

1 there's no serial number. See, those -- that leads me to
2 believe that maybe that was the case.

3 Q. I see. Do you keep records of your Form 500's?

4 A. On a completed sale when the purchase -- when
5 it becomes a bill of sale. After the purchase price has been
6 paid, yes. And we're required to by the PSC and the
7 manufacturer --

8 Q. Where is that Form 500 for the completed sale
9 on the manufactured home that did arrive at the Higgenbothams?

10 A. There wouldn't be. See, that's the problem.
11 A&G wouldn't be a dealer and so we didn't do a Form 500
12 because A&G wouldn't have -- that's why we went into the
13 Stipulation and Settlement Agreement to make sure that there
14 was no question about it. But there wouldn't have been a Form
15 500 necessarily.

16 Q. You're testifying that there was not a Form 500
17 on this manufactured home that is the subject of this hearing,
18 that there was never a Form 500 on that manufactured home?

19 A. I don't believe there ever was.

20 Q. I'm asking you whether or not there was, not
21 whether you believe --

22 A. I'm saying I don't -- I don't know -- how about
23 this? I don't know of one.

24 Q. Who is it that filled out this Exhibit 1? Who
25 did that?

1 A. It's blocked off. I mean, there's really no
2 way to tell. It says up at the top, Salesperson Chris, so --
3 I mean, I would draw that conclusion.

4 Q. Who is that?

5 A. It would have been a salesman at the time for
6 Amega.

7 Q. And what would have been Chris's last name?

8 A. Bechard (ph.).

9 Q. Does he work for you now?

10 A. No.

11 Q. How long has it been since he worked for you?
12 I guess it's a man?

13 A. Yes.

14 Q. How long has it been since he worked for you?

15 A. I -- I would say more than a year ago.

16 Q. All right. Did he leave on his own volition?

17 A. Yes.

18 Q. Do you know what he does now?

19 A. I don't for sure. I hear things, I mean, but I
20 don't know for sure.

21 Q. What do you hear?

22 A. That he's in the mortgage business.

23 Q. In the area?

24 A. I think so.

25 Q. Columbia or Jeff City? Where?

1 A. Again, I don't know.

2 Q. Okay. What did you actually -- what was
3 actually paid for this manufactured home initially by the
4 Higgenbothams?

5 A. Yeah, it's interesting that you ask me that.
6 I've been noodling ever since they did my deposition because
7 the numbers on the settlement agreement don't make sense. If
8 you add those two numbers together, coincidentally it comes up
9 to \$40,900 so that on the stipulation -- I think Commissioner
10 Murray was trying to figure out the tax a little bit ago on
11 that. And if you add those two numbers together, it adds up
12 to 40,900, which is a very coincidental figure and I've got to
13 believe that that's what they paid.

14 Q. What's this figure \$66,478.37 that also appears
15 in this stipulation?

16 A. See, I don't know where that came from. That
17 doesn't tie to Exhibit 1. But the only thing I can think of
18 was that, again, I was doing this negotiation with Williams,
19 an attorney. And I just wanted to make sure all basis were
20 covered. I wanted no misunderstanding because I knew the PSC
21 had been contacted about service issues. So I wanted to make
22 sure. And I was just -- in my layman's mind I was making sure
23 I covered every single possible thing that could come up.

24 Q. You signed the agreement, the Stipulation of
25 Settlement, didn't you?

1 A. Yes.

2 Q. As president of Amega Sales, Inc. and as
3 president of A&G Commercial Trucking, Inc. Correct?

4 A. Yes.

5 Q. Did you read it before you signed it?

6 A. I'm sure I did, yes.

7 Q. It does say in here in the second whereas
8 clause that, Purchasers entered into a contract with Amega
9 Sales, Inc. on May the 2nd, 2002. Do you see that in that
10 exhibit?

11 A. Yes. And again --

12 Q. Did you see that --

13 A. Yes. And --

14 Q. -- at the time?

15 A. Yes. And that would be referring to a purchase
16 agreement contract. That's what that was referring to. But
17 the numbers don't match with Exhibit 1. But that's what that
18 references.

19 Q. And it says that it was for the purchase of a
20 new 2001 Skyline 68-by-32 manufactured home. Correct?

21 A. That's what it says.

22 Q. You seem to be saying that there must have been
23 a different -- are you indicating to the Commission that there
24 was another Form 500 that must have been done at the same time
25 since the particular purchase price numbers do not match?

1 A. There could have been. That was just -- that's
2 a suggestion. I don't know. There could have been. These
3 people were looking for several months.

4 Q. This would have been, again, for another
5 Skyline mobile home?

6 A. Well, or maybe --

7 Q. That would have been a different one in your
8 speculation than the one that was in Exhibit 1?

9 A. With all due respect, I suppose it could have
10 different options. You know, again, see, I don't know. But
11 all I know is it doesn't -- the numbers don't match Exhibit 1.

12 Q. Yeah. The numbers don't match on the sales
13 price, do they?

14 A. No.

15 Q. Exactly anyway?

16 A. Correct. So that's --

17 Q. They're in the same range though, aren't they?

18 A. Well, yes. And, again, that could be appliance
19 package, you know, 2-by-6 walls. I mean, there's just a
20 multitude of possibilities on an ordered house.

21 Q. Did this mobile home that we're discussing that
22 ended up with the Higgenbothams, was it on your lot with a
23 sales sign on it or a sales price on it?

24 A. It was on my lot. Could very easily have had a
25 sales price on it. Sometimes the manufacturers will post

1 those like a car. Once in a while those things were brought
2 from shows where they'll have a price, so that's very
3 possible.

4 Q. Where would that have normally been located?

5 A. Probably -- as testified by Mr. Haden, probably
6 on the refrigerator.

7 Q. Can you tell me why there were no HUD labels on
8 this manufactured home?

9 A. They were pulled by the manufacturer, as I
10 recall.

11 Q. And in your experience, why is that normally
12 done, or is there a reason that it's normally done?

13 A. Yes. What happens is -- and, again, the
14 trucking company has been in existence since '95. If we
15 damage a home, like Mark was saying -- Mark doesn't deal
16 directly with it but he was right in some respects. We alert
17 the manufacturer or the manufacturer becomes aware of it,
18 obviously the delivery is delayed or whatever.

19 If -- and it's really -- and these guys may
20 correct me, I don't know, but my understanding is that it's
21 their determination about whether they want to fix it and go
22 ahead and sell it as a new home or whether they're going to
23 require that the trucking company buy it under an obligation.

24 So it's happened both ways. Sometimes we pay
25 the factory's damages. We'll pay 1,000, 1,500 dollars for

1 them to refurb a home maybe that for whatever reason the
2 trucking company damages if it can be done and still labeled,
3 I guess in their -- and I think they have inspectors in their
4 plant. But then if it gets damaged too bad, then they say,
5 Hey, you got to pay, it's your baby.

6 Q. So once it is -- once it was damaged in this
7 case, then the HUD labels were pulled would be your
8 impression?

9 A. My understanding in this case would be this
10 home was damaged significantly enough to where the
11 manufacturer pulled the HUD labels, yes.

12 Q. What was the damage that was done again? Did
13 you describe that?

14 A. Again, I think I remember -- this is three or
15 four years ago, so -- but I think this home -- typically what
16 happens is they get topped. In the manufactured housing
17 industry everybody is trying to get the house look and so they
18 want the largest pitch on the roof they can possibly get but
19 they don't want to got to the cost of a hinge so they just get
20 that height just where there's like an inch clearance on some
21 of these overpasses. And typically it will just shear the
22 peak right off, which is -- you know, I mean, practically
23 speaking -- anyway, that's what happens typically.

24 Q. And was that damage repaired at some point in
25 time prior to it being transported to the Higgenbothams?

1 A. Yes.

2 Q. When was that?

3 A. I think -- and, again, I'm working from memory,
4 but I think that was fixed before it came to the state of
5 Missouri.

6 Q. And who would have done that work?

7 A. Again, I think -- you know, this terminal guy I
8 think he had somebody handy or whatever and he was thinking
9 about somehow he was going to either use the home for an
10 office or end up with it or something, but whatever --
11 whatever, I think they ended up fixing it.

12 Q. Who's the terminal guy? I'm sorry.

13 A. I'm sorry. I testified earlier that
14 owner/operators -- I have owner/operators leased to the
15 trucking company and they were in Indiana in this case.

16 Q. Okay.

17 A. I think I might go a step further. The damage
18 on the frame, I don't think that had anything to do with the
19 transport other than the local transport.

20 Q. You think that occurred from your lot to the
21 Higgenbothams'?

22 A. That would be my guess.

23 Q. And I'm sure this is obvious, I just don't know
24 the answer. Why was there a Kansas title issued on this
25 transaction?

1 A. They asked me that in my deposition. The only
2 thing I can think of is the manufacturer was in Kansas. And
3 so this was the first one, again, that we'd done and, I mean,
4 we just -- for lack of anything better -- I mean, I had my
5 girl call Kansas and see what they required in order to do
6 this because Tim had told us that this is what we needed in
7 order to sell it. And so it was fairly easy and we did it.

8 Q. Now, the application date on the duplicate
9 Certificate of Title, is that the original application date
10 for the original title or do you know?

11 A. I -- I doubt it. You said duplicate so it
12 wouldn't be the original.

13 Q. Well, I don't know either. Do you recall when
14 you applied for a title or when a title was applied for
15 initially for this home?

16 A. Yes. The general vicinity. Again, the dates
17 are all consistent. I think Tim came in on March 8th.
18 March 13th he got with the Director and said, Hey, turn it
19 into a used house. Right along that time we would have
20 applied for a title in the state of Kansas.

21 Q. You don't have any of that title history to
22 present to us?

23 A. I don't. Other than what's here, the copy of
24 the registry from -- that shows the Kansas registry.

25 Q. Where is the paperwork on the closing of the

1 initial transaction in this case?

2 A. Honestly, I don't think that there was any. As
3 I recall, they paid -- it was 40,000 something. And, like I
4 said, just me backing into those numbers, it's real
5 coincidental that turns out to be 40,900. I think they put
6 original \$1,000 down when they were going to try to buy a new
7 home from Amega, and that's on the purchase agreement that
8 they paid 1,000. And I think they paid 39,900 when the home
9 was delivered in July. So that would be the sale time. And I
10 really honestly -- I don't --

11 Q. In July of what year?

12 A. '02. And I don't think there was ever a Form
13 500 -- as a matter of fact, I just -- I don't know for sure,
14 but I just -- I'm -- I'm -- I'll bet there wasn't.

15 Q. Do you have any of the records of receipt of
16 any of those payments?

17 A. I don't have any here. You know, we have this
18 settlement agreement that we entered into with Higgenbotham
19 and the transfer.

20 Q. I see the settlement agreement.

21 A. Right.

22 Q. It has all that information in it. That's
23 dated March 17th of 2003. I'm asking whether you have any
24 paperwork, documents from the initial transaction that
25 occurred in the year before that?

1 A. I was introduced to Higgenbotham myself and so
2 a lot of it was done verbal, so I'm going to say no.

3 Q. But you received some compensation in 2002?

4 A. I'm sure in the summer of 2002 that we received
5 40,000-ish, yes.

6 Q. And where did that money come from, do you
7 know?

8 A. Well, Higgenbotham.

9 Q. Did they write you a personal check? Was the
10 check from a financial institution? Do you know where the
11 money came from?

12 A. I don't know.

13 Q. Do you have any documents that indicate that
14 you received that amount of money to present to the
15 Commission?

16 A. I don't have anything to present to the
17 Commission.

18 Q. Is it normal practice for you to transfer a
19 title -- the title -- when A&G is selling a mobile home, at
20 some point in time in the transaction to actually have someone
21 sign a title over to the purchaser?

