

**COMMISSIONERS:**

Deborah Platt Majoras, Chairman  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour  
Jon Liebowitz

**In the Matter of**

**KENTUCKY HOUSEHOLD  
GOODS CARRIERS  
ASSOCIATION, INC.,**

**a corporation.**

**Docket No. 9309**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:** Deborah Platt Majoras, Chairman  
Orson Swindle  
Thomas D. Lewis

Pamela Jones Harbour  
Jon Highsmith

**In the Matter of**

**KENTUCKY HOUSEHOLD  
GOODS CARRIERS  
ASSOCIATION, INC.,**

**a corporation.**

**Docket No. 9309**

**RESPONDENT'S MOTION FOR  
RECONSIDERATION OR, IN THE  
ALTERNATIVE FOR A STAY OF**

**FINAL ORDER PENDING REVIEW  
BY U.S. COURT OF APPEALS**

Respondent Kentucky Household Goods Carriers Association, Inc. ("Kentucky

pending judicial review by U.S. Court of Appeals for the Sixth Circuit; and (3) such other and further relief as shall be appropriate.

**I. Introduction**

The Final Order in this proceeding was entered on June 21, 2005. Between the date of the Hearing on the Appeal from the Initial Decision and the entry of the Final Order, proceedings have taken place at the Kentucky Transportation Cabinet with respect to the activity challenged in the Complaint which the Kentucky Association believes

that the State Action Defense is available to Respondent in this proceeding

by reason of the level of "Active Supervision" now being practiced by KTC. On this basis, Respondent believes that the Commission should reconsider its Final Order and

of financial reports and written findings), these materials fall significantly short of demonstrating that the KTC's new procedures satisfy the "active supervision" requirement articulated by the Supreme Court in *Tico* [sic], and other relevant decisions. Most important, Respondent has not

require to support proposed rate adjustments and what criteria the KTC will apply to assess the reasonableness of proposed rate adjustments. These are not questions that are likely to be answered satisfactorily merely by awaiting the KTC's action with regard to the Kentucky Association's most recent tariff filing. Rather, as Respondent itself has acknowledged, development of a new program of supervision will take some time." (Opinion at pp. 27-28.)

On April 11, 2005, Hon. Louis J. Amato, Hearing Officer, conducted a hearing at

KTC's [redacted] Kentucky [redacted] to consider the rate changes proposed in Supplement

acknowledged receiving such notice in writing. The Hearing Officer took Administrative

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

interpreted differently and that Respondent and KTC should be afforded the opportunity to seek such an interpretation from the Judicial Branch.

order to grant the stay." *In re California Dental Association*, Docket No. 9259; 1996

Most importantly, Respondent believes that the Commission interpreted the applicable legal standard improperly in evaluating the record to determine the presence of

“Active Supervision” *Federal Trade Commission v. Ticor Title Insurance Company, et*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Similarly, KTC will likely be unable to accommodate the tidal wave of individual rate filings mandated by the Final Order, on short notice, in a manner consistent with the public interest.

Sections II and III of the Final Order have the effect of bringing about the cancellation of Tariff KYVDR No. 5 and any involvement of the Kentucky Association in the tariff publishing business. Since the Kentucky Association is not in a position to file individual tariffs on behalf of its Members or anyone else, the cancellation of the Agency Tariff currently on file and the Members' Powers of Attorney would represent an end of the business functions of the Kentucky Association. With no tariff on file, it

Kentucky Association's non-tariff activities are



sequence of events is as follows: (1) the Kentucky Association will terminate its

be able to comply with the Order on an immediate basis, others will not, and there will be no enforcement mechanism or Industry group to counsel them regarding such compliance due the restrictions contained in the Final Order; (3) many of the State's Movers will

The record fails to disclose a single example of an unreasonable rate or any support for the conclusion that the KTC-approved collective ratemaking practices of Respondent have yielded anything other than fair and reasonable rates. It is respectfully submitted that there is no evidence in the record to support a *factual, evidentiary* conclusion that the Kentucky regulatory program has “[produced] powerful ~~negative effects including higher prices and fewer choices for consumers~~”

(Opinion; p. 1)

D. The Granting of the Stay  
Is In the Public Interest

The Kentucky regulatory program has been in operation for fifty (50) years. To

unreasonableness of even a single Tariff rate, it is doubtful that they could have made out a case.

On the contrary, the Kentucky Transportation Cabinet has told the Commission that the public will suffer harm as the result of the Commission's Order.

Under these circumstances, it is respectfully submitted that to stay the Commission's Order pending review prejudices no person.

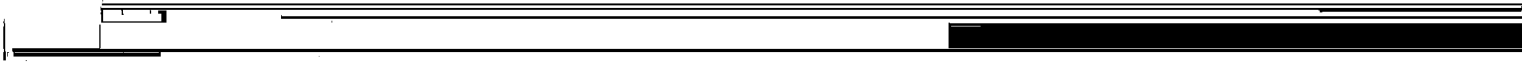
Respondent also notes that in a case such as this, where Respondent's adversary is

Dated: New York, NY  
1- [REDACTED] 1116

Respectfully submitted,

---

James C. McMahon  
Kevin P. Kelly  
McMahon & Kelly LLP  
Attorneys for Respondent  
Kentucky Household Goods  
Carriers Association, Inc.  
60 East 42<sup>nd</sup> Street; Ste. 1540  
New York, NY 10165-1544  
212.984.4444  
Fax.212.986.6905



COPY

TRANSPORTATION CABINET  
DEPARTMENT OF VEHICLE REGULATION  
FRANKFORT, KENTUCKY

KENTUCKY HOUSEHOLD GOODS  
CARRIERS ASSOCIATION, INC.  
P. O. BOX 22204  
LOUISVILLE, KENTUCKY 40202-0204

DOCKET NO. 05-022

RE: RATE HEARING REGARDING SPECIAL SUPPLEMENT NO. 86  
OF KYDVR #5

APPEARANCES

Hon. Louis J. Amato  
HEARING OFFICER

Hon. James C. McMahon  
McMahon & Kelly, LLP

The above-styled matter came on to be heard at

~~the~~ ~~Department~~ ~~Cabinet~~ ~~Hearing~~ ~~Room~~ ~~C121~~ ~~200~~ ~~Mer~~

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ASSOCIATION

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MR. AMATO: This hearing today is the

~~hearing of the Kentucky Household Goods Carriers~~

1 We had a prehearing conference on  
2 December 28th which was the original date for the hearing and  
3 ironed out a bunch of things that would shorten the  
4 presentation that was needed for today's hearing and simplify  
5 and clarify the issues.

