

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

GLOBAL HUB LOGISTICS, et al.,

Plaintiffs,

VS.

TAMERLANE GLOBAL SERVICES, et al.,

Defendants.

Civil No. 12-cv-1350

October 22, 2013

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, ESQ.

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

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
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1 (Thereupon, the following was heard in open
2 court at 9:33 a.m.)

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

5 THE COURT: Good morning, Mr. Roshan.

6 Good morning, Mr. O'Brien.

7 MR. ROSHAN: Good morning.

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

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

11 MS. FIERST: Good morning, Your Honor.

12 Thank you, Your Honor.

13 Your Honor, in light of the comments you
14 made at the end of the day yesterday regarding your
15 position on our anticipated motion, I think we may defer
16 until the close of all evidence on the Rule 50 motion,
17 Your Honor.

18 THE COURT: Okay.

19 MS. FIERST: However, we do have two
20 additional items to address before the jury comes in
21 this morning. One being --

22 THE COURT: I'm listening.

23 MS. FIERST: One being the objections to the
24 Timpson deposition.

25 Mr. Timpson is the first witness that

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

4 THE COURT: All right.

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

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

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

20 Our objection is that this is cumulative
21 based on previous testimony. And frankly, Mr. O'Brien
22 may touch on it today, so I didn't think we needed seven
23 pages to get that point across to the jury.

24 THE COURT: Who is Mr. Timpson?

25 MS. FIERST: Mr. Timpson is a Tamerlane

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

5 THE COURT: Okay.

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

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

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

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

25 So there's no dispute about the long and

1 tedious process for engaging -- getting trucks through
2 the soak yard, getting them loaded up by the military
3 and getting them out.

4 THE COURT: All right.

5 The objection's overruled. I think that one
6 of the issues here is the quality of performance by
7 Global Hub. And I think that there is indication in the
8 e-mail from Mr. O'Brien that he was unhappy with the
9 quality of the performance and with the delayed
10 performance.

11 And so I think to the extent this witness
12 has information about that, it's relevant. Objection is
13 overruled.

14 What's the next one?

15 MS. FIERST: Craig, do you have your
16 objections handy?

17 MR. FRANCO: Yeah, I do.

18 MS. FIERST: The next objection that I have
19 is on page 53, but I'm not sure if you have an earlier
20 objection.

21 MR. FRANCO: You want to go through yours
22 and --

23 MS. FIERST: That's fine. I can do that.
24 Your Honor, plaintiff designated page 53,
25 line four through page 54, line eight.

1 In this excerpt, Mr. Timpson is shown a
2 document that is an e-mail from Jim O'Brien to Shafiq
3 Mafton. Mr. Timpson is copied on it, but the
4 conversation he is being asked about is between Mr.
5 O'Brien and Mr. Mafton.

6 The first issue is that of Mr. Silverman's
7 question. He's plaintiff's counsel at the time. His
8 question mischaracterized what the document said and
9 there is an objection in the record to that.

10 And then, Mr. Timpson's response
11 appropriately is this isn't my e-mail. This is somebody
12 else's thought. And then he's asked to speculate
13 whether he would agree with that. And his response is
14 that he couldn't answer.

15 So it's both not relevant because it's not
16 probative of anything. It's not his words and frankly,
17 he's asked whether he agrees with somebody else. So
18 he's asked to speculate on that in addition to it
19 mischaracterizing the document that's referred to here.

20 MR. FRANCO: The relevant portion of this,
21 and unfortunately there's lot of wind up to get there,
22 is on page 54. It's lines five through eight where he's
23 saying if you agree -- he says, "I couldn't tell", but
24 then he said, "I mean, Afghanistan is a hard place to
25 work. Put it that way".

1 So that's the relevant portion. I -- is
2 having somebody from Tamerlane acknowledge that it is
3 difficult to work over there and there are challenges.
4 And that's -- I don't know if there's a way to trim that
5 down, but it relates to, you know --

6 THE COURT: That's the only sentence you
7 want?

8 MR. FRANCO: It's kind of -- to get it in
9 context, I believe, that you needed the beginning at
10 page 53, and that -- to get to what I believe is the
11 relevant portion. Otherwise, it doesn't make sense what
12 he's agreeing to or saying in regards to.

13 THE COURT: All right. I'm going to sustain
14 the objection.

15 What's the next one?

16 MS. FIERST: The next objection, Your Honor,
17 is on page 85, and this is our last objection.

18 It begins with line 14. On 85, line 14,
19 Mr. -- plaintiff's counsel asked Mr. Timpson about an
20 exhibit. And what Mr. Timpson explains there if you
21 read is that this is a document that he made up. He
22 calls it a hand receipt. Then he explains that he
23 couldn't get down there.