22 A. Again, normal there implies -- see, this was,
23 again -- this is a very rare occurrence and the first time
24 that I recall it happened. And so, yeah, I would say yes, we
25 assign title and probably would have done it prior if we had

1 it, but we had to get a duplicate.

2 Q. I guess my -- you say it's very unusual. Does
3 A&G ever sell any mobile homes to people?

4 A. As a matter of business, A&G is in the
5 transport business, not the sales business, but there have
6 been other cases after this one, yes.

7 Q. And in those cases, have you transferred a
8 title to the mobile homes in every case?

9 A. Not necessarily every case, no.

10 Q. Okay. Tell me when you do and when you don't
11 and why there is a distinction.

12 A. Okay. What happens is sometimes -- it depends
13 on really who the financier is and how involved we are in the
14 financing, the way I understand it. If these things become --
15 they're personal property trailers and if they -- if they get
16 a mortgage loan, okay, where they're mortgaging real property
17 and the personal property becomes real property, then a lot of
18 times they get what they call an ALTA 7 on the title
19 commitment and they don't require the surrenderer of the
20 manufacturer to have a title.

21 Q. What's the difference in the two kinds of
22 transactions? What occurs differently?

23 A. Well, as far as the customer, I mean, I
24 wouldn't think much. They get delivery of the home, get set
25 up according to the contract or whatever. You know, again,

1 from a lending standpoint, if they're mortgaging real property
2 and this becomes a fixture to that real property, then a lot
3 of times they don't -- it depends on the lender's policies.
4 Some lenders, even though they do become a fixture, still
5 require the transfer and the -- of the title.

6 Q. So it's up to the lender --

7 A. Yes.

8 Q. -- generally?

9 A. That's my experience.

10 Q. In this case was there ever any earlier
11 transfer of title that was attempted prior to this -- at least
12 prior to this 3/19/03 date?

13 A. There was no prior transfer attempted, no.

14 Q. Would you have -- and why wouldn't you have
15 transferred the title prior to that date?

16 A. We didn't have it. It was lost.

17 Q. It was lost prior to 3/19 of '03?

18 A. Yes. That title you're looking at is a
19 duplicate.

20 Q. Well, when did you get this duplicate?

21 A. It was issued -- issue date it says 8/9 of '02.
22 So it could have been as early as that.

23 Q. But you didn't transfer it prior to that?

24 A. No. The transfer is on there.

25 Q. I mean prior to 3/19. Correct?

1 A. I'm sorry?

2 Q. You didn't transfer it prior to 3/19 of '03?

3 A. Doesn't appear so.

4 Q. There's no notary seal on that transfer, by the
5 way. Is there a reason for that?

6 A. Yeah. I do know about titling. The State of
7 Missouri doesn't require a notary.

8 Q. So this is a Kansas title?

9 A. Yeah, but it would be surrendered in Missouri.
10 It goes by the state where it's surrendered.

11 Q. Okay. What was the reason why title would not
12 have been transferred prior to 3/19/03?

13 A. I don't think I have the answer to that
14 question. I don't know. Sometimes my title clerks, for
15 whatever reason, if the customer doesn't request it, it's not
16 right, but it just sits. Procrastination, I don't know. I
17 mean, no reason that I know of. How about that?

18 Q. So A&G had been paid in full for the
19 manufactured home prior to 3/19/03?

20 A. '03, yes.

21 Q. When were they paid in full?

22 A. Again, I think, as I recall, they paid the
23 consideration in the summer, around the time of delivery, of
24 '02.

25 Q. And how much was the consideration?

1 A. Well, I -- again, I don't know exactly. I said
2 40-ish. I added those numbers -- on the Stipulation it was
3 40,900.

4 Q. And is that 40,000 -- does that include sales
5 tax?

6 A. There was no sales tax.

7 Q. So when the purchase price on the title says
8 38,321.63, what accounts for the difference?

9 A. The 38,321 is the amount that we determined
10 with the NADA book whenever the attorney got involved and I
11 was trying to settle it. Because, I mean, I didn't want to do
12 any service to it and yet I didn't want to get sued.

13 Q. They had already paid over 40,000 to you -- to
14 A&G?

15 A. My opinion was 40,900.

16 Q. Did you refund money to them?

17 A. We refunded that \$2,500, yes.

18 Q. And you don't have any documents to show to us
19 about that transaction other than what we have here?

20 A. I don't have anything to show you other than
21 what you have.

22 CHAIR GAW: That's all I have. Thanks, Judge.

23 JUDGE JONES: Commissioner Murray?

24 COMMISSIONER MURRAY: Thank you.

25 QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Mr. DeLine, I'm curious. How do you file your
2 income taxes if you don't keep documentation of your sales and
3 your receipts for sales?

4 A. Well, I don't think -- I didn't mean to imply
5 that we don't keep them. I don't have them here to present to
6 you today, so --

7 Q. You knew this was coming up. Do you have them
8 in your possession?

9 A. I've got a controller and an accountant. I
10 mean, I'm sure that something could be -- but I don't have
11 anything here today.

12 Q. So it's not that you don't have documentation,
13 it's that you did not bring it; is that accurate?

14 A. That's a fair statement.

15 Q. Okay. So we could get to the bottom of this if
16 we really --

17 A. Sure.

18 Q. -- wanted to see the documents?

19 A. Sure.

20 Q. I want to refer you back to Exhibit 3, which
21 was the Stipulation of Settlement agreement.

22 A. Okay.

23 Q. Now, I heard Commissioner Gaw asking you
24 questions about March 19 concerning title transfer. Were you
25 both referring to March 17th? Is that what date you meant to

1 be referring to?

2 A. Well, maybe I did. March of '03. It says
3 March 19th.

4 Q. Well, I'm looking at the Stip and Agreement
5 that says entered into the 17th day of March.

6 A. Okay. It says 19th on the assignment on the
7 file. Sorry.

8 Q. But that's what we're talking about?

9 A. I think so. I think so.

10 Q. Now, he mentioned title transfer and I didn't
11 see anything where there was title. And I'm a little
12 confused, probably more than a little. But was there a
13 physical title transfer of this manufactured home to the
14 Higgenbothams?

15 A. This is Exhibit 15?

16 Q. And that was dated -- what was that dated?

17 A. It's dated March 19th, '03.

18 Q. Okay. Somehow I kept missing that date.

19 A. Uh-huh.

20 Q. Thank you for clearing that up.

21 Do you know, does the owner of a manufactured
22 home pay personal property taxes?

23 A. Depends on the county is my -- my opinion.

24 Q. On this document, Exhibit 3, that Stipulation
25 of Settlement, the first whereas paragraph, what did you mean

1 by that paragraph when you said, Whereas, purchasers entered
2 into a contract with Amega Sales?

3 A. I'm not an attorney, ma'am, and Greg Williams
4 prepared this.

5 Q. But you signed the document.

6 A. Yeah.

7 Q. What did you mean when you signed the document?

8 A. We were just trying to cover everybody. We
9 wanted to make sure that there was no liability for Amega for
10 prior contracts that had been written in. We were just
11 wanting to blanket everybody, make sure that we covered
12 everybody.

13 Q. So you mean you didn't really mean what you
14 said there when you said purchases entered into a contract
15 with Amega Sales?

16 A. No. They very well may have, ma'am. That's
17 what I'm saying. We just don't happen to see it here. I
18 don't know. There very well may have been another one with
19 different options.

20 Q. There could have been anything.

21 A. Sure. But I'm saying there could have been a
22 different Form 500 purchase agreement that that's referencing.

23 Q. But you did say they entered into a contract
24 with Amega Sales on May 2nd, 2002. Did you mean that?

25 A. Okay. That's what this form says so that must

1 be true.

2 Q. That they entered into an agreement with Amega
3 Sales on May 2nd, 2002?

4 A. That's what this form says.

5 Q. For the purchase of a new 2001 Skyline?

6 A. That's what it says.

7 Q. And you signed it, so you agreed that's what
8 happened?

9 A. Okay.

10 Q. Is that right?

11 A. I can't testify, ma'am, as to -- I don't have
12 clear recollection from two years ago. What I see is what I
13 see, the same thing as you, and I have no reason to doubt it.

14 Q. You have no reason to doubt that you would have
15 believed it or you wouldn't have signed it; is that right?

16 A. Yes. Because the Higgenbothams wanted a new
17 home in the beginning.

18 Q. So when they entered into a contract for a new
19 home, you indicated earlier that it could have been an
20 agreement to build them -- to order them a new home; is that
21 right?

22 A. Yes.

23 Q. Okay. And since you only had one Skyline on
24 the lot at the time, which was the damaged one, would it be
25 your testimony that contract that you, Amega, and the

1 Higgenbothams entered into was for the building of a new home,
2 the manufacture of a new home?

3 A. It would have had to have been as long as that
4 red tag was on because we couldn't sell it.

5 Q. Okay. In this agreement you agreed that you
6 contracted with them to get them a new home, sell them a new
7 home on May 2nd, 2002. Right?

8 A. That was the intent, if they could get the
9 financing.

10 Q. It says you entered into a contract for the
11 purchase.

12 A. Okay.

13 Q. Is that what happened?

14 A. It looks like it to me.

15 Q. Okay. Now you're disputing the sales price,
16 which was included in that whereas paragraph, but I won't
17 dwell on that. I want to go on to the next whereas, The
18 manufactured home delivered and installed on purchaser's
19 property is a '99 Skyline which has been damaged; is that
20 right?

21 A. I'm sorry. What was your question, ma'am? I
22 didn't understand.

23 Q. That a new home was not delivered to them, a
24 used damaged home was?

25 A. Yeah. They got a used home, that's correct. A

1 used home that had been damaged, yes.

2 Q. Okay. And the date of this Stip and Agreement
3 is March 17, 2003. Correct?

4 A. Yes.

5 Q. And that was after -- well after the original
6 purchase, which was in May of 2002, the delivery, which was in
7 July of 2002; is that right?

8 A. The purchase wasn't May of 2002, ma'am. And I
9 don't mean -- I'm not trying to be argumentative, but this was
10 what they wanted. They wanted a new home. All the way they
11 wanted a new home. And that was what was proposed. That's
12 not what happened.

13 Q. They entered into a contract --

14 A. An agreement to purchase.

15 Q. A new home?

16 A. Correct.

17 Q. On May 2nd, 2002?

18 A. That's correct. That's not what they
19 ultimately got.

20 Q. Because you delivered to them a used, damaged
21 home?

22 A. After I had met with them to explain to them
23 because they couldn't qualify for the financing because of the
24 tax liens.

25 Q. Okay. But you have no documentation, at least

1 not that you've brought here, that would show us that you
2 entered into a contract with them to sell them a used damaged
3 home?

4 A. The only thing we have is the Stipulation and
5 Settlement agreement form here. That's all we have at this
6 time. The trucking company is not in the sales -- again, I
7 hope it's okay to talk to you, but the trucking company is not
8 in the business to sell homes. This was the very first one of
9 these. Okay? So if we -- maybe the trucking company
10 mishandled it.

11 Q. This was Amega.

12 A. I'm sorry?

13 Q. Amega entered into the contract to sell them a
14 new home.

15 A. A new home, but that's not what they ended up
16 buying.

17 Q. But Amega delivered the used home?

18 A. No, no, no. No, they didn't. No. The
19 trucking -- the over-the-road tractor is leased to A&G. Amega
20 did not deliver that home. A&G did.

21 Q. Okay. And A&G delivers Amega's homes?

22 A. That's correct.

23 Q. And in July that home was delivered, July of
24 2002?

25 A. That's correct.

1 Q. And then in October of 2002 Mr. Higgenbotham
2 filed a complaint against you with the PSC; is that right?

3 A. I just see what I see. And I've got some
4 recollection of some correspondence, so yeah -- I'm going to
5 say yeah, I believe that's right.

