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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Hearing
January 22, 1998
Jefferson City, Missouri
Volume 2

Director of the Division of)
Manufactured Homes, Recreational)
Vehicles and Modular Units of)
the Public Service Commission,)
Complainant,)
v.) Case No. MC-97-542
Amega Mobile Home Sales, Inc.,)
d/b/a Quality Preowned Homes,)
Respondent.)

KEVIN F. HENNESSEY, Presiding,
REGULATORY LAW JUDGE.
SHEILA LUMPE, Chairperson,
CONNIE MURRAY,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS, INC.

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FOR: The Respondent.

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FOR: Staff of the Missouri Public
Service Commission.

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P R O C E E D I N G S

(EXHIBIT NOS. 1 THROUGH 4 WERE MARKED FOR IDENTIFICATION.)

JUDGE HENNESSEY: On the record, please.

All right. At this time I'd like the attorneys to enter their appearance.

MR. HOSFORD: Yes, thank you. On behalf of the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission, Blair Hosford, Deputy General Counsel, and Stephen M. Gunn, Assistant General Counsel.

MR. MILLER: On behalf of Respondent, Danny Miller and Tom Harrison, attorneys in Columbia, Missouri.

JUDGE HENNESSEY: Thank you. This morning we are here in Case MC-97-542, which is the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission as Complainant vs. Amega Mobile Home Sales, Inc., who is doing business as Quality Preowned Homes as the Respondent.

I would note for the record that there was a discovery motion pending. It has been withdrawn, and there are no further preliminary matters that must be

1 taken up before we begin the hearing.

2 Thank you. Off the record, please.

3 (Discussion off the record.)

4 JUDGE HENNESSEY: On the record, please.

5 At this point in time I'd like to proceed
6 with the opening statements. We'll begin with the
7 Staff of the Commission.

8 MR. MILLER: Your Honor, not to unduly
9 interrupt him, but I'd indicate and I would like to at
10 this time object to the ongoing proceeding inasmuch as
11 the -- I would renew my objections to the proceeding
12 in this form in the -- due to the fact that it
13 violates the constitutional provision previously cited
14 in my Memorandum, and I would simply renew that
15 objection at this point and ask that the proceeding be
16 dismissed.

17 JUDGE HENNESSEY: Thank you. The matter
18 referred to were filed in a variety of pretrial
19 motions. I believe there were four of them, including
20 a Motion to Dismiss.

21 The Commission cannot rule on the
22 constitutional arguments relating to the
23 constitutionality of statutes. It's not within our
24 authority to do so.

25 Insofar as the other arguments pertaining to

1 the Motion to Dismiss have already been decided. Your
2 objections will be overruled.

3 MR. MILLER: Thank you. I apologize.

4 MR. HOSFORD: Thank you, your Honor. May it
5 please the Commission? My name is Blair Hosford,
6 Deputy General Counsel representing the Director of
7 the Division of Manufactured Homes, Recreational
8 Vehicles and Modular Units of the Public Service
9 Commission.

10 The Director in this case is requesting the
11 Commission to suspend the dealer's registration of
12 Amega Mobile Home Sales, Inc., for a period of two
13 weeks and to authorize the Commission's General
14 Counsel to seek penalties for the sale of a used
15 manufactured home which did not have a proper seal as
16 required by Missouri statutes.

17 Now, at first glance this may not seem to be
18 an important matter, but the requirement for a seal on
19 a manufactured home is the cornerstone to the
20 regulation of design adequacy and safety in the
21 manufactured home industry.

22 The presence of a seal on a manufactured
23 home demonstrates that the home was manufactured in
24 compliance with mandatory construction and safety
25 standards either promulgated by ANSI or the Federal

1 Government depending on the year that the home was
2 constructed.

3 In a home of this vintage it would be an
4 ANSI standard. For newer homes it would be the code
5 adopted by the Department of Housing and Urban
6 Development, or HUD as it's more familiarly known.

7 This concept of the seal is further
8 reinforced in Missouri by the particular statutory
9 provision in Section 700.035 that says that any
10 manufactured home bearing a proper seal is exempt from
11 all building code requirements.

12 Thus, the seal and the presence of a seal on
13 a home is intrinsically tied in to the way that home
14 is constructed, the safety standards of a home and the
15 requirement for local zoning and building code
16 requirements.

17 Now, I'd also like at this time to review
18 for the Commission the statutory requirements relating
19 to the need for seals on the manufactured homes and
20 the penalties for not having the required seals.

21 First, Section 700.015.1 states that, and I
22 quote, no person shall rent, lease, sell or offer for
23 sale any manufactured home manufactured after
24 January 1, 1974 unless the manufactured home complies
25 with the code and bears the proper seal.

1 Second, Section 700.045.2 states that it
2 shall be a misdemeanor to rent, lease, sell or offer
3 for sale any manufactured home manufactured after
4 January 1, 1974 which does not bear a seal as required
5 by Sections 700.010 to Section 700.115.

6 Three, Section 700.100.3(9) provides that
7 engaging in conduct in violation of Section 700.045,
8 the previously referenced section, shall constitute
9 grounds for the suspension, revocation or placing on
10 probation a dealer's registration.

11 And lastly, Section 700.115.2 states that
12 whoever violates any provision of Chapter 700 shall be
13 liable to the State for a civil penalty not to exceed
14 \$1,000 for each violation.

15 Now, we've set kind of the statutory
16 guidelines and where we're at. I'd like to review for
17 you what the testimony as filed and the evidence as
18 filed in this case will show.

19 First, on October 1, 1996, Larry and Phyllis
20 Smith of Columbia, Missouri had a fire in their home.
21 As a result of that fire, they needed to seek out some
22 type of temporary lodging. After visiting the Quality
23 Preowned Homes lot of Amega Mobile Home Sales, Inc.,
24 they agreed to purchase a 1979 National manufactured
25 home, Serial No. 3663.

1 At least that was their understanding at the
2 time of the sales transaction based on representations
3 of the salesman and what was provided to them and
4 shown on their Bill of Sale.

5 However, testimony of Jim Phillips will show
6 that based on a search of the title records and HUD
7 records, it was determined that this home was
8 originally sold in Illinois and would have been
9 manufactured prior to the HUD preemption, in other
10 words earlier in 1976, not 1979.

11 The Smiths then lived in the manufactured
12 home they purchased until they were able to move back
13 into their home after the fire damage had been
14 repaired.

15 When the Smiths no longer needed the home,
16 they went to a dealer, Perkins Homes of Columbia,
17 Missouri, and attempted to sell the home to the
18 dealer. At that time the dealer examined the home and
19 told the Smiths that he couldn't buy the home because
20 it didn't have a proper seal on it, and he couldn't
21 resell it if he bought it because of that, and
22 furthermore, since it didn't have a seal under
23 Missouri law, they also couldn't sell it.

24 Now, upon hearing of this, the Smiths
25 attempted to contact Amega and obtain a resolution of

1 their problem. And how did Amega handle this? Well,
2 they handled it very simply. They told the Smiths
3 that they had a home and they had a title for that
4 home. Don't call us anymore.

5 Certainly that's an expedient method of
6 handling consumer complaints, however not particularly
7 consumer friendly.

8 After being rebuffed by Amega in their
9 efforts to obtain a resolution of their problem, the
10 Smiths then contacted the Manufactured Housing
11 Department and filed an informal complaint with the
12 Department.

13 As a result of the filing of that complaint,
14 Mr. Tim Haden of the Department visited the home and
15 inspected the home for purposes of determining whether
16 the home, in fact, had a proper seal. During his
17 inspection he was unable to locate a seal on the home
18 or, in fact, to find any evidence that a seal had ever
19 been on the home.

20 Joyce Schmitz, the previous owner of the
21 home, was also contacted by the Department.
22 Mrs. Schmitz had submitted testimony that there was no
23 seal on the home during the time when she owned the
24 home.

25 In summary, therefore, the home did not

1 possess a seal when it was traded in, it did not have
2 a seal on it when it was sold to Larry and Phyllis
3 Smith, did not have a seal on it when it was inspected
4 by Mr. Tim Haden.

5 Mr. Phillips will testify that Amega never
6 replied -- or applied for a seal for that particular
7 home, nor was a seal ever issued by the Director for
8 that particular home.

9 Therefore, based on the authority previously
10 described under Missouri Chapter 700 which is
11 available to the Commission, the Director is
12 requesting an appropriate suspension to the dealer's
13 registration for Amega Home Sales, Inc. and the
14 Director believes that that two-week period requested
15 in his prayer is the appropriate time length for that
16 suspension.

17 Thank you.

18 JUDGE HENNESSEY: Okay. Mr. Miller, will
19 you proceed?

20 MR. MILLER: Yes. This proceeding has
21 nothing whatsoever, in reality, to do with a violation
22 of any statute. It's because Mr. Phillips and
23 Mr. DeLine don't particularly like each other.
24 There's been a pattern, which is going to be brought
25 into evidence through the cross-examination of

1 Mr. Phillips, of an ongoing battle between himself and
2 Mr. DeLine.

3 And the evidence in this matter is going to
4 be that there is no determination as to whether or not
5 that this home complies or not.

6 There's going to be no evidence truly in
7 terms of when this home was manufactured to the
8 standard that is going to be the appropriate standard,
9 because in order to find against my client, you're
10 going to have to satisfy the criminal burden of proof.

11 They have said we get to sanction him. The
12 fine part of it is a civil burden under 700.015. In
13 order to be able to sanction my client's license,
14 you've got to get to a criminal burden of proof
15 because it says that he committed a misdemeanor. So
16 you've got to find that he committed a crime.

17 Now, for the history in conjunction with
18 this, there's going to be no proof of when this home
19 was manufactured, no proof as to -- because we're
20 going to have in essence three different homes here.

21 We've got the one on the sales contract,
22 which I think Mr. Hosford misspoke because it's going
23 to come into evidence, that's going to show you that
24 if the sale, the original sale contract, or whatever
25 the technical name of this form is, relates to a '79

1 National with a serial number of 42495.

2 The title says it's a '76 Skyline, Serial
3 No. 3663. What home it is is actually anybody's
4 guess. It may be -- you know, it's certainly not one
5 of those two, but we don't know exactly what it is.

6 The procedural manner in which it got to
7 this point is obvious, Mr. Hosford was exactly correct
8 in terms of describing how it came to their attention
9 in terms of the inspection by Mr. Perkins.

10 But what has happened here past that is the
11 Director goes out, inspects this, and there's not
12 going to be any evidence -- and I learned that from
13 Interrogatories I asked him. They don't know whether
14 or not that this home complies with the code or not.
15 They know that some --

16 MR. HOSFORD: Your Honor, I'm going to
17 object to referring to Interrogatories. If he was
18 going to show that as evidence, they should have filed
19 testimony. He's testifying here essentially to
20 matters that is not before the Commission.

21 If they wanted to use the results of that
22 Interrogatory, they should have utilized that in their
23 direct filed testimony.

24 MR. MILLER: Wrong. I'm going to put it in
25 through cross-examination. Mr. Phillips is the dude

1 who signed the Interrogatories, and that's where I'm
2 going to put it into evidence is whenever he's
3 testifying. I can't put him on as my witness, and I
4 certainly wouldn't.

5 That's the Interrogatories I'm talking
6 about, and those aren't capable of being prefiled in
7 my humble opinion. I've got to wait until he takes
8 the stand and I ask him did you sign these
9 Interrogatories.

10 JUDGE HENNESSEY: Insofar as the
11 Interrogatories are referred to, I will sustain the
12 objection. However, if you intend to establish some
13 evidence through cross-examination and will refrain
14 from discussing the Interrogatories themselves, I'll
15 permit you to go that direction.

16 MR. MILLER: I don't have a problem with
17 doing that.

18 I'll say I presume that Mr. Phillips is
19 going to testify that he has no knowledge whatsoever
20 of anything that this home -- in any way in which this
21 home does not comply. Doesn't know one way or the
22 other.

23 What we have is a lady who's been sitting
24 out there who owns a home that could have been
25 inspected and for which a seal presumptively could

1 have been issued who is the pawn in this matter in
2 terms of the dispute, personal dispute between Mr.
3 Phillips and Mr. DeLine.

4 And the simple fact of the matter is, is
5 that they do not have enough evidence to prove under
6 the criminal burden of proof, which they have in this
7 matter, that a home manufactured subsequent to 1974
8 was sold or offered for sale without the requisite
9 sticker.

10 And, therefore, they do not have the
11 authority or ability to sanction my client's ability
12 to do business.

13 JUDGE HENNESSEY: Thank you, Mr. Miller.
14 Mr. Hosford, will you please call your first witness.

15 MR. HOSFORD: Thank you. Mr. Gunn, I
16 believe, will do Mrs. Smith.

17 JUDGE HENNESSEY: That's acceptable.

18 MR. GUNN: Your Honor, if it please this
19 Commission, we would like to call Mrs. Phyllis Smith
20 to the stand, please.

21 JUDGE HENNESSEY: Mrs. Smith, will you
22 please take the stand.

23 Off the record, please.

24 (Discussion off the record.)

25 JUDGE HENNESSEY: On the record, please.

1 (Witness sworn.)

2 JUDGE HENNESSEY: Thank you. Mr. Gunn,
3 proceed.

4 MR. GUNN: Thank you, your Honor.

5 PHYLLIS SMITH testified as follows:

6 DIRECT EXAMINATION BY MR. GUNN:

7 Q. Good morning, Mrs. Smith. I know you've
8 stated your full name for the record. Could you state
9 your address for the record, please?

10 A. Yes. It is 4801 West Chapel Drive,
11 Columbia, Missouri 65202.

12 Q. Thank you. And can you tell me, did you
13 prepare prefiled testimony which has been previously
14 marked as Exhibit No. 1, the direct testimony of
15 Phyllis Smith?

16 A. Yes, I did.

17 Q. Okay. And do you have any corrections or
18 additions to make to this testimony?

19 A. Yes, I do. On page 2, line 16, it says
20 September 30th, 1997. That should be '96. And then
21 on line 20 of the same page it says October 25th,
22 1997, and it should be 1996 also.

23 Q. Okay. Thank you. Mrs. Smith, are the
24 answers in this testimony true and accurate to the
25 best of your knowledge and information and belief?

1 A. Yes, they are.

2 Q. And if I were to ask you the same questions
3 today as contained in this testimony, would your
4 answers be substantially the same?

5 A. Yes, they would.

6 MR. GUNN: Your Honor, I offer Exhibit No. 1
7 into the record as evidence and tender the witness for
8 cross-examination.

9 MR. MILLER: Your Honor, I object to a
10 portion of Exhibit 1. I object to that portion of
11 Exhibit No. 1 contained on page 3, lines 7 through 23,
12 inasmuch as the fact that those contain merely
13 hearsay.

14 MR. GUNN: Your Honor, the Staff believes
15 that the information that's just been referenced
16 actually asks for the witness' understanding.
17 Obviously the witness can testify to their own
18 understanding of the information that they received.

19 MR. MILLER: And my response, your Honor,
20 would be based upon the fact that you -- calling it
21 one's understanding doesn't clean up the fact that you
22 develop that understanding through the benefit of
23 hearsay, that it's less hearsay because it's your
24 understanding than it was if you merely say they told
25 me.

1 JUDGE HENNESSEY: Your objection is to
2 lines 7 through 23 on page 3?

3 MR. MILLER: Yes, sir.

4 JUDGE HENNESSEY: I'll overrule the
5 objection. Mr. Gunn, will you proceed.

6 MR. GUNN: Yes, your Honor. Again, we'd
7 like to offer Exhibit No. 1 into the record as
8 evidence.

9 JUDGE HENNESSEY: Yeah. Exhibit No. 1 will
10 be accepted into evidence as Exhibit No. 1, and for
11 further clarification, that's the direct testimony of
12 Phyllis Smith.

13 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

14 MR. MILLER: My witness?

15 JUDGE HENNESSEY: Yes, sir.

16 Cross-examination.

17 CROSS-EXAMINATION BY MR. MILLER:

18 Q. Yes, ma'am. When was the last time that you
19 saw the home that you purchased from Quality Preowned
20 Homes?

21 A. Just a few weeks ago.

22 Q. What purpose were you looking at it for?

23 A. We just go by occasionally to make sure it's
24 still sitting there and nobody's bothered it.

25 Q. Do you know where it is that any kind of

1 seal or sticker is supposed to be on a mobile home?

2 A. Do I know where one is or where is one
3 supposed to be?

4 Q. Yes, ma'am. Do you know either one of
5 those?

6 A. I have been told. I did not know where one
7 was supposed to be to begin with, but I do know now.

8 Q. Okay. And roughly when was it that you were
9 provided the information in terms of where a seal was
10 supposed to be on a mobile home?

11 A. When we tried to sell it, we were informed
12 that there wasn't a seal, and then we were told where
13 one should be.

14 Q. Okay. Did you look on there to see whether
15 or not the information was accurate that there was no
16 seal on there?

17 A. Yes, we did.

18 Q. Where was it you were told to look?

19 A. To the left of the door or on the rear of
20 the mobile home on the bottom left corner.

21 Q. Had you ever inspected those areas before
22 looking for that seal?

23 A. No. I didn't even know it needed a seal.

24 Q. Okay. So you had -- you would have had no
25 idea whether or not that there was a seal on there, be

1 it a federal seal or a state seal, at the time that
2 you were dealing back here with Quality Preowned
3 Homes, correct, ma'am?

4 A. Correct.

5 Q. So you don't know whether or not that it had
6 one on it at the time that -- back in October,
7 September and October of 1996, do you?

8 A. To my knowledge, it did not have one.

9 Q. Well, you don't know one way or the other,
10 do you?

11 A. Well, I did not notice one.

12 Q. But you weren't looking, were you?

13 A. Well, not specifically because I didn't know
14 one was needed.

15 Q. Absolutely. But my question is, you know
16 for certain that there wasn't one there in the spring
17 of 1997 because you looked, correct?

18 A. Correct.

19 Q. And you were looking for that seal, correct?

20 A. Correct.

21 Q. And you'd never looked in those areas before
22 for a seal, had you?

23 A. No.

24 Q. So you don't know one way or another whether
25 or not that there was one there in September of '96,

1 do you?

2 A. Well, I do not think there was one there
3 because, first of all, when you walk out the door, if
4 there was a seal you're going to see it.

5 Q. Okay. But my question to you, ma'am, was
6 you don't know, do you?

7 A. No, I do not know, but to my knowledge there
8 was not one there.

9 MR. MILLER: I'm going to need these two
10 marked. Judge, I do not have the -- I actually did
11 not know the appropriate amount of copies. Can I go
12 ahead and before we conclude get the correct number of
13 copies but I want to identify them with this witness?

