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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

Phillip Morris, Inc.,	*Plaintiff in error,*
against Record No. 730692	
Old Dominion Freight Line, and Norfolk Terminal Corporation,	*Defendants in error.*
Norfolk Terminal Corporation,	*Plaintiff in error,*
against Record No. 730698	
Phillip Morris, Inc., and Old Dominion Freight Line,	*Defendants in error.*
Old Dominion Freight Line,	*Plaintiff in error,*
against Record No. 730723	
Phillip Morris, Inc., and Norfolk Terminal Corporation,	*Defendants in error.*

JOINT APPENDIX

APPEARANCES: Messrs. Vandeventer, Black, Meredith, and Martin (Mr. Joseph A. Gawrys) for the plaintiff.

Messrs. Rixey and Rixey (Mr. Joseph A. Leafe) for Old Dominion Freight Line.

Messrs. Jett, Berkley, Furr, and Heilig (Messrs. R. Arthur Jett, Jr., and Carter B. S. Furr) for Norfolk Terminal Corporation.

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VIRGINIA: IN THE CIRCUIT COURT
OF THE CITY OF NORFOLK

Phillip Morris, Inc.,
a corporation,

Plaintiff,

v.

OLD DOMINION FREIGHT LINE,
a corporation, and
NORFOLK TERMINAL CORPORATION,
a corporation,

Defendants.

MOTION FOR JUDGMENT

1. The plaintiff is a corporation incorporated under the laws of the State of Virginia. The defendant, Old Dominion Freight Line is a corporation incorporated under the laws of the State of North Carolina. The defendant, Norfolk Terminal Corporation is a corporation incorporated under the laws of the State of Virginia.

2. On or about October 9, 1969, the plaintiff delivered 5,000 cases of cigarettes to the defendant, Old Dominion Freight Line, at Richmond, Virginia for transportation to Norfolk, Virginia.

3. The defendant, Old Dominion Freight Line, accepted the 5,000 cases of cigarettes for shipment and executed and delivered to the plaintiff bills of lading for the shipment described, copies of which are attached to this motion for judgment and labeled Exhibit "A" and Exhibit "B".

4. The 5,000 cases of cigarettes were in good condition when delivered to and accepted by the defendant, Old Dominion Freight Line.

5. On or about October 10, 1969, the defendant, Old Dominion Freight Line, delivered the 5,000 cases of cigarettes to the defendant, Norfolk Terminal Corporation, for storage and delivery to the consignee named in the bills of lading.

6. The defendants failed and neglected to deliver 1,000 cases

of the cigarettes to the consignee, "SS RUBENS, N.I.T. Terminal", and failed to notify General Foreign Freight Forwarders, Post Office Box 564, Norfolk, Virginia, in accordance with the terms of the bills of lading.

7. The plaintiff has suffered a loss in the amount of $96,000.00 as a result of the defendant's failure and neglect to deliver the 1,000 cases of cigarettes in accordance with the bills of lading.

8. The plaintiff has performed all of the conditions of the bills of lading to be performed by it.

WHEREFORE, the plaintiff demands judgment against the defendants in the sum of $96,000.00, interest and all costs.

PHILLIP MORRIS, INC.

By /s/ Bernard G. Barrow

Of Counsel

VANDEVENTER, BLACK, MEREDITH & MARTIN
One Commercial Place
Norfolk, Virginia 23510

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INC., a Corporation, *Plaintiff,*	
v.	At Law No. L-70-1058
OLD DOMINION FREIGHT LINE, a Corporation,	
and	
NORFOLK TERMINAL CORPORATION,	
a Corporation, *Defendants.*	

CROSS-CLAIM

Now comes the defendant, Old Dominion Freight Line, and for its Cross-Claim against the defendant, Norfolk Terminal Corporation, states as follows:

1. The Motion for Judgment filed by the plaintiff against the defendants, Norfolk Terminal Corporation and Old Dominion Freight Line alleges that each of the defendants failed and neglected to deliver one thousand (1,000) cases of cigarettes to the consignee, "SS RUBENS, NIT Terminal", and failed to notify General Foreign Freight Forwarders, Post Office Box 564, Norfolk, Virginia, in accordance with the terms of the applicable bills of lading.

2. While denying that it failed and neglected to deliver the said cigarettes in accordance with the terms of the bills of lading, if there was such a failure, it was occasioned solely by the

negligence and/or breach of contract by the defendant, Norfolk Terminal Corporation in its care, custody and control of the cargo.

3. In the event there is any liability imposed upon this defendant it is entitled to full indemnity from the defendant, Norfolk Terminal Corporation, including costs and attorneys fees.

OLD DOMINION FREIGHT LINE

By /s/ Joseph A. Leafe
of Counsel

Joseph A. Leafe
RIXEY AND RIXEY
1000 Maritime Tower
Norfolk, Virginia 23510

CERTIFICATE

I hereby certify that true copies of the foregoing pleading were this 12th day of July, 1972, mailed to R. Arthur Jett, Jr., Esquire, Jett, Berkley, Furr & Heilig, 801 The Bank of Virginia Building, Norfolk, Virginia, and to Joseph A. Gawrys, Esquire, Vandeventer, Black, Meredith & Martin, 2050 Virginia National Bank Building, Norfolk, Virginia.

/s/ Joseph A. Leafe

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INC.,	:	
Plaintiff,	:	
v.	:	At Law No.
OLD DOMINION FREIGHT LINE	:	L-70-1058
and	:	
NORFOLK TERMINAL CORPORATION,	:	
Defendants.	:	

CROSS-CLAIM

Now comes the defendant, Norfolk Terminal Corporation, and for its cross-claim against the defendant, Old Dominion Freight Line, states as follows:

1. The motion for judgment filed by the plaintiff against the defendants Old Dominion Freight Line and Norfolk Terminal Corporation alleges that each of the defendants failed and neglected to deliver 1,000 cases of cigarettes to the consignee, SS RUBENS, Norfolk International Terminal, and failed to notify General Foreign Freight Forwarders, Post Office Box 564, Norfolk, Virginia, in accordance with the terms of the applicable bills of lading.

2. Norfolk Terminal Corporation alleges that the cigarettes in question were never delivered to it nor were same ever accepted by Norfolk Terminal Corporation, and that the loss of the cigarettes in question was occasioned solely by the negligence and/or breach of contract by the defendant, Old Dominion Freight Line, in its care, custody and control of the cargo of cigarettes.

3. In the event there is any liability imposed upon Norfolk Terminal Corporation, it is entitled to full indemnity from the defendant, Old Dominion Freight Line, including costs and at-

torneys' fees resulting from the negligence of Old Dominion Freight Line.

NORFOLK TERMINAL CORPORATION

By /s/ R. Arthur Jett, Jr.
Of Counsel

Jett, Berkley, Furr & Heilig
801 The Bank of Virginia Building
Norfolk, Virginia 23510

Counsel for Defendant, Norfolk
Terminal Corporation

Virginia:

IN THE

Circuit Court of the City of Norfolk

This 24th day of April 1973

PHILLIP MORRIS, INC., etc., *Plaintiff,*	:
v.	: At Law No.
OLD DOMINION FREIGHT LINE, etc.	: L-70-1058
and	:
NORFOLK TERMINAL CORPORATION, etc., *Defendants.*	:

ORDER AND FINAL JUDGMENT

This cause came on to be heard on the merits on October 11 and 12, 1972, upon the plaintiff's Motion for Judgment; the cross claim of defendant, Old Dominion Freight Line against defendant, Norfolk Terminal Corporation; and the cross claim of defendant, Norfolk Terminal Corporation against defendant, Old Dominion Freight Line, and was argued by counsel on December 27, 1972. After maturely considering evidence, including testimony of witnesses who testified orally and by deposition, the exhibits, admissions of the parties, answers to interrogatories properly introduced, the memoranda of law submitted to the Court by the parties and argument of counsel, it is,

ADJUDGED, ORDERED and DECREED, that the plaintiff, Phillip Morris, Inc., hereby is awarded judgment against the defendant, Old Dominion Freight Line, in the sum of One Hundred Sixteen Thousand Nine Hundred Seventy and 67/100 dollars ($116,970.67), said sum including the principal amount of $96,000.00, together with interest at 6% on $56,000.00 of said sum from October 10, 1969 and interest at 6% on $40,000.00 of said sum from October 31, 1969; to which action of the Court the

defendant, Old Dominion Freight Line objects and excepts.

And it is further,

ADJUDGED, ORDERED and DECREED that said plaintiff shall recover its taxable costs from said defendant, Old Dominion Freight Line; to which action the said defendant objects and it is further

ADJUDGED, ORDERED and DECREED that the claim of the plaintiff against the defendant, Norfolk Terminal Corporation be and the same, hereby, is dismissed with prejudice, to which action plaintiff, by counsel, objects and excepts; and, it is further

ADJUDGED, ORDERED and DECREED, that the cross claim of defendant, Old Dominion Freight Line against defendant, Norfolk Terminal Corporation, be and the same, hereby, is dismissed with prejudice, to which action defendant, Old Dominion Freight Line objects and excepts; and, it is further

ADJUDGED, ORDERED and DECREED that the cross claim of defendant, Norfolk Terminal Corporation, against the defendant, Old Dominion Freight Line, be and the same, hereby, is dismissed with prejudice, to which action defendant, Norfolk Terminal Corporation, by counsel objects and excepts.

Judge

We ask for this:

VANDEVENTER, BLACK, MEREDITH & MARTIN, p. q.

By /s/ Joseph A. Gawrys

Seen:

RIXEY & RIXEY

By /s/ Joseph A. Leafe
Counsel for Defendant, Old Dominion Freight Line

JETT, BERKLEY, FURR & HEILIG

By /s/ George H. Heilig, Jr.
Counsel for Defendant, Norfolk Terminal Corporation

A COPY, TESTE: HUGH L. STOVAL, CLERK

By /s/ Robert M. Horpau, D.C.

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INC., etc. *Plaintiff,*	:
v.	: At Law No.
OLD DOMINION FREIGHT LINE, etc.,	: L-70-1058
and	:
NORFOLK TERMINAL CORPORATION, etc., *Defendants*	:

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The defendant, Old Dominion Freight Line, hereby files with the Clerk, pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia, notice of appeal from the final Judgment Order entered herein on April 24, 1973, against the said defendant, and assigns the following errors:

1. The Court erred in entering judgment for the plaintiff against the defendant, Old Dominion Freight Line.

2. The Court erred in its failure to hold that the defendant, Old Dominion Freight Line, had completed its delivery of the cargo of cigarettes and thus had no further responsibility to the plaintiff.

3. The Court erred in its failure to hold that the loss in question was caused or contributed to by the negligence of the co-defendant, Norfolk Terminal Corporation.

4. The Court erred in failing to grant judgment to the defendant, Old Dominion Freight Line, on its Crossclaim for indemnity against the defendant, Norfolk Terminal Corporation.

5. The judgment is contrary to the law and the evidence.

A transcript of the testimony and other incidents of the case will hereafter be filed with the Clerk.

OLD DOMINION FREIGHT LINE

Of Counsel

Joseph A. Leafe
RIXEY AND RIXEY
1000 Maritime Tower
Norfolk, Virginia 23510

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was this 21st day of May, 1973, mailed to Joseph A. Gawrys, Esquire, One Commercial Place, Norfolk, Virginia, and to R. Arthur Jett, Jr., Esquire, 801 The Bank of Virginia Building, Norfolk, Virginia.

Joseph A. Leafe

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INC., etc., *Plaintiff,*	:
v.	: At Law No.
OLD DOMINION FREIGHT LINE, etc.	: L-70-1058
and	:
NORFOLK TERMINAL CORPORATION, etc., *Defendants.*	:

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Now comes the plaintiff, by counsel, and files herewith its Notice of Appeal from the Order and Final Judgment entered in this cause on April 24, 1973, and sets forth the following assignments of error:

1. The Court erred in dismissing with prejudice the claim of the plaintiff against the defendant, Norfolk Terminal Corporation.

2. The Court erred in holding that defendant, Norfolk Terminal Corporation was not liable jointly and severally, with the other defendant, to the plaintiff in the sum of $116,970.67.

PHILLIP MORRIS, INC.

By /s/ Joseph A. Gawrys
Of Counsel

Joseph A. Gawrys
Vandeventer, Black, Meredith & Martin
2050 Virginia National Bank Bldg.
Norfolk, Virginia 23510

Q I'm going to ask you if you'd just put your initials on that page, sir?

MR. LEAFE: Judge, if I might, with reference to both of these exhibits, it would seem that he would have to identify these as being in existence as of October 9, 1969.

MR. GAWRYS: He said this was 1964 and this was—

MR. LEAFE: Both of these documents were—

THE WITNESS: This brochure is a new one.

MR. GAWRYS: You mean as far as the brochure is concerned?

MR. LEAFE: I am saying as far as the brochure is concerned.

MR. GAWRYS: We are simply trying to show the lock, Your Honor.

THE COURT: Is the lock shown in the brochure one that was in existence in October of 1969?

THE WITNESS: Yes, it is.

MR. GAWRYS: All right, we offer this.

THE COURT: This would be Plaintiff's Exhibit No. 21.

(So marked by the court.)

BY MR. GAWRYS:

Q Now, sir did you have occasion to deal with the defendant Old Dominion Freight Line concerning kingpin locks?

A Yes.

Q Tell us when, sir?

A I believe the first order that we received from Old Dominion Freight Lines was in October. October 24th, I believe, of '69.

MR. GAWRYS: All right, sir. Would you answer defendant's questions?

Oh, excuse me.

BY MR. GAWRYS:

Q Did they place an order with you at that time?

A Yes, they did.

Q For what, sir?

A Twenty-six of the pinlocks just like the sample that we showed here.

MR. GAWRYS: Thank you. Answer defendant's questions, please.

CROSS-EXAMINATION

BY MR. LEAFE:

Q May I see that list that you—

A This list?

Q Yes.

Does your record reflect the dates on which you sold to these particular carriers?

A I don't have that information with me.

Q I notice on some of them that you read out, for instance, Frederickson Motor Express no pinlocks; Youngblood no pinlocks, only padlocks; R.C. Motor Lines, Inc., padlocks only—

A That's—

Q United Parcel Service only padlocks?

A That particular information applies to my territory here. I haven't sold them any pinlocks. But of course we have representatives all over the United States.

Q Well, would you know what other representatives had done?

A I know that other representatives are selling to United Parcel Service.

Q At this time?

A Yes, but now—

Q Your record with regard to these on front you got—I see date scratched out 3-3-72. You didn't make any notations on any of these as to when you made the sales or whether they were padlocks or pinlocks or what?

A My secretary made the list for me, so let's see. Those that—Frederickson, Youngblood, and R.C. Motor Lines we have sold them padlocks only, not pinlocks. All the others have been sold pinlocks. United Parcel Service has many pinlocks in use, but

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was this 22nd day of May, 1973, mailed to Joseph A. Gawrys, Esquire, One Commercial Place, Norfolk, Virginia, and to Joseph A. Leafe, Esquire, 1000 Maritime Tower, Norfolk, Virginia.

/s/ R. Arthur Jett, Jr.
R. Arthur Jett, Jr.

EXCERPTS OF TESTIMONY OF J. D. STANLEY

(Page 40, Line 21 through Page 49, Line 2)

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Stanley, for the record, sir, would you give us your name and your address?

A My name is James D. Stanley, and my home address is 4500 Visole Road, Richmond, Virginia

Q By whom are you employed, Mr. Stanley?

A Phillip Morris, USA, Richmond, Virginia.

Q And in what capacity are you employed, sir?

A I'm supervisor of claims and special services for traffic department.

Q How long have you held this position?

A Thirteen years.

Q Have you brought your claim file on this particular case?

A I have it with me, sir.

Q Yes, sir. And I believe you can feel free to refer to it if you need to refresh your recollection.

I direct your attention to October 1969, the shipment involved in this case, sir. I hand you Plaintiff's Exhibit No. 1, which is two pages of—the top of which is the loading manifest. By whom was that loading manifest prepared, sir?

A This was prepared by Phillip Morris.

Q And what did it pertain to, sir?

A It is a shipment of one thousand cases Marlboro box cigarettes via Old Dominion consigned to SS RUBENS, Norfolk International Terminals, Norfolk, Virginia.

Q All right, sir. Now, did that shipment leave the premises of Phillip Morris?

A It left the premises on trailer No. 4572 of Old Dominion Freight Line.

Q All right, sir. You recall when it left?

A Yes, sir. The signed bill of lading is dated October 8th, and that's the day it left.

A That's right.

Q I take it, then, that though you are a salesman, an area, state, or port in which a truckline had had no hijacking and no trailers being stolen and that was not considered a danger wouldn't necessarily need the services of your particular lock, would it?

MR. GAWRYS: I object to that question, Your Honor.

MR. JETT: I do, too.

THE COURT: You finished the question?

MR. LEAFE: Yes, sir.

MR. JETT: I object also, Your Honor.

THE COURT: I don't see where that would make any difference, Mr. Leafe, whether the experience is there or not. It is an ounce of prevention is what the man is testifying to. He has a product I take it he'd like to sell before it happens rather than after it happens.

MR. LEAFE: Yes, that's true.

THE COURT: The question after it happens maybe he's got a riper customer, but he would like to sell it before the fruit's picked.

MR. LEAFE: It may be a question, judge, whether the ounce of prevention is the standard.

THE COURT: I understand.

MR. LEAFE: No further questions.

THE COURT: Anything further?

MR. GAWRYS: No further questions, Your Honor.

THE COURT: All right. You through with this gentleman? May he be excused to go about his business?

MR. GAWRYS: Yes, sir.

MR. JETT: Yes, sir, I think so.

THE COURT: All right, sir, you stand excused. You may go about your business.

MR. JETT: Your Honor, no sense putting the actual

pinlock in evidence. The court's seen it. We have pictures of it.

THE COURT: That's up to you counsel.

MR. JETT: All right.

MR. GAWRYS: Let me ask him one more question before he leaves.

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q On October 9, 1969, what was the cost of this pinlock?
A $42.00.

Q $42.00?
A Yes, sir.

Q Do you know of any instances where a trailer using one of these pinlocks was hijacked?
A Not with the lock still on it. I know some cases where it's been torn off or torched off.

MR. GAWRYS: Torched off. Thank you, no further questions.

THE COURT: All right. Next witness.

MR. GAWRYS: Your Honor, just as a matter of planning, if I may I would like to introduce certain interrogatories in evidence and answers thereto of the defendant Old Dominion Freight Lines. I will put them in at this time since it is pertinent—ties in with this witness' testimony.

MR. LEAFE: I think it would seem under the statute we have procedures we could put in all the interrogatories and answers thereto.

MR. GAWRYS: I don't think we said all the interrogatories and answers.

MR. LEAFE: I mean I would think that—you are putting yours in, and just like the depositions, they are part of the record.

MR. GAWRYS: Certain interrogatories and answers could be admissible and be offered in evidence, but some an-

A Yes, sir. This is a letter to Old Dominion claim agent requesting payment of our claim in the amount of $96,000.00, which was not paid as of date of this letter, October 24, 1969.

Q So this is a follow-up to the first claim?

A Follow-up to the first claim. After a certain length of time we follow up if it is not paid.

Q The first two documents you discussed went along with the first claim letter?

A Went along with the first claim letter as supporting papers.

MR. GAWRYS: I introduce the two documents, Your Honor.

THE COURT: All right. This is a document which has a caption Phillip Morris, and indicating that there are one thousand units, contents ten thousand, total quantity ten million Marlboro flip-top box cigarettes, fifty-six hundred, price five thousand—five point sixty, apparently, per carton, I suppose, amount $56,000.00. This will be marked as Plaintiff's Exhibit No. 10.

(So marked by the court.)

THE COURT: That's a second page to this Exhibit No. 10, also with the letterhead Phillip Morris, Incorporated, to Old Dominion Freight Lines, dated October 15, 1969, which recites for value of Internal Revenue tax applicable to ten million cigarettes hijacked from our shipment of October 9, 1969, and in the money column, terms net $40,000.00. That's part and parcel of the Plaintiff's Exhibit No. 10.

MR. GAWRYS: They will both be Plaintiff's 9. Is that correct, sir?

THE COURT: No, Plaintiff's 10.

MR. GAWRYS: I would like to introduce this as Plaintiff's Exhibit 11, the letter of October 24, 1969, which the witness has already identified.

THE COURT: All right. This will be Plaintiff's Exhibit No. 11.

(So marked by the court.)

BY MR. GAWRYS:

Q I take it, sir, that Old Dominion denied the claim and blamed NIT for the loss. Is that correct?

A That's right.

Q Now, sir, can you tell us if a claim letter was submitted to Norfolk International Terminals thereafter? And I—I ask you if this is a copy of your letter—of the letter of December 11, 1969, to Norfolk Terminals?

A I did not write it. It is by export traffic manager Ike Strauhs, and it is just what you say it was. It was to Norfolk Terminal Corporation.

Q Yes, sir. And attached to that is what, sir?

A An invoice to support his claim in the amount of $96,000.00.

MR. GAWRYS: Offer this as Plaintiff's Exhibit No. 11.

THE COURT: The two sheets will be Plaintiff's No. 12.

(So marked by the court.)

THE COURT: All right, sir.

MR. GAWRYS: And the next exhibit, Your Honor, letter dated December 23, 1969, from Norfolk Terminal Corporation signed by Mr. Tom D. Anthony to Phillip Morris, denying the claim.

THE COURT: Plaintiff's Exhibit No. 13.

(So marked by the court.)

BY MR. GAWRYS:

A Mr. Stanley, can you tell us what the value of the one thousand cases of cigarettes was on October 10, 1969?

A The value was $98,000.00.

Q Was $98,000.00. And what value was that, sir? Is that the domestic value?

A That would be the domestic value at $5.80 per thousand plus $4.00 per thousand Internal Revenue tax.

* * *

Q By whom are you employed, Mr. Trombley?
A Dart Containerline.

Q How long have you been so employed?
A Approximately six years.

Q What was your former occupation?
A U.S. Navy.

Q Was Dart Containerline known by any other name, sir?
A Yes, sir, it is formerly the Belgium Line.

Q Now, the Belgium Line have any connection with the SS RUBENS back in October 1969?
A Yes, the Belgium Line is agent for Company Maritime Belgium, who owns the SS RUBENS.

Q All right, sir. And how long did you tell us that you worked for Dart Containerline or Belgium Line?
A Approximately six years.

Q And where did you work?
A At Norfolk International Terminals office at Norfolk International Terminals from May of 1967.

Q All right, sir. Now, in October of 1969 did your employer have an office at Norfolk International Terminals?
A Yes.

Q All right. Were your familiar with a shipment of cigarettes that was consigned on the SS RUBENS in October 1969?
A Yes.

Q And are you familiar with the fact that one thousand cases of these cigarettes did not go aboard the SS RUBENS?
A Yes.

Q Are you familiar with the fact that they were hijacked?
A Yes.

Q All right, sir. Now, these cigarettes at that time, sir, were consigned to, by the loading manifest, consignee SS RUBENS, NIT Terminal, Norfolk, Virginia. Now, in the custom in the trade what does that mean?
A This means the cigarettes were to be picked up in Richmond by Old Dominion Freight Lines and brought to Norfolk International Terminals to be received by Norfolk International

Terminals as our agents for loading aboard the SS RUBENS.

Q All right, sir. Now, are you familiar with the practice and procedures at Norfolk Terminals?

A Yes.

Q All right, sir. Would you explain to the court what happens when a trucker such as Old Dominion Freight Line comes in with a tractor pulling a trailer loaded with one thousand cases of cigarettes consigned to the SS RUBENS, NIT Terminal, Norfolk, Virginia?

A The driver of the tractor would check in at the export window of the Norfolk International Terminals, and they would put him in line for unloading.

Q All right, sir. Does he—what does he do with any documents he might have?

A He turns them in at the window at the time he checks in for unloading.

Q Do you know what they do with the documents? Do they stamp them in any way?

A Normally they would not stamp them.

Q Well, I hand you a—is this a waybill?

A Yes.

Q And it is stamped on this side? If you know, can you tell us what that means?

A This is a time stamp with the date on it.

Q All right, sir. Now, this is—

A To my knowledge this would mean the time that the trucker was logged in or stamped in at the window.

Q All right, sir. And now, by being logged in or stamped in at the window what does that signify according to practices at this terminal?

A This means that he has been logged in line for unloading.

Q All right, sir. Now, according to the practice at Norfolk Terminal, who has control of the cargo on his truck at this time?

MR. LEAFE: I would object. As to who has control of the cargo I think that's a legal question. Calls for a conclusion on the part of the witness.

* * *

(Page 58, Line 20 through Page 59, Line 13)

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q How are the wharfage and unloading fees paid, sir, if you know?

A These fees are billed the carrier, in this instance, Old Dominion, and Old Dominion in turn bills Phillip Morris, and Phillip Morris pays Old Dominion.

Q That is what would have happened in this case if they hadn't been stolen?

A This is what would have happened.

Q You answered about old thefts of trailer loads of cigarettes, and I ask you if you were aware of around October 5, 1969, of a tractor and trailer load of cigarettes stolen from Liggett and Myers plant in Raleigh, North Carolina? Were you aware of that, sir?

A That particular one, no.

Q You were not. But there were other thefts were happening? You heard of those?

A I have heard of a number of tobacco companies where thefts were happening prior to that day.

* * *

(Page 132, Line 1 through Page 310, Line 19)

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Henderson, for the record would you state your name and address?

A James E. Henderson, 805 Meadow Drive, Mechanicsville, Virginia.

Q What is your occupation, Mr. Henderson?

A I am factory representative for Best Lock Corporation of Indianapolis.

Q How long have you been so employed?
A Since July of 1962.

Q Where is your place of business?
A Our office is in Mechanicsville.

Q And it's been there since 1962?
A Either Mechanicsville or Richmond. We have moved three times. But Mechanicsville is only six miles from Richmond.

Q All right, sir. What do you sell?
A Well, we sell all types of key-operated locks, primarily those that are manufactured by Best. We do represent some other companies.

Q All right. With respect to the ones manufactured by Best does your company manufacture any kind of lock which would go on the kingpin of a trailer?
A Yes.

Q What is that lock called?
A It is called trailer pinlock or kingpin lock.

Q How long has your company manufactured this kingpin lock?
A This was—I think the first orders were delivered in 1964. The planning of the lock and so on started prior to that, but I believe the first orders were actually shipped in '64.

Q What does this lock do, sir?
A It is a lock that allows you to—well, it snaps onto the kingpin on the bottom of the trailer to prevent a tractor from being hooked up to it until the lock has been removed.

Q I hand you Plaintiff's Exhibit—excuse me, Defendant's Exhibit No. 2. And is a kingpin shown on that photograph?
A No, sir.

Q Kingpin is not shown on that photograph?
A No.

Q What is that pin right there?
A Oh, the kingpin, yes. The kingpin is shown, but the kingpin lock is not.

Q My question was whether the kingpin was shown.
A Yes, sir.

Q By whom are these short-shoremen and the checker employed?

A Norfolk International Terminals.

Q And what is their function?

A To unload the trailer.

Q What does the checker do?

A The checker counts piece by piece what is unloaded from the trailer.

Q All right, sir. After the unloading had been completed and he's counted it, let's assume that the count is correct according to the papers, then what happens?

A He receipts to the driver for this cargo.

Q How does he receipt?

A Normally he signs the truck pro, and I believe there is also a tally that is signed. Whether he gives this back to the driver—the tally back to the driver or not I have no knowledge.

Q All right. I'll hand you Plaintiff's Exhibit No. 5 and ask you if this is an example of the truck pro to which you have referred?

A Yes.

Q All right, sir. Where would he sign?

A He would sign right where your signature is at the present time.

Q Now, what signature do you see there?

A I see a signature that looks like Bob Lee.

Q And you see a signature on the truck pro below that one?

A Yes.

Q And what signature is that, sir?

A It looks like either C.T. or E.T. Hughes.

Q All right, sir. Now, to the right of that lower one there are some words that say date delivered and driver. What date do you see there?

A 10-10-69.

Q And what's the name of the driver?

A Talley.

Q Do you know Mr. Talley?

A Yes.

Q By whom is he employed?
A Old Dominion Freight Lines.

MR. GAWRYS: And for the record, Your Honor, we are referring to Plaintiff's Exhibit No. 5 and the lower half of it which is the pro bill in connection with trailer 25123.

THE COURT: Is that the same as has been called a waybill?

BY MR. GAWRYS:

Q Yes, sir, they are called pro or waybill. Is that correct, Mr.—
A Yes.

Q All right, sir. Now, after the cargo has been unloaded, it is on the platform and has been receipted by the checker, what happens to the—what happens to these documents?
A Norfolk International Terminals keeps the original and sends one copy to the line—the steamship line that the cargo is consigned to to let us know they have received the cargo for us.

Q I see. At that point they receive the cargo for you. Is that correct?
A Yes.

Q What does the trucker get?
A The trucker gets a signed copy of his pro or waybill.

Q You are talking about this document I have in my hand?
A Right.

Q Now, at that point can the trucker say "I have changed my mind. Put it back on the truck. I want to take it back to my terminal"?
A No.

MR. GAWRYS: Would you answer defendant's questions, please.

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Trombley, I think you mentioned that NIT is your

A (Did so)

Q I take it Defendant's Exhibit—it is Norfolk Terminal Exhibit No. 5, shows a picture of the kingpin?

A Yes, sir.

Q And No. 6 shows another photograph of the kingpin—a kingpin lock installed. Is that correct?

A Yes, sir.

Q All right, sir. Now, were you selling these locks in the Virginia area in 1964?

A Yes, that's right.

Q Can you tell us some of the companies to whom you may have sold these locks at that time, or prior to 1969? Prior to October 9, 1969?

A If I can refer to my list. We were selling them to McLean Trucking Company, Pilon Freight Carriers, Hennis Freight Lines, Smith Transfer, Overnight Transportation, Ryder Truck Lines, Thurston Motor Lines, Frederickson Motor Express, Johnson Motor Lines, United Parcel Service, Trans-American Freight Lines, R.C. Motor Lines, Youngblood. That's about all I guess.

Q All right, sir. You have testified that your company started marketing this kingpin lock in this area in 1964?

A Yes, sir.

Q Can you tell us if a kingpin lock was a new invention in 1964 or was it already on the market by some other name?

A No. There were other manufacturers of similar equipment.

Q I see.

A At that time.

Q Do you know how long they had been on the market?

A No, I don't. Actually, the reason we started manufacturing the one we were making was that we were asked to do so by McLean Trucking Company. They were using another product at that time which they had been using for quite a number of years, and they wanted to know if we could improve upon it any.

Q All right, sir. Now, do you manufacture any type of locks which would be used for trailer doors, the doors on the back of the trailer, so they couldn't be opened?

A Yes. Most of the time a padlock is used in that case.

Q What's the purpose of the padlock?

A To prevent the doors from being opened I suppose. The one that's normally used is one that can also be worked in conjunction with the car seal that's on it—that's ordinarily put on the trailer. The padlock is made with a slot through it so the car seal can be put through the slot in the lock and then through the hasp that the lock attaches to and therefore making it impossible to remove the lock from the trailer, or even put a key in it without breaking the seal.

Q I see. And how long have you been manufacturing that type of lock and selling that type of lock?

A Padlocks for, oh, fifty years, about. But that particular pinlock—or that particular padlock with the slot in it for a car seal, approximately eight or ten years, I'd say.

Q All right, sir. I hand you this document and ask you if this is one of your brochures on the pinlock?

A Yes, it is.

MR. GAWRYS: I offer this as an exhibit, Your Honor.

THE COURT: This will be Plaintiff's Exhibit No. 20.

(So marked by the court.)

BY MR. GAWRYS:

Q Now, sir, is the lock for the doors that you have just described, is that in this booklet?

MR. LEAFE: May I take a look at those?

MR. GAWRYS: Excuse me. I thought you had looked at it.

A Yes, it is in here.

BY MR. GAWRYS:

A On which page, sir?

A The page isn't numbered. It is two pages from the back. This one right here.

Q Is that the one that's called padlock, car seal?

A That's right.

Q I'm going to ask you if you'd just put your initials on that page, sir?

MR. LEAFE: Judge, if I might, with reference to both of these exhibits, it would seem that he would have to identify these as being in existence as of October 9, 1969.

MR. GAWRYS: He said this was 1964 and this was—

MR. LEAFE: Both of these documents were—

THE WITNESS: This brochure is a new one.

MR. GAWRYS: You mean as far as the brochure is concerned?

MR. LEAFE: I am saying as far as the brochure is concerned.

MR. GAWRYS: We are simply trying to show the lock, Your Honor.

THE COURT: Is the lock shown in the brochure one that was in existence in October of 1969?

THE WITNESS: Yes, it is.

MR. GAWRYS: All right, we offer this.

THE COURT: This would be Plaintiff's Exhibit No. 21.

(So marked by the court.)

BY MR. GAWRYS:

Q Now, sir did you have occasion to deal with the defendant Old Dominion Freight Line concerning kingpin locks?

A Yes.

Q Tell us when, sir?

A I believe the first order that we received from Old Dominion Freight Lines was in October. October 24th, I believe, of '69.

MR. GAWRYS: All right, sir. Would you answer defendant's questions?

Oh, excuse me.

BY MR. GAWRYS:

Q Did they place an order with you at that time?

A Yes, they did.

Q For what, sir?

A Twenty-six of the pinlocks just like the sample that we showed here.

MR. GAWRYS: Thank you. Answer defendant's questions, please.

CROSS-EXAMINATION

BY MR. LEAFE:

Q May I see that list that you—

A This list?

Q Yes.

Does your record reflect the dates on which you sold to these particular carriers?

A I don't have that information with me.

Q I notice on some of them that you read out, for instance, Frederickson Motor Express no pinlocks; Youngblood no pinlocks, only padlocks; R.C. Motor Lines, Inc., padlocks only—

A That's—

Q United Parcel Service only padlocks?

A That particular information applies to my territory here. I haven't sold them any pinlocks. But of course we have representatives all over the United States.

Q Well, would you know what other representatives had done?

A I know that other representatives are selling to United Parcel Service.

Q At this time?

A Yes, but now—

Q Your record with regard to these on front you got—I see date scratched out 3-3-72. You didn't make any notations on any of these as to when you made the sales or whether they were padlocks or pinlocks or what?

A My secretary made the list for me, so let's see. Those that—Frederickson, Youngblood, and R.C. Motor Lines we have sold them padlocks only, not pinlocks. All the others have been sold pinlocks. United Parcel Service has many pinlocks in use, but

they didn't buy them from my office.

Q As of this time?

A Up to this time, that's right.

Q Now, I say in some instances, it shows I take it, they purchased as of 11-20-1970, but on these others that you have mentioned you haven't shown dates?

A I don't know why that date is on that. I would assume that's what that means, that Ryder purchased their first order in 1970, but the others—the others we have been dealing with for a long time.

Q But you don't know when the purchases were made

A I don't have that information with me, but—

Q What information did your secretary prepare? Just what companies you had sold pinlocks to?

A Just the companies we had sold pinlocks to. That's correct.

Q And you did not ask her to provide you with the dates on which your furnished the pinlocks to?

A That's correct.

MR. LEAFE: Thank you.

BY MR. JETT:

Q Mr. Henderson, were you selling these trailer kingpin locks to companies in this general area prior to October of 1969?

A Yes, sir.

Q Now, you mentioned quite a few trucking companies that you sold these trailer kingpin locks to. Do these companies service this area? There headquarters might not necessarily be here, but do they service the Norfolk area?

A I am sure many of them do. I don't have that particular information with me. You know, some of these trucklines will go to some cities and not to others, but among these that I have listed that we are selling to I am certain that several of them would service Norfolk. I don't know which ones.

Q Now, it is safe to say then that these trailer kingpin locks were in common usage in the trucking industry in October of 1969? Is that correct, sir?

A I'd say so, yes.

Q And would you say the same as to these padlocks?
A Yes.

Q Are these trailer kingpin locks and these padlocks, are they exhibited at trucking conventions when truckers meet to discuss various security problems?

A Yes, sir. Best Lock Corporation has made it a practice for the last—well, ever since we came out with our pinlock, to exhibit at the American Truckers Association convention and so on. We have a booth there with our padlocks and our pinlocks.

Q Is there any type of newsletter or publication in the trucking industry in which these pinlocks and/or the padlocks are called to the attention of the industry? Do you know of any?

A It is my understanding that the trucking industry does have a newspaper-like affair they circulate among themselves, and their attention has been called to this particular product in the publication in the years past. I don't know it's been recently, but, oh, back in the '64, '65, '66 area, round there.

Q Can you give us—excuse me. Can you give us any rough idea approximately how many of these kingpin trailer locks you have sold in this area?

A As I said before, I have no idea when I sell them whether they are coming to this immediate area or not simply because people have terminals everywhere and lot of these places are headquartered in North Carolina and we may sell and bill or ship to North Carolina and then they put them on a truck and send them wherever they want to. So I have no way of knowing where they go after we sell them.

Q Were you selling them in October of 1969?
A Yes.

MR. JETT: I think that's all.

MR. GAWRYS: I have no further questions.

MR. LEAFE: May I ask just a couple questions?

BY MR. LEAFE:

Q Mr. Henderson, these kingpin locks are designed, I take it, basically to prevent someone from hooking up to a trailer with conventional tractor and hauling it away, stealing the whole trailer?

A That's right.

Q I take it, then, that though you are a salesman, an area, state, or port in which a truckline had had no hijacking and no trailers being stolen and that was not considered a danger wouldn't necessarily need the services of your particular lock, would it?

MR. GAWRYS: I object to that question, Your Honor.

MR. JETT: I do, too.

THE COURT: You finished the question?

MR. LEAFE: Yes, sir.

MR. JETT: I object also, Your Honor.

THE COURT: I don't see where that would make any difference, Mr. Leafe, whether the experience is there or not. It is an ounce of prevention is what the man is testifying to. He has a product I take it he'd like to sell before it happens rather than after it happens.

MR. LEAFE: Yes, that's true.

THE COURT: The question after it happens maybe he's got a riper customer, but he would like to sell it before the fruit's picked.

MR. LEAFE: It may be a question, judge, whether the ounce of prevention is the standard.

THE COURT: I understand.

MR. LEAFE: No further questions.

THE COURT: Anything further?

MR. GAWRYS: No further questions, Your Honor.

THE COURT: All right. You through with this gentleman? May he be excused to go about his business?

MR. GAWRYS: Yes, sir.

MR. JETT: Yes, sir, I think so.

THE COURT: All right, sir, you stand excused. You may go about your business.

MR. JETT: Your Honor, no sense putting the actual

pinlock in evidence. The court's seen it. We have pictures of it.

THE COURT: That's up to you counsel.

MR. JETT: All right.

MR. GAWRYS: Let me ask him one more question before he leaves.

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q On October 9, 1969, what was the cost of this pinlock?
A $42.00.

Q $42.00?
A Yes, sir.

Q Do you know of any instances where a trailer using one of these pinlocks was hijacked?
A Not with the lock still on it. I know some cases where it's been torn off or torched off.

MR. GAWRYS: Torched off. Thank you, no further questions.

THE COURT: All right. Next witness.

MR. GAWRYS: Your Honor, just as a matter of planning, if I may I would like to introduce certain interrogatories in evidence and answers thereto of the defendant Old Dominion Freight Lines. I will put them in at this time since it is pertinent—ties in with this witness' testimony.

MR. LEAFE: I think it would seem under the statute we have procedures we could put in all the interrogatories and answers thereto.

MR. GAWRYS: I don't think we said all the interrogatories and answers.

MR. LEAFE: I mean I would think that—you are putting yours in, and just like the depositions, they are part of the record.

MR. GAWRYS: Certain interrogatories and answers could be admissible and be offered in evidence, but some an-

swers could be very self-serving on the part of the defendant, but I think these particular ones are pertinent.

MR. LEAFE: I would think that all the interrogatories, judge, should probably go in. They are in the pleadings.

THE COURT: Don't interrogatories responded to, don't they become a part of the record, Mr. Gawrys, unless there be timely objection made to those interrogatories, either in question form or the response given thereto?

MR. GAWRYS: It is my understanding, Your Honor, that the purpose is discovery, but they don't become part of the evidence unless properly introduced.

MR. JETT: That was my understanding, too.

MR. GAWRYS: But this is my understanding of the rules.

THE COURT: All right. You want to introduce certain interrogatories?

MR. GAWRYS: Yes, sir, and I will refer to them by number.

Interrogatory—

MR. LEAFE: Which interrogatories are you referring to, Mr. Gawrys?

MR. GAWRYS: 13.

MR. LEAFE: Excuse me, which set?

MR. GAWRYS: The set propounded by plaintiff to Old Dominion Freight Lines.

Interrogatory 13: Please state the knowledge of the defendant prior to October 9, 1969, A, defendant's management or supervisory personnel, such as superintendents who had knowledge of devices known as fifth wheel lock or trailer kingpin locks. If so, please identify each of such persons by name, job title, and address. The defendant's answer to that, A, was no.

B, were any such trailer kingpin locks similar to Hanson guard lock—A.L. Hanson Manufacturing Company of fifth wheel locks which may have been installed in defendant trailer or available for such trailer as security devices? Answer

no.

14, if defendant did not use or have available such kingpin locks or fifth wheel locks for use as security device on trailer, please explain why defendant did not obtain these security devices. Answer: Have no knowledge that such device was available.

15, has the defendant subsequent to October 9, 1969, obtained a trailer kingpin lock or fifth wheel locks and made them available for use on his trailers as security devices? If so, state, A, please describe such trailer kingpin lock or fifth wheel lock by its trade name and address of the manufacturer. Answer: A, Best Lock Company, distributor through Richmond, Virginia.

B, please state how many of these devices defendant now has in use. Answer to B: Forty.

C, when did defendant make the decision to use such devices, and by whom was this decision made? Answer to C was: W.E. Chestnut, Sr., vice-president of operations, subsequent to October 9, 1969, but exact date unknown.

D, why was the decision made to acquire these devices? Answer to D was: As an extra security precaution.

E, has any trailer operated by the defendant been misappropriated or stolen after one of the trailer kingpin locks or fifth wheel locks were installed properly? Answer to E was: No.

My next witness would be Mr. Morland Trombley.

MORLAND L. TROMBLEY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Trombley, for the record, sir, would you state your name and address?

A Morland L. Trombley, 3808 Chatham Circle, Norfolk, Virginia.

Q By whom are you employed, Mr. Trombley?
A Dart Containerline.

Q How long have you been so employed?
A Approximately six years.

Q What was your former occupation?
A U.S. Navy.

Q Was Dart Containerline known by any other name, sir?
A Yes, sir, it is formerly the Belgium Line.

Q Now, the Belgium Line have any connection with the SS RUBENS back in October 1969?
A Yes, the Belgium Line is agent for Company Maritime Belgium, who owns the SS RUBENS.

Q All right, sir. And how long did you tell us that you worked for Dart Containerline or Belgium Line?
A Approximately six years.

Q And where did you work?
A At Norfolk International Terminals office at Norfolk International Terminals from May of 1967.

Q All right, sir. Now, in October of 1969 did your employer have an office at Norfolk International Terminals?
A Yes.

Q All right. Were your familiar with a shipment of cigarettes that was consigned on the SS RUBENS in October 1969?
A Yes.

Q And are you familiar with the fact that one thousand cases of these cigarettes did not go aboard the SS RUBENS?
A Yes.

Q Are you familiar with the fact that they were hijacked?
A Yes.

Q All right, sir. Now, these cigarettes at that time, sir, were consigned to, by the loading manifest, consignee SS RUBENS, NIT Terminal, Norfolk, Virginia. Now, in the custom in the trade what does that mean?
A This means the cigarettes were to be picked up in Richmond by Old Dominion Freight Lines and brought to Norfolk International Terminals to be received by Norfolk International

Terminals as our agents for loading aboard the SS RUBENS.

Q All right, sir. Now, are you familiar with the practice and procedures at Norfolk Terminals?

A Yes.

Q All right, sir. Would you explain to the court what happens when a trucker such as Old Dominion Freight Line comes in with a tractor pulling a trailer loaded with one thousand cases of cigarettes consigned to the SS RUBENS, NIT Terminal, Norfolk, Virginia?

A The driver of the tractor would check in at the export window of the Norfolk International Terminals, and they would put him in line for unloading.

Q All right, sir. Does he—what does he do with any documents he might have?

A He turns them in at the window at the time he checks in for unloading.

Q Do you know what they do with the documents? Do they stamp them in any way?

A Normally they would not stamp them.

Q Well, I hand you a—is this a waybill?

A Yes.

Q And it is stamped on this side? If you know, can you tell us what that means?

A This is a time stamp with the date on it.

Q All right, sir. Now, this is—

A To my knowledge this would mean the time that the trucker was logged in or stamped in at the window.

Q All right, sir. And now, by being logged in or stamped in at the window what does that signify according to practices at this terminal?

A This means that he has been logged in line for unloading.

Q All right, sir. Now, according to the practice at Norfolk Terminal, who has control of the cargo on his truck at this time?

MR. LEAFE: I would object. As to who has control of the cargo I think that's a legal question. Calls for a conclusion on the part of the witness.

THE COURT: Unless there are some specific regulations which are pertinent insofar as the trafficking of this particular item or items of this nature by which he or others may be governed and which he is familiar with, then isn't he—aren't you going into a realm now that he could not give an opinion on?

MR. GAWRYS: No, sir, I am not asking him to give an opinion. I am asking him to tell us what the custom and practice is in this area. The court will give its opinion as to what the legal implications are.

THE COURT: I understand, but the question you put to him who has control, now—

MR. GAWRYS: Well, I am not using the word of art.

THE COURT: Hum?

MR. GAWRYS: I am not using the word "control" as a word of art.

THE COURT: I understand. But you are using that nonetheless. You can ask him what happens then, after the person is stamped in in line for unloading or whatever it may be. Then you can say what is then done next and by whom, if you want to.

MR. GAWRYS: All right, sir. Try it that way.

THE COURT: Try it that way.

BY MR. GAWRYS:

Q All right, sir. The trailer is then logged in for unloading. Is that what you said?

A Yes.

Q All right, sir. What then happens?

A He is put in line for unloading, and when Norfolk International Terminals is ready to unload the trailer, he is called to place his trailer at the unloading ramp designated.

Q All right, sir. Now, before the trailer is unloaded, can the trucker leave the terminal with the cargo?

MR. LEAFE: I object, Your honor.

THE COURT: Well, if he knows the answer, Mr. Leafe,

what's the objection?

MR. LEAFE: No, sir. Whether he can leave the terminal with the cargo or not, it would depend on the particular circumstances. It is a general question, could he leave the terminal with the cargo, and I don't think—

THE COURT: Well, I think that he might be permitted to respond and to the extent of the response, if it is a very general response it may be gone into specifically. So far as he may know he may respond if he knows.

A Yes, he can.

BY MR. GAWRYS:

Q All right, sir. Now, can you tell us if you are familiar with the practices at other ports in other areas, other terminals?

A Yes, to some degree.

Q Yes, sir. Is this in connection with your work?

A Yes.

Q And how did the practice at Norfolk Terminal compare with the practices in other terminals insofar as the loading and unloading is concerned?

A Very similar.

Q All right, sir. Now, before the tractor is unloaded and if the trucker wants to leave the terminal with his tractor and the cargo what does he do, normally?

A That's all he has to do is go to the same window that he logged in at, ask for his papers back and a pass to get the same trailer out of the terminal with the same cargo on it.

Q All right, sir. Now, sir, when the—there comes a time that the trailer and the cargo is being unloaded. Is that correct? What is the practice in that regard? How is that done?

A How do you mean?

Q Well, how is the unloading operation performed? Who was there?

A The trailer is backed up to the unloading ramp and it is performed with longshoremen and a checker.

Q All right, sir. Or short-shoremen?

A Right.

Q By whom are these short-shoremen and the checker employed?

A Norfolk International Terminals.

Q And what is their function?

A To unload the trailer.

Q What does the checker do?

A The checker counts piece by piece what is unloaded from the trailer.

Q All right, sir. After the unloading had been completed and he's counted it, let's assume that the count is correct according to the papers, then what happens?

A He receipts to the driver for this cargo.

Q How does he receipt?

A Normally he signs the truck pro, and I believe there is also a tally that is signed. Whether he gives this back to the driver—the tally back to the driver or not I have no knowledge.

Q All right. I'll hand you Plaintiff's Exhibit No. 5 and ask you if this is an example of the truck pro to which you have referred?

A Yes.

Q All right, sir. Where would he sign?

A He would sign right where your signature is at the present time.

Q Now, what signature do you see there?

A I see a signature that looks like Bob Lee.

Q And you see a signature on the truck pro below that one?

A Yes.

Q And what signature is that, sir?

A It looks like either C.T. or E.T. Hughes.

Q All right, sir. Now, to the right of that lower one there are some words that say date delivered and driver. What date do you see there?

A 10-10-69.

Q And what's the name of the driver?

A Talley.

Q Do you know Mr. Talley?

A Yes.

Q By whom is he employed?
A Old Dominion Freight Lines.

MR. GAWRYS: And for the record, Your Honor, we are referring to Plaintiff's Exhibit No. 5 and the lower half of it which is the pro bill in connection with trailer 25123.

