's two different labels.

22 Q. Does that mean that there was a HUD label or
23 was not?

24 A. There were originally HUD labels assigned to
25 this home.

1 Q. How did you know that there were originally HUD
2 labels assigned to the home?

3 A. There is a data plate on the inside of the home
4 that is -- lists information on it about the home. The data
5 plate was still present in this home and it had these numbers
6 listed on that data plate.

7 MR. KRUEGER: I'd offer Exhibit 11, your Honor.

8 JUDGE JONES: Any objection, Mr. Harrison?

9 MR. HARRISON: no objection.

10 JUDGE JONES: Exhibit 11 is admitted into the
11 record.

12 (Exhibit No. 11 was received into evidence.)

13 BY MR. KRUEGER:

14 Q. Do you see the writing in the right-hand margin
15 of that document?

16 A. Yes, I do.

17 Q. Would you read it, please?

18 A. It says, Red tag 3/13/02, red tag.

19 Q. What is the meaning of those words?

20 A. Red tag is a -- a name that we call a
21 prohibitive sale notice when we place on a home that --
22 obviously a home that contains non-compliances or missing HUD
23 labels we would apply this red tag to that home. And I noted
24 on 3/13/02 that I applied red tags to actually two different
25 homes on this list.

1 Q. Was the Skyline home that you testified about
2 one of those that it applied to?

3 A. Yes, it was.

4 MR. KRUEGER: May I approach the witness?

5 JUDGE JONES: Yes, you may.

6 BY MR. KRUEGER:

7 Q. I want to show you a document that's been
8 marked for identification as Exhibit 13 and ask if you can
9 identify that document?

10 A. This is a copy of the red tag that we use.

11 Q. Now, is that the red tag that you used on that
12 particular day -- a copy of the red tag that you used on that
13 particular day?

14 A. Yes, it's a copy.

15 Q. Of the tag or --

16 A. No. A copy of a red tag. It has the same
17 wording on it as the one I used, but it is a copy of a
18 different red tag probably.

19 Q. Standard form?

20 A. Standard form.

21 MR. KRUEGER: I'd offer Exhibit 13, your Honor.

22 JUDGE JONES: Mr. Harrison?

23 MR. HARRISON: No objection.

24 JUDGE JONES: Exhibit 13 is admitted into the
25 record.

1 (Exhibit No. 13 was received into evidence.)

2 BY MR. KRUEGER:

3 Q. Now, returning to Exhibit 11, the lot
4 inspection form, at the bottom of the middle --

5 JUDGE JONES: Just a moment, Mr. Krueger. That
6 last exhibit was 11?

7 MR. KRUEGER: Yes.

8 JUDGE JONES: Is there an Exhibit 12?

9 MR. KRUEGER: There is an Exhibit 12.

10 JUDGE JONES: Okay. Go ahead. I'm sorry.

11 BY MR. KRUEGER:

12 Q. Returning your attention to Exhibit 11, the lot
13 inspection form, the portion pertaining to that Skyline home,
14 at the bottom of that section of the lot inspection report
15 appear the words, Factory contacted, dealer notified. Do you
16 see that?

17 A. Yes.

18 Q. Did I read that correctly?

19 A. Yes, you did.

20 Q. Do you also see the circle around the word
21 "dealer"?

22 A. Yes.

23 Q. Did you draw that circle?

24 A. I did.

25 Q. What does that circle indicate?

1 A. This indicates the -- that I notified the
2 dealer of the problems that I found with this home.

3 Q. When you say you "notified the dealer," whom
4 did you talk to?

5 A. On this -- March 8th, the particular day that I
6 did this lot inspection, I gave a copy of this to Dorcas
7 Nichols in the service office. The gentleman I normally talk
8 to, Mark Mayes, was not in that day or unavailable and I
9 always talk with Mark regarding problems that I find. So I
10 simply left a copy of it with Dorcas and asked her to give it
11 to Mark and told her I would talk to him when he returned or
12 was available.

13 Q. Did you then talk to Mark at a later time?

14 A. Yes. On March 13th I went back to the sales
15 lots and discussed the home and the problems I found with Mark
16 Mayes.