14 JUDGE HENNESSEY: Off the record.

15 (Discussion off the record.)

16 (EXHIBIT NOS. 5, 6 AND 7 WERE MARKED FOR
17 IDENTIFICATION.)

18 JUDGE HENNESSEY: On the record, please.

19 MR. HOSFORD: What was the order of the
20 exhibits?

21 JUDGE HENNESSEY: Off the record.

22 (Discussion off the record.)

23 JUDGE HENNESSEY: We're back on the record.

24 Mr. Miller, will you please proceed with your
25 cross-examination.

1 MR. MILLER: Thank you.

2 BY MR. MILLER:

3 Q. Ma'am, I'm going to show you what's been
4 marked Exhibit No. 5, and ask you whether or not that
5 that is a copy of the original sales contract that
6 you've brought with you here today?

7 A. Yes, it is.

8 Q. Okay. And ma'am, if you would, please, you
9 can just go ahead and use that exhibit for a second.
10 I'm going to ask you a couple questions on it.

11 What does it indicate that the home that's
12 covered by that contract is?

13 A. It's a 1979 National.

14 Q. And does it indicate a serial number on it,
15 ma'am?

16 A. Yes.

17 Q. And what is that serial number?

18 A. 42495.

19 Q. Okay. And ma'am, I draw your attention to
20 Exhibit No. 6, and ask you whether or not that that is
21 a true and accurate copy of the front of the title to
22 that -- to the mobile home that you bought from
23 Quality Preowned Homes?

24 A. I do not know if it's the title to our
25 mobile home, but it is the title that Quality Preowned

1 Homes sent to us.

2 Q. Okay. So, in fact, your answer was better
3 than my question. At any speed, Exhibit No. 6 is a
4 true and accurate copy of the title that was forwarded
5 to you by Quality Preowned Homes in conjunction with
6 the mobile home you purchased, correct, ma'am?

7 A. Yes.

8 Q. Okay. And, ma'am, what does it indicate
9 that that mobile home was?

10 A. A '76 Skyline.

11 Q. And that, you believe, is something
12 different than the home you purchased, or do you know
13 one way or the other?

14 A. Well, the home we purchased was supposed to
15 be a '79 National.

16 Q. With a different serial number, correct?

17 A. Correct. And also on the front of the
18 mobile home, it has National written on the mobile
19 home.

20 Q. Okay. So it's pretty clear that the -- that
21 Exhibit 6 or the original of Exhibit 6 is the wrong
22 title, fair?

23 A. What do you mean? You mean the title is
24 wrong?

25 Q. Yes, wrong title.

1 A. I don't know if the title is wrong or not.
2 It just does not match our Bill of Sale.

3 Q. So you don't know one way or another?

4 A. No, I don't.

5 MR. MILLER: Okay. That's all the questions
6 I have of this witness.

7 THE WITNESS: May I mention something?

8 JUDGE HENNESSEY: Not without a question.

9 MR. GUNN: I have redirect, please.

10 JUDGE HENNESSEY: Proceed with your
11 redirect.

12 REDIRECT EXAMINATION BY MR. GUNN:

13 Q. Mrs. Smith, do you know what a seal, a
14 Missouri seal looks like?

15 A. Yes, I do.

16 Q. Okay. And when you looked at this home
17 prior to purchasing it, did you notice such a seal by
18 the front door?

19 A. No, I did not.

20 Q. After you purchased it?

21 A. No, I did not.

22 Q. You still didn't notice the seal by the
23 front door?

24 A. No.

25 Q. When you looked, you stated that you looked

1 for a seal after you were told the home needed one.
2 Did you find any evidence of a seal near the front
3 door?

4 A. No, nothing at all.

5 Q. And regarding the serial number on the home,
6 when you looked at the home on the lot, was that the
7 same home that was delivered to you?

8 A. You mean on the lot, the mobile home lot
9 where we purchased it?

10 Q. Correct.

11 A. Yes, it was the same one.

12 Q. It's the same home that was delivered?

13 A. Uh-huh, yes.

14 Q. And the home that was delivered to you says
15 National on the home; is that correct?

16 A. Yes.

17 Q. But the title does say Skyline?

18 A. The title that was sent to us says Skyline,
19 yes.

20 Q. Okay. That's correct. And can you tell me
21 on the title or on the sales agreement where it says
22 make and model, I believe there's something in
23 parentheses.

24 A. Yes.

25 Q. Can you tell me what that states?

1 A. It says Briggs.

2 Q. Briggs.

3 MR. GUNN: Okay. Thank you. No further
4 questions.

5 JUDGE HENNESSEY: Mr. Miller, recross?

6 MR. MILLER: Yes.

7 RECROSS-EXAMINATION BY MR. MILLER:

8 Q. You indicated that you didn't notice a seal
9 by the front door in conjunction with the testimony
10 you just gave, correct, ma'am?

11 A. Correct.

12 Q. And that's an area you'd normally see,
13 correct?

14 A. Correct.

15 Q. Because you go in and out the door, right?

16 A. Right.

17 Q. The back of the home is not an area where
18 you normally went in and out of the home, correct,
19 ma'am?

20 A. Correct.

21 Q. And that's not an area that you'd ever paid
22 any attention to before you were told that a seal
23 might be back there, correct?

24 A. Correct.

25 Q. So it may have been there and it may not,

1 correct?

2 A. That's correct. But also I was told that
3 the --

4 MR. MILLER: I'm going to object to what her
5 testifying to what it is that she was told, because
6 that's -- she's getting ready to provide something
7 that can be nothing other than rank hearsay.

8 JUDGE HENNESSEY: I will sustain the
9 objection but only because it's a narrative that's
10 beginning.

11 MR. MILLER: Okay. I don't have any further
12 questions of this witness.

13 JUDGE HENNESSEY: You may step down, ma'am.
14 Off the record.

15 (A recess was taken.)

16 JUDGE HENNESSEY: On the record, please. We
17 had a discussion off the record during the break where
18 the witness who was scheduled to appear second, which
19 was Joyce Briggs Schmitz, apparently is not in
20 attendance at this point in time.

21 And counsel for the Complainant has
22 requested to bring up his third witness and reverse
23 the order of his witnesses, to put Ms. Briggs down to
24 No. 4. Mr. Miller, do you have any objections to
25 that?

1 MR. MILLER: I don't have any objection to
2 that.

3 JUDGE HENNESSEY: All right. Then at this
4 time, Mr. Hosford, will you please call your next
5 witness, who I believe will be Mr. Haden.

6 MR. HOSFORD: Yes, thank you. Tim Haden.

7 JUDGE HENNESSEY: Off the record, please.

8 (Discussion off the record.)

9 (Witness sworn.)

10 JUDGE HENNESSEY: On the record.

11 Mr. Haden has taken the stand and has been
12 sworn in. Mr. Hosford, will you please proceed with
13 your direct examination.

14 MR. HOSFORD: Thank you.

15 TIM HADEN testified as follows:

16 DIRECT EXAMINATION BY MR. HOSFORD:

17 Q. Mr. Haden, I believe you've stated your
18 name. Could you provide your place of employment and
19 business address for the record?

20 A. Missouri Public Service Commission,
21 Manufactured Housing Department, P.O. Box 360,
22 Jeff City, Missouri.

23 Q. Okay. Thank you. Mr. Haden, in what
24 capacity are you employed by the Commission?

25 A. Field inspector for the Manufactured Housing

1 Department.

2 Q. Okay. And in this case did you have
3 prepared and have prefiled testimony in this case
4 which was previously marked as Exhibit No. 3, which
5 would have been the direct testimony of Tim Haden?

6 A. Yes, I did.

7 Q. And at this time do you have any corrections
8 or additions which you would like to make to that
9 testimony?

10 A. I have one addition.

11 Q. Okay. Would you please give that to the
12 reporter.

13 A. On page 6, after line 13, before line 14, I
14 also found Rose Grant at Amega Mobile Homes and asked
15 Rose about the title discrepancy. I was informed that
16 this --

17 MR. MILLER: I'm going to object to that.
18 It's hearsay and, quite frankly, you get into
19 something that's pretty unfair to my client to allow
20 what may be judged by somebody to be an admission with
21 regard to a -- with regard to my client without
22 letting me in on it prior to this moment.

23 I claim surprise with regard to that, and I
24 object to the modification of his testimony in a
25 substantive manner with regard to statements by my

1 client. It may have caused me to bring that person as
2 a witness had I known this, and it's unfair.

3 MR. HOSFORD: Your Honor, I believe all he's
4 doing is adding a sentence basically flushing out that
5 question, which is what he did next, and he is just
6 merely adding what he did next and explaining a little
7 further what actions he took.

8 Furthermore, he indicated it dealt with
9 conduct. I don't believe that it even references any
10 hearsay at all. I believe he's merely stating what he
11 did.

12 MR. MILLER: And I don't have any objection
13 to it if he said -- if he leaves it at I contacted
14 her, but then he got into what it was that she said.

15 If it's the idea of -- if he wants to modify
16 his testimony to say after that I contacted, I believe
17 was it Rose Murphy -- Rose Grant -- I contacted Rose
18 Grant at Amega Mobile Homes, I don't have a problem
19 with that because that's not hearsay. But he's
20 starting to tell us what it was that Ms. Grant said,
21 and I can't allow that.

22 JUDGE HENNESSEY: I believe the
23 administrative -- the rules of administrative
24 procedure governing these hearings are somewhat more
25 relaxed than a normal court of law regarding hearsay

1 rules, and I will go ahead and let this testimony in
2 at this point for whatever weight it might have.

3 But, sir, I would suggest that you try to
4 refrain from any major additions which might result in
5 an unfair surprise which would defeat the purpose of
6 prefiled testimony.

7 Proceed.

8 THE WITNESS: Okay. Again, on page 6, after
9 line 13, before 14, I also contacted Rose Grant at
10 Amega Mobile Homes, and I asked Rose about the title
11 discrepancy. I was informed that this was the only
12 title they had for the home.

13 MR. HOSFORD: Do you wish to go ahead now?

14 JUDGE HENNESSEY: Do you have any further
15 questions?

16 MR. HOSFORD: Yes, just a couple.

17 BY MR. HOSFORD:

18 Q. With that correction added, Mr. Haden, are
19 the answers provided true and correct to the best of
20 your knowledge and belief on the testimony that you
21 prefiled and as corrected here today?

22 A. Yes, they are.

23 Q. Okay. And if I asked you the same questions
24 today as contained in your testimony, would your
25 answers be the same?

1 A. Yes, they would.

2 MR. HOSFORD: Thank you. At this time, your
3 Honor, I would offer Exhibit 3, the direct testimony
4 of Tim Haden, into the record and tender the witness
5 for cross-examination.

6 JUDGE HENNESSEY: Any objection, Mr. Miller?

7 MR. MILLER: Yes. I believe I'm up to
8 No. 8, which is Mr. Haden's Field Inspection Report.

9 JUDGE HENNESSEY: Hold on.

10 MR. HOSFORD: Your Honor --

11 JUDGE HENNESSEY: Do you have an objection
12 to the admission of the testimony?

13 MR. MILLER: Oh, no, sir. I'm sorry.

14 JUDGE HENNESSEY: Then the testimony that
15 has been marked as Exhibit No. 3 will be admitted into
16 evidence.

17 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE HENNESSEY: Mr. Miller, you may begin
19 your cross-examination of the witness.

20 MR. MILLER: Thank you.

21 (EXHIBIT NO. 8 WAS MARKED FOR
22 IDENTIFICATION.)

23 CROSS-EXAMINATION BY MR. MILLER:

24 Q. Sir, I'm going to show you what's been
25 marked Exhibit No. 8 and ask you whether or not that

1 that is a --

2 MR. HOSFORD: Your Honor?

3 JUDGE HENNESSEY: Mr. Hosford.

4 MR. HOSFORD: I believe that -- I don't have
5 any specific objection to the report, but I should
6 note that it's also referred to as Schedule 1-1 of
7 Mr. Haden's testimony. Therefore, that particular
8 exhibit's already in evidence.

9 MR. MILLER: I knew that.

10 MR. HOSFORD: I don't have any objection
11 other than to clarify that.

12 JUDGE HENNESSEY: It is Schedule 1-1?

13 MR. HOSFORD: Of Exhibit 3.

14 JUDGE HENNESSEY: And you are offering an
15 additional copy into evidence?

16 MR. MILLER: Correct.

17 JUDGE HENNESSEY: For clarification?

18 MR. MILLER: For clarification. It makes it
19 easier to work with.

20 JUDGE HENNESSEY: That's fine. This is the
21 Field Inspection Report?

22 MR. MILLER: That's correct.

23 JUDGE HENNESSEY: His Field Inspection
24 Report has been marked by the court reporter then as
25 Exhibit No. 8. That's the document you're currently

1 asking your questions off?

2 MR. MILLER: Yes, sir.

3 JUDGE HENNESSEY: Proceed.

4 MR. MILLER: Thank you.

5 BY MR. MILLER:

6 Q. Sir, I want to direct your attention to
7 Exhibit No. 8. Is that a true and accurate copy of
8 the Field Inspection Report that you did with regard
9 to the mobile home that's the subject of this hearing
10 today?

11 A. Yes, it is.

12 Q. And, sir, you indicate on this that the make
13 of the home is a National, correct, sir?

14 A. Yes, I do.

15 Q. And where did you glean that information
16 from?

17 A. That was indicated on the Bill of Sale that
18 the Smiths provided to me, and it was also on the
19 front of the home. And then it was also, I found that
20 in the files at Columbia Discount Homes.

21 Q. Now, you indicated on there that the serial
22 number was 42495, correct, sir?

23 A. On the Inspection Report it says it's 42495.
24 I did, however, find different information than that,
25 but that's what's on the Inspection Report.

1 Q. You looked on the tongue to get the
2 different number; is that fair?

3 A. No. I looked in the -- well, the Smiths had
4 a title that I looked at, and then I also looked in
5 the files at Columbia Discount Homes and found the
6 same information.

7 Q. Whenever you say the same information, what
8 are you talking about?

9 A. A copy of the same title that the Smiths had
10 and a title application that the Smiths had.

11 Q. Copy of the title that the Smiths had was
12 that Exhibit No. 6, correct, sir?

13 A. Yes, uh-huh.

14 Q. And it indicates that the home is a '76
15 Skyline, correct, sir?

16 A. Yes.

17 Q. Skyline's a manufacturer, correct, sir?

18 A. The title indicates that it's a Skyline.

19 Q. I understand that.

20 A. Yeah.

21 Q. Skyline is a mobile home manufacturer,
22 correct, sir?

23 A. Yes, they are.

24 Q. Just like Ford --

25 A. Right.

1 Q. -- is a car manufacturer, correct, sir?
2 A. Uh-huh.
3 Q. Correct?
4 A. Uh-huh.
5 Q. Could you say -- I mean, we need to make
6 sure our record's clean. Is that accurate?
7 A. Yes, sir.
8 Q. National is a mobile home manufacturer,
9 aren't they, sir?
10 A. To my knowledge, they are. I don't know if
11 they are now. I think they used to be.
12 Q. They were a manufacturer at any speed?
13 A. Yes.
14 Q. Just like Chevrolet is a car manufacturer,
15 correct, sir?
16 A. Yes, sir.
17 Q. They're not one and the same company, are
18 they, sir?
19 A. Who are you referring to?
20 Q. National and Skyline.
21 A. I don't know that.
22 Q. Don't know one way or the other?
23 A. I don't know that I can answer the question
24 that you're asking. Maybe if you rephrase it.
25 Q. Well, what I'm asking is this, is that

1 National and Skyline are -- because you don't know
2 about National at this point. They're two separate
3 companies, aren't they?

4 A. I believe they are.

5 Q. Okay. So whenever you have a reference in a
6 title to a Skyline, you're talking about one
7 manufacturer, and if it was a reference to a National
8 you'd be talking about another, correct, sir?

9 A. I think so, yes.

10 Q. Okay.

11 A. Yes. The reason I'm being hesitant is
12 because some companies have subnames that are the same
13 as another company manufacturer or something like
14 that.

15 Q. Correct.

16 A. Okay.

17 Q. But, sir, in terms of the inspection that
18 you did, did you do anything to determine whether or
19 not that the home that belonged to the Smiths actually
20 complied with the requirements to have a seal issued?

21 A. The complaint that the Smiths had was that
22 the home didn't have proper seals on it so that they
23 could sell it. That was primarily what I was checking
24 for was whether or not it had a seal.

25 Q. But my question remains, sir. Did you do

1 any inspection to determine whether or not that it
2 complied?

3 A. I did not do a thorough inspection of the
4 home to see if there were noncompliances.

5 Q. Fair statement, isn't it, sir, that you have
6 the capacity and had the capacity at the time that you
7 performed this inspection to inspect the Smiths' home,
8 and if it passed, you have the authority and ability
9 to issue a seal so they can sell it, correct?

10 A. No, sir.

11 Q. Who has that ability?

12 A. I don't have that authority.

13 Q. Who does?

14 A. Well, I believe that would probably fall
15 under the Director's authority to issue a seal.

16 Q. Okay. It would be your responsibility to
17 inspect it for the purpose of whether it complied
18 though, correct, sir?

19 A. No, sir.

20 Q. That would be the Director as well?

21 A. I believe it would probably have to be an
22 engineer or somebody of that capacity to determine
23 whether the home was built to the compliance of the
24 code. I inspect for nonconformances to that code.

25 Q. Okay. Do you guys have anybody that does

1 that in terms of the engineer?

2 A. There's no one on our staff.

3 Q. Okay.

4 A. That would be the responsibility of the
5 manufacturer of that home primarily.

6 Q. Fair statement, though, isn't it, sir, that
7 the -- you looked at Exhibit No. 5 in conjunction with
8 your investigation?

9 A. Yes, I did.

10 Q. And that references a '79 National with a
11 serial number of 42495, correct, sir?

12 A. Yes, it does.

13 Q. Is there any doubt in your mind whether or
14 not that the home that you inspected that was owned by
15 Mr. and Mrs. Smith was a '79 National, Serial
16 No. 42495?

17 A. Yeah, there's some doubt.

18 Q. In fact, would it be a fair statement that
19 it would be your testimony that that wasn't the home
20 that you inspected, correct, sir, or do you know one
21 way or another?

22 A. I don't believe it was a '79 National, no.

23 Q. Do you believe that it was a '76 Skyline?

24 A. That appears to be what it is, yes.

25 Q. Okay. Sir, I thought you said that on a

1 portion of the mobile home that you said in your
2 previous testimony that it was a National?

