IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GLOBAL HUB LOGISTICS, et al.,	
Plaintiffs,	Civil No. 12-cv-1350
VS.	October 22, 2013
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TRIAL TRANSCRIPT

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: ODIN, FELDMAN & ITTLEMAN, P.C.
BY: CRAIG J. FRANCO, ESQE

FOR THE DEFENDANT: TROUTMAN SANDERS, LLP
BY: LESLEY WHITCOMB FIERST, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON,RMR,CRR
U.S. District Court
401 Courthouse Square,5th Floor
Alexandria, VA 22314
(703)501-1580

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(Thereupon, the following was heard in open court at 9:33 a.m.)

THE CLERK: 1:12 civil 1350, Global Hub Logistics versus Tamerlane.

THE COURT: Good morning, Mr. Roshan. Good morning, Mr. O'Brien.

MR. ROSHAN: Good morning.

MR. O'BRIEN: Good morning, Your Honor.

THE COURT: Ready? Good morning, counsel. Ready to proceed?

MS. FIERST: Good morning, Your Honor. Thank you, Your Honor.

Tamerlane expects to call this morning. We previously exchanged deposition designations, and there are a number of objections to review with Your Honor.

THE COURT: All right.

MS. FIERST: The second issue that we wanted to address before the jury comes in is several exhibits to move in to evidence that were used during Mr. Gharjy's deposition that I didn't know whether they're in evidence yet. And I'll take them up in whatever order Your Honor prefers.

THE COURT: Let's do the Timpson deposition quickly.È

MS.FFIERST: Fine, Your Honor.I The first objection, I believe, is our objection. Plaintiffs have designated pages 14, line 23, through 21, line one. And this is a lengthy discussion in which Mr. Timpson is asked to describe the process for sending a truck to Leatherneck to pick up cargo. And it goes on and on and on.

Our objection is that this is cumulative based on previous testimony. And frankly,dVMrnlO'Brien may touch on it today, so I didn't think we needed seven pages to ge

employee for some period of time that's at issue in this case. He was the program manager in Afghanistan. His current title or at least his title at the time of the deposition was data coordinator.

THE COURT: Okay.

MR. FRANCO: I guess I also have, Your Honor, quite frankly, for Mr. Roshan and Global Hub Logistics, I've a fundamental question, Your Honor, as to why Mr. Timpson's deposition should be read as opposed to him being live. He's a Tamerlane employee.

I don't know what foundation we have. It hasn't been advised to me that he's either not in Virginia or anything like that to allow for it to be done via deposition. That's -- that's something that's a foundational issue.

But, with regards to the portions that Ms. Fierst objects to, he's the person on the ground, not Mr. O'Brien, who should describe what the procedure was at Leatherneck.

This is somebody from the Tamerlane side. We've had somebody from the Global Hub side describe it. But to the extent that they try to discredit Global Hub, I think somebody's who's on the other side of this V -- I should have the ability to him give the description.

So there's no dispute about the long and

tedious process for engaging -- getting trucks through the soak yard, getting them loaded up by they

So that's the

where he was not located, for the people who are handling the cargo there to fill in.

Now, I believe that what plaintiffs want to do here is use this document in its completed form to say, see, look, the cargo was handed off. It was signed off. Everything was kosher.

But Mr. Timpson here testifies that he was not there. So to the extent they want that he prepared a blank document

And otherwise, they can just float out the notion that there was never any transfer, and there might have been problems with it. But we have a document that's signed off by the parties that was -- that was acceptable to Tamerlane and that should be acceptable -- the jury should be able to see that.

THE COURT: So, wait a minute. Ms. -- Whitcomb-Fierce says it was not

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can't be used to testify to this signature or the verification of that.

THE COURT: Whose signature is this on the end is of the last page?

MR. FRANCO: This is the follow-on company that signed. But if you read the end of his portion of the testimony, it says "So they signed off on this saying that they handed over the pieces of equipment to the new company".

This is his acknowledgment that this is the document that was the transfer document that he signed up to have people sign off.

MS. FIERST: I feel like we're talking pass each other, Mr. Franco. I'm not objecting that Mr. Timpson put this document together and that that was the purpose. We're on the same page on that.

He put together this spreadsheet anticipating that there would be a hand over of cargo. Your guys stopped performing. Our guys found somebody new. They came in and transferred the cargo. We're on the same page about that.

This document is forwarded only among your clients saying here's the receipt. Everything's cool. Nobody from our side is on this e-mail.

Similarly, the receipt is signed on page

MS. FIERST: Yes.

THE COURT: And that is the last page of this document has a name.

MS. FIERST: Yes.

THE COURT: And it's Wahid and Company. So is Mr. O'Brien going to say that that name is the name of the person and the company he sent the property to be transferred to?

MS. FIERST: Wahid and Company? I don't know who Wahid -- B&Q Logistics is one of the companies who Tamerlane retained after Global stop performing. There were two companies. B&Q was one of them.

THE COURT: My question is whether he is going to testify that B&Q Logistics which is on this last page 23172 is the name of the company he authorized cargo to be transferred to?

MS. FIERST: B&Q Logistics? Yes, and we have receipts from B&Q Logistics.

THE COURT: All right. So he's not going to deny this document is authentic in terms of the last page of it?

MS. FIERST: That B&Q Logistics performed work for them when Global stopped? No, he's not going to deny that.

THE COURT: No, my question is very precise.

Is he going to deny that B&Q Logistics which is named on this last page is not the company who received

what's above the signature.

Mr. O'Brien. Mr. O'Brien -- Wahid and Company is not -- it's not an entity -- B&Q is separate from Wahid and Company.

MS. FIERST: Okay. Your Honor, there seems to be a --

THE COURT: Okay, never mind. I'm going to admit the document. You all can cross-examine about whether or not you think it's authentic. I think there's been sufficient foundation laid. It will be admissible through this witness. He is company representative on the ground in Afghanistan. He said he prepared this document. And this document he is authenticating.

Now in terms of the last page of it, if you want to cross-examine about nobody knows who the last page was signed by, feel free to do so.

And Mr. O'Brien can say who he thinks they are. He can deny that, too. Now, these documents are -- I think sufficient foundation has been laid. They'll be received.

not authenticate or that it wasn't received by this company, B&Q or if he denies the signature, he can say it on the stand, but the document is coming in.

What's the next exhibit?

MR. FRANCO: Is that it?

MS. FIERST: That's it for our side. That was our last objection.

MR. FRANCO: I only have a couple, Your Honor. Page 41, 11 through 24.

THE COURT: 41, line 11 through 24.

MR. FRANCO: Yes, I'll let Your Honor read it.

Your Honor, this portion, I don't think it's relevant. He's speaking in generalities. He's not talking about a particular instance relating to this case. And if you read the language, it makes clear where they comply. We don't even know who the "they" is in that sentence, "comply with the request of the trucking company to -- would comply with your request? Sometimes, sometimes not, you know.

"Okay, and if they didn't would they learn af

case, and you can't tell from reading it.

The next page talks about GHL. And I have no objection to -- it's been cited, page 42 into 43. But this portion, it's just -- it has no context, makes no sense. So, I would say it's not --

THE COURT: Well, going back to page 36, it says "Whose job was it to tell the trucking companies what kind of trucks to send?"

And top page of 37 it says it was our job to figure out what trucks we needed. And he talks about what the military told him to do and not do. So I suspect he's talking about the same topic, don't you think?

MR. FRANCO: He may be. It's hard to tell from this clip and he doesn't say anything. Sometimes yes, sometimes no, sometimes we'd eat the cost.

He's not talking about a specific instance that's at issue in this case where they eat the cost and so that's my objection, Your Honor.

MS. FIERST: Your Honor, Mr. Franco just went on at length with the importance of having someone on the ground discuss the process by which they would get trucks and complete the work. This is the same type of testimony.

He's describing the process by which he

performs his job. It's not like they were dealing with tons of different trucking companies. So this is relevant to GHL.

THE COURT: All right, objection's overruled.

What's the next one?

MR. FRANCO: Page 67, Your Honor, 8 through 24. I simply think this is cumulative to a lot of testimony we've received. It doesn't seem to be a dispute over this.

THE COURT: The objection's overruled.

What's the next one?

MR. FRANCO: Page 71, 16 through 74, 20.

THE COURT: Page 71 line 16.

MR. FRANCO: Through 74, line 20.

THE COURT: Okay, hold on.

MR. FRANCO: You know, based on your prior rulings, Your Honor, I'm just going to withdraw my objection to it. He's speaking in generalities about the process. I'm happy to withdraw that.

THE COURT: But the generalities has to do with GHL in this case. It's not about some other trucking company, is it? He's talking about GHL, and this case, not some other company; is that right?

MR. FRANCO: That's --

THE COURT: Then it's relevant. It's relevant. Okay. What's the next one?

It's overruled.

MR. FRANCO: Yes, Your Honor. Page 90, line 15. And my -- it goes on to page 91, page 6. It's asking what he knows about GHL and this gentleman named Khairullah. He doesn't know anything about them. And he was released from the yard. GHL pulled them because of issues and put somebody else there to handle the situation. I don't know how that's really relevant.

MS. FIERST: Your Honor, as you may recall, Mr. Roshan testified regarding this gentleman, Khairullah. And his recollection that Mr. Khairullah was a little bit overly cautious in the first instance but then was helpful and assisted with the transition process from GHL's custody to Tamerlane's replacement provider's custody.

This testimony speaks directly to that and demonstrates that GHL ultimately had to fire Mr. Khairullah because he wasn't being helpful in the transition process. That's at issue in this case.

THE COURT: Where does it say he was fired?

MS. FIERST: I'm sorry.

THE COURT: Where does it say he was fired?

MS. FIERST: At the top of page 91,

THE COURT: Received without objection.
MR. FRANCO: No objection, Your Honor.
MS. FIERST: Defendant's Exhibit 359, there was no objection to that document.
THE COURT: Received.
MS. FIERST: Defendant's Exhibit 225. MR
MR. FRANCO: One moment.
MS. FIERST: Sure.
MR. FRANCO: No objection.
THE COURT: 225 will be received.
MS. FIERST: And the last one is Defendant's Exhibit 222.
THE COURT: 222 will be received.
MR. FRANCO: If I may, Your Honor.
THE COURT: I'm sorry.
MR. FRANCO: No objection.
THE COURT: Received.
MS. FIERST: Thank you, Your Honor.
MR. FRANCO: Your Honor

permits it to be read as opposed to having him here to have testify live.

THE COURT: All right.

MS. FIERST: Would you like me to respond, Your Honor?

THE COURT: Yes, I would.

MS. FIERST: First of all, Your Honor, Rule 32 permits the reading of a deposition under any circumstances, in particularly here where Mr. Timpson is a party.

Mr. Franco had anticipated designating pages at this deposition, so there is no surprise element.

Mr. Timpson is in North Carolina. That's where he resides. He was anticipating coming to testify last week. Because of the length of plaintiff's case, he's now in preparation to go over to Afghanistan again.

And so, frankly, at this point, based on the time we have left and Mr. Timpson's schedule and the fact that he's out of the jurisdiction, we felt it was much more efficient to do it this way.

THE COURT: Witness unavailability is not required; is that right?

MS. FIERST: That's correct, Your Honor.

THE COURT: It may be used. I'm going to take a short recess and try to start right at 10. You

all need more than five minutes, less than five? I will get my notes and come right back and start.

(Court recessed at 9:57 a.m. and reconvened at 10:10 a.m.)

THE COURT: Mr. Toliver, you can bring out our jury. Thank you very much.

You may be seated.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Good morning, Mr. Roshan.

Good morning, Mr. O'Brien.

Good morning, counsel.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: Ladies and gentlemen, I thought about giving you a table of contents so you would know who would be up next, but because things change as the trial evolves, I've decided that's not a good way to do it.

So if I give you a long list and you think, all these people are coming and if they don't show up, you'd think where are these other people. So, that's why I didn't give you a list.

All right, counsel, ready to proceed?

MR. FRANCO: Yes, Your Honor.

MS. FIERST: Yes, Your Honor.

THE COURT: All right. Who is next?
MS. FIERST: Your Honor, good morning.
THE COURT: Good morning.
MS. FIERST: The first witness on behalf of Tamerlane Global Services is Timothy Timpson, Senior.
THE COURT: All right.
So, we have by deposition?
MS. FIERST: Yes, Mr. Timpson will be read by deposition.
THE COURT: All right.
This is not Mr. Timpson, who is this?
MR. KELLY: I'm Ryan Kelly, Your Honor.
THE COURT: Good morning, Mr. Kelly.
MR. KELLY: Good morning.
THE COURT: Today he is Mr. Timpson. You're to consider him as the testimony of Mr. Timpson.
Thank you. You may proceed.
MS. FIERST: Your Honor, I believe you have a copy of the deposition.
THE COURT: I do.
MS. FIERST: We will refer you to line and page.
Beginning on page 6, line 19.
THEREUPON, TIMOTHY TIMPSON, SR., through deposition testified as follows:

Q. Okay, tell me your full name.
A. Timothy Timpson, Senior.
Q. Okay. And what's your title at Tamerlane?
A. Data coordinator.
Q. What is it?
A. Data coordinator.
Q. And what is -- what are your duties?
A. I do the -- get all the information and put the information into a spreadsheet for the customers, for they know what the daily operations we got going over on overseas.
Q. And that wasn't always your --
A. No.
Q. -- your title?
A. No, I was in country manager for Tamerlane when I first got hired.
Q. In Afghanistan?
A. In Afghanistan.
Q. When did you become a data collections -- I'm sorry. What did you say?
A. Data collection coordinator.
Q. Yeah.
A. Yeah, it started in March.
Q. March of this year?
A. Yes, sir.

Q. Okay. Were you in Afghanistan until March?
A. I was in Afghanistan and when I was in Afghanistan -- I just came out of Afghanistan February of 2012 of this year.
Q. Okay. And then what was the reason for your change of title?
A. The reason for my change of title?
Q. Yeah.
A. I just retired from the Military Reserve National Guard in April. So I had a CAC card. I had to retire, my retirement ID card.
MS. FIERST: Page nine, line four.
Q. How long were you in the military?
A. Almost 19 years.
Q. What was your rank when you retired?
A. E5 sergeant.
MS. FIERST: Page ten, line two.
Q. What was your job in the military?
A. My job?
Q. Yeah.
A. I was infantry at first, bunch of Bradleys, driving around Bradley, NEX. Then we went to patrolling fuelers. And then I went to supply specialist.
Q. What's supply specialist?
A. Logistics supply, do the supply every day,

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A. Subletting transition thing where we switched out every two months.

Q. Okay. But after -- after he left the country in June of 2011, did he come back?

A. No, he didn't.

MS. FIERST: Page 14, line 23.

Q. So, describe -- describe for me the process from beginning with sending a truck to Leatherneck to its picking up cargo and leaving Leatherneck.

A. The process of it?

Q. Yeah.

A. Okay. That's what we did. First, we got an order, a contract for retrograde. And then they give us the paperwork, which is a company LGL is the main contractor. They send it to us, and we do an accountability, a list of it, see how many trucks we need per item.

Like, if you got humvees, you need one truck, one 40-foot for the two of them to pick up. So we analyzed the list, and then we call GHL to tell them we need this many trucks at this location.

Q. Okay. And what was the next step?

A. Well, GHL would send the trucks to that base, and it's a process for them to get on base, which they have to have placards on the trucks to show them, showing the

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A. It's another yard they go to to wait for somebody to come pick them up which was the SCC military go pick them up or sometimes the military just has -- sometimes the military sometimes has escorts just for the base to escort trucks on and off base.

Q. So, from the soak yard, how would the -- how would the truck move from the soak yard to the CRSP yard?

A. They got a line they go, this is a lane they got for all trucks to go. And then the military does the escort. We don't do that. The military does it for the base.

Q. Does the military load the truck?

A. They got persons per yard, sometimes civilians or military, that runs the yard.

Q. Okay. So, but loading is not done by Global Hub?

A. No, they just bring the truck and they get loaded by the military or the civilians they got working for them.

Q. Okay. And after -- after the truck is loaded then, what's the next step?

A. Truck get loaded. We got to make a BCM for the truck to get back off base. They can't leave the base without a BCM, border control memo, which when they go to the border, they need a memo to go across the border.

name in and all that who is going to that location.

Q. That was something that you asked the military about when you arrived in country?

A. Yes, we got to ask them, because we don't know the process for each base, because sometimes it changes.

You got to make sure you got the right process at that time. It could change because of a

Leatherneck, they changed the process for issuing placards?

A. Yeah, they changed the process all the time. I mean, even when a new unit comes in, they change the process because they got to change it because people always trying to get on base, trying to blow it up and all this.

MS. FIERST: Page 33, line 18.

Q. Right, okay, okay. Now, you said later, after this movement was over, you did go to Leatherneck?

A. Yes, myself.

Q. Is that because Tamerlane obtained a letter of authorization for you to do that?

A. Yes, we can go out. We want -- the military wanted somebody on the ground to handle the -- because we had a problem with truck drivers not coming with the appropriate equipment and to organize everything and anything we have problems with the trucks that we can call our guys to get it corrected.

Which I did have a problem there with guys not coming with chains, binders, and all this and trucks not appropriate fitted to fit equipment.

A piece of equipment on with no bed on it, no wood on the back of the truck and sending shorter trucks than we asked for, I had a big problem with that.

Q. When did you have that problem?

A. Well, I'm talking overall truckers. That's what was the problem was, and then stealing from one another, chains. We had a problem with that and we just -- and it got out of control. We had to go talk to the broker actually of the truck, like GHL, and say, hey, your truck drivers coming without chains, binders, and the guys caused the conflict with the military, they had to kick them off base.

You know, they kicked them off base because they didn't have the stuff or they were stealing from one another, and they'd start a fight or they'd find knives and stuff in their -- and stuff in their truck. So they'd kicked them off base.

Some of them would have cellphones on the base and so they'd kicked them off for that and keep the phone. It was just all like that. And we had to control -- that's why the military wants somebody from that company during the moves there to make sure they can do the correction on the spot and not hold up the move.

Q. Okay. Are you speaking now about moves that -- about GHL truck drivers or --

A. I'm talking about all truck drivers, GHL, too. When I first got there, that was a problem the whole

time I was there. And the military comes back to me and says, hey, what's going on here.

MS. FIERST: Page 36, line 22.

Q. Who -- whose job was it to tell the trucking companies what kind of trucks to send?

A. Whose job was it?

Q. Yeah.

A. It was our job to figure out what trucks we needed.

Q. Okay. Did that ever change what kind of trucks were needed?

A. Yeah, if the military says we cannot use this truck because they got bars on it and that we can't put a vehicle on --

Q. Right.

A. -- they'll kick the truck off the base and tell us we need another truck with a flatbed with no bars so we can tell this equipment.

If it's rolling stock equipment, and the air in the tires, the air got out and they sit a little bit off to the side. So if you got that rebar, it damaged the tire.

That's why the military will kick -- will kick a truck off base if they can't fit a piece of equipment on, and they'll tell us we need to replace that truck.

Q. Okay. So, for the equipment that was being picked up at Leatherneck, did you know in advance every piece of equipment that was going to have to be picked up?