THE COURT: Is that the same as has been called a waybill?

BY MR. GAWRYS:

Q Yes, sir, they are called pro or waybill. Is that correct, Mr.—
A Yes.

Q All right, sir. Now, after the cargo has been unloaded, it is on the platform and has been receipted by the checker, what happens to the—what happens to these documents?
A Norfolk International Terminals keeps the original and sends one copy to the line—the steamship line that the cargo is consigned to to let us know they have received the cargo for us.

Q I see. At that point they receive the cargo for you. Is that correct?
A Yes.

Q What does the trucker get?
A The trucker gets a signed copy of his pro or waybill.

Q You are talking about this document I have in my hand?
A Right.

Q Now, at that point can the trucker say "I have changed my mind. Put it back on the truck. I want to take it back to my terminal"?
A No.

MR. GAWRYS: Would you answer defendant's questions, please.

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Trombley, I think you mentioned that NIT is your

agent at the terminal for receiving cargo?

A Yes.

Q Is that correct?

A Yes.

Q Then when the bill of lading is SS RUBENS, comma, NIT, that means that the consignee is destined ultimately for the SS RUBENS, but it is consigned to NIT for purposes of receiving it as your agent?

A Yes.

Q Now, I think that you mentioned also in answer to Mr. Gawrys' questions, on receipt of these documents by the office that they don't usually put a stamp on it?

A To my knowledge, no.

Q Then it might be that this stamp, if they did stamp it and keep it in addition to just logging it in, it might have some special significance?

A Possibly, yes.

MR. GAWRYS: I object to that, Your Honor. It is calling for speculation.

MR. JETT: Object. It is for the court to decide.

THE COURT: What was the question, Mrs. Browning?

(The reporter read the question.)

THE COURT: I think the question as phrased is objectionable, Mr. Leafe. You want to rephrase the question?

MR. LEAFE: If Your Honor please, he has testified that they don't usually use the stamp.

THE COURT: That is correct. He's testified to that, but the question at this point as it was put has been objected to, and therefore I think you might have to rephrase the question.

BY MR. LEAFE:

Q Do you know what the stamp, then, Mr. Trombley, might mean?

A I know what it would mean to me.

Q What would it mean to you?

A It would mean that the date and time was the time that I

received this piece of paper.

Q And this piece of paper, do you consider as being representative of the cargo that's on the truck?

A It would tend to tell me possibly this is the cargo that was on the truck.

Q It would tell you—it would be representative of what cargo is supposed to be on the truck?

A Right.

Q Now, Mr. Trombley, who gives the orders as to where the truck or trailer is supposed to be spotted?

A I can only assume in a situation like this who gives the orders. I do not know the person.

Q What entity would give the order? Would it be Norfolk International—

A It would be Norfolk International Terminals.

Q And so they then would direct where the truck was to be taken and where it was to be spotted for unloading?

A Yes.

Q Now, the truckline itself has nothing to do with the unloading, does it?

A No, except the driver should be counting on behalf of the truckline.

Q Does the driver, Mr. Talley, who is there for Old Dominion, shuffle trucks around, move trucks when they have been emptied and take trucks to where they are going to be loaded and things of this type?

A To my knowledge, yes.

Q Can the driver assist in the unloading of the cargo?

A No.

Q Then it is a requirement that NIT through its employes and the contract with the labor unions, that the unloading operation is fully the responsibility of NIT?

A The physical unloading, yes.

Q And the driver or any other representatives of the trucking company have no right to touch the cargo for unloading?

MR. GAWRYS: If Your Honor please, if we are asking

for legal conclusions as to how they pertain to this case—if he is simply going to a jurisdictional dispute with the short-shoreman demanding the job and not getting his—but this is really not what we are talking about.

THE COURT: The question he is putting to the witness is one in which he is merely inquiring as to in effect, I believe, whether or not the driver of the truck participates in the physical unloading.

MR. LEAFE: Yes, sir.

MR. GAWRYS: And if we are going to restrict it to that that's fine. But what I am concerned about is Mr. Leafe may later use this in argument to say Old Dominion was not responsible for the unloading. I mean the plaintiff. This is Phillip Morris, and as far as we are concerned, under the bill of lading Old Dominion's required to deliver that cargo to Norfolk International Terminals, and we are not worried about union disputes and things of that kind.

THE COURT: I understand, but his thrust is not necessarily alone at you. His thrust is also in terms of looking at somebody else, hopefully.

MR. GAWRYS: Yes, so long as it doesn't affect me.

THE COURT: I understand that. He is looking in all directions at this moment.

MR. GAWRYS: Thank you, Your Honor.

THE COURT: Move along, Mr. Leafe.

BY MR. LEAFE:

Q The truck driver does not assist in the unloading of the cargo?

A Physically, no.

Q Are you familiar with the procedures that have been established at Norfolk International Terminals for the removing of trailers from the premises?

A Not totally. Now, if you are defining trailers as—you are talking about truck trailers?

Q Truck trailers.

A Whether they be empty or loaded?

Q Either.

A The empties I am not certain about. The loads I am fairly certain about.

Q And what is the procedure? What do you need to have to get out the gate with a loaded or partially loaded trailer?

A Now, would you cut further into a loaded or partially loaded trailer as to whether it is import freight or export freight?

Q As far as the gate is concerned.

A You need a pass.

Q You need a pass?

A Right.

Q Anything else to get out of the gate?

A To my knowledge, no.

Q And the gate guard wouldn't know whether it was import or export as far as looking at the truck or the trailer is concerned?

A No. The only thing the gate guard would know is the fact that the trailer has a seal on it.

Q And then anybody who wanted to come out would have to have a pass?

A Yes.

Q And the guards wouldn't let anybody out without a pass?

A No.

Q Do you know at NIT who controls the issuance of passes?

A They have certain individuals that have authorized signatures.

Q Do you know Mr. Zanecchia?

A Yes.

Q Is he one of the individuals who has an authorized or a signature that's authorized to issue passes?

A To my knowledge, yes.

MR. LEAFE: That's all I have, thank you.

THE COURT: Mr. Furr? Mr. Jett?

MR. JETT: I don't think we have any questions, Your Honor.

THE COURT: Anything on redirect?

MR. GAWRYS: I want to ask one question if I may, Your Honor, if the court will permit me.

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Trombley, do you know what is meant by the term "pilferable cargo"?

A Yes.

Q What is meant by that term?

A This is a type of cargo that is highly desirable to individuals.

Q Could you give us some illustrations?

A Shoes, television sets, cigarettes, whiskey.

MR. GAWRYS: No further questions.

THE COURT: You gentlemen finished with this witness?

MR. GAWRYS: Yes, sir. I think he wants to go to Baltimore, anyway, if we could excuse him.

THE COURT: All right, sir. You may stand down. You are excused. Go about your business.

MR. GAWRYS: Call Mr. Harris, please.

* * *

WILLIAM K. HARRIS, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Harris, for the record, sir, would you state your name and your address?

A William K. Harris, 2017 Angora Drive, Chesapeake, Virginia.

Q Where are you employed, Mr. Harris?

A Hennis Freight Lines, Incorporated.

Q How long have you been employed by Hennis?
A Twelve years.

Q In what capacity are you employed, sir?
A City driver.

Q Now, do you have anything to do with Norfolk Terminals?
A Yes.

Q Tell us what you do at Norfolk Terminals?
A Most all our freight that's delivered to Norfolk Terminals for the last four years I either delivered or picked it up. I'm the city driver that services that account.

Q Has your employer stationed you at Norfolk Terminals?
A Primarily, yes.

Q All right. Directing your attention to October 1969, specifically October 10, 1969, and prior thereto, were you so stationed at Norfolk Terminals?
A Yes.

Q By your employer?
A Yes.

Q And what—
A Not all day long, but like I say, I was in there most every day.

Q I understand, yes, sir. And what sort of a job did you do there at Norfolk Terminals for your employer?
A Pick up and deliver freight.

Q And did you move tractors around the terminal?
A Trailers?

Q Yes, sir.
A Right. Yes.

Q Would your job be comparable—do you know Mr. Talley, who works for Old Dominion?
A Yes.

Q Would your job be comparable to his?
A Yes.

Q What is meant by the term "pilferable cargo" to you?

A Generally something that's of higher value: shirts, cigarettes, whiskey.

Q All right, sir. Now, can you tell us what the procedure would be at Norfolk Terminal if a tractor and a trailer arrives with a cargo, say, of cigarettes to be loaded aboard ship?

A We try and always have them there by lunch, and notify the people of course as soon as we get there that the cigarettes are available for delivery.

Q All right, sir. What do you do when you arrive there?

A I know what section they go to and I back it up to the platform, which is section 1A, and then I go to the office and go to the export window and turn my freight bill in.

Q What do they do with it?

A They have a register they log the bill in on, and then in turn she will give it to the warehouse foreman.

Q Yes, sir.

A Generally it is a girl that logs it in.

Q Does she stamp it and all?

A Yes, on the back.

Q What does she stamp it? Received?

A No, this stamp only shows the time the load arrived and the date.

Q The stamp you mentioned, sir, is that similar to the one on the reverse side of Plaintiff's Exhibit No. 7?

A Yes, it is.

Q Thank you, sir.

All right, sir, then what happens to your load or your cargo?

A All right, the warehouse foreman assigns a checker and his gang to unload the cargo.

Q All right, sir. What are you doing? What do you have to do with the operation?

A Tally is all. In other words, all I'm responsible for is to make sure that the count is correct.

Q By tally you mean count?

A Count, right.

Q There is a witness in this case named Talley. That's why I am asking you.

So you stay there and count?

A Yes.

Q All right. When it is unloaded then what happens?

A I and a checker get together and check or sign—generally sign the freight bill in my presence. I try to be there, especially at the time the load is finished, in case there is any exceptions or any discrepancy in the unloading or loading.

Q All right, sir. And after it is signed then what do you do?

A I am free to go. Of course I have to sign the bill, too, and then I am free to go on my way.

Q All right, sir. Now, if you had a trailer of cigarettes that were destined for export and you had backed your trailer up to 1A and you were told you wouldn't be unloaded until the next day, being Saturday, what would you do with respect to your cargo?

A I'd notify—of course the warehouse foreman would notify me. I in turn would notify his supervisor and ask them what they want me to do with them.

Q All right, sir. What would you do with respect to the trailer and the cargo with respect to your company?

THE COURT: Excuse me, when you are saying the warehouse foreman, who are you referring to? The warehouse foreman being an employe of who, the terminals or of the trucking company?

THE WITNESS: Of the terminal, of Norfolk Terminals.

THE COURT: All right.

BY MR. GAWRYS:

Q All right, sir. And if they told you that you couldn't be unloaded until the next day what would you then do?

A Then I would call my dispatcher for instructions whether to leave it or to return it to the terminal.

Q I see. And then you'd follow those instructions?

A That's right.

Q What have you done in the past? Have you left any trailers with cigarettes at the Norfolk terminals?

A Yes.

Q All right, sir. And when you did leave them there what did you—what action did you take?

A I have had this happen one time.

Q What did you do then?

A The procedure that I explained to you and notified security.

Q You notified security?

A Yes.

Q That the truck was there?

A Right.

Q Are you familiar with the device called the kingpin lock?

A Yes.

Q You use one?

A My corporation has two, and I do use them.

Q Now, if you were to leave a trailer at the terminal what would you do in respect to the kingpin lock?

A I use it periodically. We haul some whiskey, and when I go to lunch I put the kingpin lock on the trailer.

Q All right, sir. If you were leaving a trailer load of cigarettes at Norfolk Terminal overnight, what would you do, if anything, with respect to your kingpin lock?

A If the judgment was left up to me I would put the kingpin lock on the trailer.

Q All right, sir. Why would you do that?

A Prevent theft.

Q All right, sir. Now, is there a custom, procedure, understanding between the truckers and the terminal as to at what point of time the terminal takes over the custody of the cargo brought in by a trailer?

MR. LEAFE: Objection, Your Honor. I'm objecting—

THE COURT: I think that question is objectionable.

MR. GAWRYS: All right, sir. I withdraw the question.

Would you answer defendant's questions, please, sir?

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Harris, you are employed by Hennis Freight Lines. Is that correct?

A Correct.

Q How long has Hennis been hauling cigarettes down to Norfolk International Terminals?

A Approximately theee years.

Q Were they hauling cigarettes prior to October 10, 1969?

A No.

Q So you started hauling cigarettes after that date?

A That's correct.

Q So when you describe this incident where you have had occasion to leave a trailer load of cigarettes overnight—

A Right.

Q —and use the lock, it was in light of what had already happened to the Old Dominion trailer?

A True.

Q Prior to then had you used these kingpin locks down there?

A No.

Q And you had not used them prior to October of 1969 in that—

A My memory says that we got a kingpin lock in '68, but I am just—I don't know for sure.

Q But you didn't use it prior to '69?

A Yes, we did on whiskey.

Q At NIT?

A Yes. Anywhere. We lock them on our yard. We have lost whiskey in the system.

Q In the Hennis system?

A I am talking about the freight lines in general. I am saying we have lost whiskey in the past, and it is general procedure in the system to lock whiskey up.

Q Never at NIT, though?

A No, thank goodness.

Q Do you—when you are down there, how many Hennis trailers might have there at one time being loaded or unloaded?

A One or two.

Q You never have more trailers than that?

A Very seldom.

Q I take it, then, Hennis' operation at NIT is much smaller than Old Dominion's?

A Correct.

Q Do you ever—you don't—strike that.

You do not assist in the unloading of the trailer other than to count?

A Correct.

Q Do you in any manner direct the short-shoremen as to how they should unload the cargo?

A No.

Q Who does that?

A Generally the header in the gang.

Q And would he then be—take his instructions from the warehouse foreman in the employ of NIT?

A Right.

Q And when you check in your waybill that you take, they actually take the document, don't they?

A That's correct, yes, sir.

Q And so in addition to logging it and stamping it they keep it?

A Correct.

Q And then it is given back to you only after the cargo has been completely unloaded?

A Yes, sir.

Q And checked to see if there is any damage or shortage?

A Yes, sir.

Q Do you know of the requirement at NIT that no trailer be taken off the premises without a pass?

A Yes.

Q Do the gate guards enforce this?

A Very well.

Q And so they don't let anybody out without a pass?
A That's correct.

Q And the passes are issued by the NIT office?
A Right. There's only two places.

Q And they are the ones who determine who does not get a pass?
A That's correct.

MR. LEAFE: That's all I have, sir.

BY MR. JETT:

Q Mr. Harris, I believe you said that there have been instances in which you have taken trailers loaded with, say, alcohol or cigarettes back to your terminal if they could not be off-loaded on the particular day they arrive and they cannot be gotten to until the next day. Is that correct, sir?
A Yes. Um-hum. It is very, very seldom. Very seldom this happens.

Q But you have taken them back?
A Right.

Q Now—and even after you have turned the waybills in and before the trailer is off-loaded you could take that trailer back anytime you wanted. Isn't that correct?
A Right. I'm supposed to notify the warehouse foreman to get my freight bill back and get a pass and I am free to go.

Q So all you have to do, then, is go to the window, request your waybills, get a pass, and take the trailer back. Is that correct.
A Yes, that's correct.

Q Now, how about padlocks? Have you used padlocks on your trailers also?
A Yes.

Q Were you using these in 1969, October of 1969?
A No.

Q When did you start using them, approximately?
A '70. 1970.

THE COURT: How did you secure your trailers prior to

1970 in lieu of the use of padlocks?

THE WITNESS: With only a seal, with only a truck seal.

BY MR. JETT:

Q You were using a trailer kingpin lock at that time, were you not?

A Yes, we had one of those.

Q Had a trailer kingpin lock?

A Right.

Q But you were not using padlocks at that time?

A No.

Q Now, this—when is this receipt, this waybill, when is it signed and returned to the trucker?

A At the time of completion of unloading.

Q What is the custom—what is the custom at NIT as to what this receipt given to you at that time means?

A That you have finished unloading and the count is agreed upon with or without exceptions.

Q And does it have any significance as to who is taking care, control, and custody of the goods at that time?

MR. LEAFE: I object, Your Honor.

THE COURT: Sustained.

MR. LEAFE: Thank you, sir.

THE COURT: You through with this witness?

MR. GAWRYS: I just have one more question on redirect examination, Your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Leafe asked you a question to the effect that after your cargo is unloaded you can then get your waybill back from the export window, after it's been signed. However, if you take your—check your cargo in or check your trailer in and then if it is determined it can't be unloaded until the next day and you desire

to take your trailer back all you have to do is demand that the waybill be given back to you. Isn't that correct, sir?

A Yes.

Q And they have to give it back to you. Is that right?

A Yes.

Q And they will give it back and you can then leave with your cargo. Isn't that correct, sir?

A Right. I notify the warehouse foreman I would like to leave and they return my freight bill to me and I get a pass on the basis of the freight bill and I am free to leave the terminal.

MR. GAWRYS: No further questions. Thank you, sir.

MR. LEAFE: Just one further question.

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. LEAFE:

Q You said, Mr. Harris, that you get your pass on the basis of your waybill?

A That's correct.

Q And so that the pass is given based on your waybill as to what you have got on your trailer?

A That's correct.

MR. GAWRYS: No further questions of this witness, Your Honor.

THE COURT: You finished with him?

MR. GAWRYS: He may be excused as far as we are concerned.

THE COURT: Do you want him back for any testimony?

All right, sir, you stand excused, sir, Mr. Harris. You may go about your business.

MR. GAWRYS: Next one will be very short.

THE COURT: Hum?

MR. GAWRYS: Next one will be very short.

THE COURT: We are five minutes to five, gentlemen. We

are going to be here tomorrow anyhow. The next witness is who, nature of his testimony?

MR. GAWRYS: He is similar to this gentleman right here. Be very quick.

THE COURT: You say he is similar?

MR. GAWRYS: What I meant was his testimony would be—

THE COURT: We have been with this gentleman twenty minutes. So I don't want to overrun our time in spite of the fact we don't have a jury. You may as well face the fact we have got to come back tomorrow. Now, do you want to start earlier tomorrow or do you want to get back to your office perhaps this evening and tomorrow morning so you can get some business started, keep your stenographer busy before you come to court? Do you want it 9:30 or ten o'clock?

MR. JETT: If Your Honor please, any chance of taking—

Who is your next witness?

MR. GAWRYS: Mr. Simmons will be the next one.

MR. JETT: If there is any chance of finishing him I would like to do it if we could tonight.

MR. GAWRYS: It is up to the court.

MR. JETT: It would take fifteen minutes, Your Honor, if the court would permit that so these men can go.

THE COURT: Call Mr. Simmons, Mr. Marr.

* * *

ROBERT LEE SIMMONS, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Simmons, for the record, sir, would you state your name and address?

A My name is Robert Lee Simmons, 937 Fayette Street, Portsmouth, Virginia.

Q By whom are you employed, Mr. Simmons?
A D.D. Jones Freight Line.

Q How long you been employed by D.D. Jones Freight Line?
A Going on seven years, little over six years.

Q Where does your employer normally station you?
A What terminal?

Q Yes.
A 630 Poindexter Street, South Norfolk.

Q Do you have anything to do with the Norfolk International Terminals?
A I go in there and check in and out freight.

Q So you go there every day?
A Practically every day.

Q How long you been working Norfolk International Terminals for your employers?
A I have been going there off and on since I been there, but steady I been there a couple years.

Q Would you be in October 1969?
A I wasn't there, say, every day. Sometime I go collect freight, take a load check it in.

Q Were you familiar with the practice and procedure at that time?
A Yes, sir.

Q Are you familiar with a man named Robert Talley?
A Yes, sir.

Q You essentially perform the same work for your employer Mr. Talley does for his employer?
A Right.

Q All right, sir. In October 1969, sir, would you explain to the court what the practice and procedure was at Norfolk Terminal if you as a trucker came in—as a truck driver came in with a tractor pulling a trailer load of cigarettes destined for export?
A Well, procedure was if I go down with a load or Mr.

Jones sends a load to me, would be to take the bills to the office, turn them in, let them know I had some freight to be unloaded there.

Q And what would they do at that time with your papers?
A Well, they would take the papers and put them in a box and then you wait your turn to be unloaded.

Q I see. And what was the significance of this to you? Were you just in line for unloading at that point?
A Yes, sir.

Q All right, sir.
A They tell you, "Well, maybe I won't get to you now. It may be two or three hours," you could set there or call your dispatcher and let him know what's happening.

Q All right, sir. Now, what would happen during the unloading process? There would come a time that your cargo would be unloaded from your trailer?
A Yes, sir.

Q Let's assume you are unloading cigarettes.
A Yes, sir.

Q What would happen at that time?
A When they call you you spot the trailer whatever doorway they want it. Then they put some mens on it unloading it, and have a checker check the freight as it comes off.

Q What are you doing at that time?
A Well, I am there checking it with them. If I had something else to do, some other trailer to spot, I will call my dispatcher, he will say, "Go ahead spot that and let them go ahead check it."

Q All right, sir. When the unloading operation is complete what happens then?
A When they get it all off the checker would check the freight and if it come up short he would tell me it was short and we'd go in check it. If it come out right he'd sign the bill and give the pieces received and give me a receipt.

Q And is that your receipt for the cargo?
A Yes, sir.

Q Plaintiff's Exhibit No. 5, sir, is this similar to the receipt

which you might receive for the cargo? Made up on your own employer's form?

A We have receipts, yes, sir. We take receipts down. We have maybe two or three sheets and you have the cargo on it what you got, and when it is unloaded they would sign the receipt they received so much freight and they give you a receipt back showing they received that.

Q All right, sir. Now, sir, prior to the time that your cargo is being unloaded and if it should happen that you are told that the cargo could not be unloaded until the next day, could you take your trailer and its cargo back to your terminal?

A Yes, sir. If—well, I have had that happen, I called the dispatcher to let them know they couldn't get to it today and did he want me to bring it out or just drop the trailer and leave it.

Q You follow the instructions of your employer. Is that right?

A Right.

Q And if you were going to take it back what would you do?

A I go back and get the paper bills on it then I go to the window where you go in and ask for a pass for that trailer and take it back out.

Q All right, sir. Now, if you were going to leave it there what would you do? If you were going to leave the trailer at Norfolk Terminal.

A If I am going to leave it, he say go ahead leave it, I will put a seal on it and leave it.

Q Well, it probably already came in sealed.

A Some. It might be some he just running—pick up driver, bring it to me that way. We have a lot that do come sealed.

Q Would you ask the permission of Norfolk Terminal to leave it there?

A I have, yes, sir.

Q You have.

Would you take any precautions as far as your cargo is concerned?

A Well, I have asked about leaving it. They say they are not responsible for it. But I did have occasion some things that were very valuable that I put a seal on it and I seen the guard at the gate

and told them and gave them the seal number and they told me they would look after it.

Q All right, sir. Do you use any kind of locks?
A Down there at the terminal, no, sir, not there.

Q Are you familiar with kingpin locks?
A No, sir, we don't have any.

Q You don't have any?
A Not kingpin.

Q How about padlocks?
A We have padlocks.

Q Would you put any padlocks on the door of your trailer?
A International Terminals I never put a padlock. I have a seal. We put it at the yard terminal I do put padlocks.

Q Are you familiar with the term "pilferable cargo"?
A Yes, sir.

Q What you mean by that?
A You got cargo valuable than other.

Q What type of cargo would you say is pilferable cargo?
A Cigarettes is one. We have whiskey we haul.

Q Would you take any precautions with a trailer load of cigarettes that couldn't be unloaded?
A Yes, sir.

Q What would you do with that?
A If I had cigarettes down there I had to leave them I would call the dispatcher and he would advise me whether to bring it out or to leave it, and if I left it I would notify the guards at the gate.

MR. GAWRYS: Would you answer the defendant's questions, please?

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Simmons, does your company haul cigarettes to NIT?
A I have hauled cigarettes. Right recently we haven't. I have hauled cigarettes.

Q To NIT?

A To NIT, Portsmouth Marine Terminals. Not too steady. We have hauled cigarettes.

Q When was that?
A Well, haven't hauled any for the last year.

Q When you go in check in at NIT you give them your documents. Is that right?
A Right. You go in in the morning and, well, you go in to the window maybe it is a line, but you wait and give them the bill and they check you in.

Q And they put it in a log?
A Right.

Q And they stamp the back of your waybill?
A They stamp it, yes, sir, pieces they got. They put it in the book how many pieces your bill shows, you know.

Q And then they keep the bill in their office?
A Right.

Q And then does somebody from NIT tell you where to spot the trailer?
A Yes, sir. When your time come they—well, they have we call the Coke machine down the end, they have a room there, men's room, just set at tables. They tell you wait down there and the foreman will call you when he is ready for you.

Q Sometimes you have several trailers you move around down there?
A Yes, sir.

Q So it is not necessarily just with one trailer all the time?
A No, sir, I don't have just one trailer all the time, no, sir.

Q And the foreman for NIT tells you where to spot the trailer?
A Yes, sir.

Q And you spot it where he tells you to?
A Yes, sir.

Q And then who unloads the trailer?
A Short-shoremen. He have his men to unload the trailer. When they get ready for it to be unloaded, ready for you, you backed it up to the dock where they want it, he puts men on it to

unload, and checker.

Q The "he puts men on" you are talking about the warehouse foreman for NIT?

A Terminal, right.

Q And the terminal takes care of the unloading of the trailer?

A Yes, sir.

Q Now, you mentioned something about if you wanted to take it back—the trailer back out of the terminal. If you want to take it back out do you have to have a pass?

A Yes, sir.

Q And where are the passes issued?

A Well, you have one that is outbound and inbound. In other words, if I was, like you say, bringing in freight you have one you go through turn your bills in they check you, log you in. Then if you want a pass you go in where you check out freight, you tell tehm—you get the bills and tell them that you want to take that trailer back out.

Q Okay, you get passes, though, from NIT. Is that right?

A Right.

Q And to get the pass you need your bills?

A Yes, sir.

Q And then you are issued a pass to correspond with what's on your bill?

A That's right.

Q And so the pass says that you are leaving the terminal with certain type of cargo in a trailer?

A Right.

Q And then you have to give the pass to the guard at the gate?

A Yes, sir.

Q And he won't let you out without the pass?

A No. I ain't never been out with one without a pass.

MR. LEAFE: Thank you.

BY MR. JETT:

Q Mr. Simmons, even after a trailer is spotted and before it

is off-loaded you can request your waybills and take it off the premises, can you not?

A Yes, sir. It is my freight until they unload it.

Q Now, is there a custom at NIT as to when—

MR. LEAFE: Judge—

THE COURT: Just a minute.

MR. LEAFE: I may object to that answer. Well, I think that the answer is a legal conclusion.

THE COURT: It is an opinion on his part. You are objecting to the response?

MR. LEAFE: Yes, I am objecting to the response.

MR. JETT: If Your Honor please, I would think that on this question of custom and usage at Norfolk International Terminals the court would want the benefit of it. I think it is something the court is ultimately going to have to decide this question who has care, custody, and control. I think the court would want it. These men work down there every day of the week and there is a custom and I think the court should take it under consideration and then make an ultimate conclusion based on all the testimony in this case.

THE COURT: If you gentlemen will bring me in competent witnesses who run the terminals with rules and regulations and competent witnesses who run the freight lines, what their rules and regulations are, to testify as to whether or not there is any rules and regulations as existent between those people—

MR. JETT: I am not—excuse me.

THE COURT: —as to custom and control as such.

MR. JETT: I am not talking about rules. I am talking about custom in the trade and industry and in particular the custom in the trade at Norfolk International Terminals.

THE COURT: This is not a custom he is testifying. He is testifying as to an opinion as to what he understands to be a situation. Now, whether or not it is a fact in law or conclusion—

MR. JETT: I understand that's something else, but I

would certainly think the court would want the benefit of these witnesses.

THE COURT: No, sir, I don't want it. It is his understanding. It is his opinion as to what he understands the situation to be until such time as he delivers it. But I am not interested in what his understanding may be. As I say again, if you got anybody from NIT who can testify, has the qualifications with which to testify, as to what the situation is, fine. Bring him on. Likewise, if Mr. Leafe has anybody from Old Dominion who can testify as to what the situation is he can bring them on, that is, somebody competent. But as to what he understands the situation to be—he may have these instructions from his boss and his boss may be using extra precaution or whatever it is. But based on the actual facts as they are—he is testifying the facts, and on those facts is what the court's going to have to make a ruling.

MR. JETT: I understand that, but these men work down there every day and I just thought the court—

THE COURT: I understand that, but I think we are getting custom and usage a little bit mixed up with opinion as to what is their feeling or their understanding in the matter based upon what they do and they don't do. Now, he can testify as to what he does and what he doesn't do, but I think you are going beyond custom and usage when you are starting to get his conclusions as a result—

MR. JETT: These are truckers just the same as—

THE COURT: I understand they are truckers, and I don't question anything he can testify as to custom and usage, but the court is under the impression and feels what he has just stated, and it is being timely objected, that he is going beyond custom and usage.

MR. JETT: Well, we just feel like we have a right to put it in.

That's all I have.

THE COURT: Anything further?

MR. GAWRYS: Nothing further, Your Honor.

THE COURT: Want this witness back tomorrow?

MR. GAWRYS: Not as far as we are concerned.

THE COURT: All right, sir. You stand excused. You go about your regular business tomorrow morning. You don't have to be back.

All right, gentlemen, it is ten minutes after five. We will reconvene tomorrow morning and be ready to go at ten o'clock.

You want you witnesses recognized to be back tomorrow morning ten o'clock, or can you just advise them?

MR. LEAFE: As far as our witnesses, they are employes of Old Dominion who have been subpoenaed. They will be here, barring any catastrophe.

MR. JETT: Ours are the same thing, all terminal people.

THE COURT: Mr. Gawrys, any witnesses you want recognized?

MR. GAWRYS: There was one witness I brought down actually was employed by Old Dominion. As far as I am concerned—I have already got the evidence in. Mr. Jenkins, as far as I am concerned, he can leave if he likes.

MR. LEAFE: He is out of Richmond.

THE COURT: All right. If you have agreed on letting the witness go you can let him go. All right, gentlemen, if that is it we will recess until tomorrow morning ten o'clock.

(The court adjourned at 5:12 P.M., October 11, 1972.)

* * *

(Met, pursuant to adjournment, Circuit Court of the City of Norfolk; 10:00 A.M., October 12, 1972; Hon. Morris B. Gutterman presiding; appearances same as heretofore noted.)

* * *

THE COURT: Good morning, gentlemen. Are we all ready to continue with the matter that we recessed on yesterday?

MR. GAWRYS: Yes, sir, we are.

MR. LEAFE: Yes.

MR. JETT: Yes.

THE COURT: All right.

MR. GAWRYS: If Your Honor please, I would like to recall the witness James Black, in view of the development that occurred yesterday. Mr. Black inadvertently had taken Exhibit 14, which he gave back to me this morning.

* * *

JAMES BLACK, recalled as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Black—

A Yes, sir.

Q I would like to ask you a question. I would like you to assume that on October 9th a thousand cases of cigarettes left Phillip Morris plant at Richmond in bond on Old Dominion tractor-trailer. They were consigned to SS RUBENS, NIT Terminal. They arrived at 1:00 P.M. on October 10, 1969. That prior thereto a form 2149 had been completed by Phillip Morris and sent the usual course with one copy going to customs at Norfolk and one copy going to the assistant regional commission at Philadelphia. I would like you to assume that this form 2149 included other cigarettes, not just this particular thousand cartons—thousand cases. And for you to assume that sometime October 10, 1969, after arrival at NIT that this trailer with its cargo of cigarettes was hijacked and taken off the premises and taken to New York and then parts unknown. And assuming, sir, that Phillip Morris Company learned of the hijacking, learned the cigarettes did not in fact go aboard the SS RUBENS but had been stolen.

First of all, under the procedures of your department would any tax—excise tax be due on this thousand cartons of—thousand cases of cigarettes?

A Yes, sir. They would immediately assess them the full tax.

Q All right, sir. When would that tax be due?

A Well, the last date it could be due would be the end of the

return period in which the tax return would have been filed when they were discovered stolen. In the instance you mentioned October 31st would be the file date. Interest would start from that date.

Q I see. And is there an earlier date by which they must file? Does the date of October 15th have any significance?

A Right. It would be removal that came within the return period.

Q The return period is what?

A October 1st to 15th.

Q I see.

A And which of course is payable fifteen days later in full.

Q All right, sir. Now, if you further assume that Phillip Morris did not pay the tax and the form 2149 came back from customs, and that through error this 2149 was executed by customs indicating that the cigarettes had been exported by in fact they had not, they had been hijacked, and so Phillip Morris then simply sent tha form 2149 to the assistant regional counsel, Philadelphia, but did not pay the tax, and thereafter your bureau learned that the cigarettes had in fact been hijacked, got this information from the FBI or other sources. What procedure would your bureau take?

A Well, they would be immediately assessed the tax, because irregardless of any document that may have been executed exportation is not complete until the cigarettes leave the continental limits of the United States, and if they do not leave the continental limits of the United States they are not exported and the tax is due and payable at the time this is discovered.

Q Would your bureau assess any penalties and interests or anything of that type?

A They would be liable for the interest and possibly penalties.

MR. GAWRYS: Thank you. Would you answer the questions of defense counsel?

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Black, do you know what happened to these cigarettes?

A Sir?

Q Do you know what happened to these cigarettes?
A Do I know what happened to them?

Q Yes, sir.
A I'm not sure I understand your question.

Q Well, do you know where these particular cigarettes ended up?
A How would I have any knowledge of that?

THE COURT: You either do know or you don't know. You don't respond with an inquiry. If you do know, fine. If you don't, just say, "No, sir, I don't."
A No, sir, I don't.

BY MR. LEAFE:

Q You don't know whether they were exported or not?
A No, sir.

Q Has the Internal Revenue Service inquired of customs or received from customs any information that they, customs, made a mistake in executing this form?
A I'm not with the customs service.

Q That's not what I asked you, sir. I said has the Internal Revenue Service received any information from customs that customs made a mistake when they executed this form?
A In this particular instance?

Q Yes.
A Not to my knowledge.

Q Have you made any inquiry of customs as to whether or not they made a mistake?
A Not to my knowledge.

Q So as far as the Internal Revenue Service's records reflect from customs, customs certified that these cigarettes were exported?

MR. GAWRYS: Your Honor please, I object to that question. This gentleman could not possibly know what might be contained in Internal Revenue Service's records. He only knows what he is personally involved with.

THE COURT: Correct. I think your inquiry is too broad. You haven't laid a foundation for an inquiry of the nature of the question you put to him.

MR. LEAFE: All right, sir.
I think that's all I have.

THE COURT: All right.

MR. JETT: No questions, Your Honor.

MR. GAWRYS: No further questions, Your Honor.

THE COURT: We finished with Mr. Black?

MR. GAWRYS: I certainly have, yes.

THE COURT: May he go about his business?

MR. GAWRYS: I think he should remain—if you can. Can't tell what might come up on rebuttal.

THE COURT: All right, your next witness?

MR. GAWRYS: Mr. Robert Talley.

* * *

ROBERT C. TALLEY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GAWRYS:

Q Mr. Talley, for the record would you state your name and your address?
A Robert C. Talley, 3229 Page Avenue, Virginia Beach, Virginia.

Q By whom are you employed, sir?
A Sir?

Q By whom are you employed?
A Old Dominion Freight Line.

Q How long have you been so employed?
A Twenty years July, this July.

MR. GAWRYS: All right. If Your Honor please, I would like to call Mr. Talley as an adverse witness.

THE COURT: Mr. Talley is employed with Old Dominion?

MR. GAWRYS: Yes, sir, and he is the man on the job down NIT and he was at the time this incident occurred.

THE COURT: Mr. Leafe?

MR. LEAFE: Sir, he's not a party. I don't know that necessarily makes him an adverse witness. He is not an officer, director—

THE COURT: That's it.
He is—

MR. GAWRYS: I think I can question him.

THE COURT: —your witness.

BY MR. GAWRYS:

Q Mr. Talley, October 10, 1969, you were employed by Old Dominion and assigned to the Norfolk International Terminals, were you not, sir?
A Yes, sir.

Q Now, that was the day that a trailer of cigarettes had been hijacked from that area, is it not?
A Yes.

Q And this was trailer 4572. Is that correct?
A Right.

Q Now, did other shipments of cigarettes come in for loading on the SS RUBENS?
A Yes, sir. Some come in that morning.

Q Yes, sir. By whose freight line did they come in?
A Old Dominion Freight Line.

Q And what was done with those cigarettes? First of all, sir—let me withdraw the question.
When the tractor and trailer arrived in each instance, what was done? When it arrived at Norfolk Terminals?
A First the driver will see me and I check the billing and ask the dock foreman where they want the trailer at.

Q And was the same procedure followed with trailer 45123 and 4546 as was followed in trailer 4572?

A Right.

Q And so these were checked in at the receiving window?

A Right.

Q And then what happened?

A Well, I saw the warehouse foreman and asked him did he want to put it back—back it up on the dock at 1A.

Q Then what happened?

A He told me yeah, so I had the driver back it up to 1A.

Q All right, sir. Would you then continue and tell us what happened in respect to those particular trailers and those cargoes of cigarettes?

A Well—the first one that was unloaded?

Q Yes, sir.

A Well, they was put in the warehouse.

Q What happened at the time they were being unloaded?

A What happened during the time?

Q Yes, sir. How did the unloading take place?

A Well, the warehouse foreman generally gives it to check—a checker, and him and the men unload it.

Q All right, sir. And who was present at the time of the unloading?

A Well, most time I am present if I am not busy somewhere else. I try to be with cigarettes when they are unloaded.

Q Why are you present?

A Well, I may have something to do with 1A or—I mean pier 1, pier 2, or some other warehouse picking up or delivering over there.

Q You may have misunderstood my question, sir.

At the time cigarettes are being unloaded from an Old Dominion truck or trailer at warehouse 1A, why are you present at that time?

A Well, just happened if I am over there.

Q I see. Is there anybody else present when they are being unloaded?

A Well, I imagine lot of the drivers around and men working there.

Q By whom are the cigarettes unloaded?
A By whom? NIT.

Q By short-shoremen?
A Short-shoremen.

Q And besides the man actually unloading the cigarettes, who else is present?
A Well, lot of drivers standing around.

Q Well, is there anybody else present?
A Well, they have security guard there when it goes in the warehouse.

Q Would there be anybody counting the cigarettes that come out?
A The checker.

Q That's correct. And by whom is he employed?
A NIT.

Q All right, sir. And what is his function, now?
A Checker.

Q And what does a checker do?
A He checks the freight.

Q And after he checks the freight and it is unloaded, then what happens?
A He signs my bill.

Q He signs your bill?
A Yes, sir.

Q He receipts for it, doesn't he?
A Yes, sir.

Q Did this happen with both trailer 4546 and 45123?
A Right.

Q And do you sometimes sign that same pro waybill?
A Well, I sign the date and my name.

Q Yes, generally speaking.

Now, I hand you Plaintiff's Exhibit No. 5 and ask you if that is your copy of the pro waybill for trailer 4546 and also

45123?

A I didn't sign that one. But I signed this one here.

Q Yes, sir, but is that a true copy of your pro waybill?
A Yes.

Q And the one for number 4546 was signed by whom, sir?
A I don't know. I generally sign all of them that I receive.

Q Well, who signed as having received the goods for North International—for Norfolk Terminals?
A Bob Lee signed this and Hughes signed this one.

Q Mr. Hughes signed the one for 45123?
A 123.

Q And he signed as receiving for Norfolk Terminals on that occasion. Is that right, sir?
A Yes, sir.

Q And does your signature appear on the pro bill—pro waybill for trailer 45123?
A Yes, sir.

Q And is there a date on there?
A Yes, sir.

Q What is that date?
A 10-10-69.

Q And what does that mean, sir?
A 10th month, 10th day, 1969.

Q What does your signature mean?
A It shows that's the date it was delivered.

Q Now, sir—

MR. LEAFE: Judge, I object to what the signature means.

THE COURT: Overruled. He can explain his signature.

BY MR. GAWRYS:

Q And why do you sign it, sir?
A Well, I have to sign all deliveries after the shipment has been received.

Q And is this required by your employer Old Dominion Freight Line?

A Yes, sir.

Q Now, you didn't sign the one for trailer 4546 did you?
A No, sir.

Q But you did get a receipt from Bob Lee, though?
A Right, sir.

Q Now, can you produce a similar receipt for trailer 4572?
A No, sir.

Q Why can't you, sir?
A It wasn't unloaded.

Q And it was hijacked before you could sign any document indicating you delivered to Norfolk Terminal?
A Yes, sir.

Q Is that correct, sir?
A (No reply)

MR. GAWRYS: No further questions.

MR. JETT: Did you put that on the record? Did you get that last?

THE COURT: Mr. Leafe?

MR. LEAFE: Yes, sir. Just one second, please.

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Talley, have you had occasion working for Old Dominion to leave cigarettes at Norfolk Terminal on many occasions prior to this?
A Yes, sir.

Q Have there ever been occasions when the warehouse foreman or some representative of Norfolk Terminal has asked you to leave cigarettes overnight?
A Yes, sir.

Q Have there been occasions when they have asked you to bring cigarettes down on the day before, because they wanted to unload them the next day?
A That's right, sir.

Q And this you have done?

A Yes, sir.

MR. LEAFE: That's all I have.

MR. JETT: No questions, Your Honor.

MR. GAWRYS: I would like to cover just one or two items, sir.

REDIRECT EXAMINATION

BY MR. GAWRYS:

Q The reason the trailer of cigarettes, trailer 4572, was left at NIT or Norfolk Terminal this particular occasion is because of a policy of your employer. Is that right, sir?

A No—well, I wouldn't say exactly, because lot of times they say they want something to start on the next morning, leave the trailer there.

Q Well, your company could have taken the trailer back, could it not?

A Yes, they could, I guess.

Q And you could have brought it back next morning?

A Right, sir.

Q And the reason you didn't take it back—your company doesn't take it back, is because of the expense involved. Isn't that right, sir?

A Yes, sir, I guess that's it.

Q But you had the power to get the papers back and to take it back to Old Dominion terminal in Chesapeake?

A Yes, sir.

Q Now, sir, could you not have put the trailer, trailer 4572, physically inside of one of the warehouses and it would have been kept under lock and key?

A Sometime I can, and sometime I can't.

Q Well, you have had occasions where you have done that in the past?

A Yes, sir, I have.

Q And on this particular occasion you didn't ask Norfolk Terminal to provide you with that service, did you?

A No, sir.

Q You didn't think about it?

A No, sir, because the warehouse foreman said they'd start on it the first thing the next morning. I said, okay, I'd leave it there so it would be there to start on.

Q That was your decision?

A I told the dispatcher.

Q Okay. Between the dispatcher and you, then, this was an Old Dominion decision?

A Yes, sir.

Q You didn't have a kingpin lock for the kingpin of that trailer, did you?

A No, sir.

Q You didn't have a padlock on the door either, did you?

A No, sir. It was sealed.

Q It is a seal?

MR. LEAFE: Judge, excuse me, sir. I believe he's cross-examining the witness, and it is still his witness.

THE COURT: All right. You are objecting to the phraseology?

MR. LEAFE: Yes, sir.

MR. GAWRYS: May I address myself to that point, sir?

THE COURT: All right.

MR. GAWRYS: This was opened up by Mr. Leafe. I did not ask him as to what he did with the trailers and things of that type. I asked him specifically as to the unloading and the signing of delivery receipts. When Mr. Leafe went beyond the scope of my direct examination Mr. Talley then became his witness.

MR. LEAFE: It was no questions of mine at all with regard to security in any respect.

THE COURT: Well, we are in a gray area in that you did ask him, Mr. Leafe, as to what he had done in the past, had he been requested or asked in the past to leave the trailers down there in the past, so in one sense of the word we are skirting on what might be possible cross-examination.

But, Mr. Gawrys, go ahead and try to rephrase your question, and if we run into any difficulty we'll cross the bridge.

MR. GAWRYS: All right, sir.

BY MR. GAWRYS:

Q Mr. Talley, how was the trailer secured, trailer 4572; how was it secured that evening?

A Well, it was backed up to the dock and the trailer was dropped and it had pallets under the front of it and it had a seal on it.

Q What is the seal? Would you explain the sealing?

A Actually, it is a thin piece of tin about that long and it clicks and locks.

Q What does it take to break that seal?

A Well, you could break it with your hand I guess or take a stick of wood or anything and break it, knife and cut it.

Q Did you have any padlocks available to lock the door?

A No, sir.

Q Did you have anything on the kingpin which would prevent someone from taking the trailer?

A No, sir.

Q Do you know what kingpins are?

A I do now, sir.

MR. GAWRYS: Thank you, sir. No further questions.

THE COURT: Mr. Leafe?

MR. LEAFE: No, sir.

MR. JETT: No, Your Honor.

THE COURT: Finished with Mr. Talley?

MR. GAWRYS: Yes, sir.

MR. LEAFE: He better wait outside, judge.

THE COURT: All right, Mr. Talley, if you will step down and wait outside you may be called again for some testimony.

Next witness, Mr. Gawrys?

MR. GAWRYS: Your Honor please, subject to the introduction of the depositions upon which we have agreed, plaintiff rests.

THE COURT: All right. Mr. Leafe?

MR. LEAFE: Judge, I would like to call Mr. Brewer.

THE COURT: Just a minute. Mr—

MR. JETT: If Your Honor please, I would like to make a motion.

THE COURT: Yes, at this time.

MR. JETT: Mr. Leafe is welcome to go ahead.

MR. LEAFE: No, that's all right.

MR. JETT: On behalf of Norfolk Terminal Corporation we would like to make a motion at this time to strike the plaintiff's evidence as to the defendant Norfolk Terminal Corporation on the grounds that there's been shown no contract between Phillip Morris and Norfolk Terminal Corporation, also no negligence has been shown as to Norfolk Terminal.

THE COURT: At this time the court overrules your motion.

MR. LEAFE: For the purposes of the record, judge, I move the court to strike the evidence as to the defendant Old Dominion Freight Line.

THE COURT: Also overruled.
Mr. Leafe, you want to proceed now?

MR. LEAFE: Yes, sir. I would like to call Mr. Brewer.

* * *

RAYMOND RICHARD BREWER, called as a witness on behalf of the defendant Old Dominion Freight Line, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEAFE:

Q State your name, please, sir?

A Raymond Richard Brewer.

Q And how are you employed, Mr. Brewer?
A Terminal manager, Norfolk Terminal Corporation.

Q And you were so employed on October the 9th and 10th, 1969?
A Yes.

Q Now, sir, is Norfolk Terminal Corporation—in this instance Norfolk Terminal Corporation was the agent for Belgium Lines for the receipt of this cargo?
A No, sir, we were not.

Q You were not the agent for Belgium?
A No, sir.

Q Is there anyone who received cargo at Norfolk International Terminal other than the terminal itself?
A Yes, sir.

Q And sign any documents?
A Yes, sir.

Q In this instance who would have received the cargo?
A You mean had this particular trailer been off-loaded?

Q Yes, sir.
A Would have probably been one of the Norfolk Terminal Corporation checkers.

Q Is there any cargo that comes into Norfolk Terminal Corporation that is not checked in through the terminal office?
A That comes into Norfolk Terminal Corporation?

Q Yes, sir.
A Negative, no. It all comes in through one office. You got a receiving office.

Q And the checkers are employed by Norfolk Terminal Corporation?
A Correct.

Q And any cargo that—or this particular cargo would have been unloaded by employes of Norfolk Terminal Corporation?
A Yes, sir.

Q And it would have been after it was unloaded and

checked for damage and so forth it would have been signed by an employe of Norfolk Terminal Corporation?

A It would have been receipted for by a terminal checker, yes, sir.

Q And in this instance Belgium Lines itself would have had nothing to do with the actual receipt of the cargo?

A This is correct.

Q But you still say that you were not the agent for Belgium Lines for the purposes of receiving this cargo?

A We operate under a public tariff. We are a public terminal with a tariff filed by American Maritime Commission. We have no contracts with any carriers other than rail carriers. This is both water and motor common carrier.

Q Would you consider yourself, then, a general freight agent?

A No, sir.

Q Are you a freight agent of any kind?

A You are asking for a legal definition. I don't know.

MR. JETT: If Your Honor please—

THE COURT: He just said he doesn't know.

MR. JETT: Yes, I think so.

THE COURT: He's responded.

MR. JETT: He's testified to what they are.

BY MR. LEAFE:

Q But you do not consider yourself his agent for anyone in receiving cargo?

A I did not state that. We are a contractual agent for a railroad. We have a contract with railroads.

Q As far as trucks are concerned?

A We do not, no.

Q And yet you do receive the cargo and there's no representative of Belgium Lines who received the cargo in this instance?

A This is correct.

Q And so the Belgium Line employe who is here would not be there to receive the cargo for Belgium Lines?

A Not at that time, no.

Q You would have been receiving the cargo?
A We would receive it from the truck line, yes, sir.

Q So he was not the agent of Belgium Lines to receive the cargo?
A Not at that time. He will receipt to us for the cargo later.

Q Okay. But not at that time?
A Correct.

MR. LEAFE: No further questions.

THE COURT: Mr. Jett?
Mr. Furr?