3 A. Excuse me. A '76 National appears to be
4 what it is.

5 Q. My question though, sir, is would your
6 testimony then be that the home that the Smiths
7 purchased was not a '76 Skyline Serial No. 3663?
8 Would that be your testimony?

9 A. My testimony would be that it would be a '76
10 National, Serial No. 3663.

11 Q. So by definition it wouldn't be a '76
12 Skyline, correct, sir?

13 A. By default, I believe, yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. And, sir, you reviewed the title and Exhibit
17 No. 7 from Amega's file -- or not Amega rather, but
18 the Columbia Discount Homes' file, did you not, sir?

19 A. The title application?

20 Q. Yes, sir.

21 A. Yes, I did.

22 Q. And that's where you got the serial number,
23 correct, sir?

24 A. Well, I believe I first saw it on -- the
25 3663 serial number was on the title itself.

1 Q. Okay.

2 A. And the title application.

3 Q. So that's where you got that, correct, sir?

4 A. I also, this serial number is on a sticker
5 that's inside the breaker box inside the home.

6 Q. Okay. And is that in your experience a
7 place where a serial number is normally found?

8 A. Some manufacturers, yes, depending on the
9 manufacturer and the age of the home.

10 Q. Okay. But the sticker that you found didn't
11 say National --

12 A. Yes, it did.

13 Q. -- Mobile Homes?

14 You're saying that the sticker that you
15 found inside the breaker box --

16 A. Says National Mobile Homes, and it has that
17 Serial No. 3663 on it.

18 MR. MILLER: Okay. I think that's all the
19 questions I have of this witness.

20 QUESTIONS BY JUDGE HENNESSEY:

21 Q. I'm somewhat confused at this point. Is it
22 your testimony that the home is, in fact, a National,
23 not a Skyline?

24 A. Yes, it is.

25 Q. That's correct?

1 A. Yes, that's correct.

2 Q. And that those are distinct brands like Ford
3 and Chrysler, not like Chrysler and Pontiac? They're
4 not really the same -- they're not divisions of the
5 same company?

6 A. They would be two different manufacturers,
7 yes.

8 Q. And did I understand you to say that the
9 serial number is 3663 or 42495 on the National home?

10 A. Every place I found the serial number on the
11 home and on the paperwork, with the exception of the
12 Bill of Sale I believe, was 3663. Right, the Bill of
13 Sale is the only place I found a different serial
14 number.

15 Q. Okay. I'm confused. Then why did you put
16 on your Field Inspection Report the serial number was
17 42495?

18 A. I typically take that information off the
19 Bill of Sale, or in this particular case I did.

20 Q. Okay. The Bill of Sale reflects that it's
21 42 -- okay. I see.

22 A. Yeah.

23 Q. But the Certificate of Title indicates it's
24 3663?

25 A. Yes, sir.

1 Q. But that would make the home a '76 Skyline?

2 A. Well, there's a sticker on the inside of the
3 panel box inside the home that says it's a National,
4 and the label on the front of the house says it's a
5 National. I believe the house is a '76 National.

6 Q. Okay. It's a '76 National, and you believe
7 the serial number to be 3663?

8 A. Yes, sir.

9 Q. There are two apparent options here.
10 According to the title it's either a '79 Skyline; is
11 that correct? I'm sorry. The title indicates it's a
12 '76 Skyline?

13 A. Yes, sir.

14 Q. Is that true?

15 A. Uh-huh.

16 Q. And the Bill of Sale --

17 A. Indicates --

18 Q. -- indicates it's a '79 National?

19 A. Yes, sir.

20 Q. Is there any possibility that that home was
21 manufactured before the year 1974?

22 A. Not in my opinion there isn't.

23 Q. Okay. So that home was manufactured after
24 January 1st, 1974?

25 A. Yes, sir.

1 Q. Okay. Sir, would you please describe what a
2 seal looks like?

3 A. A Missouri seal?

4 Q. Yes.

5 A. It's about 2 by 3 inches. I'm not exactly
6 sure of the measurements. Kind of a metallic
7 background with a blue ink-colored seal, and it's --
8 it's a stick-on type seal. It sticks onto the house.

9 Q. So it would be a sticker along the lines,
10 say, of the things that we affix to our license plate
11 every year?

12 A. Yes. Very similar to that.

13 Q. But it's not a bolted-on steel plate?

14 A. No. The Missouri seals are a sticker.

15 Q. Okay. And how about the HUD seals?

16 A. HUD seals are a metal plate that's generally
17 riveted onto the siding.

18 Q. All right. And neither a HUD seal nor a
19 Missouri state seal was present when you conducted
20 your inspection?

21 A. No, there wasn't.

22 Q. Are there records kept of the seals that are
23 issued by the State?

24 A. If they're issued by our department, I
25 believe there is, yes.

1 Q. And --

2 A. I don't personally have access or haven't
3 seen those records myself.

4 Q. Okay. So you don't know if a seal was, in
5 fact, issued or not?

6 A. I personally don't.

7 Q. Okay.

8 A. That's not -- that's out of my area.

9 Q. All right. I understand. And so you
10 wouldn't have any access to the HUD records then
11 either?

12 A. Well, we can call HUD to check those kind of
13 records.

14 Q. Did you call HUD?

15 A. I did not, no.

16 Q. I notice in your testimony at page 5 you
17 discussed looking for the seal and the locations where
18 it would be, but it doesn't indicate whether or not
19 there was any evidence that a seal had ever been
20 affixed there.

21 A. No.

22 Q. Was there any kind of sticky residue film
23 that would show a Missouri state seal was there?

24 A. No, and if I can --

25 Q. Please.

1 A. -- explain that, I look at a number of used
2 homes, and if I can generally see any trace of a
3 Missouri sticker that was there, you know, that's
4 usually where it ends right there. We don't -- if I
5 can't exactly read it, that's fine. But I saw no
6 trace of there ever being a seal.

7 Q. And where the HUD seal would be located,
8 were there any rivet marks?

9 A. No.

10 Q. Or holes?

11 A. No. And there is -- we've seen seals, HUD
12 seals removed before, and they actually have screws or
13 rivets that penetrate the metal. So we would see
14 that.

15 Q. And there was no evidence of --

16 A. No.

17 Q. -- any of that?

18 A. No.

19 JUDGE HENNESSEY: Any redirect?

20 MR. HOSFORD: Yes, sir.

21 REDIRECT EXAMINATION BY MR. HOSFORD:

22 Q. Mr. Haden, just to clarify a couple of
23 things, you basically -- you conducted an inspection
24 of a home; is that correct?

25 A. Yes, sir.

1 Q. And that was the home that was purchased by
2 Mrs. Phyllis Smith?

3 A. Yes, it was.

4 Q. And when you inspected that home, did it
5 have a seal on it?

6 A. No, it did not.

7 Q. Okay. That particular home, it was a
8 National home?

9 A. Yes, it was.

10 Q. Was there any model to that National home?

11 A. I don't believe I wrote that down, but there
12 was a -- it was a 5th Avenue or Park Avenue or
13 something like that.

14 Q. Okay. So it was a National, then it was
15 a -- the designation on it was a 5th Avenue?

16 A. I believe it was, 5th Avenue.

17 Q. Okay. That's a model that National would --
18 a particular type of home that National manufactured?

19 A. Yes, It would. It would be a model that
20 they manufactured.

21 Q. Okay. And to clarify, there seems to be
22 some confusion on the 3663 and the serial number. The
23 only place that you located the number that was
24 written down on your Inspection Report, this 46 -- get
25 the number here that we've been bantering around was

1 the 42495. The only place you found that anywhere,
2 reviewing anything, was on the Bill of Sale?

3 A. That's correct, the Bill of Sale provided to
4 the homeowners.

5 Q. And the Vehicle Identification No. 3663, did
6 you find that on some type of a data plate or
7 manufacturer's data plate in the home when you
8 inspected it?

9 A. Yeah. It's a manufacturer's sticker that
10 they put on a home that gives the manufacturer's name,
11 generally an address and a serial number. That's on
12 the inside of the panel box, the main electrical panel
13 box.

14 Q. Okay. Let me ask you a question. Just take
15 a minute here. You mentioned, I believe, in response
16 -- or questions from Mr. Miller asked you about
17 inspecting for conformance to the home.

18 Did at any time you receive a request from
19 Omega Mobile Home Sales, Inc. or Quality Preowned
20 Sales, Inc. to inspect a home, the particular home, to
21 put a seal on or to see if it complied with the code?

22 A. Have I ever received a request?

23 Q. For the home that you inspected.

24 A. No.

25 Q. So they never requested any type of an

1 inspection on that?

2 A. No.

3 Q. Let me just show you a couple of things, and
4 if -- we did not have copies. These are originals.
5 Just to kind of clarify the record and in response
6 perhaps to the questions of the --

7 JUDGE HENNESSEY: Off the record.

8 (Discussion off the record.)

9 JUDGE HENNESSEY: Back on the record,
10 please.

11 MR. HOSFORD: Your Honor, I'm going to show
12 the witness a couple of items which relate, I believe.

13 JUDGE HENNESSEY: If I might interrupt you,
14 Mr. Hosford, just let the record reflect that the
15 exhibits you're holding in your hand have been
16 examined by Respondent's counsel.

17 MR. HOSFORD: Yes. Thank you.

18 BY MR. HOSFORD:

19 Q. Mr. Haden, the first exhibit I'm going to
20 show you, if you could describe it perhaps for the
21 record and explain what it is.

22 A. This is a state seal that we issue. I
23 believe this is for modulars, yeah, modular homes, but
24 it's -- it would be the exact same thing that this
25 department would issue for a manufactured home also,

1 only it would be a different color.

2 Q. And that was the seal you were describing
3 that would be above the --

4 A. Adjacent to.

5 Q. -- adjacent to the front door as you would
6 enter the home?

7 A. The primary door, yes.

8 Q. And the difference would be in the color of
9 the seal?

10 A. The color of the ink, yes.

11 Q. Thank you. Okay. And let me hand you
12 another item there, if you could describe that for us.

13 A. This is a HUD certification label that HUD
14 issues. This would be found on the tail end of the
15 home of a HUD labeled house.

16 Q. Thank you.

17 MR. HOSFORD: Let me just have a minute,
18 your Honor.

19 JUDGE HENNESSEY: Yes.

20 BY MR. HOSFORD:

21 Q. Mr. Haden, the examples I just showed you,
22 did you thoroughly inspect the home for any evidence
23 of those seals being present?

24 A. Yes. Sometimes I've run into seals that are
25 misplaced on homes, you know, maybe a sticker that's a

1 little on the wrong side of the door or something like
2 that. And yes, I inspect the entire exterior of the
3 home for a seal.

4 Q. So you didn't just limit your investigation
5 to the appointed spot of the seal; you broadened your
6 investigation to give the benefit of the doubt?

7 A. Yes, sir, I did. Yes.

8 MR. HOSFORD: Okay. Thank you. I have no
9 further questions, your Honor.

10 JUDGE HENNESSEY: Any recross?

11 MR. MILLER: Yes.

12 JUDGE HENNESSEY: Off the record, please.

13 (Discussion off the record.)

14 (EXHIBIT NOS. 9 AND 10 WERE MARKED FOR
15 IDENTIFICATION.)

16 JUDGE HENNESSEY: On the record.

17 During the off-the-record discussion that
18 was had between myself and counsel, we have agreed to
19 mark the items that Mr. Hosford was holding at the end
20 of his redirect as Exhibit No. 9, will be the Missouri
21 seal which would be affixed to a trailer under the
22 statute. Exhibit No. 10 is representative of a HUD
23 seal which also would be affixed to a trailer by means
24 of riveting.

25 Mr. Miller, if you'll proceed with your

1 cross at this point.

2 RECROSS-EXAMINATION BY MR. MILLER:

3 Q. Sir, would you agree with me that only one
4 Vehicle Identification Number is issued to a trailer?
5 Would you agree with me on that?

6 A. I think so, yes.

7 Q. And would you agree with me that there are
8 not two trailers in Missouri or anywhere in the world,
9 or actually just leave it at the continental United
10 States, that are Vehicle Identification No. 3663? Do
11 you agree with me on that?

12 A. I don't -- I can't answer that. I don't
13 know that.

14 Q. Don't know one way or another?

15 A. If there's more than one home with the
16 same -- or with 3663 as a serial number?

17 Q. Right.

18 A. I don't know that.

19 Q. Don't know one way or another, correct, sir?
20 Correct?

21 A. No, I don't know that.

22 Q. Okay. And would it be fair, then, that
23 there exists a -- strike that. Let me reask it in a
24 different fashion.

25 You don't know, then, one way or another

1 whether or not that the title that was given to
2 Mrs. Smith was for some other home that has nothing to
3 do with National Mobile Homes? There may be a '76
4 Skyline 3663 out there, correct, sir?

5 A. I don't believe I understand your question.

6 Q. Okay. Probably because it wasn't a very
7 good question.

8 From your previous testimony, I take it that
9 you don't know whether or not that a '76 Skyline
10 mobile home Vehicle Identification 3663 exists. You
11 don't know one way or another, do you?

12 A. According to this title, a Skyline 3663
13 mobile home does exist.

14 Q. Okay. And it's some other mobile home, if
15 it does exist, than the one that Mrs. Smith purchased,
16 correct?

17 A. Well, you got me again. I don't understand
18 your question.

19 Q. Well, what I'm saying is, is that you're
20 telling us that there's this title for this '76
21 Skyline 3663, correct, sir?

22 A. Uh-huh, yes.

23 Q. Okay. And you're saying that you don't know
24 one way or another whether or not that Skyline home
25 3663 exists, correct, sir?

1 A. Well, as I answered before, according to
2 this title, it does exist.

3 Q. Okay. But it by definition would be a
4 different home than the one that Mrs. Smith bought
5 because hers wasn't a Skyline, correct?

6 A. Again --

7 MR. HOSFORD: Your Honor, I'm going to
8 object to these questions. Mr. Haden has not been
9 qualified as an expert in titles, nor has he been an
10 expert in understanding titles, and I'm going to
11 object. This is beyond the scope of his testimony and
12 beyond the scope of his expertise.

13 He's being treated as an expert in a field
14 in which he's not been qualified as an expert, nor has
15 he been offered as an expert.

16 JUDGE HENNESSEY: The objection will be
17 sustained. I think if we want to have a title
18 discussion we should have brought in someone from
19 Revenue.

20 MR. MILLER: Fair.

21 BY MR. MILLER:

22 Q. So, sir, I was just -- whenever I was asking
23 you those questions, I was simply asking you
24 questions -- and I'm not picking on you because it
25 was -- but that there are simply beyond your level of

1 expertise; fair, sir?

2 A. If you're talking about titles, that's
3 correct.

4 Q. Okay.

5 A. Yes.

6 Q. And do you guys have anybody in the -- in
7 your department who's an expert on titles?

8 A. That I couldn't answer you. I don't know.

9 Q. Now, what's your background, sir, in
10 relationship to mobile homes?

11 A. Well, I've been in manufactured housing
12 since 1990, '89.

13 Q. What have you done?

14 A. Primarily in the retail end of it.

15 Q. Selling?

16 A. Uh-huh. Up until about three and a half
17 years ago.

18 Q. Okay. Sir, you're given -

19 A. Sales and management.

20 Q. Sure. Okay. And sir, I would hazard a
21 guess that in conjunction with that, that you've been
22 familiar with the repair of mobile homes as well,
23 correct, sir?

24 A. Somewhat, yes.

25 Q. I mean, they get damaged, for instance,

1 whenever they're getting set up, fair? That's
2 happened sometimes?

3 A. Happens, yes.

4 Q. Damaged in transit?

5 A. Happens, yes.

6 Q. Sir, it's not horribly uncommon to need to
7 replace some of the siding on these homes, is it?

8 A. It's not uncommon.

9 Q. Okay. Sir, then you don't know whether or
10 not that the siding of any portion of this home was
11 replaced since its manufacture, do you?

12 A. Well, that's one thing I try to look at
13 really close to see. I've looked at a lot of used
14 homes and new homes and seen a lot of siding changed,
15 and this home didn't appear to have any siding changed
16 on it.

17 Q. Sir, this home was almost 20 years old
18 whenever you inspected it, correct, sir?

19 A. Yes, sir.

20 Q. And, sir, you can't -- or can you, do you
21 think, tell me whether or not that at any time, be it
22 10 years ago, be it 15 years ago --

23 MR. HOSFORD: Your Honor, I apologize for
24 interrupting counsel, but it appears to me that we've
25 gone way beyond -- this is redirect. It appears to me

1 that these would have been more proper to ask on
2 direct than -- cross. I'm sorry.

3 This is recross based solely on questions
4 from the Bench, and we did not -- none of these were
5 raised, and I believe this is improper. This is not
6 recross-examination.

7 MR. MILLER: It's not recross?

8 JUDGE HENNESSEY: It is recross.

9 MR. MILLER: It is recross. One, we have
10 wide open cross-examination. And two, given your
11 questions and his questions, this area is not only
12 right, but it's pertinent as all get out.

13 He gets up here and discusses these stickers
14 and whatever and how they're affixed on there and
15 affixed to the siding, and I'm certainly, in my humble
16 opinion, entitled to get into the idea of whether or
17 not they were ever there.

18 JUDGE HENNESSEY: And based on my questions
19 as to whether or not there were any rivet holes, I
20 would agree with you. The objection will be
21 overruled.

22 I believe you've established your point,
23 Mr. Miller, as to the siding and whether or not it
24 could have been changed at any point in time. Unless
25 you have any further questions, I would ask that you

1 move on.

2 MR. MILLER: Okay. Can I have the -- he did
3 not -- I mean, the court may well have understood
4 that, but given the fact that the procedural path it
5 may take a little later, could I get an answer just to
6 that one question?

7 JUDGE HENNESSEY: Would the court reporter
8 please read back the question.

9 THE REPORTER: "Question: And, sir, you
10 can't -- or can you, do you think, tell me whether or
11 not that at any time, be it 10 years ago, be it 15
12 years ago --" then there was the objection.

13 JUDGE HENNESSEY: Would you care to finish
14 your question?

15 MR. MILLER: Absolutely. Actually, I'm
16 going to start over because it's always embarrassing
17 whenever you get a false start on a question. It
18 always sounds bad coming back.

19 BY MR. MILLER:

20 Q. Mr. Haden, is it a fair statement that while
21 you could tell whether or not that a recent change in
22 siding had occurred, that you don't know one way or
23 another, be it 10 years, be it 15 years, be it six
24 months after the manufacture of this home, whether or
25 not that any siding had been changed on this home?

1 A. I don't know if you can determine how long
2 you'd be able to tell that, but I have seen houses
3 that are several years old that have had siding
4 changed, and you could tell that it's been changed.