A. Yes, we do know in advance.

Q. You do?

A. Because we got a list --

Q. You do?

A. -- of what we need to pick up, yes.

Q. But does that list change?

A. Does the list change?

Q. Yes.

A. Sometimes they add more. Sometimes they take away because the military does not want -- they're still using that equipment at that time. So they don't want to -- they want to keep that equipment and they take it off the list and tell us. You need to take it off of -- this off of the list --

Q. Okay.

A. -- because they're keeping it. The unit's still using it.

Q. Right.

A. And then they'll add something where a unit wants to add something to send back to the states.

Q. So as the list of units changes --

A. We change our list.
Q. -- you NR

that.

MS. FIERST: Page 41 line 11.

Q. Right.

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A. In Afghanistan overall it was difficult to get contact, especially by Roshan. Sometimes the system goes out. The base has a blackout period where they cut off all communication --

Q. Right.

A. -- in the area of the base.

sONA Right NA cG

oOIS A. Because they know attacks comes in at night, and so they cut off all communication or detonation devices. Now they got to -- today they got these devices where they can block your phone off right at the place where the truck's coming in, the soak yard. Apparently they got devices that shut

Q. Yeah, with GHL?
A. I can't remember off hand.
Q. Where's Jalalabad?
A. Jalalabad near the Torkham border.
Q. Near Torkham? Okay. Is that another dangerous place?
A. Jalalabad?
Q. Yes.
A. Yes.
Q. Okay, did you ever go there?
A. Yes.
Q. You did?
A. Had no choice to go there.
Q. Why is that?
A. Because with -- when GHL decided to get out of the game, I had to do a transfer between two

supposed to have there. And then they brought some equipment down from Kabul, too, to that Jalalabad area.

Q. Right.

A. All of it was stored in the storage yard, holding yard, and stacked on top of each other, which it didn't make it easier to get it fixed. But I sent Emran, which you know is another trucking company we had to do the transfer between the two companies.

He went down there first because we had local moves that come all of sudden at one time, meant for I couldn't go down there at that day to check them out. So I did everything possible. I did spreadsheets. I mean, even a baby could actually read this thing and done the job.

But that day because I guess with the trucking companies down there, they don't get along with each other, so I didn't know that. One said he's here. They're here. I mean, what's going on?

And they're supposed to have done an inventory, but when I got there, the inventory was jack. I said you got inventory stuff together? So it was jacked up.

So I was like me and Fahad be there the next day to make sure this transaction happens. So I don't know. It caused a lot of more work for us, basically, for that move.

Q. This is in Jalalabad?

A. That's more than Jalalabad. Kabul -- we had to do transfer from Kabul, Jalalabad. And I had to actually do the physical one for Chaman, for my office to do a transfer from there to another company we dealt with, trucking company.

And then at -- it was -- that's when I got irritated because it had added more work to me. If they finish the move in the first place, we wouldn't have had all that work to do.

So I mean, it caused more work for me and Fahad, just to run around. In Jalalabad, he really didn't want -- my company didn't really want me to go down there because it was dangerous. But I said -- I said, well, to get this straight, I'm going to have to go. So I went down on my own down there to handle it. Me and Fahad went down there to straighten out the situation, because the GHL said they'd done.

MS. FIERST: Page 67, line eight.

Q. Okay. Now, when cargo arrives at Jalalabad, is that a place where it's cross loaded on to Pakistani trucks?

A. At that time, it was cross loaded because they -- GHL said they're not doing the move no more. So they left it in that storage yard. And then they cross

load -- I guess they cross load their trucks to Pakistani trucks to get across the border from there.

Q. Okay. So when -- when the units arrived, the units that you're talking about, when they arrived in Jalalabad, if they were on Afghan trucks, they needed to be loaded on to Pakistani trucks?

A. Yes. That's up to the trucker company. We hire them. They figure out how to get the trucks to the designation.

MS. FIERST: Page 68, line 21.

Q. Yeah.

A. Okay. What's supposed to happen? A trucking company is supposed to -- we hire the trucking company. They're supposed to get the truck from one designation to another.

Q. Right.

A. And how they do it, we didn't care as long as it got done.

Q. Okay.

A. They're responsible for how they got done.

Q. All right. And Jalalabad was a place where cross loading would occur in general?

A. I'm assuming so. It's according -- it's according to what the truckers did because that's the part of their job we hire them for.

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five showed up. Where are the other five go at? That's why we have -- that's why we have -- we have a list saying what time the truck left. They give us the sheet saying this truck left with this pieces, this day, and they're heading towards the border.

Q. Uh-huh.

A. They get to the border, five trucks showed up. What happened to the other five trucks? So we got to go to the trucking company, say, hey, what happened to your five trucks?

This guy, because sometimes -- most times, we got the trucker's name, his phone number, and all that down. And we say, hey, this guy here, Abdullah didn't show up. Where is he at with their cargo? The military wants to know where their cargo at. So, that's how we track it.

Q. Well, didn't the cargo have tracking devices on it?

A. I just said that, sir. I said the cargo had tracking devices on it, that's how we know where the truck's at.

Q. Okay. And so, if trucks didn't make it to the border, you could check the tracking device and that would tell you?

A. Well, the people we hired, Security Packers call, tell us that these many trucks showed up at the border.

What happened to these rest of the trucks. It was ten trucks. Only five showed up. Where are the rest of the other five trucks at?

Q. Are you talking about a specific incident where only five trucks showed up at the border?

A. I'm talking about most of the time. I mean most of the time, we had an issue with trucks breaking down, trucks -- trucks going somewhere where they're not supposed to be, or go visit their families on the way through, because sometimes the truckers do that.

As they're going up to the border, they got family on the way up, and they'll stop to the house. But the trucking company don't know. They don't report back to them to tell them that, so we don't know that. So we had to ask.

So then they had to call them and up and see where they at. At some of the regions where they at, they can't reach them by phone because the phone coverage is bad like I tell you.

Q. Right. So, describe for me the process of clearing customs at the Torkham border.

A. I don't do that part. That was the other company's part to do the customs clearance.

Q. Do you know what it was? Do you know what the -- what the process is?

A. No, sir. I didn't do -- like I say, I didn't do that part. We had somebody else do that part on that side.

Q. All right. So, if a unit couldn't clear customs for some reason, if it got held up at the Torkham border, you wouldn't know why that occurred?

A. They report back to us what's going on.

MS. FIERST: Page 76, at line eight.

Q. Why did they have to clear all the trucks at the same time?

A. Because that's how they pack. However the packet is sent to them, that's what they give to the Pakistani side. And they say, and they say, we're sending these items on these trucks up to the border for they can clear them because their paperwork is already done so they can cross the border.

So if they say, okay, well that -- what we did was -- what we did that for was when we sent the trucks early, they'll stay there a couple of nights. So we're trying to avoid that by waiting and say, hey, you all stay where you're at until we can get clearance, because the truckers were complaining about it, about them having to wait at the border.

So we rectified that by saying, hey, you all wait to where you at, and we get clearance from the border

for all can go up there. And when you get up there, you can just go across the border.

Q. Right.

had with Khairullah? Do you know if --

A. No, sir. That's between them two.

Q. Okay.

A. All they told me is that they had it handled and they're supposed to get resolved.

Q. Okay. And, he did let the cargo get picked up by these -- by these trucking companies, right?

A. No, he was released from the yard. GHL pulled him from the yard because of the issues.

Q. Really?

A. And they put somebody else there to handle the situation.

MS. FIERST: Your Honor, that concludes the deposition designations from the deposition of Timothy Timpson, Senior.

THE COURT: All right.

MS. FIERST: Your Honor, as our next witness, we would call Jim O'Brien.

THEREUPON, JAMES O'BRIEN, having been duly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: You may proceed.

MS. FIERST: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. FIERST:

Q. Good morning, Mr. O'Brien.
A. Good morning.
Q. Mr. O'Brien, let's start by giving the jury a little bit of information about your background. Can you tell us where you grew up?
A. I grew up in Queens, New York. I grew up in area Corona Regal Park, Lefrak City area, across the street from the projects in Queens.
Q. And have you served in the military?
A. I have. I did four years in the Marine Corp, from 1990 to 1994.
Q. And was that after high school?
A. It was. I was 17 years old. I got my parents' permission. My mom didn't want to sign off on me. My dad wanted me to get a haircut and get a swift kick in the butt.
Q. After your service in the Marine Corp, did you pursue further education?
A. I did. For a couple years, I bartended, you know, worked on kitchen floors, construction, that kind of thing. But ultimately I used my Connecticut -- there was a Connecticut Combat Veterans Benefits For Education as a result of Desert Storm service.
So I wound up going to college at Southern Connecticut State University -- after which I continued

on to -- after joining the government, shortly after that, I wound up pursuing a graduate degree at Tufts University and also an MBA at William and Mary.

Q. And what was your degree at Tufts University?

A. It was a master of arts in law and diplomacy with a specific emphasis on Islamic culture and strategic analysis.

Q. Let's --

A. I'm sorry.

Q. Let's talk about -- if you had something else to add, I don't want to be cutting you off, Mr. O'Brien. Let's --

A. That's okay, thank you.

Q. Let

The area that I worked in, there were two teams. One was the western hemisphere team which specifically dealt with Columbia, Venezuela, Brazil and an area that was called the Tri-Border area down in South America.

The next area was the Near East Desk that I was working on. That was originally defined as Syria, Lebanon, West Bank and Gaza, Israel, Egypt, Saudi Arabia, Iraq, Jordan.

e board. I worked for a customs ho[redacted]own in
l reet, a co[redacted]any called Charter Bro[redacted] It was a
ef b, about ree months, doing prim[redacted] imports.
But then I ind up working for Ame[redacted]es for
6 2008.
AmeriCares as an NGO. It was run[redacted]he best
en of George Bush, a man name Bob [redacted]ley.
- Barbara Bu[redacted] was our ambassador at[redacted]e. We
o d a lot of involvement with a gent[redacted] named
n egro Ponte that time.
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became Xe Services. I was the director of logistics. My job was to oversee all their logistics operations for all of their agencies that this served throughout the world. They had had a serious problem at the time.

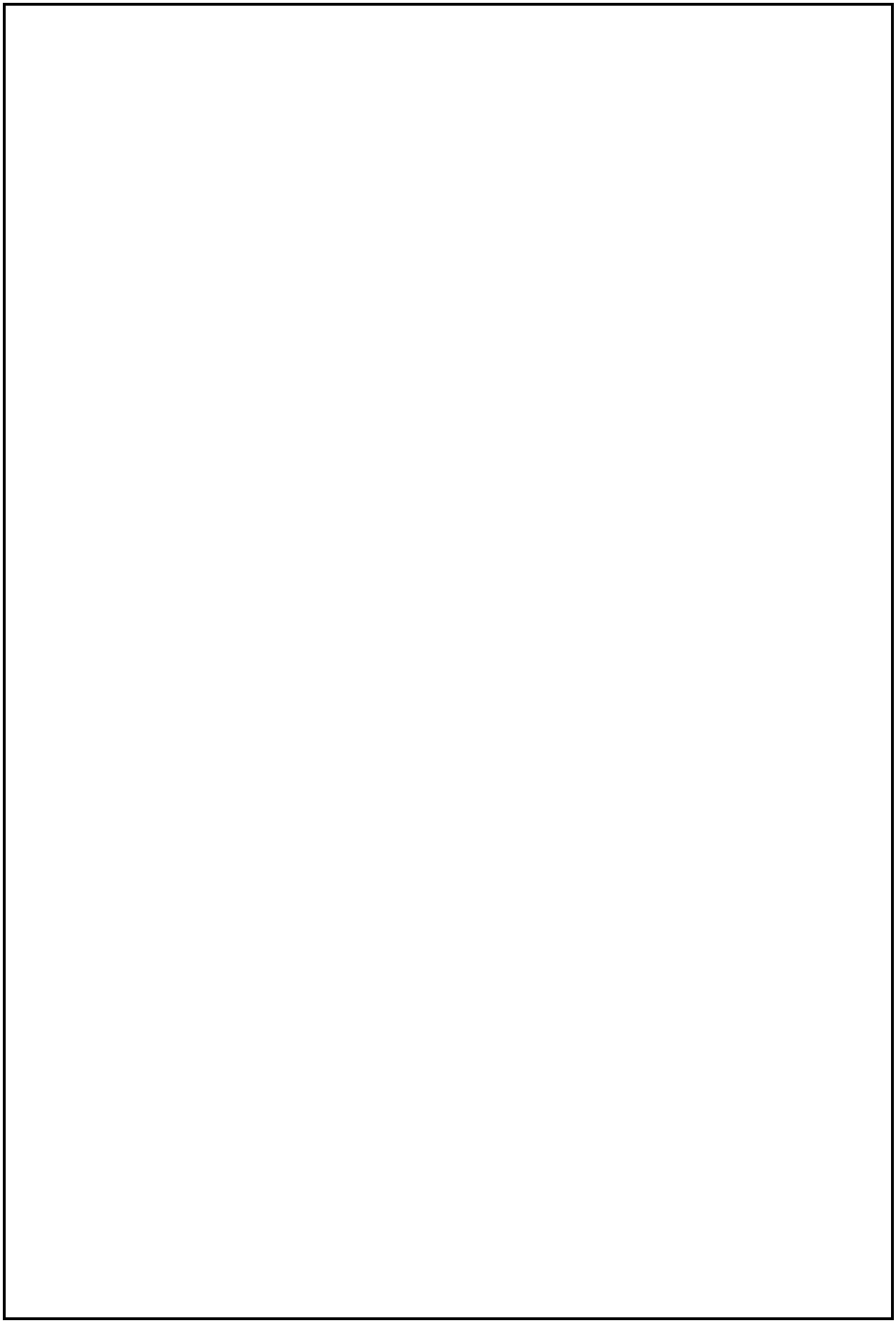
As a matter of public record, the U.S. State Department had 4,000 violations against Blackwater prior to my arrival. They wanted to have somebody come in, clean up the house, make sure that they began complying with the conditions of their contract, begin to introduce efficiencies into the logistics stream. So I wound up taking over the logistics department at that time.

I wound up bringing them from 4,000 violations to zero. I wonder up negotiating with the Commerce Department and the State Department to reduce any kind of finesf l f n e s

Services?

A.

consultant at that time



Q. And at the time that you took on this work in October of 2010, this was stuff that you had done previously, during your prior logistics experience?

A. That's correct. At -- at Xe, as director of logistics, I wasn't just sitting in an office at all times. I would rotate into theater myself and work on the ground myself.

In fact, in June 2010 is a good example. Just prior to leaving, I had taken over management. We had a 20-foot container on Bagram that was specially designed for one of our agency clients. We would have small aircraft that would come in, deliver cargo, and then would be trans-loaded onto either vertical options, helicopters or it would be transferred onto small aircraft.

I handled that program personally. I would load those. I would sit on the base, work the forklift, work the lull, make sure the aircraft was getting loaded and making sure that it got out accordingly or that some of the small trucks, small courier movements were going out as well.

On occasion if it was something that was considered diplomatic pouch, that

and go to the US Embassy as part of what was a

operations.

Mike Chapell had had a need for a secure storage yard near the Torkham border. He was working with a company called Waterlink. Waterlink at the time was having challenges with regard to the movement, so he came and approached me on behalf of Mike to see if we could help with the operation, taking over the cargo from Waterlink to be able to store it securely. And that's when we began that -- we began that in late November, early December. And then which in December, early December at some point in time, Mike Chapell and Liberty Global Logistics had an issue with Waterlink where they ultimately decided to transition all the cargo to us.

MR. FRANCO: Objection.

THE COURT: Yes, there's an objection, please stop, Mr. O'Brien.

Objection sustained.

BY MS. FIERST:

Q. Can you tell us what you took on as a project for Liberty, Mr. O'Brien, without telling us what Mr. Chapell told you?

A. Of course. So, as we were -- we had the cargo in a secure yard. I received a call from Mike Chapell and a follow-up e-mail telling us to take over the movement of that cargo.

THE COURT: That's okay. That wasn't -- go ahead.

THE WITNESS: He directed us to take over that cargo. We took over the cargo for the movement of the cargo to ultimately bring it Karachi.

BY MS. FIERST:

Q. At this point, did Liberty have any relationship -- what was Liberty's relationship with the U.S. Government?

A. The --

Q. Was there a contract between Liberty and the U.S. Government at that point?

A. Correct. Liberty Global Logistics' contract was a Universal Services Contract, iteration six. The sixth version of the Universal Services Contract. That Universal Services Contract specifically is designated

to bring cargo all over the world.

There are about 20 companies in total that are part of the Universal Services Contract, based on their geographic area of responsibility called their area of responsibility or AOR.

In this particular case, Liberty was one of six carriers that were designated for both the Iraq and Afghan war efforts, so they were responsible for cargo moving either into or out of Afghanistan as well as into or out of Iraq at that time.

Q. And, was there a point in time where you officially became engaged by Liberty to work on their USC6 contract?

A. Yes. That happened in early January, after we had taken over the cargo that has been referred to in this case, sometimes as Torkham, but in fact is what we labeled it as Retrograde 1.

Q. And what was the arrangement or the contract between Tamerlane and Liberty? What was the type of agreement that you had?

A. We were a subcontractor for Liberty. Liberty reached out to us for pricing. Actually, originally, they reached out to us through Innovative Logistics which was another company, an intermediary company between us and Liberty.

of the contract between Liberty and Tamerlane.

And I think that's where you were headed, Mr. O'Brien.

BY MS. FIERST:

Q. The arrangement between Liberty and Tamerlane, if you could try and describe for us what Liberty asked you to take on.

A. That's right. So, Innovative ultimately was pulled from the contract. And Tamerlane was told to take over as their preferred subcontractor for the USC6 movements.

In early to mid January, at about the same time that Task Force Warrior was beginning, we were asked to provide a price list to Liberty that would be held through the USC6 contract. We provided that price list. And after that, Liberty began to ask us for operations plans that would be consistent with each future task force movement.

Q. And did you have a contract or a basic ordering agreement with Liberty?

A. We did. We had a basic ordering agreement.

Q. Okay. In order to accomplish the work that Liberty was asking you to do, was -- what else did you need to do to be able to assist them in Afghanistan?

A. It's a lot more complex than just simply

Typically, in the case of retrograde cargo, it was from one base to the point of Karachi at all times.

Q. Okay. Let's talk about how Tamerlane and GHL came to work together on these projects that Tamerlane had been asked to handle for Liberty. Can you tell us about that, Mr. O'Brien?

A. Absolutely. Initially when I first started Tamerlane Global, I had known Masud Roshan from my days at Xe Services. Maybe a few months earlier I had met him and he and I had worked together along with Abdullah Gharjy on the

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Q. Okay. Let me back up a minute. You were talking about meet -- this meeting with Mr. Roshan and where you gave him a price list and you asked him for prices from different bases. Are those military bases?

A. That's correct.

Q. So, is that military movements that you were asking him about giving you prices for?

A. Initially, these were not military movements. These were -- let me take it quick step back. There is a whole lot of commercial activity as such in in

THE COURT: No problem.

MS. FIERST: I think he was answering the question, Your Honor. If I could have Ms. Wilson read back what the question was.