6 At this time, it's necessary for me to



[REDACTED] ~~Winter, Inc.~~ which has been designated as a test  
[REDACTED]

MR. AMATO: All right. I need to

that is, that is, in accordance with the requirements of VDC

[REDACTED]

[REDACTED]

[REDACTED]





1 | than that, they are an exact duplicate of what was provided.

2 | (EXHIBIT AX21)

1  
2  
3  
4  
5  
6

MR. AMATO: Yes.

MR. McMAHON: Your Honor, I just respectfully request that the record reflect that among those served with notice of the hearing, I'd ask that Your Honor take administrative notice of the fact that the Attorney General of the Commonwealth of Kentucky was served with

1 DIRECT EXAMINATION BY MR. McMAHON:

2 Q. Are you ready, Mr. Tolson?

3 A. Yes, sir.

4 Q. Mr. Tolson, are you employed?

5 A. Yes.

6 Q. I'm just going to ask you, Mr. Tolson,  
7 if you don't understand or cannot hear a question that I ask,

1  
2  
3  
4  
5  
6  
7  
8

Q. Can you describe the business of the  
Kentucky Association?

A. The Kentucky Association is a tariff  
publishing agent.

Q. And does it publish tariffs for motor  
carriers here in Kentucky?

A. Yes.

Q. For what type of business do those





1 marked as Exhibit AX1. And, by the way, AX is what we are  
2 using. It stands for Association Exhibit 1. I show you what  
3 has been marked as Exhibit AX1 and ask if you can tell me  
4 what it is?

5 (EXHIBIT AX1)

6 A. This is a letter of justification  
7 directed to the Kentucky Transportation Cabinet.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]





1 | them in March of 2004.

2 | Q. And what is Victory Packaging?

3 | A. It's a corrugated distributor in  
4 | Louisville, Kentucky whom we buy our boxes from.

5 | Q. And for what purpose do you buy boxes?  
[REDACTED]

1 A. To it states Our Valued Customers.

2 Q. And what does it show?

3 A. It shows justification for a rate

4 increase that they have notified their customers of

1  
2  
3  
4  
5  
6  
7  
8  
9

MR. McMAHON: Could you answer the  
Judge's question?

A. December 13, 2004.

Q. I will show you what has been marked as  
Exhibit AX8 and ask if you can tell me what that is?

(EXHIBIT AX8)

A. This is a copy of a web page from the  
American Moving and Storage Association.

Q. What is the American Moving and Storage



1

published?

2

A

By the Surface Transportation Board T



1  
2  
3  
4  
5  
6

Q. I show you what has been marked as Exhibit AX11 and ask if you can tell me what it is?

(EXHIBIT AX11)

A. This is a March 30, 2005 letter from AEGIS Insurance Services.

Q. Can you tell me what it shows?

This shows that the average property

1 to save time -- I'm going to show you Exhibits AX13, AX14 and  
2 AX15 and I'm going to ask if you can tell me what they are  
3 and what they show?

4 (EXHIBITS AX13, AX14 AND AX15)

5 MR. AMATO: Any objection, Ms. Fugazzi?

MS. FUGAZZI: No, I have no objection.





1

Q. I will show you what has been marked as

2 Exhibit AX18 and ask if you can tell me what that is?

To show you what has been marked as

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Is this something that you did in

- 1 intrastate being 6,000 pounds moving 70 miles, local moving,
- 2 what their rate per hour was and then what their cost for

1. news based on those numbers?

1

A. Yes.

2

Q. What was that?

3

A. Excluding Indiana's rate per hour,

4

those other four states which charge by the box, the average

rate is \$15.04

1 contained in a supplement to Tariff #5 that's been filed and



And have these files been and are they

(b)

1 CROSS EXAMINATION BY MS. FUGAZZI:

2 Q. What is the current percent of the fuel  
3 surcharges on interstate moves?

4 A. Twelve percent.

5 Q. And do you know what the current  
6 percent of insurance surcharges on interstate moves are?

7 A. Four percent.

8 Q. Do you have a copy of the exhibits up  
9 there?

10 A. Yes.

11 Q. If I could refer you to Exhibit No. 11.  
12 This letter refers to some insurance increases that are to be  
13 effective May 1 of this year. Have you received any billings  
14 showing that this will be the anticipated increase---

1

Q. What type of unit and/or truck was this

2

fuel going into?

3

A. These were designated as local pieces

and these pieces range anywhere from half ton

1 questions.

2 MR. McMAHON: Nothing, Your Honor.

3 MR. AMATO: All right. Let's go off  
4 the record and talk about the possibility of whether either  
5 party or both desire to file any briefs in this matter.

CONFIDENTIAL

1 minute, Your Honor.

2

MR. AMATO: Yes, sir.

3

(OFF THE RECORD)

4

MR. McMAHON: Your Honor, if I may. I

5

just wanted to note that apparently the Cabinet is not

1

The witness, WILLIAM DeBORD, after having been

2

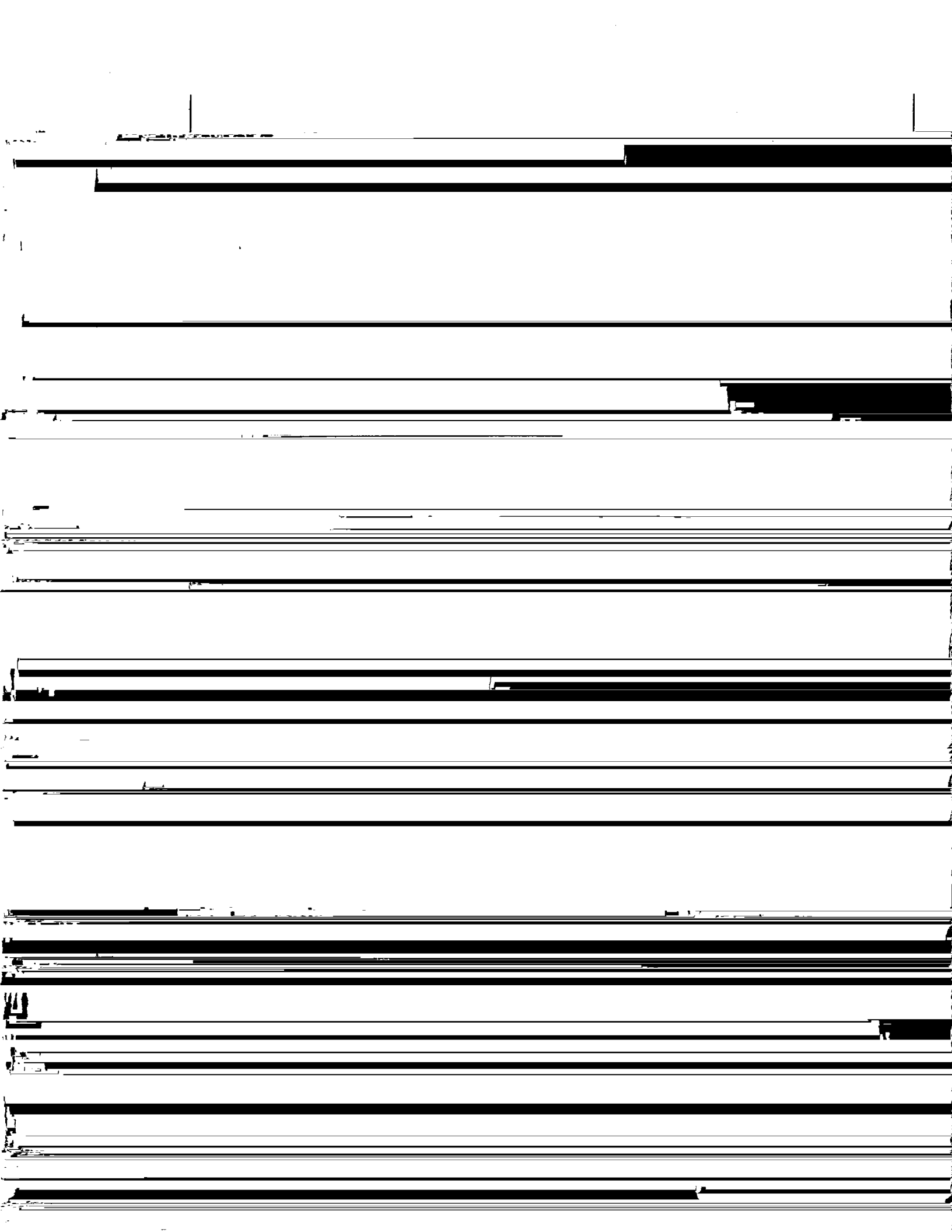
solely sworn was examined and testified as follows