5 Q. So the answer to my question was? I asked
6 you whether or not you could tell.

7 A. You've got it open-ended time-wise. I mean,
8 if you're talking about ten years ago, it would be
9 very difficult to tell probably for me. If it's
10 within a year or two, I think we could probably tell.

11 Q. Sure. So my question was -- and I'm just
12 asking this for clarity of the record. I'm not trying
13 to beat a dead horse.

14 But for the clarity of the record, sir, is
15 it a fair statement that you can't tell one way or
16 another whether or not that any siding on this home
17 had been changed at any point in the past?

18 A. Yes, I can tell, to answer your question the
19 way you're asking it.

20 Q. What I was basically asking was -- what I'm
21 saying is, you don't know one way or another whether
22 or not at some distant point in the past the siding
23 was changed, do you?

24 A. On this particular home?

25 Q. Correct.

1 A. If you're talking about over a year or so
2 ago, probably not. I couldn't tell.

3 Q. So you don't know one way or another,
4 correct, sir?

5 A. Yes, that's correct.

6 Q. And, sir, so isn't it -- given that fact,
7 you can't tell us one way or another whether or not
8 that a seal of the nature of the one on Exhibit 10 may
9 have been on there 15 years ago, can you?

10 A. If the metal had been changed 15 years ago,
11 you probably wouldn't be able to see the holes where
12 this label was.

13 Q. Right.

14 A. That's correct.

15 Q. So you don't know one way or another, do
16 you?

17 A. What? Know what one way or another?

18 Q. You don't know one way or another whether or
19 not 15 years ago a tag like that's shown on Exhibit
20 No. 10 was on this home?

21 A. 15 years ago, I don't know.

22 Q. Okay. And, sir, you indicated that, in
23 response to a question, every place that I found the
24 serial number on the house that it was 3663. I
25 believe that to be your testimony.

1 My question to you, sir, is this: Did you
2 not just find the serial number 3663 on an electrical
3 box?

4 A. It was on a sticker that was on the
5 electrical box.

6 Q. On a sticker on the inside of an electrical
7 box, correct, sir?

8 A. There, yes, I found it on there.

9 Q. That's the only place on the house you found
10 it, correct, sir?

11 A. On the house, yes.

12 Q. Okay. Found it somewhere else on a title,
13 correct, sir?

14 A. Uh-huh, yes.

15 Q. Sir, tell me this. How is it that you know
16 or have any earthly idea as to whether or not that
17 that house the day that it was manufactured had that
18 electrical box in it?

19 A. Well, it appeared to be the original
20 electric panel, yes. Another one of those things, you
21 can kind of tell if they've been changed. This
22 appeared to be all the original electrical breakers,
23 panels and everything.

24 Q. How is it you could tell whether or not
25 the --

1 A. Well, to find a panel box that fits that
2 cut-out in the wall exactly I would think would be
3 extremely difficult. Then you can tell the age of the
4 panel box. It looks like original equipment with the
5 house.

6 Q. Sir, you can't tell me whether within two to
7 three years when a panel box was manufactured, can
8 you?

9 A. The manufacture of the panel box itself?

10 Q. Sure.

11 A. There probably is a way to do that, yes.

12 Q. But you can't do it, fair?

13 A. Yeah, probably if I could -- if I'd examine
14 the box.

15 Q. You didn't do it in this case, though, did
16 you, sir?

17 A. No. I did check to see if that was the
18 original box by just physically looking at it.

19 Q. Just to see whether or not it fit the same
20 size opening?

21 A. It appeared to be the same panel box, yes.

22 Q. Because it fit the same size opening,
23 correct, sir?

24 A. Well, there were other factors.

25 Q. How, or what other factors rather?

1 A. Well, it all looked like the original
2 installation of the panel box.

3 Q. But, sir, what I'm asking you is this -- and
4 by the way, would you agree with me that given
5 manufacturers tend to buy their components from the
6 same vendors? Would that be your experience?

7 A. Explain -- I'm not sure if I understand what
8 you're asking now.

9 Q. Okay. Well, do you think it would be
10 probably a pretty fair presumption that National does
11 not buy or did not buy their electrical panel boxes
12 for their Fifth Avenues from Square D and the ones for
13 another model from Cutler Hammer or some other
14 manufacturer?

15 A. Well, I see manufacturers use different
16 brands, if that's what you're asking, of the same
17 thing.

18 Q. Okay.

19 A. Different brands of panel boxes or furnaces
20 or ranges, ovens, whatever. I've seen different
21 brands of appliances in the same manufacturer of a
22 home.

23 Q. Tell me each and every thing about that
24 panel box that told you that sometime back in 1977,
25 '78, '79 or whatever, that the original panel box was

1 not replaced and that one put there. Tell me
2 everything that tells you that didn't occur.

3 A. It's nothing much of what you see as what
4 you don't see. You don't see, as I explained,
5 different size cut-outs. You don't see wires that
6 have been spliced, openings for breakers, knock-outs,
7 different knock-outs where breakers used to be. It's
8 things you don't see. Everything looked clean like it
9 was originally produced. That's primarily what I'm
10 basing that on.

11 I can't say a hundred percent that the panel
12 box itself was never changed out, but if somebody did
13 it, they did an awful good job, and it's not typically
14 what I see during my inspections. If something's
15 changed, you generally can see it.

16 Q. Okay. But if it was done, it would have
17 been a better job than you normally see was done,
18 correct, sir?

19 A. A lot better job.

20 Q. Okay.

21 A. Yes.

22 Q. Now, sir, you indicated that you didn't
23 believe that there was a possibility that this home
24 was manufactured prior to 1976, correct, sir?

25 A. I think the question was prior to 1974.

1 Q. Okay. What about prior to 1974? You
2 believe that you can tell that it was not manufactured
3 prior to then?

4 A. Based on the information that I have been
5 provided, I don't think it was a pre-1974 home, no.

6 Q. And you say based upon the information that
7 you've been provided?

8 A. Well, and based --

9 Q. What was the source of that information?

10 A. Well, I got information out of the Columbia
11 Discount Homes file. I got information from the
12 consumer, and there's -- based on the look of the
13 home, I mean, I'm going a little bit by my experience.
14 Pre-1974, you know, it looks a little older, a little
15 older look home than this one.

16 Q. Did something happen -- I mean, we're not
17 talking about a '57 to a '59 Cadillac where one of
18 them has tail fins and one of them doesn't. How does
19 a '74 home or a '73 home, how does it look different
20 from a '75 home or a '76 home?

21 A. Well, I maybe missaid that. The condition
22 and things generally when I see '74 homes or
23 pre-regulated homes, what we kind of refer to them as,
24 generally they're a lot worse than what I was looking
25 at there, a lot worse.

1 Q. Whenever you say a lot worse, you're
2 talking --

3 A. Condition, age and things like that,
4 generally.

5 Q. Well, would you agree with me that the
6 condition of the home has a pretty fair amount to do
7 with how it's maintained, the climate that the home
8 was set in and kind of stuff like that?

9 A. Right. And '74 homes are generally pretty
10 rough, real rough.

11 Q. But, sir, I mean, the thing of it is you've
12 seen -- fair statement in your career, you've seen
13 relatively new homes that were trashed and old homes
14 that looked about as good as the day that they were
15 manufactured?

16 A. Occasionally, yes.

17 Q. Okay. And so, sir, what I'm trying to get
18 at is, I'm not understanding how it is that you can
19 kind of eyeball one of these homes and go, you know,
20 that's a '75 and that one's a '73 and that one's a
21 '78. How do you do that?

22 A. I didn't say I could do that.

23 Q. Okay. So, sir, I mean, from what I just
24 got, you don't know, based upon what you saw of that
25 home, anything about its age from physically looking

1 at the home, do you, other than the fact it wasn't
2 brand-new?

3 A. Well, I could tell it wasn't brand-new, but
4 like I say, I believe the home was newer than a '74.

5 Q. And is it for any other reason than you've
6 already testified to?

7 A. No. I look at hundreds of homes a year.
8 Every year I look at hundreds of homes, and this home
9 looks newer than a '74 based on what I look at.

10 Q. Okay. And that's the condition of the home,
11 correct, sir?

12 A. Condition, appearance, yeah.

13 MR. MILLER: Okay. That concludes my
14 recross-examination.

15 JUDGE HENNESSEY: Call your next witness,
16 Mr. Hosford.

17 MR. HOSFORD: Yes. I believe Mr. Gunn will.

18 MR. GUNN: Yes, your Honor. Our witness has
19 arrived. The Director would like to call Mrs. Joyce
20 Schmitz to the stand, please.

21 JUDGE HENNESSEY: Ms. Schmitz, would you
22 take the stand, please.

23 Off the record.

24 (Discussion off the record.)

25 (Witness sworn.)

1 JUDGE HENNESSEY: On the record, please.

2 Let the record reflect that the witness has
3 been sworn. This is also a change again in the
4 witness order. Ms. Schmitz is now testifying No. 3
5 instead of the No. 4 that we had agreed to earlier.
6 Counsel?

7 MR. MILLER: For the record, Judge, I have
8 no objection whatsoever.

9 JUDGE HENNESSEY: Thank you. Direct
10 examination, Mr. Gunn. You may inquire.

11 MR. GUNN: Thank you, your Honor.

12 JOYCE E. SCHMITZ testified as follows:

13 DIRECT EXAMINATION BY MR. GUNN:

14 Q. Mrs. Schmitz, could you please state your
15 full name and address for the record, please.

16 A. Joyce Elaine Schmitz. I live at HCR 64,
17 Box 42, Loose Creek, Missouri.

18 JUDGE HENNESSEY: Ma'am, could you please
19 speak up. I know I'm having some trouble hearing you.
20 I think the attorneys --

21 MR. HOSFORD: Perhaps if you adjust the
22 microphone.

23 JUDGE HENNESSEY: If you would pull that
24 microphone down. Thank you.

25 BY MR. GUNN:

1 Q. And Mrs. Schmitz, have you been known by any
2 other name?

3 A. Yeah, Joyce Briggs.

4 Q. Joyce Briggs. Okay. Mrs. Schmitz, did you
5 prepare prefiled testimony which has been previously
6 marked, I believe, as Exhibit No. 2, the direct
7 testimony of Joyce E. (Briggs) Schmitz?

8 A. Yes.

9 Q. Okay. And do you have any corrections or
10 additions to make to that testimony?

11 A. No.

12 Q. And are your answers in this testimony true
13 and accurate to the best of your knowledge and belief?

14 A. Yes.

15 Q. And if I were to ask you the same questions
16 contained in this testimony today, would your answers
17 be substantially the same?

18 A. Yes.

19 MR. GUNN: At this time, your Honor, I'd
20 like to offer Exhibit No. 2 into the record as
21 evidence and tender the witness for cross-examination.

22 MR. MILLER: I have no objection to the
23 exhibit being introduced.

24 JUDGE HENNESSEY: As there are no
25 objections, the exhibit will be accepted and admitted

1 into evidence as Exhibit No. 2.

2 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

3 JUDGE HENNESSEY: Mr. Miller, your
4 cross-examination.

5 MR. MILLER: Yes.

6 CROSS-EXAMINATION BY MR. MILLER:

7 Q. Ma'am, I'm going to show you what's been
8 marked as Exhibit No. 6 here by the court reporter
9 that we've already talked about a little bit here
10 today. Do you recognize that as a copy of the title
11 to a mobile home that you traded in to Columbia
12 Discount Homes?

13 A. This don't look familiar, no.

14 MR. MILLER: Okay. Have you got the
15 original?

16 BY MR. MILLER:

17 Q. Ma'am, let's try the -- let's try the
18 original of this title, which I'm not going to mark,
19 and I'd ask you to review those and see if that in any
20 way --

21 JUDGE HENNESSEY: Mr. Miller, just for
22 clarification, are you saying that this is the
23 original title of the copy that was admitted in as
24 Exhibit No. 6?

25 MR. MILLER: Yes, your Honor, it is.

1 THE WITNESS: Oh, yeah, now it is.

2 MR. MILLER: And all I was doing was giving
3 it to her to potentially refresh her.

4 JUDGE HENNESSEY: I just want to clarify
5 what it was since we had --

6 THE WITNESS: Because First Trust is over at
7 Quincy, yeah.

8 BY MR. MILLER:

9 Q. So now that I've given you the benefit of
10 the original, does Exhibit No. 6, which is a copy of
11 this original, does that kind of look familiar to you?

12 A. Yeah, it does now.

13 Q. Okay. And that's a copy of the -- now that
14 you've seen that, ma'am, that's the front side of the
15 title of a mobile home that you traded in to Columbia
16 Discount Homes, correct, ma'am?

17 A. (Witness nodded.)

18 Q. Is that yes?

19 A. Yes.

20 Q. I'm not being picky, but the court
21 reporter's got to take everything down.

22 A. I'm sorry. I'm sorry.

23 Q. That's okay. You're nervous. That's all
24 right.

25 And, ma'am, was that the title that you got

1 to the home that you traded in whenever you bought
2 that home?

3 A. Yes.

4 Q. And was it the only title that you ever had
5 to that mobile home that you traded in?

6 A. Yes.

7 Q. And, ma'am, it indicates that the -- that
8 that home's a '76 Skyline on there, correct?

9 A. Yeah.

10 Q. That's what it was?

11 A. Yes.

12 Q. It was a Skyline, you think?

13 A. Yeah.

14 Q. Okay. And so the fact -- or in your
15 testimony here, whenever it indicated that, so you
16 traded in a 1976 National 5th Avenue to Amega Mobile
17 Home Sales, you were simply answering the -- you were
18 giving the answer that was kind of indicated to you
19 that you should give, correct, ma'am?

20 A. Yeah.

21 Q. Okay. And, ma'am, you didn't ever inspect
22 this mobile home to see whether or not that it had any
23 kind of federal plate on it, did you?

24 A. No, but --

25 Q. Didn't inspect to see whether or not it had

1 a Missouri sticker on it, did you?

2 A. But before I moved that trailer, a friend of
3 mine, him and I, we painted the outside of that
4 trailer, and we painted it from top to bottom. And
5 everything that was mounted on there we put back. I
6 mean, every little plastic piece, every little metal
7 piece, we put it back, because he was the one that --
8 I mean, he was really good about helping me paint that
9 trailer.

10 Q. Okay.

11 A. We painted the trim. We painted everything
12 on the outside of that trailer.

13 Q. And when did you do that, ma'am?

14 A. It was in '95.

15 Q. Okay.

16 A. June, or it might have been in July. July
17 of '95.

18 Q. Okay. And so in terms of when you guys were
19 painting this, did you paint a specific part and he
20 painted a specific part, or how did that work?

21 A. No. We painted -- we'd paint one side, and
22 then we'd work on another side.

23 Q. Okay. And do you recall which of you
24 painted the areas on either side of the front and back
25 door to this mobile home?

1 A. No, I don't.

2 Q. So it may have been you and it may have been
3 the other guy, right?

4 A. Yeah.

5 Q. And you think that you would have -- if
6 there had been some kind of plate on there, that you
7 would have taken it off and put it back on?

8 A. Yeah, we did. We took everything that was
9 on there, we put it back.

10 MR. MILLER: Okay. Could I see the original
11 of the sticker, please?

12 BY MR. MILLER:

13 Q. Ma'am, if there had been a little adhesive
14 sticker like that on there, that wouldn't have come
15 off without getting torn up to beyond recognition,
16 would it, ma'am?

17 A. We didn't see nothing like that.

18 Q. You didn't, correct?

19 A. I didn't seeing nothing like that.

20 Q. That's perfectly all right. You don't know
21 what the guy that you had helping you there saw in
22 terms of whether or not it had a sticker, though, do
23 you?

24 A. No, I don't.

25 Q. Okay. When did you last see this mobile

1 home?

2 A. '96.

3 Q. September of -- or what month in '96?

4 A. June.

5 Q. Okay. So when you got your new home?

6 A. Yeah.

7 MR. MILLER: That's all the questions I have

8 for this witness.

9 QUESTIONS BY JUDGE HENNESSEY:

10 Q. Ma'am, could I ask you to hold up that
11 sticker. Have you still got it over there?

12 A. (Indicating.)

13 Q. Just to clarify for the record, that is the
14 original of a Missouri seal that was admitted as
15 Exhibit No. 9. Okay. Just to clarify that.

16 Ma'am, let me ask you this question. Did
17 you scrape anything that looked like that off the
18 trailer when you were painting it?

19 A. No.

20 Q. Did you see anyone scrape anything off like
21 that?

22 A. I didn't see anyone.

23 Q. When you were living in there, did you ever
24 notice anything like that on the trailer?

25 A. No, I did not.

1 Q. Okay. There was a question in your direct
2 that asked if you remembered the make or model of the
3 manufactured home you lived in in Memphis, Missouri.

4 Do you recall what your answer was to that?

5 A. It was a National 5th Avenue.

6 Q. Okay. But you didn't know what the -- do
7 you recall the VIN number?

8 A. (Witness shook head.)

9 Q. You don't probably recall that any better
10 than you do your car's VIN number, do you?

11 A. No.

12 Q. But you believed it was a National 5th
13 Avenue?

14 A. I know it was a 5th Avenue.

15 Q. And it was not a Skyline?

16 A. I guess it was a Skyline. I guess all -- I
17 don't know.

18 Q. Okay. Why do you believe it was a National?

19 A. Because I know it was a National because I
20 was working for National Garment, and everybody was
21 laughing about it because I had bought a National
22 home.

23 Q. Okay. And was there some kind of a label --

24 A. Yes.

25 Q. -- on the home?

1 A. Yes, there was. It had a label in front, a
2 plastic piece. And when I took that off it cracked,
3 but I put it back on there and I glued it. It said
4 National.

5 Q. So you're sure it was a National?

6 A. Yes, I do.

7 Q. Did you buy that home new?

8 A. No, I did not.

9 Q. Okay. I think in your direct you stated you
10 bought it in 1991?

11 A. '90 or '91, something like that.

12 Q. And do you know what year the home was
13 manufactured?

14 A. They said in '76.

15 MR. MILLER: I'm going object to that,
16 Judge. She said they said --

17 THE WITNESS: On the paper when I bought it,
18 it was a '76.

19 JUDGE HENNESSEY: I'm going to overrule the
20 objection.

21 BY JUDGE HENNESSEY:

22 Q. Your understanding when you bought the home
23 was that it was a '76?

24 A. Yes. That was my understanding, that's what
25 it was.

1 Q. Did you paint over any tags or seals that
2 looked like that one sticker that you've got?

3 A. No.

4 Q. So they weren't underneath the paint?

5 A. No.

6 Q. How many coats of paint did you put on?

7 A. At least one.

8 Q. One. Did you replace any siding when you
9 did that?

10 A. No. Can I say something?

11 Q. No. I'm sorry. The procedure typically is
12 that you may only testify in response to a question.

13 A. Okay.

14 Q. One other question for you. Do you know
15 what the two varieties of seals are that we've been
16 talking about this morning, the Missouri state seal
17 and HUD seal?