6 Q. And in October of 2002, Mr. Haden and Mr. Winn
7 came out and inspected on the Higgenbothams' property; is that
8 right?

9 A. See, I don't know that at all. They wouldn't
10 advise me of what they were doing. I wouldn't have any idea.

11 Q. Did you receive a complaint filed by the
12 Higgenbothams?

13 A. I received -- because of this deposition, I
14 remember seeing the letter. I think it's very possible. I
15 think I probably did. And I'm not trying to be -- I'm just
16 saying sitting in this chair, I can't tell you for sure that,
17 but I have no reason to doubt it.

18 Q. And that was October of 2002, according to the
19 Public Service Commission records and according to what we
20 heard here in testimony. And you were not one of the
21 witnesses that was not in the room today, so did you hear that
22 testimony about those inspections?

23 A. Yes.

24 Q. And you don't have any reason to disagree with
25 that; is that right?

1 A. No. Like I said, I think that these people
2 complained about some service problems and I think that's
3 consistent with what I said.

4 Q. And you heard the testimony that that was in
5 October of 2002?

6 A. I think it's when the inspection was.

7 Q. And then this Stipulation and Agreement was
8 entered into with the Higgenbothams between the Higgenbothams
9 and Amega and A&G Trucking in March of 2003; is that correct?

10 A. That's what it says.

11 Q. And in an attempt -- it appears that there was
12 an attempt to settle out all of the claims that the
13 Higgenbothams would have had against either A&G or Amega in
14 this Stip and Agreement. Was that the intent, that you be
15 relieved of any liability resulting from this sale?

16 A. Yes. Our attempt was to blanket every possible
17 way to make sure that there was no liability, yes.

18 Q. And did you understand that the Higgenbothams
19 might be able to relieve you of any complaint they would have
20 against you, but that they couldn't relieve you of a complaint
21 the PSC might have against you?

22 A. Well, I was working under the same -- like I
23 said, the same thing, that if there was some things that
24 needed to be done, that as long as they were compensated with
25 sufficient funds, that they could take care of that stuff and

1 that was the context.

2 Q. The PSC was not a part of this agreement --

3 A. No. I understand that.

4 Q. -- is that correct?

5 A. No. I understand.

6 Q. On your first whereas, talking about the
7 contract with Amega Sales -- between Higgenbothams and Amega
8 Sales, on that date the unit -- strike that.

9 Earlier you described the difference between a
10 bill of sale and a Form 500. Which was this?

11 A. Are you talking about Exhibit 1?

12 Q. I'm talking about exhibit -- the document
13 referred to in Exhibit 3, the contract entered into on
14 May 2nd, 2002.

15 A. Do I have Exhibit 3?

16 Q. It's the Stipulation of Settlement.

17 A. It says 18.

18 Okay. I'm sorry, ma'am. What was your
19 question? I'm sorry.

20 Q. The first whereas clause references a contract.
21 Was that, in your opinion, a bill of sale or a Form 500?

22 A. Well, it wasn't a bill of sale because that
23 amount wasn't paid. So it had to have been just a purchase
24 agreement.

25 COMMISSIONER MURRAY: I think that's all I had.

1 Thank you.

2 JUDGE JONES: We're going to take at this time
3 I do mean a very short bathroom break and come right back. So
4 we'll go off the record just long enough to go to the restroom
5 and come back. We'll go off the record now. Thank you.

6 (A RECESS WAS TAKEN.)

7 JUDGE JONES: Okay. Let's go back on the
8 record. We were having questions from the Bench.

9 I believe, Commissioner Murray, you were
10 finished with questions.

11 Commissioner Davis?

12 QUESTIONS BY COMMISSIONER DAVIS:

13 Q. Mr. DeLine, correct me if I'm wrong, but
14 earlier you testified that it's possible that the
15 Higgenbothams could have entered into another sales contract
16 on May 2nd; is that correct?

17 A. I don't know as it was May 2nd. The date might
18 have been May 2nd. Sometimes when those Form 500's are
19 redone, they'll use a consistent date. So I think I said I
20 don't know. And certainly I know that we weren't specific of
21 the date.

22 Q. Okay. I want to go back to exhibit -- I
23 believe it's 16. It's the Stipulation of Settlement. Do you
24 have a copy of that in front of you?

25 A. I've got that as 18.

1 Q. I'm sorry, Exhibit 3, the Stipulation of
2 Settlement. Second paragraph says, Whereas, purchasers
3 entered into a contract with Amega Sales, Incorporated on
4 May 2nd, 2002 for the purchase of a new 2001 Skyline
5 manufactured home, etc., etc.

6 You see that statement. Correct?

7 A. Yes.

8 Q. And if you turn to page 2, that's your
9 signature on this document. Correct?

10 A. Yes.

11 Q. Okay. Are you aware of any other documentation
12 other than Exhibit 1, which is, I believe, what would be
13 called the Form 500, that manifests an agreement or contract
14 written on May 2nd, 2002?

15 A. I don't know specifically of anything, no.

16 Q. Okay. I don't believe --

17 COMMISSIONER DAVIS: Does the witness have a
18 copy of Exhibit No. 10?

19 JUDGE JONES: I don't know. I don't believe he
20 does.

21 COMMISSIONER DAVIS: Can he be given a copy of
22 Exhibit No. 10?

23 BY COMMISSIONER DAVIS:

24 Q. Mr. DeLine, this is a letter on Amega
25 stationery. Is that your signature?

1 A. Yes.

2 Q. And are you familiar with this letter?

3 A. More so -- I saw it at my deposition the other
4 day, so yes.

5 Q. Okay. Would you read the third paragraph,
6 please?

7 A. Ron, it's pretty clear from the documents, that
8 my salesman erred when he wrote the deal with this customer --
9 when he wrote the deal with this customer and used an Amega,
10 quotation marks, form and checked the wrong box for a new or
11 used. Amega does not have authority to sell this home nor
12 offer it for sale. Obviously any sale would need to come from
13 the owner of the house, A&G Trucking. However, again, no sale
14 from anyone has happened at this point.

15 Q. Chris, he was an employee of Amega. Correct?

16 A. Well, we kind of went through this the other
17 day too. I used, and still do, an employment service and so
18 like what companies use for work comp and things like that.
19 So technically he didn't work for Amega, but he did services
20 and duties for Amega.

21 Q. Did he also do services and duties for A&G?

22 A. No.

23 Q. Did he, in fact, sell this manufactured house
24 that's now in possession of the Higgenbothams?

25 A. No.

1 Q. Did he, to the best of your knowledge, meet
2 with the Higgenbothams regarding this particular manufactured
3 house?

4 A. He turned them over to me about this house.

5 Q. Okay. Correct me if I'm wrong. My impression
6 from your earlier testimony was that you didn't have any
7 contact with the Higgenbothams until their financing came into
8 question?

9 A. I think that's true.

10 Q. But you just said that he turned them -- Chris
11 turned them over to you regarding the sale of this particular
12 house or manufacture--

13 A. Yes. See, they were trying to buy a new one
14 and they couldn't qualify for it. And so I said to him, Hey,
15 let me meet with them and I've got one with the trucking
16 company that we can participate with and make this work with
17 these folks. And if you remember, Mr. Higgenbotham testified
18 earlier they just wanted a home, so they were receptive to the
19 idea.

20 Q. I thought you testified earlier that
21 Mr. Higgenbotham wanted a new home?

22 A. He did, but he couldn't get it because of his
23 tax liens.

24 Q. Okay. But it is apparent from your letter here
25 designated as Exhibit 10 that your sales-- that your

1 salesperson wrote a deal with this customer. Correct?

2 A. The salesperson wrote at least one deal with
3 the customer trying to sell them a new home, yes.

4 Q. Right. And Exhibit 1 manifests a deal made on
5 May 2nd, 2002. Correct?

6 A. Yes. For a new home.

7 Q. Right.

8 A. That's correct.

9 Q. And you agreed in the Stipulation and
10 Settlement that purchasers entered into a contract with Amega
11 sales on May 2nd, 2002. Correct?

12 A. That -- yes, that's what it says.

13 Q. And is there any other evidence here of any
14 other deal being made?

15 A. There's not here.

16 Q. Is there anywhere else?

17 A. I don't know specifically of any. All I'm
18 saying is that the numbers -- obviously there was a mistake
19 made or somebody didn't check something or there was another
20 one. I mean, there's a lot of possibilities and we can
21 speculate all day. I don't know.

22 Q. All right. Exhibit 1, what I'd call the Form
23 500, I guess --

24 A. Okay.

25 Q. -- do you have a copy of that in front of you?

1 A. Yes.

2 Q. There is no, quote, number on this particular
3 form. There is a box denoted as stock number and inside that
4 box is the word "stock" and it's circled. Does that have any
5 special significance?

6 A. And I wouldn't have any idea. I mean, it may
7 be ordered off stock. I don't know. I didn't write the
8 agreement.

9 Q. And so you've never seen this on another Form
10 500 filled out by any of your employees?

11 A. I didn't say that.

12 Q. Okay. Well, have you seen it on other forms
13 filled out by your employees?

14 A. Well, I would think that if they were talking
15 about --

16 Q. I think I asked you a yes or no question.

17 A. I'm sorry. Ask me again. I'm sorry.

18 Q. Have you seen this word "stock" circled on
19 other Form 500's that have been filled out by your employees
20 in the past?

21 A. I really don't recall, no.

22 Q. Okay. So this is just a once in a lifetime
23 occurrence, to the best of your knowledge?

24 A. If you're pushing me to that point, that's --
25 that would be my answer, yes.

1 Q. Okay. Do your employees normally use the wrong
2 sales form, mark down the wrong year, mark down whether it's
3 the wrong designation as being new or used?

4 A. Can I give you a better answer than yes or
5 no --

6 Q. Sure.

7 A. -- please? All due respect, please, but this
8 was a one-time beginning thing here where the trucking company
9 was going to sell a home. And so this Form 500 doesn't relate
10 necessarily to that. They were originally wanting a new home.
11 They couldn't make that happen because of their economic
12 situation. I met with them after that.

13 And I see also that the Form 500 has a scribble
14 on the date also and then a date put above, so see, I don't
15 know what the salesman -- he might think, well, in layman's
16 terms, maybe I need consistency here with dates. I don't have
17 a clue what was in his mind.

18 COMMISSIONER DAVIS: No further questions.

19 JUDGE JONES: Thank you.

20 Commissioner Appling?

21 COMMISSIONER APPLING: Just a couple of
22 questions.

23 QUESTIONS BY COMMISSIONER APPLING:

24 Q. Remind me again, Mr. DeLine, how long have you
25 been in business? How long have you been in the mobile home

1 business and trucking?

2 A. Well, the trucking -- I've been in the retail
3 sales of mobile homes 20 years and in the trucking business
4 for 9.

5 Q. For 9. I would have to be very honest with you
6 that there's a lot of inconsistency in this sales contract
7 with the Higgenbothams and there's just a lot of things and
8 pieces of paper in front of me that just certainly don't add
9 up. Don't take my comments as a lecture because I don't go
10 around lecturing people, but there's a lot of inconsistency
11 here with this sale and for being in business for 20 years.

12 Is it a possibility that Chris got a little bit
13 enthused about this bill? Well, let me go back and ask
14 another question before I do that.

15 Where did the trailer sit at from the time it
16 was damaged? Was it damaged in Indiana? Is that where it
17 took place -- the damage took place?