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terms of which it needs materials of some kind.

The contracts are pretty set in stone. They will say, you have to have equipment X at that particular base Y in order for you to achieve objective Z.

So, the commercial company will engage a freight forwarder or logistics provider to ask to have that equipment moved from one point to another point in order to achieve the objectives of the contract under which the commercial entity is operating.

The military [illegible] responsibility for that, unless it is in the contract itself, that the military will take responsibility for that movement.

Under most circumstances that I have been involved in, the commercial companies are on their own to move the cargo from point A to point B in order to move stuff wherever it may go, in order to execute the contract.

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that would happen. If it came into a U.S. military base, it was staying in Afghanistan.

Q. All right. Let's talk about the retrograde movements a little bit more.

Can you describe for us what it means. What is -- what is going into a retrograde movement?

A. Retrograde movements are movement of cargo that is going home, or it's going to go to another location based on where that unit may ultimately be consigned to go.

So, for instance, the majority of retrograde cargo going home is going back to the United States. However, there are other programs called A to A which Afghanistan to Africa. There's A to EA which is Afghanistan to East Asia. So they may go to a different AOR based on the need of the military.

Q. And, when you were asked to take on a movement, a retrograde movement by Liberty, when that request first comes in, what do you do?

A. The first part of -- the first stage we do is take a look at the conveyance analysis that would be sent by the U.S. military.

The U.S. military would provide us -- originally Liberty Global Logistics provided us with a conveyance analysis.

Ultimately, ourselves and Global Hub Logistics received those conveyance analyses directly from the U.S. military.

But we receive the conveyance analysis, take a look at the units intended to move, and then determine what were the assets that were needed to move that particular cargo.

So, for example, if I've got two humvees that are a certain weight

THE WITNESS: In some cases, sir. But in some cases there may be lowboys.

THE COURT: All right, thank you.

THE WITNESS: So we would take this conveyance analysis,

routing may change as conditions on the ground changed.

Q. And, when these trucks leave the military base, the Washington to get to Dallas, tell us about how that trip goes.

A. I'm sorry. Can you repeat the question. I apologize.

Q. I said, you using an example of Washington, D.C. to Dallas, that's the equivalent of what? What place to what place?

A. That would be the equivalent to say from Bagram to Karachi.

Q. And, when the trucks leave Bagram, how is it that they go from Bagram to Karachi? Can you describe that trip for us.

A. Sure. In normal circumstances, based on what was happening at the border, a movement would have -- you would have Bagram. A cargo would be collected. It would ultimately get to Kabul. It either might be trans-loaded into Kabul on Pakistani trucks or Pakistani trucks may be allowed onto Bagram Base, depending on the

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It would cross over through a road, pass Peshawar and ultimately move straight down into the port of Karachi via Pakistan. That's normal conditions.

In some conditions, in the event of the border happened to be closed or a challenge of some kind at the border in Torkham, they

So most of the cargo that's moving on these military movements ultimately at some point in time go along this circle, this kind of large oval as such. Because in the center of Afghanistan, it's entirely mountainous and the roads are relatively useless.

Q. You heard Mr. Franco state in his opening statement that there was not, in these retrograde movements, an agreement on the number of trucks that were needed, just send trucks. Do you agree with that? Is that accurate?

A. That is absolutely false.

Q. Tell us why?

A. The conveyance analysis from the U.S. military was clearly given to anybody that was moving. They give out a list of&

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have, say, 200 units that become 210. They may ask for more trucks. But these would be slight variations in the overall numbers. And they were anticipated prior to the end of the IN~~DIVEMENT~~.

The only thing that would really change to any great degree

in Chaman? No. Let's move it

Q. So then was this not -- was this a military retrograde movement, Ramrod 3+1?

A. It was ultimately -- well, again it wasn't -- it wasn't an official movement at all. We were never given Ramrod 3+1. This is a name that Global Hub Logistics first used to give it to us.

Ramrod was one of the forward operating bases that

come out and say, pick this particular cargo up by these particular dates, by this -- and make sure it gets to the port at this particular time, again the ROD and the RDD. Here's your list.

If it gets consigned to us, it means that U.S. military decided it will take that cargo and hand it into our custody and add it to our conveyance list, our initial conveyance list.

Q. All right. Let's return to something that we touched on a little bit earlier. You talked about a meeting with Mr. Roshan where you discussed working together. Tell me about -- was there a contract between GHL and Tamerlane?

A. No, there was no contract at that time. I already had Afghan service providers, but I liked Masud. He was a nice guy. I got along with him. We were working at a contract together at George Scientific. I knew he had this trucking company. So I wanted to give him some business

hoping that it'll take off. I think it will do great. Really excited, just started this company, rah, rah, rah.

And I'm going to need trucks and assistance in Afghanistan.. Would you be interested in working with me? Yeah, that would be great.

We were working at the time in -- at George Scientific on another project involving trucking on a larger scale, fuel contract that GHL was trying to attain where Masud was asking for my assistance with regard to how to price out and how to actually draft up an operations plan with a woman named Sandy Ibrahim, o

I'll give you an example. Here's one of my guys that I'm using right now. Here's a price list. If you can beat these prices, you got my business. I'll give you my business. If you can't beat them, man, I've got to go somewhere else.

And so, exchanged e-mail, send the price list, comes back and then he comes down to either matching or in some cases beating those prices.

Q. All right. So then, there was a discussion -- you and Mr. Roshan discussed setting a price list; is that correct?

A. That's correct. That was for the commercial movements.

Q. And, when generally was that, Mr. O'Brien?

A. Mid October, somewhere thereabouts. I believe the ultimate list wound up being sometime late October.

THE COURT: Of what year?

THE WITNESS: Oh sorry, 2010, Your Honor.

BY MS. FIERST:

Q. How about -- what were these prices? How were these prices set? Was it based on time? Was it based on distance? What was it based on?

A. It was based on position A to position B. So if it was going to one base to the other base and also based on the type of conveyance, the type of vehicle

that would be used. So --

Q. Continue.

A. So if it had to go from Bagram to Kabul, I need this price for 20-foot truck. Bagram to Kabul for a 40-foot truck. And what I explained to Masud at the time when I gave him the price list was these are government contractors. They need to have lists in order for their bids to happen. Therefore, I need this price list to stand for at least a year. He agreed. He'd stand for it for at least a year with regard to these smaller commercial movements.

Q. And, were there other things aside from what you've described, the prices and the routes or points A to B that you discussed with Mr. Roshan agreeing -- in terms of an agreement between GHL and Tamerlane?

A. The points discussed at that time were thanks for price list. Definitely want to use you. I'd like to use you guys. I'll give you every bit of business I can get, that I can get, as long as this goes well. We'll be happy. You're happy. Let's get it to you.

And then it would be literally on a transactional basis. It would be one of those, I've got an e-mail. I've got a shipment from point A to point B. Based get

particular time, particular date, et cetera, et cetera.

Q. How about other charges? There were other charges aside from the cost of the truck. Was that something that you and Mr. Roshan negotiated or discussed at this point?

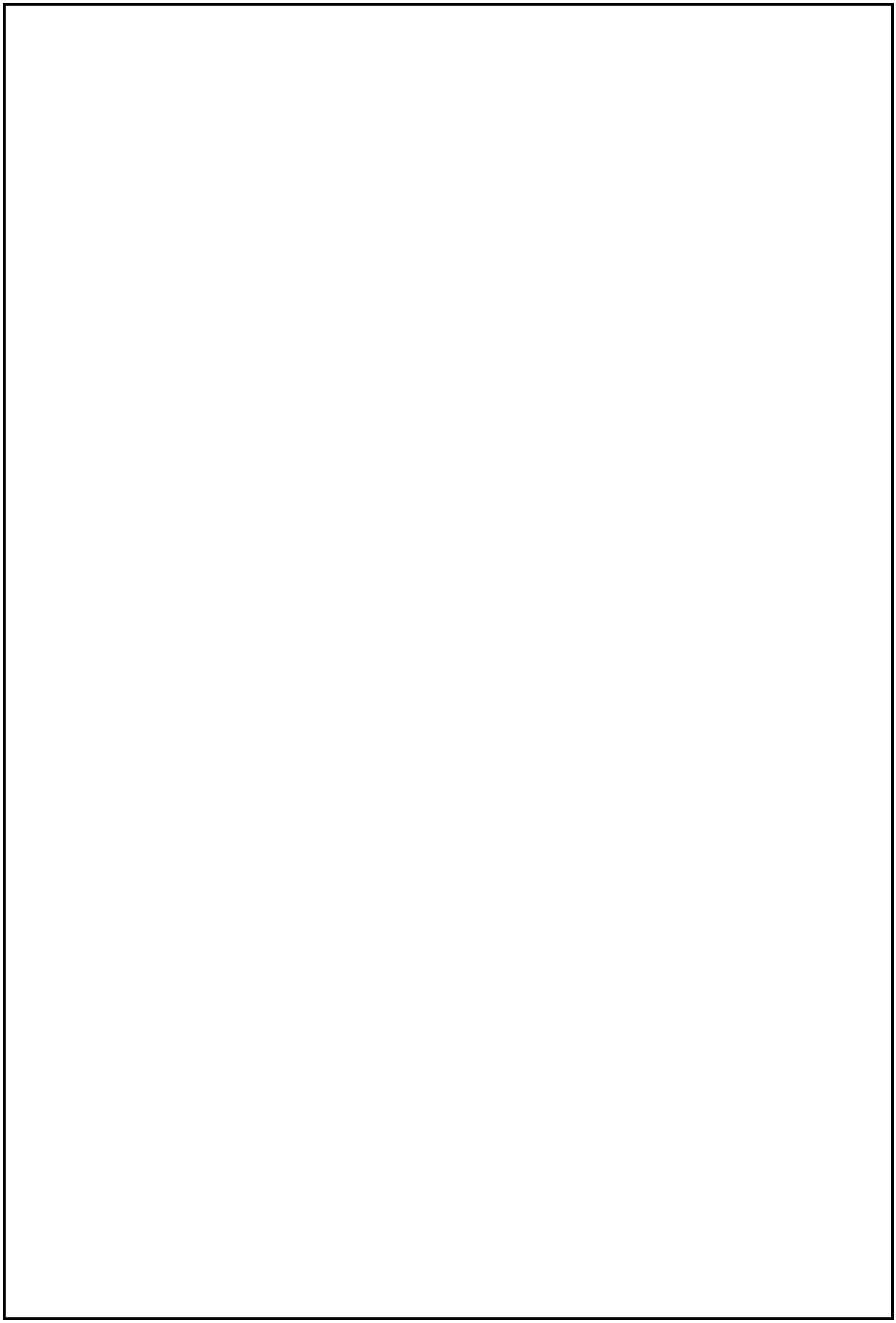
A. Not at that point.

Q. Now, the prices that you just talked about setting for commercial movements, were those prices also used when GHL ultimately was asked by Tamerlane to take on retrograde movements for the military as well?

A. Not when it was to take on retrograde movements, no. When the retrograde movements started, there were larger movements. We wound up going back to GHL for first retrograde, Retrograde 1, because we had not had USC pricing set yet. We went back to GHL and negotiated rates with GHL.

After which, with the retrograde movements, moving forward, when we provided our price list for the USC pricing in early January, if it wasn't a small movement, if it wasn't a commercial movement, but it was a military affiliated movement, the price list that we had would stand.

Q. Were there additional prices that were discussed aside from the first list for commercial movements and the second set of prices agreed on for military



talking about the beginnings of the working relationship between GHL and Tamerlane, right?

A.

We did not -- we were not originally part of the TF Strike movement at all. Tamerlane was not. That was issued to Security Packers.

GHL was, in fact, not involved whatsoever in TF Strike 1. Liberty Global Logistics had a concern that they conveyed to us that they needed somebody on the base.

MR. FRANCO: Objection.

MS. FIERST: Mr. O'Brien, let's see if you can respond regarding the Strike 1 movement without talking about what Liberty told you.

THE WITNESS: Okay. My apologies. My apologize, sir.

THE COURT: All right.

THE WITNESS: The -- we were engaged by Liberty to send a team to Kandahar to manage Security Packers' movement to ensure that the cargo would move out of

Packers came together, and Security Packers understood that we were going to take over, we were told -- we were told to take over Kandahar as a management team. At that time Liberty also asked to make a cleaner billing, cleaner invoice, that we would cut the invoice from our side and the Pakistani would hold onto the money that had been initially offered. That's when the Pakistanis explained to us that they were charging per TCN, and we had to put that --

MS. FIERST: Objection, objection.

THE COURT: What's the objection?

MR. FRANCO: Hearsay. Pakistanis were telling us that --

BY MS. FIERST:

Q. Mr. O'Brien, if you can talk --

THE COURT: Sustained.

BY MS. FIERST:

Q. -- about the charging by the Pakistanis without referring to what the Pakistanis explained or told you.

THE COURT: What were you looking at? Were you looking at something to tell you what the Pakistanis charged, or did they tell you what they charged?

THE WITNESS: Yes, sir. We were looking at it, and that's what we had to reflect in the invoice, itself.

THE COURT: All right.

THE WITNESS:

we charged per truck.

In TF Strike 1, we charged per TCN because that's the way it had originally been bid, without our involvement.

Q. And how -- regarding Strike 1, how was it that Global Hub Logistics ultimately was brought into that movement, because you testified that they weren't involved initially?

A. That's right. Originally, this was a movement that Liberty Global Logistics had provided to the Pakistani firm, Security Packers.

Because Kandahar is so close to Karachi, relatively close, it was assumed that they may be able to save some money by going with Security Packers. Security Packers engaged. We were out of the loop.

However, Kandahar military personnel require that you have an American team present to oversee the loading, similar to what I believe Tim Timpson talked about earlier today, was that you had to have a military team there to ensure the efficient movement of cargo.

So, Liberty Global Logistics contacted us and said, can you send a team down to Kandahar? And we said yes. We'll send a team down to Kandahar to manage the cargo. They told us at that time, this is Security Packers' movement. You have to coordinate between

up the cargo, bring it -- to pick up the cargo off the bases, Afghans, bring it to a trans-loading point and then from that trans-loading point, the Pakistanis would move it to -- the Pakistani truckers would move it to Karachi. There's a really important reason for that, by the way.

THE COURT: Does this have to do with this contract?

THE WITNESS: Yes, it does, sir.

THE COURT: All right.

THE WITNESS: If you have Pakistani truckers that could bring the cargo directly to Karachi, you can have the BCM cut very early on and then you have absolutely no wait time whatsoever. It just goes straight through. It's a straight path, hot knife through butter to the border.

However, the military then determined that using a shuttle was not an efficient way. They were having to recut TCNs in too quick of a time. And they decided to put the kibosh, essentially, on the use of an Afghan shuttle system.

That's when Liberty turned to us and said, can you provide a trucking solution? And we turned to Global Hub. I actually met with Masud Roshan personally myself at Pat Troy

I said, tell you what, we have this movement. We were not part of this movement originally. There's no reason to have -- that we should get this trucking. However, conditions change. Do you want to come in on this movement?

The Pakistanis -- let me see what I can do to broker with the Pakistanis to get you involved in this movement and that way we can all make some money and at least make something out of what originally was going to be nothing.

Masud agreed. I told him I was going to try to get us a profit share. I then flew -- I flew to Dubai, met with the Pakistanis. The Pakistanis were understandably angry about this. They didn't want to lose out on their profit.

MR. FRANCO: Objection, Your Honor.

the trucks and that our invoicing would not change based on the way they had provided their original costs to Liberty Global Logistics.

I agreed. I went back to Masud, explained what the conditions were and told Masud and Abdullah, I need your absolute cost per truck and your absolute cost per security, and then I'll bill that into the rates and this is what the Pakistanis are charging. This is what we're going to wind up charging, and they agreed. And that's when GHL was brought into the movement.

BY MS. FIERST:

Q. Okay. Let's back up for a minute and talk about other costs aside from the trucking and the security that sometimes have -- that have been discussed in this trial as times coming into play. Demurrage is one of them.

Right -- was there any agreement between GHL and Tamerlane regarding demurrage?

A. There was no agreement on demurrage prior to any particular movement. The expectation was you would move efficiently and not have to even broach that subject at all.

Q. So then was it something that was discussed before each movement?

A. It was not discussed before each movement, no.

Q. How did demurrage work on these retrograde movements?

A. On the retrograde movements themselves, demurrage charges, just -- I know this is probably been beaten like a dead horse, but demurrage charges are charges that accumulate when you have cargo sitting essentially.

Typically and in our particular case, detention demurrage charge has a three-day grace period which under our -- all movements prior to TF Strike, we never really hit the demurrage threshold.

There was one time in which we had to trans-load cargo in a Kabul yard during TF Hammer in which we had folks waiting for clearances to move out. We wind up pay a detention charge, a security per day charge, ultimately, to the Afghans.

But demurrage itself is something that will happen whether it's your fault, or if it's a fault of something out of your control.

As far as demurrage is concerned, it's important to point out that nobody hates curve balls more than a contracting officer, and they will call you out on it as a contractor, subcontractor, or contractor. If you

clear. We gave a statement of work. It was provided with regard to Task Force Warrior. This was what was required of them. And chains and straps and tarps were part of that statement of work that was provided to them, the con opts plan.

After the movement had completed, Mr. Roshan when he tried to change the invoice and increase the invoice by $400,000 on us, say what are the $400,000 charges

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as possible based on the direction of Masud Roshan. But even that direction would change. Sometimes banks would change. Sometimes he would ask us to hold money. Sometimes he would ask us to provide it into a Wachovia Bank in the United States, sometimes to a Pakistani bank. But those payment terms themselves would change constantly.

Q. How about any agreement to pay sort of piecemeal or pro rata as described trucks got from point A to point B? Was there any agreement on that?

A. The only time we had that kind of agreement at all was during the course of Task Force Warrior in which we explained to them that we would give them a significant portion once we received a significant portion down, and we did. We gave them a $602,000 deposit on February 4th of 2011. That was as part of Task Force Warrior which is approximately half of the value of what we had originally been -- what we were originally told would be the cost.

Q. Now, on that note, there's been some discussion about advances. Have you heard the term advance in your industry?

A. I have.

Q. What does that mean, Mr. O'Brien?

A. An advance is when prior to a movement starts,

you would receive an advance of some kind, some kind of monetary advances to assist the company in any kind of cost that may be incurred in the ramp up to the particular activity.

Q. How about a progress payment? Is there such a thing in your industry as a progress pavement?

A. There is such a thing as a progress payment in the industry. And a progress payment is when you have certain thresholds to meet, you'll get certain amounts of payment over the course of a particular time.

So, for instance if I'm moving cargo from point A to B and I get

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would be called, you know, F you. I mean, you hear all the back and forth on it.

But it was guys, you gave me this price list. You gave me these prices. Here it is. E-mail one, e-mail two, e-mail three.

And this process would go on in some cases upwards of a week where the invoices were all over the place. And I was accused of doing everything, you know, under the sun, with regard to trying to screw them out of money.

And ultimately we would come up with a clean invoice, one that I would eventually agree to pay and that's when we would then discuss, where do you want the money sent?