18 A. I do now.

19 Q. Okay. Do you -- is that HUD seal over
20 there?

21 MR. MILLER: I've got the --

22 MR. HOSFORD: Here it is.

23 JUDGE HENNESSEY: Just hold that up. Thank
24 you.

25 BY JUDGE HENNESSEY:

1 Q. Have you ever seen a seal similar to the HUD
2 seal which was admitted as Exhibit No. 10 or the
3 Missouri state seal, was that -- were either of those
4 present on the manufactured home, the National
5 manufactured home when you owned it?

6 A. I didn't see nothing like that on it. I
7 mean, like I said, I painted -- I helped paint the
8 trailer. I done a lot of maintenance around outside
9 of it, and I didn't see nothing like that.

10 JUDGE HENNESSEY: Thank you. Any redirect?

11 MR. GUNN: Yes, your Honor.

12 REDIRECT EXAMINATION BY MR. GUNN:

13 Q. Mrs. Schmitz, when you owned this mobile
14 home that you traded in, again, I refer to the
15 Certificate of Title for this home. It states that
16 it's a -- on the title it states that it's a '76
17 Skyline.

18 Okay. The home that you lived in and the
19 title that you received for the home that you lived
20 in, can you tell me your belief as to the manufacturer
21 and the date of the home that you lived in?

22 MR. MILLER: I'm going to object to that.
23 The date of it gets to the very substance of this, and
24 I don't think this witness is qualified to speak to
25 that issue.

1 JUDGE HENNESSEY: Mr. Gunn?

2 MR. GUNN: Your Honor, again, I believe that
3 she can testify to what her belief was of the home she
4 lived in. If I asked her if she owns a 1979
5 automobile, she can tell me whether or not she
6 believes it's a 1979.

7 I don't believe she has to be an expert to
8 say that the car she thought she purchased was a 1979.

9 MR. MILLER: And I don't think it's relevant
10 to anything.

11 MR. GUNN: I think it definitely is
12 relevant. We need to try to determine --

13 JUDGE HENNESSEY: I agree, it is relevant,
14 and I think the question has already been asked and
15 answered on two or three different occasions. I think
16 it's sufficiently in the record.

17 I'm going to sustain your objection on the
18 alternate grounds it's been asked and answered.

19 MR. GUNN: May I approach the witness, your
20 Honor?

21 JUDGE HENNESSEY: Yes.

22 BY MR. GUNN:

23 Q. Mrs. Schmitz, I know that you've probably
24 looked at this already. It is the title for the home.
25 It indicates again that it's a '76 Skyline. Is this

1 the title you received for the home that you've
2 referred to as a '76 National 5th Avenue?

3 A. Yeah.

4 Q. Okay.

5 A. That's it because I -- this is the bank that
6 I used.

7 Q. So this is the title that you received for
8 the 1976 National 5th Avenue home?

9 A. Yeah.

10 MR. MILLER: I'm going to object to the
11 leading nature of the question because it indicates
12 that -- by definition indicates that it was a '76
13 National, which is a --

14 MR. GUNN: I'll rephrase it. I'll rephrase
15 it.

16 BY MR. GUNN:

17 Q. Can you identify what this document is?

18 A. It's a title. It's a title for that -- the
19 older trailer that I had.

20 Q. And again for clarification, which older
21 trailer?

22 A. It was the '76 National.

23 Q. Okay. Thank you. And again, one more
24 redirect. Just for the record, in your, I believe it
25 was five, close to six years that you owned this home

1 and you stated that you've done maintenance on this
2 home, did you ever see anywhere on the home a seal
3 that looked similar to the Missouri seal that you
4 previously have just looked at?

5 A. No, I did not.

6 Q. And when you traded that home in in 1996, to
7 the best of your knowledge, information and belief,
8 was there such a sticker on that home?

9 A. No. No, there wasn't.

10 MR. GUNN: Thank you. I have no more
11 redirect.

12 JUDGE HENNESSEY: Recross?

13 MR. MILLER: Thank you.

14 RECROSS-EXAMINATION BY MR. MILLER:

15 Q. Ma'am, is the title that's been discussed
16 here which shows up in Exhibit No. 6, is that the only
17 title that you ever got for what you've referred to as
18 the older home that you traded in to Columbia
19 Discount?

20 A. Yes.

21 Q. And, ma'am, you've indicated that you don't
22 recall seeing a seal that looked like that on that
23 older home, correct, ma'am?

24 A. No, I never seen that.

25 JUDGE HENNESSEY: Mr. Miller, would you

1 please clarify when you say a seal that looked like
2 that, which exhibit it is you're referring to?

3 MR. MILLER: You're right. That was sloppy.

4 BY MR. MILLER:

5 Q. Ma'am, whenever I just managed to botch
6 asking you my question a minute ago, I was referring
7 to Exhibit No. 9.

8 Is it your testimony you don't recall having
9 seen a sticker that kind of looked like that on the
10 side of your home?

11 A. No, I never seen one.

12 Q. What color was it, by the way, before it was
13 painted?

14 A. It was cream, like an off-white.

15 Q. What color after?

16 A. It was the same color.

17 Q. Okay.

18 A. As close as we could get it.

19 Q. Okay. Ma'am, you weren't really -- or until
20 this matter came up, did you have any kind of
21 knowledge about the existence of a seal similar to
22 that that's shown on Exhibit No. 9?

23 A. No, I didn't know there was any such thing.

24 Q. Okay. By definition, you wouldn't have been
25 looking for it, would you?

1 A. No, I wouldn't.

2 Q. And ma'am, this is -- the original of the
3 seal is kind of a clear deal, isn't it?

4 A. Uh-huh.

5 Q. Is that yes, ma'am?

6 A. Yes, it is.

7 Q. And you indicated a minute ago that you put
8 a sticker back on either the side or the front of the
9 home that said National. Do you remember telling us
10 that?

11 A. Yeah. It was a plastic mounted thing. It
12 told -- it was plastic. It was a molding-like deal.
13 When we took off, it cracked, but we put it back on.
14 And there was another plastic piece under that that
15 said 5th Avenue.

16 Q. Okay. So on the side of the home it had one
17 little deal that you said was kind of like a piece of
18 molding that was plastic that said National, and --

19 A. This was on the front of it.

20 Q. Okay. On the front of the home?

21 A. This is on the front of it.

22 Q. Said National and below it it had a deal --

23 A. Yeah.

24 Q. -- that said 5th Avenue?

25 A. Yeah. It was right below the window there.

1 Q. Okay. On the front of the home?

2 A. Yes. It was on the front, below the window.

3 Q. Okay. When was the last time that you saw
4 either one of those two moldings, placards, stickers,
5 whatever you want to call them?

6 A. When I traded it in. That was in '96.

7 Q. Okay. But would you have looked for that to
8 see whether or not that was still on there?

9 A. You mean the molding, you mean?

10 Q. Yes, ma'am. Or do you know one way or
11 another?

12 A. Well, I know it was there because I walked
13 around the trailer and inspected it, you know, making
14 sure everything was on, you know, what was -- I needed
15 to take with me and stuff.

16 Q. Okay.

17 A. And I know it was there because I -- it's
18 pretty noticeable. It's big and it's just noticeable.

19 Q. Okay. And ma'am, I believe your testimony
20 had been previously that you didn't notice a sticker
21 that looked like Exhibit No. 9, correct, ma'am?

22 A. No. I've never seen one like that.

23 Q. And you didn't see the guy that helped you
24 scrape it off, scrape one off or put one back on that
25 looked like that, did you?

1 A. No.

2 MR. GUNN: Objection, your Honor.

3 JUDGE HENNESSEY: Sustained.

4 MR. MILLER: On what grounds?

5 MR. GUNN: Your Honor, he's rephrasing the
6 witness' testimony stating that --

7 JUDGE HENNESSEY: I believe you misstated.
8 Your question inferred that someone had scraped a
9 sticker off the trailer, which there was no such
10 testimony.

11 MR. MILLER: Sure. I understand. I didn't
12 realize that I'd done that, which is why I didn't
13 understand the objection or the ruling.

14 BY MR. MILLER:

15 Q. But your testimony would be that you didn't
16 scrape off or put on a sticker -- back on a sticker
17 equivalent to Exhibit No. 9, correct, ma'am?

18 A. That's right.

19 Q. But you don't know whether or not that your
20 helper did, do you?

21 A. No, I don't.

22 MR. MILLER: That's all the questions I
23 have.

24 JUDGE HENNESSEY: You may step down, ma'am.

25 (Witness excused.)

1 JUDGE HENNESSEY: Off the record.
2 (Discussion off the record.)
3 JUDGE HENNESSEY: On the record, please.
4 All right. At this time we will recess
5 until 1:30 for lunch, at which time the attorneys will
6 come back and we'll continue with direct examination
7 of the remaining witness, Mr. Phillips. Thank you.
8 Off the record.
9 (The noon recess was taken.)
10 JUDGE HENNESSEY: On the record.
11 Note for the record that Commissioners Lumpe
12 and Murray have joined us and that we are back from
13 our lunch recess. The next witness, I believe, is the
14 direct of Mr. James Phillips.
15 MR. HOSFORD: That's correct, your Honor.
16 JUDGE HENNESSEY: All right. Mr. Hosford,
17 call your next witness.
18 MR. HOSFORD: At this time we'd call
19 Mr. James Phillips to the stand.
20 Off the record.
21 (Discussion off the record.)
22 (Witness sworn.)
23 JUDGE HENNESSEY: On the record, please.
24 Mr. Hosford, if you'll begin your direct
25 examination.

1 JAMES PHILLIPS testified as follows:

2 DIRECT EXAMINATION BY MR. HOSFORD:

3 Q. Mr. Phillips, will you please state your
4 full name for the record.

5 A. James Phillips.

6 Q. And Mr. Phillips, would you please provide
7 us with by whom you are employed and in what capacity?

8 A. I'm employed by the Missouri Public Service
9 Commission as the Director of the Department of
10 Manufactured Housing, Recreational Vehicles and
11 Modular Units.

12 Q. Thank you. And as part of your duties as
13 Director, did you prepare or have prepared prefiled
14 testimony in this case which we've previously marked
15 as Exhibit No. 4, which would be the direct testimony
16 of James Phillips?

17 A. Yes, I did.

18 Q. All right. Mr. Phillips, do you have any
19 corrections or additions you wish to make to your
20 testimony at this time?

21 A. Yes, I do. On page 4 I found two typos.

22 Q. Okay. Would you give us those.

23 A. Yes. Line 11, homes, manufactured homes
24 should be plural or -- excuse me -- singular,
25 manufactured home. And then down on line 18 there's a

1 phrase that says he would not buy it, and that should
2 read from her rather than form her.

3 Q. Okay. And then are those the only
4 corrections that you have to make?

5 A. Yes, sir.

6 Q. Okay. Mr. Phillips, with those corrections,
7 are the answers provided in your testimony true and
8 accurate to the best of your knowledge and belief?

9 A. Yes, they are.

10 Q. And if I asked you the same questions today
11 contained in your prefiled written testimony, would
12 your answers be the same?

13 A. Yes, they would.

14 MR. HOSFORD: Your Honor, at this time I
15 would offer Exhibit 4 into the record.

16 MR. MILLER: Your Honor, I have some
17 objections to that on pages 4 and 7. On page 4, it
18 would be lines 21 and 22, on page 5, lines 1 through 5
19 are recitations of legal conclusions which invade the
20 province of the ultimate finder of fact.

21 Page 7, lines 1 through 18 contain hearsay
22 with regard to substantive elements of the case and in
23 essence are a back-door attempt to bring in testimony
24 of other agencies through Mr. Phillips.

25 On page 7, lines 19 through 21, and page 8,

1 lines 1 and 2 are once again legal conclusions, and I
2 would request, after you review, that you strike those
3 from the exhibit.

4 JUDGE HENNESSEY: Run through the page
5 numbers again.

6 MR. MILLER: Sure. In fact, I'll tell you
7 what. In order to make life simpler, I've got
8 Mr. Harrison's notes with regard to that.

9 JUDGE HENNESSEY: All right. Mr. Hosford,
10 do you have any comment?

11 MR. HOSFORD: Just a response, your Honor.
12 Regarding the objections on the legal conclusions,
13 while that may be statements of statutory basis, these
14 are the basis that Mr. Phillips uses to administer the
15 law.

16 He's not rendering necessarily a legal
17 opinion. He is telling us in the testimony how the
18 Director interprets the law and how the Director
19 utilizes the law in the operation of the division and
20 the basis for their authority. He is not rendering
21 necessarily legal opinions. Those are the basis for
22 his actions.

23 Regards to the hearsay, I think we've gone
24 through this earlier, and these are merely statements
25 where Mr. Phillips is providing us with his

1 understanding of those incidents and using that to set
2 the basis for his decisions rather than admitting them
3 necessarily for the truth of the statement. They are
4 from Mr. Phillips' understanding the basis for his
5 actions.

6 MR. MILLER: If they are not offered -- if
7 you're referring to page 7, if you're not offering it
8 for the underlying truth of it but as a basis for the
9 action, I don't have any problem with it then, if
10 that's all it's being offered for.

11 JUDGE HENNESSEY: You're withdrawing your
12 objection to lines --

13 MR. MILLER: Based upon -- right. Page 7,
14 lines 1 through 18, based upon the representation of
15 counsel with regard to the purpose for which they are
16 offered, I'll withdraw the objection.

17 MR. HOSFORD: Understanding, your Honor,
18 that our rules of evidence are much broader than the
19 normal case, that we're not using these as hearsay and
20 we have a much broader understanding of hearsay.

21 JUDGE HENNESSEY: I understand.

22 MR. HOSFORD: I think Mr. Phillips'
23 statements speak for themselves on those matters.

24 JUDGE HENNESSEY: Right. And I will
25 overrule the objections insofar as the statements of

1 law may contain a conclusion, although I don't happen
2 to see one. Those will be admitted for whatever
3 weight they might bear.

4 And the administrative rules regarding
5 hearsay would allow the testimony covered on pages 7
6 to --

7 MR. MILLER: Well, I've withdrawn that based
8 upon his representation of what it was that he was
9 offering for. So I withdraw it because he said he
10 wasn't offering it for the truth.

11 JUDGE HENNESSEY: That's right. Fine.
12 Regardless, the rest of the objections with regard to
13 page 4 and page 7, lines 19 through 21, page 8, lines
14 1 through 2 are overruled.

15 Mr. Hosford, did you already move to admit?

16 MR. HOSFORD: Yes, I did, but I will again
17 just to clarify for the record that --

18 JUDGE HENNESSEY: Thank you.

19 MR. HOSFORD: -- based on the objection,
20 that we now move again the admission of Exhibit 4 into
21 the record.

22 JUDGE HENNESSEY: The exhibit marked as No.
23 4, the direct testimony of James Phillips, will then
24 be received into evidence.

25 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

1 JUDGE HENNESSEY: Mr. Miller, you may begin
2 your cross.

3 MR. MILLER: Thank you, your Honor.

4 CROSS-EXAMINATION BY MR. MILLER:

5 Q. Mr. Phillips, you were obviously here for
6 the morning's proceeding, correct, sir?

7 A. Yes.

8 Q. And you heard Ms. Schmitz's testimony, did
9 you not, sir?

10 A. Yes, I did.

11 Q. Indicated obviously that this mobile home
12 had been repainted approximately six, eight months
13 prior to its trade-in to my client, correct, sir?

14 A. Yes, sir.

15 Q. And you also heard her testimony with regard
16 to the fact that there were certain decals on the
17 trailer whenever she traded it in, correct, sir?

18 A. I heard her say that she removed some decals
19 and metal tags off of it to paint it and then put
20 those back on.

21 Q. Right. But let's just -- let me
22 specifically draw your attention to the items she
23 discussed were on the front of the home. Do you
24 remember her testimony in that regard, sir?

25 A. I believe I do.

1 Q. Namely that there was something on there
2 that said National, and then there was something on
3 there that said 5th Avenue. Do you recall that, sir?

4 A. Yes, I do.

5 Q. Sir, you inspected this home yourself, I
6 believe, on June the 3rd of this year, correct, sir?

7 A. I inspected it myself. I believe that's
8 around the date.

9 Q. Okay. And the sale transaction occurred
10 back in September, correct, sir? The sale contract I
11 think says September 20th, '96.

12 A. Okay. I believe that's about right.

13 Q. Okay. Sir, was the National 5th Avenue
14 decal, that wasn't on there at the time that you saw
15 it in June of this year, was it, sir?

16 A. It was on the home when I saw it, yes.

17 Q. You're saying that it was on there at that
18 time?

19 A. Yes.

20 Q. And I'm talking about the one on the front
21 of the home.

22 A. Yes, sir.

23 Q. Okay. Sir, do you have any idea why that
24 whenever you answered your Interrogatories you didn't
25 mention that for me?

1 A. No, I don't have any idea.

2 Q. Okay. And, sir, did you listen to
3 Mrs. Schmitz's testimony wherein she didn't --
4 indicated that she didn't know whether or not that the
5 guy who was helping her paint might have removed a
6 sticker like that and tried to put it back on? Do you
7 remember that was my last question?

8 A. I heard her talk about some guy helping her
9 paint her home, yes.

10 Q. You don't remember my last question, though,
11 wherein I asked her whether or not she knew whether or
12 not he might have scraped it off and put it back on?

13 A. I believe you asked her something like that,
14 yes.

15 Q. And do you recall her answer being that she
16 did not have an idea whether or not that might have
17 occurred one way or another?

18 A. I think that's what she said, yes.

19 Q. Sir, given the fact -- given that testimony,
20 how is it that you would have any earthly idea as to
21 whether or not that a sticker may have been on the
22 home on September the 20th of 1996?

23 A. Well, based upon what she said, I couldn't
24 make that conclusion only based upon just what she
25 said.

1 Q. Couldn't make it one way or another, could
2 you?

3 A. No.

4 Q. Okay. May have been there, may not have
5 been, fair?

6 A. On the date that she painted her home, if
7 someone could have taken it off at that time, I don't
8 know.

9 Q. But once again, you don't know one way or
10 another, do you, sir?

11 A. I don't know what happened when she had the
12 home, no.

13 Q. And, sir, with regard to the idea of what
14 year home that this is, I take it that you have a
15 belief that it was sold in 1976, correct, sir?