18 A. I'm not sure exactly where. I think, as I
19 recall -- again, my memory's really gray with that, but
20 somewhere -- the terminal I believe was in Indiana that
21 dispatched the transport. I don't recall where the house was
22 going. I think for that period -- that better than a year or
23 whatever that's unaccounted for, I think to the best of my
24 recollection, I think it was in Indiana.

25 Q. When did you make the contract with Skyline to

1 buy the house -- to buy the mobile home?

2 A. It would have been the date that they
3 transferred the Certificate of Origin to me. I think November
4 19th is what they show of '99.

5 Q. '99?

6 A. November 19th of '99 I think it was.

7 Q. Did the mobile home sit on your lot from '99
8 until you sold it?

9 A. No.

10 Q. Would you have any financial obligation during
11 that time it was sitting and where it was sitting at?

12 A. Absolutely. See, I would have bought it in
13 November of '99. That's what I was saying. And so for, what,
14 16, 17 months, I was trying to figure out, number one, you
15 know, who's responsible and what we're going to do with it.
16 And this was -- again, prior to that, I had Cargo Insurance
17 with the trucking company and this was just coincidentally a
18 time when I just dropped that and self-insured.

19 Q. Well, why would you -- and how many times have
20 you sold mobile homes under the trucking company?

21 A. I think, including this one, over a couple of
22 year period I'm going to say five.

23 Q. Okay. Is that a good practice?

24 A. Honestly, no.

25 Q. Okay. Thank you for being honest, because in

1 my previous job I used to certify small businesses and
2 organizations for doing that, but thanks for your honesty in
3 that.

4 I still say there's a lot of inconsistencies
5 here and it just seems to me that -- I keep running back to
6 the fact that when I see this Form 500 that Chris must have
7 drawn up for \$70,000, almost \$71,000, \$70,900, it just
8 triggers things in your mind, was he trying to sell this
9 mobile home --

10 A. Yes.

11 Q. -- as a new home? What was the reason behind
12 this --

13 A. I understand that.

14 Q. -- Form 500 and what led you to the selling
15 with the Higgenbotham? Help me out here because I'm having a
16 real problem following this case.

17 A. I'm going to -- I'm going to -- may I narrate?

18 Q. Yeah.

19 A. And my attorney's probably going to get mad at
20 me about this, but it doesn't make any difference. My
21 salesman was trying to sell them a new home. There's no
22 question about it. They wanted a new home, he was trying to
23 do that. They couldn't qualify for the financing, they had
24 tax liens.

25 He brought them to me. I said, Chris, I've got

1 the damaged house with the trucking company. I can get
2 involved and maybe carry a second or whatever I need to and
3 make the numbers work and sell it for a heck of a lot less
4 money. And I handled it poorly and I mean that sincerely. I
5 didn't document well and that's the truth.

6 Q. Well, you gave me what I was looking for
7 because I will use another word for it, it's sloppy for a guy
8 that's been in business 20 years and your reputation is on the
9 line here.

10 A. I understand. But this is the first time this
11 had happened. We had Cargo Insurance before and so this was I
12 guess almost a knee jerk or hysterical situation. I mean,
13 what do we do? We've got to buy this \$40,000 house and what
14 are we going to do with it? And it sat around for a year,
15 year and three or four months. So, again, that's the way it
16 was.

17 COMMISSIONER APPLING: That's all the questions
18 I have.

19 JUDGE JONES: Chairman Gaw?

20 FURTHER QUESTIONS BY CHAIR GAW:

21 Q. You may have answered this earlier, Mr. DeLine.
22 You just said you had to buy this \$40,000 house. How much did
23 you actually pay Skyline for the mobile home?

24 A. Again, sir, with all due respect, I don't have
25 that off the top of my head. I pulled -- I said 40. I'm sure

1 it was 35, 38, 40.

2 Q. 35 to 38 that you would have paid Skyline?

3 A. Yes.

4 Q. Well, why in the world would they take that
5 much money for it? Help me to understand that.

6 A. Who? Skyline?

7 Q. Skyline.

8 A. Oh, they demanded it.

9 Q. That's not my point.

10 A. Oh, I'm sorry.

11 Q. Maybe I don't have a point, but that's not
12 unusual either.

13 A. Okay.

14 Q. What was the value of this home undamaged in --
15 at the time it was damaged?

16 A. Yeah. And I testified that we -- Greg Williams
17 and I, when we did this stipulation, we used the NADA book.

18 Q. No, that's -- I'm sorry. That's not my
19 question.

20 A. I'm sorry.

21 Q. At the time that it was damaged back in
22 Indiana --

23 A. Okay.

24 Q. -- okay, just prior to it being damaged, what
25 would have been the market value of that new manufactured

1 home?

2 A. It would have been very close, I would guess,
3 to Exhibit 1.

4 Q. Just tell me a figure.

5 A. Seventy thousand.

6 Q. Seventy thousand?

7 A. Yes.

8 Q. How much did you pay Skyline for the home?

9 A. Again, I don't know exactly, but I'm going to
10 say 36, 37, 38,000.

11 Q. Is that generally your profit margin, the
12 difference between 70 and 36, gross profit margin?

13 A. You want to get in the mobile home business?
14 No, I'm teasing.

15 Q. I don't know. I'm just trying to find out.

16 A. Now, remember sales tax is in there and there's
17 other items that are dealer-installed options, air
18 conditioning, skirting, things like that that are in that
19 purchase price. We've got a delivery and set-up. But, yes,
20 that is the gross margin, yes.

21 Q. But those other things would trim that 70 down.
22 It's not fair to say you make all of that money --

23 A. No.

24 Q. -- but that's your gross difference?

25 A. That's a fair statement.

1 Q. Okay. So you paid Skyline what you would --
2 what they would have gotten out of it from a dealer?

3 A. That's correct.

4 Q. You said you talked about the possibility of
5 carrying a second mortgage when you were dealing with the
6 Higgenbothams or that that might have been a possibility. Did
7 you carry any mortgage on this manufactured home?

8 A. No.

9 Q. And you don't know where the money came from?

10 A. I really don't.

11 Q. You don't know how they got the money with
12 these tax liens that you're talking about --

13 A. Well --

14 Q. -- being still out there?

15 A. I don't know exactly, but again, I think it
16 becomes a function of the loan to value ratios and there's
17 equity buyers out there and they already testified, somebody
18 did, that Liberty was involved. And so, you know, they very
19 likely could have gotten an equity buyer that would -- you
20 know, 60 percent loan to value that would just about do Jack
21 the Ripper.

22 Q. You're going to have to explain that one to me,
23 Mr. DeLine. You're talking in a code I don't understand.

24 A. I'm sorry. I'm sorry. Okay. Let's say that
25 they paid 40,000 for this home. Okay? And these appraiser

1 guys use books. Okay? They use the book for a basic mobile
2 home, square footage X, and it just comes up with a value.
3 Okay?

4 Well, obviously if Higgenbotham could buy a new
5 one for 70 or a damaged one for 40, okay, but yet that had
6 been refurbished -- you see what I mean -- he would have some
7 equity. Even if they dinged it 10,000 for being used, he's
8 still got some instant equity there because he made a heck of
9 deal. See? That's the theory.

10 Q. So if the value of the home was closer to 70,
11 maybe 60 after you take the 10 off --

12 A. In good shape, yeah.

13 Q. -- but maybe he's only paying --

14 A. Forty.

15 Q. -- 40 --

16 A. Yeah. See --

17 Q. -- then he might be able to make the deal?

18 A. In an equity situation, you bet.

19 Q. So you don't know where the money came from?

20 A. I really don't. Not sitting right here
21 tonight, no.

22 Q. And you can't tell me where the check is that
23 you got?

24 A. I don't know.

25 Q. Or a copy of it?

1 A. No.

2 Q. Or a copy of the contract with A&G that you
3 say -- you don't whether there was a contract?

4 A. See, again, and this is going to sound very
5 poor in front of this Commission, but I -- number one, I did a
6 lot of this with Higgenbotham myself verbally and amended this
7 thing not thinking there was ever going to be a problem. And
8 then all of a sudden they had service problems so they contact
9 Gene and Tim and those guys.

10 And so then I'm scrambling around, I'm wanting
11 to just settle the thing because it's liability for me and I
12 know that. I mean, what else is it? So, I mean, that's just
13 the truth of it. And I -- I mean, it was handled poorly. I'm
14 not debating that. It was absolutely handled poorly by me for
15 A&G Commercial Trucking.

16 Q. Mr. DeLine, if the desire was to get this
17 manufactured home off your lot, from your standpoint, and try
18 to cut your losses or avoid losses, that was your -- that
19 would have been part of your motivation, wouldn't it?

20 A. It absolutely was.

21 Q. Higgenbothams wanted to buy a manufactured
22 home?

23 A. There you go.

24 Q. Eventually it will get easier for me.

25 A. Yeah.

1 Q. But you say they couldn't get the money for a
2 new one?

3 A. They couldn't qualify, that's correct. And so
4 that's why with this --

5 Q. If they had gone into a financial institution
6 and said, We want to buy this home but it's used and it's
7 damaged, would that have impacted the valuation of that home?

8 A. Yes. Absolutely.

9 Q. But if they'd have gone in and said, This is a
10 new home, been worth a little more then. Correct?

11 A. Yeah. And ethically you'd like to think that
12 they didn't do that.

13 Q. Were you involved in any of the financing of
14 this mobile home?

15 A. No.

16 Q. Why is it that we see this fax to the appraiser
17 from -- in regard to the sales contract from your Amega
18 office?

19 A. They would have asked for it. I think that was
20 the testimony of the appraiser. Here's what happens. They
21 write a deal typical of this deal on May 2nd, whether that was
22 the date, whether that was the deal or whatever, but let's
23 just use that as an example.

24 A deal like that is written. Okay? Then
25 you've got to go about -- it's not written on here contingent

1 on financing, but that's the understanding it's contingent on
2 financing unless the customer can just write you a check,
3 which typically they can't.

4 And so then you have to order an appraisal on a
5 land/home deal because the value of the project has to be
6 established to see if we're within lim-- most mortgage lenders
7 want 80 percent loan to value. There are some out there that
8 will do 90 on manufactured housing, but the -- the appraisal
9 is critical. And it was on this projected new home.

10 Now, I don't remember if it became apparent
11 before the appraisal came in or whatever that Higgenbotham
12 couldn't qualify, he had a couple of big tax liens as far as I
13 recall. So then I hatched this plan with him about this used
14 home from the trucking company. Another appraisal was done --
15 and that guy wasn't here today, I don't even know who it is,
16 but I know there was another appraisal done on the actual used
17 home, so --

18 Q. Do you know who that was?

19 A. I don't.

20 Q. But you know it happened?

21 A. I -- I recall that, yeah, there was another
22 appraisal done.

23 Q. Did you talk to this guy that did the other
24 appraisal?

25 A. No. I talked to the guy with Liberty.

1 Q. With Liberty?

2 A. Yes.

3 Q. That's the financial institution --

4 A. Yes.

5 Q. -- that would have been loaning the money?

6 A. Well, I think they're the broker, but they
7 would have arranged the money, yes.

8 Q. When you talked to them, did they tell you how
9 much money was being sought to be borrowed?

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

11 Q. Who did you talk to there?

12 A. I don't really remember that. I'm sorry.

13 Q. Did you have a contact there that you normally
14 talked to at Liberty?

15 A. No. Right after that I developed my own
16 brokerage, so --

17 Q. So now you loan money?

18 A. I'm the broker.

19 Q. So now when people come in to buy a home from
20 you, you also have an ability to loan money to the purchaser?

21 A. They have that option.

22 Q. Is that a separate corporation?

23 A. Yes.

24 Q. What's the name of that one?

25 A. DeLine Finance, LLC.

1 Q. How many corporations do you have, Mr. DeLine,
2 that you are the principal owner of?

3 A. Ten or twelve.

4 Q. How many of them are you the president of?

5 A. Ten or twelve.

6 Q. How many of them are affiliated with the sale,
7 transport or anything to do with mobile homes?

8 A. Ten or twelve.

9 Q. That's what I figured. How many of them
10 operate in Missouri?

11 A. Ten or twelve.

12 Q. How many of them have some presence of business
13 in Ashland?

14 A. Ten or twelve.

15 Q. Do we have the names of all of them somewhere?

16 A. You may have. I don't know.

17 Q. Can you list them?

18 A. Sure.

19 Q. Would you do that, please?

20 A. There's DeLine Equipment Leasing, there's
21 DeLine Real Estate, there's DeLine Kansas Aircraft, there's
22 DeLine Finance, LLC, there's Madison Mortgage Investors,
23 there's A&G Commercial Trucking, there's GKD Management, LP.
24 What am I missing, Tom? I don't know.