Q. And what did you do? You talked about how you'd have to drop everything to look at the invoices. What was the process of attempting to review or verify the invoices that you received from Global Hub?

A. So, at the time that Global Hub was in business there was only two people at the time. It was Masud and Abdullah. So Abdullah was doing most of the invoice work and the operations work at the same time. We were receiving most of the invoices from Abdullah directly or it was coming through Masud but it would have Abdullah's signature on there.

So the process that would be undertaken was, I received the invoice. Again, I'd stop what I was doing, whatever I might

A. I see it.

Q. Mr. O'Brien, can you describe what Exhibit 343 is?

A. This is an internal report generated by us from QuickBooks that goes over every payment that we made and the date which we made it to Global Hub Logistics.

MS. FIERST: Your Honor, I'd like to offer Defense Exhibit 343 into evidence and ask that it be published to the jury.

THE COURT: 343 will be received. You may publish it.

MS. FIERST: Thank you, Your Honor.

BY MS. FIERST:

Q. All rig

attention -- we may come back to this, but I'm going to direct your attention right now to two particular entries.

First of all, there's an entry -- I don't know. There's an entry on the 7th line. It's a check dated 4/27/2011 for $50,000.

Do you see that entry, Mr. O'Brien?

A. I do.

Q. I know it actually looks -- on the screen it looks quite small.

Do you know what that payment to Global Hub Logistics was for?

A. I do.

Q. Can you tell us?

A. Yes, during the course of Task Force Warrior, Task Force Warrior was originally quoted at approximately $1.2 million. That was what the cost would be for Global Hub Logistics. And that's reflected a few lines above in $602,425. That was a 50 percent

on the ground.

When we finally got -- when we were able to cut the final invoice based on pricing that had been provided by Global Hub Logistics, the military had reduced

thanking them for the work and support for things like Brad Parham's phone.

Q. Mr. O'Brien, the other entry that I want to direct your attention to is a little easier to spot because it's the only one in the debit column. It's about two thirds of the way down the page.

Now there's a blue box around it on your screen. It's a debit for 299,980. Do you see that entry?

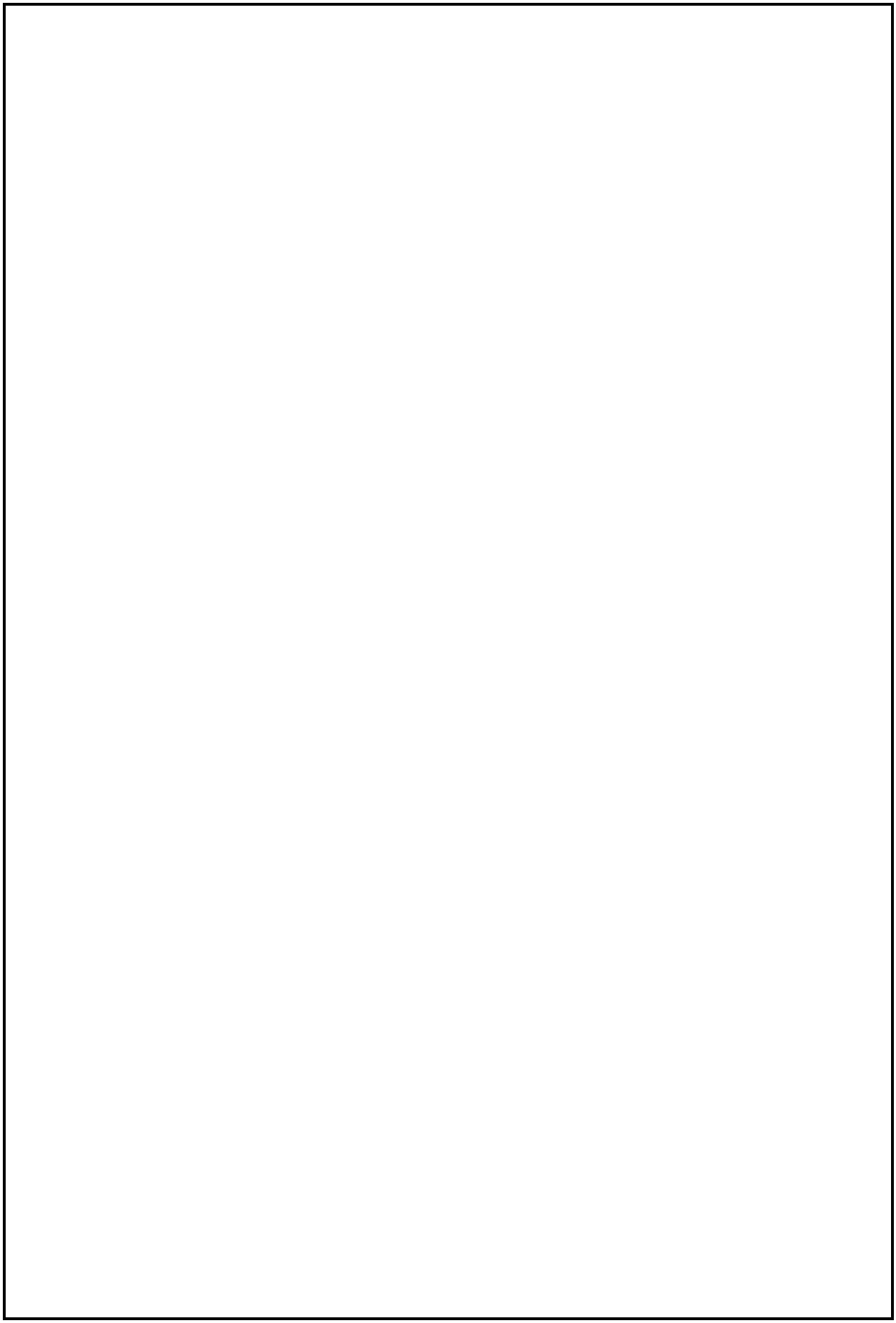
A. Yes, I do, ma'am.

Q. Can you describe what that entry signifies, Mr. O'Brien?

A. I do. Yeah, that entry is in direct relation to a $300,000 payment that is a few lines up. If you see on April 28th, that $300,000 payment was paid to one of Global Hub Logistics' service providers in Pakistan.

And this is -- this was a -- probably with the exception of learning of the Yorio e-mail, the second scariest time that I had as a company because I really thought we were going to get shut down on this.

We sent the $300,000 payment to Pakistan. That wire went out, and it was taken out of the bank in Pakistan. Global Hub Logistics at the time -- my wife by the way is a Treasury auditor. We had hired a banker named Michael Brown from Cardinal Bank to work in our finance team as well and ensure our compliance with



that money was not received.

Ultimately, the money was tracked and came back to our account with some kind of weird fee of $20. $299,980 was returned back to us, thankfully. And then we immediately sent back out the -- not immediately, but within a few days, I guess, of receiving that money, a week or so, an additionally $300,000 to give that money back over to where it needed to go, an alternative bank that was provided by Masud Roshan.

Q. All right. Mr. O'Brien, we've talked about contract terms or the agreements that were reached between Tamerlane and Global Hub Logistics. Are there any other terms that come to mind as you're testifying?

A. No. Our terms were pretty simple and transactional. I have movement. Do you want this movement, yes or no? It needs to go from point A to the point of Karachi or point A to point B. Are you willing to accept it? Are these the prices we're going to go? Yes or no? Okay. Here you go, guys. Take on the movement for you. Here's the operations plan. Here's the conveyance list. Here you go, guys. Let's get to work.

Q. Now, I notice you didn't mention any sort of exclusivity arrangement as I think you heard the plaintiff testify about.

Do you -- Mr. O'Brien, do you know what I'm talking about?

A. I do.

Q. Was there an sort of exclusivity between Tamerlane and Global Hub Logistics?

A. Nothing was codified or put into a

instances I should say. We had in May of 2011, we had engaged Global Hub Logistics on multiple occasions to pick up small unit cargo.

Like I said before, the original company started out with small freight forwarders. We had folks that were moving commercial cargo for contractors from bas ba

these things.

Ms. Dean is not here to testify. He doesn't know what -- he's only knows what Ms. Dean told him.

MS. FIERST: Your Honor, it may be that there instances in which these were e-mails that Mr. O'Brien and Ms. Dean were on at -- were on collectively. Ms. Dean is an employee --

THE COURT: Well, he didn't refer to an e-mail. He can't tell us that generally without knowing the foundation for it.

MS. FIERST: Fair enough.

BY MS. FIERST:

Q. Let me ask you, Mr. O'Brien, to look at∑ Defendant'saExhibit 58. t

A. I see it, ma'am.

Q. Mr. O'Brien, can you identify what is Defendant's Exhibit 58?

A. This is an e-mail from Angela Dean to Abdullah Gharjy with myself and Masud Roshan in copy asking Abdullah to pick up cargo at Bagram Air Base for one of the small movements that I had referenced Abdull®┘Ø

published to the jury.

THE COURT: 58 will be received.

publish.

MS. FIERST: Thank you, Your Hono

BY MS. FIERST:

Q. I'm going to direct your attention, Mr. O'Brie to the last page, so the earliest in time e-m

A. I see it, ma'am.

Q. Okay. What is that e-mail, that first ail there from Angela Dean on March 3rd?

A. This is a pick up request that Angela is sending again to Abdullah

follows up where she says, Please be aware that the cargo was delayed. It's going to actually arrive on March 5th. She's asking, I

Q. I'm sorry, Mr. O'Brien. Is there a response from anyone at Global Hub between those two e-mails? I

A. There is not.

Q. Okay. Let's look at the next e-mail. It's on the bottom of page 3 and the top of page 4.

A. Correct.

the case at end. If you would ask him a question like I asked, it would be very helpful to me.

MS. FIERST: Yes, Your Honor.

BY MS. FIERST:

Q. Mr. O'Brien, were there discussions between Global Hub and Tamerlane regarding putting any sort of exclusive arrangement into writing?

A. There was. There were a few conversations to that effect. And on April 1st of 2011, I ĭŎ

brought it to Kabul to present to Mr. Roshan and Masud Roshan.

Q. Now, you saw earlier in this trial, Mr. O'Brien, Mr. Roshan was asked some questions about conversation that you and Mr. Roshan had on March 8, 2011. And I'm going to ask if you can take a look at Plaintiff's Exhibit 39-A which has been admitted into evidence already.

Do you have -- can I use your witness binder for him, Craig?

THE COURT: Did you say 39-A?

MS. FIERST: Plaintiff's 39-A.

THE COURT: All right.

THE WITNESS: Yes, ma'am, I see it.

MS. FIERST: Let's wait one minute until the judge is with us.

THE COURT: I have it.

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either. The small

time was reporting the cargo was moving to me. I was going back and forth with Abdullah. I was reporting back to the military, and the military was reporting back to me that these were lies, that each time that I was reporting the status of cargo, it was an outright lie.

MR. FRANCO: Objection, Your Honor, hearsay.

THE COURT: It is. I guess you have to be a little faster on your objection. Objection sustained.

MR. FRANCO: Thank you.

BY MS. FIERST:

Q. If you can focus your response, Mr. O'Brien, on the fact that here your statement in this e-mail that you'd written Mr. Gharjy with a

middle of the first page, right?

A. Yes, he does.

Q. And, he says that he needed to talk with Abdo. That's Mr. Gharjy, correct?

A. That's correct.

Q. And his father as well, right?

A. Yes, Mr. Roshan.

Q. Did you have an understanding of what Mr. Roshan was doing at this point in response to your request to -- your request to him?

A. My understanding was he was thinking about which way to go. I had put it out there. I want to continue to use you guys. But will you be there for us? And he wanted to get some advise from his father whom I knew he had a lot of respect for.

Q. And there at the top of the page, do .

movements from the Torkham border in and around Afghanistan.

We had established a route and a vendor for movements throughout what's called the Northern Distribution Network.

The Northern Distribution Network is the former Soviet Union. And what we needed to do is find ourselves an Afghan vendor that would be able to bring up the cargo at Towraghondi, the border in Turkmenistan which is one of the natural borders, crossing borders into Afghanistan and move the cargo from the border point throughout the different points withiU ù poit

A. Correct.
Q. What were you telling him there?
A. If he can't work these deals out, I will have to go back to the folks that I previously used, specifically Emran Dawran and a couple of other small companies that were regionally placed.
Q. Okay. You also -- I'm going to direct your attention, now, Mr. O'Brien, to the continuation of that conversation that we also sought the other day. It's Defendant's Exhibit 60. So you can put that one aside.
This is an exhibit that's already been admitted into evidence, Your Honor.
So, I'm going to ask -- is it up on the screen? Thank you.
So, Defendant's Exhibit 60, do you see the oldest e-mail in that string on page 9452, Mr. O'Brien?
A. Yes, ma'am.
Q. And the subject line, re conversation yesterday?
A. Yes, ma'am.
Q. Is this a continuation of the same conversation we just looked at in Plaintiff's Exhibit 39-A?
A. It does. It looks like it's a little bit intermingled, but yes, it is the same conversation as yesterday.
Q. Okay.

A. When we just -- sorry.
Q. Right. I'm going to direct your attention to the second page of the document, page 9451.
A. Yes, ma'am.
Q. Your e-mail there that takes up the majority of that page, do you see where I'm directing you?
A. Yes, ma'am.
Q. So, what are you saying there specifically regarding the last statement there about diversifying basket or sticking with GHL?
MR. FRANCO: Objection. The document speaks for itself. It's what he's saying.
THE COURT: Overruled.
THE WITNESS: At this stage, we were having concerns regarding GHL's performance as it pertained to the three trucks that were stuck at the border and, the essential failure to respond on multiple e-mails that we were providing as a company.
And so, I was asking him flat out, hey, I need to know whether you're going to be there. Are you going to be there or do I need to find some other service providers? If that's the case, I'll find other service providers. If you're my guy, I'll stick with you.
BY MS. FIERST:

Q. And Mr. Roshan responded to this question, Mr. O'Brien?
A. He did.
Q. On the prior page? What was --
A. Yes, he did.
Q. What was your understanding with -- direct your attention to where he says, "let's also make sure all your eggs are not in one basket". Do you see where it says that?
A. I do.
Q. What was your understanding of that response from Mr. O'Brien -- Mr. Roshan?
A. He was advising me to go out and seek other vendors in case they got overloaded or overwhelmed.
Q. And did you wonder -- did you know whether GHL was going to continue to work with Tamerlane at all at this point?
A. Not at the point at which I read -- that I got that e-mail, no. And that's why if you look at the line above, I need to ask him. I need clarification.
Q. Did you have further conversations with Mr. Roshan about whether GHL would continue working with Tamerlane at all?
A. Do you mean after March 8th, ma'am?
Q. After March 8th, yes.

Ultimately, Brad Parham had made the decision to use an alternative vendor on the ground to get that cargo moving, again those 31 pallets.

I found out just through the grape

Parham, Tim Timpson, David Gordon and some of the folks from the client support, to include Sherri MacIntyre, Jerry McDonough and few other folks that were a part of these client support team. It was a catchall to ensure that

A. Yes, ma'am.
Q. Do you have a recollection of Masud Roshan's involvement in Global Hub work during June 2011?
A. I do. Yes, Masud Roshan was in Kabul at the time covering for Abdullah Gharjy while Abdullah Gharjy was in Canada. So he was handling some of the operations activity while Abdo was handling a personal matter in Canada.
Q. So, here in this particular paragraph that I pointed you to, Mr. Roshan is talking about -- do you see what Mr. Roshan is talking about, Mr. O'Brien?
A. Yes, ma'am.
Q. That -- there was some cargo that had been -- that needed to be picked up; is that right?
A. Yes, ma'am.
Q. Was

responding to it appears to be Saturday night around 11:00 p.m. on Saturday night, so almost four days later after it had to be picked up. And Tim Timpson is explaining on that Sunday shortly after receiving that e-mail that because there was no response from the GHL team, that they decided they need to go with a

In May, we were -- we began to have pricing concerns that were expressed back and forth between us and Liberty Global. And that is when we began to shop pricing to see what might be out there because we didn't want to lose any future bids and we were hoping to get discounts in order to continue winning these IDIQs.

Sorry, I apologize. An ID IQ for those who don't know is an indefinite delivery, indefinite quantity. It means that for every single movement that you're provided, you actually have to bid for it. And based on how your past performance is and your pricing, the contractor can choose or the government entity can choose whether or not they want to select you.

In the USC6 contract, it's an ID IQ in which how you performance and your prices determine whether or not you'll get future movements.

Q. Thank you, Mr. O'Brien.

I want to shift gears a little bit

A. Right. It was -- it was a mess. The -- the bank accounts -- we've essentially had two bank accounts as a company, Tamerlane Global Services. Wachovia, we ultimately switched to Bank of America. Pretty standard, one single bank account. Here is your invoice. We get paid on it.

With Masud Roshan and GHL, that wasn't the case. On occasions they would ask us to move money to Kabul Bank. There was a challenge at Kabul Bank. Then they asked us to move it to Alfalah Bank to pay some of their subcontractors directly. So we moved it to Alfalah Bank.

They asked us to move money to a Wachovia Bank that was established in Maryland. So we sent it to a Wachovia account that was established in Maryland.

For different reasons, sometimes they would actually ask us to withhold the payment. And they would say, would you hold the payment for a little while? We hold the payment for a little while. And then they would say, okay, can you execute the payment to go to another bank?

So, these -- the banks were again, kind of like, throwing darts against a moving wheel. We were trying to hit the bulls eye and there just wasn't any consistency in the banking.

concerning?

A. This is concerning the TF Hammer invoice.

MR. FRANCO: Relevance, this is the Hammer invoice, Your Honor.

MS. FIERST: This was discussed at some length with Mr. Roshan as was the movement itself.

MR. FRANCO: Ms. Fierst did cross Mr. Roshan about this invoice previously. It wasn't relevant then. It's not relevant now.

MS. FIERST: Mr. --

THE COURT: Objection overruled.

MS. FIERST: Thank you, Your Honor.

BY MS. FIERST:

Q. Go ahead, Mr. O'Brien.

A. Yes, ma'am. This is in reference to the TF Hammer invoice, and it's a great example of the kind of postgame horse trading that would often occur.

THE COURT: If you focus on answering her question without the editorial, that would be very helpful to me.

THE WITNESS: All right, sir.

BY MS. FIERST:

Q. You can continue, Mr. O'Brien.

A. So in this particular case, we received an invoice for TF Hammer that was hyperinflated. I turn

you around to my -- as I described earlier, the usual process of sitting down, taking a look at e-mails and determining based on e-mails, price lists, et cetera on previously negotiated terms, as to what these charges are, why were we being charged more money here and there.

I gave seven specific line items that were of concern. One of the issues is a hyperinflated price for security in which GHL was charging us $900 more. We had records to indicate that they were overcharging us with regard to the security charges. That's on line item two.

On line item three, we had a higher price that was being provided for the daily storage rate by about $10 a day, cumulatively a little bit more.

We had an issue with regard to detention. The issue with detention, of course, is that we can charge back the client for detention that is out -- that is their fault. But if it's our fault or if it's GHL's fault, we didn'p

and then at cancel crane charge, something that wind up being -- that I was simply not aware of that somehow slipped its way into the invoice.