1 | you reviewed the exhibits, most of which were pretrial  
2 | exhibits. I think. except for one today? Have you had the

1 the mileage, the weights, and we applied Kentucky rates to  
2 that and also Indiana, West Virginia, I think all the  
3 surrounding states except Tennessee. Although this  
4 particular document does not show percentages. I would say



1 an error, they will--once the rate schedule goes into effect  
2 and the movers start using them, then, historically, some of  
3 those have surfaced. But I have reviewed the numbers in the  
4 report and have found them to be accurate.



STATE OF KENTUCKY

COUNTY OF FRANKLIN

I, Terri H. Pelosi, a notary public in and for  
the state and county aforesaid, do hereby certify that the

December 28, 2004

Mr. William Debord  
Kentucky Transportation Cabinet  
Division of Motor Carriers  
202 West Street

Frankfort, KY 40601

RE: Special Supplement No. 86 of KYDVR #5

Dear Mr. Debord:

The Kentucky Household Goods Carriers Association, Inc. hereby  
~~is~~ ~~the~~ ~~attached~~ ~~Special~~ ~~Supplement~~

This letter of justification, along with required copies of  
[redacted] is submitted to the Division of Motor Carriers

We appreciate your interest and consideration of these requests  
and await your response.

Sincerely,

*A. F. Mirus*  
A. F. Mirus, Chairman

Box 27704

Louisville, KY 40202-0204

(502)429-4957

FAX (502)425-5799

# INSTRUCTION SHEET

SPECIAL SUPPLEMENT #86

TARIFF KYDVR #5

ISSUE DATE: December 28, 2004

EFFECTIVE DATE: January 28, 2005

13<sup>th</sup> Rev. Page 3

14<sup>th</sup> Rev. Page 3

Delete references to:  
Commercial Moving – 187  
Fuel Surcharge – 185

INDEX	SECTION NO.	RULE NO.	ITEM NO.	PAGE NO.
-------	-------------	----------	----------	----------

ADDITIONAL SERVICES

Additional Transportation Charges	I		160	50
Auxiliary Services	I		125	45
Other Additional Charges	I		100	51

Decomposed for Electronic Use

[Redacted line]

[Redacted line]



**Reserved for Future Use**



---

**SECTION I - continued**

---

**Reserved for Future Use**

SECTION II-A

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 3, 14 and 21), and include  
loading and unloading, and the actual movement or transportation of property from origin to destination, but do not

[The table content is almost entirely obscured by heavy black redaction bars.]

SECTION II-B

Price per is dollars and cents per 100 pounds applied to the actual weight (subject to Rules 2, 44 and 94) and include

Reference is made to the 400 bonds issued to the State of Kentucky on July 1, 1931, and to the 1931 Act, Chapter 111, which authorized the issue of such bonds.

SECTION II-D

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 3, 14 and 21), and include loading and unloading, and the actual movement or transportation of property from origin to destination, but do not include Additional Services and Charges shown in Section I. (Break Point indicates weight at which a lower charge

SECTION II-E

Enter rate in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 2, 14 and 21) and include

insurance and unloading, and the actual movement or transportation of property from origin to destination, but do not



SECTION II-F

\_\_\_\_\_ Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 2, 14 and 24) and include:

\_\_\_\_\_ loading and unloading and the actual movement or transportation of property from origin to destination but do not

SECTION II-G

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 3, 14 and 21), and include loading and unloading, and the actual movement or transportation of property from origin to destination, but do not

include Additional Services and Charges shown in Section I. (Break Point indicates weight at which a lower charge

develops by use of lowest weight and applicable rate in next highest weight bracket.)

MILES	500 TO 999	BREAK POINT	1,000 TO 1,999	BREAK POINT	2,000 TO 3,999	BREAK POINT	4,000 TO 7,999	BREAK POINT	8,000 TO 11,999	BREAK POINT	12,000 & OVER
1-15	52.25	59.1	56.15	45.67	39.55	36.26	35.05	5.700	49.00	44.044	47.05

SECTION VI-A

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 3, 14 and 21), and include loading and unloading, and the actual movement or transportation of property from origin to destination, but do not

include additional services and charges shown in Section I. (Bracket Point indicates weight at which a lower charge

SECTION VI-B

... is dollar amounts per 100 pounds applied to the actual weight (subject to Rules 2, 14 and 24) and include

... and the actual movement or transportation of property from origin to destination, but do not

SECTION VI-E

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Rules 3, 14 and 21), and include loading and unloading, and the actual movement or transportation of property from origin to destination, but do not include Additional Services and Charges shown in Section I. (Break Point indicates weight at which a lower charge

charges by use of lowest weight and applicable rate in next highest weight bracket.)