17 Q. What did you tell him?

18 A. At first I asked him the status of this home,
19 to confirm it was new. Mark first indicated to me that he
20 thought it was a used home, but at that point he couldn't
21 really provide me with anything indicating that it was a used
22 home. I felt like it was a new home and -- it had the
23 appearance of a new home, it had the appliance labels still on
24 it, there was no excessive wear or any wear that I saw in the
25 home.

1 Then later during that conversation Greg DeLine
2 came into the office. We, again, talked about it, discussed
3 how they could possibly sell this home being a new home
4 without HUD labels. We came to the conclusion that it was a
5 new home by definition. The only way that it could possibly
6 be sold was if the Director would allow it to be sold as a
7 used home. I suggested it, talked to them about it, suggested
8 that the home be titled and sold as a used home.

9 Q. And we're referring now to the home bearing the
10 Serial No. 0151-0412-MA/B. Correct?

11 A. Yes. That's the home.

12 Q. Did you ever see that home again?

13 A. After March 13th?

14 Q. Yes. I'm sorry. Did you see it on the Amega
15 sales lot again?

16 A. I returned in May some time to pick up the red
17 tag off the home. I saw it then.

18 Q. Why were you going to pick up the red tag on
19 the home?

20 A. Part of the agreement with Amega Sales was that
21 they title this home. And when they sent us proof that the
22 home had been titled and agreed to sell it as a used home, we
23 would remove the HUD la-- I mean, the red tag, excuse me, from
24 the home.

25 In May, Mark faxed me a document -- I was in my

1 office, he called and faxed me a document showing that the
2 home had been titled. I faxed that document to my boss, the
3 Director.

4 We agreed at that point that that was
5 sufficient to show that the home had been titled. I called
6 Mark back, told him on that day he could remove the red tag
7 because I couldn't make it to the lot at that particular
8 moment. And then I went by a couple days later and picked up
9 the red tag. The home was still sitting there. That's the
10 last time I saw it at that point.

11 Q. Did you discuss with him then whether the home
12 could be sold as a new home?

13 A. I discussed with Mark again when I picked up
14 the red tag, that the home must be sold as a used home.

15 Q. Were there any other visits to that home while
16 it was on the Amega lot?

17 A. No.

18 Q. Did you ever see that home again in another
19 setting?

20 A. Later in October I conducted a consumer
21 complaint inspection on that home at the homeowner's site in
22 Osage Beach.

23 Q. Do you know the address there?

24 A. I don't off the top of my head.

25 Q. Do you know the name of the homeowner?

1 A. Don Higgenbotham.

2 Q. What was the reason why you conducted this
3 inspection?

4 A. They had requested the inspection from our
5 department.

6 Q. Were you directed to inspect it?

7 A. I was directed to inspect it, yes.

8 MR. KRUEGER: May I approach the witness?

9 JUDGE JONES: Yes, you may.

10 BY MR. KRUEGER:

11 Q. I want to show you a document that's previously
12 been admitted into evidence as Exhibit 2 and ask if you can
13 identify that document?

14 A. Yes. This is a Consumer Complaint Form that
15 our department uses. When a consumer requests that we do an
16 inspection, we provide them with this document to fill out and
17 submit to us.

18 Q. Is that a form of the type that you used on the
19 day of that visit to Mr. Higgenbotham?

20 A. Yes, it is.

21 Q. How did you acquire the blank form?

22 A. When we arrived at the consumer's home in Osage
23 Beach, I did not have a form with me. I usually carry them in
24 my briefcase and I guess I had ran out. We did get on the
25 Internet at the Higgenbothams' home and went to our website

1 and printed it off of his computer.