24 So, what he's talking about here is that he
25 prepared a document that could be sent to Chaman, a city

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

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

7 But Mr. Timpson here testifies that he was
8 not there. So to the extent they want that he prepared
9 a blank document, there -- I don't think there's any
10 issue with that.

11 But to the extent that they want to use this
12 to get in what otherwise would be hearsay from another
13 company who conducted activities outside Mr. Timpson's
14 presence, it's not authenticated and it's hearsay.

15 MR. FRANCO: The document is designated as
16 one of our exhibits, Your Honor, and perhaps it's easier
17 to look at it to understand.

18 But the point of this is, he's the guy for
19 Tamerlane on the ground in Afghanistan, and there is a
20 transfer of cargo. And this is the receipt that shows
21 that the cargo was transferred to Tamerlane, accepted as
22 their -- they accepted this as the receipt to show that
23 the cargo was transferred from one company to the other
24 during the transition after the party's relationship
25 broke down.

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

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

9 MS. FIERST: Correct.

10 MR. FRANCO: That's --

11 MS. FIERST: Your Honor, Mr. Franco can ask
12 Mr. O'Brien about the transfer of cargo. It's not like
13 he's not going to have an opportunity to ask those
14 questions. Getting it through Mr. Timpson when
15 Mr. Timpson says he wasn't there, he was one of
16 Tamerlane's people in Afghanistan, but his testimony
17 makes clear that he was not present in Chaman for the
18 completion of this process.

19 THE COURT: What I -- was the receipt
20 prepared by him?

21 MR. FRANCO: It's P28, Your Honor, if you'd
22 like to look at the exhibit that Mr. Timpson -- that's
23 Exhibit 10.

24 THE COURT: Plaintiff's 28?

25 MR. FRANCO: Yes, Your Honor.

1 And this is -- I don't see --

2 THE COURT: This is an e-mail.

3 MR. FRANCO: And then there is -- attached
4 is the receipt, he's on the e-mail. He's one of the
5 recipients of this e-mail. And he says, "it's a hand
6 receipt I made up for the transfer the units to
7 different companies".

8 He doesn't say it's a blank receipt. He
9 said, I made up and they use this in Chaman because I
10 couldn't get down there.

11 So what happened was, they, the company took
12 over down there. GHJ come in, inventoried the stuff
13 they got. They signed off saying they handed it over.
14 It's a receipt he says I made up.

15 MS. FIERST: Your Honor, the issue that we
16 have pertains to, if you look at the last page of this
17 Exhibit 23172. There's -- again, there's no objection
18 that Mr. Timpson put this spreadsheet together.

19 But what appears on the last page of this
20 document is a company's stamp and a signature that's not
21 Mr. Timpson's confirming that the trucks and the cargo
22 were received safe and soundly. Mr. Timpson makes clear
23 he wasn't present for that.

24 So while he puts together this spreadsheet
25 that anticipated this transfer, he can't testify and he

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

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

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

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

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

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

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

25 Similarly, the receipt is signed on page

1 23172 by someone other than Mr. Timpson whose testimony
2 on page 85 makes clear I wasn't there when this
3 spreadsheet was filled out and signed. I wasn't in
4 Chaman.

5 If Mr. Franco wants to ask Mr. O'Brien about
6 the transfer of cargo and whether they got the cargo,
7 he's welcome to ask him that, but --

8 THE COURT: What he's going to say if he's
9 asked that question?

10 MS. FIERST: If he's asked about the
11 transfer of cargo?

12 THE COURT: Yes.

13 MS. FIERST: I think he's probably going to
14 say the cargo was transferred. They had a new company
15 who completed the -- completed the missions, completed
16 the movements that Global stop performing in.

17 And if there are questions about whether
18 there was damage to the cargo, he may testify that they
19 were advised that there had been damage.

20 But Mr. Franco will cross-examine him and
21 say, just like he introduced in the deposition testimony
22 yesterday, you can't prove that it was GHL as opposed to
23 someone else along the chain who did that, can you?
24 Really, the damage to --

25 THE COURT: I want to focus on one thing.

1 MS. FIERST: Yes.

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

4 MS. FIERST: Yes.

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

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

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

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

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

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

25 THE COURT: No, my question is very precise.

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

4 MS. FIERST: The only reason I'm hesitating,
5 Your Honor, is because there is a signature on the
6 bottom and then there's this Wahid and Company stamped
7 below it. If I could have --

8 THE COURT: It says clearance agent
9 porter --

10 MS. FIERST: Right. So if I could have a
11 moment to confer with my client about the --

12 THE COURT: I want to save us time. If it's
13 not contested and it's an authentic document, it's
14 nothing to fight over. But if it is, then you know what
15 to do.