Q. Now, these inaccuracies on these invoices, Mr. O'Brien, what was the issue with these inaccuracies? Invoices can be inaccurate sometimes, right, so what was the issue here?

A. Sure. As far as the inaccuracy in the invoices are concerned, we had provided the substantiating data, the e-mails that are referenced to being attached.

I based my pricing to my client on the prices that I received from my subcontractor. In return, if the subcontractor comes back to me and charges me a higher price that is unrecoverable, that hurts me. I can't go back to my prime and say, oh by the way, my subcontractor just charged me more than was agreed upon originally. Would you mind covering the cost? You just can't do that.

So, in this case, any time I had an invoice, in this particular case, TF Hammer, that came back this hyperinflated, it wind up being -- it was a bite out of our apple so to speak.

Q. And, how would you determine the number of trucks, for example, whether the number of trucks on the invoice was accurate or not?

A. We have a number of ways actually to check on whether or not the number of trucks were used. One, our own guys had their inventor list. So we had Brad Parham, Tim Timpson, David Gordon. We also have the border crossing memo, itself. The border crossing memos were highly accurate with regard to the information as it pertained to the trucks.

Sometimes the information, the body might be wrong. But within the truck numbers itself, we're very accurate. And then, at the end of the day, the ship's manifest was another way in which we can take a look and see what cargo was moved. When you have cargo going on the ship itself, you can't lie to customs and border protection about what cargo moved.

So we had the border crossing memo to look at. We had our own inventory list to look at, and we had the ship's manifest that was available at our disposal to take a look at to ensure that the movements we were charging were in, in fact, accurate.

Q. And do you recall whether this invoice got readjusted based on the comments and corrections that you asked for?

A. It did.

Q. It --

A. It did get readjusted.

Q. It did get readjusted.

Let's talk about another -- let's talk about a differen

Q. And, specifically regarding Mr. Gharjy's reporting, what was the issue with -- with the reporting on these movements. I interrupted you a moment ago and asked slightly different question.

MR. FRANCO: Objection. Speaking in generalities, Your Honor. If we could speak to particular movement, it would be helpful.

MS. FIERST: I'm asking him about -- we definitely discussed some background information about how these retrograde movements were handled. I'm asking him about the reporting on the retrograde movements that were at issue in this case.

THE COURT: I understand, but they're five of them as I understand it, five or six, right?

MS. FIERST: Yes, Your Honor.

THE COURT: Without connecting to a particular timeframe or invoice, it's difficult to quantify and difficult for us to follow.

MS. FIERST: Fair enough.

THE COURT: I'll sustain the objection. What we're going to do now is we're going to take the luncheon recess. That may help you all.

Ladies and gentlemen, please do not discuss the case. Don't permit the case to be discussed in your presence and we'll resume at 2 o'clock.

Thank you.

(Court recessed at 1:01 p.m. and reconvened at 2:01 p.m.)

THE COURT: You can bring our jury out, Mr. Toliver. Thank you.

MS. FIERST: Your Honor, would you like me to get set up or wait until they come in?

THE COURT: You can get set up now.

MS. FIERST: Thank you.

THE COURT: You may be seated. You may proceed.

MS. FIERST: Thank you, Your Honor.

BY MS. FIERST:

Q. Mr. O'Brien, before we took our break for lunch, you were discussing issues that Tamerlane had with GHL's performance. Do you recall your testimony?

A. I do, yes, ma'am.

Q. Let me ask you if you recall a person named Afzal and an incident involving a person name Afzal?

A. Yes, I do. I do recall Afzal.

Q. Can you describe that for the jury, please, Mr. O'Brien?

A. Afzal was a local Pakistani, smaller Pakistani broker that was working on behalf of Global Hub Logistics during the course of the TF Strike movement.

it turned out to be approximately $11,200 or something to that effect

responsible for the Afzal hold up?

A. Global Hub Logistics.

Q. There's also been testimony regarding this alleged attack on a convoy near Leatherneck. Do you recall that topic coming up, Mr. O'Brien?

A. Very much so.

Q. Okay. And why do you say very much so? Why do you remember it so clearly?

A. If I would say the first two instances, security instances where the Yorio e-mail and shortly before that the issue with the bank. The third was when the Department of Defense was breathing down my neck and Liberty was breathing down my neck for what appeared to be a false report issued by Tamerlane.

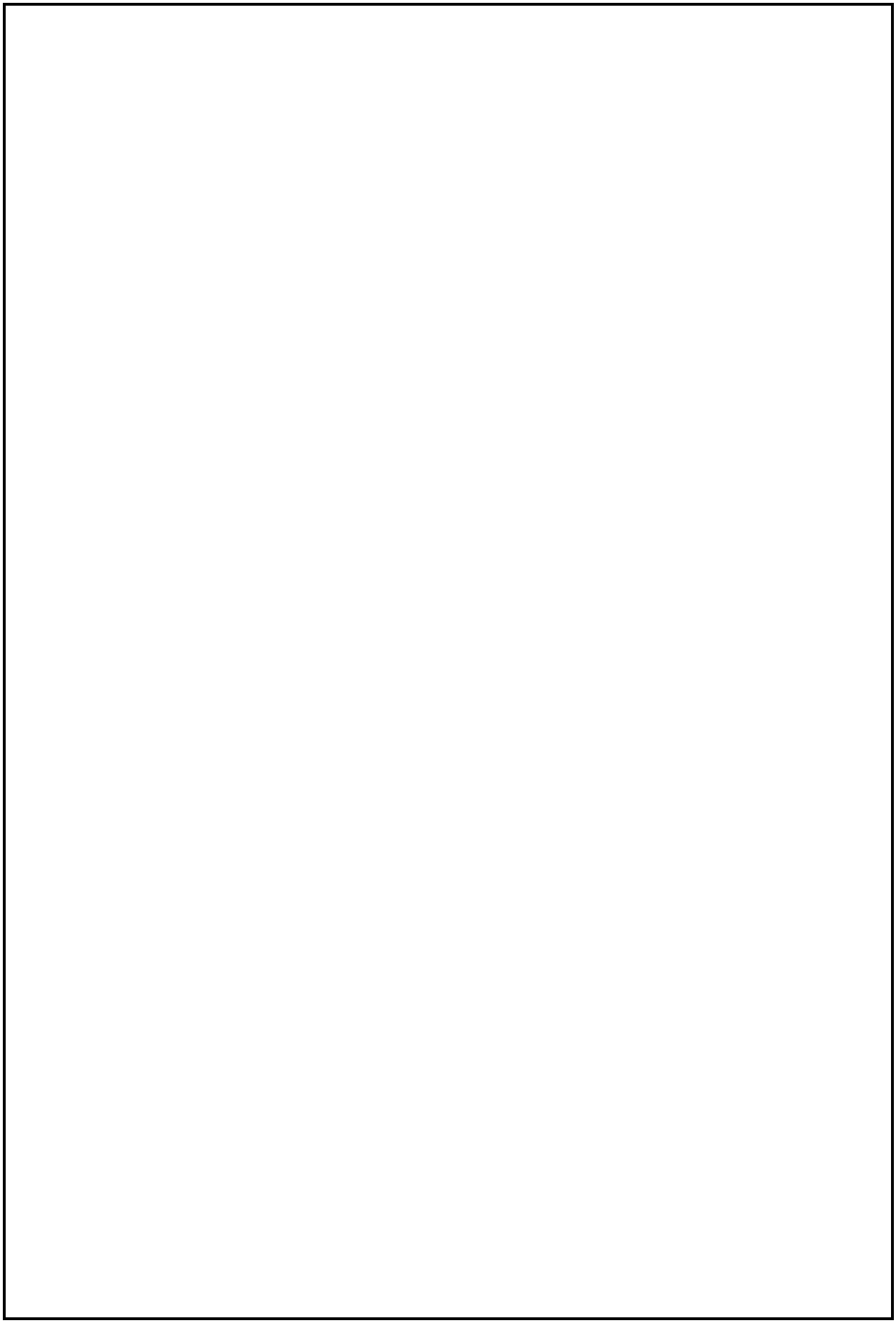
MR. FRANCO: Objection. Foundation for that.

THE COURT: Sustained.

BY MS. FIERST:

Q. Well, let's back up a little bit, Mr. O'Brien, and try to get to where you're at right now. Why don't you tell us your recollection of what happened here?

A. Okay. We had the first movement of Retrograde 11 beginning in late May. At that time, in fact, with all movements, in order for the trucks to enter the base, there was a requirement to provide a list of truck names



Five had come back from Kandahar and five had gone on to Leatherneck.

THE COURT: Next question, please.

MS. FIERST: Yes, thank you, Your Honor.

BY MS. FIERST:

Q. Mr. O'Brien, I want to ask one or two clarification questions based on your response just then. You talked about tazkira numbers?

A. Correct, the tazkira number T-A-Z-K-I-R-A, is a -- essentially, it's a license plate, a license for the truck itself.

Q. Thank you. And just to make sure I understand the trucks that you're talking about getting the information for these 20 trucks, these were -- were these loaded trucks that were on route?

A. They were not. These were trucks that were going to get loaded. And in order for you to access the base, you had to provide a list of the truck and truck numbers that you anticipated entering the base to collect the cargo for area movement as those trucks were arriving on base. At least that was the procedure at Leatherneck, Kandahar and a few other bases as well.

Q. Okay. Mr. O'Brien, I'm going to direct your attention to Defendant's Exhibit 149.

A. Yes, I see this, ma'am.

Q. And Mr. O'Brien, Exhibit 149, Defendant's Exhibit 149 is a series of e-mails that -- and you're on them, correct?

A. I am, yes, ma'am.

Q. Are these e-mails discussing the incident or the surrounding circumstances that you were just describing?

A. They are, yes, ma'am.

Q. Okay, thank you.

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back in terms of the pagination, but forward in terms of chronology, eventually, there's an e-mail from Mr. Gharjy to the rest of the team on the bottom of the page that's marked 15

A. Yes, ma'am.
Q. And, so was that your understanding of what GHL was doing?
A. That's correct, ma'am. Yes, ma'am.
Q. All right. And if you look at Mr. Roshan's e-mail to you on the front of -- I'm sorry, on the first page of the document, do you see in Mr. Roshan's e-mail where he writes, "it's all getting nasty"? Do you see that in the first paragraph?
A. Yes, ma'am.
Q. So, at this point in time, the Sunday that you just described, the Sunday before Memorial Day, what is your understanding of the situation with these trucks?
A. At this -- at this time, it was our understanding that there were ten trucks that were still hostage, five trucks that are returned to Kandahar and five trucks that had moved on to Leatherneck and that they were still held hostage at this point.
Q. And, based on what GHL was telling you here, what was your understanding of the gravity of the situation?
A. It was pretty dire. It was -- these men's lives were in jeopardy.
Q. And what did you do with that information?
A. We were -- we did what we were obligated to do which was inform Liberty Global Logistics, our client,

that there was a Taliban incident that occurred in theater, in region.

Q. Okay. I'm going to ask you to look now at Defendant's Exhibit 160. Now, the subject of this e-mail is "our last chance", right?

A. Yes, ma'am.

Q. And, what were you -- what were you referring to when you called it our last chance?

A. This was our last chance to report -- to provide the information that the U.S. military was seeking which was very simply, they wanted the ten names and the ten truckers that were involved in the incident. They did not request police reports. They did not request security reports. They didn't request pictures. They just wanted to have the ten names and the ten tazkira numbers that were involved in the incident. And Global Hub at this stage did not provide those ten names to us.

Q. And what was -- based on that, what was your belief about this incident?

MR. FRANCO: Objection, relevancy.

MS. FIERST: I asked him his belief, Your Honor.

THE COURT: Come to sidebar a moment, please.

(Thereupon, the following side-bar was had:)

THE COURT: What is your objection?

MR. FRANCO: It's relevance, his belief about an incident is not relevant to whether or not it happened. The jury makes the decision, not Mr. O'Brien.

MS. FIERST: But it is relevant to the credibility of GHL. He got -- he elicited testimony from Mr. Roshan about this incident in an attempt to bolster the integrity of GHL.

Of course, there wasn't testimony, I don't believe, about whether it actually happened for Mr. Roshan. But certainly, Mr. Roshan testified to what they did to respond to these requests and how quickly they reacted to respond to the requests.

Mr. O'Brien's reaction to GHL's response, which was lagging, is relevant to their interpretation of GHL's credibility and whether they were doing their job properly.

THE COURT: I'

MS. FIERST: I -- am I able to ask him not if he believed that it happened, but if he believed that GHL was being honest about it?

THE COURT: No, the jury decides that. And I'm not sure if you have some witness who is going to come in and say they made this up or not. Do you have a witness that's going to say that?

MS. FIERST: No, there isn't.

THE COURT: It's just a matter of his opinion versus Mr. Roshan's opinion. The jury can decide. You can argue that if you want.

MR. FRANCO: We already have. Mr. Gharjy's testimony in the video said yes, it happened, absolutely.

MS. FIERST: That's exactly the point.

THE COURT: Hold on, hold on, hold on. The jury's going to decide the credibility of the witnesses.

MS. FIERST: But, Your Honor, that's the -- what Mr. Franco just brought up, what we have here, Mr. Gharjy can't testify that it happened. He didn't see that it happened. I should be able to ask Mr. O'Brien, the testimony that was responsive to that, Your Honor.

THE COURT: Thank you. Objection sustained.

(THEREUPON, side-bar conference was concluded.)

BY MS. FIERST:

Q. Mr. O'Brien, at this point in time, what information were you getting about this incident?

A. From whom, from Global Hub Logistics?

Q. Yes.

A. We were getting nothing.

Q. And why was that a problem?

A. Because the military was asking very specifically for --

MR. FRANCO: Objection.

THE COURT: Sustained.

BY MS. FIERST:

Q. Without providing what the military told you, what kinds of

Q. What did you do next, Mr. O'Brien, when you got this e-mail?

A. After collective shock that GHL would not recognize the significance of it --

MR. FRANCO: Objection.

THE COURT: Sustained.

MR. FRANCO: Thank you.

THE COURT: Next question.

BY MS. FIERST:

Q. What did you do next, Mr. O'Brien? Did you ultimately receive any information?

A. We

A. We did, ma'am, yes.
Q. And were you able to obtain information regarding that report?
A. We were not, no, ma'am.
Q. Who did you ask for information regarding that report?
A. Masud Roshan.
Q. Let me ask you, Mr. O'Brien, regarding Exhibit 200. I'd like to direct your attention to Exhibit 200, Defendant

particular series of events is that the drivers were at the border ready to cross. Customs had in fact cleared the cargo to move.

However, the drivers had begun to move away from the border prematurely, moving from Torkham back towards the Kabul yard which would have taken them pretty far away from where they should have been.

And, Adam is essentially stating why are you doing that? This cargo can move. Why are you moving them away?

Q. And when you received this e-mail from Mr. Gharjy on page 16522 directing that the units be moved to the Jalalabad yard, what was your reaction to that?

A. Again, having read that e-mail, it indicated to me that already the cargo was moving. It was being moved away from Torkham yard. That would unnecessarily delay the cargo. And that's when I proceeded to write the follow up e-mail to Masud to express my concerns regarding the relationship between ourselves and Global Hub Logistics that at this stage, it looked like we're clearly broken.

Q. You also heard some testimony, Mr. O'Brien, from Mr. Roshan regarding the tempo of the movements, that things were moving quickly. Do you remember that testimony?

A. Yes, ma'am.
Q. Did Global Hub Logistics ever refuse a movement because there was too much to do or things were moving too quickly?
A. No, ma'am.
Q. I'd like to ask you to look at Defendant's Exhibit -- rather, this is Plaintiff's Exhibit 407.
A. Should I keep this open?
Q. No, it probably makes sense to move it to the side. Sorry about the jumping.
A. No problem. Yes, ma'am.
MS. FIERST: Your Honor, this exhibit, I'm informed by Mr. Franco already is in evidence as well, Plaintiff's 407.
THE COURT: All right.
BY MS. FIERST:
Q. Mr. O'Brien, you testified earlier about the development of pricing with GHL. Right?
A. Yes, ma'am.
Q. Is this -- does this e-mail concern the development of pricing, the series of e-mails from May 16, 2011?
A. Yes, ma'am.
Q. Can you tell us the thrust of the back and forth here between you and GHL?

A. Absolutely. We were bidding on a number of projects, movements moving forward. We were bidding high in

39154.

So, it looks like there's some additional back and forth negotiating between you and GHL on these prices, correct?

A. Yes, ma'am.

Q. The page or so prior to that?

A. Yes, ma'am.

Q. And then on the top of 39154, do you see where it says, "okay, we accept if this is what we have to accept. After this move, though, I would not expect much more business".

Do you see where it says that?

A. Yes, ma'am.

Q. What were you thinking at the time?

A. If we continued to put high prices here, we're going to lose more and more bids because our prices are simply too high.

Q. Okay. The -- there's been a fair amount of testimony regarding the Strike 1 movement and the profit sharing agreement.

Do you recall this topic coming up, Mr. O'Brien?

A. Absolutely, ma'am, yes, ma'am.

Q. What was your -- when you received these invoices, what was your concern regarding those invoices and how GHL was handling that movement in particular?

A. Well, I mean, to begin with, the TF Strike as a whole had gone completely awry. We were in the process of missing our first boat. The TF Strike cargo was arriving late to the port. We -- the process itself, for moving cargo was going slow, very slow.

We had had the issue with Afzal at Quetta that had created an unnecessary delay. And so as we're moving this cargo with TF Strike, we then receive the invoice on June 22nd where the pricing is completely wrong. It's not even -- almost laughably wrong.

And then, they were asking for a profit, too, a profit increase. I think it was $84,000 at that time.

So, not only was the pricing hundreds of thousands of dollars higher than anything we had ever discussed, but also they was seeking charges that were -- seemed to be completely fabricated based on the information I had in front of me on that invoice.

Q. And, I think you testified to this earlier, but what -- what pricing was supposed to be billed in the Strike 1 movement based on your discussions with Mr. Roshan?

MR. FRANCO: Objection, asked and answered, before lunch.

THE COURT: Overruled.

THE WITNESS: The -- what was told to me was

that we would receive their costs for the trucks, their cost for security, their cost for anything else that was incurred.

We would charge accordingly to Liberty Global Logistics as well as the costs that were affiliated with the Pakistanis, our third partner, Security Packers. That included the enhanced in-transit visibility. That included port ØŽÄØÄ ÄoŎ

A. That's correct.

Q. Were you

Finally, there were additional charges that were involved as well that were not initially anticipated to include detention charges that ultimately were paid by the security -- by Security Packers, the Pakistanis involving the NLC L

minutes ago, and you began to testify about this letter that you wrote. But then we were finishing talking about the issue at Torkham. So I stopped you there.

But now I'd like to ask you about the e-mail that you wrote here that's at the bottom of the first page of this document and the top of the second, okay.

A. Yes, ma'am.

Q. So, in this first line here of the e-mail to Mr. Roshan, you wrote "the working relationship between GHL and Tamerlane is broken, and I am not sure it can be repaired", right?

A. Yes, ma'am.

Q. What -- what did you mean there?

A. At this stage, we had performance issues. We had cost overcharges. We had invoices that were coming in inappropriately. We had the postgame horse trading that was going on.