MR. FURR: Mr. Brewer is our witness. We'd like to reserve our examination to a later time when our case is put on.

MR. JETT: When our case is put on.

THE COURT: Mr. Gawrys?

MR. GAWRYS: I have no questions of Mr. Brewer at this time.

THE COURT: Stand down, Mr. Brewer.
Next witness, Mr. Leafe.

MR. LEAFE: Judge, I think we will rely upon the evidence contained in the depositions that by agreement are being submitted to the court.

THE COURT: You rest?

MR. LEAFE: Yes.

THE COURT: All right, sir, Mr. Jett.

MR. JETT: If Your Honor please, I would also like to make a motion to strike the evidence as to the cross-claim of Old Dominion Freight Lines vis-a-vis Norfolk Terminal Corporation at this time on the same grounds, that there's been no proof of any contract and/or no proof of any negligence as to Norfolk Terminal Corporation by Old Dominion Freight Lines. Then—that's my motion.

THE COURT: That's overruled at this time.

MR. JETT: All right, sir.

MR. GAWRYS: If Your Honor please, I would like to make a motion in behalf of the plaintiff to strike the evidence of the defendant Old Dominion Freight Line and to enter summary judgment for the plaintiff on the grounds that the goods as a matter of law were still in the care, custody, and control of Old Dominion Freight Line.

THE COURT: Mr. Leafe?

MR. LEAFE: Judge, I would certainly oppose the plaintiff's motion on the ground that there's been evidence presented and that particular question is one of the issues to be determined in the case, that there's considerable evidence contained in the depositions relating to that and it is a legal question which is one of the issues to be decided by the court as to who had care, custody, and control and whether Old Dominion had made its delivery in accordance with the terms and conditions of its bill of lading.

THE COURT: Of course, the court has not read all of the depositions, Mr. Gawrys, so I don't have all of the evidence before me upon which to properly rule on your motions, so I will reserve on that particular motion at this time.

MR. GAWRYS: Yes, Your Honor. I make the motion for the record. I realize the court has to read the depositions.

THE COURT: All right. Mr. Jett.

MR. FUEE: I would like to put Mr. Brewer on.

THE COURT: All right.

* * *

RAYMOND RICHARD BREWER, called as a witness on behalf of the defendant Norfolk Terminal Corporation, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FURR:

Q Mr. Brewer, you have testified you are manager for Norfolk Terminal Corporation. There's been various testimony as to

NIT, Norfolk International Terminals, and Norfolk Terminal Corporation here today. Could you tell us exactly what Norfolk Terminal Corporation is in relationship to NIT or any other authority?

A Norfolk Terminal Corporation is the operating company of Norfolk International Terminals. The facility is Norfolk International Terminals. There are other entities on Norfolk International Terminals: General Services Administration; at that time Norfolk Port and Industrial Authority maintained some offices on the premises; some of the steamship lines: U.S. Lines, Dart Line, Belgium Line at that time had offices on the premises.

Q Now, do you have a contract with anyone to operate the portion of the terminal you are talking about?

A Yes, sir. At that time we had a contract between Norfolk Terminal Corporation and Norfolk Port and Industrial Authority.

Q All right. Now, in regard to the security force that's been averred to precedent in the testimony, the gate guards and security force on Norfolk International Terminals, could you tell us who employs them and what relationship, if any, you have with them?

A Norfolk Port and Industrial Authority employed them at that time and I had no direct relationship with them.

Q Now, in the normal daily operation at the whole Norfolk International Terminals, approximately how many trucks, that is, tractor-trailer trucks, come on the terminal during an average day?

A Average probably eighty to a hundred, possibly as high as a hundred sixty a day.

Q Now, do you have any contract or did you in October 1969 have any contract with Phillip Morris in regard to anything?

A No, sir.

Q Did you have any contract with Old Dominion Freight Line?

A No, sir.

Q Did you have any contract with Belgium Lines, the owner of SS RUBENS?

A No, sir.

Q What do you operate under?

A We operate under a public tariff filed with Federal Maritime Commission.

Q And I show you Defendant's Exhibit 8. Is this the public tariff in existence?

A Yes, Norfolk Marine Terminal Association terminal tariff number 1-A, FMC, T number 2, effective June 12, 1970.

Now, I can't tell you whether this is the updated one. There are supplements put out on occasions.

Q That was the first page of a change. Look at the second page at the date.

A The original tariff was issued October 1, 1969. And this is the check sheet on the front, which cites the modifications that have been made to the tariff.

Q Other than for that it was in effect on October 10, 1969?

A Yes, sir.

Q Now, in regard to export cargo, such as the cigarettes that have been testified about yesterday and today, could you tell us your procedue, that is, Norfolk Terminal Corporation procedure, in receiving cargoes of cigarettes brought in for export?

A You are referring specifically to cigarettes now?

Q Well, any type of security cargo that's going to be stuffed into containers.

A Well, as far as the actual process of receiving, initially it is the same one that is on a highly pilferable on break bulk normal value commodity, in that the driver will report in to the terminal. We have receiving offices. One on the pier on the break bulk vessel and one warehouse A, where this took place, for containerized cargo. The driver in this particular case, normally Mr. Talley from Old Dominion Freight Line, would bring the truck pros waybills in, register them with the receiving office. At that time the tallies—the waybill is logged in at the office. It is picked up on the truck log, a number which corresponds with the number on the truck log is placed on the waybill, and it is stamped on the back for the time received.

Q Could I interrupt you just a second?

A Yes.

Q In referring to this tariff I refer you to item 750 in the tariff, truck service scheduling, which says "Drivers of all motor carriers or highway vehicles shall register in person with the terminal prior to 3:00 P.M. Terminal shall not be required to perform loading or unloading after 5:00 P.M."

Now, what is the system you use in scheduling the trucks under this item of tariff?

A That's what I was describing. We would pick them up. We would have the time of arrival stamped on the back, that is, the arrival of the piece of paper that's presented to us by the driver stamped on the back. The number is also timed for the particular time, being numerical sequence by day. These are daily logs, and they are kept on file.

Q And what is the purpose of logging these in?

A To be able to prove basically to the trucking industry that we have worked in normal sequence the arrival of the truck that arrived—before if a truck arrived earlier than another and we worked it we caught a little bit of criticism, and the only time we do this is if it was a priority item such as a ship loading or something like this.

Q Now, you mentioned you received documents. What type of document do you receive?

A The waybill.

Q Do you ever receive the bill of lading, which is the document of title of the goods? In your—

A Not normally, no. We have received them in error on occasion, but not normally, no.

Q Now, does the Norfolk Terminal Corporation in the normal course of its business ever receive trailers?

A You referring now I am sure to a common-carrier-owned trailers?

Q Yes.

A No.

Q All right, sir. Now, tell us, after you have scheduled these trucks for a certain sequence of unloading what happens then in the normal course of business?

A The waybill would be placed in the box—well, in the case of 1A, where the particular local that's involved, it would go in the box for the warehouse foreman to pick it up to schedule the off-loading of the trailer itself, placing of his labor, the checker and the short-shoremen involved, to off-load the trailer. As it came up in normal sequence he would request of the driver to spot it at the correct location. As has already been mentioned here, warehouse 1A is the security warehouse for high pilferable commodity for

stuffing and stripping under normal circumstances. He would ask him to spot it at warehouse 1A and assign a checker and a three-man gang, employes of Norfolk Terminal Corporation, to off-load it, the checker to check it for exceptions, marks, damages, and normal count, in this case a thousand cases of cigarettes, and place it in the warehouse, and then receipt to the truckline for the commodity that we have off-loaded.

Q Now, when does Norfolk Terminal receive and accept a cargo?

A At the completion of the off-loading, as soon as all of the cargo has been checked and is placed in the warehouse we sign the receipt.

Q Is that the point you receive it?

A Yes.

Q Now, did Norfolk Terminal Corporation receive or accept the cargo of cigarettes that was under discussion that was hijacked in this case?

A No, sir.

Q In whose possession was the cargo when it was higjacked?

A It was still in the Old Dominion Freight Line trailer.

Q In connection—you mentioned high-risk or security cargo. What is warehouse 1A and what security precautions are taken by Norfolk Terminal at warehouse 1A?

A Warehouse 1A is a warehouse that is designated specifically for the high pilfer-prone cargoes, whiskeys, cigarettes, shoes, shirts, this type of thing. Warehouse 1A is also—well, it is divided by a fence. There are four doors entering this particular one. Under normal circumstances three of the doors are kept locked, one left open with a guard on it.

Q You employ a guard yourself there?

A This is—

Q Or you did at the time?

A This is the Norfolk Port and Industrial Authority guard. We employed a guard at one time, yes.

Q How about at October 10, 1969?

A I can't recall. I don't know the exact date.

Q Well, there was a guard, regardless of who employed

him?

A There was a guard, yes.

Q Now, what happens at the close of business at the end of the day, working day, at warehouse 1A so far as security?

A As soon as the working day is completed, the guard on duty would lock the warehouse and then of course he is off duty.

Q Now, who owns the street or area outside or surrounding warehouse 1A?

A At that time the City of Norfolk.

Q And why don't you or why did you not employ the guard after normal working hours, which I assume is 5:00 P.M.?

A Hopefully he had secured the warehouse and all the cargo we were responsible for was secured.

Q And where was all the property that you were responsible for located?

A Locked up inside of warehouse 1A.

Q Inside.

Now, for your services of unloading the trailers that come in there and stuffing them into containers, do you charge any fee to anyone?

A Yes, we have a wharfage and unloading charge published in the tariff.

Q Who do you normally charge this to?

A The shipper pays the charge. An actual invoicing goes through Old Dominion Freight Line. They protect our charges.

Q Now, in the instance of the cigarettes that were hijacked, did you submit any bill to anyone?

A No, sir. We didn't handle them.

Q And you were not paid for any such services?

A No, sir. We didn't perform them.

Q Now, in connection with the—there's been testimony earlier, which you have heard, in connection with passes that are issued or people that have cargo on trailers that want to leave the terminal. Can you tell us the procedure concerning passes?

A Yes, sir. The normal procedure—of course, we are not the only identity that issues the passes at the terminal. But the normal procedure for a truck that has cargo which—well, there are

two procedures I guess from Norfolk Terminal Corporation's standpoint. On import cargo, cargo which has been off-loaded from a ship and stripped from container in warehouse 1A or located on the pier, upon completion of the loading of the truck the driver will sign a receipt for the cargo to us and at that time we will issue a property pass for that cargo which we have loaded on the vehicle.

Q That's import cargo?

A That's import cargo, yes, sir.

This particular shipment is an export shipment that was pilfered at this time. If a truck arrives on terminal with export cargo, this is the normal common carrier truck, for export and consigned to a vessel that is working at Norfolk International Terminals, there would be no pass at all issued if we took the cargo off the truck. The truck could be employed; that is, if we removed all of it, the truckline if free to carry his trailer on off the terminal.

Q He doesn't need a pass then?

A Does not need a pass, no, sir.

Q If you have a partial delivery, this is a multiple-shipment truck, a miscellaneous service truck with some shipments for Norfolk International Terminals and some for, say, Lamberts Point Docks, Naval Supply Center, or someplace like that?

A We would normally issue a pass. The driver would say, "I still got fifty pieces left on." The procedure is for him to show the girl a stack of bills and say, "I got all these left on." She will issue a pass—if he says fifty pieces, then fifty pieces—to remove it from the terminal. Of course the system is set up to control the cargo that's in our care and custody, not what he brought into the terminal and is going to take back out. It is to prevent pilferage of our cargo.

Q Cargo in your possession. And was that setup primarily for import cargo?

A Primarily for import cargo, yes, sir. The export cargo under normal circumstances did not leave the terminal. When a man brought it in he brought it in for delivery. If we didn't get it off-loaded, then he would go back out. But the other cargo, be it export or domestic, that's left on a trailer, really, we don't control. We don't own it. We don't have any custody over it.

Q What would it entail for Norfolk Terminal Corporation

if it were to undertake to actually physically inspect each trailer before issuing any pass to see what was on there?

A Well, we'd probably be closed up in about a half a day. The trucks would be lined up at the front gate if you had to go through and physically inspect each one lined up with a cargo. The guard at the gate is the only one that verifies it, and all he is doing is verifying there is commodity aboard. If the man has fifty different waybills or something like that you'd have to go through and physically check each shipment out. It would be very nearly impossible.

Q Did you ever undertake this service for trucking lines?

A No, sir.

Q In regard to trailers that come onto the whole facilities at Norfolk International Terminals, does Norfolk Terminal Corporation assume any responsibility for these trailers?

A No, sir.

Q Do you undertake to keep a record of where they are or what trailers are there?

A No, sir.

Q When you log the cargo into your register there, export cargo, do you note down the number of the trailer that brought it in in the normal course of business?

A We don't log cargo in. We are logging a piece of paper in at that time which is the rail pro which designates the trailer number on it. Yes, that is in the log, the total number of pieces.

Q You are logging—you are writing the cargo down on a piece of paper?

A So we can identify it back against the particular instrument and then write the number it corresponds with on the pro itself, again cross-referenced in the proper sequence. Because the papers there does not mean the cargo is there or the trailer is there or anything else.

Q That's what I was getting at. Do you have any record of where a trailer is located just when you get a waybill?

A No, sir.

Q Do you sometimes get waybills when trailers are not even on the premises?

A Yes, sir.

Q And what I was asking for, in your log do you put the number of the trailer down?

A Yes, sir.

Q Put the trailer number down or the cargo?

A Cargo—

MR. LEAFE: Judge, I would suggest this is his witness. The man answers the question and then he starts leading him.

THE COURT: Yes, Mr. Furr, don't lead him.

BY MR. FURR:

Q I show you Defendant's Exhibit No. 1 and ask you to tell us what that is?

A This is the daily truck log titled truck or rail—we have one of each—for the 11th day of October—wait, no, that's this one—for the 10th—

Q That's day?

A You entered it as an exhibit here. Friday, October 10, 1969.

Q Now, what—can you tell us what information is shown on that daily truck record?

A The only thing she's shown on this particular one is the name of the carrier, the commodity, the time in, the waybill number, the weight, and the vessel name. The trailer is not shown on here.

Q All right. Thank you.

I was asking you about trailers. Does Norfolk Terminal Corporation in the normal course of business attempt to move trailers from one location to another on the premises?

A Again you are referring to common carrier?

Q Common carrier trailers?

A We do handle containers down there which is a different kettle of fish. Common carrier trailers, no, sir.

Q Do you attempt to spot the trailers at a particular unloading facility?

A With our own equipment, no, sir.

Q If you desire a trailer to be moved what do you normally do?

A If you are referring to one such as D.D. Jones or Old Dominion or Estes—

Q Say Old Dominion.

A All right, Old Dominion we get ahold of Talley and ask him to spot the trailer. Anyone keeps one on the terminal, keeps a spotter on the terminal, we ask them to spot it at a particular location.

Q Referring to October 10, 1969, in regards to these cigarettes we have been discussing, can you state whether or not any request was made to Norfolk Terminal Corporation for any particular security measures to be taken for this trailer?

A None was made of me, no, sir.

Q Did you have any knowledge?

A None as far as any of my personnel to my knowledge.

Q Was there any advantage to anybody, a party, for the trailer to be left overnight on Norfolk International Terminals, that is, the trailer of cigarettes we are talking about? And if so, who?

A We have had an advantage from the terminal standpoint to two different groups. Of course, the Old Dominion trailer would be there for working; they wouldn't have taken it back to the terminal in Chesapeake and bring it back in. The owner or the consignee, Belgium Lines, RUBENS, would be paying the cost for the standby of the labor if the trailer wasn't there.

Q Incidentally, when was the SS RUBENS due to arrive for that particular shipment?

A She was due for Monday.

Q Was not there on the 10th?

A No, sir.

Q Which was a Friday.

A No, sir.

Q Is there any custom in the trade regarding whether or not trailers are left there overnight or taken back to the individual companies' terminals?

A Customs in the trade, by that I would assume you mean marine terminals?

Q Yes, that's right.

A To my knowledge it is done at all the marine terminals in this area.

Q What is done?

A The trailers are left overnight or at the discretion of the company, the common carrier, motor common carrier. Lamberts Point Docks, Portsmouth Marine Terminals, or any other terminal.

Q All right. Now, do you know at Norfolk International Terminals, is there any normal procedure? Are they normally left overnight, or are they not normally left overnight, or is there no normal procedure? Or what is the procedure—I won't lead you—if any?

A You want to know what the procedure is. From the terminals' standpoint, other than a trailer that is dropped on the pier that will be obstructing the—or possibly obstructing the loading of a vessel—I am referring to break bulk vessels now—if it will be in the way the following day they will be requested to remove it from the premises and either carry it back to their own or drop on the terminal. There have been areas designated on the terminal for the dropping of common carrier trailers to keep them out of our way and to allow them to leave them on the terminals.

Empty trailers left in position, if they are in to pick up a load and we haven't had the labor to load them, they will be left in position normally and we will go ahead and load them the following day.

The trucks are scheduled, both loading and discharging, the same type of log that you referred to before is kept and the loading sequence is maintained on both the discharge and the loading of the trucks.

We don't—have not attempted to control the trailer on the terminal itself. At one time—I do not recall the dates—it is in the minutes of the board meeting—we were requested to invoice the common carriers for the trailers that were left on the terminal. We had accumulated so many down there that there was just too much congestion to cope with our container traffic. This was attempted for I think approximately a week and it was just too much work for security to keep track of them, even from the standpoint of invoicing to generate revenue.

So in essence only to control the location that they are dropped on the terminal. I think that answers your question, but I

think it is very rambling and I apologize.

MR. FURR: Just one minute. Answer the questions of the other counsel.

MR. GAWRYS: I'll defer to Mr. Leafe at this time.

CROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Brewer, do you have on behalf of Norfolk Terminal Corporation or have you issued any rules and regulations with—written rules and regulations with regard to handling of trailers and so forth on the premises?

A We have issued some and some recently. Primarily containers rather than trailers. Trailers I don't think were mentioned other than the fact that parking them in our regimented parking spaces, which I had indicated before.

Q Any written rules and regulations with regard to trailers, trailer cargo, as of October 1969?

A I do not recall.

Q Now, you are the individual, are you not, who establishes the procedures for the handling of cargo at Norfolk Terminal Corporation, NIT?

A As far as the actual handling of the cargo by Norfolk Terminal Corporation personnel, yes, sir.

Q And you are the individual who establishes the procedures for obtaining passes and to move cargo out of the terminal?

A This is only partially true. Norfolk Port and Industrial Authority employes are responsible. They are the guards at the gate, not mine.

Q Okay. They are just required to receive a pass. Is that correct?

A No, sir.

Q What are they required to receive?

A They are required to ascertain that the cargo that might be on the carrier does not belong to the terminal or, if possible, any identity on the terminal.

Q How do they do that?

A By a truck pro. You have tire companies that come in that deliver two tires to us and a piece of paper to show that the tires that he has on there are supposed to be someplace else rather than off the terminal.

Q Okay. Then it is determined he either has a truck pro or property pass. Is that right?

A Or some type of documentation

Q Or a property pass?

A Yes.

Q And you establish the procedures for the issuance of property passes?

A No, sir, that was established by the port authority.

Q You enforce the procedure?

A As far as Norfolk Terminal personnel, yes, sir.

Q And how the passes are issued through your office?

A Yes, sir.

Q And as that procedure is established, for someone to get a pass they need some documents?

A Yes, sir, normally.

Q Normally?

A Yes, sir.

Q That's what—

A You will find that there are times that a truck is delivered at the terminal that has no papers on what he's got left on the truck.

Q And he is not going to get back out that gate until some determination is made. Is that correct?

A We have gone so far as to have the trucklines bring pros back into the terminal and the pros presented to the guard at the gate before he leaves.

Q Before he gets out?

A Right.

Q So he is not going to get out without a pass or pro?

A Wrong. We have had trucks to leave without a signature at all. If the guards are performing correctly it will not leave.

Q That's in accordance with your procedure?
A Right.

Q But for you to issue a pass at your office—
A Possibly you better get some correction here. We do not issue all of the passes. He also goes to General Services Administration. The Norfolk Port and Industrial Authority have authority to issue passes. Numerous ship lines have authority to issue passes. So, no, not just to us.

Q I am talking about the ones, though, that are issued from your office?
A Well, then you better repeat you question. I lost you or you lost me.

Q Somebody needs some documents to get a pass from your office?
A Not in all cases.

Q Under your procedures?
A Under procedures, yes.

Q Under procedures which you have established?
A Right.

Q All right. Now, when a truckline or a trailer load of cargo comes into the terminal it is your procedure that establishes what's done as far as turning the bills in to your office?
A On those trailers that have cargo that is consigned to Norfolk Terminal Corporation, yes, sir.

Q And you require them to turn their documents in?
A Yes, sir.

Q At your office?
A Log them, yes, sir.

Q And also physically deliver the documents?
A Yes, sir, right.

Q So you keep a log?
A Yes, sir.

Q Which logs the trailer in?
A Right.

Q Says the time?
A Right.

Q Has the number?
A Right.

Q As to when it is logged in its sequence?
A Yes, sir.

Q But in addition to taking the information and putting it in the log you physically require the delivery of the documents to your office?
A Yes, sir.

THE COURT: Let's get this cleared up. What documents?

THE WITNESS: The waybill, the truck pro. The delivering instrument, Your Honor.

BY MR. LEAFE:

Q And that is the delivery instrument, is it not?
A Well, there are several different types. In the case of the common carrier it is the waybill.

Q In the case of the common carrier the waybill is the delivery instrument?
A Normally. Memo pro, free astray.

Q But the waybill?
A Yeah.

Q Now, it is your employe who directs the trucking company where to spot the trailer for unloading?
A Yes, sir.

Q Now, who unloads the trailer?
A Freight Handlers Local 1458.

Q And they do it under a contract with Norfolk Terminal Corporation?
A Right.

Q The truck company does not assist in any way in the physical unloading of the vehicle?
A No, not normal procedure, no.

Q In fact, they have no right to assist—
A You are wrong.

Q —in the physical unloading?
A They do have a right to, yes, sir, and that will probably be

tested in court shortly.

Q Under your contract with the union they don't have a right?

A That will be tested shortly. In the new tariff that is published now there is a DOD delivery item.

Q As a matter of fact, though, in October 1969 at NIT all the physical unloading was done by employes of Norfolk Terminal Corporation?

A No, sir.

Q Or under the union contract with Norfolk Terminal Corporation?

A No, sir.

Q All right. Who did the other unloading?

A General Services Administration off-loaded their own. Civil Service, Norfolk Port and Industrial off-loaded their own cargoes with their own labor.

Q I mean Norfolk Terminal Corporation in 1A?

A Warehouse—

Q Warehouse 1A.

A To my knowledge all of it was off-loaded by Norfolk Terinal Corporation.

Q Now, Mr. Brewer, Norfolk Terminal Corporation was aware that cargo was left at the terminal overnight?

A Are you asking specifically about a specific thing or the fact that it is normal practice that something is left.

Q Normal practice to leave cargo overnight?

A (Pause) Yes, to a certain extent.

MR. GAWRYS: If Your Honor please, I'd object to the use of the word "normal." Mr. Brewer had testified there was no normal practice or procedure. I think the use of the word "normal" is incorrect and I object to that.

THE COURT: He can respond to the question. He seems to be quite an intelligent witness and he is on cross-examination. I think he can respond. He apparently, as a matter of fact, was weighing the question as it was put to him and he was in the process of giving an answer and explaining it. You have got an intelligent witness here. I don't think

anybody will be putting words in his mouth.

Go ahead, sir.

A Would you repeat that for me?
(The reporter read the question.)

A The procedure was that anything that we hadn't worked up to then may or may not be left on the terminal. It was up to the discretion of the truckline.

BY MR. LEAFE:

Q But you had the documents in your office?
A Yes, sir.

Q And you knew from the documents that you had what cargo was still there?
A No, sir.

Q You had the ability to know?
A Well, not in all cases, no, sir.

Q In this case?
A The fact that a document was there did not mean the trailer was there, no, sir.

Q In this case?
A I don't know of my own knowledge.

Q All right. Your office in this case issued a property pass for this particular trailer at the same time that the documents for that trailer were still in the physical possession of your office?
A Two different offices, yes, sir.

Q Two different offices?
A Yes, sir.

Q How far apart?
A Receiving and delivery, at that time twenty, twenty-five feet, probably.

Q Same building?
A Yes, sir.

Q Connections between the two?
A Certainly.

Q They are just designated by different names?
A One is for receiving and one is delivery.

Q But it is a designation?
A Well, it is functional. It is a functional change.

Q Is Mr. Zanecchia—at that time was he your man in charge of these?
A Of the two person—two offices involved, yes, sir.

Q He was in charge of both?
A Yes, sir.

Q And so at the time that you had in your possession, Norfolk Terminal Corporation, a waybill showing a thousand cases of cigarettes on this particular trailer you issued a property pass for this same trailer showing a number of pieces of piece goods. Is that correct, sir?
A Correct. Yes.

Q Now, Mr. Brewer, I believe it has been your contention in the direct examination that this cargo is still in the possession of the truckline until it is completely unloaded and checked for damage and shortage and signed by the checker?
A Yes, sir.

Q But without going through your office, in accordance with your procedures, and getting a pass or his bills, he can't get off the terminal with this property that you say is still his. Is that correct?
A You are wrong. By procedure he is not supposed to be able to get off. Legally he can get off anytime he wanted. That was tested.

Q I understand he can cut the gate.
A No, he can go out through the guard at the gate. That is the truckline's property, and they can remove it.

Q By your procedure, the procedure that has been established?
A I acknowledge by procedure, right, but if he wants to take that trailer off with the load he can do it.

Q Without a pass?
A Without a pass.

Q Without documents?
A Without any documentation whatsoever, yes, sir.

Q And the guard's not going to stop him or question him?

A The guard attempted to in one particular case.

THE COURT: Let me see if I understand you correct, sir. If I were to drive onto the Norfolk Terminal property or the NIT property with my automobile and wandered around there for a half hour or more, and I then approached a gate to leave the gate and come out on Hampton Boulevard, you are stating that the guard could not hold my car, could not hold me until such time as I produced a valid pass under your procedure to be let through, and that I would have to be let through without a search, if need be, to determine whether I had anything in the nature of stolen merchandise or merchandise that didn't belong to me, I could—the guards would have to legally let me go through without a pass?

THE WITNESS: Sir, your case is different in that you are referring to a privately owned vehicle, but from the ruling that we received back from the attorney general, they are special police and they have special police privileges, but unless they suspect you and have reason to suspect you of having stolen something from the terminal they cannot hold you. Now, we can go through customs, the tresury agents, if we have reason, and they do have the right of seizure and search.

MR. LEAFE: Judge, if I might clarify for a minute. You used the example of your private car?

THE WITNESS: That's what I said.

MR. LEAFE: Private cars and trailers—

THE COURT: He made the distinction.

MR. FURR: If Your Honor please, I might say City ordinance has been introduced in evidence that sets up these procedures for passes in the situation you mentioned, and it is not set up by Norfolk Terminal Corporation.

THE COURT: This is off the record.

(Off-the-record discussion.)

BY MR. LEAFE:

Q Mr. Brewer, is it your practice at the terminal to request that freight be on the premises twenty-four hours before the arrival of the ship?

A No, sir.

Q You don't have any practice in regard to wanting freight there before the ship arrives?

A No, sir. Twenty-four hours that you are referring to I would assume is the scheduling we attempted to work out.

Q Yeah, do you have some—

A We want it on premises twenty-four hours—we want twenty-four-hour notice before the cargo arrives so we can set up labor for it, if this is what you are referring to.

Q And you don't care whether—as long as you know the cargo is coming you don't care whether it comes after the ship's arrived or whether it comes—

A I have no control over when it arrives, nor can I exercise any.

Q I am not asking you control in that instance, Mr. Brewer. Do you have a policy of requesting that the cargo be there?

A No, sir. We do not book the cargo. The vessel books the cargo. I don't even know what it is due to arrive, so how could I request it be there twenty-four hours before?

Q As a general directive type.

You have to schedule the labor?

A Yes.

Q Because—so that there will be labor to unload whatever cargo arrives?

A You are coming back to the same thing, on scheduling and not on the—the physical presence of the cargo there. I want to know that it is coming so that I can set up the labor. I have to set it up the day before for the following day. So it is scheduling you are referring to and not the presence of the cargo.

MR. LEAFE: All right, sir. That's all I have.

MR. GAWRYS: I have no questions.

THE COURT: Anything on redirect?

MR. FURR: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. FURR:

Q Mr. Leafe was asking you about trailers presumably with cargo in them being left overnight. Can you tell us if trucking companies do take their trucks off or their trailers off at night?

A Yes, sir, some have a standard procedure they always remove them.

Q In regards also to the waybills that are turned in to Norfolk Terminal at 1A, if the cargo has not been delivered or unloaded by Norfolk Terminal Corporation, can you tell us if the trucking company can get their documents back if they want to from you?

A Yes, they can.

MR. FURR: That's all.

MR. LEAFE: I have one other question.

RECROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Brewer, you say the trucking company can get its documents back. If a total stranger walks up and he had never been there and say, "I want the documents for such and such a truck," do you give it to them?

A You are asking for a supposition. I don't know that it's ever happened, so I'd have to give you a supposition on my own behalf. Normally, they try to identify them.

MR. JETT: Your Honor, I don't think it is a far question. It calls for a supposition.

THE COURT: All right. Witness can't answer it.

MR. JETT: I object.

BY MR. LEAFE:

Q Under your procedures, Mr. Brewer, since you have physically taken the documents which have been required under your procedure, when you redeliver documents what is your procedure for determining that you are giving the documents back to the same person from whom you received them or a representative of the same company?

A Under normal circumstances the same man comes to pick them back up. In Old Dominion's case it would be Talley would

come to the window and ask for them, and of course he is known by everybody on the terminal.

Q So you know and it is known on the terminal that Talley is Old Dominion's man down there?

A Right.

Q So any documents of Old Dominion's you would anticipate being given to Talley?

A Normally, yes.

Q And since Talley is their man and has been there for so long, you would consider it unusual if someone other than Talley decided to—

A No, sir.

Q —get the documents?

A No, sir. They also have drivers that come down and make a normal pickup and a normal delivery. He's got local drivers that come in that Talley does not spot their traffic for them.

Q All right, sir. Under your procedure do you require for someone who is not known any type of identification before handing over documents to them?

A No, sir. I have tried that. So far I have two trucklines that have permanent identification, and both of those are private carriers. Contract haulers—I don't believe Old Dominion has identification for the driver himself. We have requested it very unsuccessfully. We cannot demand it.

Q And you make no verification at all?

A As nearly as possible. If a total stranger such as yourself came in and asked for an Old Dominion document under normal circumstances, the girl—which normally you would be dealing with a girl clerk, possibly a male on pier 1—would call Talley and ask Talley to identify you if they had reason to question you.

Q Whether they should get the pass.

Would Mr. Zanecchia, who executes property passes on your behalf under your procedure, execute a property pass without knowing what—

MR. JETT: If Your Honor please, I think Mr. Zanecchia has testified by deposition. I don't think he can ask this witness what Mr. Zanecchia would do under a particular instance. There's been no foundation laid.

MR. LEAFE: I said under his procedure.

THE COURT: You can ask what the procedure might be, but what somebody would do under a procedure would be a different story, because he doesn't know. But you can ask under normal procedure—what should someone be doing under normal procedure would be a different situation.

BY MR. LEAFE:

Q All right, sir. Under the procedures which you have established would a property pass be delivered without some type of documentary or other verification as to what's on the—what is physically written on the property pass for a person to get out of the gate?

A Restate—clarify it.

Q Under your procedures would a property pass be issued—let me—

MR. LEAFE: Off the record, Mr. Gawrys, do you know what your property pass exhibit number is?

MR. GAWRYS: It is one of the earlier ones, Your Honor. About 4 or 5.

MR. FURR: Exhibit 8, Your Honor.

BY MR. LEAFE:

Q I show you this Plaintiff's Exhibit 8, Mr. Brewer, which is the property pass—not too good a photocopy of the property pass in this instance, which shows property pass being issued for truck number 4572, persons named Old Dominion, twenty-five boxes of piece goods, I believe it is, signed by Mr. Zanecchia, supervisor—

A Stuffing and stripping.

Q —stuffing and stripping.

Now, to issue such a pass for that type of cargo under your procedure is some type of verification required, documentary or otherwise?

A This one's compromised to start out with in that procedures haven't been followed on it; it is filled out by one person and signed by another. So this one is bad to start with. But under normal circumstances a document would be presented.

Q All right. You say this one already violates your

procedure because—

A Right.

Q —the person who signed it didn't fill it out?

A (No reply)

MR. LEAFE: I think I have no further questions.

MR. FURR: Your Honor, just on that last thing—

REDIRECT EXAMINATION

BY MR. FURR:

Q On that pass, Mr. Brewer, if such a request was made or someone represented he had twenty-five boxes of piece goods, what would that indicate to you so far as the ownership of that twenty-five boxes of piece goods?

A Well, the particular girl that issued that pass, she'd verify that we had not loaded twenty-five pieces of piece goods. She would assume it was somebody else's cargo and issue a pass for it.

Q Somebody else's cargo?

A Yeah.

MR. FURR: That's all.

MR. LEAFE: Just one.

RECROSS-EXAMINATION

BY MR. LEAFE:

Q Mr. Brewer, the waybill for that trailer 4572, which the pass was issued for, was in the possession of Norfolk Terminal Corporation at the time that pass was issued?

A You stipulate Norfolk Terminal Corporation, and the person that issued that pass did not have it in their possession, no, sir.

Q Not that individual, but—

A But a personnel—both of them were personnel of Norfolk Terminal Corporation in two different locations.

Q But in the same building?

A Same building.

Q Connected?

A (No reply)

THE COURT: Mr. Brewer—

THE WITNESS: Yes, sir.

THE COURT: You testified that when cargo—cargo may not necessarily be logged in to the terminal physically at the same time as the pro or the waybill may be presented at the window to be processed for purposes of the stamp of its arrival and so forth. When is the actual pass, incoming pass issued? Is it issued at the time that the pro bill is presented, regardless of whether the physical cargo is there or not, or must the physical cargo be present on site before the in pass is issued?

THE WITNESS: Well, there is no pass issued at that time, sir. The log is prepared and the carrier's pro that they have entered in evidence there with the stamp on the back, the waybill itself, is presented to us. One driver can carry in five or six truckloads and have drivers following him in, such as Talley. There might be three or four drivers bringing trailers down behind Talley, but Talley has the pros for all of them and will enter all of them in to the terminal, and the others don't arrive for a number of hours.

THE COURT: He has a copy of the pro that has been duly authenticated, say, at a later date or later hour to bring in the truck?

THE WITNESS: No, sir, it would be authenticated as of the hour he presented the waybill to us.

THE COURT: All right, now—

THE WITNESS: And he would be placed in sequence.

THE COURT: Let's say the trucks are ten miles or twenty miles down the road?

THE WITNESS: Yes, sir.

THE COURT: And what Mr. Talley is trying to do or the Old Dominion is trying to do is to anticipate and get logged in early?

THE WITNESS: Yes, sir.

THE COURT: So that by getting logged in early they will be ahead of somebody else, maybe, for unloading purposes so

they can get their trucks out and get them back out on the road and make some money with them?

THE WITNESS: Yes, sir.

THE COURT: Now, the court is interested in knowing if the waybills are presented let's say at eight o'clock in the morning, the trucks will be two hours later coming, what's the procedure then for the trucks to get on and what happens with the waybills?

THE WITNESS: Well, the waybill will remain in the box until we have labor available. If we have labor available at eight o'clock and we had a truck pro that was checked in at eight o'clock, we request that truck be spotted, then we would find that the man was in violation of our own scheduling system.

We have trailers—one particular one with a fairly high value of merchandise on it was logged in with us—it was not this particular truckline—the trailer was found three days later at the Naval Supply Center. We did have the document, but we did not have the trailer.

THE COURT: Well, are you saying now to the court, then, that the cargo should be there at the time the waybill is presented?

THE WITNESS: Yes, sir. Should be, yes, sir.

THE COURT: Well, the court did not understand that, because in examination it appeared from your testimony that you weren't concerned with the cargo; you were only concerned with the waybill, that you had nothing to do with the cargo. It was the waybill for the purposes of setting up your scheduling as to the unloading that would take place afterwards?

THE WITNESS: Yes, sir.

THE COURT: And this is the reason of the court's inquiry. So it is your testimony now, however, actually they should be simultaneous?

THE WITNESS: They should be, yes, sir, according to our system.

THE COURT: Any further questions?

MR. FURR: Your Honor please, I think to—Your Honor was—His Honor was asking about the—

THE COURT: If you want to ask questions, that is all right; go ahead. Get it cleared up. I am not trying to put words in anybody's mouth. The court is trying to get something clear in its own mind. If by any chance you think the witness ought to further clarify it, go ahead ask him.

REDIRECT EXAMINATION

BY MR. FURR:

Q When a truck comes into the gate coming in with cargo does he get a pass at that time?

A No.

Q He doesn't need a pass?

A No, sir.

Q When a truck comes in and delivers cargo and leaves empty does he need a pass then?

A No, sir.

Q Now, if he deliveres a partial cargo to Norfolk Terminal Corporation and has other cargo to go to some other terminal, does he need a pass then?

A Depending on circumstances. If he has a waybill or any type of documentation as to what he has on the truck, no, sir. If he does not, then, yes.

Q At the gate does he necessarily need to hand a pass to the guard?

A No, sir. If he's got other bills, if he's got a waybill on the truck, he can show it and they will open the back and identify that he has cargo, and that's about all. The empty trailers are opened. A sealed trailer is not under normal circumstances opened.

Q In connection with the scheduling of these trucks—and you have just said that you would hope that the cargo would be there at the same time as the waybill?

A That's the idea behind the system, yes, sir.

Q Does Norfolk Terminal exercise any control over that cargo before you physically unload it? Can you state whether or

not you do?

A I don't know whether I am supposed to answer with him standing up.

MR. LEAFE: Judge, I would object to whether or not he exercised control. He can say what they do prior to the unloading, but whether or not that constitutes control or does not constitute control—

THE COURT: It is a conclusion.

MR. LEAFE: —is a conclusion.

BY MR. FURR:

Q All right. Do you do anything with the cargo at all before you physically unload it off that trailer?

A No, sir.

Q Do you know where that cargo is located before you physically unload it?

A No, sir. Except immediately before. We will order him to a location, a specific location, such as warehouse 1A, and that's where the labor is going to be to off-load it. If it is on the pier we designate the pier or berth.

Q That's immediately before you unload it?

A Right.

Q How about at the time the waybills are presented? Do you have any way of knowing at that time?

A No, sir.

THE COURT: Mr. Leafe?

RECROSS-EXAMINATION

BY MR. LEAFE:

Q Just one thing, Mr. Brewer: You say you don't have any way of knowing where the cargo is, but once you get the waybill, if that man is within the premises of Norfolk International Terminals he can't get out without the bill or without a pass?

A Correct.

MR. LEAFE: All right, sir.

MR. GAWRYS: I knew if I waited long enough I'd have a

question.

BY MR. GAWRYS:

Q Mr. Brewer, do I understand your testimony in essence at this point to be this: that at the time the pro waybill is presented to your receiving window, that it is desirable that the tractor be there with the cargo, but that it is not always the case?

A Yes.

MR GAWRYS: No further questions.

THE COURT: Is that it?

MR. JETT: That's it, Your Honor.

THE COURT: Do you have another witness? We should recess.

MR. JETT: I think that's it, Your Honor. I have certain interrogatories I would like to read in.

MR. FURR: We just got the depositions. We are not going to call any other witnesses.

THE COURT: All right. You want to read in the interrogatories?

MR. JETT: Yes, sir.

If Your Honor please, as to the depositions, if it is agreeable with the court, we will try to among the three of us try to get the best copies we can for presentation for those witnesses whose depositions we agreed will be put in evidence.

THE COURT: All right.

MR. JETT: Some of the copies are a little bit marked up.

On behalf of Norfolk Terminal Corporation I would like to read into evidence—

THE COURT: Additional depositions to come in? Is that it?

MR. JETT: No, Your Honor, not additional, but the depositions of certain Norfolk Terminal employes. Mr. Brewer, Mr. Zanecchia, John Kellam, young lady Naomi Kight. And also the Old Dominion witnesses, Mr. Talley, Mr. Lamm, and Mr. Jones. They are the ones, the ones we agreed on earlier.

THE COURT: You say but they have not yet been admitted—

MR. LEAFE: No, sir.

THE COURT: —officially as exhibits?

MR. LEAFE: No, sir.

MR. JETT: Maybe I better give them to yuo.

MR. LEAFE: The idea, again, was to get the best copies.

THE COURT: I just wanted to know. So there will be additional exhibits to be marked?

MR. LEAFE: Additional exhibits, which will be depositions of these people and, in addition, depositions of the three individuals who were involved in the theft.

MR. GAWRYS: Those have already been put in.

MR. LEAFE: Those are already in? Then it would be the—

THE COURT: I think what you gentlemen should do, in any event, before we recess or adjourn on the matter today, before the case is fully in, is to at least have the exhibits identified with the court reporter, and with leave of course to substitute clean copies, so that the court reporter will know—when she has to prepare this that she would know what exhibits she has to correlate to the testimony that she's transcribing.

MR. JETT: All right.

MR. LEAFE: Judge, I will go ahead and put my copies in and then we'll work it out if there has to be a substitution.

THE COURT: Okay.
This will be Old Dominion's depositions?

MR. LEAFE: No, sir, they are not really Old Dominion's depositions.

THE COURT: Talley was taken by whom?

MR. LEAFE: Talley was my witness.

THE COURT: That would be your exhibit.

MR. LEAFE: That would be Old Dominion exhibit—I think this would be 3.

THE COURT: This is Old Dominion Exhibit No. 3 is the deposition taken at two o'clock P.M. on April 27, 1971, at the offices of—law offices of Jett, Sykes, and Berkley, which is of the witness of R.C. Talley. The exhibits which are marked 1, 2, and 3 therein will carry the same number.

(So marked by the court.)

THE COURT: The next exhibit of Old Dominion would be Exhibit No. 4, which is of the witness R.R. Brewer. That would probably be Norfolk Terminal—rather than the Old Dominion Exhibit No. 4 that would be a Norfolk Terminal exhibit, and that would be Norfolk Terminal Exhibit No. 9. And this deposition was taken on April 27th of 1971, also at the law offices of Jett, Sykes, and Berkley, and this exhibit or the deposition contains 1, 2, 3, 4 exhibits, which are marked 1-A, 1-B, 1-C, and 2, and they will remain with the same numbers.

(So marked by the court.)

THE COURT: The next exhibit or deposition is the deposition of Naomi Kaye Kight, Armando L. Zanecchia, and John H. Kellam.

Are those Norfolk Terminal's?

MR. JETT: Norfolk Terminal's, right.

THE COURT: This would be Norfolk Terminal No. 10. This particular deposition does not refer to any exhibits within it.

(So marked by the court.)

THE COURT: The next deposition is that of Robert E. Jones and E. Lumis Lamm.

Whose exhibit would that be?

MR. JETT: That's Old Dominion, sir.

THE COURT: All right. In that case this would be Old Dominion No. 4, I believe.

(So marked by the court.)

MR. JETT: Your Honor, could I go ahead and read the interrogatories?

THE COURT: I believe that concludes the exhibits that have been presented. Are there any more depositions to be presented to be marked as exhibits?

MR. LEAFE: We had the four previous ones in.

THE COURT: I have 1, 2. We have the deposition previously of—

MR. LEAFE: Emminizer.

THE COURT: And then we have another deposition here of Wright and Larry Haywood.

MR. LEAFE: Yes, sir, you have them all.

MR. JETT: You have one of White.

MR. GAWRYS: Graham White. That was presented to you yesterday. Here it is right here, Your Honor.

THE COURT: Okay, fine.

All right, sir. Now we get on with the interrogatories that you want read in.

MR. JETT: All right, sir, I will fire away on those.

I would like to read into the record on behalf of Norfolk Terminal Corporation two interrogatories that were propounded by Norfolk Terminal Corporation to Phillip Morris.

The first one was Interrogatory No. 18: Was any objection or protest made in writing by Phillip Morris, Inc., regarding the payment of the IRS tax being claimed? And if so, give the date of this written objection and to whom it was made and the contents thereof? Answer: No.

Also Interrogatory 18A: Were any efforts ever made by Phillip Morris, Inc., to seek a credit for or refund of the IRS tax imposed? And if not, why not? Answer: No.

Interrogatory 18B: If the answer to 18A is yes, describe these efforts. And the answer again is: See answer to Interrogatory 18A.

Now as to—

THE COURT: You have a no-answer, but no explanation.

MR. JETT: Right, sir.

THE COURT: All right.

MR. JETT: As to Old Dominion, we would like to read in these interrogatories and the answers thereto on behalf of Norfolk Terminal.

The first is Interrogatory 6E.

MR. GAWRYS: Whose interrogatories you reading from now?

MR. JETT: I am reading from Norfolk Terminal's interrogatories to Old Dominion Freight Line.

The first one is 6E. Did defendant receive any form of receipts for said cargo? If so, please describe this receipt in detail and set forth all of its terms and conditions contained thereon. In the alternative you may attach a copy of this receipt to the answer to these interrogatories. 6A in Old Dominion's answer is: The only receipt is the stamp on the back of the delivery receipt. Photocopy of the stamp is attached.

6F, did defendant—and defendant here refers to Old Dominion—receive any other documents upon checking in said cargo? Please describe each other said document in detail, or in the alternative, attach a copy to your answer to these interrogatories. If you do not have such document, please state what happened to it. And the answer to 6F is "No."

6G, does defendant contend that any such other document as described in the preceding subpart of this interrogatory is a receipt for the cargo? If so, state which such document, if any, claimed is a receipt. No.

The next one I would like to read in is 15A: Has the defendant, that is, Old Dominion, subsequent to October 9, 1969, obtained trailer kingpin locks or fifth wheel pinlocks and made them available for use on the trailers as security devices?

MR. LEAFE: Judge, I would—

MR. JETT: If so, state—

MR. LEAFE: I would object to the admissibility of this particular interrogatory as evidence, because what may have

taken place subsequent to this happening is not relevant.

THE COURT: That's correct.

MR. JETT: If Your Honor please, there's already been testimony.

THE COURT: It's been testified to. As a matter of fact, there's been oral testimony on it.

MR. JETT: Certainly has. You are objecting nonetheless to the interrogatory?

MR. LEAFE: As to constituting any evidence on our part.

THE COURT: It is already in without any objection as to oral testimony.

MR. JETT: I will drop that.

MR. GAWRYS: May I suggest, Your Honor, why that would be in, why it would be particularly appropriate? Because the testimony is in that they got the pinlocks later, and there will be evidence that they use them. But one of the contentions on the part of Old Dominion is that they don't have—they claim that once it is on NIT premises, Norfolk Terminal premises, they don't have control.

THE COURT: I know what they are claiming, Mr. Gawrys, but it is the same thing, someone might get hurt in a shop and the question then arises what rulings or regulations did you establish subsequent to this man.

MR. JETT: If Your Honor please, I think this is a little different. I agree with Mr. Gawrys.

MR. GAWRYS: I'm not saying that's evidence of negligence, the fact they didn't have it before. What I am saying, this is an admission on their part that they still have control of the cargo after it comes on the premises of Norfolk Terminal Corporation and before it is unloaded; otherwise, why should they try to keep it under lock and key?

THE COURT: The testimony—I think the objection by Mr. Leafe to the interrogatory—is that subsequent to the theft have they obtained any—is that correct—and used them? This is, subsequent to October 9th?

MR. GAWRYS: Yes, sir.

THE COURT: Did they obtain any and did they use them?

MR. GAWRYS: Yes, sir.

THE COURT: And you want it in for the purposes of perhaps having relevancy it was still under their control and custody and care?

MR. GAWRYS: Yes, sir.

MR. JETT: I certainly do.

THE COURT: All right, sir. On that basis I'll permit the interrogatory and response. Note the exception of Mr. Leafe for the record.

MR. LEAFE: Note my exception.

THE COURT: Go ahead.

MR. JETT: A, please describe each such trailer kingpin lock or fifth wheel pinlock by its trade name and the name and address of the manufacturer. A in answer: Best Lock Company, distributed through Richmond, Virginia.

B, please state how many of these devices defendant now has in use. B, the answer: Forty.

Interrogatory 15C: When did defendant make the decision to use such devices, and by whom was this decision made? Answer: W.E. Chestnut, Sr., vice-president of the operations, subsequent to October 9, 1969, but exact date unknown.

D, why was the decision made to acquire these devices? D, as an extra security precaution.

E, has any trailer operated by the defendant been misappropriated or stolen after one of the trailer kingpin locks or fifth wheel locks were installed properly? Answer: No.

I would like to read Interrogatory 17A. Does defendant, either directly or through its subsidiary or related corporations, operate a truck terminal in North Carolina? If so, state: A, identify the closest terminal to Raleigh, North Carolina, which may have been operated by defendant on October 5, 1969. Answer: A, yes; Durham, North Carolina.