16 A. Do I believe it was sold in 1976?

17 Q. Sure. Or do you know?

18 A. I believe it was sold prior to 1976. Well,
19 no. I believe it was probably sold in or around '76,
20 yes.

21 Q. Okay. What told you that?

22 A. Well, a couple of things. We did a title
23 search on it and found that the home was titled
24 originally in 1976, I believe.

25 Q. And that's whenever its manufacture would

1 have been completed, correct, sir?

2 A. Well, generally, that's the way it works.

3 Generally when it's completed, they -- a

4 Manufacturer's Statement of Origin goes to the dealer,

5 the first dealer that sells it to the first purchaser.

6 Q. Okay.

7 A. Generally.

8 Q. I'm sorry, sir. So it's titled as whenever

9 it's originally on a Manufacturer's Statement of

10 Origin, correct, sir?

11 A. It's not titled then. The date of

12 manufacturer is generally on the Manufacturer's

13 Statement of Origin.

14 Q. Okay.

15 A. And then that with the Bill of Sale and the

16 Title Application is submitted to get a Title on it

17 the first time.

18 Q. So let's go through it like this. When it

19 leaves the manufacturer, it leaves there with a

20 Manufacturer's Statement of Origin to go to a dealer,

21 correct, sir?

22 A. I think that's the usual procedure, yes.

23 Q. And the manufacturer -- have you ever seen

24 the Manufacturer's Statement of Origin with regard to

25 this home?

1 A. I've not seen it, no.

2 Q. That Manufacturer's Statement of Origin
3 would tell us when the manufacture of that home was
4 completed, correct, sir?

5 A. I believe that -- I believe. I'm not that
6 familiar with Manufacturer's Statement of Origin. So
7 I don't know what exactly they say on it.

8 Q. But it would be your belief that that would
9 tell you when it was completed, correct, sir?

10 A. Generally, I think, yes.

11 Q. Okay. And the Title merely tells us what
12 year that it was first sold to a consumer, correct,
13 sir?

14 A. I thought the Title identified the owner.

15 Q. Okay. It would identify the owner and the
16 year which it was first -- the first Title would tell
17 you the original owner and the year that it was first
18 sold at retail sale, correct, sir? The original
19 Title, correct?

20 A. Well, again, I'm not that familiar with the
21 titling licensing laws like that. I believe that the
22 year of the home is on the Title, and I believe that
23 the purchaser of the home, if you're talking about the
24 very first Title --

25 Q. Sure.

1 A. -- the first purchaser would be listed on
2 that Title --

3 Q. Okay.

4 A. -- as owner.

5 Q. And whenever you say the year of the home,
6 the year of the home is the year it first sold at
7 retail, correct, sir?

8 A. No, not necessarily. I think the year of
9 the home is the year it was manufactured.

10 Q. The year the manufacture was completed,
11 correct, sir?

12 A. The model year, yes.

13 Q. Okay.

14 A. The model year.

15 Q. And do you know anything about the status of
16 business or how National Manufactured Homes -- I don't
17 know what -- do you know what the technical name for
18 the company was that manufactured National homes?

19 A. I believe it was National Mobile Home
20 Company.

21 Q. Okay. Did you know anything about their
22 manufacturing process --

23 A. No.

24 Q. -- during the time period of 1973, '74, '75,
25 '76, do you know anything about that at all?

1 A. No.

2 Q. I take it, then, that you would have no idea
3 as to how long that National Manufactured Homes took
4 to manufacture a home, would you?

5 A. I don't know.

6 Q. No way at all? Could have been one week,
7 one month, could have been three years, correct, sir?

8 A. Highly unlikely.

9 Q. You don't know, though, do you, sir?

10 A. I don't know how long it took National to
11 build a house, no.

12 Q. Okay. And you're not proffering any
13 testimony in terms of how long that it took National
14 to build a house, are you, sir?

15 A. No, I'm not.

16 Q. Because you don't have any knowledge, do
17 you, sir?

18 A. No, I don't.

19 Q. Okay. So you can have an idea -- or you
20 don't even know for sure when the manufacture of this
21 home was completed, do you?

22 A. The exact date, no, I don't.

23 Q. Well, you don't know the year, do you?

24 A. I believe it was completed in 1976.

25 Q. Okay. And you have no earthly idea when

1 that it was first started to be manufactured, do you?

2 A. First started to be manufactured, no.

3 Q. And, sir, the Title to this home indicates
4 that it was a '76 Skyline, correct, sir?

5 A. I believe that was the Title that Tim Haden
6 found as a result of his inspection. The Title that
7 Mrs. Smith had said it was a '76 Skyline.

8 Q. In fact, it was marked as an exhibit here
9 this morning?

10 A. I believe that's correct.

11 Q. And you'd agree with me that Skyline and
12 National are completely separate and distinct
13 manufacturers, correct, sir?

14 A. Well, I believe that today there is no such
15 company as National building mobile homes, and there
16 is a Skyline building homes today.

17 Q. Let's go back to -- I understand that
18 National may no longer be in business. That's your
19 understanding, correct, sir?

20 A. That's my understanding, yes.

21 Q. And, sir, during the time period that
22 National was in business, National and Skyline weren't
23 the same companies, were they, sir?

24 A. I don't know that.

25 Q. Don't know one way or the other?

1 A. I don't know.

2 Q. Okay. But at any speed, the -- do you have
3 any idea how come that whenever I asked Mr. Haden, --
4 and I'm not picking on you for this, but how do you
5 think Mr. Haden knew that they were separate
6 manufacturers and you don't? Is there not a book
7 somewhere that would tell you that kind of stuff?

8 A. No, there's no book that would tell us that
9 kind of stuff.

10 Q. What did you do in terms of going about
11 finding out when mobile home No. 3663, Skyline mobile
12 home No. 3663 was manufactured?

13 A. Well, I could call the housing and building
14 technology division of NCSBCS, which is a HUD's
15 monitoring contractor, and they track the labels for
16 all manufactured homes built since June 15, 1976. And
17 if this house was manufactured after that time, they
18 would know. They could tell me if it had been
19 manufactured after June 15, 1976.

20 Q. And you did that?

21 A. I did that.

22 Q. And they told you that it was manufactured
23 before June 15th of 1976, correct, sir?

24 A. They told me that the serial numbers that
25 National Mobile Home Company started building as of

1 June 15, 1976 when they were certified as a HUD code
2 manufacturer were after 3663.

3 Q. Okay. So would it be a fair statement that,
4 from what you were able to glean from this NCSBCS,
5 that the one thing that you can tell us for certain is
6 that this home was manufactured with the completion of
7 this home -- excuse me. The completion of the
8 manufacture of this home occurred prior to June of
9 1976, correct, sir?

10 A. I believe that, yes.

11 Q. Okay. And what you found out from them
12 didn't tell you anything at all about when the first
13 step of manufacture of this home took place, did it?

14 A. No.

15 MR. MILLER: That is all.

16 JUDGE HENNESSEY: At this time we'll take
17 questions from the Bench. Commissioner Lumpe?

18 QUESTIONS BY CHAIR LUMPE:

19 Q. Mr. Phillips, following the questioning
20 relating to 1976, how does that relate to January
21 1974?

22 A. All manufactured homes manufactured after
23 January 1st, 1974 which are sold or offered for sale
24 in the state of Missouri must have either a Missouri
25 label if it's a '74, '5 or '6 model, or a HUD label if

1 it was manufactured after June 15, 1976. That's the
2 beginning of the model year '77.

3 Q. So there are two different dates that have
4 two different requirements as to what seal, tag or
5 whatever they have to have?

6 A. That's right, Commissioner.

7 Q. And the testimony as I think I was hearing
8 it was that this vehicle or mobile home was
9 manufactured prior to '76?

10 A. Prior to June 15, 1976.

11 Q. 1976. But we don't know if it was
12 manufactured prior to January 1974?

13 A. We don't know the actual date that this unit
14 began -- was first entered into the first phase of
15 construction. The manufacturer, the original Title in
16 the title search that we did was issued in 1976, which
17 leads us to believe that it was manufactured in 1976.

18 Q. And the questioning was sort of getting at
19 the difference between what date it might be
20 manufactured and what date it might be titled. Am I
21 correct that that was sort of the thrust of the
22 questioning or --

23 A. I'm not sure that's the thrust of his
24 questioning, no.

25 Q. Okay. Is the significance of the 1974 that

1 it was to have started being manufactured or that it
2 was completed manufactured? In other words, is it
3 when the first piece of metal or wood was cut, or is
4 it when the thing is a product? Which is significant
5 for the date?

6 A. I believe the statute in 700.015 says that a
7 mobile home which entered the first stage of
8 production after

9 Q. So first stage of production?

10 A. Right.

11 Q. So it could be the drawing might be on a
12 piece of paper?

13 A. Right.

14 Q. Okay. And that drawing, that first drawing
15 on a piece of paper, what it might look like, would
16 have to have been after --

17 A. I think more --

18 Q. -- 1975?

19 A. I think more when it actually went into
20 production down the line, when it actually was put on
21 the factory line to be built. I think that's what
22 it's talking about.

23 Q. And how do you get that information? Where
24 is that kind of information kept that says we started
25 building this on January 1?

1 A. Normally that's in the unit file at the
2 manufacturing facility, or possibly for a HUD code
3 house we can find that information from the Housing
4 and Building Technology Division of NCSBCS, which is
5 the monitoring contractor for HUD.

6 Q. And is it not possible to get that
7 information from National? Is National the one -- are
8 they the ones that are no longer in business and
9 records don't exist?

10 A. Yes, ma'am.

11 Q. Okay. And would they -- when they go out of
12 business, would they have transferred those records to
13 anyone?

14 A. I don't believe they would have. That's not
15 typical.

16 Q. In other words, they didn't necessarily
17 merge into another company that would have picked up
18 their records or --

19 A. No. As far as we know, they just went out
20 of business.

21 Q. They just went out of business and the
22 records are gone?

23 A. Right. I know that it was in November of
24 '78 that they quit producing, and, in fact, I asked
25 the question were they bought out by Skyline or did

1 they merge with Skyline. The only record that they
2 had at HBC was that they just ceased to produce, just
3 quit producing.

4 Q. So at this point there's no record, no
5 company that we can go back and say what date did you
6 start production of this particular vehicle?

7 A. Right.

8 Q. And so we're looking at the records that do
9 exist, which are the Title, and making assumptions
10 then from the titling date.

11 Are there any other things on that vehicle
12 that would give a clue without the records from the
13 manufacturer?

14 A. No, ma'am. As we searched the unit, we did
15 not find a date of production on the manufacture
16 information inside the home.

17 Q. And if I heard the questioning, earlier
18 questioning, the normal production time for a home of
19 that, is there any -- are there any kinds of records
20 or estimates that one could make from records, say,
21 they produced one of these in a five-month period?

22 A. No, ma'am.

23 Q. Did they go off the assembly line quickly
24 or --

25 A. Yes.

1 Q. -- long process or what?

2 A. That varies per manufacturer depending on
3 how large a facility and how much production they
4 have. We have manufacturers in Missouri that produce
5 approximately five floors a week. We have
6 manufacturers in other states that ship into Missouri
7 that produce 25 homes a day.

8 Q. And do we have any way of knowing how many
9 units National put out their door in a day, any kind
10 of background to go to and say they produced X number
11 a day out of the factory?

12 A. If my memory serves correct, for the -- from
13 June 15th, '76 until November of '78 when they quit
14 producing, I believe there was a range of about 2,000
15 serial numbers that covered that HUD had record of.
16 So that 2,000 serial numbers in approximately two
17 years is approximately a thousand units.

18 Q. A year?

19 A. A year.

20 Q. Extrapolate how many a day, et cetera?

21 A. Right. So it was a fair number.

22 Q. So in other words, it didn't take them five
23 years to build one of these units?

24 A. No, ma'am. No. These are generally, this
25 type of housing --

1 Q. A year at most?

2 A. Oh, days.

3 Q. Five months?

4 A. Days.

5 Q. Days?

6 A. Days at most. I mean, a long period of time
7 is generally some days for these houses. I mean,
8 they're affordable housing, and the assembly line
9 production generally pops them out very regularly.
10 That's what they need to be affordable, take advantage
11 of the economies of scale.

12 CHAIR LUMPE: Okay. Thank you,
13 Mr. Phillips.

14 JUDGE HENNESSEY: Commissioner Murray?

15 COMMISSIONER MURRAY: Thank you.

16 QUESTIONS BY COMMISSIONER MURRAY:

17 Q. I'd like to talk about the Title a little
18 bit. You indicated in answering a couple of questions
19 that you -- that the Title shows when it was
20 originally titled to the first retail purchaser; is
21 that correct?

22 A. Yes, Commissioner. We did a title search on
23 it that went back, I believe, all the way to the
24 original purchaser.

25 Q. And what else does the Title -- what other

1 information does a Title contain?

2 A. Well, typically it will tell you the owner
3 of the unit, the year, and under vehicle
4 identification it would have a serial number, a VIN
5 number of some kind. It generally has, you know, who
6 a lien holder might be, that kind of thing.

7 Q. And --

8 A. It's exactly like a car title.

9 Q. In the Complaint there was a copy of the
10 Title included in the Complaint?

11 A. Yes, Commissioner.

12 Q. And that's -- I'm looking at that right now.
13 I'm a little confused because this Title shows the
14 make and the model as being Skyline, or SKYL, which
15 is --

16 A. That's Skyline, right.

17 Q. And yet did I not hear you-all saying that
18 it was manufactured by National?

19 A. Yes, ma'am.

20 Q. So why would it -- why would the Title show
21 Skyline?

22 A. The title search that we did indicated that
23 at some point, I think just when the house first came
24 into Missouri, out of Illinois into Missouri, somebody
25 scratched out 5th. You could see a 5th and Skyline

1 put in in the line where it says manufacturer.

2 So at some point somebody made an error in a
3 Title Application that misidentified the original
4 unit, which was a National, as a Skyline.

5 Q. And where did you see this being crossed
6 out?

7 A. On an old Title Application that the
8 Department of Revenue provided us in the title search
9 on the unit.

10 Q. Okay. And there's a vehicle identification
11 number there. If there is no seal on the vehicle, is
12 there a point on the vehicle in which you can -- with
13 which you can compare the VIN number for the Title?

14 A. In this home in question there was a
15 Manufacturer's Data Plate which gave manufacturing
16 information, where it was built, for instance we knew
17 it was built in North Anna, Illinois, and different
18 information about the home. And it gave the Serial
19 No. 3663 on that data plate inside the home.

20 Q. Does the data plate not contain the year it
21 was built?

22 A. No. No, ma'am, it doesn't.

23 Q. What information is a dealer required to
24 keep of previous sales? What information about the
25 units that they sell are they required to keep?

1 A. As I mentioned in my direct testimony, I say
2 the documents include any Title to any manufactured
3 home, any Application for Title to any manufactured
4 home, any Affidavit pursuant to Section 301.407 of the
5 Missouri Statutes, any Assignment of Title to any
6 manufactured home, and any Disclosure Statement or
7 other documentation required by the laws of the United
8 States or any other state.

9 Q. And did the documents that they have on
10 file -- first of all, did you examine the documents
11 that the dealer had on file?

12 A. Yes, ma'am. Tim Haden, the field inspector
13 that originally investigated, made copies of them at
14 the dealer's lot and brought them back to the office
15 and he filed them with his report. And I looked at
16 those, and then they've been entered in testimony. So
17 we've looked at them quite a bit.

18 Q. Was there anything unusual about any of
19 those copies?

20 A. Well, unusual, it was unusual to me that the
21 Title said it was a Skyline when the home said it was
22 a National. But again, once we did the Title search
23 on it, we found out the reason for that.

24 Q. And what -- where in the process of the
25 Titles on this vehicle or the documents that you

1 looked at was this scratched-out material?

2 A. It was on a Title Application.

3 Q. And did that have a date?

4 A. I believe it did. I believe it did.

5 Q. Do you recall, or do you have that
6 information?

7 A. The information is available. We have it.
8 I mean, I don't recall the date, no.

9 Q. Do you know if it was prior -- okay.

10 MR. HOSFORD: If I might -- I apologize for
11 interrupting, Commissioner. On redirect we were -- we
12 have certified copies of that information that we were
13 going to introduce with Mr. Phillips, and perhaps it
14 would -- we can introduce them now, or perhaps if the
15 Commissioner wants to hold the questions until after
16 that, maybe even we could introduce these into
17 evidence and Mr. Phillips would have the opportunity
18 of referring to them during the questions.

19 COMMISSIONER MURRAY: That's all right with
20 me.

21 MR. HOSFORD: If that would be of
22 assistance.

23 BY COMMISSIONER MURRAY:

24 Q. I may just have one other question, then.
25 Is a dealer required to indicate when selling a

1 vehicle what year the vehicle was manufactured or what
2 model year it is?

3 A. Yes, ma'am. I believe that the law is clear
4 that they have to fill out a Title Application for a
5 mobile home when they sell it, and that's part of the
6 information you have to put on a Title Application is
7 the year, serial number, that kind of thing.

8 Q. So on a Title Application, the year that
9 shows -- if the model year is listed on the Title
10 Application, is that the same number that is
11 transferred to the Title itself to show the model
12 year, or does the model year show on the Title?

13 A. That is the year of the model year. If the
14 Title says it's a '76 National, for example, that
15 means that the building was built after June of that
16 year and prior to -- or after June 15 of that year and
17 prior to June 15 of the next year. That's the model
18 break for mobile homes.

19 So if you say you have a '77 model mobile
20 home, it could have been built in December of '76. So
21 if you have a '76 model house, it could have been
22 built late '75, it could have been built up until
23 June 15, 1976.

24 COMMISSIONER MURRAY: All right. Thank you.

25 JUDGE HENNESSEY: Then what we will do is,

1 I'm going to withhold my questions at this point.

2 Commissioner Murray, do you have further questions
3 after the redirect?

4 COMMISSIONER MURRAY: I may.

5 JUDGE HENNESSEY: All right. Do you have
6 any objection to that procedure, Mr. Miller, if we
7 cease questioning from the Bench right now, go back to
8 redirect, and then maybe we'll have more directed
9 questions?

10 MR. MILLER: That's super with me.

11 JUDGE HENNESSEY: Thank you. Mr. Hosford,
12 proceed with redirect.

13 MR. HOSFORD: I apologize for interrupting.
14 I just thought it might be of more assistance to get
15 this in.

16 REDIRECT EXAMINATION BY MR. HOSFORD:

17 Q. Mr. Phillips, you conducted, I think we've
18 referenced in Mr. Miller's examination, an inspection
19 of the home?