	500		1,000		2,000		4,000		8,000		12,000
--	-----	--	-------	--	-------	--	-------	--	-------	--	--------

SECTION VLE

SECTION VI-G

SECTION VI-D

... 100 pounds to the actual weight (subject to Rules 2, 44 and 94) and include

loading and unloading, and the actual movement or transportation of property from origin to destination, but do not  
include Additional Charges and Charges for Break Point indicated weight at which a lower charge



SECTION VI-C

Rates are in dollars and cents per 100 pounds applied to the actual weight (subject to Duty 0.44 1913 11.1)

CORRIGATED BOX PRICES - PACKING MATERIAL

ACCORDING TO THE ATTACHED DOCUMENTS FROM VICTORY  
PACKAGING, INC. IN LOUISVILLE, WE HAVE EXPERIENCED A 14%

PACKING AND PREPARING LOCAL AND INTRASTATE SHIPMENTS.

VICTORY IS THE LARGEST SUPPLIER OF BOXES FOR MOVERS IN  
KENTUCKY.







July 7, 2004

To Our Valued Customers:

On Monday, June 21, 2004, Pulp & Paper Week published a \$35/ton increase for 42#  
24# chemical medium. This increase



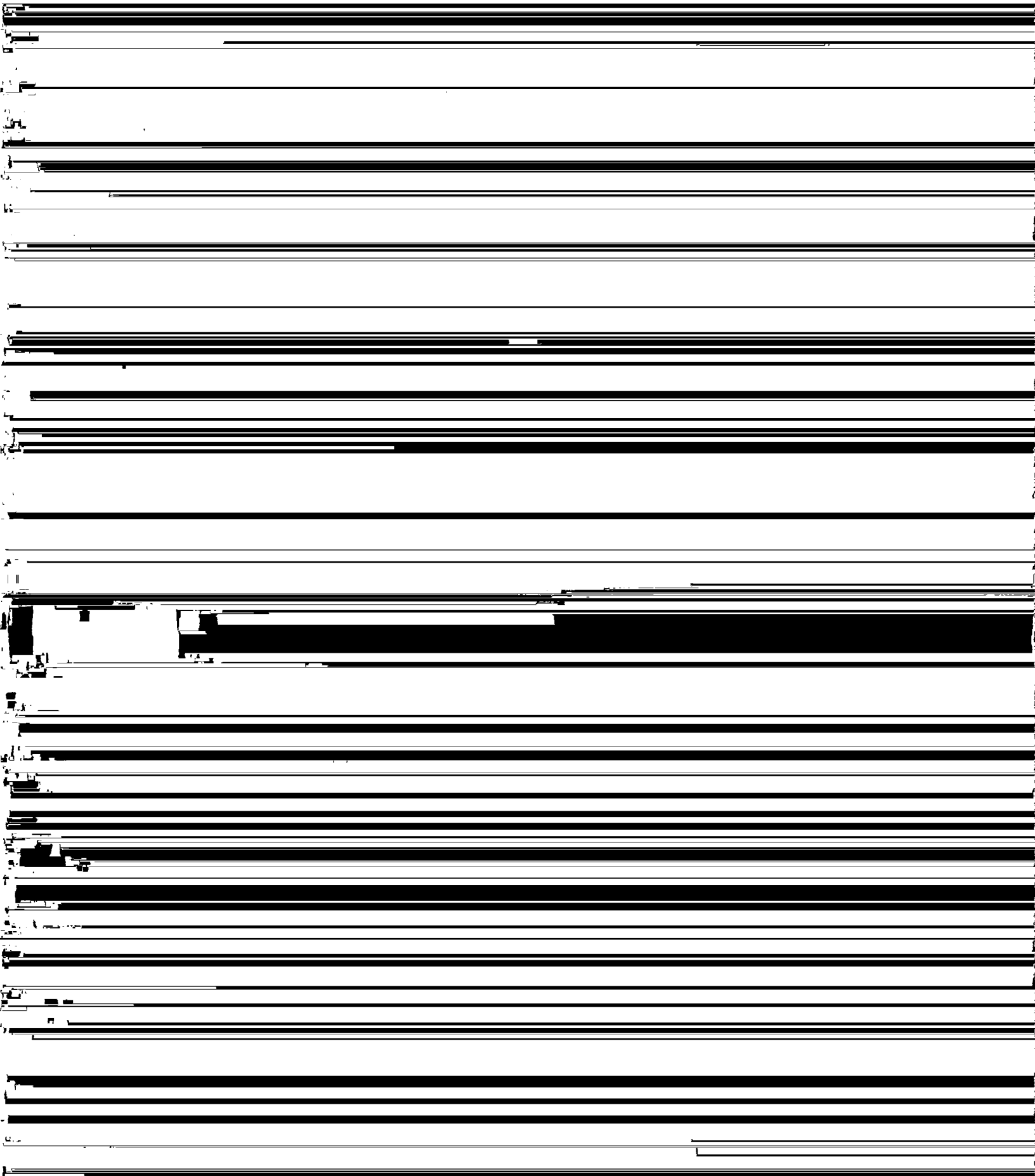
American Moving and



04-01-02	129.5 ¢	04-15-02	0.0%
03-04-02	117.3 ¢	03-15-02	0.0%
02-04-02	114.4 ¢	02-15-02	0.0%
01-07-02	116.8 ¢	01-15-02	0.0%
12-03-01	119.4 ¢	12-15-01	0.0%
11-01-01	129.1 ¢	11-15-01	0.0%
10-01-01	139.0 ¢	10-15-01	1.0%
09-04-01	148.8 ¢	09-15-01	2.0%
08-06-01	134.5 ¢	08-15-01	1.0%
07-02-01	140.7 ¢	07-15-01	2.0%
06-01-01	151.4 ¢	06-15-01	3.0%

When the DOE Fuel Price Per Gallon The MTMC Fuel Cost Adjustment Factor









Mr. Dennis Tolson  
Vincent Fister, Inc.  
P.O. Box 5063

RE: Property and Casualty Rate Increases - Renewal

Dear Dennis:

In pursuance of the preceding annual renewal agreement for Vincent Fister, Inc. effective 1/1/99.

COST FOR NEW FREIGHTLINER TRACTOR FOR VINCENT FISTER, INC.

2003 MODEL CT 120

890 060 11

2005 MODEL CT 120

898 885 00 (+63 717 52)

03/24/2025 15:53

FREIGHTLINER OF KNOXVILLE

865 824 2420

P.03/03

03/24/2025 15:53

*Freightliner of Knoxville, Inc.*

Finance Department Use Only

P.O. Box 6479  
Knoxville TN 37914-0479

FREIGHTLINER OF KNOXVILLE, INC. ("Seller")

P.O. BOX 36010

KNOXVILLE, TN 37930-6010

TEL: (606) 412-2224

MS8404

John Gisham  
Salesperson

THIS AGREEMENT WHEN SIGNED BY PURCHASER AND A MANAGER OR OFFICER OF SELLER  
CONSTITUTES A BINDING CONTRACT

NAME:	<u>Melbourne Leasing Co</u>	DATE:	<u>3/16/04</u>
ADDRESS:	<u>2305 Palumbo Ave</u>	PHONE:	<u>858-335-0854</u>
		STATE:	<u>KY</u> ZIP: <u>40302</u>

FUEL COST PER GALLON FOR VINCENT FISTER, INC. SINCE 6/15/04 SIX PERCENT FUEL SURCHARGE IN KYDVR 5.