I would like to read Interrogatory 18A. Please state

whether any of defendant's management or supervisory personnel has knowledge or information or reports of the theft of a tractor-trailer loaded with cigarettes being stolen from Liggett and Myers, Raleigh, North Carolina, on or about October 5, 1969? If so, state: A, the names and present addresses of such persons who had this knowledge. A, it was learned of through newspaper articles. No details reported and a list of the people who might have known of the incident would be impossible to obtain.

18C, the name of the truckline which may have been involved and victimized by such theft. C, New Dixie Line.

I would like to read Interrogatory 25B. What documents, receipts, exceptions, et cetera, does Old Dominion normally receive from Norfolk Terminal Corporation or Norfolk International Terminals when a trailer of cigarettes or other cargo is delivered to or off-loaded at Norfolk International Terminals? The answer to that interrogatory is "Stamped waybill as indicated in A above. In addition, when freight is unloaded and its contents noted the waybill is signed."

30, was any type of lock or locking device placed on the trailer in question to prevent it from being moved from Norfolk International Terminals by Old Dominion? And if so, describe this device and when it was placed on the trailer. Answer to 30: No.

I think that's all.

THE COURT: Any interrogatories, Mr. Leafe, you want read in?

MR. LEAFE: No, sir.

THE COURT: Is there anything further? Do I understand now that all parties rest?

MR. LEAFE: Yes, sir, before—

THE COURT: Subject to you gentlemen waiting for the record to be written up and presenting memorandums and argument on your respective positions. Is that correct?

MR. GAWRYS: Yes, sir.

MR. LEAFE: Yes, sir. If Your Honor please, I would have a motion to make at this time.

THE COURT: All right.

MR. LEAFE: On behalf of the defendant Old Dominion Freight Line I would like to move the court to strike the evidence of Norfolk Terminal Corporation on its cross-claim against Old Dominion, that there is no showing—has been no showing by Norfolk Terminal Corporation that they would be entitled to recover or no negligence, nothing that Old Dominion Freight Line would be responsible for if delivery had been effected at the time of this loss, and I move to strike their evidence.

THE COURT: Again I'd have to overrule you at this time, because I have not read all of the testimony. The court doesn't have all of the testimony in mind as yet. I have only got that which I have heard and what exhibits have come in with oral testimony, but I have not read all of the depositions, so at this time I overrule it as premature.

MR. LEAFE: I note my exception, sir.

In addition, I would at this time like to renew my motion to strike the plaintiff's evidence as to the defendant Old Dominion Freight Line on the grounds that the evidence has established the delivery had been accomplished in accordance with the terms and conditions of the applicable bill of lading and that there was no further responsibility on the part of Old Dominion Freight.

THE COURT: That too at this time is overruled.

MR. LEAFE: Exception.

MR. JETT: We'd like to renew our motion at this time on behalf of Norfolk Terminal Corporation to strike the evidence of Phillip Morris Corporation on the grounds we reiterated earlier: There's been no proof of any contract and/or negligence on the part of Norfolk Terminal Corporation, and we'd also like to make a motion at this time to strike the evidence of Old Dominion Corporation as to its cross-claim against Norfolk Terminal Corporation and ask for—well, that's our motion at this time.

THE COURT: All of that too at this time is overruled.

MR. JETT: Note our exception, please.

MR. GAWRYS: If Your Honor please, I would like to

make a motion on behalf of the plaintiff Phillip Morris, Incorporated, to strike the evidence of the defendant Norfolk Terminal Corporation to the claim against it by Phillip Morris, and I would like to make a motion—to renew my motion to strike the evidence of Old Dominion Freight Line to the claim against it by Phillip Morris and to ask the court to enter summary judgment in both instances for Phillip Morris against both defendants and ask the court to reserve ruling on this motion until the court has had an opportunity to consider all of the evidence considering the depositions which have been presented.

THE COURT: The court would deny your motion for summary judgment at this point, because it is premature.

MR. GAWRYS: Just I asked the court to reserve it.

THE COURT: And will reserve on that. And in any event, overrules the second motion that you made at this time.

(Off-the-record discussion.)

MR. GAWRYS: We'd like to have after the reporter has finished the transcript thirty days to submit memorandum.

MR. JETT: Simultaneous filing within thirty days after receipt of the transcript.

MR. LEAFE: Fifteen days for reply thereafter, and then we could argue it if the court desires, which should give us plenty of time before we run into—

THE COURT: This being October 12th. Do you think you could have the record by November 15th? All right, by November 15th or sooner, if the reporter has the record out. You gentlemen have thirty days from the time the record is delivered into your hands to get up a memorandum, to exchange with each other and the court to have it, and then fifteen days thereafter for your responses.

* * *

JUDGE'S CERTIFICATE

I, Morris B. Gutterman, judge of the Circuit Court of the City of Norfolk, State of Virginia, who presided over the trial of the case of Phillip Morris, Inc., plaintiff, versus Old Dominion Freight Line and Norfolk Terminal Corporation, defendants, on October 11 and 12, 1972, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all the evidence adduced, all the exhibits offered in evidence, as well as all of the objections to the evidence or any part thereof offered, admitted, rejected, or stricken out, together with all motions and objections of the parties, all rulings of the court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of said cause.

As to the original exhibits introduced in evidence as shown in the foregoing record, to wit: Plaintiff's Exhibits 1 through 21, Old Dominion's Exhibits 1 through 4, Norfolk Terminal's Exhibits 1 through 10, and Court's Exhibits 1 and 2, which have been initialled by me for the purpose of identification, it is agreed between the attorney for the plaintiff and the attorneys for the defendants that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this case in lieu of certifying to the said court copies of said exhibits.

I further certify that this certificate has been tendered to me and signed by me within the time prescribed by section 8-330 of the Code of Virginia for tendering and signing bills of exception and certificates of record, and that reasonable notice in writing has been given to the attorneys for the of the time and place at which said certificate has been tendered.

This record was tendered to me on the day of 1972.

Given under my hand this day of 1972.

_____

Judge

CLERK'S CERTIFICATE

I, Hugh L. Stovall, clerk of the Circuit Court of the City of Norfolk, State of Virginia, do hereby certify that the foregoing is a true and correct copy of all the testimony, exhibits, and other incidents of the trial of Phillip Morris, Inc., plaintiff, versus Old Dominion Freight Line and Norfolk Terminal Corporation, defendants, together with the original exhibits therein referred to, duly initialled and authenticated by the judge who presided over the trial of said cause, and that the same were lodged and filed with me as clerk of said court on the day of 1972.

_____

Clerk

VIRGINIA:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INCORPORATED, a corporation, *Plaintiff,*	)	
v	)	At Law
OLD DOMINION FREIGHT LINES, a corporation, and NORFOLK TERMINAL CORPORATION, a corporation, *Defendants.*	)	No. L-70-1058.

Discovery deposition of Robert C. Talley taken before Ronald Graham, C.S.R., a Notary Public for the State of Virginia at Large, pursuant to agreement of counsel as to the time and place, at the offices of Messrs. Jett, Sykes and Berkley, 801 Bank of Virginia Building, Norfolk, Virginia, at 2:00 o'clock P.M., April 27, 1971, to be used in the trial of the above-entitled cause, pending in the Circuit Court of the City of Norfolk.

* * *

APPEARANCES: Messrs. Vandeventer, Black, Meredith and Martin (Mr. Joseph A. Gawrys), attorneys for the plaintiff.

Messrs. Rixey and Rixey (Mr. Joseph A. Leafe), attorneys for the defendant Old Dominion.

Messrs. Jett, Sykes and Berkley (Mr. R. Arthur Jett, Jr.), attorneys for the defendant Norfolk Terminal.

ROBERT C. TALLEY, called as a witness on discovery, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. JETT:

Q Would you state you full name, please.
A Robert C. Talley.

Q And your present home address?
A 5445 Curlew Drive.

Q Is that in Norfolk or Chesapeake?
A Norfolk.

Q Norfolk, Virginia. What is your present occupation?
A Truck driver.

Q By whom are you employed?
A Old Dominion Freight Line.

Q And how long have you been so employed?
A This July it will be nineteen years.

Q With Old Dominion?
A Yes.

Q Have you been employed in this area for most of that time?
A Yes, sir.

Q In this area. Now, do you have any particular duties that you perform at the present time for Old Dominion?
A No, sir, no more than—no more than the job down at NIT.
A Right, sir.

Q Approximately how long have you been doing this work at NIT?
A (No response)

Q What year did you first begin working down there?
A I think it was at least two or three years—at least three years I think because I have worked dock foreman and dispatcher.

Q Now, this work that you do at NIT—can you just briefly describe what you do at NIT?
A I take care of most of the deliveries and picking up.

Q That is of the trailers?
A Yes.

Q When they arrive and taking them away; is that correct?
A Well, if I get some load, you know, right many loads I call the dispatcher—will tell them what trailer to pick up and take back into the terminal.

Q What was that word you used?
A I call the dispatcher and tell them I have two or three loads, what trailer to pick up to carry back to the terminal.

Q Do you have an office at NIT?
A No, sir.

Q Do you have any particular area that you work in down there?
A Well, it's all around—different warehouses and Pier 1 and Pier 2, and you have—let me see—six or seven warehouses there, but I don't work in all of them.

Q But you don't maintain any office down there?
A No, sir, no office.

Q How about any particular books or records? Do you yourself keep any down there?
A No, sir.

Q You don't keep any sheets dealing with the number of trailers that are there at the present time?
A Oh, I put down the number of trailers which I have to call the dispatcher and let him know it's empty and stuff like that.

Q This is daily records that you keep?
A I don't exactly keep them. I throw them away. I give the information to the dispatcher.

Q You don't maintain any records that you turn in to your home office?
A To the dispatcher.

Q The day that we are concerned about with the theft of this particular trailer of cigarettes—on this particular day did you keep any records dealing with the time that this trailer arrived?
A I kept no records of it. No, sir.

Q No written records?

A No, sir.

Q All right. Fine. Do you have any records at all—any written notations, diaries, or work sheets for the day of this theft?

A No, sir.

Q None whatsoever? All right. Do you have any particular job title that Old Dominion gives you or just merely a driver with these other duties that you told us about?

A No, sir. The only job I got is down there which is take care of the unloading and picking up, and that's it.

Q What time do you normally get to work down there in the morning?

A I get there around 8:00 or five after 8:00.

Q What is your normal workday? Until what time approximately?

A Well, I generally get back in between 6:00, 6:30.

Q You get home at that time?

A To the terminal.

Q Back to your home terminal?

A Where I punch out at.

Q Where is your home terminal?

A On Providence Road.

Q Is that in Chesapeake?

A Yes.

Q Now, on the day of this particular accident or casualty that we are concerned with, you were at NIT when this trailer arrived?

A Yes, sir.

Q You were there. Can you tell us approximately what time that this trailer that we are concerned with arrived?

A Well, it was there after I came back from lunch, which I checked it in. It was about five or ten after 1:00.

Q And you say it was there. Where was it when you came back from lunch?

A It was parked in front of 1-A.

Q 1-A?

A Yes, sir.

Q 1-A. What area is 1-A? Could you describe it?

A Well, at NIT it's—it's the last warehouse back this way. (Indicating)

Q Was the tractor still attached to the trailer at that time?

A Yes, sir.

Q Where was it parked in relation to—1-A is the warehouse; is that correct?

A Yes, sir, the warehouse which you have containers—the customer backs up to this side. (Indicating) It's no warehouse. It's level cement ground there.

Q Right.

A Well, he was parked not right direct in front of 1-A warehouse. He was parked a little in—on this side. You can't park directly in front.

Q I see. Do you know who had placed the tractor and trailer in this position?

A Yes, sir. Church. He was the one driving it.

Q Do you know—do you remember his name?

A Church.

Q His first name?

A No, I don't know the first name. All I know is Church.

Q Did you know him before?

A I don't know. He hadn't been there too long.

Q I see. Was the tractor and trailer in a designated area? Can you remember exactly where it was in relation to any—to the warehouse itself or any other landmarks?

A Well, it was somewhere—well, it's close around—like I say, where the containers—where you check the customers—in front of 1-A on this end. (Indicating)

Q On which end? Let's get it on the record. What end is that?

A (No response)

Q Take your time.

A Let me see. I imagine we call it east.

Q All right. Okay. Where was the driver when you got back from lunch?

A He was in the truck.

Q He was in the truck?
A Yes.

Q All right. Now, did you have any discussions with him at that time, and, if so, what was said? Just roughly.
A Well, what I was—when I—when a driver brings a load down, I generally go to him and ask him what he had. He gave me the bill, and I went up there and checked it in.

Q He told you what was in it?
A Yes.

Q And what was in it?
A Which he gave me the bills.

Q And you looked at them?
A And I went up and checked them in and see the dock foreman, and the dock foreman said to back it up to 1-A.

Q You took the bills from the driver; is that correct?
A Yes, sir.

Q What bills were these? Do you remember? Are these the waybills?
A Well, this is the waybill.

Q How many documents are there? Is it original and several copies?
A On the free astrays there was two copies at that time and on the original bill it's three copies.

Q Do you remember what it was on this occasion?
A I think it was two copies.

Q Original and two copies? Take your time.
A I am not sure. It could be two or three. It could be a free astray.

MR. GAWRYS: What is that term you are using?

THE WITNESS: Free astray.
It could be either one.

BY MR. JETT:

Q Free astray. But you don't remember exactly?
A I am not sure about it.

Q Have you seen a copy of the waybill recently? Have you looked at it?

A No.

Q Do you remember what it looked like—this particular one?

A Not right off.

Q I will just show you a document. Is this the document or a copy of the document that you referred to if you remember?

(Document handed to the witness for examination.)

A Yes, sir, which that is. Ordinarily you wouldn't get but two copies. Well, at the containers which is later on they recommend three copies, which they have to hold one more back in files.

MR. GAWRYS: Off the record.

(Discussion off the record)

MR. JETT: Now, let's get the court reporter to mark this. Would you mark that then Talley Exhibit 1.

(Marked in evidence by the court reporter as Talley Exhibit Number 1.)

BY MR. JETT:

Q Are you certain this is the very document or is this just based on your recollection?

A I have a lot of bills that look exactly alike which is—it's a lot of them come down that look exactly like it. I believe I had a couple loads that morning of the same stuff.

Q Of the same thing?

A Yes.

Q Do you remember the number of this particular trailer?

A I think it was 4572.

Q I see. Which would be the number in the right-hand corner of this?

A That's right.

Q So you believe you had an original and two copies?

A I am not sure. On FA they used to put two copies, and I think NIT said they had to have another copy in the file for U.S. Lines.

Q All right. Now, so you got this from the driver; is that correct?

A Yes, sir.

Q Now, where did you go with it?

A I went to the receiving window and give it to the girl there and checked it in.

Q What does she do when she gets this document?

A She gets the document and she—which she has a logbook, and she logs it in and puts in the weight and generally marks it what warehouse it goes to.

Q All right. There is a number in the corner. Do you have any idea what that number is?

A Let's see. That was Number 23 truck that day. Let me see. I think that's why she put that number. Yeah, Number 23.

Q So she stamps the document then; is that correct?

A At that time—no, sir. I don't think she did.

Q You don't think she stamped the document?

A No, sir.

Q Does she give you anything back?

A No, sir.

Q She did not?

A No, sir.

Q She did not give you any receipt for anything?

A No, sir.

Q Then what did you do after that?

A Well, I went over and take care of some of my pickups and deliveries that I had.

Q How about this particular trailer? After you left the window where the girl was, did you go back to the trailer?

A I believe I went to Pier 1 or Pier 2 to pick up some delivery I had over there which I had so much—I had some to pick up at Warehouse 4F2, so I didn't exactly stay with the trailer.

Q When you last saw the trailer where was it?

A It was back up to the dock at 1-A.

Q Is that the same place that you described for us before?

A Where the driver dropped it at.

Q Where the driver had placed it?
A Yes.

Q Now, did you give the driver any instructions after you returned or after you left the window?
A Well, see, when I left the window I seen—which is—you know—the foreman and he told me where to put the trailer, and I went out in the meantime and told the driver where to back it up to the dock.

Q And you say somebody told you where to put the trailer?
A He generally tells me, you know, where to put it.

Q Did somebody on this occasion tell you where to put it?
A Yes.

Q Who was that?
A John Kellam.

Q And what did he say?
A Put it in Warehouse 1-A.

Q Put it at Warehouse 1-A?
A 1-A.

Q Is that where it was already located?
A Yes, sir.

Q That is where it had been placed by the driver?
A Yes, sir. When I told him to pull it up to the dock and drop it, and they put pallets underneath.

MR. GAWRYS: Excuse me. Can I get the spelling of that name?

THE WITNESS: Get the spellng of Kellam?

MR. JETT: K-e-l-l-a-m.

BY MR. JETT:

Q When did you talk with John Kellam? Was this after you went to the window?
A Yes, sir. It was five or ten minutes after 1:00.

Q Afterwards?

MR. LEAFE: He says five or ten minutes after 1:00.

BY MR. JETT:

Q Oh, after 1:00. It was after you went to the window?
A After I checked the load in.

Q So it was already at 1-A?
A No, it had not backed up to the dock yet.

Q Not backed up to the dock yet?
A No, sir.

Q So John said leave it there?
A Put it at 1-A.

Q Put it at 1-A?
A Yeah.

Q And you are certain this was John Kellam?
A Yes.

Q Is it standard procedure as far as you are concerned that drivers check in with you when they arrive?
A Yes, sir. They check in with me when they bring a load down.

Q I see. Do they normally do this before they check in with the terminal? Your drivers?
A They check in with me—which the dispatcher tells them to see me before they drop the trailer, which I have to see the bills and tell them where the freight is going to, where it's shipped.

Q All right. Fine. And I believe you said that you don't keep any reports or records as to how many Old Dominion trailers are on the premises?
A No, sir.

Q You try to keep it in your head?
A I generally tell the dispatcher how many empties I have and how many loads I have to pull back in.

Q I see.
A And how many loads which is left open, which I didn't off load.

Q All right.
A But I don't keep no record of it. I mean I keep it on a sheet of paper and throw it away that night.

Q And when a trailer such as this arrives at NIT and is to be off loaded, who determines whether or not it's to be left there

overnight, or not? Now, do you make that decision?

A No, sir.

Q Who makes that decision?

A Well, that's up to the terminal itself or the dispatcher.

Q What dispatcher?

A Old Dominion Freight Line.

Q I see. Well, does it all depend on the circumstances whether or not you will take it over to your terminal and leave it there overnight?

A No, sir.

Q Who determines that—whether or not one will be left at NIT if it can't be discharged?

A It's generally left there till the next morning to be unloaded.

Q I see. And who makes that decision? Your dispatcher?

A Dispatcher.

Q Your dispatcher?

A Yes, sir.

Q Did you discuss this with him on this particular day?

A Yes. I generally tell him what trailer which hadn't been unloaded and which had to be worked the next day.

Q And you told him it was going to be left at NIT?

A At 1-A.

Q At 1-A?

A Yes.

Q I see. Did he make any suggestion or did you that it should be taken back to your terminal and left there overnight?

A No, sir.

Q Approximately what time did the driver Church leave down there? Do you remember? When was the last time you saw him anyway?

A I think he left right after I—he dropped the trailer. I didn't see him no more, you know, after that.

Q I see. How does he leave the trailer? First of all, he will unhook; is that correct?

A Yes, sir.

Q Unhook the tractor?
A Yes, sir.

Q And how do you leave the trailer? Is anything put there to secure it in any fashion?
A Well, they back it up to the platform flat against it to be off-loaded, and they put pallets on the front of it to keep it from—you know—tilting up for security.

Q Was that done on this occasion?
A Yes, sir. It was pallets under it.

Q Did you see the pallets under it?
A Yes, sir.

Q So then the pallets had been placed under it before you went home; is that correct, sir?
A Yes, sir, which they will not—the ILA—you know, the shortshoremen and longshoremen—they won't unload it unless there is some pallets in front of it.

Q Now, did you yourself discuss with anyone else other than John Kellam for NIT the fact that this trailer was going to remain there overnight?
A No, sir.

Q When was the last time you saw the trailer? Do you remember on this evening? This was a Friday, was it not?
A Yes, sir. I think it was around 5:15 or 5:20 when I left there.

Q When you left?
A Yes, sir.

Q And where was the trailer situated at that time?
A Still backed up to 1-A.

Q Backed up to 1-A?
A Yes, sir.

Q Did it have pallets under it at that time?
A Yes.

Q I see. Did the trailer have a seal on it?
A Yes, sir.

Q Had the seal been broken at this time?
A No, sir.

Q Was there any particular reason why the trailer wasn't taken to your terminal for the night?

A No, sir. Well, which they ain't never pulled no loads back. With any loads which go down there is generally left there for the next day to pull back to. It would be expensive to pull the loads back into the terminal. I can understand that.

Q And was the driver from Richmond?

A No, sir. A local driver.

Q Church was local?

A Yes, sir.

Q Take your time.

A I am not sure. He could have been running the roads some and coming down there and drop it.

Q The shipment came from Richmond, did it not?

A Yes, sir. It came from Richmond.

Q I see.

A But he did run the road a little bit. I don't know whether he was running the road at that time or not. He works—stayed there a little while and then run the road.

Q Run the road—you mean hits the road; is that right?

A Yeah.

Q Now, did you discuss with anybody—I think maybe you did. Did you discuss with the Old Dominion dispatcher the fact that this particular trailer was going to be left there overnight?

A Like I say, if I—if there is something left over, I see what has to be worked.

Q But Old Dominion was aware of the fact it had to be left there overnight?

A I think they sent another man there the next morning to take care of it.

Q The man who came the next morning which was Saturday morning?

A Yes.

Q What was the reason for him going to NIT?

A Well, to see—well, if I had any freight left over there, they go down there and see if it's off loaded.

Q Is this a man named Bunche? Do you remember?

A I think it was.

Q Were you down there Saturday morning?
A No, sir.

Q Let's go back one more time. What was the reason for Bunche going down there Saturday morning?
A To take care of off-loading the cigarettes but he couldn't find the trailer.

Q What do you mean "take care of"? Be present when they were off loaded?
A Check in some containers, see that the cigarettes were off loaded.

Q Was he there to check on this very particular trailer?
A Yes, sir, to check on that too.

Q To see that it was spotted?
A I don't know what the dispatcher told him because I wasn't there.

Q Did you come back yourself after it was discovered that it was missing?
A No, sir. I didn't go in until Saturday afternoon.

Q Saturday afternoon. Was it customary to leave trailers loaded with cigarettes at NIT during this period of time?
A Yes, sir. I left them there before.

Q You left them there before?
A Yes, sir.

Q Were there others that you did not leave there? Were there others that—
A I have never—well, if there is any trailer load that had to be unloaded, they don't generally put it back into the terminal unless the ship has been delayed for too long. They may pull it back, but being they had to off load it the next day, they left it in there.

Q I see. Did you put any locks on the wheels of this trailer?
A No, sir.

Q Is there such a device as a fifth wheel pinlock? Are you familiar with it?
A Yes, sir. They got one now.

Q They have them now?
A Yes, sir.

Q Do they use them now?
A I use them.

Q Do you put them on trailers down there now at times?
A Yes, sir.

Q How do those devices work?
A You know where your fifth wheel hooks up to that pin? You take the lock and shove it up there and lock it. (Indicating) It keeps the fifth wheel from locking to it.

Q I see. And makes it rather difficult for somebody to move the trailer; is that right?
A Yes, sir. They can't move it unless they bust the lock.

Q Was there any reason why a fifth wheel pinlock wasn't put on this particular trailer?
A Right at that time we didn't have none that I know of.

Q I see. But Old Dominion does have them now; is that correct?
A Yes, sir.

Q Did you request anybody from the terminal to keep a particular close watch on this trailer before you left?
A No, sir. At least I am not—well, after all this mess I generally tell the guard at the gate—the security guard—

Q I see. To watch a particular trailer?
A To be on the watch out. I generally tell them that if—you know—something left open.

Q Something as valuable as cigarettes?
A That's right.

Q I see. How about a warehouse? Could this trailer have been put in a warehouse?
A They have Pier 1 and Pier 2 there.

Q All right.
A Which I have put them in there. I have left some cigarettes?

Q Do you remember whether or not NIT was requested to put this particular trailer in a warehouse? Did you do it yourself?

A No, sir. They generally leave it so they can get to it the next morning if their driver doesn't show up.

Q And I think you said that the last time you saw it was around 5:00—shortly after 5:00?

A Around 5:15 or 5:20.

Q And I believe you said it was backed up; is that right—

A Yes, sir.

Q —to the warehouse? So that would mean that the pallets then were—

A Placed in front of where your pins are—your fifth wheel.

Q I see what you mean.

A To keep it from tilting up.

Q I see. Did you or anyone else from Old Dominion do anything else to see that the trailer was secure other than just leave it there?

A No, sir, other than I go around to see if the seal is still there, to see—

Q Did you check the seal on this one?

A Yes, sir.

Q And it was all right?

A Yes, sir. It was all right.

Q Do you remember discussing with this particular driver, Church, whether it would be necessary for him to come back the next morning?

A No, sir, I don't have nothing to do with that. I mean—see, when they come there to see me and turn the bill over to me I generally tell them where to put the trailer and they generally call the dispatcher.

Q Who calls the dispatcher? The driver?

A The driver.

Q And would you know whether he did so on this occasion?

A Well, whichever one of them have to, they have to call the dispatcher.

Q But you weren't there when he called?

A No, sir. I wasn't.

Q Okay. And then if the dispatcher wanted it taken

someplace else overnight, then he would tell the driver I assume; is that correct, sir?

A Right, sir.

Q Now, I believe that you said that you did come back down to NIT the next afternoon; is that correct?

A Yes, sir.

Q And where did you go?

A No, sir. The FBI called me down.

Q They said come down?

A Right.

Q How about this other driver Bunche who was the one that went back down the next morning? Was he down there when you got there?

A I understand they had him working there that morning, but I don't know nothing about it. I didn't go in the terminal Saturday morning. I didn't work Saturdays.

Q But did you inspect the area where the trailer was when you last saw it?

A When I last saw it, it was backed up to the dock.

Q How about the next day? I am talking about Saturday. Did you go down?

A No, sir. As far as I went was inside the gate.

Q But you didn't go and look at the area where the trailer was?

A No, sir.

Q All right. Did you happen to know this fellow Larry Wright who was involved in this theft?

A I don't know him personally. I know him when I see him. Yes, sir.

Q Do you remember by whom he was employed at that time?

A Overnite.

Q Overnite?

A Yes, sir.

Q Did you see him?

MR. GAWRYS: Is that Overnight Transportation Com-

pany?

THE WITNESS: Yes.

MR. JETT: I think that's right.

BY MR. JETT:

Q Do you remember seeing him on this particular Friday?
A Yes, sir.

Q Did you have any discussion with him about this particular shipment at all?
A Hadn't even spoke to him.

Q Didn't speak to him at all?
A No, sir.

Q Do you have any idea how Wright or anyone would have found out what was in this particular trailer and whether or not it was going to be left overnight?
A No, I really don't, sir.

Q Or where it was located?
A No idea.

Q Did you discuss this trailer—what was in it and what was going to be left with anyone other than the driver?
A No, sor. The only one I discussed it with was the warehouse foreman, which there was a lot of times the drivers are standing around, and when I say, "Are you going to unload this?" they could have overheard that. I don't know.

Q But you didn't know Wright personally other than the fact that you had seen him around?
A I just seen him, and that was about it.

Q How long had he been working around there? Do you remember—before this.
A I don't know right off. I don't think he worked down at NIT. I think—mostly I think he worked C and O, you know, which Overnite had a number of drivers over there working at that time. I think the guy was down there working containers or something like that.

Q Yeah?
A They used to have a regular man down there now like I am for Old Dominion.

Q Was he a regular man down there for Overnite on any basis?

A No, sir. He was not a regular man. He just happened to be down there that day.

Q One other thing. Wasn't one of the Old Dominion tractors used to remove this trailer from the premises?

A That's what I understand. I don't know nothing about it.

Q You don't know anything about that?

A No, sir. I was told that it was one of Old Dominion's tractors used.

Q Do you know where it was obtained from?

A I understand it was from Lamberts Point docks.

Q Lamberts Point docks. Do you all normally leave the tractors at Lamberts Point docks or NIT?

A Yes, sir. This one they did at Lamberts Point docks. NIT didn't leave no tractors.

Q Do you know why this one was left?

A Yes, sir, because a lot of cases at Lamberts Point dock—they wouldn't unload it unless you had a tractor.

Q Does Old Dominion leave the keys in the tractor?

A No, sir. I think they generally hide them somewhere. I mean they leave them in a place.

Q They normally put them under the floorboards?

A Where the driver knows where to get to them.

Q That is something they tell the driver?

A Yes, sir.

Q Are they sometimes left in the tractor?

A No, sir. Ain't supposed to be left in the switch.

Q I don't mean in the switch necessarily, but are they sometimes left in the tractor itself?

A They may be left in there so—I mean the driver may leave them—may put them in his pocket. I don't know. I don't know about this case, which he taken care of—the way they take care of Lamberts Point docks is altogether different to me.

Q Well, do you know anything about whether or not any keys were left in this particular tractor?

A No, sir.

Q Do you have any personal knowledge of how they obtained this tractor from Lamberts Point?

A No, sir.

Q Did you have anybody else working with you at NIT on the day of this—this particular Friday when this trailer was discovered?

A No, sir.

Q I guess there would be other drivers coming and going from time to time?

A Yes, sir. They bring a load coming out and maybe pick up a load to go back.

Q How many trailers on the average a day approximately would just Old Dominion have coming and going? I guess it varies from time to time?

A Well, it varies because you have—which is containers involved here.

Q Right. I notice one more thing. On this waybill I notice it says in the corner something about a duplicate. Is there any reason for that? Where would the original be?

A The original bill—

Q If you know?

A This is the original code number. This is. (Indicating)

Q Now, 577471?

A That's supposed to be the original pro number.

Q But it says "Duplicate".

A Yes.

Q I am asking if you know where the original of this is.

A No, I really don't.

Q Is this a copy of the very one that you presented to the girl? Do you remember or do you know?

A Well, it's a copy like that.

Q Yeah, yeah. But you don't know whether the one you presented had "Original" on it or whether it had "Duplicate" on it?

A No, sir, I am not sure about that. All I know, it's a load of cigarettes, which I think it was—well, it was for the Belgian Line, wasn't it?

Q Well, the shipment was consigned to that—
A Yes, sir.

Q Right. I think it was. Right. Well, as a document such as this, isn't it eventually signed by someone for the terminal?
A Yes, sir, generally they signed it NIT and whatever the checker's name is, and which I signed here. (Indicating)

Q Where would you sign?
A I put the date here, and then I signed here. (Indicating)

Q Over on the right where it says "Driver"?
A Yes, sir, and which if we unload a thousand cases, I put a thousand cases.

Q When did you sign it?
A After I unload it.

Q When do they sign it?
A After they receive it.

Q After it's unloaded?
A Yes, sir.

Q All right. Maybe you don't know this. Is there any billing by Old Dominion to the terminal for any work done by the terminal or do you know or would that be something that Mr. Lamm would know more about?
A Let me see. Whichever bill that—that should be made in Richmond.

Q I see.
A Sometimes it's not. The shipping order may come down to Norfolk and they have to bill it there.

Q I see. Did you ever receive any documents back from the terminal in regard to this particular shipment?
A No, sir.

Q I don't guess—you didn't make any investigation as to how this theft was perpetrated yourself?
A No.

Q Is it customary for either the driver or you to be present when the trailer is off loaded? Do you try to have someone present?
A No, sir, which—like I say, I ain't but one man, and I got

all the other trailers to work, and there ain't no way unless you stay with that one trailer continually while it's there.

Q Right, right. How about your drivers? If they arrive on an afternoon—excuse me—say if a trailer arrives in the morning and they can get to it right away, does the driver normally stay around while they off load it?

A No, sir.

Q He does not normally do so?

A The reason why, because there are too many trailers at one place.

MR. JETT: I see. Off the record a minute.

(Discussion off the record)

BY MR. JETT:

Q Had Old Dominion had any trouble with any shipments of cigarettes being stolen prior to that that you know of?

A Not that I know of.

Q Does Old Dominion normally do anything so far as taking any particular precautions if there is a shipment of cigarettes in a particular trailer that is left at NIT? Would you do anything out of the ordinary?

A If I am not too busy, I generally stay around it close. If I am not too busy.

Q How about if it's left overnight, would you put a fifth wheel pin on it now?

A Right now. I got one on the tractor—one I keep on there.

Q In case you need it?

A If I ain't got enough, I generally call the dispatcher to tell him to send some more down.

Q Did anyone for the terminal tell you that they would post a particular watch or guard on this trailer that you remember?

A No.

Q How about when these trailers are off loaded and, like you say, that you can't be there, you know, watching it the entire time?

A Um-hum.

Q What is normally done when they complete the off

loading? Are you notified in some fashion?

A No, sir. I generally go back in and check the first chance I get.

Q The first chance you get?

A Yes.

Q I see. And then you make arrangements to move the trailer away?

A Right. Away from the docks so we can put something else up.

Q Right. So you can put something else there?

A Yeah.

Q How about moving these particular trailers around the premises down there? Do you do that with one of your tractors normally or how is that done?

A I pull them all away from the dock when they empty them so they can get some more loads up there, which they don't have too much room as it is.

Q You keep a tractor there yourself?

A I keep one. When I—I keep one that I drive—I go down with and come back with.

Q You keep it?

A I use it during the day.

Q You keep it there to use during the day?

A Yes, which I use during the day. Yes.

Q How about getting these trailers back off the premises down there? Would you do that with one of your tractors or is that right if you wanted to take it somewhere?

A I would say—you said off the premises?

Q Yeah. How would you get it off? Would you have to get a pass for it?

A For an empty trailer you don't need a pass.

Q I see.

A For a load, you have to present a bill now, and you have to—you get the bill stamped—I mean the pass stamped, and you have to sign your name, and she logs your name in on her log.

Q I see. Mr. Talley, is Church any longer with Old Dominion?

A No, sir.

Q You don't know—do you know why he left Old Dominion?

A I think they let him go. I am not sure, but he turned a tractor and trailer over. I think he must have went to sleep. It took an hour and a half to get him out of the cab.

Q Just one last thing. Now, you mentioned that you had discussed leaving this trailer at 1-A with John Kellam and what time was that again roughly?

A Around 5:15, 5:20 when I left the terminal. I mean when I left—

Q No, no. I am talking about—you said that you discussed leaving this trailer at 1-A with John Kellam at a certain time. I thought you said earlier—

A Now, at a certain time I might have talked to John Kellam about unloading it. I think it was around 4:00 or 5:00.

Q And what was said at that time?

A I said, "Are you going to unload it?" And he said, "No, I think we may have to wait till tomorrow to unload it."

Q Was that the first time you talked to John Kellam?

A I may have said something later on. I am not sure.

Q When is the very first time that you discussed this trailer here with John Kellam and what was said?

A Between 3:00, 3:30, 4:00, 5:00. It was in the afternoon. I don't know the exact time. I know I did discuss it with him whether he was going to unload it.

Q I see.

A And he said, "Well, we may have to get it tomorrow."

Q I see. Was anything said about leaving the trailer where it was at 1-A?

A No, sir.

Q Is that the only time you remember talking to Kellam on this particular Friday?

A Well, I may have talked to him all day. I had a lot of other trailers now working off the same platform—job.

Q Right. What I am getting at, was anything said about leaving it at 1-A, and, if so, what time was this discussed?

MR. LEAFE: What do you mean by leaving it? I think it's causing a little bit of the problem, Arthur. Are you talking about spotting it initially?

MR. JETT: Right.

BY MR. JETT:

Q What I want to get at is what time—you said that you discussed the fact that trailer was going to be left at 1-A with John Kellam; is that correct?

A Like I say, I think it was around 4:00, 5:00 when we discussed, and he said, "We may have to get it tomorrow morning."

Q And the trailer at that time was located at 1-A.

A And generally when it's at 1-A they generally tell you to leave it there and they will get it at 9:00 the next morning and off load it.

Q So the trailer at that time had been placed by the driver at 1-A?

A At 1-A.

MR. JETT: I see. Okay. I think that's all.

EXAMINATION BY MR. GAWRYS:

Q Mr. Talley, let me ask you just a few questions, sir. This shipment was picked up in Richmond, was it not, sir?

A Yes, sir.

Q And that would have been picked up by your driver Church?

A No, sir.

Q By whom?

A I don't think so. That was picked up by the Richmond city drivers.

Q By one of the Old Dominion Freight Line drivers in Richmond?

A That works in the city.

Q I see.

A Which I think they have a driver, and I think they have a helper to load it.

Q I see. You—

A Which I can't tell you what road driver brought it to Norfolk. I wouldn't even remember. The only one I know is who brought it down to NIT and give me the bill. That's the only one I know.

Q The only thing you know is that NIT brought it to you, but you don't know where he picked it up?

A No, sir.

Q So conceivably Old Dominino Freight Line would have a certain driver and helper pick it up in Richmond and take it to its terminal in Richmond?

A Take it to its terminal in Richmond, which they would have the road driver to bring it to Norfolk, which the Norfolk terminal would dispatch it from there, and then NIT—

Q I see. Now, if you know, what documents are given to the shipper in Richmond when one of your drivers picks up a shipment?

A Well, it would be a shipping order.

Q A shipping order?

A Yes, sir.

Q Is that what your company would give to the shipper?

A No, sir, which they get—well, yeah. Well, it's liable to be a bill of lading, which the driver will sign the copies.

Q I see.

A And get the shipping copies and carry it back to the terminal, and they bill it from there.

Q I see. And the document which you had earlier identified, Talley Exhibit 1—that is a waybill; is that correct, sir?

A Yes, sir. Well, this is what you call—well, it's an FA—which you have a master bill. It's liable to be three or four or five loads. They use that same pro on all loads until that bill is completed to cover, you know, the total which was on the master bill.

Q Well, this is probably one of several waybills covering that particular shipment; is that right?

A Yes, sir. Like I say, the company, having two or three loads of it, which you have a master bill and you may have one or two more FA to complete it, but you can't have it all on one bill.

Q How many cases of cigarettes would have been on that trailer?

A A thousand cases.

Q A thousand cases. And this waybill is for that particular trailer?

A Yes, sir.

Q And where was this carried? How was it carried? Where did you get it?

A Well, I checked it in at 1-A. I ain't never hooked to nothing. The driver put it up to the dock. I just turned the bill in.

Q Where did you get the waybill?

A Church gave it to me. The driver.

Q I see. Now, I have—I hand you two documents and ask you if these are the type of bills of lading which your Richmond office would give to the shippers. These are Zerox copies, of course, sir.

(Documents handed to the witness for examination.)

A Yeah, that's the straight bill, and that's the original bill, and we would have the shipping order—one just like it.

Q Um-hum. By "we", what do you mean, "we"?

A Old Dominion.

Q The Richmond office or the Norfolk?

A Richmond—

Q I see.

A —would take that and then go ahead and then make a bill on this.

Q The Richmond office would make the shipping order and prepare the bill of lading, and isn't that correct, sir?

A Yes, sir.

Q And the two documents I have handed you would be copies of the bill of lading; is that correct, sir?

A That's right, sir, but you have—which on this here—if it's 3,000 cases, they should have made a master bill and then made two FA's like that.

MR. GAWRYS: Can we mark these as Talley Exhibit 2 and 3.

(Marked in evidence by the court reporter as Talley Exhibit Numbers 2 and 3.)

THE WITNESS: If this called for 3,000 cases—just like you take that 108,000 pounds—well, if this was the master bill and—well, this would be the FA on this, and there would be an FA on the other thousand cases. But you can't put a thousand cases on the trailer so it actually would be three loads.

BY MR. GAWRYS:

Q I see. In order that I may understand it, your company gets a shipping order from Phillip Morris in this case?

A Yes, sir.

Q And then your company prepares a bill of lading which is given back to the shipper; is that right?

A You got two or three copies here. There is three copies—you know—to a regular bill of lading. You got the original, and there is another one, and then you have a shipping order.

Q I see.

A Well, the driver picks it up. He signs it.

Q The driver signs what?

A That picks up the load. He signs the bill of lading right along here. (Indicating)

Q This is the Old Dominion driver?

A Right. Then he takes the shipping order on back to the terminal which would be Richmond and gives it to the dispatcher, and they go ahead and make a bill like this. (Indicating)

Q Speaking of a waybill which was marked Exhibit Number 1?

A That's right. They will make a—what you call it? If it's 3,000 they make a master bill and two FA's to take care of three loads.

Q The documents which have been marked Exhibit 2 and 3 have someone's signature in the right-hand side under "Agent, per" and there is a signature. Number 2 looks like it's Willey, and Number 3 looks like somebody named Shook. Would these be the Old Dominion drivers?

A Whoever picked it up. They are supposed to sign for the load, and then they pick it up.

Q Do you know whose signatures these might be?

A Let me see. What is that? Willey—I can't hardly make that out.

Q How about the next one, Number—Exhibit Number 3?

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

Q All right, sir. Now, turning to Exhibit Number 1, the initials—letters FA are in this column. What does that column stand for?

A They are what you call—it's what you call a free astray.

Q What is a free astray?

A It's FA—it covers the master bill. It's got the same pro up here. (Indicating) You have a master bill made first on the original bill. Then they type out a couple of FA's to cover that master bill, which they have to go by the pro up here.

Q By the pro, you are referring to the numbers 577471?

A Right. Then there—and it wouldn't be completed until they got these two copies back.

Q All right, sir. Now, what does this indicate? It says off trailer 4572 Rich.

A I think that's the trailer they had it loaded on. That's Trailer 4572 Richmond.

Q I see. The R-i-c-h stands for Richmond?

A That's right.

Q Now, when the truck driver Church delivered the trailer and tractor to Norfolk International Terminals, you then got the waybill from him and went over to the receiving clerk; is that correct, sir?

A Yes, sir.

Q And the receiving clerk then stamped the waybill; is that right?

A No, sir.

Q What did she stamp?

A At that time I don't think she stamped it. They log it in.

Q That is a poor copy of this document we have marked

Talley Exhibit Number 1. Would you like to compare it? Some of the figuring hasn't come out.

(Document handed to the witness for examination.)

All right, sir. This document that I am showing you consisting of two pages—it's a Xerox copy, and it appears to be a Xerox copy of the document which has earlier been marked Exhibit Number 1. However, it is not as legible. See the thousand. The figure thousand didn't come out, and the CS didn't come out plainly, but other than that does it appear to be a copy of that document, sir?

A Yes, sir.

Q So the second page appears to have a stamp. Is this the type of stamp that you are referring to that Norfolk International Terminals places on shipping documents?

A Yes, sir. It's a stamp like that they got.

Q When did they place that stamp on?

A Every time I take a bill in now they stamp it.

Q You are talking about the waybill?

A Yes, sir. Bills just like this here which I carry one in. (Indicating)

Q Um-hum.

A And they turn it over on the back and stamp each one what time they brought the trailer in.

Q They stamp it on the back?

A Yes, sir.

Q And you leave the waybill with them or take it?

A I leave it with them and don't pick the bill up until after it's unloaded.

MR. LEAFE: I believe the FBI has the original.

MR. JETT: I think so.

BY MR. GAWRYS:

Q Do you know if they stamped that waybill at the time when they logged it in?

A I am not sure right then if they used it or not, but I know they use the stamp regular now. I ain't going to say for sure that they did at that time.

Q I understand but—

A But as of this time they are using that stamp regular every time a bill is turned in there at NIT.

Q That is what I am trying to get at. When did they put the stamp on it?

A As soon as she logs it in.

Q As soon as she logs it in?

A Yes, sir.

Q What does that signify to you when they log it in? What is the purpose of that?

A Well, they log it in on their book. Well, different ships—they got to have the ship's name and all that I guess to keep a record of it for themselves.

Q To whom does that trailer belong at that point when they log it in? Who has control of the trailer?

MR. LEAFE: I object to this line of questioning. This is discovery.

MR. GAWRYS: What do you think it is?

MR. LEAFE: It's a legal conclusion.

MR. JETT: Yeah, I don't think so.

MR. LEAFE: No. It's a legal conclusion, and I object to the question. I din't—he can answer anything as far as facts are concerned, but he is not in a position to express an opinion on who has control of it.

MR. GAWRYS: Well, let's go on down and see the Judge about it because I am not going to sit here.

MR. LEAFE: All right.

MR. GAWRYS: I am not going to sit here and argue every question.

MR. LEAFE: You asked one question, and you don't seem—

MR. GAWRYS: I am trying to find out what's going on down there as to who keeps—moves the truck around.

MR. LEAFE: Well, ask that question.

MR. JETT: I don't have any objection.

MR. GAWRYS: Well, this is petty.

MR. LEAFE: You are petty when you ask for a legal conclusion. If you ask him who is doing what with the bills and the truck, fine.

MR. JETT: See if—

BY MR. GAWRYS:

Q Who keeps control of the truck—of the trailer, rather, after that stamp is put on the waybill?

A Well, the trailer is left there for them to off load.

Q All right, sir. Do you move the trailer around or they move it around?

A The only time I move it around if I have more freight on there going to a different warehouse.

Q All right, sir.

A But if it's one shipment, they unload it at the same spot the trailer is spotted.

Q So is it the practice to actually turn over the trailer and its contents to Norfolk International Terminals?

MR. JETT: Now, I object. That is what we been over. You could ask him questions. You could ask him facts.

MR. GAWRYS: That is what I am asking.

MR. JETT: It's a legal conclusion.

MR. GAWRYS: No, it's not.

MR. JETT: Yes, it is.

BY MR. GAWRYS:

Q What is the practice followed by Old Dominion Freight Line and Norfolk International Terminals?

A Well, let me see. When you say "turn the trailer over", what? To NIT?

Q Yes, sir.

A All I do is check the bills in and drop the trailer.

Q You drop the trailer?

A Yes, sir, and—and to be off loaded.

Q And who moves the trailer if it has to be moved?
A If it has to be moved. When it's empty, I move it.

Q You move it?
A Yes, sir.

Q That's after it's emptied?
A Yes, sir.

Q Suppose it has to be moved while its still loaded?
A If it has to be moved to another place. I guess—yes, sir, I have to move it.

Q You have to move it?
A Yes, sir.

Q Do you have to get permission from NIT in order to move it?
A No, sir. The foreman tells me to move it to another door, and if it has to be unloaded at another warehouse I move it or if it has to be moved to the pier I move it for them to unload it.

Q The foreman tells you to unload it?
A Yes, sir. That's the only time I move it.

Q And by whom is he employed?
A NIT.

Q And on October 10, 1969, who was the foreman?
A John Kellam.

Q What was your normal quitting time that day?
A Around 5:15 or 5:20 or a little after.

Q Who took over for you?
A Nobody.

Q So Old Dominion had no one on the premises then?
A No, sir.

Q Do you know how long John Kellam worked?
A I think he—I think he gets off at 5:00 unless he has some gangs work overtime. Sometimes they have some gangs around there work overtime, and he stays later.

Q I see. All right, sir. Now, would you get—would you sign—would you get any sort of receipt from Norfolk International Terminals for the shipments delivered to them?

A I wouldn't get no receipts until they are unloaded, and then I get the bill.

Q I see. So they would not give you any receipt until the shipment was unloaded, is that correct, sir?
A Yes, sir.

Q And then what would they give you?
A They give me a delivery receipt.

Q And what does that delivery receipt signify in the trade?
A Whatever merchandise is on the trailer.

Q That signifies they have received that merchandise?
A Yes, sir.

Q And is it customary in the industry at that point when Norfolk International Terminals takes control of the shipment?

MR. LEAFE: I object again, Joe. I think that is a legal conclusion.

MR. GAWRYS: I am just asking him what the understanding is in the trade.

BY MR. GAWRYS:

Q How long have you been in this business?
A I been in nineteen years.

Q And how long have you been working in Norfolk International Terminals?
A Like I say, I don't think it's been over two or three years.

Q And where did you work before that?
A Still Old Dominion. I worked dispatcher and warehouse foreman and dock foreman.

Q Just for my understanding, is it at that point that the NIT would take control of the shipment when it was unloaded and you received the receipt for it?

MR. LEAFE: Subject to my objection he can answer the question.
If you know.

A Well, like I say, when they received the shipment, if they received it all in good order—

MR. JETT: Subject to whatever exceptions.

A (Continuing) Unless there is an exception to which they had noted.

MR. JETT: Right.

BY MR. GAWRYS:

Q And is it your understanding that the receipt means that NIT has control of the shipment?

A Right, sir.

Q All right. Now, what is your understanding as to who has control of the shipment up to the time that they begin the unloading operation?

MR. LEAFE: Objection. Same objection. It's a legal conclusion that he is not in any position with Old Dominion Freight Lines or anyone else to answer that question as to who has control.

BY MR. GAWRYS:

Q I am just asking. Subject to his objection, would you answer the question, sir.

MR. LEAFE: If you are in a position to know the answer to the question, you can answer it subject to the objection.

BY MR. GAWRYS:

Q I am just looking for your understanding of the situation.

A All I am interested in—the trailer is unloaded, and the bill is signed and clear, and that's all I need.

Q Yes, sir. What I am after is up to the time that they begin the unloading operation. What is your understanding as to who controls the shipment at that point?