25 Q. Those are the ones you can remember?

1 A. Those are the ones I can remember.

2 Q. You'll think of the rest of them if there are
3 more later I'm sure, but are you the principal shareholder of
4 all of those or are they structured so that some of them are
5 owned by the other corporations?

6 A. Yeah. That's the way it is.

7 Q. The latter?

8 A. That's correct.

9 Q. In the case of A&G Trucking, do you personally
10 own the shares of A&G as opposed to one of your companies
11 owning the shares, if you know?

12 A. I don't know. At the end of the day, it all
13 comes back to me.

14 Q. Yeah. Okay. You don't know though exactly how
15 that works?

16 A. I don't know. I don't know.

17 Q. With Amega, do you own those shares personally?

18 A. I think I do.

19 Q. Yeah. Okay. Earlier your employee said that
20 the driving of the A&G truck from your lot over to wherever
21 the manufactured home was delivered is generally done by an
22 employee of Amega. Do you agree with that?

23 A. Again, he's employed by an employment service,
24 but does work for Amega, yes. His principal duties are for
25 Amega, yes.

1 Q. Okay.

2 A. But the truck is leased to A&G.

3 CHAIR GAW: Okay. That's all, Judge. Thanks.
4 I'm sorry.

5 JUDGE JONES: Commissioner Murray?

6 COMMISSIONER MURRAY: Thank you.

7 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Did the contract for sale of the manufactured
9 home include any land?

10 A. No.

11 Q. And yet there were remarks in the Exhibit 1
12 that said add for land. Was that just a notation that that
13 much additional would be being spent separately for land? Is
14 that what that was to indicate?

15 A. Yes. That's pretty much for the financing.
16 That's just so that -- some salesmen do that. They just want
17 the customer to see how much money they're talking about.
18 They needed about 100,000.

19 Q. And this Exhibit 1, is that typical of a Form
20 500?

21 A. Yes.

22 Q. And the language in there that says, All
23 paperwork must be completed in full before home can be
24 delivered, is that typically added to these forms?

25 A. Yeah. And the reason that that is, is the

1 floor planning sources that finance the homes for the
2 dealership get really cranky when people move into these
3 things prior to closing.

4 Q. But you don't have any paperwork, even the
5 initial Form 500, for the sale of this particular manufactured
6 home; is that right?

7 A. Ma'am, again, I don't think there is a Form 500
8 honestly. Honestly, I -- I can just -- I'd bet a lot of money
9 that there's no Form 500.

10 Q. And are you saying there was no written
11 contract either?

12 A. I'm saying that there was no written contract
13 until all this stuff started going downhill and we did the
14 settlement, that's correct.

15 Q. And by "settlement" you're speaking of the
16 Settlement and Stipulation that -- thank you -- that was in
17 Exhibit 3?

18 A. That's correct. And, again, I'm not trying
19 to -- in my simple mind, I was trying to cover all basis and
20 make sure that everything was covered there. And turns around
21 and somebody says, Well, now there's sales tax involved so
22 that implies -- anyway, I intended something totally
23 different.

24 Q. And covering all basis, to make sure everything
25 was covered, what were you worried about?

1 A. Liability.

2 Q. For what?

3 A. Well, honestly, this kind of situation, civil,
4 some kind of action by Higgenbotham that I misrepresented or
5 somebody had or whatever, so --

6 Q. And are you saying you could lay your hands on
7 no documentation that substantiated your position on anything
8 you had done?

9 A. Just what we have here on the Stipulation and
10 Agreement, what subsequently happened, yes.

11 COMMISSIONER MURRAY: Okay. Thanks.

12 THE WITNESS: Okay. Sorry.

13 JUDGE JONES: Were you finished, Commissioner
14 Davis?

15 COMMISSIONER DAVIS: I've just got a couple
16 more questions.

17 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

18 Q. So, Mr. DeLine, correct me if I'm wrong, but my
19 understanding of your testimony was that there really wasn't a
20 contract until the Stipulation of Settlement was signed on
21 March 17th, 2003; is that correct?

22 A. Nothing in writing. Verbal only.

23 Q. So you delivered -- or one of your companies or
24 combination of your companies delivered a manufactured house
25 to this gentleman's property and installed it without a

1 contract. Is that what you're telling me?

2 A. Well, we got a 39, 40,000 dollar deposit --
3 payment, see, so yes, that's true. That's what I'm telling
4 you. Other than the payment and the verbal.

5 See, this was a problem home for me obviously.
6 And if we were able to -- we'd already been told we could sell
7 it as a used home. So if we were able to sell the thing and
8 get the \$40,000, that was the best solution that I could come
9 up with. Again, maybe I mishandled it at that point, but
10 anyway, that was what we did.

11 COMMISSIONER DAVIS: No further questions.

12 JUDGE JONES: Commissioner Appling?

13 COMMISSIONER APPLING: No further questions.

14 JUDGE JONES: Commissioner Gaw?

15 I just have a couple questions.

16 QUESTIONS BY JUDGE JONES:

17 Q. When someone contracts to purchase a home, does
18 that hold it for them? What's the purpose of contracting to
19 do that?

20 A. Well, yeah. I mean, if it -- if indeed it is a
21 stock home bought from the dealership --

22 Q. Right.

23 A. -- and they put a good faith deposit down, yes,
24 that holds the home.

25 Q. Did the Higgenbothams put a deposit down?

1 A. They put a deposit down in the beginning of
2 \$1,000.

3 Q. Why were they refunded over \$2,000?

4 A. Well, because we had -- they had paid X amount
5 of dollars and we determined --

6 Q. What is X?

7 A. That's what we're saying, it was -- I don't
8 have the exact amount. I can assume or guess that it was
9 \$40,900 is what I've come up with because the numbers really
10 make sense that way. I've been scratching my head since the
11 deposition. But anyway, irregardless of that, what we see is
12 that they had \$1,000 good faith on the original purchase
13 agreement on the new home that they couldn't purchase because
14 they couldn't qualify.

15 Q. Okay. Well, I guess I'm grappling with the
16 problem of the refund in paragraph 3 of the Stipulation of
17 Settlement. They were refunded the taxes of \$2,578?

18 A. Again, I allowed that to be called tax.

19 Q. But it's the exact amount of the tax that would
20 have been on the new home?

21 A. No, it's not.

22 Q. Oh, it's not?

23 A. No. Not at all.

24 Q. 2,578.37 is exactly what I'm reading. It says
25 the --

1 A. Tax on the Exhibit 1 you're talking about?

2 Q. No. I'm looking at the Stipulation of
3 Settlement. The price of the new home was
4 66-some-odd-thousand dollars and that included a sales tax of
5 \$2,578.37. In paragraph 3 they were refunded sales tax, or
6 whatever you want to call it, in the amount of \$2,578.37.
7 Why?

8 A. Okay. But that's what I'm saying. I didn't
9 question that. I probably should have. I just thought, well,
10 what the heck -- this will make sure nobody ever construes
11 this as a new house or whatever. If you're -- your point
12 there would be -- look at what the tax would be on 38,000 and
13 it wouldn't be 25. You see? So there's no rhyme or reason
14 for it. The tax rate in Missouri is 7 percent. You only get
15 60 percent is all that's collected on manufactured housing,
16 so --

17 Q. I think we're missing each other.

18 A. Okay.

19 Q. They were refunded something. That's true?

20 A. That was an additional discount, refund,
21 whatever, yes. That's correct, that amount.

22 Q. And that something, according to this
23 agreement, was \$2,578.37?

24 A. Yes.

25 Q. Coincidentally, that's the sales tax on the new

1 home -- on this new home that they had initially contracted
2 for on May 2nd?

3 A. Well, okay. I see what you're saying. Yes.

4 Q. So why were they refunded the sales tax?

5 A. Again, I signed this and it says what it says.
6 They didn't pay that.

7 Q. So they weren't refunded it then, they were
8 given it? I mean, what happened?

9 A. It was an additional concession on my part to
10 settle this deal with the Higgenbothams and their attorney.

11 Q. Well, now I hear you saying that you took
12 \$2,578.37 off the sales price of a used home?

13 A. Correct.

14 Q. And you called it a sales tax in this
15 agreement?

16 A. Yes.

17 Q. Why didn't you just say part of the agreement
18 is we'll discount the price of the used home at \$2,578.37?

19 A. That certainly could have been done.

20 Q. Well, this is an agreement. Did an attorney
21 draw this up? Did your attorney draw this up?

22 A. No. My attorney really wasn't involved.

23 Q. Who drew this agreement up?

24 A. Greg Williams, Higgenbothams' attorney.

25 Q. So an attorney did?

1 A. Yes.

2 Q. And did you read that clause right there?

3 A. Again, I --

4 Q. Didn't you have a problem with that?

5 A. No. Because you're looking at it in the
6 context of -- what I was looking at it was, boy, that will
7 absolutely establish that there's no -- I mean, I easily gave
8 that up because that would absolutely establish this was a
9 used home. You see? So that was the context I was thinking
10 about.

11 Q. To me, this absolutely establishes that they
12 were sold a new home, delivered a used home, given the sales
13 tax back and then paid the purchase price of a used home.
14 That's what it absolutely shows. So why would you agree to
15 something that absolutely shows that? It's almost like a bait
16 and switch.

17 A. Well, I -- I didn't see it that way. The way I
18 saw it is what I'm telling you. What I recall was that it was
19 an additional concession on my part and I thought -- I guess
20 that's why lay people shouldn't practice law. I don't know.
21 I mean --

22 Q. And apparently they shouldn't sign Stipulations
23 and Agreements either.

24 A. I guess not, sir. I don't have any better
25 explanation for you. It is what it is.

1 JUDGE JONES: All right. Are there any more
2 questions from the Bench? Commissioner Appling?

3 FURTHER QUESTIONS BY COMMISSIONER APPLING:

4 Q. This will be my last question, but did the
5 Higgenbothams, did they ever come to you after you had set the
6 trailer up and say, We've got problems here with this trailer?
7 Did they ever come to you with concerns of problems with the
8 trailer itself?

9 A. They -- they didn't come to me. And that's
10 part of the problem. That's -- again, we just talked about
11 all the entities that I run, if you will, and some of the
12 loosey-goosey unfortunately that happens. And they -- I'm not
13 saying they wouldn't have contacted maybe Mark, my service
14 manager, at Amega, even though -- sometimes the apples get in
15 with the oranges. They might have contacted Chris. They
16 didn't contact me. I wish they had of. I would have
17 certainly made a heck of a lot different choices then what
18 happened.