Avg. Cost per gallon -	Diesel	Unleaded
JULY '04	\$1.716	\$1.820

SEPT. '04	\$1.859	\$1.819
-----------	---------	---------

OCT. '04	\$2.119	\$1.969
----------	---------	---------

DEC. 04	\$2.074	\$1.604
---------	---------	---------

JAN. '05	\$2.106	\$1.639
----------	---------	---------

FEB. '05	\$2.02	\$1.834
----------	--------	---------



F/C  
TRUCK

863  
69973

PN 67  
399 RICHMOND RD  
EXINGTON KY

2767234-01  
FASTRACK #1  
800 C-VILLE BYPASS  
CAMBELLSVILLE KY

MAPLELEAF SP  
3100 MAPLELEAF  
LEXINGTON, KY

01/27/85 06:26  
STN # 47909347

BP OIL  
7987

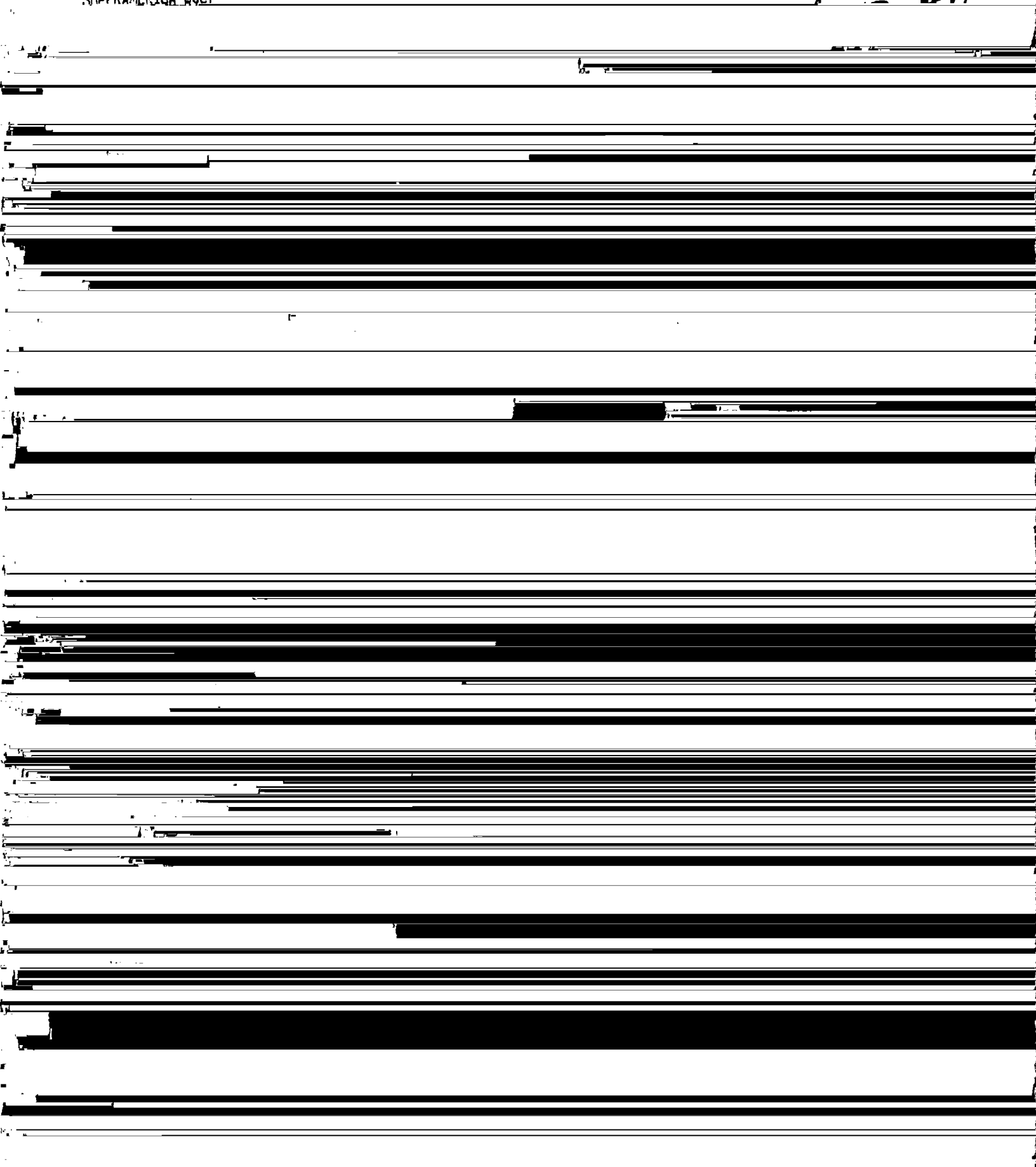
A-17-5

THANK YOU  
VISIT US AT  
WWW.SPEEDWAY.COM

SUPRAMERICA 9397

A-17-16

1 - an



A-17-9

Thanks for shopping the  
convenience  
of Speedway.