MR. FRANCO: Objection.

THE COURT: Overruled.

THE WITNESS: We had a number of issues with regard to communication, the back and forth screaming. I was guilty of it, too. I knV wќofk

great relationship was completely falling apart at this stage.

Q. And there in the next sentence -- or the next paragraph there, I guess it's the next sentence, too, you referred to an agreement that has not yet been signed and that may be a good thing.

Do you see where it says that?

A. Yes, ma'am.

Q. Which agreement are you referring to, Mr. O'Brien?

A. That was the agreement that I had brought to Kabul on June 7th and presented to both Masud and Sardar that included an exclusivity and a right of first refusal clause within that contract.

Q. Okay. I'm going to ask you to flip to the next page, Mr. O'Brien.

A. Yes, ma'am.

Q. There at the top of the next page, you wrote -- it's on the first line going into the second, "the reason that we pushed to move units as aggressively as we do is because the military has requirements".

Do you see where it says that?

A. Yes

Q. These were the military's requirements?
A. That's correct. The military sets the Bž

Do you see where it says that?

A. Yes, ma'am.

Q. So you were interested in continuing to work with GHL? Is that accurate?

MR. FRANCO: Objection, leading.

THE COURT: Overruled.

THE WITNESS: Yes, ma'am. Our intention was -- at the end of the day, GHL would actually provide a pretty good product, pretty good service. There were challenges. There were issues. We wanted to fix those issues.

You know, the only way I can describe this note is this was sort of a honey we need marriage counseling. It was kind of, hey, we got these issues. We need to work these out. Let's get back to when we were doing great things earlier on in this relationship.

So I wanted to continue to work with these guys. And hopefully we would be able to repair something. But right now, let's get these movements out of the way. Let's get these five out of the way and then let's see what we can do to repair and move forward.

Q. All right, and Mr. Roshan responds to you, actually, three minutes after your e-mail, right, if you look at the page 16521, the first page of this. Your

e-mail was at 11:40 a.m. Mr. Roshan's was at 11:43, right?

A. Yes, ma'am.

Q. So you received this e-mail from him asking if the -- if they should hand over the current cargo or would you like us to finish the movement, right?

A. Yes, ma'am.

Q. What's your reaction when you get that e-mail?

A. As I write above, simply, hey, let's keep these movements going. Let's finish these projects and then let's move on. Let's go forward wherever we can.

Q. All right. But that's not what ends up happening, right?

A. That's correct. That's not what happens.

Q. I'm going to ask you to look at Defendant's Exhibit 470. 470.

A. Yes, ma'am.

Q. Thank you. All right, Mr. O'Brien, so a day or two after the e-mail that we were just looking at in Defendant's Exhibit 200, you get the e-mail that's in Defendant's Exhibit 470, right?

A. Yes, ma'am.

Q. Do you recall receiving this e-mail?

A. Very much so, ma'am. Yes, ma'am.

Q. Tell us about that, Mr. O'Brien.

A. I received this e-mail. It was on Thursday, June 23rd. I was in Williamsburg actually at the time. I looked at this e-mail and was surprised. I was surprised to see that what I thought was an agreement two days earlier, let's complete these movement. Let's get this stuff going. Let's finish the work. All of a sudden, Global Hub Logistics had decided that it was going to stop moving the cargo and dump it off wherever it felt like.

Q. And, did you consider the e-mail that you had sent to be a termination notice or an end to the relationship?

MR. FRANCO: Objection.

THE COURT: Suggesting the answer is leading. Objection sustained.

You may ask him to describe the --

BY MS. FIERST:

Q. How did you -- how would you have considered the e-mail that you sent that we just looked at in Defendant's Exhibit 200?

A. As I stated --

MR. FRANCO: Objection, Your Honor, relevance.

MS. FIERST: I think it's clearly --

THE COURT: Overruled. He can answer.

THE WITNESS: As I stated earlier, I mean, it might become an awkward term, marriage counseling e-mails. It's one of those I was saying, guys, we got these problems. Let's work on this. This is our project at hand now. These are the five movements that we have. Let's finish these movements, and then let's get back and let's work on this together. Let's see what we can do here to maybe repair this relationship.

I did not look at this at all as one that was terminating the relationship with GHL. It was let's focus on these five movements. Let's get the job done, and then let's sit down and see what we can do to fix things. That's how I interpreted my e-mail from a couple days earlier.

BY MS. FIERST:

Q. All right. So, now looking back to Defendant's Exhibit 470 that you have in front of you and that's on the screen, when you read the rest of the units which are not loaded yet will be TLG and his group's responsibility to move, what was your understanding of what you're being informed there?

A. The initial here was for all units and trucks which were already loaded for Karachi. So they were going to go and move to Karachi.

For the units that hadn't been picked up yet,

those units would then ultimately be collected by some alternative vendor, whomever we designated.

Q. So those were additional units that were part of the movement?

A. That's -- that's what I read. Any movements -- any of the pieces that may still be left over as it pertained to a movement would be our responsibility to then take over.

Q. All right. And, the next line there, "we are working on invoice before handing all units over to TLG

top of the page -- and again, I just -- if you look at the time of Mr. Gharjy's e-mail and the time of your e-mail, do you see that, Mr. O'Brien?

A. Yes, ma'am.

Q. I can't recall frankly whether Mr. Roshan touched on this as well, but can you explain why the later e-mail has an earlier time stamp? Was Mr. Gharjy in Afghanistan?

A. Yes, ma'am. But, in terms of the -- this is -- is this coming from GHL? I don't know why the time stamp would be different regarding 6/23/2011. I have no idea why this would come in, because it's a response to my e-mail earlier.

But that said, it's -- yeah, this is -- I believe Abdullah Gharjy on June 23rd was already back in Afghanistan. So he was already there and I was definitely in the United States. No question about it.

Q. Okay. In Mr. Gharjy's response to you, I'm going to direct your attention --

A. I see why, yes.

Q. -- I'm going to direct your attention to the middle of the first paragraph where he wrote, "an inventory of remaining items which are not loaded and are in a secure holding area will be provided to you at later date".

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Q. Why were you very concerned?

A. Because on numerous occasions in the past, GHL would submit invoices that hyperinflated. They were constantly wrong. And, my concern was they're going to give me some hyperinflated invoice while holding my cargo hostage, that I would be demanded to pay in order to get U.S. military cargo out of being held hostage until I paid these hyperinflated rates. And I would have no ability or no recourse like I had done on previous invoices as described for instance, the TF Hammer, where I could show them where pricing was inappropriate.

Q. And, why was it that you wouldn

Q. Regarding TF Strike, he's asking for an update of the status there. Do you see that in that same line?

A. Yes, ma'am.

Q. Had that invoice been verified or reconciled at that point?

A. No, as previously stated, it was received only about a day earlier. And it was hundreds of thousands of dollars over what had originally been agreed upon even discussed, let's just say. So

foundation, please, about Mr. Gharjy receiving the conveyance analysis first.

BY MS. FIE

to Mr. Gharjy, right?

A. Yes, ma'am.

Q. Now, what information would those cargo lists and conveyance analyses have provided for Mr. Gharjy and GHL?

A. The total number of units that would be moving with respect to each movement as it pertained to task force Curahee, Retrograde 11, SMU-1, Strike 1 and LOGCOM Z2.

Q. And would it have told them what remained in order to complete the movements that were then ongoing?

MR. FRANCO: Objection. Clearly calls for hearsay. He's describing what's in the document that's not before this jury.

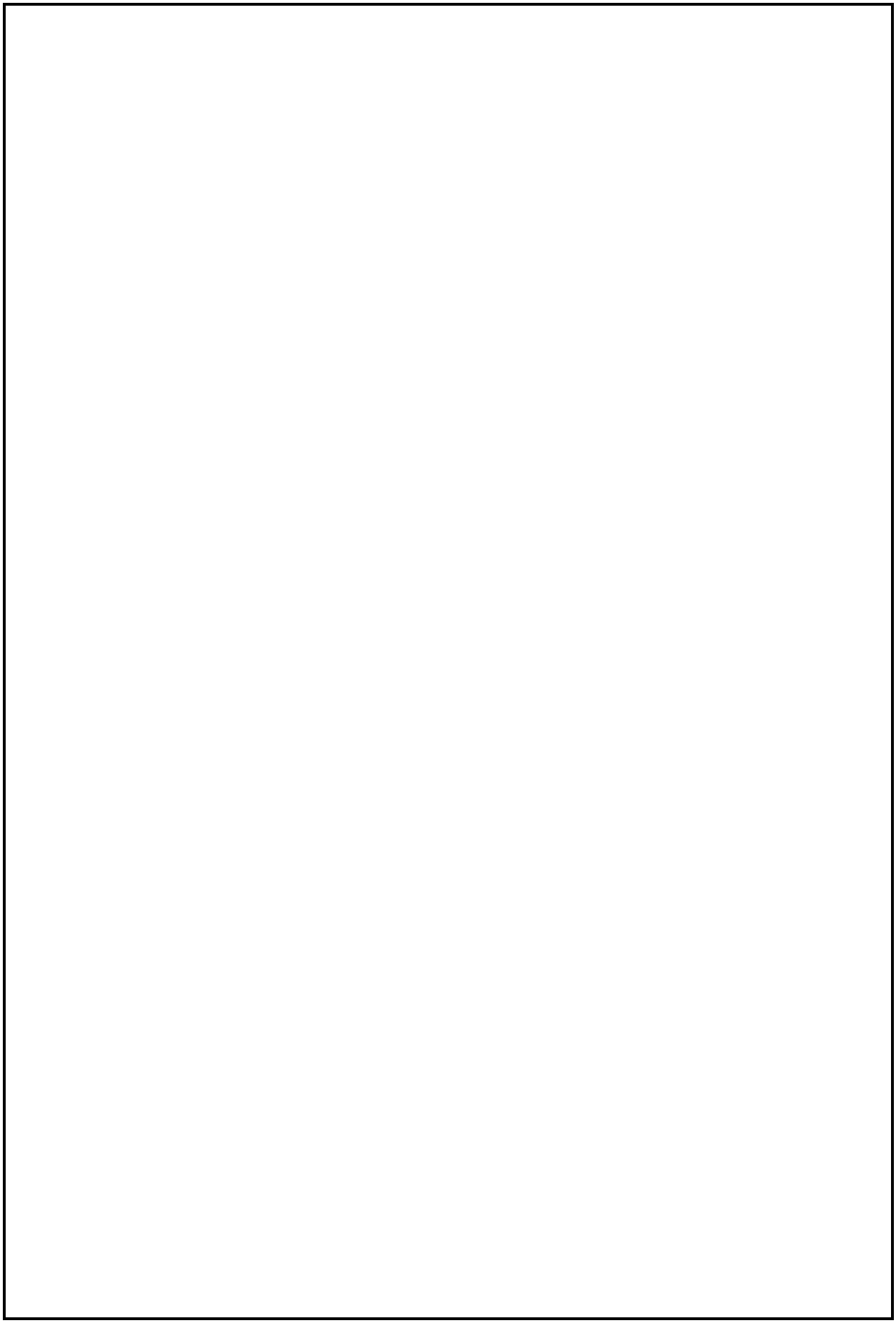
MS. FIERST: Your Honor, the objection was foundation regarding the testimony on what was required to complete the movements.

Mr. O'Brien is talking about what was required in these movements. It's point A to point A. He's responding about what was required to complete the additional --

THE COURT: All right.

MS. FIERST: -- part of the movement.

THE COURT: Objection Ă G Ɛ ĔH



the ground to work with their GHL counterparts for the transition of cargo which, at that stage, we had hoped would be a relatively smooth transition. We had hoped that would be the case.

Q. And, nows

evidence.

THE COURT: 146 will be received.

MS. FIERST: Thank you, Your Honor.

BY MS. FIERST:

Q. Now, there in the middle of the first page, Mr. O'Brien, do you see the e-mail from PM3, Brad Parham?

A. Yes, ma'am.

Q. All right. Do you see where Mr. Parham says "I have a guy I can call"?

A. Yes, ma'am.

Q. Do you know what Mr. Parham was suggesting there?

A. I believe he was suggesting -- suggesting Emran Dawran.

Q. So, and what was he suggesting by Emran Dawran?

A. He was suggested to bring in alternative trucker to collect the cargo as part of these SDDC movements.

Q. At this point in late May?

A. Yes, ma'am.

Q. And what's your -- your response at the top of the page there? Do you see the --

A. Yes.

Q. "Do not change this horse midstream" --

A. Yes, ma'am.

Q. "It will cause major problems".

A. Yes, sir.

Q. What kind of major problems would changing vendors in the middle of a movement cause?

A. We expected kind of what happened. We felt that -- I felt, personally felt, that if we tried to change horses midstream, that GHL would take some form of retaliatory action to try to hurt us during the middle of this movement.

Q. And, what other kinds -- were there any other kinds of problems that changing a provider in the middle of the movement could cause?

A. With the exception of the potential operation in security issues that I was aware of, I guess I didn't think was proper in

So there was

Major Max Ward.

Q. So, Major Ward ultimately sent you a copy of the e-mail? Is that --

A. Yes, ma'am.

Q. Now, Mr. O'Brien, we'll go through this e-mail in some detail, but what was your reaction when you read this e-mail?

Well, actually, first, because you testified that you heard about it before you saw it, what was your reaction when you heard this e-mail had been sent?

A. At first, I was completely confused as to why anybody would be w

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weeks f

THE COURT: Okay. We want to concentrate on the contract here that is dispute.

MS. FIERST: I understand.

THE COURT: Next question. Next question.

BY MS. FIERST:

Q. Let's go through the specific statements in this e-mail, Your Honor --

refers to miscommunication, misrepresentation, and recent payment issues.

Do you see where it says that?

A. Yes, ma'am.

Q. Let's talk in particular about recent payment issues.

Did you believe there were any recent payment issues?

A. Absolutely not.

Q. How about misrepresentation, do you know what that's referring to?

A. No cluįV עב

no choice but to take the action that it was taking at that time, due to the previously referenced matters.

Q. And, in the next paragraph, GHL or Global Hub Logistics is terminating its relationship with Tamerlane.

Do you see where it says that?

A. Yes, ma'am.

Q. The next sentence, "they cannot further tolerate the problematic working relationship with the company and its president".

Do you see where it says that?

A. Yes, ma'am.

Q. What was your take on "problematic working relationship"?

A. Again, as previously stated, it -- it appears to me that they were complaining that we were mistreating them in some way, and I was personally mistreating them.

Q. And that's -- where it says, "its president", that's you, right?

A. Yes, ma'am

jeopardy".

Do you see where it says that?

A. Yes, ma'am.

Q. Did you put the customer in jeopardy?

A. Never put the customer in jeopardy, ever.

Q. Why was it important not to put the customer in jeopardy?

A. Because if you're accused of trying

and you don't like it because it's dangerous, don't work in Afghan freight.

Q. How about the following paragraph, Mr. O'

A. Yes, that's proven in the fact we ultimately moved the cargo to Karachi.

Q. Now, you heard Mr. Rashan testify about his

before as well, correct, Mr. O'Brien?

A. Yes, ma'am.

Q. And, this e-mail on the bottom is from Masud Roshan to Major Ward copying Joe Yorio on June 27th, right?

A. Yes, ma'am.

Q. Right around the same time period?

A. Yes, ma'am.

Q. Now, I'm going to direct your attention to the bottom of the first page is the from/to line and Mr. Roshan's introduction of himself. But the body is the top of the following page.

A. Yes, ma'am.

Q. Now, in the first paragraph there, I'm sorry, in the second paragraph there, the first sentence, do you see where Mr. Roshan wrote, "I apologize for any inconvenience this may cause"?

manner or the way that they had acted. So, therefore, he had no choice.

Q. And, he says there that it's in the best interest of all involved that we, meaning GHL, severe the relationship with Tamerlane, right?

A. Yes, ma'am.

Q. What was your understanding of that statement?

A. That he was explaining to the military that at this stage, GHL was removing itself from Tamerlane operations effective as soon as possible.

Q. And in the next sentence there, where Mr. Roshan talks about 25 years of experience that GHL has. Do you see the end of the sentence?

"So, the GHL team has 25 years of experience relationship and impeccable past performance".

Do you see where it says that?

A. Yes.

Q. And it says, "and we stand by willing to assist you in any manner possible with the current movement or future opportunities".

Do you see where it says that?

A. Yes, ma'am.

Q. What's your y Ø}onɻaL:

ago, was trying to seek future movement opportunities if they could from the U.S. military that they can get their hands on, current movements and future opportunities.

So it was -- it was an overture to try to get U.S. military cargo.

Q. Mr. O'Brien, I want to switch gears a little bit and talk about the invoices that you've received in the movements that are -- regarding the movements that are at issue here.

So, first, I want to talk about the Strike 1 invoice --

A. Yes, ma'am.

Q. -- Mr. O'Brien.

A. Yes, ma'am.

A. Yes, ma'am.

Q. So -- and this is the first invoice you get for the Strike 1 movement, right?

A. Yes, ma'am.

A. Yes, ma'am. So early on, we received the Strike invoice about a day and a

A. Yes, ma'am.
Q. "To Kasachi plus one third of the profitability on a final rate of 4,100 to the client"?
A. Yes, ma'am.
Q. Can you explain just so we're sure we understand the rate there.
A. Sure. The -- again the profitability discussion was something we had with them early on. We had all agreed that we split the profit three ways.

With regard to the -- the 4,100 minus 2,800, 4,100 was what we were charging Liberty Global Logistics. And they told us that their cost per truck was $2,800.

So, we were taking 4,100, subtracting out the difference, dividing it by three, and then any charges that may have been extraneous to that, we then ultimately reduce profitability.
Q. And then are you saying there that the -- was the issue that 2,800 was not the rate that was included?
A. At this time, we had no basis to determine whether or not they were lying to us or not. We had the Pakistani screaming up and down, but we had no way to know.
Q. And what

to yes, KAF?

A. Correct. If you look at the invoice that -- and I don't know if it's included in this particular exhibit. But if you look at the invoice that was provided by Global Hub Logistics only a day and a half earlier, you'll see --

Q. Defendant's 208.

A. Defendant's 208. If you see on the chart here, Abdullah was charging us again. This is pretty consistent with the way it always happened, an additional charge of some kind from KAF to Chaman. He was adding an extra 1,000 bucks here, $800 there, $1,400 there per unit, so an extra of 146,000 -- roughly $150,000 more than anything that had ever been discussed.

And then, again, on those bottom charges we didn't go into that. But as far as it pertains to what you just asked me, these charges were all jacked up.