19 COMMISSIONER APPLING: Thank you very much,
20 sir.

21 JUDGE JONES: Commissioner Davis?

22 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

23 Q. Mr. DeLine --

24 A. Yes.

25 Q. -- how often do you get customer complaints?

1 A. Oh, really fairly frequently.

2 Q. And how often do you personally handle and make
3 sure that those complaints are resolved?

4 A. Probably not as much as I should, but some.
5 When I do, it gets taken care of.

6 COMMISSIONER DAVIS: Thank you.

7 JUDGE JONES: Commissioner Murray?

8 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

9 Q. You were asked a question earlier, I believe it
10 was by the Judge, about the purpose of entering into -- what
11 are these? Form 500's, is that what you're calling them?

12 A. That's what I call them.

13 Q. And he said would that hold the home for them
14 and you said -- I believe your response was yes, if it's a
15 stock home, that holds it for them. Is that what you said?

16 A. Yes.

17 Q. And would that be what the meaning of the word
18 "stock" that was circled there on that form is?

19 A. I don't think so. And the reason -- the reason
20 I don't think so -- again, I didn't write it, but I don't
21 think so because there's not a serial number there. There
22 would be a serial number and the model year is different than
23 what was there, so that doesn't make any sense. So all I can
24 see is that that was a good faith maybe to pay for the
25 appraisal or whatever. I don't know.

1 Q. And then that \$1,000 that they put down on this
2 particular contract --

3 A. Yes.

4 Q. -- what happened to that?

5 A. That was transferred to the trucking company.
6 That's what I was saying. That's what was part of the
7 consideration. They paid that 1,000 and if you look at it,
8 they would have paid 39,900 in addition to that for a total of
9 40,900.

10 Q. How do you know that?

11 A. Well, I don't. That's speculation. I added up
12 those numbers on the stipulation. I was wondering after I
13 gave my deposition where in the world did those numbers come
14 from. And they coincidentally add up to 40,900.

15 Q. And how did you come up with -- how did the
16 Higgenbothams' attorney come up with the numbers that were put
17 in the Stipulation of Settlement?

18 A. Yes. We used the NADA book for used homes.
19 And that's how we came up with the 38 whatever. And so then
20 the difference was refunded back to them and I allowed that to
21 be called sales tax.

22 Q. So they had paid -- even if they --

23 COMMISSIONER MURRAY: I'm finished. Thank you,
24 Judge.

25 JUDGE JONES: Cross-examination, Mr. Krueger?

1 MR. KRUEGER: Thank you, your Honor. I
2 promised an hour. I'll try to make it less.

3 First of all, maybe I can clarify something
4 with counsel. You had identified as Exhibit 18 Stipulation of
5 Settlement, but I don't think it was offered or admitted. Is
6 that the same as Exhibit 3?

7 MR. HARRISON: It is. And that was my fault,
8 so there only needs to be one copy of it in evidence and it's
9 Exhibit 3. I'm sorry. I had it in my list as well.

10 MR. KRUEGER: I just wanted to make sure we
11 weren't talking about two different documents.

12 MR. HARRISON: yeah.

13 CROSS-EXAMINATION BY MR. KRUEGER:

14 Q. You testified that you read the Stipulation of
15 Settlement before signing it?

16 A. Yeah, I'm sure I did.

17 Q. And when you signed it, were you indicating
18 that the statements therein were true and that you agreed to
19 them?

20 A. I think that would be the understanding, yes.

21 Q. Okay. The second paragraph, the first whereas
22 clause says, Purchasers entered into a contract with Amega
23 Sales, Inc. on May 2, 2002; is that true?

24 A. I would -- yes.

25 Q. And it was with Amega Sales, not with A&G?

1 A. Yes. This -- the Exhibit 1 is -- it's -- I
2 mean, that would be -- I'm sorry.

3 Q. So the contract with Amega Sales that was
4 entered into on May 2, 2002 is the one that was Exhibit 1?

5 A. They were trying to buy a new home, but we've
6 already talked about it. I'm sorry. I probably misspoke.
7 The numbers don't match up. So there was some purchase
8 agreement out there with Amega that Greg Williams referenced
9 or some agreement. And I don't have anything more than what's
10 right here in front of me.

11 Q. When you say "Greg Williams referenced," it
12 makes it sound like you're not sure that that statement is
13 true. Is that statement true that there was a contract with
14 Amega Sales on May 2, 2002?

15 A. And I think consistent with what I told you in
16 the deposition, I don't have any reason to doubt that.

17 Q. And is that the contract that was evidenced by
18 Exhibit 1 in this case or is it a different one?

19 A. See, I don't think so. I don't think it was.
20 The numbers don't match.

21 Q. So then is it your testimony that you believe
22 that there were two contracts with Amega Sales on May 2, 2002?

23 A. Again, I don't know if it was May 2. The date
24 on this Exhibit 1 has been scratched and then put above.
25 Sometimes the salesman will think that there's some

1 consistency with dates or whatever, so I don't know. I really
2 don't.

3 Q. But you believe the one that's referred to in
4 here was, in fact, on May 2?

5 A. I signed this agreement. That's all I can tell
6 you.

7 Q. This stipulation also refers in the next
8 paragraph to a 1999 Skyline 68-by-32 manufactured home.
9 Correct?

10 A. Which one now?

11 Q. I'm talking about Exhibit 3, the Stipulation of
12 Settlement, the third paragraph, which is the second whereas
13 clause --

14 A. Okay.

15 Q. -- refers to a 1999 Skyline 68-by-32
16 manufactured home?

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

18 Q. Now, do you know why this 2001 Skyline home
19 mentioned in paragraph 2 and the 1999 Skyline home mentioned
20 in paragraph 3 were referred to in the same document?

21 A. Again, I think I've testified that I was trying
22 to, with Williams, cover all basis and make sure every single
23 home that these guys had ever been interested in, no matter
24 what entity it was, was covered under this agreement. That's
25 what my intent was.

1 Q. There was a dispute between you and the
2 Higgenbothams over the sale of the home that they eventually
3 purchased; is that right?

4 A. That's incorrect.

5 Q. You did execute a Stipulation of Settlement?

6 A. Yes.

7 Q. What were you settling if it wasn't a dispute?

8 A. Well, you said the sale. And it was about
9 service issues, as I recall.

10 Q. What service issues was it?

11 A. I think -- I do not -- I don't know. I don't
12 have it in front of me. It would have been consistent with I
13 think some of the things that field people have identified.
14 There were some cracks in some sheetrock and I think when they
15 got in on the site, I think that there was maybe a bend in a
16 frame, which happens sometimes when you get to a bad site. So
17 I think there were some things that the customer was concerned
18 about.

19 Q. It states here in numbered paragraph 1 that the
20 fair value of the home as delivered and installed is
21 38,321.63. Do you agree with that? Do you see that?

22 A. Yes.

23 Q. So the service issue -- the service issues
24 arose before the home was delivered and installed; is that
25 right?

1 A. How do you follow that? I don't understand.

2 Q. I'm trying to understand what kind of service
3 issues you're talking about.

4 A. The Higgenbothams complained of some cracks in
5 the sheetrock and some things like that, as I recall.

6 Q. And why do you consider that a service issue?

7 A. Why wouldn't it be? What else is it?

8 Q. What kind of service were they complaining
9 about? The delivery and installation, is that --

10 A. They were wanting service on a used home and we
11 don't warranty a used home.

12 Q. Did they agree to pay \$66,478.37 for the home
13 that they eventually bought?

14 A. Absolutely not, no. That never was.

15 Q. And why is that recited in the second paragraph
16 of this stipulation?

17 A. Because they had originally contracted with
18 Amega trying to buy a new home. That's been established.

19 Q. Did they have any dispute at all over that 2001
20 Skyline home that's mentioned in paragraph 2?

21 A. Did they have any dispute?

22 Q. Dispute with Amega.

23 A. They didn't get that home, they didn't buy the
24 home so they never did take delivery of that home. So the
25 only reason we put that in there, again, was there was a

1 purchase agreement contract at a point in time and we were
2 just wanting to blanket every possible thing that we could to
3 make sure this agreement was whole.

4 Q. Is it your testimony that Exhibit 1 was a
5 different purchase agreement contract?

6 A. I'm saying I don't know.

7 Q. Do you know why that purchase agreement
8 contract or whatever it was was not mentioned in this
9 Stipulation of Settlement?

10 MR. HARRISON: You're talking about Exhibit 1?

11 MR. KRUEGER: Yes.

12 THE WITNESS: I don't know.

13 BY MR. KRUEGER:

14 Q. The document states in numbered paragraph 3
15 that you agree to refund the sales tax. Correct?

16 A. Again, I told you in deposition and here that I
17 allowed that to be called sales tax.

18 Q. When you say you allowed it to be called sales
19 tax, are you saying that it really wasn't sales tax?

20 A. That's what I'm saying.

21 Q. So in that particular instance at least, the
22 statement in the Stipulation of Settlement is not correct?

23 A. Looking at it that way, that's correct.

24 Q. Even though you read it and would not -- and
25 signed it and would not have signed it if you knew there was

1 something in there that was incorrect?

2 A. I really didn't look at it this way.

3 JUDGE JONES: Mr. Krueger, I don't want to
4 discourage your zealous representation of your client, but try
5 not to rehash questions that have already come from the Bench.
6 That will be in the record. I take it you're leading to a
7 point by asking these questions. Just ask the question right
8 to the point.

9 MR. KRUEGER: I'm just trying to get an
10 understanding of this document and I cannot get it.

11 JUDGE JONES: Neither can I.

12 BY MR. KRUEGER:

13 Q. Do you know what is meant by the term "stock"
14 in connection with manufactured homes?

15 A. I would have an opinion.

16 Q. You don't know?

17 A. Well, I think it's up for interpretation, don't
18 you suppose?

19 Q. What is your opinion then?

20 A. Well, stock would be something that you
21 display.

22 Q. Something that you have on your lot?

23 A. Yes.

24 Q. You testified a few times I believe that
25 \$40,900 was a coincidental figure. Do you remember that?

1 A. I don't think I said coincidental. Maybe I
2 did. I just said I was wondering where in the world these
3 numbers came from. And if you add those up, it's real strange
4 that it comes up to an even 40,900.

5 Q. Why is that strange? What other --

6 A. Why would you pick -- I don't know. It just
7 seemed odd to me that, first of all, if the purchase price was
8 38,000 and it's a used home -- but even if it was a new home,
9 the sales tax wouldn't be 2,500. See, the figures don't
10 make -- don't make any sense, they don't jive.

11 Q. I wrote in quotes that you called it a
12 coincidental figure.

13 A. Okay.

14 Q. So I'm wondering what does it coincide with?
15 40,900 coincides with what in some strange way?

16 A. Maybe I misspoke. I'm sorry. I don't know
17 what you're trying to ask me. I don't understand what your
18 question is. I didn't mean it coincided with anything, just
19 seemed odd to me.

20 Q. You testified that the \$38,321.63 figure was
21 the NADA value of the home; is that right?

22 A. I remember negotiating with Greg Williams and
23 that was the way somehow -- we used the NADA book to establish
24 that figure, yes.

25 Q. And what is NADA?

1 A. National Automobile Dealers Association. And
2 in a lot of states manufactured housing is still considered an
3 automobile.

4 Q. And does that book tell you how to determine
5 the value of a home that's had some damage?

6 A. There are adjustments for -- yes.

7 Q. Are you a franchise dealer for Skyline homes?

8 A. Not at this point, no.

9 Q. Have you ever been?

10 A. Nothing other than the trucking company.

11 Q. Okay. So you wouldn't ordinarily have a new
12 Skyline home on your lot?

13 A. No.

14 Q. When this home that the Higgenbothams
15 ultimately bought was shipped, it came from Kansas; is that
16 correct?

17 A. It originally came from Kansas, yes.

18 Q. Do you know where it was destined for?

19 A. I don't. I really don't. No.

20 Q. Do you know where the accident occurred, the
21 damage?

22 A. No.

23 Q. And after that, it went to Indiana. Is that my
24 understanding?

25 A. That's -- I think that's right.

1 Q. And do you know how it came to be in Indiana?

2 A. Well, yeah. I had a terminal there and, as I
3 recall, it was an owner/operator and it was one of his trucks
4 that had been involved or whatever, so --

5 Q. Do you know any way that HUD labels can be
6 affixed to a manufactured home after it leaves the
7 manufacturer?

8 A. I think from prior experience -- I don't know
9 about a HUD label, but there's something that the manufactured
10 housing arm can do that's similar. So as I recall, it
11 wouldn't necessarily be a HUD label, but the Commission can do
12 something from the State of Missouri's standpoint in lieu of
13 is the way I understand it. Maybe that's wrong, but I think
14 that's right.