A I couldn't say. I check the bill in. I couldn't say.

Q I see. You don't know?

A I check the bill in to be off loaded.

Q All right, sir. Now, you mentioned earlier that your dispatcher makes a decision as to whether a trailer should stay at the terminal overnight or be returned to the premises of the Old Dominion Freight Line; is that right?

MR. LEAFE: Excuse me. I don't think that is—as I recall, I think he said there was an "or" in there. He said somebody at NIT, and I don't think—I don't know who he said. I think he said, "or the dispatcher."

BY MR. GAWRYS:

Q First of all, do you know what the practice is by Old Dominion Freight Line? Do they simply send the trailer to NIT or could they check and see if NIT is ready to receive it?

A They check with the broker first, and they tell him where to send it and what time, and which the trailer has to be there at a certain time to be off loaded.

Q I see. Now, when the trailer arrives at NIT and it has to stay overnight or if it cannot be off loaded until the next day as occurred in this case, who makes the decision whether the trailer should stay at the premises of NIT or be returned to the premises of Old Dominion Freight Line?

A Well, on two or three occasions I—the foreman said, "Leave it up here, and we will unload it the next morning." I have left two or three or four loads down there.

Q Does your dispatcher—

A Which he knows—

Q Let me ask the questions so he can take me down and then your answer. Does your dispatcher enter into this decision at all?

A No—well, which I tell him the trailers which will be off loaded. The dispatcher don't have too much to do with it.

Q I see.

A Because he leaves me to see that they are unloaded.

Q Could you have taken the trailer back to Old Dominion's premises that night?

A Well, on a case like that they generally tell you to leave it up to the dock and they will get to it the first thing in the morning.

Q Did you have the authority to take it back to Old Dominion?

A No, sir, I don't have no authority. I have to get the okay from the dispatcher. Whatever trailer he tells me to bring back, I bring back.

Q Could the dispatcher direct it be returned?
A Which, if they did, I guess it would be a redelivery.

Q I understand. The dispatcher could have directed this?
A Well, most of the time they want it there so they can get it the first thing in the morning because the driver is liable to be late getting there. It's liable to be broke down before he gets the load back down there, and they been waiting on the shipment.

Q This would be a decision to be made by Old Dominion Freight Lines I take it?
A Well, like I say, it's the decision of them, but then NIT wants the cigarettes and if they back up again at the terminals that would be a redelivery.

Q I understand.
A So I don't have nothing to do with that.

Q Did you receive up to the time that the shipment was stolen—did you receive any receipt from Norfolk International Terminals acknowledging that it had taken custody of the shipment of the trailer?
A No, sir, no receipt.

Q All right, sir. Could you have arranged for a security guard to guard the vehicle that night or the trailer that night?
A No, sir, I don't see how I could.

Q You don't? Could you have asked your company to have done this?
A Well, they had secured at the gate.

Q Who provides the security at the gate?
A I think NIT does.

Q I see. Well, how does material move on and off the premises of NIT?
A I reckon you got to have a pass, and you have to sign your name to the pass. It has to be stamped a certain time that they give you the pass.

Q What was the practice on October 10, 1969, or October 9, 1969, the time the shipment was stolen?
A I don't know.

Q Well, how would—how would one of your drivers—how would any tractor driver move on and off the premises of NIT

with a trailer and a tractor?

A Well, right at that time—most of the time you tell them what's on the trailer, and they give you a pass, and you go on there.

Q What would you do going through the gate?

A All I do is give them the pass.

Q You just gave them the pass?

A That's right.

Q From whom did you get the pass?

A NIT.

Q Which particular person at NIT?

A Any of them. Any of the shipper, receiver—any one of them.

Q Anybody could give you a pass. Now, would that pass be then turned in at the gate?

A Yes, sir, the guard would get the pass.

Q He would then get the pass?

A Right, sir.

Q Do you happen to know who was the dispatcher for Old Dominion Freight Line on the date this particular shipment was delivered to NIT?

A Let me see. I think back now. I don't remember right off. They had two or three since then.

MR. LEAFE: I am sure our records will reflect that. I will provide that.

MR. GAWRYS: Would you?

MR. LEAFE: Yes, that's all right.

MR. GAWRYS: And can you furnish me the names of the people on guard, the security guards at NIT?

MR. JETT: I think so.

MR. GAWRYS: And can you furnish me with the property pass which was turned in?

MR. JETT: I think so. I think so.

MR. GAWRYS: Okay.

BY MR. GAWRYS:

Q Now, you had mentioned that you used a fifth wheel pinlock now?

A Yes, sir.

Q Is that a new invention or had that—

A It's the first time I ever seen one. I will be honest with you.

Q I see.

A The first time I ever seen one.

Q Um-hum. Do you know where it was obtained—the one you use now?

A Well, you mean where it come from?

Q Yes, sir.

A Well, I think we got it from the terminal, which I keep one on my tractor all the time now.

Q I see.

A Just in case I have some load that has cigarettes on, I put the pinlock on and seal it.

Q Um-hum. But I take it this is not a new development?

A Well, it's mostly I guess for security.

Q Yes, sir. But this isn't something which was invented subsequent to October, 1969?

A I couldn't tell you that. I don't know. Like I say, it's the first time I seen one.

Q It is provided for you now by Norfolk International Terminals?

A No, sir.

Q Who provides it?

A Old Dominion.

MR. JETT: I think that's what he meant when he said terminal. Is that right?

THE WITNESS: That's right.

BY MR. GAWRYS:

Q Now, you knew that the trailer contained a shipment of—a valuable shipment of cigarettes, did you not?

A That's what the bill said.

Q And when you turned it in to the receiving clerk at NIT, the receiving clerk knew what it contained?

A Right.

Q Was this a man or a woman—the receiving clerk?

A I am pretty sure it was a woman because they had right many there during that time, but I couldn't tell you which girl it was at that time.

Q Um-hum.

A Because they have two or three in the office worked the same window sometimes.

Q Now, there were several people charged with the theft of the shipment. Did you know any of them except for the one you mentioned?

A That's the only one.

Q You didn't know the rest of them?

A I knew only him when I seen him, but that was it.

Q You don't know the rest of them?

A No, sir.

Q I am not familiar with the premises of Norfolk International Terminals, Mr. Talley. You mentioned that your tractors are kept at Lamberts Point docks?

A Well, I mentioned that I understood that the one—you know—that went down there was one from Lamberts Point docks.

Q I see.

A Yeah, just this one tractor kept there with that driver all the time. At NIT there is no tractor kept down there.

Q I see. How far is Lamberts Point dock from NIT?

A I would say around six or seven miles—somewhere around there I reckon.

Q Who told you the—that Old Dominion tractor was used to take the trailer?

A Mr. Lamm, the management.

Q Mr. Lamm?

A Yes.

Q He is with Old Dominion?

A Yes.

Q Does the security guard check any tractors that go through the gate at NIT?

A No, sir. They do not check no tractors.

Q Anybody can just drive on there with a tractor?

A Yes, sir.

Q Can anyone just drive out with a tractor and trailer?

A No, sir. Not with a trailer.

Q Um-hum.

A Right now if it's empty you don't need a pass, but if you got freight, they look in the back.

Q They actually check it now?

A Right, but if you got freight on it you got to have a pass.

Q What was the practice on October 9th or 10th, 1969? Did they actually check the trailer at that time?

A They would—yes, sir. They would check it if the trailer was empty—see if it was empty.

Q They would check it?

A Yes, sir. Then they would tell you to go ahead, which you don't have to have a pass, but if you had freight on there, you would have to have a pass.

Q So then, based on the practice in effect at that time, this trailer could not have gotten past the guard without a property pass; is that right, sir?

A Well, I understand if they had freight on it, yes, sir, it was supposed to have a pass.

Q And that pass would be turned in to the guard?

A Right, sir.

Q Now, would the guard check the trailer to see if it had property on it described on the property pass?

A I would think he would check the number, but he very seldom ever checked what was inside the trailer.

Q I see.

A He would check the number on the trailer.

Q Have you given anyone any written statements concerning this incident, sir?

A No, sir.

Q Any insurance investigator or anyone else?
A Insurance. Yes, sir.

MR. LEAFE: I have a written statement.

THE WITNESS: Yes, I have given a statement.

BY MR. GAWRYS:

Q You have?
A Yes, sir.

Q And have you read this statement any time recently?
A Yes, sir.

Q When did you look at it, sir, last?
A This morning. I mean—yes, sir. This afternoon.

MR. GAWRYS: May I see a copy of that statement, Joe?

MR. LEAFE: Yeah, sure. Let me see if I can find it.

(Document handed by Mr. Leafe to Mr. Gawrys for examination.)

MR. JETT: Off the record.

(Discussion off the record)

BY MR. GAWRYS:

Q Now, Mr. Talley, back at the time that incident occurred, what did you have to do to get a property pass to take the trailer—a loaded trailer off the premises of NIT?
A At that time all you had to do was go up there and say, "I got so and so on the trailer," and get the pass and go on out.

Q Would they check any credentials on anything?
A No, sir.

Q Nothing at all. Is that the practice today?
A No, sir.

Q What do they do now?
A If you got any freight on the trailer, you got to present a bill to them, show them what's on the trailer; and you have to give them your name, and you have to sign the pass.

Q Um-hum.

A And they put your name down on the log book.

MR. GAWRYS: That's all I have. Thank you, Mr. Talley.

EXAMINATION BY MR. JETT:

Q Just a couple quick ones here. Mr. Talley, I notice on here it says, "Notify: General foreign freight forwarders." Is that customary to notify the freight forwarder?

A Yes, sir.

Q When is this normally done and by whom is the freight forwarder notified?

A Old Dominion does that when it arrives at the destination like the Old Dominion terminal. They call the broker.

Q When?

A As soon as they get the load. Well, it comes in that night, and the girl the next morning calls the broker, and they say what pier it goes on. It's liable to go to Portsmouth or the Marine Terminal or NIT. They have to notify us where to send it.

Q Was the broker notified in this case?

A I think it was, but I don't know. I wasn't in the office at that time.

Q Who for Old Dominion would normally notify the broker?

A They have a man in there sometimes, and they have a girl in there working. They generally call.

Q I see. Well, do you notify your home office here in Chesapeake, and then they in turn notify the broker? Is that the way it works?

MR. LEAFE: No.

BY MR. JETT:

Q How does it work?

A A load comes in to Norfolk like that, and they have a bill there, and the next day the girl or whoever is working—they call the broker. That would be Hipage or Cavalier Shipping, either one of them. They have to call them and tell them where the merchandise goes and what time it has to be there.

Q What I am driving at is how is that information passed on to your home office over in Chesapeake normally when a shipment

arrived?

A Well, when it arrives she gets the bill. They give her the bill before they send it out.

Q She gets a copy of this waybill?

A And because she don't have a shipper's name on some of them, then again she has to call the broker and let them know the cigarettes are there or the merchandise. They have to call the broker and let them know where to send it. They are liable to change the ship and go to Newport News so they have to be called.

Q So then after someone in Old Dominion's office gets a copy of this waybill, then she notifies the broker; is that right?

A Yes, sir.

Q And is that normally after it's notified received by—by the terminal?

A No, sir. No, sir.

Q When is a copy of this sent to your home office?

A As soon as the load gets there.

MR. LEAFE: Off the record.

(Discussion off the record)

MR. JETT: Back on the record.

BY MR. JETT:

Q Then, to clear this up, when a shipment comes in from, say, in this case it was Richmond, this shipment will go by your terminal in Chesapeake first; is that correct?

A Yes, sir.

Q And a copy of the waybill is left there; is that correct?

A Well, they—generally a Number 4 copy they hold for a manifest.

Q I see.

A Which has the driver's name on it.

Q And then that is how the person in your office gets the information to notify the broker?

A Well, they generally notify the broker before they send the load out.

Q Before the load is even sent to NIT?

A Yes.

Q Okay. Now, you indicated earlier that when you last saw this—this trailer on Friday evening, that there was some pallets under the front end of it; is that correct?

A Yes.

Q Did you see who put those pallets under it?

A I didn't see him put the pallets under it. It's a longshoreman goes around with the tow motor and takes care of all them trailers up there and puts pallets under there.

Q You didn't actually see the person on this occasion?

A No, sir.

Q Okay. Lastly, could you just—you have told us about this conversation you had with John Kellam. Could you just briefly describe for us what was said between you and John Kellam in regard to this trailer?

A Well, like I say, not much said. Told him to put it in 1-A, which they unloaded. About 4:00 or 5:00 o'clock he said he couldn't do it and it would be tomorrow morning before he could do it because they was busy I think, which they had right many trucks then.

Q I see. So that's—all right.

A That's what they generally do. I generally check them before I leave.

Q So then you decided it was okay to leave it there at 1-A?

A Yeah.

Q One last thing. You mentioned about the guards checking trailers going out at this time. Now, this trailer had a seal on it?

A Yes.

Q And if the guards had checked the trailer they would have broken the seal; is that correct?

A Well, like I say, all—if you got a pass they don't ever check to see the seal back there. Very seldom. They would check the number on whatever you got on that pass and what you got on that trailer.

Q And compare the two? They compare the pass number with the trailer number?

A Right.

MR. JETT: That's all I have.

MR. LEAFE: Mr. Talley, when Mr. Graham, the reporter, gets this deposition written up you have a right to read it over and then sign it. By the same token, you have the right to waive the reading and signing of the deposition and rely on his accuracy, and I would ask you if you waive the reading and signing.

If you will say yes out loud. I can see you nodding your head, but he can't take a nod down on his machine. Do you waive it?

THE WITNESS: Yes, sir.

(And further this deponent saith not.)

* * *

CERTIFICATE

STATE OF VIRGINIA,
CITY OF NORFOLK, to wit;

I, Ronald Graham, C.S.R., a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of Robert C. Talley was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 4th day of May, 1971.

/s/ Ronald Graham
Notary Public

VIRGINIA:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INC., a corporation, *Plaintiff,*	)	
v	)	At Law
OLD DOMINION FREIGHT LINES, a corporation, and NORFOLK TERMINAL CORPORATION, a corporation, *Defendants.*	)	No. L-70-1058

Discovery deposition of Raymond Richard Brewer, taken before Ronald Graham, C.S.R., a Notary Public for the State of Virginia at Large, pursuant to agreement of counsel as to the time and place, at the offices of Messrs. Jett, Sykes and Berkley, 801 Bank of Virginia Building, Norfolk, Virginia, at 2:00 o'clock P.M., April 27, 1971, to be used in the trial of the above-entitled cause, pending in the Circuit Court of the City of Norfolk.

* * *

APPEARANCES: Messrs. Vandeventer, Black, Meredith and Martin (Mr. Joseph A. Gawrys) attorneys for the plaintiff.

Messrs. Rixey and Rixey (Mr. Joseph A. Leafe), attorneys for the defendant Old Dominion.

Messrs. Jett, Sykes and Berkley (Mr. R. Arthur Jett, Jr.), attorneys for the defendant Norfolk Terminal.

RAYMOND RICHARD BREWER, called as a witness on discovery, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. LEAFE:

Q Would you state your full name, please, sir.
A Raymond Richard Brewer.

Q And where do you live, Mr. Brewer?
A 1125 Milissa Court, Virginia Beach, Virginia.

Q And how are you employed, sir?
A Terminal manager, Norfolk International Terminals.

Q And how long have you been terminal manager?
A Four and a half years.

Q Since the terminal came into existence?
A Yes, sir.

Q Generally what is your—are your duties as terminal manager at NIT?
A Responsibility for the operation of the terminal.

Q And this responsibility would include the receiving of freight and the handling of freight on the terminal and for loading on ships and receiving?
A Qualified to a certain extent. Not loading on vessels. That's the stevedores' responsibility.

Q The stevedores' responsibility for the actual loading of the vessels, but as far as the handling of the goods on the premises would be part of your responsibility?
A Yes, sir.

Q And the actual conduct of activities on the terminal with the exception of the loading of the ships?
A Yes.

Q Now, Mr. Brewer, what is—is the terminal's procedure for the acceptance of freight and in dealing specifically with the instance we are talking about, freight from a truck to be loaded into a container?
A You are talking about all the way through?

Q Yes, sir. The procedure that the terminals require from

the time the truck comes on your premises.

A On arrival at the terminal the truck driver will go to a hold area and then leave the truck and report in to the office with the pro waybill and surrenders the waybill to the office.

Q This is your office?

A The receiving office. At that time we will log the truck as to arrival time and give him a schedule number and place him in line for working. We work in arrival sequence as far as the discharge of trucks is concerned, and he will be told to wait until we have lined up the place for him to be worked, and then the pro will be given to the dock foreman who will then call the driver to spot the truck.

Q All right. Now, the waybill that is received—it's kept by your office at that time?

A Yes.

Q And is that stamped?

A Normally the procedure is to stamp the reverse of it so we know what time the instrument came into our office. Yes.

Q And at the same time the tractor is logged in in a logbook?

A The trailer is logged in.

Q The trailer is logged in. I am sorry.

A Yes.

Q Do you have that logbook with you? I don't mean with you today.

A Yes.

Q But it is in your possession and would be available for examination?

A Yes.

Q Who—going back to—I think it's October the 10th of 1969, at the time this load was first brought on the terminal, who was the receiving clerk who received this load?

A I don't remember.

Q Would your records reflect that?

A Oh, yes. Yes.

Q Could you provide this information to Mr. Jett?

A Yes.

Q And he could get it to us?
A Yes.

Q Now, after the trailer is logged in and the waybill is stamped, what happens to the bill then?
A It's—remains in abeyance. It goes into a box for working, which is the truck foreman's box—the dock foreman's box.

Q And that's a box in your office?
A Right, a box in the office. It remains in there until such time as he is capable of working and in sequence, and then we go ahead and off load it. He will physically take the pro and go out and hand it to a checker who will supervise—will, he don't supervise. He checks the cargo as it comes off.

Q As it comes off the trailer?
A Yes.

Q And the dock foreman will not get the bill out of the box until he was ready to unload the trailer?
A General practice, no. I am not saying that it never happens. There is a possibility of one of them going out that he can't work.

Q Well, in this specific instance was the bill still in the box in the office?
A That's beyond my knowledge.

Q You don't know?
A No.

Q Do you know who would have that knowledge?
A Probably Mr. Zannechia, but I am not sure.

MR. JETT: He is the other man who is available.

THE WITNESS: He is my supervisor of that office.

BY MR. LEAFE:

Q I see. Now, when trailers are taken from the premises do you have a procedure established for the removal of trailers from the premises?
A No, sir.

Q Can anybody just drive the trailer out?
A Yes, sir.

Q You do not have any procedure for obtaining a pass?
A Not for a trailer. No, sir.

Q Not for a trailer?
A No, sir.

Q Makes no difference whether the trailer is loaded or unloaded?
A You are qualifying now. We have a control for a cargo.

Q Right. Well, that's not—let's not play on semantics.
A That's not semantics.

Q All right. If the—presumably, if cargo is taken out, it is taken out in a trailer?
A Well, this is one of the more acceptable ways. They go out on trucks.

Q Yes, sir.
A Trunks of cars.

Q If someone wants to take cargo from the terminal, do you require a pass for that cargo to be taken from the terminal?
A If it's our cargo, yes. If it's something that belongs to the terminal or is in the care and custody of the terminal. If you come on with your briefcase or golf clubs, no pass is required.

Q What would you consider cargo that would require a pass?
A Something that we have receipted to a truck line or steamship line for.

Q So if the waybills are delivered to your receiving clerk, stamped, and logged in, at that time if someone wanted to take that trailer off the premises they need a pass to do it?
A No, sir. We haven't accepted anything at all in the way of cargo at that particular time.

Q And you are saying that your guard at the gate would not require any identification or any pass or any inspection at the time the trailer is removed from the premises?
A If the individual had the pro in question, the waybill in question, he would be allowed to go through the gate.

Q If he had the waybill?
A Right.

Q But the waybill, once it's turned in to your receiving sec-

tion, is in your possession?

A Yeah, but it will be also be given back to a truck driver if he requests it to take a trailer off the terminal.

Q If he requests it?

A Right.

Q And—and is this checked by the gate guard when a truck leaves? The fact that he has a waybill in his possession?

A A waybill, a property pass. Yes.

Q Does it take for a trailer that has cargo on it—does it take either a waybill or a property pass to get off the premises?

A Hopefully

MR. LEAFE: Off the record.

(Discussion off the record)

MR. LEAFE: Okay. Back on the record.

BY MR. LEAFE:

Q In any event, the procedure as set up by the terminal is that cargo taken off the premises will either go off with a pass or with a waybill?

A We attempt to control cargo in this way. Yes.

Q How is—is a pass obtained?

A Under standard procedure on import cargo which is what the pass is actually designed for is import cargo from vessel—at the time of the loading of the truck, the girl that loads—handles the truck loading will write a pass for the number of pieces that have been picked up by the truck line.

Q Okay. Does she have documents from which she prepares the pass?

A She will have the actual loading delivery order in this particular case.

Q She will have the delivery order?

A Yes.

Q So she will not fill out a pass unless she had a delivery order showing the description?

A Correct.

Q Of what's on the trailer?

A Yes.

Q Does she check it by trailer number?

A The trailer number will be indicated. She does not check it by trailer number. If it's import cargo, the tally will indicate the number. It is part of the loading procedure that the checker will write the trailer number on it so she will refer to that. She does not physically check the number.

Q You used the term "import cargo," and I take it that is something off loaded from a ship and carried out of the terminal. How about cigarettes, the trailer that was taken out? If someone brings goods on the terminal from off the street and then they want to take it back off, how do they do it?

A The procedure is not designed for this type of transaction. However, a pass would be issued in some cases upon presentation of a pro which showed that the cargo was as presented. Of course, we have no idea what is on any trailer that comes in nor can the guard at the gate go through and actually check all the cargo. You would have to off load most trucks to find out what is on them.

Q Again, when a truck is—or a tractor-trailer is coming out of the terminal, he does not know whether it's import cargo or a truck that has nothing in it and turned around and come back out?

A This is correct.

Q So he expects to get one of two things—either a—a pass or a waybill?

A Correct.

Q So anyone who comes out needs to have one of those two items?

A Yeah.

Q And a pass to get out of the terminal is only issued by your office?

A On our cargo.

Q Well—

A We are not the only identity on NIT.

Q So if a pass has been issued for a particular trailer, then that trailer would be your cargo or else you wouldn't issue the pass?

A You don't follow me. GSA always issues passes, and so does Norfolk Port and Industrial Authority.

Q Is it the same pass?
A It serves the same purpose. It's a different design.

Q But if the pass is your pass, then it's a pass that is issued for your cargo?
A Not necessarily. If it's the case that you have already mentioned of export cargo that came on the terminal, supposing it's a part load that arrives at NIT and part of it is destined for Lamberts Point dock, and we take part of it. No, sir. It's not my cargo.

Q Would you issue a pass for it?
A In this case.

Q Would you issue a pass or would the driver have the waybill for the remaining cargo?
A It could be both. He could have waybillls only. It depends on what has actually happened with the truck.

Q But he wouldn't have pass only?
A It's possible for him to have pass only too. Yes, sir.

Q Should he if the procedure is—is—
A There is no procedure that I have been able to set up with the truckline that is strictly adhered to.

Q Well, I am talking about not the procedure with the truckline but the procedure with the security force that you maintained on the gate.
A The security force—of course, it's not mine. It's Norfolk Port and Industrial Authority's security force. It's not Norfolk Terminal Corporation.

Q What is Norfolk Terminal Corporation?
A We are the operating company of the terminal.

Q And a separate corporation?
A Yes,sir.

Q Controlled by—
A We are private.

Q Controlled by Norfolk Port and Industrial Authority?
A By our board of directors, which are four stevedoring companies. The fifth identity is the Norfolk Port and Industrial Authority.

Q If the terminal corporation has a loss, who absorbs it?

A Our insurance company if it's enough.

Q An operating loss?
A An operating loss—then it would be the Norfolk Port and Industrial Authority.

Q And if there is a profit?
A The Norfolk Port and Industrial Authority.

Q And the operating control—the four stevedoring companies are paid a management fee in effect for managing the terminal?
A Yes, sir.

Q So in essence it's—though we may be talking about a legal question, it's the same entity that employs the security force and operates the terminal?
A No, sir. By implication I would be in control of security, which I am not.

Q You have nothing to say about security?
A Well, I am not saying I have nothing. I mean I can try coercion or anything else, but I do not control them. They have a chief of security.

Q Which is a—
A A civil servant that works for Norfolk Port and Industrial Authority.

Q What is his name?
A John Wolford. I don't know that he was there.

Q How do you spell that?
A W-o-l-f-o-r-d.

Q Wolford. Would your records reflect whether he was the security head at that time?
A Mine would not, but the port authority's would. Yes, I am sure.

Q You can get that?
A Yeah.

Q What is the duty of the security force at the terminal?
A Integrity and security of the premises and the cargo. We also—at that particular time we had a private watching service.

Q And who was that?

A Maritime Ship Watch Service Corporation that was responsible for cargo in the piers and in one security warehouse.

MR. GAWRYS: Just off the record.

(Discussion off the record)

BY MR. LEAFE:

Q Maritime Ship Watching, Incorporated—was Pier 1-A one of their responsibilities?

A Warehouse 1-A. That was the security warehouse. We had one watchman that was responsible for that, and they were also responsible for Pier 1 and Pier 2, general cargo piers.

Q Is there a—is there a gate guard twenty-four hours a day?

A Yes. Well, two through certain periods of the day. We have two gates. One is a navy gate.

Q At least one?

A Yes. One.

Q Is the guard, when a cargo goes out on—on pass—does the guard check to see if there is any cargo on board?

A No. You mean if—

Q Once he has gotten the pass.

A No, because in a lot of cases your truck is sealed, and he has no authority to break the seal. Well, none of us have authority to break the truckline's seal.

Q How many security people are employed?

A I have no idea.

Q You have no idea?

A No.

Q Who sets up the procedures for the handling of cargo at the terminal?

A I do.

Q Is your procedure for removing or for cargo going on and off the terminal the same now as it was in October of 1969?

A I am sure there has been some modifications. Basically I believe it's the same as it was.

Q What are the modifications?

A I don't know. I said I am sure there are some

modifications, but I couldn't tell you in detail.

Q Who would know what the modifications are?

A We probably would have no documentary evidence of changes. It would be a normal change in procedure.

Q You don't know of any changes in procedure with regard to the obtaining of a pass to take cargo out of the terminal?

A I can't think of any that would be directly involved with what you are saying. We haven't changed the basic procedure. We can't—

Q Well, is anything more required to get a pass now than was required to get a pass prior to this loss?

A Not as a requirement. No.

Q If a man wants to get a pass, he does the same thing now as he would have done then?

A Basically.

Q Well, basically. You mean basically then there must be some changes, and I am interested in what they are.

A I stated you have no—no actual change in it. You had the same procedures in force before as you have now. The way each particular clerk carries on their functions—I am not aware nor could I be.

Q Are you saying they are enforced better now than they were then?

A Not that I know of as far as enforcement is concerned. You still have the truck driver that will show up that has absolutely nothing in the way of a pro, a document, or anything else on his truck.

Q Okay. What do you do?

A He wants to get back out of the gate. Actually there is nothing I can do according to Ed Wolcott, our attorney. It belongs to him, and he has the egress to the terminal at any time.

Q But prior to this coming up, you didn't let him off the terminal, did you?

A Well, prior to or after we attempted to hold him on the terminal.

Q Why?

A To ascertain if it was cargo in our care and custody or

legitimate cargo that he was carrying off. It's a moot point. Security under the best of circumstances dealing with public transportation is not the best.

Q But whether you had control of the cargo as far as you could keep it from going off or not, at least your system should show that there was cargo going off?

A Yes.

Q And who took it off?

A In theory, yes. I have no idea who takes any trailer that is signed for right now. Container or anything else. Who actually physically carries it out. The property passes are issued for house-to-house containers that are left on the terminal and carried off after 5:00 o'clock.

Q But the individual has documents?

A We have issued a pass to one individual, and another individual is carrying it off the terminal.

Q I understand. But you have issued a pass—

A Yes, sir.

Q —to someone?

A But you say we know who is going to carry it off, but we don't.

Q And you have issued a pass pursuant to documents which someone presented?

A Yes.

Q And if they didn't present documents to you, you won't issue them a pass?

A This is not always true either.

Q Well, whether it's always true, under your procedure as it is set up?

A Under my procedures, if they arrive on the terminal without a pro for a shipment they have on a truck, right now if the girl is working as she should, she will ask him to call his terminal to find out what he has on the truck because he doesn't have a pro with it at that particular time, and based on that she will issue a pass, but that's—depends on whether she is busy. If she is not busy—doesn't know the fellow—I have the same problems in my office that you do in yours I am sure.

Q Okay. Have you ever had any—prior to this occasion have there ever been any trailers or containers hijacked from the terminal?

A No. You mean container or trailer?

Q Yes.

A To my knowledge, no.

Q Have there been any subsequent to this to your knowledge?

A Not—we have never lost a container. As far as a trailer, I don't know. I have lost cargo off the terminal, which we are fairly sure went out in trailers, but we have no positive proof.

Q But not a trailer? Not a whole trailer?

A Well, I don't own trailers.

Q I understand. When a trailer is brought in to the terminal, I take it where it is to be unloaded is determined by your foreman?

A No. It's determined by the office actually.

Q All right.

A And we—you are talking two different locations as far as NIT is concerned.

Q All right.

A One is the warehouse which is cargo which is destined for stuffing into containers.

Q Right.

A You have break bulk which is the pure office.

Q But the cargo we are talking about is that destined for stuffing in containers, the cigarettes?

A In the office we have certain warehouse areas which fluctuate. They are not always the same but basically assigned to a steamship line so they would write warehouse in 1-A or C or D or whatever warehouse they were receiving in at that time.

Q And the driver for the trucking line—Old Dominion in this case—would be told where to spot the trailer?

A Not by her.

Q Well, by somebody?

A By the foreman. Yes.

Q By the foreman. Where? At the warehouse?

A Yes.

Q Now, who unloads the trailers?

A 1458 labor, employed by Norfolk Terminal Corporation, checked by 1840 checkers employed by Norfolk Terminal Corporation.

Q I am not familiar with the number.

A Locals.

Q Shortshoremen, longshoremen?

A Shortshoremen.

Q All right. They would unload the trailer?

A Yes.

Q And these are employed by—

A Norfolk Terminal Corporation.

Q Norfolk Terminal Corporation. And I take it under your contract or somebody's contract with the union it's required?

A Our contract.

Q That they do the unloading?

A Yes.

Q When a trailer is spotted, the tractor leaves, and there has been some talk about some pallets put under the fifth wheel. Who does that?

A Two things. Let me clarify one thing. As far as the tractor's leaving, he may or may not. Now, the case in point with Old Dominion—they service the biggest portion of the terminal with one driver, Talley, who you just talked to.

Q Right.

A Talley, of course, works there all day. He will bring one trailer in and carry another one out at night. He might handle fifty trailers on the terminal. Talley will drop one. Norfolk Terminal Corporation puts the pallets under there for protection when you are off loading because when you empty the back you have a possibility of it tipping up.

Q Is that a union contract requirement also?

A Negative. That is a safety policy.

Q Now, what happens?These shortshoremen unload the trailer, but they don't do the stuffing in the containers?

A No, sir. The shortshoremen off load, and 1840 terminal checkers check the load and receive it on behalf of the terminal and then a different local, 1248 or 970 which are the two longshore locals with 1624 deep sea checkers actually stuff or load the container and stuff the cargo into it.

Q Does the shipping line have a representative there?
A Yes, when stuffing.

Q When stuffing?
A Yes, or stripping on the container operation.

Q Right. Now, who determines when a particular trailer will be unloaded?
A Norfolk Terminal Corporation.

Q All right. Is it—do you operate on a twenty-four-hour-a-day operation out there?
A Hopefully not. We will work overtime on—scheduled overtime if someone pays the overtime differential.

Q Who is the someone?
A Steamship line, freight forwarder, consignee—anyone who wants to get the work done, anybody that will pay it we will normally—normally the straight time hours are from 8:00 to 12:00 and 1:00 to 5:00 as far as the contract labor is concerned.

Q Anything outside of that is overtime?
A Right.

Q And you determine or—when you say "you," the terminal corporation determines when a particular load will be unloaded or not be unloaded, where it will be unloaded and whether overtime will be used to do it?
A We—we would be involved in the determination. Yes, especially from the standpoint of overtime. Someone will have to contact us and say, "We will pay overtime for this to be done."

Q This particular ship that was—
A The RUBENS.

Q What did you say it was?
A The RUBENS.

Q The RUBENS. Was it in port?
A Negative.

Q When was it due in?

A Monday.

Q Monday. And this was on a Friday?
A Um-hum.

Q Now, as a part of this shipment I think there were actually three trailers; is that correct?
A I didn't know that until today.

Q Yeah.
A The first time I saw the revenue pros was today. The entire shipment was handled at NIT on memo pros which indicated there were a total of five to be handled.

Q Right.
A Today Mr. Jett showed me to two revenue pros, one for three and one for two trailers—

Q Right.
A —respectively.

Q Do you know which of these trailers were actually unloaded?
A All with the exception of one.

Q Was there one left partially unloaded? Do you know?
A Not to my knowledge, but I would not have first-hand knowledge of this. As far as I know, there was not, but it's possible.

Q All right.
A Normally speaking, we don't leave a half unloaded truck.

Q Okay. And you say that there is a watchman at this warehouse?
A While the warehouse is open and working. Yes.

Q Well, would he have been on duty after 5:00 o'clock?
A No. If the warehouse was secured and we did not work after 5:00 o'clock, he would secure at 5:00 o'clock.

Q And then there would be no watchman at the warehouse?
A No. The warehouse is secured. It's locked.

Q There would be the normal security force provided by the terminal?
A The perimeter guard and the gate guard.

Q Is there any type of patrol?

A Roving patrol.

Q And you are not familiar specifically with their responsibilities?

A Not specifically. I don't know what their operating procedure is or their patrol sequence. I get a copy of their log for unusual events or something like that, but it's not—

Q Okay. All right. But you are the—you are the particular individual as the manager who determines and sets the procedure for the cargo operations within the terminal, the bringing on, the taking off, and the stuffing and so forth that is not covered specifically by the union contract?

A Correct.

Q Now, your foreman is the warehouse—the warehouse foreman is Mr. Kellam?

A Was. Yes, at that time.

Q What is his job?

A He is retired.

Q He is retired now?

A Yes.

Q Mr. Zannechia?

A Zannechia. Yes.

Q What is his position?

A He is the assistant container supervisor, directly responsible for the stuffing and stripping portion of containerization, but he is second for all the container operation.

Q How do you get your initial contact from the—with regard to this cargo moving through the terminal?

A When a truck driver shows up at the window.

Q Well, I take it that you know that the ship—the—the RUBENS was going to be in?

A The vessel would be booked with us. Yes.

Q And you knew that it would be taking on cargo though you did not know specifically what cargo would be taken on?

A True.

Q Who contacts you on behalf of the RUBENS?

A There would be no contact on behalf of the RUBENS. We

would tell their delivery clerk—I don't recall who it was at the time—that we had received this cargo for the RUBENS. Of course, they would have a booking for—well, I would assume in this case five truckloads. I am not sure that five truckloads were all—of cigarettes, but they would have a booking for so many cases of cigarettes.

Q All right. Do they—this is a clerk that they—they maintain down at the terminal?

A The booking would not be made with that clerk. No. The booking could be made in—well, I don't know where this one was made. It could have been made with Dichmann, Wright and Pugh, their agency here in Norfolk; or it could have been made with the Belgian Line in New York. Bookings were made in both fashions.

Q The bookings would be between Philip Morris and either the agent probably or the—

A Or the line.

Q So the—

A Or the line.

Q So the representative of the line would know about the bookings and would know that there would be in this case five trailer loads of cigarettes due in?

A Either before or after the fact. In a lot of cases, especially with Philip Morris cigarettes, we—no one locally had knowledge of the cigarettes coming down or when they were coming down. Both before and after this particular incident we were attempting to get the advance information. It seems they loaded at the Philip Morris plant in Richmond until 8:00 or 9:00 o'clock at night, and they are never sure if they will complete a truckload to come down to us so we could not get advance notice of it.

Q Okay. What would you do with—once the bill was turned in to your clerk and logged in and it showed that it was for the RUBENS and cigarettes, what would she do then?

A She would log it on the log and put it in the box.

Q Okay. Would there be a separate box for the RUBENS?

A No.

Q Just a box in general?

A One common box for the pier foreman, and the trucks are worked in sequence.

Q Would they notify the clerk or whoever it was, the representative for RUBENS down there?

A Not—you mean that we had a load to work?

Q Yeah, that these cigarettes were in?

A No.

Q But if you received them, how did you know that you were supposed to automatically unload the truck and stuff them in a container?

A Anything that arrives on the terminal for a vessel that we have booked we accept. We have no way of knowing whether it's actually going on the vessel. We did not before, and we don't now.

Q But if it comes in and your clerk receives a waybill that says RUBENS and you got RUBENS booked in, you accept the cargo? You unload the truck and restuff it into containers for the RUBENS?

A We notify the line that the cargo is on hand.

Q When did you notify the line?

A After we received the cargo.

Q After you stuffed it into the container?

A After we have off loaded the truck and placed it in the warehouse we notify them we have this on hand; and they will issue stuffing instructions, whether they want it in twenty-foot containers, forty-foot containers, and this type of thing.

MR. LEAFE: I got you. Off the record.

(Discussion off the record)

MR. LEAFE: Arthur, are you going to give me the name of the clerk who was on duty and the security guard? Clerk who issued the pass?

MR. JETT: All right.

MR. LEAFE: And the one who receipted for it—this load if they are not the same person?

MR. JETT: Okay.

MR. LEAFE: The guard who was on duty and the—the head of the security force?

MR. JETT: Yeah, that is Wolford.

THE WITNESS: I am fairly sure it was his predecessor.

MR. JETT: Okay. Well, we will check that.

MR. LEAFE: Okay. I think that's all I have.

EXAMINATION BY MR. GAWRYS:

Q Mr. Brewer, just to refresh my recollection, what did you say your job was at Norfolk Terminal Corporation?

A Terminal manager.

Q Terminal manager, and how long have you been in that position?

A Four and a half years. Since the company was formed.

Q Is Mr. Tom D. Anthony still with Norfolk Terminal Corporation?

A Yes, he is.

Q Do you happen to know the name or names of the guards who were on duty at the time the trailer and tractor in question were taken through the—taken off the premises?

A No, I do not.

Q I believe it's been established it was taken some time on the morning of October the 11th; isn't that correct?

A No, sir. Not from the information he has. Some time in the evening of the—the Friday evening. The 10th I guess was the date.

Q Um-hum. Approximately what time was it taken off?

A I don't know. It seems like it was around—between 6:00 and 8:00, some place around in there, but I am not real familiar.

MR. GAWRYS: Do you have documents which might indicate when the tractor and trailer left the premises, Mr. Jett?

THE WITNESS: If you have a property pass, the property pass would indicate the time.

MR. JETT: I have a pass.

(Documents handed by Mr. Jett to Mr. Gawrys for examination.)

THE WITNESS: Do you have a copy of the back of the

pass?

MR. JETT: No, I do not.

THE WITNESS: The back of the pass would show that.

BY MR. GAWRYS:

Q Do you have documents at NIT which would show that?
A No. Someone else has the property pass. I don't know if the FBI—they latched onto almost everything.

MR. LEAFE: The FBI has the original.

MR. GAWRYS: Could we get a copy of this?

MR. JETT: Yeah.

MR. LEAFE: I would like to get a copy too.

MR. JETT: Yeah.

BY MR. GAWRYS:

Q This property pass is signed by someone. Who would that be?
A Mr. Zannechia.

Q I see. Is that his signature? (Indicating) Do you know?
A It appears to be. Yes.

Q It appears to be his signature. By whom is Mr. Zannechia employed?
A Norfolk Terminal Corporation.

Q Now, this property pass describes the material being removed as twenty-five boxes of something.
MR. JETT: Piece goods.

BY MR. GAWRYS:

Q Piece goods?
A Yes, piece goods.

Q Did the person who operated that tractor which removed the trailer—did he get possession of the waybill or was that still in

the possession of Norfolk International Terminals?

MR. JETT: If he knows.

Q As far as I know, it was still with Norfolk International Terminals. I am not positive, but I believe it was still in the box.

BY MR. GAWRYS:

Q I see.
A But that is an assumption.

Q So a property pass would be issued without the waybill being displayed? Is this what appears to have happened?
A That particular waybill definitely was not presented to obtain this pass.

Q I see.
A It doesn't cover the same thing at all.

Q Um-hum. Now, Mr. Brewer, the—you used a term called "pro". What does that mean?
A It's industry vernacular for a truck waybill. It's called a pro. They even have pro printed on the top part. I have no idea what it actually means.

Q Now, the expression has been used in taking your deposition as to when you accept the cargo. Is that a proper phrase? Do you accept the cargo?
A We accept the cargo on behalf of the steamship line. Of course, the cargo is never ours.

Q But in accepting it you take delivery of it?
A Yes.

Q And you then issue a receipt?
A Yes.

Q And up to the time that you accepted it, in whose possession is the title considered to be?
A As far as I am concerned, the common carrier's. He is responsible for delivering it.

Q Yes, sir, and at the time that you issue a receipt, that is when you accept delivery of it?
A Yes, sir.

Q And up to that point it's understood that it's in the possession of the carrier?

A Yes, sir.

Q Do you ever accept the trailer in which the cargo might be located?

A I never accept a trailer under any circumstances unless it's cargo.

Q I see. Well, I have—do you know a Mr. W.B. McDonnal who is with Old Dominion Freight Lines?

A No, I do not.

Q I have a copy of a letter which purports to be from Old Dominion Freight Lines signed by Mr. W.B. McDonall and addressed to Mr. Henry Socha, General Traffic Manager, Philip Morris Incorporated. In this letter Mr. McDonall appears to make that statement.

MR. JETT: Mr. Gawrys, would you let him see the letter. I don't think he has ever seen it.

MR. GAWRYS: I will. I will let—in fact, I will let you see another copy.

MR. JETT: Yeah, let's have a copy.

MR. GAWRYS: You might follow along. I don't want this one marked up.

(Document handed to the witness for examination.)

BY MR. GAWRYS:

Q This is a letter dated December 2, 1969. In the fourth paragraph Mr. McDonall appears to make this statement. "Further investigation in Norfolk, Virginia, reveals that our trailer No. 4572, which was the trailer containing the 1,000 cases of cigarettes, was actually given to Norfolk International Terminal at one o'clock on the afternoon of October 10, 1969, with the seal intact." Now, is that a correct statement, sir?

A Not from my definition. No.

Q All right, sir.

A They didn't give me a trailer at all. They brought it on the terminal for delivery of a thousand cases of cigarettes.

Q All right, sir. And in the next sentence Mr. McDonall says, "This fact is attested to by the attached photocopy of our waybill No. 577471, dated October 10, 1969, and by the receiving stamp of the Norfolk International Terminal as it appears on the reverse side of our waybill," end of quote.

Now, tell us what significance you attach to taking the waybill from the truck driver and having Norfolk International affix its stamp and place it in its box?

A We have received a paper and placed the paper in line so it will be off loaded in sequence. The stamp is a time and date stamp which indicates the time and the date that we got the paper from the truck and the truck driver and logged it, and also on the pro we will put a number which is a sequence number. In this case I believe 23 was affixed to that. That means it would be the twenty-third truck to be off loaded that particular day. There may or may not have been a trailer. As far as that piece of paper is concerned, I have no knowledge nor does the girl that there is actually a trailer there. On occasion, the first driver in will bring four pros in and then go back to the terminal and bring in the other trailers, and he sets the one trailer down there somewhere because we are not ready for it.

Q Then you are just getting the paper in line?

A Yes.

Q Do you consider at that moment in time that you are accepting delivery of anything?

A I accept nothing until I have signed for it as far as I am concerned.

Q All right. Now, the next sentence in this letter from Mr. McDonall—and I quote, "It is, therefore, our contention that our trailer was in the possession of Norfolk International Terminal and that title passed to them for the entire load as soon as it was logged in on their premises and in their possession," end of quote.; Do you agree with that statement, sir?

A I do not.

Q And would you tell us why you do not.

A I don't take possession of their trailer.

Q All right, sir. Did you exercise any dominion or control over the trailers that come into the premises?

A Only for spotting; if they are casuing traffic congestion we

will have the guard move them, but in the spotting.

Q By whom are they moved?
A By Old Dominion or the owning line. I will not move them.

Q I see. Would your people ever move the trailer itself?
A In an emergency. If we are on a railroad track and we have a rail spot coming in, but not as normal practice. No.

Q In the general practice whose responsibility is that trailer when it's on your premises?
A The truckline's.

Q And if the cargo is still in the trailer and the seal is still intact, whose responsibility is it?
A As far as I am concerned up to this point it's still the truckline's.

Q Thank you, sir.
A You have a misstatement in this letter by the way.

Q Excuse me. It's not my letter. It's Mr. McDonall's.
A Well, whoever. It indicates a waybill, and that is a duplicate copy of that waybill.

Q Would you read the sentence, sir.
A Sentence?

Q It's the letter from Mr. McDonall to Mr. Socha.
A Yes. "This fact is attested to by the attached photocopy of our waybill No. 577471, dated October 10, 1969, and by the receiving stamp of Norfolk International Terminal as it appears on the reverse side of our waybill." The waybill that is in evidence here is a duplicate copy of a waybill. It's attached to the letter also.

Q What is the significance of the duplicate?
A It would indicate that your original waybill is free astray someplace the same as this pro is free astray someplace.

Q What does it mean if it's free astray?
A It means a duplicate copy was made. The original free astray pro with that number is lost someplace.

MR. GAWRYS: All right, sir. I would like to have this letter marked as Brewer Exhibit 1 I suppose.

MR. JETT: Yeah, and also the documents attached to it.

MR. LEAFE: I don't object to them for purposes of discovery. Obviously not for evidentiary purposes.

(Marked in evidence by the court reporter as Brewer Exhibits 1-A, 1-B, 1-C.)

MR. GAWRYS: And why don't we mark the property pass also which Mr. Brewer identified.

(Marked in evidence by the court reporter as Brewer Exhibit Number 2.)

BY MR. GAWRYS:

Q Has anyone told you, sir, what the guard at the gate or any statements which may have been—strike all that. Has anyone told you, sir, what statements may have been made by the guard at the gate at the time this tractor and trailer went through?

A No, sir.

Q You don't know his name I take it?

A No, sir.

Q Do you have any information which might tell us as to how the people involved may have taken the tractor and trailer?

A Can I go off the record for a minute? Can I go through what I went through with that Saturday morning?

Q Why don't you tell us on the record.

MR. LEAFE: Tell us on the record. It's all right.

A Well, I was first contacted in regards to the cigarettes about 9:00 o'clock Saturday morning, the 11th.

BY MR. GAWRYS:

Q This is by the FBI?

A No. This is by my own personnel, and the security force had been brought into the thing, and then the FBI was brought into it, the city police.

Q Who called you?

A I think it was Mr. Zannechia, but I am not positive of this right now. It was either he or John Horn who was his assistant at that time who is no longer employed by Norfolk Terminal Corporation. I went to the warehouse 1-A office and got as much as

was obtainable as far as information was concerned at that time, and I think it was a Joe Smith—I know the last name is Smith—the FBI agent involved—with one other FBI agent, and we went from there to the gate, and while we were at the gate over the radio came the announcement that they had found the trailer, and I rode with Mr. Smith to a furniture company off Little Creek Road and around behind it, and there we were met by City of Norfolk policemen and a tractor—Old Dominion tractor was sitting there at that time. The key was in the ignition and all of this, and they were going—you know—no one touch it so we can get prints off of it, and the patrolman, City of Norfolk patrolman, said you can forget that because they had moved it this morning. They had to push it out of their way because it wouldn't start; it was at their back door, and at that time it was reconstructed that they had taken this tractor from Lamberts Point docks. This is the Old Dominion tractor which was left at Lamberts Point docks for shuttling around their trailers down there. It was immediately adjacent—about ten feet away from another Old Dominion trailer with a thousand cases of cigarettes in it, but they had carried that from Lamberts Point dock to NIT and gone in and hooked up to this trailer in question and pulled it out with the Old Dominion tractor. They carried it out there. The tractor had two major flaws. One, it wouldn't run very well, and, two, it was single axle, and they needed a double axle for load limits going north.

Q Wouldn't want to break the law.

A Right. They went to either Pilot or McLean truck terminal in Portsmouth and obtained the use of a tractor there. I don't know whether it was loaned or stolen. I don't know, but this was the tractor that they used to pull the trailer to New York, and this we found out on Saturday. Not all of it as to where it had gone and all this, but the fact there was another tractor involved and they had discovered where the tractor came from.

Q And the tractor then which took the trailer from NIT was not the same one which delievered—

A No, definitely not.

Q But it had been parked at Lamberts Point next to a trailer with a thousand cases of cigarettes?

A That is correct.

Q Had NIT ever commenced unloading of the cigarettes

from the trailer which was stolen?

A No.

Q So as far as you know, the seal was still intact?

A As far as I know. Yes.