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VISIT US AT

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1281 NEW CIRCLE RD

456044  
#843

233318  
#843

853  
146720

499486

836

499318

PA 67  
393 RICHMOND RD  
EXINGTON KY

734 05125

Local Job

F/C truck

8AS

881036

TOBACCO ROAD 172  
3100 MAPLELEAF  
LEXINGTON, KY

DOUBLE KWIK  
NICHOLASVILLE, KY  
859-887-5556

TOBACCO ROAD 172  
3100 MAPLELEAF  
LEXINGTON, KY

89/23/84 14:52  
STN # 47939947  
RD 011

89/23/84 14:52  
STN # 47939947  
RD 011

BP OIL  
7013

INV # 0947110813  
REF # 4000025866  
CREDIT 547942  
PUMPN06 DIESEL  
GALLONS 17.156  
@ \$1.749/GAL \$30.01  
FUEL

TL/NOTAX \$30.01  
TAX PD \$0.00  
TOTAL \$30.01

Descr. qty amount  
<CUSTOMER COPY>  
DIES CR #13 47.4926 78.31  
@ 1.649/ G

Sub Total 78.31  
Tax 0.00  
TOTAL 78.31  
CREDIT \$ 78.31

INV # 1451480010  
REF # 4000044013  
CREDIT 116145  
PUMPN06 REGUNL  
GALLONS 11.207  
@ \$1.829/GAL \$20.50  
FUEL

TL/NOTAX \$20.50  
TAX PD \$0.00  
TOTAL \$20.50





FL

853

30907

#843

871

871

179655

DOUBLE KWIK  
NICHOLASVILLE, KY

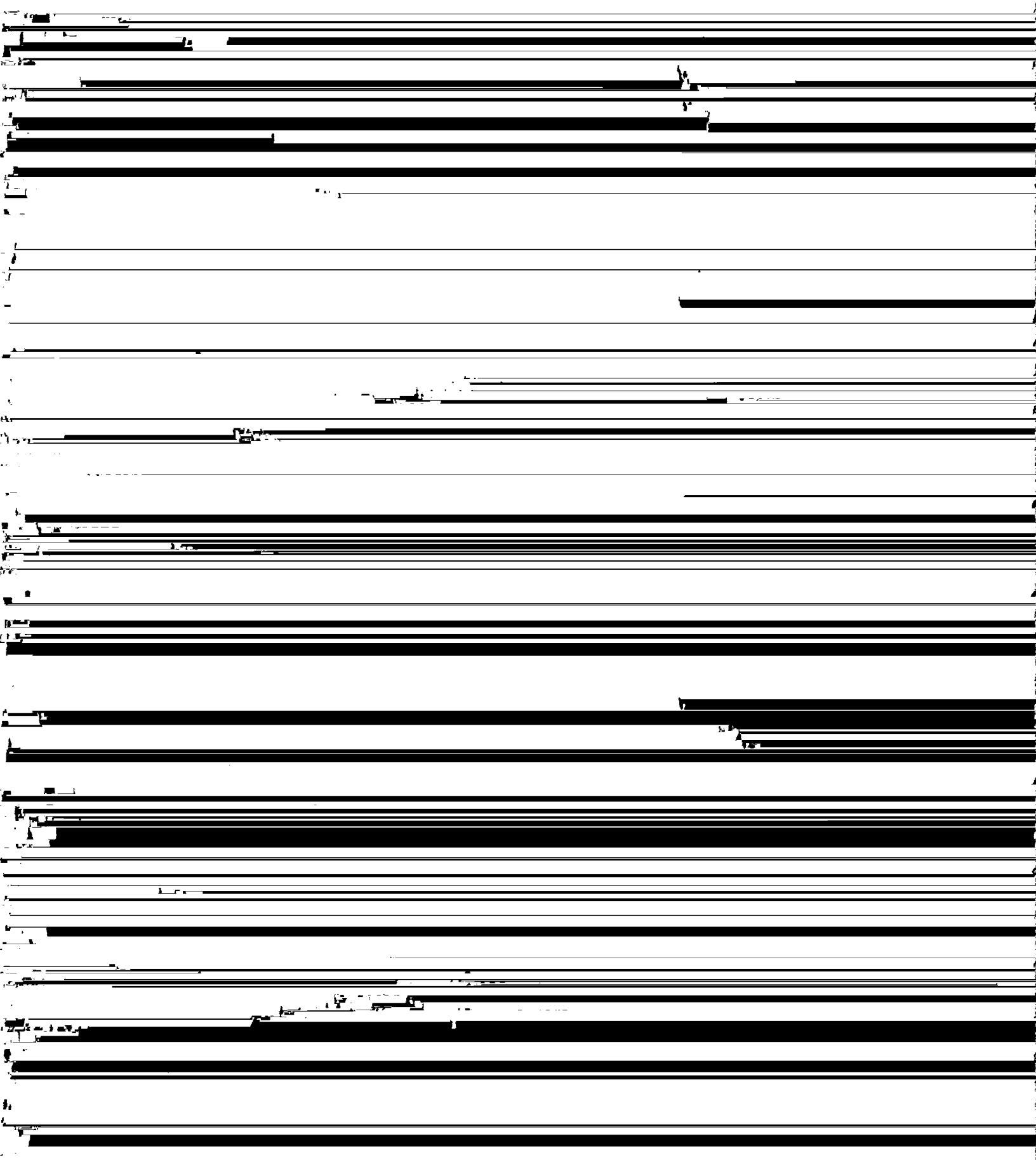
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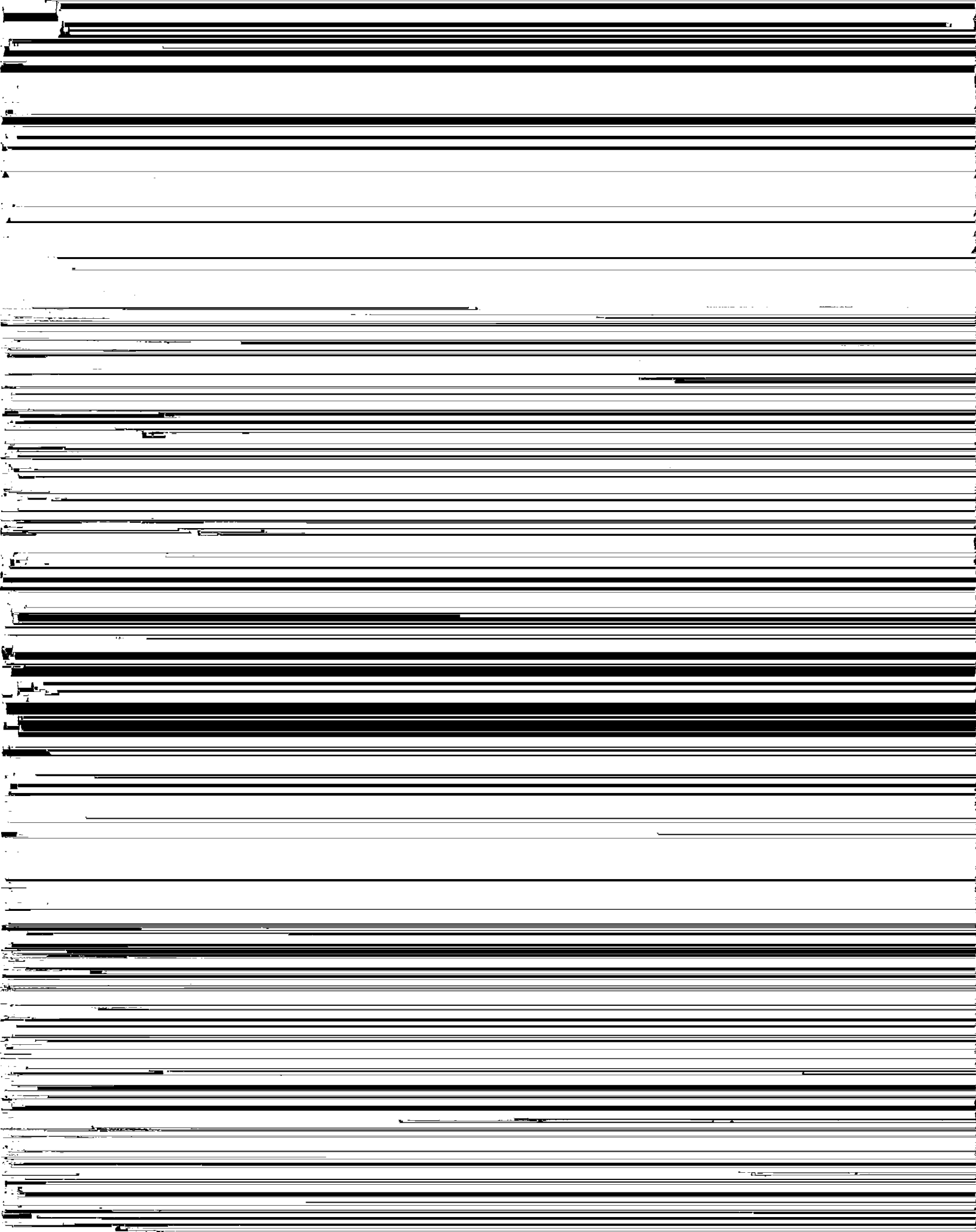
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**DRIVER SHORTAGE CAUSING COMPANIES TO ENHANCE PAY, BENEFITS**