15 Q. I'm talking about HUD labels.

16 A. Specifically a HUD label?

17 Q. Yes.

18 A. I think by definition, in my mind, my opinion
19 would be the HUD label is applied by a manufacturer.

20 Q. And could not be -- if it's shipped from the
21 manufacturer and the HUD label is removed, there could not be
22 a HUD label again affixed; is that correct?

23 A. I don't think that's right. I think the
24 manufacturer could come and fix it if they wanted to as long
25 as they go through their certifications.

1 Q. Do you have any reason to believe that the
2 manufacturer ever affixed a HUD label to the home that the
3 Higgenbothams bought?

4 A. I really don't know what happened, period. I
5 have no reason to think so or not.

6 Q. Do you know how long your salesman, Chris,
7 worked at Amega?

8 A. I don't.

9 Q. Any idea?

10 A. Several years, I suppose.

11 Q. Did you regard him as a good employee?

12 A. Yeah, good salesman.

13 Q. Unlikely to make errors?

14 A. Don't say that, no.

15 Q. Do you know where he works now?

16 A. I don't.

17 Q. The copy of Exhibit 1 is not very good. Do you
18 know if you signed that document?

19 A. I don't know.

20 Q. Do you need to see it?

21 A. Exhibit 1?

22 Q. Yes.

23 A. I think I've got it here.

24 I don't know.

25 Q. You can't tell if that's your signature that's

1 been cut off at the bottom?

2 A. I doubt it, but I don't know.

3 MR. KRUEGER: I believe that's all the
4 questions I have.

5 JUDGE JONES: Redirect, Mr. Harrison?

6 MR. HARRISON: I'll be as brief as humanly
7 possible, I promise.

8 REDIRECT EXAMINATION BY MR. HARRISON:

9 Q. Okay. If you would, look at the Settlement
10 Stipulation, please, Exhibit 3.

11 A. Okay. Mine still says 18, but --

12 Q. It's the same thing.

13 A. Okay.

14 Q. All right. I guess I want to clear up some
15 questions and maybe some things that have been suggested here.
16 With regard to the homes described in this stipulation. All
17 right?

18 A. Okay.

19 Q. The second whereas paragraph mentions a 1999
20 Skyline home. Do you see that?

21 A. Yes, sir.

22 Q. All right. I'm trying not to tread on
23 ground -- trod over ground we've already trod.

24 It was not the case, was it, sir, that the home
25 that the Higgenbothams purchased, the one that they actually

1 purchased, was misrepresented to them in any way as far as you
2 know. Is that correct? That did not happen?

3 A. I did it, so I promise you it didn't happen.

4 Q. All right. I don't know how to ask this
5 question other than to just ask it. There's been a
6 suggestion -- I think the term "bait and switch" was used. Is
7 that what happened here?

8 A. No.

9 Q. Okay. I think you've tried to explain the
10 stipulation and the reason for the reference to the two homes.
11 I'd like you to, just to clear up the record, I hope, make
12 sure that it's clear, explain that again.

13 A. Okay. Again, Higgenbothams from the very
14 beginning wanted a new home. They --

15 Q. And you know that because you dealt with them?

16 A. That was what was explained to me --

17 Q. All right. Go ahead.

18 A. -- at the appropriate time.

19 Q. I'm sorry. Go ahead.

20 A. They wanted a new home. They even put a
21 contract, at least one, and a deposit to secure the price.
22 That was something else that -- deposits are used to hold a
23 stock home or also to freeze a price with price volatility,
24 which is kind of going on now with steel and lumber and
25 whatever.

1 Q. You're talking about --

2 A. On order.

3 Q. You're saying on a new home?

4 A. Yeah. You'll put a deposit down to freeze a
5 price. But anyway --

6 Q. And what do you base that statement on?
7 Exhibit 1?

8 A. What?

9 Q. You just said -- I think you said that they
10 entered into a contract for a new home and you based --

11 A. Yeah. I see -- it appears to me --

12 Q. All right.

13 A. -- that that's -- again, I didn't write it so I
14 don't know.

15 Q. Okay. Go ahead.

16 A. That's my best -- they wanted a new home. I
17 know that for sure.

18 Q. Continue with regard to the stipulation.

19 A. They wanted a new home. They tried to get a
20 new home. They couldn't qualify because of tax lien
21 situations. And they were introduced to me and I hatched this
22 plan. I said, Hey, look, I can sell you something from the
23 trucking company standpoint, a used home, we can sell it to
24 you way down the line. And -- and -- and I handled it very
25 poorly from that point.

1 Q. All right. I don't want there to be any
2 implication that you agree in any way that any kind of bait
3 and switch happened or that they were misled in any way with
4 respect to the home that they bought; is that correct?

5 A. No. There was no -- the Higgenbothams --
6 evidenced by what they said, Higgenbothams were good with the
7 whole situation. They had some service problems and didn't
8 understand that we don't service used homes, so that's what's
9 hatched this whole settlement situation.

10 Q. That was my next question.

11 A. They were all fine with everything.

12 Q. The reason they called you back dealt with
13 service-related questions?

14 A. They didn't call me, unfortunately.

15 Q. All right. The nature of their complaint, as
16 far as you understood, was not that they had been promised
17 something and got something else; is that correct?

18 A. That's correct.

19 Q. All right. You were asked a question with
20 respect to the land involved here. You had nothing to do with
21 the land part of the transaction; is that correct?

22 A. That's correct.

23 Q. As far as you knew, the Higgenbothams had their
24 own land from some place else and you didn't sell them the
25 land?

1 A. I didn't sell them the land.

2 Q. All right. You were also asked questions about
3 documents that substantiate your position in this case. You
4 mentioned the stipulation?

5 A. Yes.

6 Q. I don't want there to be any implication that
7 there aren't any documents. I mean, there's the Certificate
8 of Title that's in evidence. Correct?

9 A. That's correct.

10 Q. There's the Manufacturer's Certificate of
11 Origin that's in evidence. Correct?

12 A. That's correct.

13 Q. In other words, those documents, among other
14 things, substantiate that the owner and seller of this home to
15 the Higgenbothams was A&G Commercial Trucking; is that
16 correct, sir?

17 A. I don't see with what I see there would be any
18 dispute that A&G Trucking owned this home.

19 Q. All right. Did A&G Trucking collect any sales
20 tax?

21 A. No.

22 Q. All right. Your testimony with respect to the
23 stipulation provision that deals with sales tax, I want to go
24 over that.

25 A. Okay.

1 Q. It's your testimony that no sales tax was
2 collected on the home that the Higgenbothams purchased?

3 A. That's correct.

4 Q. All right. The Stipulation of Settlement says
5 sales tax is being refunded. That's what it says?

6 A. That's what it says.

7 Q. Your testimony is that is simply incorrect,
8 that is not the case, that is not what happened?

9 A. I'm saying that that was not the intent for
10 sales tax. I allowed that, thinking in my mind that that would
11 absolutely establish that this was a used house.

12 Q. But, in fact, no sales tax -- your testimony is
13 that no sales tax was, in fact, collected?

14 A. They didn't pay any sales tax.

15 Q. And, therefore, there was no sales tax to be
16 refunded?

17 A. That's correct.

18 Q. Is it also your testimony that if sales taxes
19 were payable on the 38,321.63, if they were payable, the
20 amount that would have been payable would have been
21 substantially less than 2,578.37; is that correct?

22 A. Sales tax rate in Missouri is about 7 percent
23 depending on what county you're in. 60 percent on
24 manufactured housing is 4.2. 4.2 percent of 40 is 16, so
25 yeah, it would be substantially less.

1 MR. HARRISON: All right. I don't have any
2 more questions.

3 JUDGE JONES: Thank you.
4 Commissioner Gaw?

5 CHAIR GAW: Sorry, Judge.

6 FURTHER QUESTIONS BY CHAIR GAW:

7 Q. Mr. DeLine, just one line here to see if I'm --
8 I'm trying to understand still on this Form 5-- whatever the
9 heck THE Form 500 is.

10 A. I understand.

11 Q. Have you got that in front of you, the
12 Exhibit 1?

13 A. Yes.

14 Q. Would you mind doing a little math for me?

15 A. Sure.

16 Q. And also Exhibit 3 --

17 A. Do I have it?

18 Q. Yeah, the stipulation.

19 A. Okay.

20 Q. You said that was Exhibit 18 sometimes.

21 A. Got it. Okay.

22 Q. In the paragraph 2 up there it has the number
23 66,478.37. Do you see that?

24 A. Yes, sir.

25 Q. And then it says, Which included sales tax of

1 2,578.37?

2 A. That's what it says.

3 Q. Would you mind subtracting the 2,500 number
4 from the 66,000 number?

5 A. Yeah. That's interesting too, isn't it? That
6 would be 63.9, it looks like.

7 Q. 63,900, wouldn't it?

8 A. That's what it looks like to me.

9 Q. All right. Now, would you mind adding the
10 \$7,000 figure that is on Exhibit 1 where it says something
11 about cash down payment and --

12 A. Yeah.

13 Q. -- something about cash as agreed --

14 A. Interesting.

15 Q. -- on that figure?

16 A. Yeah. That --

17 Q. What's that total?

18 A. 70,900.

19 Q. And that's the same as the base price of the
20 unit that's listed on Exhibit 1, isn't it?

21 A. Yes, it is. Isn't that amazing?

22 Thank you.

23 CHAIR GAW: That's all I have, Judge.

24 THE WITNESS: Yea. That put that to rest.

25 JUDGE JONES: Commissioner Murray?

1 COMMISSIONER MURRAY: I had something, but I've
2 lost it. Just give me a second, if you would.

3 It's all right, Judge. Thank you.

4 JUDGE JONES: Commissioner Davis?

5 COMMISSIONER DAVIS: No questions.

6 JUDGE JONES: Commissioner Appling?

7 COMMISSIONER APPLING: No questions.

8 JUDGE JONES: Okay. Now we'll have recross.
9 Do you have any more questions?

10 MR. KRUEGER: No questions, your Honor.

11 JUDGE JONES: And, Mr. Harrison?

12 MR. HARRISON: No, sir.

13 JUDGE JONES: You may step down, Mr. DeLine.

14 That end the hearing. Well, I'm not trying to
15 be funny here, but briefly I'll say that briefs will be due
16 20 days after the transcript is in. Reply -- now --

17 MR. HARRISON: Judge, could I just say
18 something?

19 JUDGE JONES: Yes, Mr. Harrison.

20 MR. HARRISON: I have some deposition testimony
21 that I wanted to offer. In the interest of time, I believe I
22 would agree to submit it in writing, if you'd like, or I could
23 read the lines that I would want --

24 JUDGE JONES: You have a deposition of who?

25 MR. HARRISON: Mrs. Higgenbotham, some of what

1 Mr. Higgenbotham said, and I think just one statement that
2 Mr. Haden said.

3 JUDGE JONES: So Mr. and Mrs. Higgenbotham and
4 Tim Haden?

5 MR. HARRISON: Correct.

6 JUDGE JONES: Do you have any objection,
7 Mr. Krueger?

8 MR. KRUEGER: Well, I don't know why
9 Mrs. Higgenbotham wasn't subpoenaed if he wanted to have her
10 testify.

11 JUDGE JONES: Does that mean you do or don't
12 have an objection?

13 MR. KRUEGER: I do have an objection to that.

14 JUDGE JONES: Were you there at the deposition?

15 MR. KRUEGER: Mr. Bates, from the general
16 counsel's office, was present.

17 JUDGE JONES: So we had an opportunity to ask
18 her questions that we wanted to ask at that time?

19 MR. KRUEGER: We did.

20 JUDGE JONES: So is your objection based on --

21 MR. KRUEGER: I'm just saying -- I'm sorry. Go
22 ahead.

23 JUDGE JONES: No, go ahead, Mr. Krueger.

24 MR. KRUEGER: My objection is that a deposition
25 is given for the purpose of discovering evidence, but that the

1 witness is supposed to be presented at the hearing if
2 available. And there's no explanation that the witness is
3 unavailable and the witness could have been subpoenaed and
4 brought in.