Q. And, you had further conversation with Mr. Gharjy and Mr. Roshan regarding this -- this invoice, correct?

A. Yes, ma'am.

Q. Now, I want to direct your attention to page 23073. So, as this discussion continues, the page before that --

A. Okay, sorry.

Q. -- in Defendant's Exhibit 263.
A. Yes, ma'am.
Q. So, your e-mail to Mr. Gharjy there at the top part of the page?
A. Yes, ma'am.
Q. So, in that top line there, I think that top line actually is that explaining what you were just discussing, Mr. O'Brien?
A. Yes, ma'am.
Q. And, you say, "however, with your extra charges that margin will further drop".
Do you see where you say that?
A. Yes, ma'am.
Q. What extra charges were you talking about?
A. The extra charges that were related to demurrage charges that were all of a sudden coming out. This preposterous need to move an entire convoy to take one piece of cargo off and bring it back to Kandahar, the demurrage charges that seemed to be accumulating exponentially were going out of nowhere. These were the kind of charges I was referring to.
Q. All right. And in the next sentence there, you say, "as I have said many times, the U.S. Government allows a maximum of five percent net margin per the FAR. The gross margin can be higher but the net cannot, or

which obviously is a different meaning to me. But can you talk about what debarred means?

THE COURT: Well, before he does that, there's no indication of that here, is there? Did anybody threaten to debar Tamerlane?

THE WITNESS: No, sir, but --

THE COURT: Next question. Nobody's threatened to debar Tamerlane. Next question.

MS. FIERST: I just knew the word had been mentioned in the e-mails, Your Honor. I wa

A. No, ma'am. We had received multiple iterations of the Strike 1 invoice since that time.

Q. How about, do you recall when -- was there a time you received invoices for the five movements that Global stopped performing during?

A. During the course of which they stopped, did they provide the invoice?

Q. I'm sorry. I asked that inartfully. Did you receive invoices for the movements -- I'm stopping myself.

Did you receive invoices for those movements that Global did part of but not all of?

A. Yes, ma'am.

Q. Okay. Do you recall when you received those invoices?

A. It was towards late July, early August, thereabouts around that timeframe.

Q. Okay. Now, the Strike 1 and these other movements invoices, have they been paid?

A. The Strike 1 invoice, has it been paid? I'm sorry.

Q. The Strike 1 invoice. Okay. So, let's separate it out. Thank you for that.

The Strike 1 invoice, has that been paid?

A. We have paid $459,700 approximately towards that

Strike 1 invoice of which we contest multiple other charges involved.

Q. And, the invoices for the other five movements, have those been paid?

A. Absolutely not.

Q. How about -- were you ever invoiced for demurrage for those five movements, Mr. O'Brien?

A. Among the five movements as far as demurrage is concerned, yes, there were demurrage and detention charges that were part of some of the invoices that we received on the five movements.

Q. And, have you paid the remainder of the Strike 1 invoice for the five movements invoices or the demurrage invoices for those five movements?

A. No, ma'am.

Q. Why haven't you paid GHL on those invoices?

A. With regard to Strike 1, we had ultimately determined that most of the charges, in fact, the majority of the charges that were charged on Strike 1 were simply bogus. There was no reason to charge us those charges.

With regard to the other five movements, we had hired GHL to move the cargo from different points in Afghanistan to Karachi, and mid movement GHL chose to stop operating and broke its contract agreement with us.

Now, that was a -- let me clarify. Not only

with everything we were doing to clean up these efforts by the contracting officer, Anita Rice, Max Ward who was the SCC, senior military officer on Kandahar --

MR. FRANCO: Objection. Can we approach?

THE COURT: Yes.

(Thereupon, the following side-bar conference was had:)

MR. FRANCO: I have a couple issues I'd like to raise with the Court.

THE COURT: Okay.

MR. FRANCO: First, they're about to talk to repercussions generally from other people. I think that there are repercussions that need to come in from the people who are advancing them, not his self-serving testimony about these repercussions. If there is something from the SDDC, if there's something from Major Ward, if there's something from Liberty that can give credence to it, that should be the evidence, not --

THE COURT: I want to ask you a question. Repercussions may have to have economic consequences; is that right?

MR. FRANCO: Absolutely.

THE COURT: All right, okay. Hold on, hold on.

MR. FRANCO: Sorry.

J.

If Mr. O'Brien can talk about the impact on his business, what he was speaking about immediately before the break, which was the impact on his reputation. That's -- that has a damages value as well, Your Honor.

Under the instruction and the elements of defamation, per se, the jury can presume damages if they find that there was a harm to Tamerlane by these statements. Then we don't have to introduce specific evidence of that. That's separate from the tortious interference.

Now, they're somewhat intertwined because the Yorio e-mail is part of the tortious interference, and the tortious interference is part of the defamation. But, Your Honor, and the repercussions are more broad than the monetary1

going to say. Well, of course, I can't say exactly --

THE COURT: Oh, you know. You know what your client is going to say. Come on. You know what your client is going to say.

I'm asking you because my impression was that there's nothing in the record that suggests that Liberty withheld opportunities from Tamerlane because of this. There's no document to suggest that; is that right?

MS. FIERST: No, that's not accurate, Your Honor.

THE COURT: There are documents that say -- that Liberty says, we're withholding the work from you because of GHL's poor performance --

MS. FIERST: We're withholding because of these screw ups which they argue were attributable to GHL. We argue were at least in part attributable to GHL because they were doing a trucking. We are not giving you work for a certain period of time.

MR. FRANCO: That's -- there's so much to this, Your Honor, that I think needs to

MS. FIERST: Yes, Your Honor.
THE COURT: You have a documents that say that?
MS. FIERST: Yes, yes.
THE COURT: Well, focus on those. And if they have some monetary impact, because this only deals with the tortious interference claim. The defamation claim, he's not talking about defamation right now.
MS. FIERST: And in fairness, my question, I believe part of -- again, I don't know exactly what he's going to say.
THE COURT: Yes, you do. Yes, you do.
MS. FIERST: No, Your Honor, because it depends on whether he's thinking operationally, financially. But he also could talk about what they had to do as a result of Global Hub Logistics stopping.
THE COURT: I thought he already testified to that. He hired another trucking company. He arranged for the shipment to be moved. Is there more he's going to say about that?
MS. FIERST: I can't say what he's going to say.
THE COURT: I want to take it all down for a second, just one second. Everybody take it down for a second and to compartmentalize what is taking place.

My impression is that the witness is now talking about impact from the delayed -- abandonment of the cargo in mid group.

MS. FIERST: Right.

THE COURT: And, repercussions would be what? Tell me. Itemize what the repercussions would be.

MS. FIERST: The repercussions would be the increased cost that Tamerlane had to pay as cover cost.

THE COURT: And so he has bills showing what he paid to cost more than he would have paid?

MS. FIERST: Correct.

THE COURT: Okay.

MS. FIERST: And he has the $125,000 penalty that Mr. is p e

[redacted]

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J. O

If you're going to go to the

us.

Is there something more you want to say?è1

MR. FRANCO: Those were the big issues. I completely agree with Your Honor's ruling. They can elicit evidence what they paid the follow NT 6n y ID

You can have a seat, Mr. O'Brien.

THE WITNESS: All right, sir.

THE COURT: Mr. O'Brien, I just had a conference with your lawyer and thel

again, Mike Chapell specifically states he's not going to give us that movement because of the recent issues that had occurred with regard to the five moments, sir.

THE COURT: All right. I appreciate what you just said. Have we discussed this previously? I believe we had. I just wanted to make sure.

MR. FRANCO: Your

subs on it or anything like that.

It's just Mr. O'Brien's opinion, on again an award that wasn't given to them based on past performance issues unrelated to the tortious interference claims that are before Your Honor.

THE COURT: Okay. Well, Mr. O'Brien, I understand what you just said. And your lawyer has argued here at least four times, these issues.

THE WITNESS: Yes, sir.

THE COURT: And I've considered it. My judgment about Comanche is that you may offer some testimony about Comanche, but the problem with Comanche is Liberty was not awarded Comanche.

So because Liberty wasn't awarded Comanche, we don't know that Liberty would have -- if Liberty had received the award, then they would have had to decide to award to it you.

And because those things are speculative at this point because it didn't happen, those would not be appropriate damages.

As it relates to HM1, again, my understanding is that that contract, if it were awarded to Liberty and you said that it was; is that right?

THE WITNESS: Yes, sir.

THE COURT: They decided not to use you. We

don't know what Liberty's cost would have been, what your profit would have been on that. And, that is not necessarily related to this which has to do with stopping them, the five movements. You would have had to get somebody else any way.

So that wouldn't have been a damage incurred by Global. That would not

I don't want you to go into this HM1. And Comanche only to the extent that it's clear from the e-mail that they didn't get it because of Comanche. That's what we talked about.

All right. Thank you.

MS. FIERST: It's clear from the e-mail that's already in evidence.

THE COURT: The one that's already in evidence. You can bring the jury back now. Thank you.

Hold on. Hold on. It's been called to my attention, we didn't take the afternoon recess. We're going to take the afternoon recess for 15 minutes. Thank you. Thank you.

Yeah, I didn't understand what you were trying to tell me. Thank you.

MS. FIERST: Okay.

THE COURT: Fifteen minutes, thank you.

(Court recessed at 3:44 p.m. and reconvened at 4:02 p.m.)

THE COURT: You may be seated.

Counsel, my question is not intended to limit you. I just want to know where you think you are in your direct examination.

MS. FIERST: Thank you, Your Honor. Mr. Franco asked me the same question earlier.

I think we are toward the end, Your Honor. And by that, obviously, it's a little bit unclear. But I don't know whether we would finish today or perhaps if we don't finish today, a little bit more tomorrow.

THE COURT: Well, I want to make sure that what I tell the jury is going to sound accurate.

I had the impression it would be done by 1 o'clock tomorrow, the whole trial. Is that right?

MR. FRANCO: I still need to do a little cross-examination.

THE COURT: No, I understand that. I'm just asking you all to tell me what you think. I -- obviously I don't think the trial is going to go another three days. I just need to know --

MR. FRANCO: I'll be straight with Your Honor. I don't see how we can get it to the jury, done with closing, done with jury instructions by 1. I don't see any way that happening.

I have at least two or three hours, probably two hours of cross-examination. And then we have closing arguments and jury instructions to work on. So I don't see that as a legitimate possibility.

THE COURT: So you're saying you think we can even finish tomorrow?

MR. FRANCO: Not by 1. I think it will be

finished tomorrow. Goodness, I would hope it's finished by tomorrow, but I don't think by 1 o'clock tomorrow.

MS. FIERST: I think when p oã ŷ re

of business tomorrow.

MS. FIERST: Right. And if I may point out, Your Honor, we have very few arguments regarding the jury instructions. So, I expect that conference to be pretty tight. If we needed -- I mean, I wouldn't want to interfere with anyone's lunch hour.

THE COURT: We can do it tonight. We can get that done.

MS. FIERST: I think that tomorrow is certainly reasonable.

THE COURT: Okay.

MS. FIERST: I would, however, of course, Your Honor, expect some redirect after Mr. Franco's cross-examination.

Mr. Franco had the same opportunity with his witness. I would expect the same.

THE COURT: I wasn't limiting you. I just wanted to have an idea if I can tell the jury we thought we would be done with the evidence by 1. But we're not sure yet is what we're saying.

MS. FIERST: I think we can certainly strive to do that, but I want to make sure that --

THE COURT: All right. Bring our jury back, Mr. Toliver. Thank you.

You may be seated.

Mr. O'Brien, is that sun in your eyes?

THE WITNESS: A bit, sir.

THE COURT: All right, ladies and gentlemen, I'm going to give you an update on where we stand in the trial. It's apparent to me we're not going to finish today. But I have the impression and we can -- just a second.

I have the impression in I'm talking to the lawyers about where we stand in the case, that our goal will be to deliver the case to you tomorrow, meaning have the evidence presented, closing arguments and instructions tomorrow.

That's my goal. And if I don't hold up to it, then blame me. But, I'm going to try to give both sides the right to fair trial and a chance to present their evidence. But, I can't stampede them to do it. They have to have a chance to present this. This is a very important case to both sides.

And you've been very attentive. And we will be very efficient about our time.

Mr. Toliver, can you close the blinds.

Thank you for your patience, ladies and gentlemen. Thank you very much.

You may proceed.

MS. FIERST: Thank you, Your Honor.

BY MS. FIERST:

Q. Mr. O'Brien, I believe immediately before our break, you were talking about the repercussions to Tamerlane of GHL abandoning the five moments.

Can you continue with your response?

A. That's correct, ma'am.

THE COURT: The charges that Tamerlane incurred in connection with hiring others to complete the shipment is what I want to hear about.

MS. FIERST: Yes, Your Honor.

THE WITNESS: In total --

MS. FIERST: And I don't -- I'm sorry. Go ahead, Mr. O'Brien, and then I'll -- if I need to cut in, I will.

THE WITNESS: And just to -- only because I'm confused, sir, if you don't mind --

THE COURT: I'm asking about if you paid money to someone else to complete the shipment, I want to know about that.

THE WITNESS: Yes, sir.

THE COURT: If you had additional charges to pay for holding, I want to know about that.

THE WITNESS: Yes, sir.

THE COURT: Money you had to pay for Tamerlane.

point -- at that point in time.
BY MS. FIERST:
Q. How about ultimately was there any sort of impact from Liberty in terms of the way that these movements were handled? Were there any monetary impact imposed by Liberty on Tamerlane?
A. There was. There was a $125,000 penalty that Liberty charged on us, as well as additional discounts that they requested on specific movements related to particular TCN movements on the invoices.
MR. FRANCO: Objection, foundation.
THE COURT: Overruled.
BY MS. FIERST:
Q. With respect to the -- the amount -- what amount did you just state?
A. There was a $125,000 penalty that was charged against us by Liberty Global Logistics as well as certain discounts that they had requested based on certain routes that had been impacted by GHL's actions.
Q. And on the $125,000, how did that number -- how was that number achieved, that dollar figure?
Q

a[illegible]hibit t[illegible] ear[illegible] Mr. O[illegible]n, Defendant's [illegible] Motion's -[illegible]es, [illegible]ma

Q. All right [illegible], [illegible]arding the Stri[illegible]e

assumed -- we had no reason to suspect that they were lying to us and those truck charges we ultimately wind up paying.

Q. All right. I want to ask you

Q. Now, there was testimony earlier in the case about after these invoices were sent, GHL didn't hear from you.

Do you recall whether you had any conversations with anyone at GHL after the invoices for the five movements were issued to Tamerlane?

A. Nothing that I can recall with GHL members, no, no, ma'am.

Q. So, when you received these invoices, what did you do?

A. Looked at them. You know, at first it was -- I couldn't believe they were charging me for movements they didn't complete. But then, I looked at the numbers, and to be honest, I actually laughed. I couldn't believe how incredibly hyperinflated many of the movements were.

Q. What were -- I'm going to direct you to the first -- I guess this invoice encompasses several different aspects; is that fair to say? This invoice isn't for one particular movement?

A. That's correct, ma'am. There's a number of movements built into this particular invoice.

Q. Okay. Do you see on the top one, LMK, Retro 11 and SMU-1? Do you see that part of the invoice?

A. Yes, ma'am.

Q. Okay. Were there issues with the rates that were included in this invoice from GHL?

A. Absolutely, no question about it.

Q. Tell us why. What were the issues?

A. Well, again to reiterate, we didn't hire GHL to move any cargo from Leatherneck to Chaman. It wasn't what we asked them to do.

But then looking at the rate itself, it's so hyperinflated on the second line item, it's preposterous.

If you look at the top line, Leatherneck to Karachi the $7,300 charge rate, as I described before, Bagram to Karachi is kind of like the distance between Washington, D.C. to Dallas.

In this case, Leatherneck to Karachi, Inth˝ L

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Q. I m . e I 4- you uC˚t there The to d

A. Karachi movFPŸTų.

Q. IĄ the of Washingtonr Dâllas that what you d d

A. In terms of , in terms oJPÊEHeų of täme It t[a]kes sät,oÂÂ it you were stcaál˝ , d}pSät, to tcaðekx ðo

again, Washington-Dallas if you driving that road, maybe a little further out.

Obviously, the road conditions are different over there. But, that's about the equivalent in distance.

BY MS. FIERST:

Q. Was there an agreed on rate for the Leatherneck to Chaman route?

A. No, we never asked them to do Leatherneck to Chaman.

Q. So then, had there been discussions between you and anyone at GHL to fix a rate for Leatherneck to Chaman?

A. We never had a rate established from Leatherneck to Chaman.

Q. How about the -- you see below that there's also rates for Shank to Chaman, Phoenix to Chaman. Do you see that in the next two segments of the invoice?

A. Yes, ma'am.

Q. Were there rates agreed upon between GHL and Tamerlane for Shank to Chaman?

A. No, ma'am.

Q. How about for Phoenix to Chaman?

A. No, ma'am.

Q. So do you have an understanding of how they came up with these rates?

A. No clue, ma'am. I've heard testimony, but I don't know how they could have possibly come up with these rates.

Q. Okay. Let's look -- let's put Exhibit 1 aside,

and I don't know if this is possible for -- if you keep that exhibit or that notebook with you, if you could look at Exhibit 2 and Exhibit 16.

Can you do that, Mr. O'Brien?

A. Yes, ma'am.

THE COURT: Defendant's 16 or --

MS. FIERST: I'm sorry. Thank you, Your Honor, Plaintiff's Exhibits 2 and 16 which are both in evidence.

BY MS. FIERST:

Q. Okay.

A. Yes, ma'am.

Q. So, Plaintiff's Exhibit 2 is just a single sheet, right?

A. Yes, ma'am.

Q. Okay. And that's -- excuse me. I'm sorry. On August 3rd, 2011, invoice for LOGCOM, TF LOGCOM plus Retro 11, right?

A. Yes, ma'am.

Q. Okay. And if you look at the page in -- Plaintiff's Exhibit 16, that at the bottom right says GHL 44285.

A. Yes, ma'am.

Q. Do you see that page?

A. Yes, ma'am.

Q. Okay.
A. On the Exhibit 16, or Plaintiff's Exhibit 16, the TF LOGCOM and Retro 11 movement has a 40-foot KAF to Karachi --
Q. Go to --
A. KAF to Chaman, I apologize, with only two units that had moved at a unit cost of $2,000 and a total of $4,000.
Q. Okay. So, the quantity there is the number of trucks?
A. That's correct.
Q. So -- all right. So it goes from two trucks on -- on July 17th to 22 trucks on August 3rd, right?
A. Yes, ma'am.
Q. And, GHL had completed their work by this point; is that right?
A. Had they completed their work at this time?
Q. Yes.
A. They were no longer involved in our movements. They had never completed the job we hired them for.
Q. And then the unit cost you said is different, as --
A. Correct the unit cost as well. So on July 16th, they're charging us $2,000 for that movement, but on August 3rd, they're charging us $2,800 for that

movement.

Q. Okay. And then the -- and was the -- the rate from KAF to Chaman something that you and -- that Tamerlane and Global Hub had agreed on prior to this?

A. No, ma'am. We didn't have a rate agreed upon from Kandahar to Chaman.

Q. Okay. Then there's a Kandahar to Karachi line each of Plaintiff's 2 and 16, right?

A. Yes, ma'am.

Q. Can you do the same thing you just did for the Chaman line for the Karachi line?

A. Absolutely, ma'am. So, on Plaintiff's Exhibit 16, which is the earlier invoice, there's a 40-foot KAF to Karachi, where the quantity is 29 and the cost is $2,800 at a line item cost of $81,200, a total line item cost.

On the August 3rd, the 40-foot KAF to Karachi has changed from 29 units to 9 units and then a rate of

A. Yes, ma'am.
Q. This is dated July 17th, this invoice referenced extra charges, right?
A. Yes

that program management fee.