16 MR. FRANCO: If it's the stamp that's at
17 issue, quite frankly, I don't care about the stamp.

18 MS. FIERST: But the signature is also from
19 your client's agent rather than our client's agent.

20 MR. FRANCO: Well, this is B&Q.

21 MS. FIERST: No, I understand B&Q is a
22 company that our client retained. I'm talking about the
23 Wahid and Company clearance agent. If that's your
24 client's agent --

25 MR. FRANCO: No, it's clearly yours. Read

1 what's above the signature.

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

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

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

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

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

22 MS. FIERST: I'm sorry. Just to be clear,
23 you're saying I can cross-examine Mr. Timpson on it?

24 THE COURT: You can cross-examine Mr.
25 O'Brien about this document. If he says he denies it's

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

4 What's the next exhibit?

5 MR. FRANCO: Is that it?

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

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

10 THE COURT: 41, line 11 through 24.

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

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

21 "Okay, and if they didn't would they learn
22 after because the truck company, the military is not
23 going to pay for trucks they didn't use? Uh-huh,
24 they're not. And so, sometimes we would eat that cost."

25 I don't know what this relates to to our

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

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

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

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

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

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

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

25 He's describing the process by which he

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

4 THE COURT: All right, objection's
5 overruled.

6 What's the next one?

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

11 THE COURT: The objection's overruled.
12 What's the next one?

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

14 THE COURT: Page 71 line 16.

15 MR. FRANCO: Through 74, line 20.

16 THE COURT: Okay, hold on.

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

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

25 MR. FRANCO: That's --

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

3 It's overruled.

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

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

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

22 THE COURT: Where does it say he was fired?

23 MS. FIERST: I'm sorry.

24 THE COURT: Where does it say he was fired?

25 MS. FIERST: At the top of page 91,

1 Mr. Timpson is asked at the bottom of page 90, "And he
2 did let the cargo get picked up by these companies,
3 right?" That's where plaintiff's counsel is trying to
4 rehabilitate the situation and say "But he ultimately
5 cooperated, didn't he?" And Mr. Timpson says "No, he
6 was released from the yard. GHJ pulled him from the
7 yard because of the issues."

8 Meaning, Mr. Khairullah was not able to be
9 coaxed into being helpful, and therefore GHJ said, well,
10 let's just take him out of the yard. And they put
11 somebody else there to handle the situation.

12 So that directly contradicts Mr. Roshan's
13 testimony regarding Mr. Khairullah's initial reluctance
14 but ultimately his helpfulness.

15 THE COURT: All right. I overrule the
16 objection. Overrule the objection.

17 Is that it?

18 MR. FRANCO: That's it.

19 THE COURT: Okay.

20 MS. FIERST: One last issue, Your Honor,
21 that I'd mention is moving in a couple of -- actually
22 four exhibits from Mr. Gharjy's deposition.

23 THE COURT: I'm listening.

24 MS. FIERST: The first is Defendant's
25 Exhibit 360.

1 THE COURT: Received without objection.

2 MR. FRANCO: No objection, Your Honor.

3 MS. FIERST: Defendant's Exhibit 359, there
4 was no objection to that document.

5 THE COURT: Received.

6 MS. FIERST: Defendant's Exhibit 225.

7 MR. FRANCO: One moment.

8 MS. FIERST: Sure.

9 MR. FRANCO: No objection.

10 THE COURT: 225 will be received.

11 MS. FIERST: And the last one is Defendant's
12 Exhibit 222.

13 THE COURT: 222 will be received.

14 MR. FRANCO: If I may, Your Honor.

15 THE COURT: I'm sorry.

16 MR. FRANCO: No objection.

17 THE COURT: Received.

18 MS. FIERST: Thank you, Your Honor.

19 MR. FRANCO: Your Honor, I did want to raise
20 my objection to the reading Mr. Timpson in its entirety.
21 I don't know what foundation we have.