2 Q. Were you present when the information on that
3 form was filled in?

4 A. Yes, I was.

5 Q. Was anyone else present in the Higgenbotham
6 home on that occasion?

7 A. Mrs. Higgenbotham was there and my supervisor,
8 Gene Winn, was there.

9 Q. Was Mr. Winn present throughout the meeting?

10 A. During the filling out of this form?

11 Q. Yes.

12 A. No.

13 Q. Do you know who filled in the handwritten
14 information?

15 A. Yes. Don Higgenbotham did.

16 Q. Do you see the signature in the lower left-hand
17 corner of the Consumer Complaint Form?

18 A. Yes, I do.

19 Q. Do you know whose signature that is?

20 A. Don Higgenbotham.

21 Q. Did you see him sign his name on the document?

22 A. Yes, I did.

23 Q. Do you know the date on which the form was
24 prepared?

25 A. October 23rd, 2002.

1 Q. Did you fill in any part of the handwritten
2 information on that form?

3 A. No, I didn't.

4 Q. I want to call your attention to the right-hand
5 side of the document. Do you see the heading there, Home
6 Information Required?

7 A. Yes.

8 Q. Do you see the first line below that where the
9 word "new" is circled?

10 A. Yes, I do.

11 Q. Did you circle that?

12 A. No, I didn't.

13 Q. Do you know who did?

14 A. Don Higgenbotham.

15 Q. Do you see the bottom line of that section of
16 the form where the words, Are you the first owner of this home
17 is printed?

18 A. Yes.

19 Q. And the word "yes" is circled; is that correct?

20 A. That's correct.

21 Q. Did you circle that?

22 A. No, I didn't. Don Higgenbotham did.

23 Q. Okay. Did Mr. Higgenbotham ask you for help in
24 deciding how to fill out this form?

25 A. No. He filled out all the information on this

1 form. I did provide him with the serial number and HUD label
2 numbers that were on the data plate located inside his home.

3 Q. But that was the only thing that you -- only
4 information that you provided for that form?

5 A. Yes, it is. Excuse me, possibly the date of
6 manufacture too. I'm not -- it was on his data plate inside
7 the home and I directed him to where that information was.

8 Q. Did you have any other discussions with
9 Mr. Higgenbotham at the time of this meeting?

10 A. Yes. We -- we responded to the consumer
11 complaint. My supervisor was with me, Gene Winn. Mr. and
12 Mrs. Higgenbotham were concerned --

13 MR. HARRISON: I'm going to object to any
14 testimony that I think he's going to give with respect to
15 anything Mr. and Mrs. Higgenbotham said because it's hearsay.

16 MR. KRUEGER: Normal course and scope of his
17 business investigating a consumer complaint. It's a part of
18 his job. He has to do that and the way to get that
19 information is by talking with the homeowner.

20 JUDGE JONES: Mr. Higgenbotham was just here.
21 You could have asked him what he said to Mr. Haden; isn't that
22 true?

23 MR. KRUEGER: I could have.

24 JUDGE JONES: I'll sustain the objection.

25 BY MR. KRUEGER:

1 Q. At the time of this conversation with
2 Mr. Higgenbotham, did you take any other actions?

3 A. We conducted an inspection of the home.

4 Q. Did you inspect the home after Mr. Higgenbotham
5 filled out and signed the Consumer Complaint Form?

6 A. Yes, we did.

7 Q. Did you prepare a report on your inspection of
8 the home?

9 A. Yes, I did.

10 MR. KRUEGER: May I approach the witness?

11 JUDGE JONES: Yes, you may.

12 BY MR. KRUEGER:

13 Q. I want to show you what's been marked for
14 identification as Exhibit 12 and ask if you can identify that
15 document?

16 A. This is a copy of my findings of the
17 inspection.

18 MR. HARRISON: I'm sorry. That was Exhibit 12?

19 MR. KRUEGER: Yes. I believe so. Yes.

20 BY MR. KRUEGER:

21 Q. Did you prepare that document?

22 A. Yes, I did.

23 Q. How do you know that?

24 A. It's my document. I prepared it.

25 Q. Does your name appear on it?

1 A. Yes, it does.

2 Q. Okay. And is that a report on your inspection
3 of the home bearing Serial No. 0151-0412-MA/B?

4 A. Yes, it is.

5 Q. What have you noted on this form?

6 A. We noted several what he we consider to be
7 problems with the home that the homeowner brought to our
8 attention as well as some set-up deficiencies and some anchor
9 standard violations.