Q To your knowledge had you—had you ever accepted custody of the cargo which was in the trailer which was stolen?

A No, no.

BY MR. GAWRYS:

EXAMINATION BY MR. LEAFE:

Q Let me ask a couple more things along this line. You stated before and in response to Mr. Gawrys' last question that these goods you considered still in the custody of Old Dominion Freight Line?

A Correct.

Q When did you consider that they came into the custody of the terminal corporation?

A When we physically checked them out of that trailer.

Q And you signed for them?

A We signed for them. Yes.

Q Okay. Now, I take it then it would have been all right with you if Old Dominion Freight Lines had brought their own labor up to unload that trailer?

A This is not so. No, sir.

Q Why is that not so, Mr. Brewer?

A Because the ILA claims jurisdiction over any freight handling to be done at any marine terminal.

Q Is that your contract with the ILA?

A Yes.

Q And it's not Old Dominion's contract?

A It is not.

Q So everything from the time that trailer is spotted and that unloading starts, those men are doing it as your employees and under a contract with you?

A This is correct.

Q And in spite of the fact that Old Dominion can—has no

say-so at all about the method of unloading, you say that at that point you don't consider them goods in your possession?

A That is absolutely correct. Suppose that thousand cases is only 900. Am I responsible for the hundred that are short?

Q I am not talking about shortage. I am talking—

A Well, the whole thing is one package.

Q You are saying they are Old Dominion's goods?

A They are not Old Dominion's. They are in Old Dominion's care and custody.

Q They are in Old Dominion's care and custody, but it's your contract with the union that requires that the union unload that truck or that trailer?

A I fail to see exactly what your point is. Suppose the trailer went into Baltimore where they have both tailgate unloading and full unloading.

Q I am talking about this particular instance, and I am just—you have previously said that Old Dominion still has custody of those goods, but it's your contract with the union that requires that the union unloads these goods.

A What does the unloading have to do with care and custody?

Q Well—

MR. GAWRYS: May I just be excused?

BY MR. LEAFE:

Q I am going to finish. I will not argue with you on the point, but you agree—you agree that Old Dominion could not in any respect have unloaded its own truck?

A But they could take it back off the terminal.

Q If they had the papers or a pass?

A They could take it off in any circumstances. It's their truck.

Q If they had a waybill or pass?

A Even without a waybill or pass. I can't hold it.

Q But you would have tried?

A I would have endeavored to even in this case had we

known it. Yes. But I cannot prevent them from taking their own property off the terminal, and that trailer is their property and not mine.

Q That is the legal opinion that you have gotten from your lawyer at this time?

A That is the legal opinion not dealing with this case at all.

MR. LEAFE: I understand that.

Waiver?

MR. JETT: Waive the signature.

MR. LEAFE: Yes.

MR. JETT: You don't have any objection to waiving your signature on this?

THE WINTESS: Right. Okay.

(And further this deponent saith not.)

CERTIFICATE

STATE OF VIRGINIA,
CITY OF NORFOLK, to wit:

I Ronald Graham, C.S.R., a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of Raymond Richard Brewer was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 11th day of May, 1971

/s/ Ronald Graham
Notary Public

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INCORPORATED,
a corporation,
Plaintiff

vs

OLD DOMINION FREIGHT LINES,
a corporation,
and
NORFOLK TERMINAL CORPORATION,
Defendants,

At Law No.
L-70-1058

Discovery depositions of Naomi Kay Kight, Armando L. Zannechia and John H. Kallam, taken before T.M. Phlegar, a Notary Public for the State of Virginia at Large, at the law offices of Jett, Sykes & Berkley, 801 The Bank of Virginia Building, Norfolk, Virginia, November 12, 1971.

APPEARANCES: Mr. Joseph A. Gawrys, Attorney for Phillip Morris, Incorporated.

Mr. Joseph A. Leafe, Attorney for Old Dominion Freight Lines.

Mr. R. Arthur Jett, Jr., Attorney for Norfolk Terminal Corporation.

Phlegar & Phlegar
Shorthand Reporters
Norfolk, Virginia

(It is stipulated and agreed that filing be waived.)

NAOMI KAYE KIGHT, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. LEAFE:

Q Would you state your name, please?
A Naomi Kaye Kight.

Q Is that K-i-t-e?
A K-i-g-h-t.

Q Where do you live?
A Route 3, Box 3154, Virginia Beach.

Q How are you employed?
A By Norfolk International Terminals.

Q Norfolk International Terminals?
A Yes.

Q Is it Norfolk Terminal Corporation?
A Norfolk Terminal Corporation.

Q That is actually your employer?
A Yes.

Q How long have you been working there?
A Two years and two months.

Q So you were employed by Norfolk Terminal Corporation on October 10, 1969?
A Yes, sir.

Q You had been there what—about six weeks at that time?
A Yes, sir.

Q What were your duties at Norfolk Terminal Corporation?
A Import clerk.

Q Is that what you have been doing the whole time you have been there?
A Right now I am import and export supervisor.

Q But on October 10, '69, you were just an import clerk?
A Yes, sir.

Q What were your duties as an import clerk?

A As to the delivering of cargo, I did the paper work.

Q You did the paper work?
A Yes, sir.

Q Did you receive shipping documents if a trailer with some goods was brought in for export?
A No. I received documents when they wanted to pick up cargo.

Q When they wanted to pick up cargo?
A Yes, sir.

Q You did not have anything to do with the documents when they were bringing cargo on the terminal?
A No, sir.

Q Who took care of that?
A It would be the export clerk who was Beverly Pratt.

Q Beverly Pratt?
A Yes, sir.

Q Is she still there?
A No, sir.

Q Who is your immediate supervisor?
A Mr. Zanecchia.

Q Was he your supervisor on October 10, 1969?
A Yes, sir.

Q As an import clerk—was that what you were?
A Yes, sir.

Q —what duties did you have with regard to passes for outgoing material?
A When a truck driver came to get a pass I would issue it to him, according to his paper work; or if he had none, he would give me the truck number, who he drove for and what he had, and I just issued a pass.

Q Did you sign the passes?
A No, sir.

Q Who signed the passes?
A Mr. Zanecchia.

Q Did he sign a stack of them and leave them there for your

use?

A Yes.

Q And then you filled it in?

A Yes, sir.

Q Did you have any written instructions with regard to the issuance of these passes?

A No, sir.

Q What were you told specifically as to when and how to issue the passes?

A Just that if a driver wanted a pass and he had freight on his truck that had to go out, to issue a pass.

Q Did he have to have shipping documents of some type to show you?

A No, sir.

Q So he could come in and tell you that he was a driver?

A Yes, sir.

Q For some freight line?

A Yes, sir.

Q And that he had goods on his truck, and you would issue him a pass?

A Yes, sir.

Q Did you check the truck number and the trailer number?

A Not unless I had some doubt about it. I would give it to Mr. Zanecchia and he would have it checked.

Q Do you remember this specific pass that was issued on this?

A No, sir.

Q Do you normally get the name of the driver?

A No, sir.

Q He just tells you for whom he drives?

A Yes, sir.

Q And you don't check at all to find out whether he really is the driver for that company?

A No, sir.

Q Does the export clerk work in the same office that you do?

A Yes, sir.

Q You all are sort of side by side?
A Well, yes, sir.

Q Is there a logbook in which the trailers are logged?
A The trailers, yes, but not by number, no, sir.

Q How is it logged in?
A By the freight carrier, what he has on his truck, what ship it is for, the weight of it and the pro number.

Q That is off the shipping documents?
A Yes, sir.

Q But it is not logged in by the number on his trailer?
A No, sir.

Q Did you know the driver who took this particular shipment of cigarettes out of N.I.T. who got the pass?
A No, sir.

Q You had no instructions to check with Mr. Zanecchia or to check the load in any way before issuing the pass?
A No, sir.

Q Do you mark the passes in any way so that you know they are the ones you issued or not?
A No, sir.

Q Would anybody else have authority to issue these passes?
A Yes, sir.

Q Who would that be?
A We have two offices. Pier 1 has an import clerk just like Stuffing and Stripping does.

Q All of the passes from Stuffing and Stripping you would issue?
A No, sir.

Q Who else might?
A Authority is in certain girls that would. At that time I think there was another one, which would be the import billing clerk, that would have the authority.

Q Let me show you this. It is a photocopy of the outgoing materials' pass, listed as "Brewer Exhibit 2." Would you look at that and tell me if that would be your handwriting?

A Yes, sir.

Q It is?
A Yes, sir.

Q So that would have been the pass that you prepared on that day?
A Yes, sir?

Q Do you know anything about the receipt of incoming shipping documents and the stamping of documents?
A Yes, sir.

Q When a load comes in on a truck and trailer, am I correct that the driver brings the documents to your office?
A Yes, sir?

Q Then you stamp the documents, or someone in the office stamps them?
A Yes, sir.

Q On the back?
A Yes, sir.

Q What does the stamp say?
A This is the time that the truck came in.

Q What does it say?
A "Received, Stuffing and Stripping," the date and the time.

Q The date and the time?
A Yes.

Q What is done with the document then?
A It is put in the basket for the warehouse foreman to take and give to a checker who is available to unload the truck.

Q Where is the basket physically located?
A Right on the desk of the export clerk.

Q On the desk of the export clerk?
A Yes, sir.

Q Does the checker come in? Who comes in and gets it?
A The warehouse foreman.

Q Who would that be?
A Mr. John Kellam.

Q Would Mr. Kellam be the only one who would take these

documents?

A Yes, sir.

Q Your office locks up at what time?

A 5.

Q 5 o'clock?

A Yes, sir.

Q Do you ever have occasion when a truck driver or someone comes and wants their documents back?

A Yes, sir.

Q What do you do in that instance?

A They usually at the end of the day get a copy if the truck is unloaded, with the checker's signature at the bottom accepting the cargo, with exceptions. If the truck is not unloaded he can take his bills back, because it is not our responsibility.

Q You mean that he can get his bills back?

A Yes, if the truck is not unloaded.

Q But what do you do when he gets his bills back?

A Nothing.

Q Do you log it?

A I mark off the stamp.

Q Do you have another stamp that you use, or do you just scratch through the stamp? Do you scratch through the stamp that you previously put on the back when it was received?

A Some people do, and some people just leave it until the next day. Then if he brings the load in again we will stamp it again, with the next day's date and the time he brings it in.

Q What does the driver have to do to get his documents back?

A Just ask for them.

Q The only thing that you would require, or the only thing that you would do then, would be to mark off the stamp?

A Yes, sir.

Q Are there any types of written instructions available in your office to you or to which you have been referred for the handling of shipping documents and passes?

A No, sir.

Q Do you get all of your instructions from Mr. Zanecchia?
A Yes, sir.

Q Answer these gentlemen's questions.

MR. GAWRYS: I don't have any questions.

BY MR. JETT:

Q Naomi, the particular individual who requested this pass, do you know of your own knowledge whether he presented any documents to you or not?
A No, sir. I can't say.

Q Did some of the drivers at that time present documents to you?
A Yes, sir.

Q They would?
A Yes, sir.

Q But this particular individual you don't remember; is that right?
A No, sir.

Q Naomi, you have the right to read the deposition, but we normally just waive signature. Mr. Phlegar is very competent. Do you waive your signature?
A Yes.

Q It will be here if you want to read it.
A O.K.

* * *

ARMANDO L. ZANECCHIA, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. LEAFE:

Q State your name, please.
A Armando Luigi Zanecchia.

Q Where do you live?
A 9433 Orleans Street, Norfolk, Virginia.

Q How are you employed, Mr. Zanecchia?

A At this time, today?

Q Yes. How are you employed today?
A Today I am container supervisor.

Q Where?
A Norfolk International Terminals.

Q You are employed by Norfolk Terminal Corporation?
A Yes, I am.

Q How long have you been employed by Norfolk Terminal Corporation?
A Since the 2nd of December, 1968.

Q You were then so employed on October 10, 1969?
A Yes, sir.

Q What was your capacity on October 10, 1969?
A I was supervisor for Stuffing and Stripping.

Q What were your duties as supervisor for Stuffing and Stripping?
A I was responsible for the receipt and monitoring of all cargo, either export or import.

Q Mr. Zanecchia, did that include the receiving and handling of documents that a shipper would bring with his cargo to the terminal?
A Yes. I want to clarify that. Receipt of the documents, was that what you said?

Q Yes, sir.
A Receipt of the documents.

Q Would you describe for me, please, sir, the procedure which Norfolk Terminal Corporation has for the handling of documents?
A From the time the driver comes to the window?

Q From the time the driver brings a load onto the terminal.
A The driver does come to the window with a carrier's waybill. His waybill indicates the carrier's name, the commodity, the weight, and sometimes the truck number for the cargo which is for export, assigned to a particular ship.

The driver hands to the clerk at the window a copy or copies of the waybill. If the information is correct, that the cargo is

identified by the terminal, we receipt the document only. We log that document into what is called "The Truck and Rail Log."

Q How do you receipt the document?

A The document is receipted by putting a stamp on it. It is a normal, round stamp that shows the date we receive the document.

Q The date and the time?

A The date and the time. It shows that it is received, Stuffing and Stripping, and the daytime group.

Q In addition to stamping the document you note the arrival of the cargo in a log?

A The log will show the commodity, the carrier's pro number, the weight of the shipment, and the ship it has been booked for, and also the time that we receive the document.

Q What is the purpose of your log?

A The log is for different purposes. It is to find out how many trucks we have for the day, or what we have had for the day, and it is a reference as to whether or not we have received a certain document in the office. We get many telephone calls.

Q Do you log a truck out?

A Yes, we do if it is import cargo.

Q You have a separate log for import cargo?

A Yes, we do.

Q And a log for export cargo?

A That is correct.

Q A truck coming off the street onto the terminal would have export cargo?

A Export cargo, that is right.

Q You log the load in the logbook?

MR. JETT: He did not say that. He said that he logged the document in it.

A I said that we log the document.

BY MR. LEAFE:

Q But you have a logbook in which you list—what again is the information that goes in the logbook?

A We copy the information from the document.

Q Once the trailer is unloaded do you put any additional markings in this logbook to indicate that unloading has taken place or that this trailer is leaving the premises?

A When the document is received back at the office and has been properly marked by the checker—I.L.A. checker—that the cargo has been unloaded, and the location where they stored the cargo, we do go back into the register and place the location where the cargo has been stored.

Q As to these documents that are received, I think you said that the driver comes to the window?

A Yes. That is normal procedure.

Q Is the driver standing outside and there is a window open to the outside?

A That is right. There is a half moon window. We open it when somebody is outside to be served. They do give the girl, the clerk, a document.

Q These drivers don't have access to the inside?

A No, sir.

Q What do you do with the document after it is stamped and entered in the logbook?

A The document itself will show the priority. It will show the following numbers of the trucks coming in. If this is a security commodity it will show where the cargo should go.

Q You mean physically?

A After it is unloaded. We assist the warehouse foreman and the checker in putting the cargo into a location which can be secure.

Q Are cigarettes a security cargo?

A Yes, they are.

Q Are the shipping documents for a security cargo put in a special place or marked in a special manner?

A No, sir. They are all put in the same box.

Q Who would take the documents out of this box?

A The warehouse foreman.

Q At that time was Mr. John Kellam?

A Yes, sir. He was my warehouse foreman.

Q Is he still the warehouse foreman?

A No, sir. He is retired.

MR. JETT: He is here today.

BY MR. LEAFE:

Q He was the only one that would take documents out of this box?

A Yes, sir.

Q Mr. Zanecchia, if someone wanted to take a cargo off the terminals what procedure would he have to follow?

A No. 1, we have got to determine whether or not it is terminal cargo. Then they have to show the reason why they want to take it out. We have different agencies around the terminal like G.S.A. and Norfolk Port Authority, and other agencies, that take care of their own problems.

Q What would you need in order to get out of the gate with cargo?

A If they identify the cargo we give them a gate pass.

Q Is there any other way that they can get out other than with a gate pass?

A I am sure they probably do, but normally a gate pass is the authorized way to get anything out of the terminal.

Q How would someone acquire a gate pass?

A By coming to the office and presenting a document to the clerk.

Q What type of document would they need, Mr. Zanecchia, to get a gate pass from you?

A Normally they will show a copy of the waybill and state the reasons why they want the cargo to be taken out. You see, we have stray drivers coming in from other areas like Portsmouth and Lambert's Pont. They do come into our terminal as strays. They don't know where they are. If they can identify that they are in the wrong place—certainly, No. 1, if they have the waybill—they can go out without a pass. That is No. 1.

Q If they have the waybill?

A If they have the waybill they can go out without a pass. If they have split shipments, if they have given us some cargo and still have other cargo inside the truck, if they can show us that they have authorization from the dispatcher to let the cargo go out,

then we will authorize by a gate pass the man to remove the cargo from the terminal.

Q But they would still have another waybill for the other portion of the cargo?

A Yes.

Q When they show that to you then you issue them a gate pass?

A Normally.

Q As to anything that went for Stripping and Stuffing, did you issue the gate passes, yourself?

A Sometimes I would

Q Who else signed them other than you?

A My assistant, John Horn, was authorized to also sign them.

Q Did you as a matter of practice sign a stack of passes in blank to be used by the personnel?

A Normally I don't recall that I have done that. I have signed them as they became necessary.

Q So it was a filled-out pass that you would sign?

A That I would sign.

Q Would you sign them in blank?

A Probably sometimes. I don't recall that.

Q What instructions did you give the personnel in your office with regard to the issuance of gate passes?

MR. JETT: At what time, Joe?

BY MR. LEAFE:

Q On October 10, 1969.

A This particular day?

Q This particular day and prior thereto. The personnel who were working in your office on October 10, 1969, what instructions had they received concerning the issuance of outgoing materials' passes?

A I believe I explained that before. If it was a partial load and they had authorization from their own dispatcher, they would normally show it to the girl, and the girl would prepare the pass and then bring it over to me for signature.

Q But in these cases the driver would have documents?
A Normally he would, yes. I could not say that that was so every time they came to the window.

Q Did you instruct your personnel not to issue materials' passes unless there were documents?
A Definitely, yes.

Q So at any time a driver got an outgoing materials' pass from your office, in order to have gotten it he should have had documents that were presented to the clerk or to you?
A That was the general procedure, you know, that I told the clerks to follow.

Q They were your instructions?
A They were my instructions. Sometimes the drivers, you know, do show it and sometimes they don't. It is hard to determine whether or not they did.

Q If a pass were issued without the driver showing documents it would be contrary to your instructions?
A It would be contrary. I don't believe they would issue a pass like that. They would show it to me normally.

Q Mr. Zanecchia, before you would sign a pass what kind of checking did you do to determine that the pass was valid?
A No checking. It was just based upon what the girl was authorized to do.

Q You assumed that she had prepared the pass from the waybill that had been presented to her?
A Many times they do show it at the window, something like that, or verbal.

Q This is not a verbal document, is it, Mr. Zanecchia?
A No, it is not, but it is from whatever information was available at the time.

Q I show you this photocopy of an outgoing materials' pass, which is identified in the corner as "Brewer Exhibit No. 2," and ask you if that appears to be your signature and is your signature?
A Yes, sir.

Q Do you recall issuing this particular pass?
A No, I don't.

Q Do you keep a record in your office, Mr. Zanecchia, of

the passes that are issued?

A No, we don't.

Q So there is no record in your office as to what reason was given or what documents were shown in order to obtain a pass?

A That is correct. I would like to clarify that. As to import cargo we do keep a record of the cargo that is picked up, and a pass is issued on import cargo.

Q On import cargo?

A Yes, sir.

Q You mentioned earlier that you assist the warehouse clerk or the warehouse supervisor and checker with regard to security cargo in getting it located, and so forth. How do you assist them?

A On the document we do place the storage area where we would like to have the cargo stored. We only have one area which is 1-A. We try to separate the cargo by lines. We have them in different warehouses. When it becomes what we think is a security cargo that can be pilfered then we recommend that they do place it in an area like 1-A.

Q Do you have any responsibility, Mr. Zannechia, in arranging for the longshoremen or the shortshoremen who work the cargo?

A Just general responsibility only. Can you define for me what responsibility?

Q Who determined, as a specific example, the unloading of the trailer of cigarettes that were destined for the RUBENS? Who would have engaged the longshoremen to unload this cargo?

A The warehouse foreman.

Q The warehouse foreman?

A Yes, sir.

Q Is it the warehouse foreman's responsibility to determine how much longshoring personnel is needed to handle a particular cargo?

A Well, the day before he recommends to us, for example, that he needs so many gangs to do the work for the next day. As to how many truck drivers are coming in, it is not a known factor many times. The work load can jump in different areas for the following day. We actually do not know exactly how many people are coming in the following day.

Q Am I correct that you are required to use longshore personnel to unload the trailers?

A We have shortshore labor to unload export cargo. That is what we call "terminal cargo." We use longshore labor to unload cargo which is imported in containers.

Q You are required to use shortshore labor to unload export cargo from trucks?

A Yes, sir.

Q And to do any restuffing and repacking that is to be done?

A The restuffing is done with longshore labor.

Q But the shortshoremen are the ones who unload the trucks?

A That is correct.

Q And this is a requirement?

A It is an I.L.A. requirement.

Q It is a part of the I.L.A. contract with the terminal?

A That is correct.

Q Who pays the shortshoremen?

A The terminal does.

Q The terminal pays them?

A Yes.

Q Whom does the terminal charge for the cost of unloading the trucks?

A I don't know, sir. That is an accounting question.

Q You don't know whether the terminal is in effect engaged by the shipping line or what?

A No, sir. That is a question that is out of my area of responsibility. I don't know that.

Q But Norfolk Terminal Corporation does pay the shortshoremen?

A Yes.

Q Does Norfolk Terminal Corporation determine where a particular vehicle is to be spotted for unloading?

A Yes.

Q Do you know anything about the spotting of this par-

ticular trailer in question, this Old Dominion trailer No. 4572?

A No, sir.

MR. LEAFE: I think that is all I have.

BY MR. GAWRYS:

Q Mr. Zanecchia, you mentioned earlier that when some cargo arrives at the terminal you log in the documents. Was that what you said?

A Yes, sir, I did.

Q What is the significance of logging in the documents?

A Well, I think I did explain it before, but I will go back again. The significance is that during the day we have many, many calls from the different carriers, "Is my driver there?" "Has my cargo been off-loaded?" "How long will he stay there?" There are those kinds of questions. The only way we can determine whether or not the driver has arrived with the documents is by looking into the register. That is the only way we can answer the many inquiries that we get during the day.

Q At what point does cargo which is going to be loaded on a ship for export come into the custody of Norfolk Terminals?

A It is still the responsibility of the line. It is actually the carrier's responsibility all the way through. We have an interim receipt of the cargo only.

Q It is your understanding that it is the truck line's responsibility up until it gets on the ship, itself?

A Yes, sir. That is actually correct.

Q Is that the custom in the trade?

A It certainly is.

Q When a trailer comes to Norfolk Terminals loaded with a cargo of cigarettes, what is going to be done to this cargo of cigarettes before it goes aboard ship?

A No. 1, you have to spot the trailer. First of all you have to have a document.

Q I understand.

A The document will tell you that in a certain container there is a certain amount of cargo said to be—it could be anything. Many times we have found that instead of the commodity that is stated on the document we have found other items which were not

in conformity with the pro at all.

Q Let's assume that it was a trailer full of cigarettes that were shipped on the SS RUBENS, what would be the normal procedure?

A The normal procedure would be to receipt the document and then direct the driver to come into the ramp closest to the place where you wanted to store the cargo, and to open up the doors by taking the seal off. The warehouse foreman will direct the checker with his gang to physically count each item inside the container to make sure that it does agree with the document.

Q Is this done before the cargo if offloaded from the trailer?

A No, sir. It is done after every piece of cargo has come out from the trailer.

Q Let's assume that the trailer is placed in this area 1-A and is to be offloaded. Who breaks the seal?

A Normally the driver breaks the seal.

Q The driver who is employed by the carrier?

A By the carrier.

Q Then what happens to it?

A Then they open up the doors and start unloading the cargo.

Q By whom is it opened up?

A One of the laborers.

Q By whom is he employed?

A By Norfolk Terminal Corporation.

Q By whom is the checker employed?

A By Norfolk Terminal Corporation.

Q The cargo is then placed where?

A The cargo is either palletized or moved by forklift to a resting place within the warehouse.

Q Within the warehouse, and that is in a security area?

A In a security area.

Q That I take it is to protect it from pilferage and theft?

A Yes. It is not only to count it in order to determine how many pieces came out from the container, but also to store it and protect it until it is restuffed into a container.

Q Where does the restuffing take place? Is that in the security area?

A Normally it is close to the security area, yes.

Q Who guards the cargo when it is in the security area?

A At that time we had some maritime guards. We had a guard at the time and he was guarding it during the day, up until the time we finished working. Then the doors were locked.

Q By whom are they locked, sir?

A By the maritime guard.

Q By whom is the guard employed?

A He was employed by Norfolk Terminal.

Q What happens to the keys?

A The keys are kept inside my office.

Q So at this point this cargo is in the custody of Norfolk Terminal; is that right?

A Yes, sir.

Q While it is still in the trailer and before it is offloaded in whose custody is that cargo?

A In the carrier's.

Q In the carrier's custody?

A Yes, sir.

Q If a trailer arrives at the terminal in the afternoon and cannot be unloaded until the next day and it is parked in this area 1-A, what is the usual procedure under that circumstance?

A Normally if we can find the driver—many times we cannot find the driver, but when we do find him the warehouse foreman tells the driver, "We are not able to unload the trailer."

Q In whose custody is that cargo during the time that it is still in the trailer before it is offloaded?

A The carrier's.

Q Can the carrier take that trailer off the premises if it wants to?

A Yes, sir.

Q You would not stop it; is that right?

A No. I don't have any right to. They have a copy of the waybill, or they can pick up the documents from the office, and

with a copy of the waybill they can go.

Q In respect to Trailer 4572 on October 10, 1969, was any information given to you that the trailer would stay on the premises overnight?

A Not to me personally, no.

Q Was it given to any of your employees?

BY MR. JETT:

Q If you know.

A I don't know. I don't recall it.

BY MR. GAWRYS:

Q Has anybody told you that this information was conveyed?

A Yes. It was conveyed to the office that the unloading could not be completed that day and had to be completed the following day.

Q Did they start unloading that trailer that day?

A No, sir.

Q They did not start at all?

A No, sir.

Q Was any information given to your office, from what you have been told, that the trailer would remain on the premises?

A No, sir.

Q You don't know of any such information?

A No, sir.

Q What security precautions are taken in respect to trailers which remain on the premises overnight?

A None.

Q None? Do you consider that you have any responsibility toward these trailers?

A No, sir. I do not have any responsibility for any of these trailers.

Q Just to be sure—I am referring not just to you personally, but to Norfolk Terminal Corporation—

MR. JETT: He can speak for himself, Joe.

MR. GAWRYS: I am just trying to find out what he knows, what his understanding is.

A My understanding is that Norfolk Terminal is not responsible.

BY MR. GAWRYS:

Q That is the understanding you have?
A Yes, sir.

Q Who employs the security guards?
A The Norfolk Port & Industrial Authority.

Q By whom are they told what to do?
A By the chief.

Q Do they take any instructions from Norfolk Terminal Corporation?
A No, sir.

Q Are your sure about that?
A I can't give them any instructions.

Q How about Mr. Brewer?
A I don't think he can, either. He can recommend certain things to the chief as to what he would like to have done at the terminal. But whether or not he has any authority over them, I don't believe he does.

Q In October of 1969, or prior to October 10, 1969, did the clerks who gave out these property passes from time to time issue the passes without receiving any document from the truck drivers?
A I don't know, sir.

Q Were you ever told that they did?
A No, sir.

Q How about Miss Naomi Kight, has she ever told you that she gave out these passes without getting any document from the truck driver?
A Probably she did.

Q What did you tell her?
A That she should not do it.

Q When did she tell you that she had been giving them out without getting any document?

A I say that maybe she told me, but I can't state when.

Q If maybe she told you, what did you maybe tell her?
A I told them that they have got to have some kind of authorization, if they did it.

Q Did this conversation maybe take place after this cargo of cigarettes was stolen?
A I don't recall it, sir.

Q What steps would the girl take to be sure that the document presented to her by a truck driver, from which the pass was filled out, was consistent with the cargo that he wanted to take off the premises?
A Well, at the time they just took the verbal say-so of the driver.

Q At that time?
A At that time.

Q What do they do now?
A Now we have the warehouse foreman spotcheck the trailers.

Q Do they get the outgoing materials' pass at the same office where the documents are turned in when the trailer arrives at the premises?
A If it is export cargo, yes.

Q Well, Trailer 4572 was export cargo, wasn't it?
A Yes.

Q I take it at that time that they logged in some documents, did they not?
A They logged in some documents, that is correct.

Q In logging in those documents I take it that they also logged in what the cargo contained. Is that correct?
A Yes.

Q This information was already in the office?
A Yes, sir.

Q The office knew that the trailer could not be offloaded that evening; is that right?
A Well, the trailer, but not the number of the trailer. We do not keep in our log the number of the trailer.

Q You do not keep the number of the trailer?
A No, not to my knowledge.

Q You are sure of that, though?
A I am sure.

MR. JETT: He said not to his knowledge.

BY MR. GAWRYS:

Q Do they now log the trailer's number?
A Not that I know of.

Q Was there any way that the young lady, if she was presented some documents as to Trailer 4572 showing that it was going to leave the premises with 25 boxes of piece goods—was there any way that she could check that against the documents which were already in the office?
A No, sir.

Q She had no way to verify it, whatsoever?
A No, sir; not referring particularly to the number of the trailer, no.

Q Was there any way that she could have checked as to these 25 boxes of piece goods?
A No, sir.

Q No way at all? What sort of document would the truck driver have to present in order to get one of these passes?
A Normally the dispatcher would give them a carrier's waybill. If they have got to deliver 25 cartons to Lambert's Point and they do come into the terminal, then they do have a delivery carrier's waybill for Lambert's Point. So they would have some kind of document. They vary between carriers.

Q So really what you are telling us is that you don't know what sort of document the driver may have presented?
A No, because many times they don't have anything.

Q As a practical matter it is perfectly possible that he may not have presented any document at all?
A It could be possible.

Q To your knowledge had any other cargo been stolen from Norfolk Terminal prior to October 10, 1969?
A No, sir, I don't recall it.

Q Do you know of any cargo ever being stolen before?
A Are we talking about cargo or trailers?

Q Let's talk about cargo.
A There have been small thefts, such as a pair of shoes or a blanket, things like that, if we want to call that cargo.

Q Didn't you have a pilferage problem concerning shipments that were going out for export and shipments that were coming in?
A At any terminal you have a certain amount of pilfered cargo.

Q I take it that you are on the lookout for that?
A Yes, we are. We notify Security as soon as we find out that we do have pilferage.

Q But you were not expecting a big pilferage such as a whole trailer?
A No.

Q Had you ever had a trailer stolen from the terminal before?
A No, sir, not to my recollection.

Q Have you had any since?
A No, sir.

Q I take it that the personnel at the terminal knew that this one contained a load of cigarettes?
A We didn't know what was inside the trailer.

Q At that time you didn't know?
A Except what was shown on the document.

Q I understand.
A Many times the document may say "ciagarettes" and you find straw inside the container. You will find anything.

Q I assume that the documents as to this trailer showed cigarettes?
A The documents did show cigarettes.

Q I assume that it is correct that you assumed there was a cargo of cigarettes in there?
A We can assume that.

Q That is a high pilferage item?

A Yes, it is.

Q I take it that the personnel at Norfolk Terminal was acquainted with the fact that there had been a market in stolen cigarettes?

A No, sir. We did not know that.

Q You did not know that?

A No.

Q You had never heard of hijacking in cigarettes prior to this occasion?

A Yes, by experience in other areas, and you read it in the paper.

Q Thank you.

MR. GAWRYS: No further questions.

BY MR. JETT:

Q Mr. Zanecchia, we normally just waive the signature. You have the right to read the deposition and sign it if you like, but it will be here.

A Whatever I said, that is it.

JOHN H. KELLAM, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. LEAFE:

Q State your name, please, sir.

A John H. Kellam.

Q Where do you live, Mr. Kellam?

A 1407 East Brambleton Avenue.

Q Is that in Norfolk?

A In Norfolk.

Q Are you employed now, Mr. Kellam?

A No, sir.

Q You are retired?

A Yes, sir.

Q How were you employed on October 10, 1969?

A I was employed at the Norfolk International Terminals.

Q By the Norfolk Terminal Corporation?
A Yes.

Q What was your job?
A Warehouse foreman.

Q Were you foreman of any particular warehouse?
A 1-A.

Q What was your job as warehouse foreman, Mr. Kellam?
A My job was to supervise the labor. It was my responsibility to see that cars or trucks were unloaded as instructed by my foremen.

Q Who was your foreman?
A Mr. Zanecchia and Mr. Raymond Brewer.

Q If a truck were to be unloaded at 1-A were you the one who told them where to spot the truck?
A If we had sufficient labor to unload it then I would order it to be spotted.

Q I take it then that if you did not have sufficient labor you would not order it to be spotted?
A No, sir.

Q As to this particular trailer of cigarettes that was hijacked back on October 10, 1969, which was Old Dominion Freight Lines' Trailer 4572, do you recall that trailer, Mr. Kellam?
A I would not be definite as to that particular number, because we had about five or six trucks in at that time.

Q But you recall the trailer that was taken?
A Not by number, I wouldn't.

Q Not by number, but that this was the one that was taken?
A I recall the next day seeing that one was out. I did not know at the time what trailer it was. After they go to the office then I get the pro from the office to tell them where to spot it to be unloaded.

Q This particular trailer was spotted, was it not, Mr. Kellam, at 1-A?
A I did not order this particular trailer to be spotted, because we could not unload it. We had all that we could unload.

Q You are saying that it was not spotted?

A Not by me.

Q Who else down there would have had authority to spot it?
A Well, the truck driver could have spotted it, himself, if there was a vacancy. The truck driver could have just backed it up without anybody telling him to spot it.

Q On this particular day were there three Old Dominion trailers of cigarettes that were going to go on the RUBENS?
A I could not answer that question, as to how many. The only thing I know is that we had about five trucks. What truck line had them, whether Old Dominion had all of the cigarettes or whether there was another truck line, I don't know. But we had about five truckloads there that particular day.

Q That you were unloading?
A Not that we did unload, because this particular one we did not unload.

Q Who decides when you knock off for the day?
A That comes from the office. If they want to work overtime, as foreman I do not have the authority to authorize overtime.

Q Who would authorize overtime?
A It would come from the labor foreman which would be my next boss. He would say whether or not we are going to unload or whether we are not.

Q Is that Mr. Zanecchia?
A Yes. He could do it or either Mr. Brody could authorize it.

Q Is there anything special about cigarettes, Mr. Kellam?
A Well, all cigarettes unloaded go into a warehouse. We do not unload them on the dock.

Q Do you take special precautions with cigarettes?
A We do.

Q Do you report to any of your superiors if you know there is a trailer of cigarettes that is not going to be unloaded?
A Normally we do.

Q You would report to your superior that you have got a trailer of cigarettes that you are not going to be able to get to?
A (Nods in the affirmative.)

Q You are saying "Yes"?
A Yes.

Q Then would you ask your superior whether they wanted to work overtime in order to get the cigarettes unloaded?
A Normally I would not ask him that. They would contact the trucking line as to whether they would want to pay the differential between straight time and overtime in order for them to be unloaded.

Q Are you sure that they would contact the trucking line?
A Yes. The trucking line pays the differential.

Q Do you know of your own knowledge who pays for the unloading of the truck?
A No, I would not know who pays for it.

Q So you don't know whether the terminal pays for it or whether the shipping line pays for it or whether the trucking line pays for it?
A Normally the trucking line would lose money if it had to pay for unloading on overtime. The trucking line, if they wanted to get the truck out, would assume responsibility. I don't know who they would bill for it. I don't know.

Q You don't really know who pays for the unloading at all?
A No. That is office work. That would not come under my supervision.

Q When a trailer comes in and you are getting ready to have it unloaded at 1-A, what do you do?
A When a truck comes in, the first thing the driver does is to let me know that he has a trailer to be unloaded. If we can unload the trailer then I will tell him to carry his pro to the office so they can make a record of it. If we can unload it after it is checked in at the office and the time is put on the pro, I pick it up from the office and give the order to a checker. Then I authorize the trailer to be spotted for unloading.

Q When is it that you authorize it to be spotted for unloading?
A After it comes through the office.

Q Do I understand that it would not be logged through the office unless you could handle it for unloading?

A No. It could be logged through the office without that. If I was somewhere on the job and a truck was brought in and the cargo went to a certain ship, it would probably be logged in through the office. But it would have to come through me before it was authorized to be spotted for unloading.

Q Do you get the shipping documents from the office?
A I do.

Q What do you do with them after you get them?
A After spotting the truck I turn these over to one of my checkers for unloading.

Q Do you make any notation on it at all, yourself?
A No, sir, I don't make any notation.

Q Then the checker does what with the document?
A He holds this document until this truck is completely unloaded and examined for shortage or damage. If it comes out according to the pro and there is no damage, then he signs this document and returns it, with one copy to the checker, or two copies, whatever is required.

Q To the checker or to the office?
A To the driver.

Q Does the checker give it to the driver or does it go back to the office?
A The checker gives it to the driver with all of the notations on it, as to shortage or whatnot.

Q Who unloads the trailers, Mr. Kellam?
A What do you mean?

Q What type of personnel unload the trailers?
A That is the shortshore gangs that unload the trailers.

Q The trucking company's driver does not have anything to do with the unloading?
A No, sir.

Q In fact, he is not even authorized to do anything with it, is he?
A He is supposed to be there to see that his count comes out according to our count.

Q As a matter of practice does each driver stay with his

truck, or does a trucking line just have one man down there to shift the trailers around?

A That is up to the man that they have there. He can send him back or he can let him stay. That is up to him. We have nothing to do with that.

Q What is usually done?

A Usually he will tell him where to spot it, and then if he leaves it there he will go back, this particular driver will.

Q Usually he brings the trailer down and leaves it?

A He brings the trailer down and he turns the documents over to the man.

Q At the office?

A No—his man.

Q I see.

A He turns the documents over to him. We don't bother with the documents. If this man is available, if he turns them over to him, then in turn he gets in touch with me and says, "I have a truck of cigarettes." If I tell him I cannot unload them now, then that is all the responsibility we have. We inform him that we will not be able to unload them at this time.

Q When do you inform him of that—when he has still got the documents?

A When he has still got the documents.

Q That is before he logs them in at the office?

A He logs them in. He does that, himself. We don't tell him to log them in, but we tell him that we cannot unload them. This was the case.

Q You are saying now that at the time this trailer came to Norfolk Terminal Corporation you told him that you could not get to it?

A I told him that we would not be able to unload it that day. We had as many trailers as we could handle on this particular day.

Q What time was it that you told him this?

A I would not pinpoint it, but it was somewhere around 12 or 1 o'clock. I would not try to pinpoint it.

Q Did you give this same information to the office?

A Not right then, because we had other trailers that we were unloading. We always inform them when we cannot get to a truck. We tell them that we won't be able to get to a truck. We have a certain number of laborers ordered, and if there are more trucks coming in than we have got laborers for them it is impossible to unload them.

Q You are not the one who decides whether you get more labor or not?

A After 1 o'clock it is impossible to get any more labor, because you don't order form the hall after 1 o'clock.

Q You don't know, Mr. Kellam, where this particular trailer was parked?

A I really at this time could not tell you. All I know is that it wasn't parked for unloading.

Q Suppose, Mr. Kellam, that you did not get to a trailer on a particular day, but that was the first one that you were going to start on the next morning, would you be likely to tell the driver to spot it at a certain place because, "We are going to start on it the first thing in the morning"?

A Not cigarettes, because it takes about an hour and a half or two hours or two and a half hours to unload cigarettes. Normally if there was space where we could spot a truck we could unload two or three pieces off in maybe half an hour. If somebody had one piece we could take it off, but we know that we cannot unload a truck of cigarettes in thirty or forty minutes. We would not need to spot it because we would know that we could not unload it.

Q Can a trucking line park their trailers anywhere on the terminal that they want to?

A They can park them where they want to. That is up to them, unless they are parking them in the way of something else that we have got. If they wanted to park them where the U.S. does the sampling, they would not be able to. We don't have any control over where they park and when they take them out and when they bring them back. We have nothing to do with that.

Q It is not part of your job, is it, to do anything about the handling of documents at the office or the issuing of gate passes, and so forth?

A No. That doesn't come under my supervision.

Q Do you know anything about the requirements for taking a trailer off the premises?

A Well, that does not come under my supervision. I have nothing to do with that.

Q Do you know who the driver was that brought this particular trailer in?

A No, I do not.

Q Who is Old Dominion Freight Lines' driver who stays down at the terminal all the time?

A Mr. Talley. He doesn't stay there all the time.

Q He is there most of the time?

A Yes, but not all the time.

Q It was common practice, was it not, for whatever other drivers brought trailers in to leave them and for Mr. Talley to move them around?

A That was what he was down there for. He did not stay there all the time at 1-A.

Q He worked in other areas of the terminal, too?

A He did.

Q If you had a trailer that had been spotted and unloaded you would contact Mr. Talley to move it out of the way?

A Well, normally he would make rounds to see if there was one empty, or we would contact him and ask him to move it.

Q This was the same practice that the other trucking lines followed, too, wasn't it?

A Oh, yes. That is routine.

Q They had a man that they left down there routinely to move these trailers out of the way?

A I don't know if all the truck lines had one. I could not say.

Q I say, most of them?

A (Nods in the affirmative.)

MR. LEAFE: I think that is all.

BY MR. JETT:

Q John, you have the right to read this deposition to make sure that it is correct. We normally waive signature, because Mr.

Phlegar takes it down correctly. It will be here if you want to see it.

A (Nods in the affirmative.)

VIRGINIA,
CITY OF NORFOLK, to-wit:

I, T.M. Phlegar, a Notary Public for the State of Virginia at Large, having qualified in the Corporation Court of the City of Norfolk, Virginia, certify that the foregoing discovery depositions of Naomi Kaye Kight, Armando L. Zanecchia and John H. Kellam were duly taken, that it is a true record of the testimony given by the witnesses to the best of my knowledge, and that the witnesses were duly sworn by me at the time and place in the caption mentioned.

Given under my hand this_____ day of _____, 1971.

_____
Notary Public

My commission expires
August 3, 1973.

VIRGINIA:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INCORPORATED, a corporation, *Plaintiff,*	)	
vs	)	At Law
OLD DOMINION FREIGHT LINES, a corporation, and NORFOLK TERMINAL CORPORATION, *Defendants,*	)	No. L-70-1058

Discovery depositions of Robert E. Jones and Lumis Lamm taken before T.M. Phlegar, a Notary Public for the State of Virginia at Large, at the law offices of Vandeventer, Black, Meredith & Martin, 2050 Virginia National Bank Building, Norfolk, Virginia, November 19, 1971.

* * *

APPEARANCES: Mr. Joseph A. Gawrys, Attorney for Phillip Morris, Incorporated.

Mr. Joseph A. Leafe, Attorney for Old Dominion Freight Lines.

Mr. R. Arthur Jett, Jr., Attorney for Norfolk Terminal Corporation.

* * *

Phlegar & Phlegar
Shorthand Reporters
Norfolk, Virginia

(It is stipulated and agreed that filing be waived.)

ROBERT E. JONES, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. JETT:

Q Will you state your full name, please?
A Robert E. Jones.

Q What is your present occupation?
A I am terminal manager for Old Dominion Freight Lines, Newport News, Virginia

Q You are in Newport News, Virginia?
A Yes, sir. It is Hampton, Virginia, actually, but we call it the "Newport News Terminal."

Q Are you familiar at all with a shipment of cigarettes that was consigned to Norfolk International Terminals in October of 1969 that was ultimately stolen?
A Yes, sir. I was the dispatcher in the Old Dominion Norfolk Terminal. It is Chesapeake, actually, but we call it the "Norfolk Terminal."

Q Roughly where is that terminal located?
A It is in the 4900 block of Providence Road in Chesapeake, Virginia.

Q It is in Chesapeake rather than in Norfolk?
A Yes.

Q You were the dispatcher at that time?
A Yes.

Q What were your hours?
A From 8 o'clock in the morning to sometimes 6 or 6:30 or 7 o'clock at night.

Q You had an office in the terminal?
A Yes, sir, the dispatch office.

Q As to this particular shipment, how was it that you got involved with the shipment? This particular shipment ultimately originated in Richmond; is that correct?
A Anything coming out of our terminals out-of-state or in the State of Virginia, coming from another terminal of Old

Dominion Freight Lines, would come into the Chesapeake Terminal that was being worked in this particular area.

So it would come here and we would get the bills, with the manifest, showing that it was manifested from Richmond to Norfolk, and then in turn we would execute the manifest from Richmond to Norfolk, and we would in turn make a local city delivery manifest out showing that this trailer was coming from Norfolk to N.I.T. or from our terminal to N.I.T.

Q Is this what you refer to as a waybill?

A No, sir. This is a manifest. The waybill comes along with the manifest, but the manifest has the waybill number, the number of pieces, the weight and everything on it.

Q The waybill itself originates in Richmond?

A That is right. But the waybill comes along with the manifest to Norfolk. We have a special pouch that we put the manifest and the bills in so that the driver won't know what is in there or what is on the bills.

Q Do you remember the number of this particular trailer?

A No, sir.

Q Do you remember when the particular trailer arrived at your Chesapeake Terminal?

A To the best of my knowledge it was I believe on a Friday.

Q It was on a Friday?

A I believe so.

Q Was this the same day that you in turn dispatched it to Norfolk International Terminals?

A Yes, sir.

Q Was the driver who brought the trailer from Richmond the same driver that ultimately took it over to Norfolk International Terminals?

A No, sir. The driver that brought it from Richmond is what we call a line-haul driver. He goes from terminal to terminal. He does not work locally in the city unless you are over-cramped, and then you ask him to help you and he will help you occasionally. But at this particular time, no, sir.

Q When the driver from Richmond arrived with the trailer, do you remember approximately what time it was?

A No, sir.

Q Does he on arrival deliver the waybill to you?

A We have a drivers' room in our office in Chesapeake where the drivers come in and sign in a log showing that they arrived at such and such a time with such and such a trailer and such and such a tractor. They in turn will turn the waybill over to the dispatcher at that time.

Q So the waybills for this particular trailer and this particular cargo then were turned over to you; is that correct?

A Yes.

Q Were you aware of the type of cargo that was in this trailer?

A Yes, sir, after I opened the pouch and looked at the bills.

Q And looked at the waybills?

A Yes, sir.

Q It was a cargo of cigarettes; is that right?

A Yes, sir.

Q Consigned to Norfolk International Terminals?

A There were 1,000 cases of cigarettes, yes, sir.

Q Do you keep a copy of the waybill?

A We keep a No. 4 copy, yes, sir, which is a control copy that we keep so that we will know what driver has what or what freight is where.

Q The other copies I assume are given to the driver that is to take the trailer on to Norfolk International Terminals?

A Yes, sir.

Q How about the particular tractor that brought the trailer down, was that the same tractor that ultimately took it over to Norfolk International Terminals?

A I could not say for sure at this time. I know that we have used the road tractors occasionally. But I would not think so in this case, because the Richmond drivers usually turn around and go back to Richmond.

Q Do you remember the name of the driver that you designated to take the trailer to Norfolk International Terminals?

A Not particularly. I believe, to the best of my memory, that the driver's name was Church.

Q Do you remember approximately at what time you told Mr. Church, or whoever it might have been, to take the trailer of cigarettes to N.I.T.?

A No, sir.

Q You don't remember?

A I can't remember the time.

Q What instructions did you give the driver?

A When we dispatched it I told him to take it down to N.I.T., to Warehouse 1-A, and to check in and call me.

Q Why 1-A, just as a matter of interest?

A Warehouse 1-A is where we deliver cigarettes and things like that at N.I.T.

Q Did you know at that time that this particular trailer of cigarettes was going to remain at the terminal overnight?

A Not at the time I dispatched it.

Q Not at the time you dispatched it?

A No, sir.

Q Is it up to you to determine whether or not the trailer remains at N.I.T. or comes back to your terminal for the night? Is that your decision to make?

A No, sir. When the driver checks the trailer in at N.I.T. he checks the bills into the office and everything. Actually the only way we could have pulled that trailer out of there was by having to go and get our bills back from the office and get a permit or a pass from N.I.T. to pull the trailer out of there.

Q If you wanted to you could have requested N.I.T. to give you the waybills back?

A And a pass to get out of the gate.

Q Was that done on this particular occasion?

A No, sir.

Q How are you in contact with these drivers? Do you have a radio or something?

A The local city trucks are radio-dispatched, but your tractors are not. They call us on the telephone.

Q Was it ultimately called to your attention by anyone that this particular trailer was being left at N.I.T. overnight?

A I don't recall whether the driver at N.I.T. called me and

told me or not, but I do know that we had set up a crew to work the next day to spot these trailers to be worked. But as far as making the statement that the driver called me and told me that it was, I forget.

Q Were you aware, yourself, that the trailer in question was being left overnight at N.I.T.?

A I knew that the trailer was at N.I.T., yes, sir.