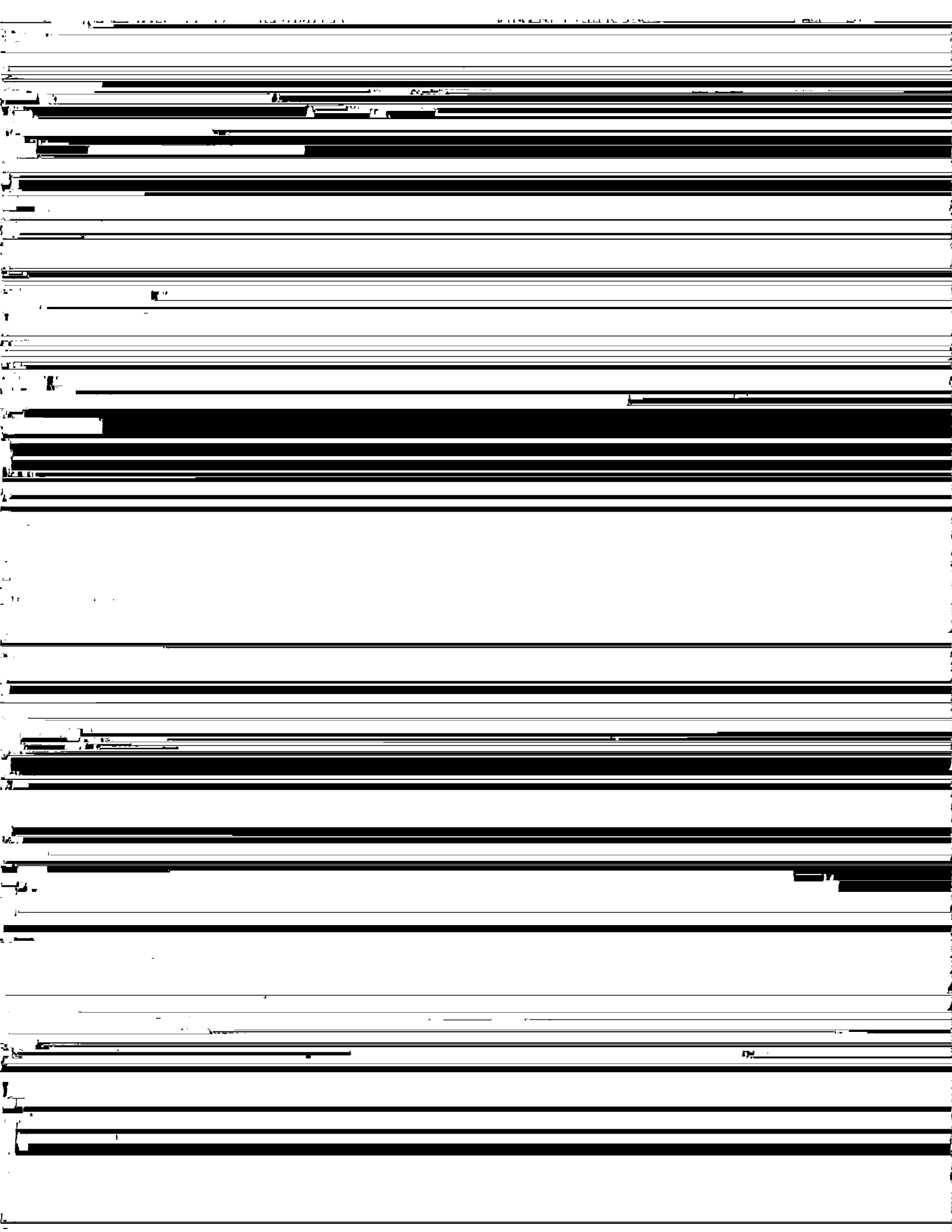
According to information obtained from the ATA, over-the-road truck drivers can expect to start at \$35,000, with 401K matches and \$5,000 signing



kaiserEDU.org

of small employers (three to 199 workers) offering health insurance over this period. In 2004, 63% of all small firms offer health benefits to their workers, down from 68% in 2001.

approaching the gross earnings of a full-time minimum wage worker," said Drew Altman...



***AMSA TODAY***

March 18, 2005





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KHGCA KENTUCKY HOUSEHOLD GOODS CARRIERS ASSOCIATION INC

MEMO

From: Dennis Tolson, President  
KHGCA

To: Mr. James McMahon, Attorney  
Mr. Paul M... KHGCA Traffic Committee Chairman

Re: Revolving States Rate Commission for Interstate and Local Moving Services





proceeding. The Attorney General received notice of the hearing by Certified mail and acknowledged receiving such notice in writing. The Hearing Officer took Administrative Notice of this fact. (Hearing Tr. p. 13)

The Transcript of Proceedings held on April 11, 2005 is incorporated herein by reference and made a part hereof in all respects. The descriptions of Exhibits and explanations of their relevance to the rate relief sought to the subject proposed Tariff Supplement as adduced during testimony was unchallenged and will not be repeated here.

**Additional Legal Matters**

At this time Respondent invites the attention of the Hearing Officer to request

[REDACTED]

before the full Federal Trade Commission a Motion seeking a stay of its final appeal proceedings pending the outcome of the *within* proceeding.