10 Q. Why did you note those items on the form?

11 A. The homeowner asked us to inspect --

12 MR. HARRISON: I'll object, calls for hearsay.
13 I don't think he can testify about anything that the homeowner
14 said.

15 JUDGE JONES: Well, we've already admitted the
16 homeowner's complaint and request that he inspect the home.

17 MR. HARRISON: Right. But I think -- I don't
18 know what he was going to say, but I don't want --

19 THE WITNESS: I was going to read this right
20 here.

21 MR. HARRISON: If he's going to read a document
22 that's already in evidence, then that's fine.

23 JUDGE JONES: Go ahead, Mr. Haden.

24 THE WITNESS: The Consumer Complaint Form that
25 we received from Mr. and Mrs. Higgenbotham requests that we

1 inspect damage and set-up of home. And that's where we
2 derived these problems that we found with the home and the
3 set-up of the home.

4 BY MR. KRUEGER:

5 Q. Is it your job to note items that do not comply
6 with the code?

7 A. Yes, it is.

8 Q. I call your attention specifically to
9 paragraph 7 on this Exhibit 12, which states there are no HUD
10 labels on the form -- on the home. Why did you note that?

11 A. That would be a violation of the federal
12 standards and the regulations.

13 Q. And with regard to the other items that are
14 listed there, are they also violations of the code?

15 MR. HARRISON: I'm going to object. I think
16 that requires the witness to render a legal conclusion and as
17 to the previous question and answer ask that it be stricken
18 for the same reason. He's asking this witness to render legal
19 conclusions and interpret regulations, in effect.

20 MR. KRUEGER: I'll rephrase the question.

21 BY MR. KRUEGER:

22 Q. Why did you note those items on there?

23 MR. HARRISON: Same objection. I think he's
24 asking it a different way

25 MR. KRUEGER: I think the reason --

1 JUDGE JONES: Well, he did note these things on
2 here and he noted them for a reason --

3 MR. HARRISON: And the document --

4 JUDGE JONES: -- so why wouldn't he know?

5 MR. HARRISON: I just don't think he can
6 testify about interpretations of regulations, which I think is
7 what the question asks him to do.

8 JUDGE JONES: But he can tell us why he put
9 this on here.

10 MR. HARRISON: I suppose he can testify that --
11 I agree with that. I don't want him to interpret regulations,
12 which I believe is where the question was headed.

13 JUDGE JONES: You can answer the question why
14 you put whatever you put on Exhibit 12.

15 THE WITNESS: I noted these as non-compliances
16 to the code.

17 BY MR. KRUEGER:

18 Q. Was your opinion that each of these was a
19 non-compliance with the code?

20 MR. HARRISON: Same objection. He's asking him
21 for a legal conclusion. This witness has not been identified
22 as an expert and it invades the province of the Commission
23 which is the entity that's supposed to determine what the law
24 is and apply the law.

25 MR. KRUEGER: It is his job to investigate

1 complaints. And the purpose for the investigation is to
2 determine whether there's compliance with the code.

3 JUDGE JONES: Quite frankly, Mr. Harrison,
4 Mr. Haden may know more about this law than we know and we're
5 all attorneys. So I think he can answer the question. As far
6 as the legal conclusion is concerned, I believe legal
7 conclusions stem from applying the law to facts and making a
8 legal conclusion, not saying what the motivation is for
9 including this information on this form. So I'll overrule the
10 objection. You may answer the question.

11 MR. HARRISON: My other objection is I think
12 he's giving expert testimony here and I've asked them to
13 identify experts and they haven't identified any. That's
14 another objection.

15 MR. KRUEGER: I don't recall that we didn't
16 identify experts. I think you asked whether -- for all
17 experts -- all witnesses, expert and otherwise, and asked for
18 information about them and then you asked some questions about
19 what the experts' deposition fee would be and we said there
20 was none. That's my recollection.