20 A. Yes, I have.

21 Q. During that inspection, did you have the
22 occasion to take any photographs of that home?

23 A. Yes, we took photographs.

24 Q. Okay. Can I show you, which we may want
25 to --

1 MR. HOSFORD: I don't know if you want to go
2 ahead and mark them, your Honor, at this point.

3 JUDGE HENNESSEY: Please go ahead.

4 MR. HOSFORD: I'd like to mark these three.
5 And I apologize, these are the only originals we have.

6 JUDGE HENNESSEY: If you'll please show
7 those to Mr. Miller and then we can attempt to make
8 copies of them.

9 (EXHIBIT NOS. 11 THROUGH 13 WERE MARKED FOR
10 IDENTIFICATION.)

11 BY MR. HOSFORD:

12 Q. Mr. Phillips, I'm going to show you a
13 photograph which has been marked as Exhibit 11, and I
14 believe during cross-examination Mr. Miller asked you
15 a question regarding whether or not you noticed either
16 a designation of National or 5th Avenue?

17 A. Uh-huh.

18 Q. Does that photograph of the home, which is
19 Item No. 11, clearly designate the label 5th Avenue on
20 it?

21 A. Yes. This is the corner of the front side
22 of the mobile home. If you're looking at it, it would
23 be the left corner of the mobile home, and it clearly
24 shows 5th Avenue by National Homes in this corner in
25 letters that I would estimate were probably about

1 eight to ten inches tall.

2 Q. Okay. And these are the emblems that we've
3 referred to earlier in the testimony --

4 A. Yes.

5 Q. -- that Ms. Schmitz had referred to as
6 putting back on the home?

7 A. Right. Right. I believe these are those.

8 Q. Okay. Thank you.

9 I'm going to show you Exhibit No. 12, which
10 is a photograph. If you could explain what that
11 photograph is.

12 A. This is a photograph of the back end of the
13 home, specifically if you're standing looking at the
14 home the left-hand corner of the home, which is the
15 area where the federal regulations say a HUD label
16 should be located on this home if it were on there.

17 Q. And is there any HUD label there?

18 A. No, there's not.

19 Q. Lastly I'm going to show you the photograph
20 which has been marked as Exhibit No. 14, and if you
21 could explain what that photograph represents.

22 A. This is a picture of the primary door, the
23 front door of the home in question. And as you're
24 looking at it, the doorknob is on the left-hand side
25 of the door. The door would open into the building.

1 And this is the area where the Missouri
2 label should be next to that door if there were a
3 Missouri label on the unit.

4 Q. And is there any Missouri label?

5 A. No, there's not.

6 Q. Now, Mr. Phillips, I believe both in your
7 written testimony and in response to questions from
8 both Mr. Miller and from the Commissioners there was
9 some discussion, I believe you mentioned that you had
10 conducted a title search?

11 A. Yes, sir.

12 Q. And what did you do on that?

13 A. We called the Department of Revenue and
14 talked to the folks down in titles and motor vehicle,
15 the Motor Vehicle Commission, and did a search, asked
16 for a search on the Title for this home. We gave them
17 the information we had from the Title that we'd -- a
18 copy of the Title that we'd received from Phyllis
19 Smith.

20 Q. Okay. And at this time I'd like to show you
21 a packet of titles which have been certified by the
22 Missouri Department of Revenue as being records
23 maintained by the Department.

24 Do those represent the title records that
25 you obtained from the Department?

1 A. Yes. These look like copies of the kind of
2 documents that the Department of Revenue provided for
3 us when we asked them to do a title search on this
4 unit. We even have Illinois Certificates of Title in
5 here. This one is dated 12/4/75.

6 MR. HOSFORD: Okay. Your Honor, we have
7 copies of these. We do not have extra copies at the
8 present time of the front sheet of the certification
9 from the Department of Revenue. We'd be glad to hand
10 out the packets and get the certifications later or
11 wait and distribute.

12 JUDGE HENNESSEY: Why don't you go ahead and
13 pass them now. That way the questions can be asked.
14 You can get your certifications later.

15 MR. MILLER: Before we do that, I've got a
16 little bit of an objection to this.

17 JUDGE HENNESSEY: What's your objection?

18 MR. MILLER: The objection is this, Judge.
19 If you want to look at the Interrogatories with regard
20 to asking what they did in conjunction with
21 determining what year it was, I asked. I was not
22 informed that this existed. This is a surprise to me.

23 I probably wouldn't have minded if in
24 response to these questions I had gotten this and then
25 had gotten these documents. This wasn't listed in

1 terms of the exhibits that they were going to
2 introduce today. It certainly wasn't -- the existence
3 of this document wasn't provided to me in conjunction
4 with either the Request for Production of Documents or
5 my Interrogatories.

6 Therefore, you know, I'm seeing this for the
7 very first time and being asked to then, A, figure it
8 out, and, B, ask intelligent questions about it, you
9 know, in a matter of minutes.

10 And I'm surprised. I claim surprise by
11 virtue of it, and that's the -- actually, that's the
12 only reason why that I object to it is the fact that I
13 have not seen it before, and I should have been
14 provided the information with regard to its existence.

15 JUDGE HENNESSEY: Mr. Hosford, do you have a
16 response?

17 MR. HOSFORD: Yes, I do, your Honor. On
18 page 7 of Mr. Phillips' written testimony filed some
19 time ago, I believe starting at line 12, the answer
20 was, upon learning Smith's home could not have been
21 manufactured, the Department of Revenue was contacted
22 to get a title search done on this home. The Motor
23 Vehicle Commission (MVC) at the Department of Revenue
24 provided a title history for this unit dating back to
25 its entry into the state of Missouri.

1 I believe that very plainly provided notice
2 to the Respondent that a title search had been
3 provided and that those records had, in fact, been
4 provided to the Director and it was referenced
5 specifically in the testimony that was filed. I would
6 be very surprised if they were surprised.

7 MR. MILLER: And that's actually -- the
8 thing of it is is the fact the first time it comes up
9 at all, I wasn't aware of the existence of the
10 document, and the first time that it is even
11 referenced in any vague sense is whenever the prefiled
12 testimony was filed, which obviously is slightly after
13 any discovery opportunity that I would have had.

14 MR. HOSFORD: Your Honor, I'm not aware that
15 there was any lack or failure of the discovery. There
16 was no cut off of the discovery period that I'm aware
17 of under the Commission rules.

18 There would have been more than adequate
19 time for the Respondent to have initiated discovery
20 process after reading the testimony.

21 JUDGE HENNESSEY: The testimony was filed on
22 October 27th. That was well prior to the prehearing
23 conference where we had an extensive discussion on
24 discovery and pretrial matters.

25 Mr. Miller, are you saying that you

1 specifically asked an Interrogatory regarding title
2 search records and didn't receive such?

3 MR. MILLER: Actually, I asked even a better
4 question than that. Interrogatory No. 7, which was
5 obviously the set forth all facts known to you which
6 indicated that it did not have the HUD or the Missouri
7 seal, the -- which would be a request for, you know,
8 tell me everything that you know about this.

9 It was not objected to, and the response did
10 not contain the indication that it was a -- in fact,
11 there's another one which indicates that -- that asked
12 about whether or not the fact that it was a '76
13 Skyline versus '79 National, and I didn't get any
14 of -- any indication that this document existed.

15 MR. HOSFORD: Your Honor, the question
16 merely asked -- although I don't think this is the
17 proper time to get into discovery, but the question
18 asked what facts we were aware of. We stated those
19 facts, the fact that we -- it was our opinion that it
20 was a 1976 home based on the facts.

21 It didn't ask for the underlying evidence.
22 We would have responded. And again, certainly no
23 attempt to in any way to hide this or to hold anything
24 back. I think that's the whole purpose of having
25 written testimony in a proceeding, and I think that

1 written testimony more than adequately provided that
2 information. That is a form of discovery in this
3 case.

4 JUDGE HENNESSEY: We'll take a ten-minute
5 recess while I consider the issue, and we'll be back
6 at, call it 2:35. Thank you.

7 Off the record, please.

8 (A recess was taken.)

9 JUDGE HENNESSEY: On the record, please.
10 Mr. Miller?

11 MR. MILLER: Your Honor, given the fact that
12 I had ten minutes to review them, my objection was
13 that I'd never seen them before. I saw them, and I'm
14 going to withdraw the objection. I don't have any
15 objection to them. I've now seen them, and that's --

16 JUDGE HENNESSEY: That resolves the issue.
17 If you'll give us a minute to take a look at them,
18 then.

19 MR. MILLER: Sure.

20 JUDGE HENNESSEY: Mr. Hosford, did you mark
21 all of these under Exhibit No. 14?

22 MR. HOSFORD: We have not marked exhibits
23 yet, and we may want to either mark them as separate
24 or, like, A, B, C, whatever.

25 JUDGE HENNESSEY: I think maybe -- why don't

1 we put them all under No. 14, and why don't we do A,
2 subpart A, B, C, et cetera, however many. What, are
3 there five subparts?

4 MR. HOSFORD: Yes.

5 JUDGE HENNESSEY: So be A through E.

6 MR. MILLER: I'd waive any objection that I
7 had with regard to certification. I don't care.

8 (EXHIBIT NOS. 14A THROUGH 14E WERE MARKED
9 FOR IDENTIFICATION.)

10 JUDGE HENNESSEY: Off the record, please
11 (Discussion off the record.)

12 JUDGE HENNESSEY: On the record, please.

13 Mr. Hosford, if you'll continue with your
14 redirect.

15 MR. HOSFORD: Thank you, your Honor. Just
16 as a housekeeping matter, before I get started on
17 that, I am not certain that we moved to have the
18 photographs, which I believe were 11, 12 and 13,
19 admitted into evidence, and --

20 JUDGE HENNESSEY: That's correct, you
21 didn't.

22 MR. HOSFORD: At this time -- I believe they
23 have no objection -- I would move that those
24 photographs be admitted.

25 MR. MILLER: I don't have any objection.

1 JUDGE HENNESSEY: So noted. The Exhibits
2 11, 12 and 13, photographs, will be admitted into
3 evidence.

4 (EXHIBIT NOS. 11, 12 AND 13 WERE RECEIVED
5 INTO EVIDENCE.)

6 MR. MILLER: Without trying to interrupt,
7 just so I can -- it's a housekeeping matter, and as
8 long as we're on housekeeping, let's just do it. What
9 exhibits do you show as in at this point, because I
10 have 9 and 10 which I would certainly offer and I want
11 to make sure that we've got --

12 JUDGE HENNESSEY: I thought 9 and 10 had
13 been offered into evidence. But if for some reason
14 that's due to my confusion, it is my understanding you
15 entered 9 and 10. You have no objection to the two
16 seals?

17 MR. HOSFORD: No objection, your Honor.

18 JUDGE HENNESSEY: Then we'll restate it for
19 the record that 9 and 10 are admitted into evidence.

20 (EXHIBIT NOS. 9 AND 10 WERE RECEIVED IN
21 EVIDENCE.)

22 MR. MILLER: What about 5, 6, 7 and 8?

23 JUDGE HENNESSEY: They've been offered and
24 admitted.

25 MR. MILLER: Great.

1 MR. HARRISON: Thank you, Judge.

2 MR. MILLER: Thanks. I was just trying to
3 stay on top of it.

4 JUDGE HENNESSEY: Okay. Proceed.

5 BY MR. HOSFORD:

6 Q. Mr. Phillips, you had indicated in your
7 testimony, and I believe we've had substantial
8 cross-examination on the issue of the year of the
9 home, the Title, what -- some confusion regarding
10 whether this home is a Skyline or a National.

11 When you were going through and doing your
12 research, did you -- and I believe you mentioned this
13 in your testimony. You did have some type of a title
14 search conducted?

15 A. That's correct.

16 Q. And was that with the Department of Revenue?

17 A. Yes, the Missouri Motor Vehicle Commission.

18 Q. And I've handed you a series of documents
19 which have been certified by the Missouri Department
20 of Revenue as official documents with the Department.
21 Do those represent the title documents that you
22 received from the Department in response to your title
23 request?

24 A. Yes, they are.

25 MR. HOSFORD: Okay. Your Honor, at this

1 time I would move to enter into evidence Exhibits 14A
2 through 14E, which represent the certified copies of
3 those documents from the Department of Revenue.

4 MR. MILLER: And I have no objection to
5 that.

6 JUDGE HENNESSEY: Then Exhibits 14A, 14B,
7 14C, 14D and 14E are admitted into evidence.

8 (EXHIBIT NOS. 14A THROUGH 14E WERE RECEIVED
9 INTO EVIDENCE.)

10 BY MR. HOSFORD:

11 Q. Okay. Mr. Phillips, if I could draw your
12 attention to the first title packet there, which has
13 been marked as Exhibit 14A, can you tell me -- I'm
14 looking at page 2 of that document. Does that show --
15 well, I'll ask you, what does that show? That would
16 be the item marked two of that in 14A. There's a two
17 down in the lower right-hand.

18 A. Yes. That looks like an Application for
19 Title from a home that was sold by an Allan
20 Dochterman, Allan and Rose Dochterman, by a dealer in
21 Illinois.

22 Q. Okay. And then if I could refer you back to
23 the last page of that exhibit.

24 A. Page 6?

25 Q. Yes. What does that purport to be there?

1 A. That looks like an Assignment of Title by
2 the dealer, a Shelor Mobile Home, Inc. of Colchester,
3 Illinois, to Allan Dochterman.

4 Q. Okay. And so that sale, then, was from a
5 dealer in the state of Illinois?

6 A. Yes.

7 Q. Okay. And assuming that a home was coming
8 from Illinois, would that raise a question in your
9 mind whether or not that particular home would have
10 ever had a Missouri seal on it?

11 A. Well, yes. Yes, it would.

12 Q. To the best of your knowledge, did the State
13 of Illinois have a program in 1976 similar to the
14 State of Missouri where seals would have been put on
15 homes prior to the HUD program?

16 A. I don't know.

17 Q. You don't know?

18 A. I don't know.

19 Q. Okay. If you could then bear with me.
20 Let's look at the next exhibit, which is 14B.

21 A. Uh-huh.

22 Q. Is that another Title with the Dochtermans?

23 A. Yes. Exhibit 14B-1 is a -- it looks like an
24 Application for Title showing an Allan and Rose
25 Dochterman of St. Patrick, Missouri as the owners of a

1 '76, and there it's scratched out. Something is
2 scratched out and Skyline is --

3 Q. I was going to ask you about that. You have
4 the original there. Can you make out, does that
5 appear that there was a change there on the make?

6 A. Yes, it does. On 2, on 14B-2 it's a little
7 more clear. You can see the 5th below the scratchings
8 under make.

9 Q. So it perhaps looks to you like maybe there
10 was something like 5th written in there and then that
11 was changed to Skyline?

12 A. That's what it appears.

13 Q. Or S-K-Y-L to be precise.

14 A. That's how it appears, yes.

15 Q. So it appears to you -- we've had in this
16 case a lot of discussion, a lot of testimony regarding
17 some confusion about whether this home would be a
18 Skyline home or a National home.

19 Does it appear that this may have been the
20 point of the controversy when the home was titled from
21 a National home to a Skyline home?

22 A. I believe so, because on 14A-2, on the same
23 Title Application or Title Application similar to the
24 one in 14B-2, it shows a 1976 and it says make 5th
25 Avenue, Vehicle Identification No. 3663, body style

1 mobile home.

2 And on that same line of this application
3 for Title on 14B-2 it says year 19 -- or '76, and then
4 make, and as I say, it looks like a 5th was typed in
5 there and then scratched out, and then S-K-Y-L, which
6 is generally the abbreviation for Skyline, is typed in
7 there, Vehicle Identification No. 3663, body style
8 mobile.

9 Q. Okay. So what we have here in these, and
10 you can refer to any of these if you want, did you
11 basically start out with a -- by the way, do these all
12 refer to a Vehicle Identification No. 3663?

13 A. Yes, they do.

14 Q. Okay. So in your opinion, what we have here
15 is a chain of Titles starting with the Dochtermans and
16 ending up with, taking all five of the exhibits
17 together, ending up with Mrs., at that time, Joyce
18 Briggs?

19 A. It appears we have the -- yes, the history
20 goes back to when the Title first came from Illinois
21 into Missouri, and that's where our Motor Vehicle
22 Commission picked up the record from there.

23 Q. And these all refer to Vehicle
24 Identification No. 3663?

25 A. 3663, that's correct.

1 Q. Okay. Thank you.

2 I have another question for you,
3 Mr. Phillips. While we were talking, some of the
4 discussion about years and when homes were
5 manufactured and what qualifies for a seal, and I
6 believe you mentioned -- or at least it was mentioned
7 in questions about when a home commenced construction
8 or at least the start of the process.

9 Did the Missouri law regarding seals tie the
10 date to the date it first started production?

11 A. No. Technically it does not say that.
12 700.015 says -- began if it was manufactured after
13 January 1st, 1974.

14 Q. So it wouldn't matter how long it would have
15 been in construction?

16 A. How long prior to that it started production
17 doesn't matter. And the way the practice is in the
18 industry, the date of manufacture is the date that the
19 certification label is put on it.

20 MR. MILLER: I'm going to object to that
21 because basically he's just giving some kind of
22 hearsay with regard to some, somewhere in the
23 industry, and it doesn't deal specifically with
24 National Mobile Homes, and it certainly doesn't deal
25 with the mobile home which is the subject matter of

1 this because he stated previously that he has no real
2 idea with regard to how National did it.

3 MR. HOSFORD: Your Honor, this is directly
4 in follow-up on the cross-examination question asked
5 by Mr. Miller, which spent a significant amount of
6 time discussing with Mr. Phillips exactly when a home,
7 how long it takes to build a home, when does it enter
8 production.

9 Certainly he's -- in this question all we're
10 asking him is to discuss his understanding of what the
11 law states regarding when a seal needs to be issued.

12 He is the Director. He is the individual
13 responsible for issuing those seals and certainly
14 should be entitled to give his opinion of when that
15 would be and what type of home.

16 MR. MILLER: But that has nothing to do with
17 the titling aspect. I mean, you discussed the fact
18 that it was started out with a Manufacturer's
19 Statement of Origin, and it -- he's going from that to
20 the idea of giving an opinion with regard to when this
21 home started to be manufactured.

22 MR. HOSFORD: Perhaps I could rephrase my
23 question.

24 JUDGE HENNESSEY: Well, if you would like to
25 rephrase your question --

1 MR. HOSFORD: I don't think it's going to
2 help.

3 JUDGE HENNESSEY: Well, let me go ahead and
4 rule on the objection. The objection is overruled.
5 The witness has been qualified as an expert. Insofar
6 as what the standard of -- standard practice of
7 business within the manufactured housing industry is,
8 I believe that Mr. Phillips is well qualified to
9 answer that question.