Q You did?

A Yes, sir.

Q Was there any particular reason why the trailer was left overnight at N.I.T.?

A We do it all the time. If we carry a load down there, we don't bring it back if it is not unloaded. I think that just about everybody who goes in there, rather than having to haul it all the way back to the terminal and all the way back the next day, does that.

Q To save the expense of having to take it back and bring it back the next day?

A At N.I.T. they have security guards that ride around. You have to have a special pass to get out - not especially in.

Q I believe you said that you don't remember specifically either the driver or anyone else calling you as to this particular trailer?

A No, sir.

Q But you were aware that it was staying down there overnight?

A Yes, sir. We keep a record of what is at N.I.T. Everywhere that we drop a trailer we have a dispatch sheet showing that that trailer is dropped at such and such a place.

Q Did you advise Mr. Lamm or anyone else for Old Dominion that the trailer in question was being left at N.I.T.?

A Not that particular trailer, no, sir. I imagine probably at that time we had seven or eight of them down there.

Q Were they loaded with cigarettes?

A Not particularly cigarettes. There were empty trailers and loaded trailers.

Q Were any particular precautions taken as to this trailer,

since it was loaded with cigarettes, by Old Dominion that you know of?

A Not particular; nothing but the normal procedure - the security guards at N.I.T. and everything.

Q Did you all have at that time a device known as the "fifth-wheel pinlock"?

A I don't believe so. I think it was shortly after that when we got them.

Q What is this device?

A A fifth-wheel pinlock is a special lock. On every one of your trailers you have a pin in the front of it. When your tractor backs under it it locks onto this pin. It is universal like. It is so that you can turn, and this, that and the other, and pull your trailer around. This fifth-wheel pinlock fits over the top of this pin and it locks. The only way you can get it off is with a special key.

Q Is Old Dominion using the fifth-wheel pinlock now?

A Yes, sir.

Q If a trailer loaded with cigarettes were left at N.I.T. overnight at the present time would you put a fifth-wheel pinlock on it?

A Yes, sir.

Q Do you know of your own knowledge why a fifth-wheel pinlock was not used on this particular trailer?

A Like I stated before, I don't believe we had them at that time.

Q When did you get them? Was it shortly after that?

A I believe so, yes, sir.

Q Whose idea was it to get these fifth-wheel pinlocks? Was it Mr. Lamm's?

A I could not say definitely, because they sent them to the Norfolk Terminal. Every one of our terminals now has fifth-wheel pinlocks.

Q Do you know Mr. Talley?

A Yes, sir.

Q He has indicated that he takes the fifth-wheel pinlock to N.I.T. for his own tractor. Is that your recollection of it now?

A I don't know what they do now. I am in Newport News. I don't know what they do in Norfolk. I have been in Newport News

since January of this year.

Q Were you on duty the next day after this theft?

A No, sir. Mr. Lamm called me at home, and then I came over to the terminal.

Q You went over to Norfolk International Terminals or to your terminal?

A To the Chesapeake Terminal.

Q Do you remember advising anybody from N.I.T. that this trailer that was full of cigarettes was being left at N.I.T.?

A Did I advise anybody at N.I.T.?

Q Yes.

A No, sir. The trailer was checked in at N.I.T., at Warehouse 1-A. They should have a record of the time they received the bills, the time that the trailer got there.

Q I am talking about did you, yourself, personally advise anybody at N.I.T. that it was going to be left there overnight?

A No, sir.

Q Have you ever worked down at N.I.T., yourself, or has most of your work been over at the Old Dominion Terminal?

A I have carried trailers into N.I.T., and I have brought trailers out, yes, sir.

Q When you take trailers into N.I.T. are you normally given a receipt in due course from N.I.T.?

A No, sir. If we had something going to Warehouse 1-A that was local delivery down there, then I would take it down there and give it to my driver Talley for local delivery. But if I had a load going to 1-A, or somewhere like that, I would back the trailer up to 1-A and turn my bills into the office.

Q Was that what Church did in this case?

A To the best of my knowledge. That is what he should have done. I can't say definitely what he did, because I wasn't at N.I.T. at the time.

Q Had you made arrangements before you went off duty on this particular Friday for another driver to go down the next morning?

A We had set up a driver or two to work the next day, yes, sir.

Q Was one of these drivers assigned to this particular trailer?

A I could not say, because I didn't work on Saturday. As to the man who dispatched the man down to work the trailer, I could not say.

MR. JETT: I think that is all I have.

BY MR. GAWRYS:

Q Mr. Jones, I take it that your company assumes that these trailers contain cargo which has a certain value to it. Is that correct, sir?

A Yes, sir.

Q I take it that it is commonly understood in the trade or in the business that certain security precautions should be taken to prevent thefts of the merchandise. Is that not right, sir? Would that be a fair statement?

A I would say so, yes, sir. We turned the trailer over to N.I.T. We checked it in at Warehouse 1-A, turned the bills over to them and spotted the trailer at 1-A.

Q Is it your feeling then that the trailer had actually been turned over to N.I.T. and that it was N.I.T.'s responsibility?

A I would think so. The trailer was turned over to N.I.T. It was checked in at the office. The bills were turned over to them. They knew what was on the trailer. They knew that the trailer was spotted at their platform.

Q Does your employer have any documents which would indicate that N.I.T. actually accepted responsibility for the security of the trailer?

A Not to my knowledge, other than the driver had checked the trailer in. That is all I know.

Q Did he check it in to Mr. Talley or N.I.T.?

A He would have checked it in to Warehouse 1-A, at the office.

Q By "checking in" you mean that he turned over certain documents?

A He would turn in the bill of lading stating the trailer number, the number of cases, the weight, Old Dominion's pro number, showing that it was an Old Dominion trailer.

Q Do you have any documents which indicate that he did turn in the bill of lading?

A Not to my knowledge, other than our copy showing that he carried it down there. That is all.

Q Showing that he carried what down there?

A The trailer to N.I.T., and the bills.

Q If the warehouseman takes the bill of lading for the cargo, how does anyone else get the cargo from the warehouse, if the warehouseman has the bill of lading?

A What warehouseman?

Q In what category would we consider N.I.T. in this situation?

A N.I.T. in this particular situation would be Warehouse 1-A, at the office where you check your bills in. We don't give the bills to the warehouseman. We check them into the office.

Q When you turn these documents over you are telling us that you are actually turning over the cargo to N.I.T.; is that correct?

A Yes, sir.

Q How does someone else get the cargo from N.I.T.?

A How do they get it?

Q Yes, sir.

A I could not truthfully answer that. I know personally from my experience that when you go down there and pick up freight you have to get a special pass showing the commodity you have, what you have picked up in order to get out of the gate. You have to turn the pass over to the gate guard.

Q It is a property pass?

A Yes, sir. If you have an empty trailer they stop you at the gate and you have to get out and open your doors and let the guard look into the trailer.

Q As to this cargo which has been turned over now, according to you, to N.I.T., the bill of lading has been turned over. You say now that N.I.T. has the cargo. This cargo was destined for a certain ship. Is that correct?

A I could not tell you where it was going. It was going to be stuffed in a container.

Q And then it was to go on a certain ship; isn't that correct, sir?

A Yes, sir.

Q Your driver gets rid of all the documents which he has when he turns them into the office. Is not that right, sir?

A Yes, sir.

Q At this point then Old Dominion has washed its hands of the cargo. Is that not correct? Is that what you are telling us?

A We have turned the trailer over to N.I.T.

Q And you have also turned the cargo over; is that correct?

A Yes, sir. We have backed up to their platform.

Q So you have washed your hands of the cargo. Is that what you are telling us?

A Not particularly. We back the trailer up to the dock and turn the bills in. N.I.T. had the trailer and they had the bills. They knew what was on it.

Q Yes, sir. Is it your thinking, and is it the custom in the trade, that at that point the carrier has washed its hands of the cargo and has done what it was supposed to do?

A We have delivered the cargo to the consignee, yes, sir, which would be N.I.T. - Norfolk International Terminals.

Q You have now turned it over to them; is that right?

A Yes, sir.

Q Did Old Dominion have the right to take the trailer and that cargo off N.I.T.'s premises?

A No, sir, not unless we had a special pass.

Q How would you get that special pass?

A By going to the truck office and picking up the bill and getting a pass to pull it out.

Q What would you show them at N.I.T.'s office to establish your right to that cargo?

A We would have Old Dominion's bill of lading for this particular trailer showing so many cases of whatever is on it.

Q I understand.

A They would have to give us a pass for that.

Q What would you show to establish your right - when I say

"you," I mean Old Dominion's right - to take that trailer back if you had already turned the cargo over to N.I.T.?

A We have our control copy that we could carry back down there to get it, or Mr. Talley who is the driver that works at N.I.T. all the time could go up there and get it.

Q So Old Dominion still exercises some control over the cargo; is that right?

A I would say so, yes.

Q So you had the right to take it off the premises if you wanted to?

A Yes, sir, by getting a special pass to take it off.

Q Suppose the cargo has been unloaded by N.I.T. and put into the security warehouse 1-A, could Old Dominion come back to N.I.T. and say, "Load this cargo back in the trailer. We are going to remove it"?

A No sir.

Q Why would there be a difference?

A Because it would not be on our trailer.

Q So as long as it is on your trailer you still have some control over it; is that correct?

A I would think so, yes, sir.

Q You still have some dominion over it at that point? I am not making a pun. But you are still exercising dominion over the cargo at that point if it is on your trailer?

A Yes, sir.

Q N.I.T. hasn't actually taken it off the trailer and put it in its warehouse; is that right?

A I guess so.

Q Mr. Talley could have hooked up a tractor and moved that trailer from Warehouse 1-A and put it at someplace else on the premises. Isn't that correct?

A He could have, yes, sir, but to my knowledge he didn't.

Q But he could have?

A Yes.

Q So Old Dominion was still exercising control over that trailer?

A Not particularly Old Dominion. They have jitterbugs

down there or jockeys. N.I.T. could have moved that trailer anywhere that they wanted to, themselves.

Q Do they customarily do that?

A They have spotters down there that they use to spot the containers up to the dock, and trailers up to the dock, and move them.

Q As a practical matter, if Mr. Talley wanted to take that trailer back to Old Dominion that evening he would just simply have to walk into the office and ask for the papers and they would be given back to him. Isn't that correct?

A I would assume that he could. I am not familiar with this feature at N.I.T. Like I say, I have been down there occasionally and carried trailers, but Mr. Talley works down there all the time and just about everybody knows him.

Q When you went down, yourself, and brought some back what was the procedure that you followed?

A Say if I went to Pier 1 or Pier 2 or somewhere and picked up merchandise, then I would have a pickup request from a broker, say Hipage or some other broker in the city. I would go down there to pick up this particular cargo. When they loaded this cargo on my trailer then I would go to the truck office and say, "Pier 1," and turn in my receipt showing that they had loaded it. She would give me a pass for that commodity to go out the gate with.

Q Did you ever have occasion to deliver a trailer and cargo to N.I.T. and then take that trailer and cargo back - that same trailer and that same cargo?

A Not to my knowledge, no, sir.

Q Did you ever have occasion simply to pick up a trailer and cargo and bring it back after it had been delivered by someone else?

A Do you mean one of our trailers?

Q Yes, sir.

A That somebody had carried something down?

Q Yes, sir, and then you decided to bring it back.

A No, sir.

Q You never had that experience?

A No, sir.

Q After N.I.T. in the usual and normal course would unload the cargo from a trailer and put it in its warehouse, would any other documents change hands?

A I could not say what N.I.T. does with their documents down there.

Q As far as Old Dominion is concerned would you be notified in some way that N.I.T. now had the cargo in its warehouse?

A No, sir.

Q You would not get a receipt or anything of that type?

A We get a receipt or our bill of lading.

Q You would get your bill of lading back?

A Yes.

Q When would that take place?

A After they unloaded the trailer.

Q So when you get your bill of lading back, in effect that serves as your receipt that you have delivered the cargo to N.I.T.?

A It shows that they received that many cases, yes, sir.

Q That is really your receipt that you have delivered it to where you are supposed to? Isn't that right?

A That is right.

Q And until that moment you have not delivered the cargo. Isn't that correct? Is this the practice in the trade?

A I really don't know how to answer that. There have been times when we have delivered freight down there and it has been six months before you can get the bill back. It would get lost somewhere.

Q Did you ever turn the papers over to them before the trailer arrived?

A No, sir. The bill goes with the trailer.

Q Old Dominion kept a tractor on the premises of N.I.T. Is that right?

A No, sir.

Q How about the one that Mr. Talley used?

A Mr. Talley brought it in every night and carried it back every morning.

Q Where did you keep the tractor?

A We had an old tractor down at Lambert's Point Docks that we used to spot trailers with. In other words, down at Lambert's Point you could not drop a trailer. You had to keep a tractor on it all the time. We had an old tractor down there that we kept locked up. The man that worked at Lambert's Point would use it to spot. Say if a tractor was hooked up to a trailer and backed up to one door, he would get the extra tractor and back it up to another door.

Q You say that you kept it locked up?

A Yes, sir.

Q What did you do with the keys?

A The driver kept them.

Q Where did he keep them?

A I don't know where he kept them.

Q Is this the tractor that was used to take this particular trailer with which we are concerned for the purposes of N.I.T., according to the information you have?

A Yes, sir.

Q Can you tell us how the person who took this tractor managed to get the keys to operate it?

A No, sir, I could not tell you.

Q What have you heard in that regard?

A Nothing, sir.

Q No one has told you anything?

A No, sir.

Q Did anyone tell you that the keys were in the tractor?

MR. LEAFE: I think he has answered the question, Joe.

BY MR. GAWRYS:

Q Did anyone tell you that the keys were in the tractor and the tractor was used? Did you not hear that, sir?

A No, sir.

Q Was it not the practice to leave that tractor at Lambert's Point Docks with the keys in it?

MR. LEAFE: I am going to start objecting to the

questions, Joe. If you want to ask him for information, I am perfectly agreeable. I sat here while you cross-examined him. If you want information, O.K.

MR. GAWRYS: That is what I am looking for. I may be striking a sensitive nerve, but I have the right to pin this witness down so that I can impeach him, and I fully intend to. Your previous witnesses have testified that this tractor was left at Lambert's Point with the keys in it.

MR. LEAFE: There have been no witnesses that testified that anybody has told any dispatcher or this man anything. I have just let you go right along in cross-examining him, but I will just call a halt.

MR. GAWRYS: We will have to come back.

MR. LEAFE: That is all right. It doesn't bother me in the least.

MR. GAWRYS: I am entitled to ask him not only what he knows, but what he may have heard from other people. I am entitled to find out from whom he may have heard it. It may be hearsay and triple hearsay.

MR. LEAFE: When he has answered the question one time that is sufficient.

MR. GAWRYS: I can ask the question differently. He may have misunderstood me. I want to remove all doubt. O.K.?

MR. LEAFE: Until I think you have gone too far, and then you won't go any farther.

MR. GAWRYS: At that time we will set it down for a hearing.

MR. LEAFE: That is all right.

BY MR. GAWRYS:

Q Mr. Jones, did Old Dominion keep tractors at any other locations?

A No, sir.

Q Did you have other tractors besides the one that Mr. Talley used?

A Yes, sir. We had about fifteen or twenty of them on our yard all the time, at the terminal.

Q Where did you keep those?
A In the terminal yard.

Q Who had custody of the keys to those tractors?
A We had a board, and the drivers would come in and take the keys off. We would lock them up at night. We would hang them on that board in the dispatch room.

Q The dispatcher I take it was supposed to be by those keys at all times?
A They are on a board in there, yes, sir.

Q Who was the driver who worked at Lambert's Point Docks and had the use of this particular tractor that we are discussing now?
A Sir?

Q What is the name of the driver?
A Lewis Strickland.

Q Is he a black man or a white man?
A He is a white man.

Q Is he still employed by Old Dominion?
A To the best of my knowledge, yes, sir.

Q Were there any other drivers employed by Old Dominion who worked at Lambert's Point during this period of time?
A Yes, sir.

Q What are their names?
A I could name just about every driver that we had that would go in and out of Lambert's Point at times.

Q I am speaking of any driver that would take a tractor and leave it there.
A And leave a tractor there?

Q Yes, sir.
A Nobody in particular.

Q So Mr. Strickland would be the only person then; is that correct?
A He was the man that worked at Lambert's Point all the time. That was his regular job.

Q Do you know his address?
A No, sir. He lives in South Norfolk, I know that, or used to.

Q Does he still live in South Norfolk?
A I could not tell you.

Q Do you know the street that he lives on?
A No.

MR. GAWRYS: Mr. Leafe, would you furnish us with his name and address?

MR. LEAFE: Yes.

MR. GAWRYS: I want to take his deposition.

BY MR. GAWRYS:

Q Mr. Strickland is still employed by Old Dominion?
A To the best of my knowledge, yes, sir.

Q Have you ever discussed this with Mr. Strickland?
A No, sir.

Q Mr. Jones, going back to the fifth-wheel pinlock - how long have you been engaged in the trucking business?
A A little better than ten years now.

Q What has been your experience? Have you been a driver?
A I worked in the warehouse, I drove, dispatched, warehouse supervisor, assistant manager, and now I am a manager.

Q Mr. Jett asked you about a fifth-wheel pinlock. Are you familiar with a fifth-wheel pinlock?
A I have seen them, yes, sir.

Q Have you ever used one?
A Yes, sir.

Q When was the first time, just an estimate, that you may have used one?
A I could not give you a particular time or date, no, sir.

Q Was it sometime prior to the theft of the trailer in question?
A I could not give you a definite date.

Q I am trying to develop this. These fifth-wheel pinlocks are not a new invention, are they?

A I could not say that, either. I don't know. I don't know whether it is a new invention. I don't know if they came along after the trailer was stolen or what. I don't know how long they have been in existence.

Q To your recollection you had never heard of a fifth-wheel pinlock prior to the theft of this trailer?
A No, sir.

Q You had never heard of one?
A I had never heard of one or seen one, no sir.

Q Have you always worked for Old Dominion?
A In the last ten years, yes, sir.

Q Who in Old Dominion, your company, determines what equipment is purchased for the trailers and tractors?
A Who determines what equipment is purchased for the trailers and tractors?

Q Yes.
A It would come from our home office in High Point.

Q Do you know the names of the people?
A My immediate boss is Bill Chestnut.

Q He is in High Point?
A He is Vice-President of Operations with Old Dominion Freight Lines, yes, sir.

Q That is at High Point?
A Yes, sir.

Q Would Mr. Chestnut have authority to order fifth-wheel pinlocks for the trailers?
A I would think so. It would be a vice-president operation.

Q Would anyone in the Norfolk area have authority to order fifth-wheel pinlocks?
A Not without authorization from the home office.

Q To your knowledge had anyone suggested the use of fifth-wheel pinlocks prior to the theft of this trailer?
A Not to my knowledge, no, sir.

Q I take it that a fifth-wheel pinlock would prevent a person without a key from simply backing up a tractor to a trailer, hooking on and pulling it away. Is that correct?

A That is what it was designed for.

Q Does it work?

A Well, it does with our tractors. I know that with the pinlocks we use, our tractors would not go under them.

Q Your tractors would not?

A No.

Q If you haven't got the key how do you get the fifth-wheel pinlock off?

A You don't, to my knowledge.

Q Could you cut it with a torch or something like that?

A I don't know whether a torch would burn it or not. I have never tried.

Q It is a pretty good security device then?

A To the best of my knowledge, yes, from what I know about it.

Q Thank you.

BY MR. JETT:

Q Just one or two more questions. Mr. Jones, other than a fifth-wheel pinlock do you know of any other devices or any other means that can be used to lock a trailer so that you just can't back up a tractor to it and move it off?

A Not to my knowledge, no, sir.

Q Could you put a piece of chain around it and put a padlock on it? Would that do the same thing?

A I don't know whether it would or not, sir.

Q Were you familiar with any cigarette thefts prior to this particular one that we are concerned with here - any other thefts in this general area - Virginia, North Carolina, et cetera - prior to this particular one?

A Not to my knowledge, no, sir.

Q Were you familiar with the fact that cigarettes were bringing a rather high price in New York around this time?

A No, sir.

Q You were not familiar with any other thefts of trailers with cigarettes in this general area?

A Not to my knowledge, no sir.

Q Thank you.

BY MR. LEAFE:

Q You have the right to read this and sign it -

MR. GAWRYS: Could I ask one more question?

MR. LEAFE: Sure.

BY MR. GAWRYS:

Q Just for my education, Mr. Jones, what is the function of a waybill?

A What is the function of a waybill?

Q Yes, sir. What is your understanding as to its function?

A A waybill is a bill of lading showing that you have so much freight coming from a certain party that is going to a certain party.

Q Would this have been prepared in this instance by Phillip Morris or by Old Dominion?

A Phillip Morris would be the initial shipper. They would give you a shipping order. Then it would go to our billing station in Richmond, or wherever it was billed. It would go from the shipping office of Phillip Morris onto an Old Dominion waybill. The information on the shipping order would be transposed to the Old Dominion waybill.

Q Is this the same as a bill of lading?

A What - the shipping order? It is a bill of lading.

Q The waybill is a bill of lading?

A Yes, sir.

Q What function does a manifest serve?

A A manifest is a control copy from one terminal to another showing that trailer such and such left Richmond, going to Norfolk, this, that and the other. It is a five-part manifest. Two copies come with the trailer. One copy goes to Central O.S. & D.

Q This controls the movement between your Old Dominion terminals; is that right?

A Yes, sir.

Q Is a copy of the manifest given to Norfolk Terminal?

A No, sir. The bill of lading is all that is turned over to Nor-

folk Terminal.

Q Thank you. No further questions.

BY MR. LEAFE:

Q After this deposition is written up you have the right to read it and sign it, or you can waive the reading and signing. I ask you if you agree to waive it?

A Yes.

* * *

LUMIS LAMM, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. JETT:

Q State your full name, please, sir.

A Lumis Lamm.

Q And your present address.

A 1425 Elm Avenue, Chesapeake, Virginia.

Q What is your present occupation?

A Terminal manager for Old Dominion Freight Lines.

Q This is the terminal that is located in Chesapeake; is that correct?

A Right.

Q How long have you been acting in that capacity?

A At this terminal since November of 1965.

Q So then you were at this terminal at the time the particular trailer of cigarettes that we are concerned with here was stolen. Is that correct?

A I was.

Q Were you serving as teminal manager at that time?

A Yes.

Q As part of your procedure at the terminal in Chesapeake do you keep any logs or records of where your particular trailers are located at various times?

A Yes, sir.

Q How about trailers that are left at N.I.T., say, overnight,

would your records indicate that as well?

A Yes.

Q At the time of this particular theft was it customary to leave trailers with cigarettes at N.I.T. if they could not be worked that particular day?

A Yes.

Q Who would make that decision? Would that be up to the dispatcher or would that be up to the individual driver or would that be up to Mr. Talley, or just who would make the decision in that regard?

A I would make the original decision, myself. I would instruct the dispatcher.

Q As to this particular trailer, were you aware that it was being left at N.I.T. overnight?

A Not that particular trailer at that time. We had standing instructions that if they were not unloaded we would leave them there once they were checked in.

Q Were you advised that this particular trailer of cigarettes was being left at N.I.T. on this evening?

A Not that particular afternoon, no.

Q Mr. Talley has testified previously. Does he have a job title?

A Just "driver."

Q Driver?

A Yes.

Q But he is, so to speak, Old Dominion's man at Norfolk International Terminals?

A That is right.

Q That is where he operates most of the time?

A That is right.

Q As to this particular trailer, suppose you had desired to bring it back to your terminal for the evening, what would you have done in that regard?

A The only thing you could have done is that you would have to go and get a pass to get back out with it. You were supposed to have to present a bill to get a pass.

Q In other words, if you desired to do this, that would have

been the procedure you would have undertaken. Is that correct?

A Right.

Q But no decision was made as to bringing this particular trailer back to the terminal?

A No.

Q That could have been done if you had so desired; is that correct?

A Possibly.

Q At the time this particular trailer was left at N.I.T. did Old Dominion have a device that has been referred to as a fifth-wheel pinlock? Are you familiar with this particular device

A I wasn't at that particular time.

Q Is this a new device or is this something that has been in the industry for several years?

A I am not that familiar with it. We have them now, but at that particular time it was not well known. I had not seen any until we got the ones that we have - I will put it that way - or had not heard anything about them.

Q Were they in existence at the time of this theft?

A I am sure they were.

Q How did you ar anyone for Old Dominion ultimately decide to start using these?

A It was after this load of cigarettes was stolen.

Q Any particular valuable cargoes on trailers that are now left overnight at N.I.T., do you put this device on them?

A Yes, sir.

Q Is that pursuant to your instructions?

A Yes, sir.

Q What is the device, roughly? Can you tell us a little bit about it?

A Are you familiar with the fifth wheel on a tractor?

Q Yes.

A And the kingpin of a trailer?

Q Yes.

A It is a big, long type of thing that slides right up on the kingpin of a trailer. It is too large to slide in between the fifth wheel to hook up. In fact, it is impossible to slide it in. It can't

slide into the fifth wheel of the tractor.

Q It is an antitheft device more or less?

A That is right. The only way you can get it off without a key would be with a cutting torch.

BY MR. GAWRYS:

Q A what?

A A cutting torch.

BY MR. JETT:

Q Is there any particular reason why one wasn't used on this trailer that we are concerned with?

A We had none at that time.

Q You did not have any?

A No.

Q Had you made any effort to obtain any at that time?

A I hadn't, no, sir.

Q When was the theft of this particular trailer first called to your attention? Do you remember?

A I can't be exact on the time, but it was approximately around 8:30 or quarter to 9 on a Saturday morning. I don't remember the date. It was the day after it was stolen.

Q Did you, yourself, then go to Norfolk International Terminals?

A Later on in the day, yes, sir, with the FBI and with the Norfolk Terminal people: Ray Brewer and Zanecchia.

Q Did you make or undertake any investigation as to the theft of this trailer - you, yourself?

A I instigated it, yes, sir.

Q You did instigate it?

A Yes.

Q Did it not ultimately turn out that the tractor which was used to remove this particular trailer was one of Old Dominion's?

A That is correct.

Q Where was the tractor found?

A I don't remember the time. It was on Saturday, on up in the day. It was found right off Little Creek Road behind a fur-

niture warehouse. I don't know the exact address. I was with the FBI at the time. We went straight to the tractor.

Q You went directly to the tractor?
A That is right.

Q Did you find the keys in it?
A Right.

Q Whose keys were those? Were those Old Dominion's keys?
A Right.

Q Do you know how the thieves, if I can call them that, had obtained the tractor and the keys?
A I assume that I know. I am not positive.

Q What do you assume?
A The tractor was old. I believe it was a '56 model White tractor. It was parked at Lambert's Point Docks. We kept it down there specifically just to use to shuttle trailers around at Lambert's Point Docks. It was not suitable for road use. The keys were left hanging over the sun visor or behind the sun visor.

Q Was this fairly common knowledge?
A I assume so, since the tractor had been down there for several years.

Q Was there any one particular driver for Old Dominion who was assigned to it?
A Yes.

Q Would he normally leave the keys in it like that?
A Yes, sir.

Q Do you have any idea how those involved in the theft of the cigarettes - I am talking about the actual thieves - knew that this tractor was there with the keys in it?
A Well, the ones that were involved were actually drivers in the past for Overnite Transportation. They had worked at the piers and, of course, possibly they had obtained that knowledge.

Q What was the condition of the tractor when you found it? Had they damaged it in any way?
A No damage.

Q There was no damage to it?
A No, sir. The tractor would not run over 25 miles an hour

to start with.

Q That was probably why they abandoned it?
A Yes.

Q Are you still leaving the keys in the tractor at Lambert's Point?
A No. That was the only place I was leaving a tractor to begin with. During this process of containerized freight, and everything, business at Lambert's Point has slacked off, so we do not need the tractor.

Q At that particular time did you need a pass to get either on Lambert's Point Docks or to get off? Do you remember?
A No, sir.

Q I am talking about Lambert's Point now.
A No, sir.

Q You did not?
A No, sir.

Q Do you know where this particular tractor was parked at Lambert's Point?
A It normally was parked over on the right, just beyond the guard shack. You know, there is a little office there at the gate. It was just beyond there.

Q In regard to some of the documents that were involved in this particular incident there has been talk of a waybill. What exactly is a waybill?
A A waybill is a freight bill that is cut for a specific load or specific item.

Q Is that prepared normally by Old Dominion?
A Right.

Q I show you a document here that has been previously introduced in evidence by Mr. Talley. It is apparently just a copy. Is that the document that we are concerned with here?
A (Examines)

Q Based on your recollection?
A One similar to that.

Q One similar to that?
A Right.

Q I notice up in the righthand corner it says, "Duplicate." Do you have any idea what happened to the originial?

A Yes, sir.

Q Where is that?

A Each driver carries a small briefcase or luggage bag in which he carries special items that he needs, such as a flashlight or anything like that. The driver that pulled the load down from Richmond left it sitting on the saddle tank of the tractor when he pulled out of the Richmond Terminal. The bills were in that pouch. That morning somebody else found his bag and carried it back to the Richmond Terminal. The load came into Norfolk without a bill. We got duplicate billing information from the Richmond Terminal, from their bills, to deliver the load with.

Q So then he went forward with this duplicate copy; is that right?

A That is right.

Q And then this waybill was turned into the Norfolk International Terminals; is that correct?

A That is correct.

Q Did anyone for Norfolk International Terminals ever sign this copy of the waybill?

A I can't answer that question, because I don't have them. The FBI had them the last that I knew about it.

Q But this particular copy right here, no one for the terminal has signed it; is that correct?

A I can't answer that.

Q Do you see a signature on it?

A That is a photostatic copy. That is not a true copy.

Q Did Old Dominion ever receive any form of receipt from the terminal as to this particular shipment?

A I saw the bill, myself. N.I.T. had stamped the back of the bill as "Received," and the time the freight was received.

Q I understand that. But did Old Dominion or anyone for Old Dominion ever receive any form of receipt from Norfolk International Terminals for this shipment that you know of?

A Nothing except that freight bill which the FBI got.

Q But you have no documents in your possession?

A No, sir.

Q Is this particular trailer, No. 4572, if you know, still being used?

A Yes, sir.

Q It is still in use?

A Yes, sir.

Q Is the number 4572 actually on the trailer, on the outside of the trailer somewhere?

A Yes, sir.

Q It is?

A Yes, sir. It should be in the front end and the back of the trailer.

Q So if somebody wanted to look at the trailer he could pick up the number; is that correct?

A That is correct.

Q Do your drivers now carry this fifth-wheel pinlock, or most of them?

A No, sir. We keep them on at the terminal. We use them when we need them.

Q Whenever you think it is necessary?

A Right.

Q Do you have any idea how these thieves found out about this particular trailer being left at N.I.T. overnight, as to what it contained?

A Only an opinion.

Q What is your opinion?

A That one of them down there was walking around and overheard the checker tell our driver Talley or someone that they were not going to unload that trailer; that he found out from an employee of N.I.T.

Q That is your opinion?

A That is my personal opinion.

Q It is just as possible that he could have found out from an employee of Old Dominion?

A No, sir, I would not think so.

Q Why was this particular trailer left overnight at N.I.T.?

A N.I.T. was unable to unload it.

Q Who made the decision to leave it there overnight so far as you all were concerned? Was that the dispatcher in this case?
A Yes, sir.

Q The home office of Old Dominion is where - High Point, North Carolina?
A Yes, sir.

Q Were you, yourself, aware of any prior thefts of trailers with cigarettes around this time?
A No, sir, other than rumors in New York that I had heard.

Q What I am getting at - had there been any other instances of thefts of cigarettes in this general area: North Carolina, Virginia, et cetera?
A Not to my knowledge.

Q Had Old Dominion had any trouble or any instances of thefts of cigarettes prior to this?
A Not truckloads.

Q How about anything other than truckloads?
A Yes, sir. I have had problems here at the terminal where they jumped the fence or cut the fence and would break into a trailer.

Q When was this?
A It has been a continuous problem for five or six years - ever since I have been in Norfolk.

Q As to cigarettes?
A Different commodities. Cigarettes were involved, too.

Q Was there any way that anyone could tell there were cigarettes in this particular trailer?
A No, sir, not unless he opened it or he either saw the waybill.

Q Did you all ultimately get this particular trailer back?
A Yes, sir.

Q How are cigarettes loaded in there? Do they use brown paper or something like that to load them in?
A They use waterproofing paper on the floor.

Q On the floor?

A Yes.

Q In what instances now do you leave trailers of cigarettes at N.I.T. overnight?

A If they are unable to unload them we can pinlock them. We have an agreement with them that we notify the guard of the trailer numbers that are left with cigarettes in them.

Q And you leave them overnight?

A Yes.

Q Did anybody for Old Dominion notify someone for N.I.T. that this particular trailer was being left overnight, that you know of?

A No, sir, nothing except the knowledge that the trailer was being left at 1-A

Q If you, yourself, had known that this trailer was loaded with cigarettes would you have allowed it to remain there overnight?

A Yes, sir.

Q How is Old Dominion normally notified when the unloading of these trailers is completed? Is Talley usually advised?

A That is right. He checks on them continuously. He calls in and advises the dispatcher.

Q Did anyone for Old Dominion specifically request N.I.T. to post a guard on this trailer that you know of?

A No, sir.

Q Old Dominion I assume in an instance like this will bill the shipper, Phillip Morris. Is that correct?

A For freight charges, yes.

Q Did those freight charges include any services by N.I.T.?

A I can't answer that question accurately, not in this particular instance. Normally on bulk-break cargo there is a wharfage and handling fee, but at times when the container line cannot supply the containers to a shipper they will absorb that charge.

Q What was done on this occasion?

A I can't answer that.

Q Now the seal on this particular trailer, was it ever broken prior to the theft?

A Not to my knowledge.

Q Old Dominion I assume has to file a tariff with I.C.C. Is that correct?

A That is true.

Q You mentioned the handling and wharfage charges. These are charges that Old Dominion is billed for by the terminal. Is that correct?

A That is correct.

Q Was that done on this occasion?

A I can't answer that.

Q Do you bill N.I.T. for any services?

A Not unless they ask for it.

Q Was it done on this occasion that you know of?

A No, sir.

Q As to these trailers which are left overnight at N.I.T., one reason for leaving them overnight is that if they can't be worked that particular day it is to save the expense of taking them back to your terminal and bringing them back. Is that not correct?

A Partially. Another thing is the problem of getting passes to get back out with them.

Q Do you know whether or not the cigarettes in question were ever found?

A They were not, to my knowledge. We have not seen any of them.

Q So your investigation did not disclose what happened to the cigarettes? I am talking about ultimately.

A Ultimately, no. The only thing I know is what the FBI has told me.

Q What was that?

A They did not find them in New York when they found the trailer in New York. It was empty.

Q MR. JETT: I think that is all I have.

BY MR. GAWRYS:

Q Mr. Lamm, where was the trailer found in New York, from what you were told?

A I believe it was in the Brooklyn section, is all I know.

Q In the Brooklyn section?

A Yes.

Q And the trailer was empty?
A Right.

Q When was it found?
A I can't answer that. It was four or five days later.

Q You don't know the specific area where it was found?
A No, sir.

Q Was the trailer returned to Old Dominion?
A Pilot Freight Carriers in New York, their tractor was found up there, also, and they picked up the trailer and brought it to their agent and loaded it and brought it back to Norfolk.

Q From the information you received did the people responsible take a tractor from Pilot Freight Carriers and then haul the trailer?
A I did not understand the question.

Q What was the information you received as to how the trailer got to New York in the first instance?
A We got word - I think it was Sunday or Monday - that Pilot had a tractor stolen from them.

Q I see.
A We also got word that a guard on the Chesapeake Bay Bridge-Tunnel had seen one of Old Dominion's trailers going through on Saturday morning. Then we got word from the FBI that they had found the trailer in New York. They had it under surveillance and wanted us to move it. So that was the way we got Pilot to move it.

Q So Pilot moved it for you?
A That is right.

Q And brought it back to Norfolk?
A Right.

Q Did Pilot bill you for that service?
A No, sir. They had to get their tractor back, and they utilized the trailer with a load of freight back here. They brought the trailer back.

Q Was the trailer in an undamaged condition or was it damaged?

A The signs had been stripped off of it.

Q The signs had been stripped?
A Yes.

Q Did you thereafter replace those signs?
A Right.

Q This entailed a certain expense, I take it?
A Yes, sir, but I don't know the exact amount. There are three signs on the trailer: one on each side and one in front.

Q Did Old Dominion pay the expense of replacing these signs?
A Yes, sir.

Q You did not bill N.I.T. for that cost?
A No, sir.

Q Was the tractor undamaged?
A I can't answer that.

Q You did not try to impose any charge on N.I.T. because you had your trailer stolen, did you?
A No, sir.

Q Where is the tractor now, sir?
A I can't answer that.

Q I don't mean the tractor, but the trailer.
A It is in our system some place.

Q Some place?
A Yes.

Q Do you have other trailers just like it?
A Yes, sir.

MR. GAWRYS: Could we arrange to get a photograph of this tractor fifth-wheel pinlock, the trailer, and things of that type, Mr. Leafe?

MR. LEAFE: I would imagine so. I don't see any problem with that.

BY MR. GAWRYS:

Q You do have these fifth-wheel pinlocks available so that we can take a photograph?

A Yes.

Q Do you know who makes these fifth-wheel pinlocks?
A Not right offhand. The name is on them.

Q Where did you purchase the fifth-wheel pinlocks?
A I can't answer that. It was done from the home office.

Q Did you ever recommend that fifth-wheel pinlocks be obtained?
A No, sir.

Q Did anyone in your organization to your knowledge make any such recommendation?
A Not to my knowledge.

Q How does one break into a trailer that is locked up?
A In what manner?

Q I take it that you have doors in the back of the trailer?
A Right.

Q Are they locked or are they just lashed?
A Sealed.

Q How does one break the seal?
A You can cut it with a pocketknife or break it with your hand if you have got a glove on or something that won't cut.

Q Is there any other kind of lock on the doors?
A No.

Q Just the seal?
A The seal and a latch that hooks to keep the door from coming open.

Q But the latch can just be opened; is that right?
A The latch can be opened.

Q Are cigarettes considered a highly pilfered risk item in the industry?
A Yes, sir.

Q With the trailer parked at N.I.T. right in front of Warehouse 1-A, can you tell us what security precautions were taken by Old Dominion, if any, which prevent pilferage of cigarettes from that trailer? I am not talking about stealing the whole trailer now, but just stealing cargo from the trailer.
A We have confidence in the security force at N.I.T.

Q Can you tell us what the nature of the security force was at N.I.T.?

A Not the exact nature, no, sir. The only thing I know is that they have several employees and they are riding around.

Q What was your understanding on the day that this trailer was delivered to N.I.T.?

MR. LEAFE: With regard to what?

MR. GAWRYS: With regard to security.

BY MR. GAWRYS:

Q Just patrolling N.I.T. terminals?

A That is right.

Q How many guards did you assume they had on duty patrolling at any one particular time?

A I never made that assumption.

Q You never thought about it one way or the other; is that correct?

A Not as to the number they had patrolling, no sir.

Q N.I.T. does occupy quite a large area; isn't that right?

A Yes, sir.

Q And even if they had roving patrols of some security people they couldn't be everywhere at one time, could they?

A I can't answer that, because I don't know how many guards they had.

Q You had no idea when you left the trailer there, did you?

A No, sir.

Q And you made no effort to inquire?

A Pardon?

Q You made no effort to find out?

A Prior to that, no, sir.

Q Do you know now?

A Not the exact number.

Q If a person wanted in the dark of night to drive a car up to where the trailer was parked at Warehouse 1-A, could he simply go up there and break the seal and unload some cigarettes and put them in his car?

A I don't know whether he could or not. I don't know what kind of complete guard system they had.

Q It would not be too much of a problem, would it?
A I can't answer that.

Q Warehouse 1-A is a security warehouse, isn't it?
A That is true.

Q Once the cargo gets inside the warehouse it is locked up, isn't it?
A That is true.

Q There is a guard right in there, or the guard locks the door?
A I can't answer that.

Q Your trailer wasn't locked up except for this little seal; is that right?
A That is true.

Q I could break it with my hand?
A That is true.

Q There was no specific fence around this trailer?
A (No answer)

Q There was no fence around the trailer, itself?
A No.

Q And no one from Old Dominion suggested to N.I.T. that they pay particular attention to this trailer because it had a valuable cargo on it, did they?
A Not to my knowledge.

Q Now, sir, what is your understanding when the driver arrives at the premises of N.I.T. with a trailer and delivers some documents to the office as to the purpose of that? What is your understanding of that?
A The purpose of it is to know where they want the cargo, where they are going to unload the cargo, and for them to be able to set up their work force to unload it.

MR. LEAFE: Can we take a short break?

(Thereupon, a short recess was taken, after which the following occurred:)

BY MR. GAWRYS:

Q There is a procedural technique then I suppose in getting organized and preparing to accept the cargo from Old Dominion. Isn't that right, sir?

A That is right.

Q Of course Old Dominion knew where the cargo was going to go. Is that right?

A Approximately.

Q I believe you testified that you knew it was going to 1-A?

A Right.

Q What happens after the documents go into the office? Tell us what happens to normal cargo that is not stolen.

A The driver turns the bill into the office. The girl stamps the back of the bill, the time received.

Q The time that she receives the documents; isn't that right?

A The documents and the trailer. He is told at that time where they want the trailer and he spots it. They keep the bill, throw it in a basket, and a pier supervisor or foreman or somebody comes by and takes the bill and unloads it.

Q Then they start unloading; is that right?

A Yes.

Q Who unloads it?

A The pier operators.

Q Who opens up the trailer?

A The pier operators.

Q Is there a representative of Old Dominion there when the seal is broken?

A Not necessarily.

Q Not necessarily? So then they start unloading the cargo?

A Yes.

Q Then what happens?

A They unload it.

Q Do they inspect the cargo?

A I would assume they would.

Q Do they check it?

A I would assume they would.

Q What happens if the cargo is not as represented on the waybill? In other words, suppose the waybill showed 500 cartons of cigarettes and it contained bedroom furniture instead?

A They would not unload it.

Q They would not?

A No.

Q In other words, they would not accept the cargo then; is that right?

A That is right.

Q Am I correct in assuming then that the terminal does not accept the cargo until it is offloaded from the trailer? Is that correct?

A I can't answer that question.

Q What is the custom in the trade? What is the understanding in the trade?

A I assume they accept the cargo when they receive the bills and the trailer. They unload it at their convenience; not at our convenience. They unload it when they get ready.

Q Is this what your understanding is if some other freight line delivers a trailer to the premises of Old Dominion and just stops on the premises, that it is your cargo even before it is unloaded from the trailer?

A No, sir. There is a lot of difference in N.I.T.'s operation and in a truck line's operation.

Q Why would there be a difference?

A Because you are not allowed even to touch a piece of freight when loading or unloading down there.

Q How does it get unloaded?

A By pier operators, who they have got employed to do it, which I assume is I.L.A. labor.

Q Under a union contract?

A That is right.

Q What happens at the Old Dominion terminal if you have to get something unloaded there?

A The driver assists in unloading that delivers the freight to us, and we assist.

Q And you also do it?

A We supply part of the labor and they supply part of the labor.

Q That is because your union is not as tough as the I.L.A. then, I suppose?

A We are not unionized.

Q You are not unionized?

A No.

Q So isn't it correct in the trade that actually N.I.T. does not accept the cargo until it is unloaded and checked? Isn't that correct?

A I can't answer as to what their acceptability is.

Q If you wanted to have that trailer brought back from Norfolk International Terminals right afterwards could you have done so?

A If you could have located the bill and taken the bill and gotten a pass to come back out with it.

Q Have you ever brought a trailer back from N.I.T. with its cargo intact?

A Not to my knowledge.

Q But you could have brought it back with no problem?

A With some problem, yes.

Q You would have to go up and ask for a pass?

A First you have got to find the bill. Then you present the bill to the girl to give you a pass.

Q Where would you look for the bill?

A You probably would start with the check-in girl. If she doesn't have it you would have to go and hunt down the foreman. He may have it stuck in his pocket, walking around with it.

Q But you have the right to demand it and take it back?

A I assume that you would.

Q There is no doubt in your mind?

A It has been a problem getting trailers off the pier.

Q Since the theft?

A Since the theft and before the theft at times.

Q Actually it was a mechanical problem in getting the paperwork together?

A Right.

Q But the carrier could demand it and take it back if it wanted to. Isn't that correct?

A I assume you could. I have not tried it.

Q In the course of your investigation as to what happened to this trailer did you learn the names of the persons who were supposed to have stolen it?

A I did at one time, but I have forgotten their names.

Q You don't remember any of their names now?

A Not right offhand, I don't

Q Do you know who would have that information?

MR. LEAFE: I think I have got the names. They have been tried and convicted.

MR. GAWRYS: Could you give me the information?

MR. LEAFE: Yes.

A I have the clipping in the newspaper at the office.

MR. GAWRYS: Do you have that information, Joe?

MR. LEAFE: I may have it with me. I can get it for you.

BY MR. GAWRYS:

Q Did these people plead guilty?

A All of them pulled time.

MR. LEAFE: I believe they pled guilty.

A I was not at the trial. In fact, I wasn't even notified at the time.

MR. LEAFE: I think they pled guilty, and that was why there wasn't any full-fledged trial.

BY MR. GAWRYS:

Q Mr. Lamm, in your course of dealings with Norfolk International Terminals I take it that you have left trailers on the premises overnight on many occasions?

A Yes.

Q And this has really been for the convenience of Old Dominion. Isn't that right?

A For the convenience of both Old Dominion and N.I.T.

Q What difference would it make to N.I.T. if you took the trailer back to your terminal?

A It would depend on the number of trailers you had to have there the next morning for them to set up a work crew. They were assured that that trailer would be sitting there to be unloaded at a specific time.

Q You could have just brought it back on time?

A There would be a lot of hell raised if you did not get it back on time.

Q Were you ever charged a parking fee for leaving your trailer at N.I.T.?

A No.

Q Were you ever charged a security fee of any kind?

A No.

Q You are not charged any fees, are you?

A Not for leaving a trailer.

Q Mr. Jett asked you about the freight charges, as to what was included in the freight charges. You testified that you did not know. Could you tell us who would have that information?

A I could get the information from our home office on this particular bill, if wharfage and handling charges were applied to it or not. I can't answer truthfully right now.

Q I understand.

MR. GAWRYS: Joe, would you be good enough to get that information for us?

MR. LEAFE: I would think that your people would have that in their possession. It was backcharged to them, so I think they would know.

MR. GAWRYS: If you would double check that -

MR. LEAFE: I will check it out.

BY MR. GAWRYS:

Q Are there any agreements between N.I.T. and Old Dominion, if there are any, about whose responsibility the trailers might be when left on the premises?

A No, sir.

Q Nothing in that regard has ever been said?
A Not to my knowledge.

Q Are there any signs stating that the trailers are left at the risk of the carrier?
A Not to my knowledge.

Q Prior to the theft of this trailer had anyone ever reviewed your security procedures and recommended that certain actions be taken?
A Nothing except my own.

Q Have you ever made any suggestions for improving security procedures in connection with protecting the cargo in these trailers?
A At our terminal location, yes.

Q What were your recommendations?
A I put on a guard.

Q You put on a guard?
A Yes.

Q How many guards do you have at the terminal?
A At the present time there is one.

Q One guard? How much space does your terminal take up?
A You asked a good question there.

Q In terms of acres.
A I would say four or five acres.

Q Four or five acres? You have a roving guard at all times?
A Right.

Q Is there a fence around the property?
A That is right.

Q Do you have a dog?
A No, sir.

Q How long have you had this roving guard?
A Since August of '71.

Q Prior to the time these goods were taken did any other firm or company or person review your security procedures?
A No Sir.

Q No one ever made any recommendations about fifth-wheel pinlocks or anything of that type?
A Not prior to that, no, sir.

Q Are there any types of locks that can be obtained to hook the doors on the trailer?
A A regular padlock.

Q You did not have one of those on there?
A Not on those doors, no.

Q Do you now?
A No, sir.

Q I think you may have already answered this, sir. The ignition switch on the Old Dominion tractor that was used to take this trailer off the premises wasn't damaged, was it?
A Not to my knowledge.

Q I think you mentioned that the original waybill for this cargo was left sitting on the saddle tank at the Richmond Terminal. Is that right?
A That is right.

Q And it fell off?
A That is right.

Q Where was it found?
A Out on the highway. The complete bag was found by another driver and brought back to the Richmond Terminal.

Q Another Old Dominion driver?
A Yes.

Q If anybody found that bag they could determine what was in that particular trailer then. Isn't that right?
A Probably, yes, sir.

Q And also by finding that bag and looking at the waybill, and so on, they could determine not only what was in the trailer, but the trailer number and where it was going. Isn't that right?
A That is right.

Q When did that drop off the saddle tank?
A The night before.

Q The night before it was taken to the Norfolk Terminal?
A Right.

Q How many miles from Richmond was it found?
A I can't answer that.

Q When did it come to your attention?
A It came to my attention on the Friday morning that the trailer was sent to N.I.T. We did not have a billing on it. The driver came in and had misplaced the bill, and we called and got a duplicate bill from the Richmond Terminal.