21 MR. HARRISON: And I asked for a summary of the
22 opinions that were going to be expressed and I don't believe
23 any were stated.

24 JUDGE JONES: I don't believe he's testifying
25 as an expert. An expert is usually asked some hypothetical

1 question in trying to get their opinion. He's a witness to
2 what he's done in this case. So I'll overrule the objection
3 and you may proceed.

4 You might want to ask the question again.

5 MR. KRUEGER: I've forgotten it. Could you
6 read it back, please?

7 THE COURT REPORTER: "Question: Was your
8 opinion that each of these was a non-compliance with the
9 code?"

10 THE WITNESS: Yes, it is.

11 BY MR. KRUEGER:

12 Q. And I would call your attention to the note at
13 the bottom of this form. Would you read that, please?

14 A. Yes. On March 13th, 2002 a prohibitive sale
15 notice, red tag in parens, was placed on this home located at
16 Amega Sales, Incorporated sales lot for no HUD labels. The
17 dealer was informed that this home could not be sold as a new
18 manufactured home. The red tag was removed on May 29th, 2002
19 when the dealer provided information indicating that this is a
20 used home and would be sold as a used manufactured home.

21 Q. Was that statement true?

22 A. That statement is true.

23 MR. KRUEGER: I would offer Exhibit 12, your
24 Honor.

25 JUDGE JONES: Mr. Harrison?

1 MR. HARRISON: My only objection is the portion
2 of the document which lists the dealer as Amega Sales, Inc. I
3 don't think is supported. So I would object to that part of
4 the exhibit being admitted.

5 JUDGE JONES: Well, I'll certainly consider
6 that. Your objection's overruled.

7 MR. KRUEGER: I think I may be one copy short.

8 JUDGE JONES: I have two. You're okay.

9 BY MR. KRUEGER:

10 Q. In the time that you have been with the
11 Commission, have you frequently inspected the Amega sales lot?

12 A. I generally try to inspect dealers' lots at
13 least a couple times a year. Sometimes, time permitting
14 depending on how many consumer complaints I'm handling, more
15 times than that, sometimes every couple months. But, yes, I
16 have inspected the lot several times.

17 Q. For how many years have you been inspecting
18 Amega's lots?

19 A. Be 10 years in August.

20 Q. During this time have you ever known Amega to
21 have new Skyline manufactured homes on the lot for sale?

22 A. Not that I can recall.

23 Q. Do you know if they're authorized to sell them?
24 Are they a dealer for Skyline homes?

25 A. I don't think so. Not that I know of.

1 MR. KRUEGER: That's all the questions I have.

2 JUDGE JONES: Thank you.

3 Chairman Gaw?

4 CHAIR GAW: Thank you, Judge. Just one second.

5 QUESTIONS BY CHAIR GAW:

6 Q. Do you have Exhibit 12 in front of you?

7 A. I don't know if mine are marked correctly.
8 What document would that be?

9 Q. It has a listing in it from one to eight of
10 items and findings.

11 A. Yes. That's my inspection report.

12 Q. Okay. Those items that you list from one to
13 eight, do you consider those to be violations of some code?

14 A. Yes, I do.

15 Q. And what code is that?

16 A. The -- Item No. 1 we would consider to be an
17 alteration of the home. It consists of some frame
18 modifications, floor joist modifications and bottom board
19 modifications.

20 Q. All right. Now, if I were to ask you -- let me
21 ask you this. In Item No. 1, is there a particular provision
22 in the code that you believe it is a violation that you noted,
23 and what provision is that?

24 A. I don't have a copy of the federal regulations
25 with me.

1 Q. Is someone going to provide that information to
2 the Commission?

3 A. I have that noted on I think one of the
4 documents there, Ron.

5 MR. KRUEGER: What information are you
6 inquiring about?

7 CHAIR GAW: I'm interested in knowing these
8 citations on these particular findings. And what I'm wanting
9 to know is if they're violations of the federal code, what
10 provisions are alleged to have been violated by number in the
11 code?

12 THE WITNESS: I understand what -- he wants the
13 code -- the actual code violations. And are they -- do you
14 have those noted there?