10 In regards to any interpretation of the
11 legal term of art, I think that that would be going
12 well outside of Mr. Phillips' realm of expertise and
13 that the attorneys can more appropriately brief what
14 the term of art manufactured in the statute might mean
15 through the appropriate examination of case law under
16 the circumstances.

17 But certainly, if I understood your
18 question, we can certainly have the court reporter
19 read it back, but your question dealt with what does
20 the manufactured housing industry, what date do they
21 use as the manufactured date. Was that a fair
22 assessment of your question?

23 MR. HOSFORD: Not quite. My real question
24 is under -- when we -- when the State of Missouri
25 issues seals, what is the beginning date of when that

1 takes effect. And I believe there was some discussion
2 earlier on regarding when it first enters the first
3 stage of production, and I'd asked Mr. Phillips to
4 clarify that statement.

5 It has nothing to do with Titles. I'm
6 following up on a series of questions that Mr. Miller
7 asked regarding the construction and the -- when it
8 enters the first stage of construction. I believe
9 there was a series of questions of how long it took
10 and those type of things.

11 BY MR. HOSFORD:

12 Q. So my question, Mr. Phillips, is, does it
13 matter for Missouri purposes of seal regarding when it
14 entered the first stage of production?

15 A. No.

16 JUDGE HENNESSEY: Fair enough. Any further
17 questions?

18 MR. HOSFORD: I have no further questions,
19 your Honor.

20 JUDGE HENNESSEY: Chair Lumpe, do you have
21 any questions?

22 CHAIR LUMPE: No.

23 JUDGE HENNESSEY: I have several.

24 QUESTIONS BY JUDGE HENNESSEY:

25 Q. Mr. Phillips, how are records kept regarding

1 the issuance of Missouri state seals?

2 A. How are our records kept?

3 Q. Yes.

4 A. Well, the seals we issue today, the practice
5 we have is we have an application. The manufacturer
6 tells us how many seals they want. We have the seals
7 on hand. We issue those seals to the manufacturer
8 upon payment of a check. They have to have a
9 manufacturing program approved by us already in
10 existence.

11 And then we issue those seals, and we keep a
12 record of the seals that were issued to that
13 manufacturer. And then once a month the manufacturer
14 must tell us what they did with those seals, they put
15 them on whatever unit serial number.

16 Q. And do you periodically inspect to make sure
17 that they are, in fact, complying with the plan, the
18 approved plan?

19 A. Yes, we do.

20 Q. So that the seal would in effect represent
21 compliance with the code?

22 A. Yes. That's what it represents.

23 Q. You said that when you issue the seals you
24 issue them in blocks and then there are follow-up
25 records that are resubmitted by the manufacturer to

1 you every month?

2 A. Yes, your Honor.

3 Q. Okay. So then if a seal had been issued,
4 you would have a record of it?

5 A. Yes.

6 Q. Or is that -- I did notice you said the
7 current process. Was there some other process in
8 place?

9 A. I don't know what the Department did in
10 1974, you know, '76 and those years. We don't have
11 any records available for those years.

12 Q. Okay. How about when this particular
13 trailer in question or manufactured home was sold off
14 the Amega or Quality Preowned Homes lot in Columbia,
15 would you have had a seal -- I believe that was in
16 1996. Would you have a record of that if it was done
17 in the year 1996?

18 A. If we had issued a seal for it in '96, yes,
19 we would have a record of that.

20 Q. And how far back could you say that we would
21 have a record of a seal that had been issued?

22 A. Well, I know we'll have them back to 1989.

23 Q. Okay. To your knowledge, was any seal
24 issued for the National trailer, VIN No. 3663?

25 A. No, your Honor, it was not.

1 Q. Not a Missouri seal. Okay. And I believe
2 your direct testimony indicated that no HUD seal had
3 been issued?

4 A. That's correct.

5 Q. And if that vehicle was, in fact,
6 manufactured prior to June 15th, 1976, it would not
7 have a HUD seal?

8 A. That's correct.

9 Q. Earlier in your testimony, I believe it was
10 on the -- early in your cross-examination, in the
11 first cross-examination, you made reference to, I
12 believe, a manufacturer's statement that would
13 accompany a request for title?

14 A. Yes, your Honor, a Manufacturer's Statement
15 of Origin.

16 Q. Statement of Origin?

17 A. Yes, sir.

18 Q. I notice that in the exhibits that were
19 filed, 14A through E, there is no such document as a
20 Manufacturer's Statement of Origin. In fact, the
21 furthest this goes back in time is apparently back to,
22 looks like a purchase date and a -- well, a lien date
23 that might be December 4th, 1975. It's a little
24 difficult to read the copy. But there is no
25 Manufacturer's Statement of Origin attached to that.

1 Do you know if this was, if fact, the first
2 Title that was issued on this vehicle?

3 A. I don't know if this is the first Title that
4 was issued. This is the first one that came into
5 Missouri. That's where our records start.

6 Q. And did you do or cause to be done any sort
7 of title search in the state of Illinois?

8 A. No, sir.

9 Q. So if the Manufacturer's Statement of Origin
10 exists at all, it would exist in the state of Illinois
11 or somewhere else?

12 A. That's -- I believe it would be, yes.

13 Q. Do you believe it would be possible for you
14 to lay your hands on that document and perhaps file it
15 as a late-filed exhibit?

16 A. I'll certainly try.

17 JUDGE HENNESSEY: Okay. I will reserve
18 Exhibit No. 15 if such document can be found. Would
19 you please look for it and see if it can be found
20 within ten days? If it can, it will be accepted as
21 late-filed Exhibit No. 15.

22 Mr. Miller, if such document is filed,
23 you'll have an additional ten days with which to
24 review that and respond with any appropriate
25 objections.

1 MR. MILLER: That would be great. And if it
2 raises another question during that time period, I
3 mean, if I were to ask -- if it contains some
4 incomplete information, would I be given the same
5 additional ten days to be able to come up with that,
6 to submit it as well?

7 JUDGE HENNESSEY: I'm not sure I understand.

8 MR. MILLER: For instance, if I get this and
9 it says something that leads us to the key to where,
10 you know, other documents exist, you know, with regard
11 to, for instance, when it would have started the
12 manufacturing process, would I be able to submit the
13 same -- or documents that would complement and
14 supplement that document?

15 JUDGE HENNESSEY: In other words, if it took
16 you more than ten days, than the allotted ten days to
17 try to go after and supplement whatever -- well, let
18 me rephrase it.

19 In other words, if this document kicks off a
20 chain of events that requires you more than ten days
21 to solve, would you be allotted that time?

22 MR. MILLER: Right.

23 JUDGE HENNESSEY: Yeah, I believe you could.

24 MR. MILLER: Okay. I mean, obviously, just
25 like these exhibits, you know, once I looked at them I

1 didn't have a problem, and it may create a problem. I
2 just wanted to clarify that up front.

3 JUDGE HENNESSEY: Right. And yes, we can
4 certainly take that up. At this point in time we'll
5 stick with ten days, and if you need to exceed that,
6 ask for a continuance.

7 MR. MILLER: I appreciate that.

8 BY JUDGE HENNESSEY:

9 Q. I have one other question for you,
10 Mr. Phillips. Earlier in your testimony you
11 referenced that you had taken a look at a data plate
12 inside of the home which indicated that the home
13 was -- home's VIN number was 3663. Where is that data
14 plate located?

15 A. It's in the house near the electrical
16 breaker panel.

17 Q. Would that be the same one that Mr. Haden
18 referred to earlier as being inside the electrical
19 panel?

20 A. Yes.

21 Q. Okay. And is that a sticker or is it a
22 plate that's bolted or what exactly is it?

23 A. It's pasted on. I mean, it's a -- it's not
24 just paper. It's a little heavier grade of material
25 than paper. It's got information typed on it, and

1 then it's glued on to the breaker panel door.

2 JUDGE HENNESSEY: I don't believe I have any
3 further questions. Chair Lumpe?

4 CHAIR LUMPE: Just maybe one clarifying.

5 QUESTIONS BY CHAIR LUMPE:

6 Q. On the Title and Application, when it says
7 year 1976, when you title a car you put the year that
8 the car was manufactured. Is that the same assumption
9 one could make, then, that if the year on here is '76,
10 that is the year it's manufactured?

11 A. Fairly close, Commissioner. It's the model
12 year.

13 Q. Model year?

14 A. Right.

15 Q. Which as you said is --

16 A. From June 15 of one year until June 14 of
17 the next.

18 Q. So it is similar to if I buy a car and I see
19 the year on it and I say I have a '91 vehicle, it
20 means it was manufactured in that model year?

21 A. Model year, yes, ma'am.

22 Q. And so that is the understanding in the
23 manufactured housing industry when they put a model
24 year on it, that was the year it was manufactured?

25 A. That's correct, Commissioner.

1 JUDGE HENNESSEY: Mr. Miller, recross?

2 MR. MILLER: Thank you.

3 RE-CROSS-EXAMINATION BY MR. MILLER:

4 Q. Sir, what were you doing for a living back
5 in 1974 through '76?

6 A. 1974, I believe I was --

7 MR. HOSFORD: Your Honor, I'm going to
8 object to this. I believe we had a discussion earlier
9 about the scope of cross-examination and recross.
10 It's my understanding that we're limited to recross of
11 questions from the Bench, and I didn't catch the
12 question from the Bench that this question is
13 referring to.

14 MR. MILLER: It's a preparatory question,
15 and I'll give you exactly why that I'm asking it is
16 this, is that he testified in conjunction with
17 questions from the Bench with regard to what standards
18 were.

19 The standard of what you do today is all
20 well and good if we're talking about a home that was
21 manufactured in 1970 -- excuse me -- '94 or '96.
22 We're talking about '74 or '76, and I don't want the
23 impression to go out of here that -- unless he does
24 have that knowledge, that he's talking about what the
25 industry standard was back then unless he knows

1 something about what it was back then.

2 Because what it is today means nothing with
3 regard to whenever something goes off of an MSO and
4 how it's titled. It has nothing to do with it.

5 JUDGE HENNESSEY: I see what you're getting
6 at. I'll allow the question insofar as it relates to
7 Mr. Phillips' expert qualifications, but please make
8 your preface brief.

9 MR. MILLER: I will. I think I've been real
10 brief today.

11 BY MR. MILLER:

12 Q. Mr. Phillips, if you would, what were you
13 doing back in '74 through '76?

14 A. I was working as a plumber in '74, and in
15 '75 and '76 I was in the University.

16 Q. So, sir, would it be a fair statement that
17 you really don't know what the industry standards were
18 in terms of how you put a year model on a trailer back
19 in 1974, '75, '76 because you weren't in the business
20 then, fair?

21 A. No, that's not fair.

22 Q. Okay. You think -- from where did you gain
23 the knowledge that would have allowed you to know what
24 the industry standard was back in '74 through '76?

25 A. From about 15 years in the industry, both in

1 the retail sale of manufactured homes and working with
2 getting homes titled and selling used homes, having to
3 understand what exactly year home I have here that I'm
4 selling, understanding where the model breaks are,
5 trying to explain to customers when you're in November
6 of a year that we're still talking about a 1977 model
7 year home even though I'm in '76 because it was built
8 after a certain date.

9 Having to explain all that made me familiar
10 with the practices of an industry, of the industry.

11 Q. But at the bare minimum, if we go 15 years
12 back from today, that's 1982, correct, sir?

13 A. '82-'83.

14 Q. So you're familiar with what they were in
15 '82-'83, correct, sir?

16 A. Yes.

17 Q. And so what you're doing is extrapolating
18 another ten years back based upon your knowledge in
19 '82-'83, correct, sir?

20 A. It hasn't changed since then.

21 Q. Okay. Sir, in terms of the Title, I'm going
22 to direct your attention to a document that the
23 Hearing Officer described with you. If you would,
24 turn to the second to the last page of A. Have you
25 got that?

1 A. 85?

2 Q. That's correct. Super. And sir, it
3 indicates a lien date of December 4th, 1975, correct,
4 sir?

5 A. That's correct.

6 Q. Sir, it indicates that, at that time, on
7 that particular Title, as in December 4th, 1975 that
8 was a used home, correct, sir?

9 A. No, that's not correct. On 5/24/76 that was
10 a used home.

11 Q. Okay. It's got a lien date of December of
12 '75, correct, sir?

13 A. December of '75, that's correct.

14 Q. And sir, the -- also, I notice something on
15 the back here that it was sold by Shelor Homes to the
16 Dochterman people that show up in B, right, sir?
17 That's on the very last page.

18 A. Yes. It appears that the -- it says the
19 undersigned hereby certifies that the motor vehicle
20 described in this Title has been transferred to Shelor
21 from Beverly Johnson and then reassigned from Shelor
22 to Allan Dochterman.

23 Q. Sir, it looks like, from what I see, that it
24 was on the lot there for in excess of a year, from
25 March 31st of '80 'til the 15th of April of '81?

1 A. It might have been.

2 Q. Well, that's not uncommon, is it, for people
3 to have stuff in inventory for a year or more?

4 A. No, that's not uncommon.

5 Q. And sir, you've -- in fact, two years on a
6 new home, that can happen, correct?

7 A. Yes, that could happen.

8 Q. And sir, you have no knowledge from any
9 source with regard to how long that the mobile home
10 which is the subject of this case sat on the dealer's
11 lot before December 4th of '75 whenever it first got a
12 lien on it, correct, sir?

13 A. No, I don't.

14 Q. And, sir, you've given us the idea of how
15 long it took to manufacture the home. You said you
16 thought it might be days, weeks, maybe months,
17 depending on the manufacturer?

18 MR. HOSFORD: Your Honor, I apologize again.
19 I'm going to have to object, my previous objection,
20 which is that this is going beyond the scope of the
21 questions from the Bench.

22 MR. MILLER: And I disagree with that
23 statement.

24 JUDGE HENNESSEY: Read the question back,
25 please.

1 THE REPORTER: "Question: And, sir, you've
2 given us the idea of how long it took to manufacture
3 the home. You said you thought it might be days,
4 weeks, maybe months, depending on the manufacturer?"

5 JUDGE HENNESSEY: I'll sustain the
6 objection. That was discussed on your original cross,
7 not during the questions from the Bench.

8 BY MR. MILLER:

9 Q. Sir, isn't it a fair statement that you --
10 that any idea of how much time that it took to
11 manufacture this is just sheer speculation on your
12 part?

13 MR. HOSFORD: Same objection, your Honor.

14 JUDGE HENNESSEY: Sustained.

15 MR. MILLER: Well, that was going to be my
16 last question as it was. So I guess given the fact
17 that it got sustained, it's my last question anyway.

18 By the way, do we have offers of proof under
19 this format?

20 JUDGE HENNESSEY: Yes, you may, under 536.

21 MR. MILLER: I'd like to make an offer of
22 proof, then, by way of questioning to this witness.

23 JUDGE HENNESSEY: All right. Off the
24 record.

25 (Discussion off the record.)

1 JUDGE HENNESSEY: Back on the record.
2 Mr. Hosford, do you have any objection to Mr. Miller's
3 offer of proof?

4 MR. HOSFORD: I'm not sure what Mr. Miller's
5 going to offer for proof. I mean, Mr. Miller,
6 frankly, the time for filing testimony in this case
7 and offering exhibits as the direct case has long
8 since passed. Any other exhibits should have been
9 done during the scope of cross-examination and used.

10 So yes, I do have an objection because it
11 seems to me we had a procedure which clearly defined
12 when the Respondent had more than adequate time to
13 prepare a defense and submit direct testimony in this
14 case, and so that time has lapsed.

15 Had they wished to offer something for
16 proof, they certainly had more than adequate
17 opportunity to do it at that time.

18 JUDGE HENNESSEY: And your questions are the
19 same two that I just sustained the objection?

20 MR. MILLER: Absolutely. Absolutely. I
21 mean, all I want to do is make a record.

22 JUDGE HENNESSEY: The objection will be
23 overruled. Go ahead and make your offer of proof.

24 MR. MILLER: Thank you.

25 BY MR. MILLER:

1 Q. Mr. Phillips, the idea of how long that it
2 took to -- well, let me back up. Sir, you don't have
3 any real idea how long it took to manufacture National
4 Home No. 3663, do you?

5 A. No, I don't.

6 Q. And, sir, you don't have any idea whether or
7 not that this home was manufactured -- or whether or
8 not the process of manufacturing of this home started
9 before January 1 of 1994, do you?

10 A. No, I don't.

11 Q. Wouldn't it be fair, sir, that any idea of
12 how long that it took to manufacture this home or when
13 this home started the manufacturing process would
14 simply be speculation on your part?

15 A. I think it's fair to say that I don't know
16 when this home was built.

17 Q. Okay. No idea, correct, sir?

18 A. I don't know.

19 MR. MILLER: That's all the questions I
20 have. That ends my offer of proof, and that ends my
21 cross-examination.

22 JUDGE HENNESSEY: Thank you, Mr. Miller. Is
23 there anything further from Complainant's counsel?

24 MR. HOSFORD: No, your Honor.

25 JUDGE HENNESSEY: And Respondent's counsel?

1 MR. MILLER: I have nothing further.

2 JUDGE HENNESSEY: Then at this time I'd like
3 to go off the record for a few minutes and have a
4 discussion about the filing of briefs in the case.

5 (Discussion off the record.)

6 JUDGE HENNESSEY: Back on the record.

7 All right. At this time there are currently
8 14 exhibits, numbered exhibits, and with the one
9 addition that 14 has five subparts, A through E.

10 There's currently one reserved exhibit
11 number. That will be No. 15. That's for the
12 Manufacturer's Origination Statement, if Staff can
13 come up with that.

14 The current schedule as agreed to during the
15 off-the-record discussion with the parties will be
16 that the Staff will late file its Exhibit No. 15 no
17 later than the 6th of February, 1998. Mr. Miller,
18 you'll file any objections no later than the 24th of
19 February. Staff will have an opportunity to respond
20 to any objections no later than 3 March 1998. And
21 we will make briefs in this case due as of the 17th of
22 March, 1998.

23 As I indicated off the record, I will put
24 all that into writing and send that out to you so that
25 you'll have it to work from.

1 Are there any further matters that we should
2 take up before we go off the record?

3 MR. MILLER: None that I can think of.

4 JUDGE HENNESSEY: In that case, then this
5 hearing is adjourned.

6 WHEREUPON, the hearing of this case was
7 concluded.

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