Q How did you get the duplicate bill?
A By telephone.

Q Then you prepared the documents in your office?
A That is right.

Q Then they were the documents which your office prepared that the driver took to Norfolk International Terminals?
A That is right.

Q If anyone else had found the waybill which had fallen off the tractor in Richmond, could they have used that document to get the trailer back from N.I.T.?
A Say that again.

Q If I had found these documents lying on the highway -
A Right.

Q - if I were inclined to do so, could I take those documents and go N.I.T. and demand delivery of the cargo and the trailer?
A Possibly.

Q And unless the person in the office suspected that something was wrong, in the normal course that person would give me a property pass so that I could take the trailer and cargo?
A Possibly.

Q And I suppose copies of those documents would serve the same purpose?
A Not a photostatic copy.

Q But carbon copies?
A If you had the complete bills, yes.

MR. LEAFE: If you would like the names of these people involved, they are Harry Wright, Andrew Eminzer, Larry Haywood, and there may have been another one, Thomas F. Barynach. I have just got that written in. My information is

that they all pled guilty - at least, the three: Wright, Eminzer and Haywood.

BY MR. GAWRYS:

Q Were these all Norfolk residents?

A Wright was a driver for Overnite Transportation at the time. Haywood was an ex-driver of Overnite Transportation. This Eminzer was an insurance agent or broker out at Virginia Beach, I believe.

Q What is the name?

MR. LEAFE: E-m-i-n-z-e-r.

(Thereupon, an off-the-record discussion was held, after which the following occurred:)

BY MR. JETT:

Q Just one or two questions, Mr. Lamm. Could another company's tractor have been used to remove this trailer? In other words, is there anything peculiar to your tractors that fits the fifth wheel on this particular type of trailer?

A No, sir.

Q Not really?

A No, sir. They are all standard. Most all truck lines have standard ones and are interchangeable.

Q As to these fifth-wheel pinlocks that we have talked about, what do they cost roughly?

A $50.00.

Q $50.00?

A Yes.

Q Based on your investigation was there any indication that anybody employed by Old Dominion was involved in this thing at all?

A No, sir. We polygraphed every driver that we had that went in and out of N.I.T. that particular day.

Q That is all. Thank you very much.

BY MR. GAWRYS:

Q You did not polygraph anybody in Richmond, did you?

A No, sir.

Q How about the N.I.T. employees, were they polygraphed?
A This is off the record.

(Thereupon, an off-the-record discussion was held, after which the depositions were concluded.)

* * *

VIRGINIA,
CITY OF NORFOLK, to wit:

I, T.M. Phlegar, a Notary Public for the State of Virginia at Large, having qualified in the Corporation Court of the City of Norfolk, Virginia, certify that the foregoing discovery depositions of Robert E. Jones and Lumis Lamm were duly taken, that it is a true record of the testimony given by the witnesses to the best of my knowledge, that the witnesses were duly sworn by me at the time and place in the caption mentioned.

Given under my hand this ___ day of December, 1971.

_____
Notary Public

My commission expires
August 3, 1973

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INCORPORATED,
a corporation,
Plaintiff

vs

OLD DOMINION FREIGHT LINES,
a corporation
and
NORFOLK TERMINAL CORPORATION,
Defendants

At Law No.
L-70-1058

Discovery depositions of Larry W. Wright and Larry Sidney Haywood taken before T.M. Phlegar, a Notary Public for the State of Virginia at Large, at the law offices of Vandeventer, Black, Meredith & Martin, 2050 Virginia National Bank Building, Norfolk, Virginia, May 5, 1972.

APPEARANCES: Mr. Joseph A. Gawrys, Attorney for Phillip Morris, Incorporated.

Mr. Joseph A. Leafe, Attorney for Old Dominion Freight Lines.

Mr. R. Arthur Jett, Jr., Attorney for Norfolk Terminal Corporation.

Phlegar & Phlegar
Shorthand Reporters
Norfolk, Virginia

LARRY W. WRIGHT, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. GAWRYS:

Q Would you kindly state your name, please?
A Larry W. Wright.

Q What is your present address?
A 1116 Hoover Avenue, Chesapeake.

Q Are you married?
A Yes.

Q What is your wife's name?
A Charlotte Wright.

Q Do you live with your wife at that address?
A Yes, I do.

Q Who else lives with you there?
A My kids.

Q Do you rent or do you own your home?
A Rent.

Q What is the name of your landlord?
A I don't know.

Q By whom are you employed, Mr. Wright?
A Self-employed.

Q Excuse me?
A Self-employed.

Q What do you do?
A I run a Gulf service station.

Q A Gulf service station?
A Yes, sir.

Q You lease it from the Gulf Oil Company?
A Yes.

Q Where is this service station located?
A In Chesapeake on Bainbridge Boulevard.

Q Can you give me a more specific address?
A 4001 Bainbridge Boulevard.

Q How long have you been engaged in this line of work?
A Since September.

Q Of 1971?
A Yes.

Q I would like to direct your attention to October 10, 1969. On that date by whom were you employed?
A Overnite Transportation Company.

Q What was your occupation?
A Truck driver.

Q What was your address on that date?
A Woodall Trailer Court.

Q That is not the same place where you are living now?
A No.

Q You were a truck driver for Overnite, and where did you work for Overnite?
A What do you mean? I ran over the road and I worked locally, too, for them.

Q How long had you been with Overnite Transportation Company?
A Ten years.

Q Did you ever work for Old Dominion Freight Lines?
A No.

Q Did you apply for a job with them?
A No, sir.

Q Did you have occasion to go to Norfolk International Terminals in connection with your work?
A Yes, sir.

Q On October 10, 1969, were you at Norfolk International Terminals?
A Yes, sir.

Q Do you know a man named Talley?
A I know him when I see him. That is about it.

Q You know that he works for Old Dominion Freight Lines?
A Yes, sir.

Q Did you know him on October 10, 1969, sir?
A Yes.

Q Did you see him on October 10, 1969?
A Yes, sir.

Q Did you have occasion on October 10, 1969, to learn of a shipment of cigarettes which was being transported by Old Dominion Freight Lines to the Norfolk International Terminals?
A Yes, sir.

Q Can you tell us when you learned of this shipment?
A When I saw them.

Q That was on October 10th?
A Yes.

Q How did you learn in which trailers these cigarettes were located?
A You could see them.

Q How could you see them, sir?
A The door was open.

Q Were the doors open on all of the trailers?
A I believe they were, yes. I would not swear to it, because I don't remember.

Q You are not sure about that?
A No.

Q Did you have occasion to discuss or overhear a conversation by or with Mr. Talley concerning these cigarettes?
A I did not talk to him about them at all, no.

Q Did you overhear him make any remarks to anyone else concerning the cigarettes?
A I don't think so.

Q Did you have occasion to learn that one trailer—that a trailer was going to be left on the premises overnight with its cargo of cigarettes intact?
A Yes.

Q How did you learn that?
A I knew they were not going to unload it.

Q How did you know it?
A Because I was there.

Q Did you overhear someone talking about it?
A No. It is common knowledge. If you ever drove a truck you would know this. It is just common knowledge, that is all.

Q You were on the premises in connection with your work at that time; is that right?
A That is right.

Q You learned that a trailer was going to be left intact with its cargo of cigarettes; is that correct?
A Yes.

Q Was that Trailer No. 4572?
A I could not tell you.

Q You don't recall?
A I don't recall.

Q Can you then tell us if you had anything to do with this specific trailer that was left there overnight?
A Yes. I carried it to New York.

Q You carried it to New York? Will you tell us how this came about?
A I got me a truck and drove it to New York. That is the best way I can say. It has been something I have been trying to forget.

Q I understand. You went and got a tractor from somewhere; is that right?
A Yes.

Q Was that an Old Dominion tractor?
A Yes.

Q Where did you get that tractor?
A Lambert's Point Piers.

Q Did you know that that tractor was there?
A Yes.

Q How did you come to know that?
A Because it was common knowledge.

Q How did you start the tractor?
A The key was under the floor mat.

Q Was the truck guarded by anybody?
A Well, they are supposed to have guards at the gate.

Q This was at Lambert's Point?
A Yes.

Q Were there any there?
A Yes, there were guards there.

Q Did anybody check you as you drove through?
A They spoke to me.

Q They spoke to you and that was all?
A Yes. I just told them that I came to get an Old Dominion tractor.

Q Was anybody with you at the time?
A Yes.

Q Who was with you?
A Emminizer and Haywood.

Q That was Larry Haywood and Keith Emminizer; is that correct?
A Yes.

Q How did you get to Lambert's Point Docks to take the tractor?
A By car.

Q Excuse me?
A By car.

Q Whose car was it?
A I don't know whether it was my car or Emminizer's car at the time. I forget which it was.

Q And they left you there at Lambert's Point?
A Yes.

Q At what time did you get the tractor?
A I could not tell you.

Q Was it daytime or evening?
A It was in the evening I would say.

Q In the evening?
A Yes.

Q You got the tractor and then what did you do with it?
A I went to N.I.T. and got the trailer.

Q How did you get aboard the premises at N.I.T.?

A With the tractor they just figured it was all right. I just drove the tractor right on in there.

Q And then what did you do?
A I went down and hooked up to the trailer.

Q Who did the hooking up?
A I did.

Q By yourself?
A Yes.

Q Was anybody around the trailer?
A No.

Q Did you look at the trailer?
A Yes.

Q Did you look inside the trailer?
A Yes.

Q When you looked inside what did you see?
A Cigarettes.

Q These were Marlbaro cigarettes?
A Yes.

Q Was the trailer full of cigarettes?
A Yes.

Q How did you get inside the trailer?
A I opened the door.

Q Was the seal still on it?
A Yes.

Q You broke the seal?
A Yes.

Q There was no other lock; is that correct?
A No.

Q After you looked at the cigarettes what did you do then?
A I hooked up to it.

Q Did you put another seal on the door?
A Yes.

Q Where did you get the seal?
A I had it with me.

Q Where had you obtained it?
A I think it was Overnite's seal.

Q Did anyone else have anything to do with this trailer of cigarettes before you took it off the premises?
A I think Haywood got a pass for it.

Q Did you instruct him to do that?
A Yes.

Q Was that in the daytime or in the evening?
A Daytime, while N.I.T. was open.

Q What did you tell him?
A I told him what to tell the girl to get the pass.

Q What did you tell him?
A I think it was something about some cotton piece goods left on the trailer, and I gave him the number of the trailer. That was what he told her, and she filled a pass out for that.

Q Was the pass then given to you?
A Yes.

Q From Haywood?
A Yes.

Q Was the pass made out for that trailer number, the same trailer which you took off the premises?
A Yes.

Q Did Mr. Emminizer have anything to do with this phase of it?
A No.

Q Just you and Haywood?
A Yes.

Q Was it dark when you drove the trailer off the premises?
A Yes.

Q You did not accompany Mr. Haywood into the office to get the property pass, did you?
A No.

Q Was it customary to ask for any further identification?
A No.

Q It was not?

A No.

Q Had you in the past obtained property passes in just that manner?

A Yes.

Q So you were familiar with the procedure?

A Yes.

Q At N.I.T. they would not ask you for any papers or anything else to prove that you were entitled to that trailer?

A No.

Q You then hooked up the tractor to the trailer, I take it, and drove off?

A Yes.

Q Did you stop at the gate?

A And handed the guard the pass.

Q Did he look at the tractor at all?

A He looked at the trailer to see if I had the right trailer for the pass.

Q Did he examine the contents?

A He can't do that.

Q He can't?

A No.

Q The property pass had the trailer number on it, so he let you through; is that right?

A Yes.

Q Did you talk to the guard at all?

A I don't think so.

Q Did you ask him to check your lights?

A Yes, I believe I did.

Q How many guards were there?

A I don't know.

Q You were still driving this Old Dominion tractor, I take it?

A Yes.

Q And the trailer was an Old Dominion trailer?

A Yes.

Q What did you do with the tractor and trailer from that point on?

A The tractor broke down. I went and got me another tractor. I carried it to New York.

Q Which route did you use?

A The Bay Bridge-Tunnel.

Q Route 13?

A Yes.

Q When did you arrive in New York?

A About 8 o'clock in the morning.

Q 8 o'clock on the morning of the 11th?

A Yes.

Q Who was with you at that time?

A Emminizer and Haywood and Boryniach.

Q Were they in the tractor with you?

A No.

Q How did they go?

A In my car.

Q They were in your car? They followed the tractor?

A Yes.

Q When you got to New York what did you do?

A Keith went and talked to the man that we were supposed to see. They came and showed us where to park the truck. We went and parked the truck, and then went and got something to eat and a couple of drinks, and went back to it. There were three police cars around it, so we left it and came home.

Q Who were the men that you saw up there?

A I didn't see nobody.

Q I thought you said—

A They came up in their car. I was in the truck, and I followed them in their car. That was as close as I got to them.

Q You did not talk to them at all?

A No.

Q Did you look into the trailer at any time after you left N.I.T.?

A No.

Q You never unlocked it again?
A No.

Q Do you remember where you left the trailer?
A I know where they FBI told me I left it: Manhattan on the waterfront.

Q Is that substantially correct?
A As far as I know. I don't know in what part of New York it was.

Q Was it near a Greyhound station?
A First we stopped by a Greyhound station.

Q That was where you left it?
A No. We carried it down on the waterfront.

Q Down on the waterfront?
A Yes.

Q That was where you came back and saw the police around it?
A Yes.

Q You never saw it again; is that correct?
A That is right.

Q Was anybody there besides the police?
A Not to my knowledge.

Q Did you ever see that trailer again?
A Not to my knowledge, no.

Q At the time you looked at it when the police were around it could you tell if the doors were open on the trailer?
A They were closed.

Q They were still closed?
A Yes.

Q Do you know if the seal was still on?
A They had not had time to unload it, if that is what you mean, because we left it there and were back in about an hour and they were sitting around it. Then we rode around the block and came back about thirty minutes later, and they were still sitting around it. So we left it and came to Norfolk.

Q But you could not tell if the doors were opened?
A To my knowledge I would say they were not.

Q Did you see the doors?
A Oh, yes.

Q Were the cigarettes still in the trailer when you got to New York?
A Yes.

MR. GAWRYS: I have no further questions.

MR. JETT: I have no questions.

MR. GAWRYS: Just let me ask one more question.

BY MR. GAWRYS:

Q Do you remember where the trailer was located at N.I.T. when you took it?
A It was backed up to 1-A platform—platform 1-A.

MR. GAWRYS: All right.

BY MR. LEAFE:

Q To follow up on that question, is that the position it would be in to be unloaded the next day?
A Yes.

Q I understand it was common practice when you wanted a gate pass just to go up and tell the girl, or whoever was at the window, to give you a gate pass for such and such a trailer?
A Yes.

Q And no documents were required?
A No.

Q No further identification?
A That is right.

Q Could you get out of the gate without a gate pass or without showing the documents?
A No.

Q You could not?
A No.

MR. LEAFE: I have no further questions.

BY MR. JETT:

Q You did have to give the trailer number and for whom you worked; is that correct?

A Yes.

Q And the cargo that was allegedly in the trailer?

A Yes.

BY MR. GAWRYS:

Q Just one more question, Mr. Wright. From your experience in driving to N.I.T. did you ever have occasion to take a trailer off the premises without showing a property pass at the gate?

A I don't think so.

MR. GAWRYS: No further questions.

BY MR. GAWRYS:

Q Mr. Wright, you have the right to read your deposition and to sign it, or you have the right to waive the reading and signing of your deposition. Do you waive the reading and signing?

A Yes.

Q Thank you, sir.

LARRY SIDNEY HAYWOOD, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. GAWRYS:

Q Mr. Haywood, for the record would you give us your full name, please?

A Larry Sidney Haywood.

Q What is your present address?

A 4103 Mingo Trail, Chesapeake, Virginia.

Q How long have you lived at that address?

A Ten years.

Q Do you own that home?

A No.

Q Are you married?

A Single.

Q Who lives with you at that address?
A My mother.

Q What is her name, please?
A Jettie.

Q Her last name is Haywood?
A Yes.

Q Are you employed, sir?
A Self-employed, yes.

Q What do you do?
A I am a painting contractor.

Q You are in business for yourself?
A Yes.

Q Do you have anybody working with you?
A Yes.

Q Under what name are you doing business?
A Just "Haywood, Painting Contractor."

Q Do you have an office of any kind?
A No.

Q Do you have a telephone?
A Yes.

Q What is that telephone number?
A 420-5661.

Q How long have you been engaged in this line of work?
A I have been out of jail four months—four months.

Q Directing you attention to October 10, 1969, were you employed at that time?
A Yes.

Q What was your line of work?
A The same thing, the same business.

Q You were in the painting business?
A Yes.

Q I take it that you have been in that business for some time?
A Yes.

Q I direct your attention to October 10, 1969. Did you have occasion to learn of a cargo of cigarettes being transported by Old Dominion Freight Lines?

A Yes.

Q Did you have occasion to be at the premises of Norfolk International Terminals?

A Yes.

Q On that same day?

A The same day?

Q Were you with Larry Wright?

A Yes.

Q Can you tell us what you had to do, if anything, with this trailer load of cigarettes?

A I acquired a pass.

Q Are you referring to a property pass?

A Whatever they call it. I acquired a pass to get the trailer off the place.

Q Tell us how you came to acquire that pass, how it came about.

A I walked up to the window, gave the girl the number of the trailer, the name of it, and she gave me the pass.

Q Was that an Old Dominion trailer?

A Right.

Q Do you remember if the number was 4572?

A No, I don't.

Q Was it the same trailer which Larry drove off the premises?

A Yes.

Q Did the young lady at the window ask you for any identification?

A None.

Q Who did you tell her you were?

A I did not tell her I was anybody.

Q Did you tell her that you worked for anybody?

A No.

Q Did you tell her what was in the trailer?
A No—oh, yes, I told her what was in the trailer.

Q Do you remember what you told her?
A I believe I told her that it was cotton goods.

Q Did she ask for any documents of any kind?
A No.

Q Was it Mr. Wright who asked you to get the pass?
A Did he ask me to get the pass?

Q Yes.
A No, he didn't ask me to get it.

Q Did he tell you how to go about it?
A Oh, yes.

Q I take it that you were not familiar with the procedures at N.I.T., were you?
A No.

Q The girl did not ask you for any documents of any kind?
A No documents.

Q What did you do with the pass after you got it?
A I wiped it clean of all fingerprints and gave it to Larry Wright.

Q You gave it to Larry?
A Yes.

Q Do you know if that was the pass he used to get the trailer off the premises?
A Oh, yes, the same pass.

Q Do you remember approximately what time of day it was that you got this pass?
A It was in the afternoon.

Q Was it still daylight?
A Oh, yes; 1 or 2 o'clock, something like that.

Q How did you learn of this trailer load of cigarettes?
A Through Larry Wright.

Q Did you go to any places with Larry Wright that afternoon or that evening before he took the trailer off the premises?
A No.

Q Did you go to Lambert's Point Docks to get a tractor?
A Yes.

Q How did you get there?
A I drove there in a car.

Q In Larry's car?
A No.

Q Whose car was it?
A Mr. Emminizer's.

Q How did you know about the tractor being available at Lambert's Point Docks?
A From Larry Wright.

Q Did you help him start it?
A Yes.

Q Where was the key?
A If I am not mistaken, it was hanging up in the top on a little hook like.

Q Were there any Old Dominion personnel around that truck?
A No.

Q It was an Old Dominion Freight Lines' truck, wasn't it?
A That is right.

Q Larry drove the tractor, did he not?
A Yes.

Q To the premises of N.I.T.?
A That is right.

Q How was the trailer taken off the premises?
A Larry Wright drove it off.

Q Were you present at the time he hooked up?
A No.

Q Where did you all wait while he got the trailer?
A Outside of N.I.T., across the street in the shopping center parking lot.

Q Did you observe him when he came through the gate?
A Yes.

Q What did you see him do?

A I saw him pull up to the gate and stop and hand the man a pass. He handed him something. I won't say it was a pass, because I could not swear to that. But he stopped at the gate.

Q And he drove on through?
A He drove on through.

Q Did you at any time examine the contents of the trailer?
A Yes.

Q What was in it?
A Cigarettes—Marlboros.

Q Where did you examine it, sir?
A On the corner of Chesapeake Street and Little Creek Road at the Krispy Kreme doughnut place.

Q This was after it came off the terminal?
A That is right.

Q I take it that you had to break the seal to examine it, did you not?
A No, I didn't. The seal was already broken.

Q The seal was broken at that time?
A Yes.

Q You just unhooked the doors and looked in?
A Right.

Q Did anybody take any cigarettes out of there?
A No.

Q What else did you have to do with this trailer?
A We had to unhook the tractor that was attached to it and get another tractor.

Q And then what happened, sir?
A We got the other tractor and hooked it up to the trailer and drove it to New York.

Q Did you drive in the tractor with Larry?
A No.

Q What did the other people do?
A Followed in the car.

Q Who else?
A Mr. Emminizer.

Q Was somebody else with him?
A Yes.

Q A man named Boryniach?
A Yes.

Q After you all got to New York what happened?
A We parked the trailer.

Q Then what did you do?
A Well, we were negotiating the sale of the cigarettes.

Q Did you take part in the negotiations?
A No.

Q Do you know with whom you were negotiating?
A No.

Q Who handled that?
A Mr. Emminizer.

Q Where did you leave the trailer?
A That is a good question. It was all the way down at the end of Broadway, down by the piers. Third Avenue I believe it is, if I am not mistaken.

Q Was anybody left with the tractor and the trailer?
A No.

Q Do you remember whose tractor it was that you used?
A Yes.

Q What was the name on the tractor?
A I will tell you in just a minute. (Pause) Pilot Motor Lines.

Q Pilot Motor Lines?
A Yes.

Q So the tractor and trailer were left unattended?
A That is right.

Q What did you do during that period of time until you got back to it?
A Just rode around. We went to a bar and had a few drinks.

Q Did you return to the scene where the tractor was?
A Yes.

Q What did you see there?

A Approximately four police cars.

Q Did that alarm you then?

A Since they were sitting the way they were sitting, it alarmed me.

Q Were they doing anything to the trailer?

A No; just watching it.

Q Could you tell if the trailer was opened?

A No, it had not been opened.

Q It had not been opened?

A No.

Q What did you do then?

A Left.

Q Did you return again?

A No.

Q You left then for good?

A Yes.

Q So at that time as far as you know the cigarettes were sitting in the trailer on a street in New York?

A Right.

Q And you never saw it again?

A I never saw it again.

Q Up to that point had anyone taken any of the cigarettes out of the trailer?

A No.

Q If the seal had been broken the trailer could be opened?

A That is right.

MR. GAWRYS: No further questions.

BY MR. JETT:

Q When you went up to the window to get the pass was there a line? Did you get in line?

A No.

Q Did you go directly to any particular girl?

A No.

Q Was it a girl that you got the pass from?

A A girl.

Q Do you remember exactly what you said to her, just what the conversation was?

A Yes. I told her that I wanted a pass for the number of the trailer.

Q You had gotten this number off the trailer? Is that right?

A That is correct.

Q So you gave her the number of this particular trailer?

A That is correct.

Q What else was discussed?

A That was it.

Q Did you tell her what type of cargo was in it?

A Cotton goods.

Q Did she put that on the pass?

A Yes.

Q Did she put anything else on the pass?

A Not that I know of.

Q Did you tell her by whom you were employed?

A No.

Q Was anything put on the pass in regard to its being an Old Dominion trailer?

A Yes.

Q Who put that on?

A She did.

Q Did you tell her that it was an Old Dominion trailer?

A Yes.

MR. JETT: That is all I have.

MR. LEAFE: I don't have any questions.

BY MR. GAWRYS:

Q Mr. Haywood, you have the right to read the deposition after it is typed up in order to make any corrections, and to sign it; or you have the right to waive the reading and signing. I am going to ask you if you will waive the reading and signing, or do you want to read and sign it?

A I will waive it.

VIRGINIA,
CITY OF NORFOLK, to-wit:

I, T.M. Phlegar, a Notary Public for the State of Virginia at Large, having qualified in the Corporation Court of the City of Norfolk, Virginia, certify that the foregoing discovery depositions of Larry W. Wright and Larry Sidney Haywood were duly taken, that it is a true record of the testimony given by the witnesses to the best of my knowledge, and that the witnesses were duly sworn by me at the time and place in the caption mentioned.

Given under my hand this_____day of May, 1972.

_____
Notary Public

My commission expires
August 3, 1973.

Virginia:

IN THE

Circuit Court of the City of Norfolk

PHILLIP MORRIS, INCORPORATED,
a corporation,
Plaintiff

vs

OLD DOMINION FREIGHT LINES,
a corporation,
and
NORFOLK TERMINAL CORPORATION,
Defendants

At Law
No. L-70-1058

Discovery deposition of Andrew Keith Emminizer taken before T.M. Phlegar, a Notary Public for the State of Virginia at Large, at the law offices of Vandeventer, Black, Meredith & Martin, 2050 Virginia National Bank Building, Norfolk, Virginia, May 5, 1972.

APPEARANCES: Mr. Joseph A. Gawrys, Attorney for Phillip Morris, Incorporated

Mr. Joseph A. Leafe, Attorney for Old Dominion Freight Lines.

Mr. R. Arthur Jett, Jr., Attorney for Norfolk Terminal Corporation.

Phlegar & Phlegar
Shorthand Reporters
Norfolk, Virginia

(It is stipulated and agreed that filing be waived.)

ANDREW KEITH EMMINIZER, called as a witness, having been first duly sworn, testified as follows:

EXAMINED BY MR. GAWRYS:

Q For the record, Mr. Emminizer, will you state your full name, sir?
A Andrew Keith Emminizer.

Q Where do you live, Mr. Emminizer?
A 205 South Plaza Trail, Virginia Beach.

Q How long have you lived at that address?
A Just a month.

Q Where did you live prior to that time?
A 112 - 83rd Street, Virginia Beach.

Q Are you married?
A No, I am not.

Q Who lives with you at that address?
A No one.

Q Are you employed?
A Yes.

Q In what line of work are you?
A I sell home improvements for Metro Home Improvement, South Norfolk.

Q Directing your attention to October 10, 1969, Mr. Emminizer, what was your address on that date?
A 209 - 58th Street, Virginia Beach.

Q What was your employment then?
A I was an insurance agent.

Q For what company?
A Coastal Plain Life, Rocky Mount.

Q Do you have parents who live here in this area?
A No, I do not.

Q Do you have any relatives at all?
A I have a brother here.

Q What is his name?
A Thomas L. He lives at 3314 Indigo Road, Chesapeake.

Q Is he married?
A Yes.

Q Directing your attention to October 10, 1969, did you have occasion to be on the premises of Norfolk International Terminals?
A Yes.

Q Were you in the company of Larry Wright and Larry Haywood?
A Yes, I was.

Q Would you tell us the circumstances, sir?
A Well, I did not go on the terminal itself, but I did carry Wright in my automobile down to the terminal. He went inside and came out with a tractor and trailer. I believe it was Old Dominion's.

Q Was this in the afternoon or evening?
A It was in early evening.

Q Did you first take him to Lambert's Point Docks to get a tractor?
A Yes. He picked up a tractor there.

Q Had you been on the premises of Norfolk International Terminals prior to that time?
A Yes, a few days prior to that. I had taken Haywood out there.

Q Larry Haywood?
A Yes.

Q What was the reason for that?
A Wright was working with a truck line out there. He was to meet him out there.

Q Did you have occasion to learn of a shipment of cigarettes, specifically Marlboro cigarettes, coming from Phillip Morris by Old Dominion Freight Lines and which were to be brought to N.I.T.?
A I did not know where they were coming from. I was aware of a load of cigarettes. I did not know what kind they were or from where they were coming.

Q How did this knowledge come to you?
A Through Haywood.

Q Through Haywood?
A Yes.

Q Did you ever have anything to do with a man named Talley?
A No. I don't know anyone named Talley.

Q On October 10, 1969, was your first connection with this load of cigarettes to take Mr. Wright to Lambert's Point Docks to get the tractor?
A I did not follow you.

Q What was your first connection with this trailer load of cigarettes on October 10, 1969?
A Well, I picked up Wright and took him to Lambert's Point where he picked up a tractor.

Q Where did you pick him up from?
A At his house.

Q I see. Then you went and got the tractor; is that right?
A I took him, and he drove the tractor from Lambert's Point to N.I.T.

Q What time of day was this? Do you recall?
A It was early evening, 7:30 or 8 o'clock.

Q It was getting dark?
A Yes.

Q Had you seen him earlier that day?
A No, I hadn't.

Q Had you seen Larry Haywood earlier that day?
A Yes, I had.

Q In what connection had you seen him?
A I don't know what the connection was. I had just seen him. I think perhaps it was around lunchtime.

Q Had you discussed these cigarettes at that time?
A Yes.

Q Did you then arrange to meet with Larry Wright later that day?
A I did not, no.

Q How did you come to pick up Larry Wright?
A Through Haywood.

Q Haywood told you to pick him up?
A Yes.

Q Then you went to Lambert's Point Docks?
A Yes.

Q Were you there when Mr. Wright obtained that tractor from Lambert's Point Docks?
A Yes, I was.

Q Was anybody around the tractor guarding it?
A Not that I know of.

Q Was the tractor unlocked?
A As far as I know. I did not go in the terminal, itself.

Q Did you go near the tractor?
A Within 50 feet, I guess.

Q Hoe did he start it, if you know?
A I don't have the slightest idea—with a key, I assume.

Q Did you see him start it?
A Yes, I did.

Q Did you see where he got the key from?
A No, I did not.

Q Then he drove it back out to N.I.T.?
A Yes.

Q What did you do then?
A I waited for him outside on Hampton Boulevard across at the shopping center.

Q Were you in your car?
A Yes.

Q Who was with you?
A Haywood.

Q Was a man named Boryniach with you, also?
A At this point, no.

Q Did you see Larry Wright drive the tractor and the trailer off the premises of N.I.T.?
A Yes, I did.

Q Did you observe him come through the gate, by the security people?
A Yes, I did.

Q What did he do as he came by them?
A I don't follow you, as to what did he do.

Q Did he stop and give him anything?
A He stopped. I assume that he gave him a pass. I understand that he had a pass.

Q Did you ever see that pass?
A No, I did not.

Q Where did you all meet then after he came through the gate?
A On Little Creek Road near Chesapeake Street where he parked the truck.

Q Did you then examine the contents?
A We did not.

Q Did you ever look inside the trailer?
A I did not.

Q How did you know what was in there?
A I didn't.

Q Did Mr. Boryniach meet you then?
A Yes.

Q I take it that you drove to New York behind the tractor-trailer?
A Yes.

Q Who accompanied you?
A Boryniach and Haywood.

Q Did Wright drive the tractor by himself?
A Yes.

Q No one else was present?
A No.

Q Did you drive in your car?
A No. I drove Wright's car.

Q What happened after you got to New York?
A Boryniach, or whatever his name is, is from New York I

understand. We parked the car and we got in a cab and went to some address that is unknown to me right now—some person that he knew.

Q Who was with you?
A Boryniach.

Q Just you and Boryniach?
A Yes. We met with some fellow and the negotiations on the sale of the cigarettes took place. The sale never took place.

Q Had you agreed on a price?
A Yes.

Q What was the price?
A I think it was $1.00 a carton.

Q Do you remember the name of the man with whom you dealt?
A Yes, I do.

Q What is his name?
A I prefer not to say.

Q Did that man accompany you to any place?
A No, he did not.

Q Did any of his associates accompany you?
A No, they did not.

Q What did you next do in connection with the tractor-trailer?
A We moved it from where it was, because we were just off Broadway. We took it down near the waterfront. The address I don't know. It was down near the waterfront. It was a big trucking terminal. Trucks from various areas come in there. I am not familiar with the address, but it was down near the waterfront.

Q How far from the water?
A A couple of blocks.

Q A couple of blocks from the water?
A Yes.

Q As to the man with whom you dealt in New York, was he a native of this area?
A I don't believe so. I don't know. I assume that he is a New Yorker.

Q So you then left the trailer at another location and what happened next?

A We never moved it again. That was where we left it.

Q Did you go somewhere and then come back?

A Yes. As a matter of fact, I went back and forth from the trailer to this man's office on five or six occasions. Each time he left a message for me to wait. Then he called and said, "I will meet you later." At 5 o'clock in the afternoon he still had not shown up. He left word that I was to meet him in some restaurant at 6:30 or 7:30, and he gave the address. I elected not to go there.

Q Did you become concerned about that time?

A I was a little more concerned about me than I was the cigarettes, frankly.

Q Did you think that he was trying to set you up?

A Well, it would just be a guess.

Q Did this individual know where you had taken the trailer?

A Yes.

Q Did you ever go back to the trailer?

A Yes.

Q When you went back to it what did you see?

A About three or four policemen—not on the trailer and not in the trailer, but in the general vicinity.

Q Were they in cars?

A Yes, they were.

Q Did you see your friend at that time?

A I beg your pardon?

Q Did you see your friend at that time, the one who was purchasing the cigarettes?

A No, I did not.

Q Was Mr. Boryniach with you?

A Yes, he was.

Q Do you know if the trailer was open, or was it closed?

A As far as I know it had not been opened.

Q What did you do then?

A I got in the car. I told Mr. Boryniach, who was from New York, that I was going back to Virginia; that he could make his

choice, he could either stay or go with us. He elected to stay.

Q Who came back with you?
A Haywood and Wright.

Q Did you ever see the trailer again?
A No, I did not.

Q I take it, sir, from your testimony that you were not on the premises of N.I.T., itself?
A No, I was not.

Q On the day in question?
A No.

MR. GAWRYS: No further questions.

BY MR. JETT:

Q This tractor that you all got from Lambert's Point Docks was an Old Dominion tractor; is that right?
A I believe so, yes.

Q What was the purpose of getting the Old Dominion tractor? Was it because you wanted an Old Dominion tractor to take the Old Dominion trailer off the N.I.T. premises?
A I don't think so. This is not exactly clear. I am not that familiar with tractors. I believe the idea was that there wasn't a tractor at N.I.T., and of course it necessitated one to get the trailer off. I think this happened to be one that was available that Wright knew about, since he was a truck driver and in the business. I believe that was why.

MR. JETT: That is all.

MR. LEAFE: I have no questions.

BY MR. GAWRYS:

Q Mr. Emminizer, you have the right, of course, after Mr. Phlegar types up your deposition to read it and make any corrections that might be necessary. I might add that Mr. Phlegar is an excellent court reporter.
A I am sure he is.

Q And you have the right to sign it; or you can waive that right.
A I don't mind dropping back up here to read it. It

shouldn't take but a few minutes. I will be glad to give you my telephone number.

* * *

VIRGINIA,
CITY OF NORFOLK, to-wit:

I, T.M. Phlegar, a Notary Public for the State of Virginia at Large, having qualified in the Corporation Court of the City of Norfolk, Virginia, certify that the foregoing discovery deposition of Andrew Keith Emminizer was duly taken, that it is a true record of the testimony given by the witness to the best of my knowledge, and that the witness was duly sworn by me at the time and place in the caption mentioned. I further certify that the witness subscribed to his testimony before me in the City of Norfolk, Virginia, on the _____ day of _____, 1972.

_____
Notary Public

My commission expires
August 3, 1973.

OLD DOMINION FREIGHT LINE

P. O. Box 1189 High Point, North Carolina

MEMO 577471 C

CONSIGNEE: DATE TRANSFER TO

SS RUBENS NIT TERMINAL
NORFOLK VA
NOTIFY TENERAL FOREGIN FRT FORWARDERS PO BOX 564 NORFOLK VA 10 8 69

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS INC
RICHMOND VA E 23260

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PCS.	DATE	CKER.	BAY/UNIT
	4572		

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
1000	F CS MARLBORO FLIP TOB BOX 205	36000	LBS	
	FOR DELY ONLY MEMO			
	TO BE PACKED INTO 20 FT CONATINERS IN NOFOLK BY THE BELGIAN LINES AT THEIRR EXPRNSE AND TO BE ON A HOUSE TO HOUSE BASIS			

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 1

OLD DOMINION FREIGHT LINE

P. O. Box 1189 HIGH POINT, NORTH CAROLINA

MEMO 577471 A

CONSIGNEE: DATE TRANSFER TO

SS RUBENS N I T TERMINAL
NORFOLK VA 10 8 69G
NOTIFY GENERAL FOREIGN FRT FORWAREDERS PO BOX 564 NORFOLK VA

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS INC
RICHMOND VA E 23260

NO. PCS.	DATE	CKER.	BAY/UNIT
	4546		

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
1000	F CS MARLBORO FLIP TOP BOX 20S	36000 BKSX LBS		
	FOR DELY ONLY			
	TO BE PACKED INTO 20 FT CONTAINERS IN NORFOLK BY THE BELGIAN LINES AT THEIR EXPENSE AND TO BE ON A HOUSE TO HOUSE BASIS			

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 2

OLD DOMINION FREIGHT LINE

P. O. Box 1189 HIGH POINT, NORTH CAROLINA

MEMO 577471 B

CONSIGNEE: DATE TRANSFER TO

SS RUBENS NIT TERMINAL
NORFOLK VA
NOTIFY GENERAL FOREIGN FRT FORWARDERS PO BOX 564 NORFOLK VA

10 8 69G

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS INC
RICHMOND VA E 23260

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PCS.	DATE	CKER.	BAY/UNIT
	45123		

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
1000	F CS MARLBORO FLIP TOB BOX 20S FOR DELY ONLY MEMO TO BE PACKED INTO 20 FT CONTAINERS IN NORFOLK BY THE BELGIAN LINES AT THEIR EXPRENSE AND TO BE ON HOUSE TO HOUSE BX BASIS	36000	LBS	

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 3

Form No. S-60

This Shipping Order must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

Carrier's No._____

OLD DOMINION FREIGHT LINE P. O. BOX 1189 HIGH POINT, N. C. (Name of Carrier) Shipper's No. E 23260

From
At PHILIP MORRIS INC., RICHMOND, VIRGINIA 577471 10/8/69, 19

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to ~~XXXX~~ SS "RUBENS", N. I. T. TERMINAL,

Destination NORFOLK State VA. County_____ Delivery Address*_____

NOTIFY: GENERAL FOREIGN FRT FORWARDERS (*To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Route P. O. BOX 564 NORFOLK, VA.

Collect On Delivery $ and remit to

Delivering Carrier_____

No. Packages	Kind of Package, Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column
3000	FIBRE CASES CIGARETTES	108,000	.47	FOR EXPORT
	1000 CS 36,000 LBS. TR# 45123 SEALS 82824			
	1000 CS 36,000 LBS. TR# 4572 SEALS 82823			
	1000 CS 36,000 LBS. TR# 4546 SEALS 82822			
	TO BE PACKED INTO 20 FT CONTAINERS IN NORFOLK BY THE BELGIAN LINES AT THEIR EXPENSE AND TO BE ON A HOUSE TO HOUSE BASIS			
	DO NOT USE PAYABLE THROUGH DRAFT SYSTEM. MAIL FREIGHT BILL DIRECT PHILIP MORRIS, INC. P. O. BOX 1838 RICHMOND 15, VA.			

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

"The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges."

(Signature of Consignor)

If charges are to be prepaid, write or stamp here: "To be Prepaid."

~~PREPAID~~

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per_____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding_____ per_____

† The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Consolidated Freight Classification.

~~PHILIP MORRIS INC~~ JK

Shipper, Per OLD DOMINION FREIGHT LINE Agent. Shipper detach and retain this Shipping Order and must sign the Original Bill of Lading.

Permanent post office address of shipper,_____

EXHIBIT NO. 4

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes. Except in case of carrier's negligence, no carrier or party in possession of all or any of the property herein described shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge or ferry, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, or carrier in possession of the property when the loss, damage, injury or delay occured, within nine months after delivery of the property (or, in the case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: PROVIDED, That the carrier reimbuse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. **PROVIDED,** That, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of carriers other than water.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vessel, vehicle, car, depot, warehouse or place of business of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available point, then in other available storage facility, at the cost of the owner and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, then in that event, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading for notification, showing the warehouse in which such property has been placed, subject to the provisions of this paragraph.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier:

PROVIDED, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. **PROVIDED,** That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale: **PROVIDED,** That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, landing or other place at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars, vehicles or vessels or until loaded into cars, vehicles or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharfs, landings, or other places, shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels, or if property is transported in motor vehicle trailers or semi-trailers, until such trailers or semi-trailers are attached to and after they are detached from power units. Where a carrier is directed to unload or deliver property transported by motor vehicle at a particular location where consignee or consignee's agent is not regularly located, the risk after unloading, or delivery, shall be that of the owner.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

OLD DOMINION FREIGHT LINE

P. O. Box 1189 — High Point, North Carolina

MEMO 577471 A

CONSIGNEE:

SS RUBENS N I T TERMINAL
NORFOLK VA
NOTIFY GENERAL FOREIGN FRT FORWAREDERS PO BOX 564 NORFOLK VA

DATE: 10 8 69G

TRANSFER TO

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS INC
RICHMOND VA E 23260

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PCS.	DATE	CKER.	BAY/UNIT
	4546		

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
1000	F CS MARLBORO FLIP TOP BOX 20S	36000 XXXX LBS		
	FOR DELY ONLY			
	TO BE PACKED INTO 20 FT CONTAINERS IN NORFOLK BY THE BELGIAN LINES AT THEIR EXPENSE AND TO BE ON A HOUSE TO HOUSE BASIS			

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY: Bob Lee 10/10/69

DATE DELIVERED

DRIVER

EXHIBIT NO. 6

(8) 1A

OLD DOMINION FREIGHT LINE

P. O. Box 1189 45123 High Point, North Carolina

MEMO 577471 B

CONSIGNEE: DATE TRANSFER TO

SS RUBENS NIT TERMINAL
NORFOLK VA
NOTIFY GENERAL FOREIGN FRT FORWARDERS PO BOX 564 NORFOLK VA

10 8 69G

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS INC
RICHMOND VA E 23260

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PCS.	DATE	CKER.	BAY/UNIT
	45123		

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
1000	CS MARLBORO FLIP TOB BOX 205	36000	LBS	
	FOR DELY ONLY MEMO			
	TO BE PACKED INTO 20 FT CONTAINERS IN NORFOLK BY THE BELGIAN LINES AT THEIR EXPRENSE AND TO BE ON A HOUSE TO HOUSE BX BASIS			

TRAILER DROPPED

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 7

OLD DOMINION FREIGHT LINE

P. O. BOX 1189 — HIGH POINT, NORTH CAROLINA 27461

2

ORIGINAL FREIGHT BILL
577471

DATE 10 8 96

TRANSFER TO

SS RUBENS N I T TERMINAL
NORFOLK VA
NOTIFY GENERAL FOREIGN FRT FORWARDERS PO BOX 564 NORFOLK VA

YEAR	BAY/UNIT	T.L.C. CODE

PHILIP MORRIS INC
PO BOX 1895 RICHMOND VA BILL DIRECT
E 23260

FRT ON MENUS

INT. PAYABLE	OUR RECEIVABLE

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
3000	F CS CIGTS FOR EXPORT	108000 W&M	47 17	507 60 ~~XXX~~ 183 60
	1000 CS 36000 LBS ON TRL 4512 1000 CS 36000 LBS ON TRL 4572 1000 CS 36000 LBS ON TRL 4546			691 20 PPD

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 8

DOMINION FREIGHT LINE

577471 DUPLICATE 10/8/69

P. O. Box 1189 — HIGH POINT, NORTH CAROLINA

CONSIGNEE:

[illegible]ENS KIT
[illegible]FOLK, VA.

1A

DATE: 10/10/69LM

TRANSFER TO:

SHIPPER (AND SHIPPER'S NUMBER)

PHILIP MORRIS CO.
RICHMOND, VA.

NO. PCS.	DATE	CKER.	DAY/UNIT
1000	10 10		4572

TRANSFERRED FROM (ALL REF. TO PREV. CARRIERS)

NO. PIECES	DESCRIPTION	WEIGHT	RATE	TOTAL CHARGES
	[illegible] CIGTS	FA		
		36,000		
	OFF TRAILER 4572 RICH			

PLEASE SHOW COMPLETE COMPANY NAME AND SIGNATURE - NO INITIALS

RECEIVED IN GOOD ORDER EXCEPT AS NOTED:

BY:

DATE DELIVERED

DRIVER

EXHIBIT NO. 9

4-7-71

RECEIVED
OCT 19 1965

EXHIBIT NO. 10

NORFOLK INTERNATIONAL TERMINALS

7737 HAMPTON BLVD. NORFOLK, VIRGINIA

OUTGOING MATERIALS PASS

Company issuing pass: NORFOLK TERMINAL CORPORATION

Pass the following vehicle with tag number shown, or the person named:

Truck No. 4572 Sta. Wagon No. _____ Auto No. _____

Person's Name [illegible]

Give detailed description of material being removed below:

[illegible]

Signature [illegible] Title [illegible]

This pass good for this date only [illegible]

EXHIBIT NO.

DAILY TRUCK/RAIL RECORD

No.	Carrier	Commodity	Time In	Load	Discharge	Cube or Weight	Ships Name
1.	D. D. Jones	8 plt Tractor wheels	8	45311		5125	Rubens
2.	Overnite	153 Bdl Matching Rpo	815	11-93748		5703	Amer. Lar
3.	✓	14 Rolls cellulose	815	12-595412		5054	Amer. Astro
4.	✓	110 Fibre Yarn	815	28-255421		13135	Cont. Forwa
5.	Pilot Freight	18 Cts Cot Rags	850	09-656875		4962	Amer. Astro
6.	✓	~~39 Cs~~	850	0765-6871-8		12277	✓
7.	Old Dominion	30 Cs. Sp. Steel Tube	900	Gen	294013	15531	✓
8.	✓	1000 Cs Nation	900	memo	577716	36000	Rubens
9.	Security	2 H.M.H.G	915	—		2030	Amer. Astro
10.	Wilcox	93 bg Palmetto Service	1010	—		11298	✓
11.	✓	11 bg. "	1010	—		1211	✓
12.	✓	19 bg. "	1010	—		2995	✓
13.	Old Dom.	18 Power Lawn Tests	1025	212115		17655	✓
14.	Eastern Truck	3 Cts Chem Tests	1030	97535	262536	9165	Highland
15.	Hyatt	8 Tdr Resins	1045	—		26117	Amer. Fore
16.	Blue & Gray	15 Bl Bg Tr Mfg	1	155698		6015	Cont. Forw
17.	✓	16 Bl Bg Mfg	1	155826		11950	Rubens
18.	U.S. Sal Co	4 Bkt Bags	1	4256		1298	Amer. Lin
19.	Mr. Lawn	6 Cts Lawn Tools	1025	15-301031		760	✓
20.	✓	Tools & Bk	1025	15-30433		940	✓
21.	Stokes	1 Ct U.M.H.G	1025	[illegible]		1472	Stoplo
22.	✓	200 bg Cinders	1025	01-001388		11260	Rubens
23.	Pilot	24 Bl Sign Steel	1025	1041903-7		18665	✓
24.	Apalachicola	2 H.B.G	1045	—		3080	Stoplo
25.	✓	5 H.H.G.	1045	—		17480	✓
26.	Cincinnati	1 U.H.H.G	210	[illegible]		558	Amer. Ast
27.	✓	1 Lth Belts	210	[illegible]		178	✓
28.	✓	Hardware	210	[illegible]		2341	Amer. Lin
29.	~~Jacobs~~	~~Fetus Lawn~~	~~215~~	~~[illegible]~~		~~[illegible]~~	~~Amer. Ast~~
30.	Crown	1 Mach Tools	300	—		755	✓
31.	T. Wh. & Son	Crown	320	—		1010	✓
32.	~~Pilot~~	~~Tops Cars~~	300	~~[illegible]~~	~~30622~~	~~2792~~	~~Rubens~~
33.	Mr. Lawn	31 Ts Mufflers	315	19-110306		5326	Rubens
34.	Old Dom	7 Cts to Dan	330	11316		2241	Stoplo
35.	✓	42 Cts Cartons Smok	330	3185512		1580	Amer. Li
36.	✓	10 Cs. Tools	340	35[illegible]682		825	Rubens

Weather _____ Day Thurs Date 10/9/69

DRIVERS REPORT TO THE TRUCK OFFICE TO BE CHECKED IN WHETHER LOADING OR UNLOADING FREIGHT

Page 2

DAILY TRUCK/RAIL RECORD

	Carrier	Commodity	Time In	Load	Discharge	Cube or Weight	Ships Name
7	Old Dom.	1 ctr Sheets, P. Cases	345	311285		72	Rubens
8	✓	23 bl. Cat & Lym	345	308861		7624	Lightning
9	Rep Posts	5 cart U.H.H.G.	4	—		7838	Amer Astronaut
0	Old Dom.	70 bl. Cat	410	5800.28		2339	✓
1	✓	150 cs Mixt	410	5860.24		5038	Rubens
2							
3							
4							

Weather _____ Day Thurs. Date 10/9/69

DRIVERS REPORT TO THE TRUCK OFFICE TO BE CHECKED IN WHETHER LOADING OR UNLOADING FREIGHT