5 JUDGE JONES: Mr. Harrison?

6 MR. HARRISON: That's not what the rule says.
7 The rules says the deposition if notice is properly given,
8 which was the case, can be used at hearing. That's what the
9 Rules of Civil Procedure say, 57.07 I think it is, for any
10 purpose I believe is what the rule says.

11 JUDGE JONES: Do you disagree with that,
12 Mr. Krueger?

13 MR. KRUEGER: I don't have the rule in front of
14 me.

15 JUDGE JONES: What rule is it?

16 MR. HARRISON: I believe it's Rule 57.07.
17 Don't hold me to that, but I think that's right.

18 JUDGE JONES: Okay.

19 MR. HARRISON: You know, I'm not -- in order to
20 get things going here, I'm happy to -- I can submit the
21 depositions or -- you know, I don't want to read them unless
22 you all want me to.

23 JUDGE JONES: Well, no.

24 MR. HARRISON: I can submit the pages. You can
25 read them for yourself.

1 JUDGE JONES: You submit the pages and whether
2 or not we consider them in evidence, I'll issue an order
3 concerning that later.

4 MR. HARRISON: Well, I -- okay. I don't want
5 to be -- I want them in evidence, don't get me wrong. I don't
6 think there's any question that they're admissible. The fact
7 I didn't subpoena --

8 JUDGE JONES: Obviously there is a question as
9 to their admissibility, and I'll answer the question after
10 they've been submitted.

11 MR. HARRISON: All right. That won't change --
12 well, all right. I just want to make sure if I don't -- if I
13 read the depositions here, would that eliminate any question
14 about it? I don't know why counsel won't agree. I mean, the
15 rule clearly says that a deposition can be used at a hearing
16 and a trial for any purpose. They were given notice, there's
17 no requirement that I subpoena the witness. That used to be
18 the rule years ago, that you had to show unavailability.
19 That's not the rule anymore.

20 So I guess if there's going to be a question
21 about whether or not it's admissible, I need to read the
22 depositions.

23 JUDGE JONES: We certainly don't want to hear
24 you read the depositions.

25 MR. HARRISON: I'm sure you don't.

1 JUDGE JONES: What rule are you referring to?
2 Let's just look at the rule.

3 MR. HARRISON: I believe it's Rule 57.07. I
4 don't have a civil procedure rule book with me here. Perhaps
5 you do. May I approach the Bench?

6 JUDGE JONES: While we're doing this,
7 Mr. Krueger there was -- Tim Haden?

8 CHAIR GAW: I think so.

9 JUDGE JONES: Tim Haden is not here anymore, is
10 he?

11 MR. KRUEGER: No. I think he was sent home.

12 JUDGE JONES: Commissioner Gaw has another
13 question of him. We may need to reconvene.

14 CHAIR GAW: Go ahead and finish this, but I
15 don't remember him being excused.

16 JUDGE JONES: Well, I'm looking at this rule
17 and it sounds like you may be right except for -- except in
18 the second sub-- in the subsection 2 under Section A it says
19 that, The deposition may be used in court for any purpose if
20 the deponent is not in court, which she isn't in court, or if
21 the deponent is an adverse party, which that doesn't apply,
22 except the deponent or the party may not use such party's
23 deposition as evidence unless such party deponent is dead or
24 incompetent or not able to safely testify in court because of
25 deponent's sickness, bodily infirmity or imprisonment.

1 That seems to say that if Mrs. Higgenbotham is
2 unable to be here, then that deposition can be used. She's
3 not sick or dead or unable to be here.

4 MR. HARRISON: May I look at the rule?

5 JUDGE JONES: Sure you can.

6 MR. HARRISON: Judge, here's what I remember --
7 this is a 2001 rule book.

8 JUDGE JONES: Good grief.

9 MR. HARRISON: I looked at the rules maybe
10 three days ago. I'm relying on my memory. I remember looking
11 at 57.07 and I remember it saying, looks to me like you can
12 use it for any purpose. And I closed the book and I said that
13 answers that and I moved on.

14 JUDGE JONES: I'll tell you what. Go ahead and
15 submit it. If --

16 CHAIR GAW: Judge, may I just ask a brief
17 question, if I may. I think that if I'm understanding the
18 Judge correctly, he's not suggesting that the problem is
19 whether you read it or not, just he wants to answer the
20 question about whether it's admissible or not. And offering
21 it and taking under advisement the question of whether or not
22 it should be admitted, if you want to submit some suggestions
23 in support I think is what Commissioner Davis was suggesting.

24 MR. HARRISON: All right.

25 CHAIR GAW: I don't know if that -- but if that

1 causes a problem for your case in regard to whether it's read
2 or not is the first question that seems to need to be
3 answered.

4 MR. HARRISON: I'm not hung up on whether I
5 read it. I just want it to be considered, I want it to be
6 part of the record. I don't think there's any question but it
7 ought to be part of the record.

8 JUDGE JONES: Is there some reason,
9 Mr. Krueger, you don't want the deposition in the record? I
10 mean, there was an opportunity to examine Ms. Higgenbotham at
11 the time of the deposition.

12 MR. KRUEGER: Well, it's my understanding that
13 she -- that if she was going to give testimony in this case,
14 she needed to be present and that we're not obliged
15 necessarily to ask all questions at the time of a deposition.
16 If I was of the -- if I was of the impression that whatever
17 was said then was going to go into the record without the
18 necessity of the witness appearing, we might have conducted
19 ourselves differently.

20 JUDGE JONES: Is there some reason that she's
21 not here today?

22 MR. HARRISON: Well, first of all, I had her
23 deposition in the can and the deposition said what I wanted it
24 to say. Second, they filed a motion to subpoena her. I guess
25 I assumed -- which the Commission granted. I guess I assumed

1 that she would be subpoenaed.

2 MR. KRUEGER: I don't believe that we did file
3 a motion to subpoena Mrs. Higgenbotham. I think we only asked
4 to subpoena Mr. Higgenbotham. But I may be mistaken on that.

5 Okay. I stand corrected. I didn't draft that
6 document.

7 MR. HARRISON: I would remind you, your Honor,
8 that until Mr. Higgenbotham showed up, they were prepared to
9 read his deposition. Grant you, that didn't happen. I don't
10 know. I think we're arguing about nothing.

11 JUDGE JONES: I'm going to allow the deposition
12 in. There was an order granting the motion to subpoena her
13 and Mr. Higgenbotham. Why she's not here, I don't know. So I
14 will allow it in and those other depositions.

15 MR. HARRISON: Right. So should I -- do you
16 just want me to submit the portions that I want in the record
17 along with maybe --

18 JUDGE JONES: No. I want you to submit the
19 whole thing.

20 MR. HARRISON: Do you want me to state with my
21 submission what parts I'm offering?

22 JUDGE JONES: That would be helpful. Thank
23 you.

24 MR. HARRISON: All right.

25 MR. KRUEGER: So you're admitting it?

1 JUDGE JONES: Yes, I am. I am admitting it.

2 Now, back to the briefing, when the transcripts
3 are in, the initial brief, Mr. Krueger, will be 20 days
4 thereafter and the reply brief will be 10 days after that.

5 It seems like you were under the impression
6 that you would get 20 days for a reply brief.

7 MR. HARRISON: Help me understand. The time
8 for submitting the briefs doesn't begin until the transcript
9 is delivered?

10 JUDGE JONES: Exactly.

11 MR. HARRISON: And he has 20 days, I have 10
12 days after that --

13 JUDGE JONES: To reply.

14 MR. HARRISON: -- to submit my brief?

15 JUDGE JONES: Well this is a reply brief. If
16 you want to submit an initial brief, both of you submit those
17 20 days after. And if both of you to want reply to one
18 another's briefs, then 10 days after those initial briefs are
19 filed.

20 MR. HARRISON: Fine.

21 JUDGE JONES: In any event, initial briefs are
22 filed 20 days after the transcripts are in; reply briefs are
23 filed 10 days after the initial briefs. So whoever files an
24 initial brief, file it 20 days after the transcripts are in
25 and 10 days after that reply briefs will be due. Is that

1 clear or did I make it muddy?

2 MR. HARRISON: Absolutely crystal clear.

3 JUDGE JONES: Mr. Krueger, you have a perplexed
4 look on your face.

5 MR. KRUEGER: I'm sorry. I'm functioning on
6 not enough sleep. I must be --

7 JUDGE JONES: Twenty days after the
8 transcript --

9 MR. KRUEGER: Both parties file a brief at that
10 time and then both parties have the opportunity to file reply
11 briefs. Is that your intention?

12 JUDGE JONES: Exactly.

13 MR. HARRISON: And then that's all the briefs?

14 JUDGE JONES: That's right. That's all the
15 briefs.

16 Is there anything else we need to discuss?

17 Commissioner Gaw, you had a question?

18 CHAIR GAW: Well, if the witness isn't here,
19 Judge, it's not critical. I did have another question of one
20 of the witnesses that was here earlier, but if he's not
21 here -- I think that it's not clear to me what portions of the
22 deposition of Mrs. Higgenbotham will be admitted into the
23 record for consideration and I'd like that cleared up so I
24 know what's in and what's not.

25 MR. HARRISON: If it helps, that deposition was

1 very short, 15 pages maybe. Well, let me --

2 JUDGE JONES: The whole deposition will be
3 admitted.

4 MR. HARRISON: I think I'm going to offer the
5 whole thing.

6 JUDGE JONES: He'll offer the whole thing and
7 it will be admitted. He'd refer to those portions that he
8 wants us to consider particularly.

9 CHAIR GAW: I just want to know whether it's
10 all in the record. That's all I'm trying to clarify.

11 JUDGE JONES: Right.

12 Is there anything else before we adjourn?

13 MR. KRUEGER: You're not offering Mr. Haden's
14 deposition; is that correct?

15 MR. HARRISON: I'm going to offer I think one
16 question and one answer. I'd be happy to tell you what it is
17 right now or I'd be happy to read it in the record right now.

18 MR. KRUEGER: He was present in the hearing
19 room and you could have asked him any questions that you
20 wanted to ask at that time. I don't know why -- and you could
21 have asked him questions about the deposition at that time. I
22 don't know why --

23 MR. HARRISON: In fact, I did.

24 MR. KRUEGER: -- I don't know why that should
25 be brought in at a later time without giving me the

1 opportunity to follow up with questions.

2 JUDGE JONES: So you're objecting to the
3 admission of Tim Haden's deposition?

4 MR. KRUEGER: I do.

5 JUDGE JONES: I'll sustain that objection.

6 Is that it?

7 Seeing nothing else, then we will conclude the
8 hearing.

9 WHEREUPON, the hearing was adjourned.

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