Accordingly, the Kentucky Association respectfully offers **for information purposes only**, certain of the points which have been urged by F.T.C.attorneys with regard to intrastate household goods rate proceedings in Kentucky, based upon **their** understanding of the subject and the applicable federal law. For ease of reference, the attached Appendix reproduces certain portions of Complaint Counsel's Memorandum in Opposition to the Kentucky Association's Motion for Summary Decision made in the F.T.C. case. We believe these representative portions to be sufficient for the purpose at

hand. The entire document is available for submission to the Cabinet and Council of

any other document in the F.T.C. proceeding. The document in its entirety is also available at [www.ftc.gov](http://www.ftc.gov).

### **Conclusion**

Wherefore, Respondent Kentucky Household Goods Carriers Association, Inc. respectfully requests that Special Supplement No. 86 of KYDVR#5 be permitted to

Dated: New York, NY



**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**  
(Selected portions of Brief of Complaint Counsel filed in  
In re Kentucky Household Goods Carriers Association, Inc.)  
(Docket No. 9309; Initial decision filed 6/25/04)

**“1. The KTC Commits Very Limited Resources to Tariff  
Issues**

~~The person at the KTC responsible for interstate commerce matters is William~~

**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**

(Selected portions of Brief of Complaint Council filed in

(Docket No. 9309; Initial decision filed 6/25/04)

decided that due to the amount of information which maybe required by D.M.T., it would be feasible and probably more economical to call in an outside rates firm . . .” The expert under consideration had many years experience at the Interstate Commerce Commission, where he supervised “between 30 and 40 employees whose duties were to develop cost formulae for the determination of rail motor carrier . . . pay costs to process

**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**  
(Selected portions of Brief of Complaint Counsel filed in

(Docket No. 9309; Initial decision filed 6/25/04)

**4. The KTC Does Not Hold Hearings**

**Appendix to Brief Submitted on Behalf of  
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(Selected portions of Brief of Complaint Counsel filed in  
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(Docket No. 9309; Initial decision filed 6/25/04)

(<sup>1</sup> A general rate increase will involve adjusting upward hundreds of prices  
contained in the tariff's rate charts. Mr. Debord merely books a few of the numbers for

For instance, in December 2000, Respondent sought an 8% rate increase. The  
only written justification for that increase was a cover letter. Mr. Debord characterized

that letter as an "extra courtesy" and said that tariff filings were not normally  
accompanied by such a justification letter. Mr. Debord also could not recall any oral  
statements made to justify this rate increase. Nevertheless, the rate increase was allowed

**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**

*(Selected portions of Brief of Counsel, et al., et al.)*

In re Kentucky Household Goods Carriers Association, Inc.

whether these rates complied with the statutory requirement that rates not be “excessive.”  
CCS ¶ 59. The state also does not have any standard in place to evaluate rates charged  
by non-member firms. A moving company that is not a member of the Kentucky

**Appendix to Brief Submitted on Behalf of**

**Kentucky Household Goods Carriers Association, Inc.**

(Selected portions of Brief of Complaint Counsel filed in  
In re Kentucky Household Goods Carriers Association, Inc.)

~~Redacted text~~

Written analysis by the state of its decision-making process has a direct bearing  
on the active supervision requirement. Courts have looked positively upon efforts to

~~Redacted text~~

~~Redacted text~~

**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**

(Docket No. 0200, LHM 1-1-11, E-16(0510)...

**Appendix to Brief Submitted on Behalf of  
Kentucky Household Goods Carriers Association, Inc.**  
(Selected portions of Brief of Complaint Counsel filed in  
In re Kentucky Household Goods Carriers Association, Inc.)

reasonable rate for moving services. KY REV STAT ANN § 88.091.500, .091.600.

281.695. Courts have identified several analytical tools that states have used to review the reasonableness of rates. In *Tiger*, the Supreme Court noted that “an affidavit”







*Rec'd 6/16/05  
by [signature]  
6/14/05*

**TRANSPORTATION CABINET  
DEPARTMENT OF VEHICLE REGULATION  
FRANKFORT, KENTUCKY**

**KENTUCKY HOUSEHOLD GOODS  
CARRIER ASSOCIATION, INC.  
P.O. BOX 22204  
LOUISVILLE, KENTUCKY 40202-0204**

**DOCKET NO. 05-022**

**Closing Argument  
Kentucky Transportation Cabinet**

On April 11, 2005, a hearing was held relating to interstate Kentucky motor vehicle

proposed in \_\_\_\_\_ Special Supplement #86 as published by the Kentucky Household Goods Carrier Association, Inc. (KHGCA). The proposed change sought would eliminate the six percent (6%) fuel surcharge contained in Item 185 and further eliminate the four percent (4%) insurance surcharge set forth in Item 188 of KYDVR Tariff #5. In lieu of these deletions, the general rates would be increased by eleven percent (11%) \_\_\_\_\_



degree a slight decrease in insurance costs for certain companies that have maintained a relative stable safety record without major claims. It is general knowledge that present insurance costs are a major factor in the operations of trucking companies. There is no evidence that the costs of cargo and liability insurance is less than that covered by the

~~temporary four percent (4%) insurance exchange authorized by Public Law 100-505~~

Tariff #5 The Cabinet has and continues to monitor the costs of Class 1

The Division of Motor Carriers had performed its own review and comparison of

Kentucky's intrastate household goods moving rates. It was determined that the rates were

be submitted to the court and would be considered as additional evidence in this

proceeding. Evidence was presented by KUGCA relating to the Kentucky intrastate

Indiana household goods carriers' joint tariff and many filed the same rates that were on file. The rate structure and tariff format is the same as Kentucky. It appears that rates are

common. Based upon the review conducted by the KY Board of Public Utilities, it is the

CERTIFICATE OF SERVICE

This will certify that the foregoing was served by mailing a true and correct copy thereof by U.S. mail, postage prepaid, to the following on this the 13<sup>th</sup> day of June, 2005:

[REDACTED]

McMahon & Kelly, LLP  
New York, NY 10165

[REDACTED]

Liebman & Liebman  
403 West Main Street  
Frankfort, Kentucky 40601

ORIGINAL BY HAND DELIVERY UPON THE FOLLOWING:

Hon. Louis Amato  
Transportation Cabinet  
200 Mero Street  
Frankfort, KY

*Dana C. Flagg*

[REDACTED]



CERTIFICATE OF SERVICE

This is to certify that on July \_\_\_, 2005 I caused a copy of the attached Respondent's Motion for Stay of Proceedings and the corresponding Proposed Order to be served upon the following persons by hand delivery:

The Commissioners

Via Office of the Secretary; Room H-159  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dana Abrahamsen, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580

Assistant Director  
Bureau of Competition  
Federal Trade Commission