15 BY CHAIR GAW:

16 Q. And I'm not asking you whether they are or they
17 aren't. I'm asking you what you're referring to here --

18 A. Yes.

19 Q. -- and what you allege to have been violated by
20 that finding.

21 A. Yes. I understand. And to clarify something,
22 when I cite these type of things to the manufacturer, we do
23 list these code violations because they are required to do
24 some investigating and we suggest the code violations that we
25 see. I didn't cite them on this particular report. We have

1 changed that and we do now.

2 Q. Okay.

3 A. Back at this time we didn't. The alteration
4 would apply to 700.025 of the state statutes and then also HUD
5 Code Section 3282.2252A which speaks about alterations causing
6 a non-compliance to the home.

7 Q. All right. And does that cover No. 1?

8 A. That's Items 1, A, B and C.

9 Q. And what about 2?

10 A. Two would be a HUD code violation of the
11 Federal Manufactured Home Construction and Safety Standards.
12 This particular one I would apply 3283.03B, which is a
13 workmanship issue, and then also possibly 3285.05A, which is
14 an air infiltration issue. The reason for that, this is a
15 wall panel located on the exterior wall of the home which in
16 the HUD code, the interior skin of the home is an air barrier.
17 And being a broken wall panel could allow air infiltration
18 into the home so I cited those two codes on that one.

19 Q. And No. 3?

20 A. Three would be the same. Since we're talking
21 about a ceiling panel, drywall, with a crack in there it could
22 again be an air infiltration problem and also workmanship
23 issue, so it would be the same two codes, 3283.03B and
24 3285.05A.

25 Q. All right. Number 4?

1 A. Number 4 I would apply 3283.05F2, which
2 requires wall panels to be secured fastened to the wall
3 framing. This was a loose wall panel on the rear end
4 bedroom -- or in the rear end bedroom, excuse me.

5 I can move onto Item No. 5, the loose floor
6 decking, which is again -- this is a 305 code G1, requires
7 to -- or refers to the installation or construction of floors.

8 Q. Okay. Six?

9 A. Item No. 6 is exterior vinyl siding missing on
10 the back side wall near the hitch end of the home. I applied
11 3283.07A ,which covers exterior coverings of the home being
12 water resistant.

13 Q. All right. Seven?

14 A. No HUD labels on a home, 700.015.1 of state
15 statue 700.045.2 and then HUD Code Section 3282.252A1. I
16 can't cite those codes right off the top of my head. They do
17 apply to the HUD label requirement on a home.

18 Q. Okay. And eight?

19 A. Eight is set-up deficiencies. I refer to the
20 manufacturer's installation instructions that come with the
21 home that describe the proper installation of the home.
22 Crossover heat duct not being properly supported, the
23 manufacturer requires that --

24 MR. HARRISON: Let me object to that. The
25 manufacturer's specifications are not in evidence in this

1 case. He can't testify about what they say because they're
2 the best evidence of what they say.

3 THE WITNESS: Actually, that's a federal code
4 too, and that's fine. The federal code requires that the
5 manufacturer provide instruction on properly supporting that.
6 3287.15A5.11 would give you that information.

7 Q. Okay. B?

8 A. Drain lines not being properly supported under
9 the home. Again, besides being a manufacturer's requirement,
10 it was described in the HUD --

11 MR. HARRISON: Let me object to that. He can't
12 say that because it's not in evidence. He can't say that it
13 violates because to do so violates the best evidence rule. If
14 the position is that it violates the manufacturer's
15 regulations, then those need to be before the Commission, they
16 need to be in evidence and they're not.

17 JUDGE JONES: Mr. Krueger?

18 MR. KRUEGER: I'll agree that they're not in
19 evidence.

20 CHAIR GAW: Judge, my question is why he put
21 these on here. And if counsel wishes to exclude the evidence,
22 I don't have a problem with excluding it. I'm not sure I
23 agree with him, but if the witness wants to tell me where it's
24 a violation of the federal code, I'll leave it with that.

25 THE WITNESS: Okay. Again, the federal code