A. In the $50,000 that I'd pa
Logistics as a thank you very much for th
you provided, the credit for Jim's phone in
January 18th, credit for Brad's phone, credit for Brad's phone again in February, those were all part of the TF Warrior movement that we gave additional funds to.

The Brad ticket from Kabul

you -- that you, Tamerlane, had agreed to pay to Global Hub Logistics?

A. That's correct.

Q. How about -- let's talk for a moment about demurrage. Mr. Roshan and Global Hub have put into evidence certain

A. Yes, ma'am.

Q. And, I believe Mr. Roshan talked about this e-mail a little bit, the days have now escaped me, sometime last week.

Do you recall that testimony?

A. Yes, ma'am.

Q. Okay, looking at the third bullet point, do you see where Mr. Gharjy wrote that "we have billed Jim O'Brien for TF Strike project and now he's trying to find a problem to delay the payments"?

A. Yes, ma'am.

Q. And if you go a little further down in that same bullet point, do you see that Mr. Gharjy asks Major Ward for a report? Do you see where he's asking for that?

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charges to invoice us.

But, by then, this is on July 4th. We had already received two invoices in the past with what we had suspected and found out later were hyperinflated demurrage charges to begin with.

Q. I want to talk for a minute, Mr. O'Brien, about Brad Parham who you heard last week.

A. Yes, ma'am.

Q. Tell us about the end of Mr. Parham's employment with Tamerlane.

A. Brad Parham was fired on July 1st, 2011. He was released for being a no show in the office. He was -- he was a pretty good operator in terms of his work, was -- it was involved. But he had a really bad attitude in the office.

We had a lot of challenges with him with respect to his respect for Adam Bonifant who had been the new COO and Angela Dean who was as close to a number two, outside of my COO. She was my right-hand man -- woman, so to speak.

Q. And, you also heard some testimony about Mr. Parham coming back early from Afghanistan or staying for parts of movements.

Do you remember that testimony?

A. Yes, ma'am.

Q. Can you shed some light on that, Mr. O'Brien?

A. On multiple occasions, from an operational perspective we always want

Q. And what did you consider -- what did Tamerlane consider to be the completion of the -- the movement or the completion w (o l e o n

-

the projects in Afghanistan.

So, if I had say, Tim Timpson in Afghanistan, I wanted David -- I'm sorry, I wanted Brad Parham in the United States to provide any kind of operational support necessary to Tim Timpson should he need it on the ground.

One of the reasons I wanted that to happen is because if you have somebody who's actually worked in Afghanistan, would understand what that person on the ground was communicating, and you can get them the tools you might need.

So I wanted to have this -- this seamless integration of constant program management, somebody here in the U.S., somebody in Afghanistan, 24/7 coverage for the client's cargo.

Also we had a client support team. Our client support team was made up primarily of individuals who had never traveled to Afghanistan. And since those individuals had never traveled to Afghanistan but they were hired -- they were operating with clients who had operational needs in Afghanistan, it was my opinion that if you had a program manager in the office, they can communicate if the client raises a subject said, hey, what's going on with this particular package? If the client support individual wasn't capable of

communicating that appropriately to the client, the program manager could step in and say, I got this. Let me explain to your client what's going on or help that client support manager explain what was going on to his or her client.

So, that was what I was seeking. And, what Brad Parham was seeking was not to have to go into the office. He didn't want to go in the office because he lived too far away and didn't want to spend the money on fuel, which is what he communicated to us that he drove an Escalade and it cost too much money to commute.

Q. And was Mr. Parham in the office once he returned from Afghanistan in I believe you testified he returned sometime in early or mid June 2011?

A. Correct, Brad Parham came back into the United States on June 5th. After June 5th hit on I believe a weekend, if I'm not mistaken. I have to take a look at the calendar. And then he took two weeks off as he testified because of the unfortunate tragedy of losing his mother-in-law. And he winds up returning to the office in Virginia Beach on or about June 20th.

Q. And, when you say returning to the office, are you saying returning to physically in the office or returning to work in the United States?

A. No, he actually physically returned to the office

on June 20th. He worked from the 20th to the 23rd of June in the office. He took off on June 24th.

Q. Okay. And how do you know that?

A. I know that because I havthat

your focus ÐA explanation of where you were.

THE COURT: If he would just answer where he was on that day, that would save us a lot --

MS. FIERST: I asked him to please explain where you were during that time period.

THE WITNESS: Sure. So I'm in Afghanistan for a couple days. I wind up staying in Afghanistan, meet with the Roshans on the 7th. And after I meet with the Roshans on the 7th, I leave Afghanistan. I then travel to Kenya for our Kenyan operations, go to Uganda as well, meet with the folks in Uganda.

THE COURT: Excuse me. I'm not sure what this has to do with this case. If you would just get back to this case, I think would be 222222.

Q. He said that you and he were in the same room for this meeting, and that you said you weren't going to pay GHL. Remember that --

A. Yes, ma'am.

Q. -- his testimony?

A. Yes, ma'am.

Q. Do you remember that meeting?

A. That meeting never occurred. I was never in the office with Brad Parham. The entire month of June, I was out of the country the first half. In the middle, I was at my wife's baby shower. I was in Florida the week prior to Brad's dismissal.

Brad did not come into the office from June 27th to July 1st. And Brad Parham was fired by me on July 1st. I never saw Brad Parham in the month of June. I did not see him in the month of May. I did not see him in the month of June, and I certainly did not see him in the month of July. That was a lie. He lied on the stVe

it was in June. Do you remember that?

A. Yes, ma'am.

Q. Did you ever say that at some other point in -- with Brad Parham?

A. No, ma'am. In fact, Brad Parham's biggest complain about me was that I did not speak to Brad Parham often enough to placate his ego.

Q. And when, Brad Parham left the company, what -- did he have any particular -- tell us about his departure specifically to that point of whether he was talking with you or not regularly enough?

A. So, again, on -- towards the end of -- I'll tell you how the lead up is if that's okay with regard to Brad's dismissal.

On the 26th, Brad sends me

On Tuesday, he does not show up in the office. Again the operation team is working together to try to fix this issue.

Again he writes an e-mail, why aren't you responding to my e-mail about me becoming IC. On the 29th he does write me again why aren't you responding to my e-mail? I finally respond to him that, hey, Brad we're all scrambling here working on this issue, these five movements that have been dropped by GHL. Where are you? And oh, by the way, if you want to turn into IC, I've got no problem with that. But please understand what my operational philosophy is with regard to seamless integration support, and that I can't guarantee an independent contractor work. I don't know when the work is going to come as an IC.

Employees get guaranteed work. ICs don't. He said he's going to write me. Nonresponse. He does not show up on the 30th. He does not show up on the 1st. Meanwhile the operations team is scrambling to fix these issues. And finally I GsV

MS. FIERST: Let's --

THE COURT: Sustained.

BY MS. FIERST:

Q. Let's turn, Mr. O'Brien, to Mr. Parham. Do you specifically -- your knowledge -- do you have knowledge of -- what do you know Mr. Parham's reputation for truthfulness to be?

A. Mr. Parham had been -- he was not renewed on a DEA contract --

THE COURT: Excuse me. We're only concerned with what he knows his reputation to be without referring to specific incidents, if that's what you're trying to do.

BY MS. FIERST:

Q. And my question was what do you know Mr. Parham's reputation for truthfulness to be?

THE COURT: Not referring to specific incidents.

THE WITNESS: It is suspect at best.

BY MS. FIERST:

Q. Now, in fairness, Mr. O'Brien, were you upset when GHL abandoned their work in the middle of the performance?

A. Absolutely.

Q. Did you make comments to that effect at

Tamerlane?

A. Absolutely.

Q. Mr. O'Brien, I want to direct your attention now to Defendant's Exhibit 345.

A. Yes, ma'am.

Q. All right. In -- what's been marked as Defendant's Exhibit 305 -- I'm sorry, 345. Thank you, 345.

This is an e-mail between you and Mike Chapell at Liberty -- Liberty Global Logistics, correct?

A. Yes, ma'am.

Q. And, can you describe -- after -- can you describe after the -- after the five movements debacle, what happened with Tamerlane's relationship with Liberty?

A. Tamerlane's relationship with Liberty essentially ceased as a commercial engagement. They stopped using us. They did not use us for --

MR. FRANCO: Objection.

THE COURT: I'm listening.

MR. FRANCO: Your Honor, this relates to what we spoke about at sidebar earlier.

THE COURT: If you would focus the question and the timeframe and the particular project you're referring to.

J. OE O

doing to essentially make the corrections that we needed to make to ensure that another GHL incident never happened again.

Q. And if you look at the second paragraph of this e-mail, the Defendant's Exhibit 345, do you see where it says -- that first word is basis. But -- I think in context it might mean base.

But in any event, "it says basis your rates supplied to Mike V earlier today, we're pleased to offer the Retro 28 move to Tamerlane".

Do you see where it says that?

A. Yes, ma'am.

Q. Was that the first movement that Tamerlane got from Liberty -- put that in context in terms of the five moments and then this Retro 28 move.

A. This was the first award to Tamerlane by Liberty Global for a cargo movement in six months. The last order we had received was in May, late May, 2011. This is coming in on November 10th. This is the first award that we had received after that incident.

Q. All right. If you'd look at the top of the following page.

A. Yes, ma'am.

Q. Do you see there's a referencV a ‖ ŮÔÔŸ

A. Yes, ma'am.
Q. Was that -- what does required delivery dates there in this e-mail mean?
A. Required delivery dates are --
MR. FRANCO: Objection, Your Honor. Relevance.
MS. FIERST: The requirement to deliver cargo at a certain point in time is certainly relevant to the dispute.
THE COURT: Only if it's part of this contract case. Is this a part of the invoices before the Court?
MS. FIERST: Is this a problem did you say?
THE COURT: Is this retrograde movement here a part of the claim before the Court?
MS. FIERST: No, Your Honor. Retro 28, is that your question?
THE COURT: Yes.
MS. FIERST: No, it's not.
THE COURT: Then it's irrelevant. Objection sustained.
MS. FIERST: Thank you, Your Honor.
BY MS. FIERST:
Q. Mr. O'Brien, Ŕ _
Bemsyant

MR. FRANCO: Objection, foundation, hearsay.
THE COURT: Okay, as we discussed previously, you can ask him about what Liberty represented to him, I guess, about what -- concerning the Comanche, but --
MS. FIERST: Yes.
THE COURT: But as I understand it, we already know what Liberty's relationship is with respect to that contract. You have to ask that question first.
MS. FIERST: I'm sorry, Your Honor, I didn't follow your comment. I apologize.
THE COURT: All right. The first question is whether Liberty got a contract called Comanche. Second question is whether -- well, that's the key question it seems to me.
MS. FIERST: Fair enough, Your Honor. I apologize for the --
THE COURT: No problem. No problem.
BY MS. FIERST:
Q. Are you aware of a movement known as the Comanche movement, Mr. O'Brien?
A. Yes, I am.
Q. Was that a movement that Tamerlane and Liberty worked on?
A. Yes, ma'am. That we worked on as a bid or as we

worked on in general?

Q. Were you awarded that movement?

A. We were not, ma'am.

Q. Why not?

A. We were not awarded that movement because there were -- because Liberty did not get that movement. And since Liberty did not get that movement, the reasons we didn't get that movement were because of operational concerns by the SDDC regarding recent issues as it related to the five movements.

Q. Can you be more specific, Mr. O'Brien. Tell us the operational issues.

A. Yes, ma'am. The reason why we didn't get the -- Comanche wasn't given to -- when I say we, I mean Tamerlane and Liberty Global Logistics. Liberty Global not getting the movement itself, was that Liberty didn't get the movement because of operational issues at Leatherneck with the specific reference to Joe MaDeen, an employee of Global Hub Logistics.

There were issues at the border crossing in Torkham as it pertained to cargo that was currently in motion that had been cleared and then decided to turn around. Again those were Global Hub Logistics' trucks.

And then there were internal communications issues in which members of the Tamerlane team and Global

You can step down, sir. You can step down.

(Thereupon, the witness withdrew from the stand.)

THE COURT: 10 o'clock.

MS. FIERST: Thank you, Your Honor.

THE COURT: We're in recess.

(Court recessed at 5:03 p.m. and reconvened at 5:09 p.m.)

THE COURT: I want to make sure I understand what you all have done here. It looks like I have one set of agreed instructions, and I have a set of Global Hub and Masud's jury instructions and a set of Tamerlane O'Brien's jury instructions. Are these the ones that are contested?

MR. FRANCO: We have competing ones and the Tamerlane and the Global Hub ones.

THE COURT: Okay, all right.

MR. FRANCO: And some are not competing but one wants and the other just doesn't.

THE COURT: All right. I'm happy to take them in whatever order you want.

MS. FIERST: One other issue, Your Honor, if I may. In the joint proposed jury instructions, just as sort of a reminder of the context, right around the time that the jury instructions were filed with the Court,

the Court ruled on the remaining e-mail that was the subject of the defamation claim.

So we tried our best at this point to remove Mr. O'Brien's name from the jury instructions. And I think we caught most of them, but I did find at least one instruction that still mentions a defamation claim against

But the evidence in the case and an instruction about what is and isn't in evidence I think is still relevant.

THE COURT: I think what Mr. Franco is saying that instructions two -- pages two through seven have already been given.

MS

MR. FRANCONE

MS. FIERST: Right.

THE COURT: Okay.

MR. FRANCO: I think that's certainly fine, Your Honor.

THE COURT: All right.

MS. FIERST: Pages 10 and 11, the use of deposition instruction and the first ~~illegible~~ instruction also seem, I think, we agree unnecessary.

MR. FRANCO: Joint motion to withdraw, Your Honor, pages 10 and 11.

THE COURT: Okay. Withdraw pages 10 and 11.

MS. FIERST: Your Honor, Mr. Franco's pointed out to me that on page 29, this is an instruction entitled "employer's liability for employee's conduct". And again, this e-mail goes both ways,Ş rucÂ Ş ru

MS. FIERST: There is an instruction on intent, contractual intent which I think was one that the parties are agreed on in terms of it being an accurate statement of the law but agreed to sort of defer to the end of trial to determine whether it's actually necessary or supported by the evidence.

I'm not sure that it is, Your Honor.

THE COURT: What number is it?

MS. FIERST: This is on page 33.

THE COURT: You want to withdraw it?

MS. FIERST: Neither of us can remember who submitted it in the first place, so I think it's --

MR. FRANCO: It certainly an accurate statement of law. We don't disagree on that.

Does Your Honor see any need to instruct the jury on intent in this particular case?

THE COURT: Well, I think that the word should be given their plain and ordinary meaning is important.

MR. FRANCO: Okay. Then we'll leave it.

THE COURT: I think that's important.

MR. FRANCO: We'll leave that in.

MS. FIERST: That's fine.

MR. FRANCO: Your Honor, without getting to -- there are some that we will argue whether or not

they should be given at all. And I don't know that that can be done until all of the evidence.

I think what we can resolve is the

page 36 to waiver. What would that refer to and how do you see that in this case?

MS. FIERST: This would refer to the arguments or some of the arguments that Global has made pertains to an exclusivity arrangement, I believe is the term that's been used in the testimony.

And so, to the extent that there was any contractual right to an exclusivity, then the conduct of the party or the expressed waiver of that right is at issue in this case.

THE COURT: Okay.

MR. FRANCO: I withdraw my objection. That's fair.

THE COURT: Okay.

MS. FIERST: On the disputed instructions, Your Honor, I think we did do the lettering and numbering.

THE COURT: All right. Who do you want to take first? Let's take plaintiff's first, I guess.

MR. FRANCO: I'll go ahead if you'd like.

First the instruction that I would ask is for the rights of first refusal on material to the contract. And that is -- I cite the case --

THE COURT: Hold on, hold on. Hold on, hold on.

about just wholesale putting each of these statements in.

THE COURT: But these are the statements that defendant contends are falr ^

MR. FRANCO: Objection, foundation, hearsay.
THE COURT: Okay, as we discussed previously, you can ask him about what Liberty represented to him, I guess, about what -- concerning the Comanche, but --
MS. FIERST: Yes.
THE COURT: But as I understand it, we already know what Liberty's relationship is with respect to that contract. You have to ask that question first.
MS. FIERST: I'm sorry, Your Honor, I didn't follow your comment. I apologize.
THE COURT: All right. The first question is whether Liberty got a contract called Comanche. Second question is whether -- well, that's the key question it seems to me.
MS. FIERST: Fair enough, Your Honor. I apologize for the --
THE COURT: No problem. No problem.
BY MS. FIERST:
Q. Are you aware of a movement known as the Comanche movement, Mr. O'Brien?
A. Yes, I am.
Q. Was that a movement that Tamerlane and Liberty worked on?
A. Yes, ma'am. That we worked on as a bid or as we

Typically, in the case of retrograde cargo, it was from one base to the point of Karachi at all times.

Q. Okay. Let's talk about how Tamerlane and GHL came to work together on these projects that Tamerlane had been asked to handle for Liberty. Can you tell us about that, Mr. O'Brien?

A. Absolutely. Initially when I first started Tamerlane Global, I had known Masud Roshan from my days at Xe Services. Maybe a few months earlier I had met him and he and I had worked together along with Abdullah Gharjy on the

you would receive an advance of some kind, some kind of monetary advances to assist the company in any kind of cost that may be incurred in the ramp up to the particular activity.

Q. How about a progress payment? Is there such a thing in your industry as a progress pavement?

A. There is such a thing as a progress payment in the industry. And a progress payment is when you have certain thresholds to meet, you'll get certain amounts of payment over the course of a particular time.

So, for instance if I'm moving cargo from point A to B and I get

up the cargo, bring it -- to pick up the cargo off the bases, Afghans, bring it to a trans-loading point and then from that trans-loading point, the Pakistanis would move it to -- the Pakistani truckers would move it to Karachi. There's a really important reason for that, by the way.

THE COURT: Does this have to do with this contract?

THE WITNESS: Yes, it does, sir.

THE COURT: All right.

THE WITNESS: If you have Pakistani truckers that could bring the cargo directly to Karachi, you can have the BCM cut very early on and then you have absolutely no wait time whatsoever. It just goes straight through. It's a straight path, hot knife through butter to the border.

However, the military then determined that using a shuttle was not an efficient way. They were having to recut TCNs in too quick of a time. And they decided to put the kibosh, essentially, on the use of an Afghan shuttle system.

That's when Liberty turned to us and said, can you provide a trucking solution? And we turned to Global Hub. I actually met with Masud Roshan personally myself at Pat Troy

I said, tell you what, we have this movement. We were not part of this movement originally. There's no reason to have -- that we should get this trucking. However, conditions change. Do you want to come in on this movement?

The Pakistanis -- let me see what I can do to broker with the Pakistanis to get you involved in this movement and that way we can all make some money and at least make something out of what originally was going to be nothing.

Masud agreed. I told him I was going to try to get us a profit share. I then flew -- I flew to Dubai, met with the Pakistanis. The Pakistanis were understandably angry about this. They didn't want to lose out on their profit.

MR. FRANCO: Objection, Your Honor.