22 Unlike prior witnesses where they're out of
23 the country or they're out of this jurisdiction, I don't
24 know where Mr. Timpson is. He's a Tamerlane employee
25 and I don't -- I don't know what the foundation is that

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

3 THE COURT: All right.

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

6 THE COURT: Yes, I would.

7 MS. FIERST: First of all, Your Honor, Rule
8 32 permits the reading of a deposition under any
9 circumstances, in particularly here where Mr. Timpson is
10 a party.

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

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

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

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

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

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

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

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

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

7 You may be seated.

8 Good morning, ladies and gentlemen.

9 THE JURORS: Good morning.

10 THE COURT: Good morning, Mr. Roshan.

11 Good morning, Mr. O'Brien.

12 Good morning, counsel.

13 ALL COUNSEL: Good morning, Your Honor.

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

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

23 All right, counsel, ready to proceed?

24 MR. FRANCO: Yes, Your Honor.

25 MS. FIERST: Yes, Your Honor.

1 THE COURT: All right. Who is next?

2 MS. FIERST: Your Honor, good morning.

3 THE COURT: Good morning.

4 MS. FIERST: The first witness on behalf of
5 Tamerlane Global Services is Timothy Timpson, Senior.

6 THE COURT: All right.

7 So, we have by deposition?

8 MS. FIERST: Yes, Mr. Timpson will be read
9 by deposition.

10 THE COURT: All right.

11 This is not Mr. Timpson, who is this?

12 MR. KELLY: I'm Ryan Kelly, Your Honor.

13 THE COURT: Good morning, Mr. Kelly.

14 MR. KELLY: Good morning.

15 THE COURT: Today he is Mr. Timpson. You're
16 to consider him as the testimony of Mr. Timpson.

17 Thank you. You may proceed.

18 MS. FIERST: Your Honor, I believe you have
19 a copy of the deposition.

20 THE COURT: I do.

21 MS. FIERST: We will refer you to line and
22 page.

23 Beginning on page 6, line 19.

24 THEREUPON, TIMOTHY TIMPSON, SR., through
25 deposition testified as follows:

1 Q. Okay, tell me your full name.

2 A. Timothy Timpson, Senior.

3 Q. Okay. And what's your title at Tamerlane?

4 A. Data coordinator.

5 Q. What is it?

6 A. Data coordinator.

7 Q. And what is -- what are your duties?

8 A. I do the -- get all the information and put the
9 information into a spreadsheet for the customers, for
10 they know what the daily operations we got going over on
11 overseas.

12 Q. And that wasn't always your --

13 A. No.

14 Q. -- your title?

15 A. No, I was in country manager for Tamerlane when I
16 first got hired.

17 Q. In Afghanistan?

18 A. In Afghanistan.

19 Q. When did you become a data collections -- I'm
20 sorry. What did you say?

21 A. Data collection coordinator.

22 Q. Yeah.

23 A. Yeah, it started in March.

24 Q. March of this year?

25 A. Yes, sir.

1 Q. Okay. Were you in Afghanistan until March?

2 A. I was in Afghanistan and when I was in
3 Afghanistan -- I just came out of Afghanistan February
4 of 2012 of this year.

5 Q. Okay. And then what was the reason for your
6 change of title?

7 A. The reason for my change of title?

8 Q. Yeah.

9 A. I just retired from the Military Reserve National
10 Guard in April. So I had a CAC card. I had to retire,
11 my retirement ID card.

12 MS. FIERST: Page nine, line four.

13 Q. How long were you in the military?

14 A. Almost 19 years.

15 Q. What was your rank when you retired?

16 A. E5 sergeant.

17 MS. FIERST: Page ten, line two.

18 Q. What was your job in the military?

19 A. My job?

20 Q. Yeah.

21 A. I was infantry at first, bunch of Bradleys,
22 driving around Bradley, NEX. Then we went to patrolling
23 fuelers. And then I went to supply specialist.

24 Q. What's supply specialist?

25 A. Logistics supply, do the supply every day,

1 getting equipment for the military.

2 Q. When did you start doing that?

3 A. I don't recall that, but let's see. I don't
4 remember off hand. Active duty, 2002 to 2005 for active
5 duty. I went to the Army after that. I switched to the
6 Army. I went to National Guard and then the Army.

7 MS. FIERST: Page 11, line 16.

8 Q. How did you begin to work at Tamerlane?

9 A. How did I begin to work at Tamerlane?

10 Q. Yeah.

11 A. I was working for Xe Services, U.S. Training
12 Services, used to be called, formally called Blackwater.
13 I used to work Jim and Angela at the warehouse in
14 Moyock, North Carolina, and then they called me up,
15 asked me do I want a job.

16 Q. When was that?

17 A. I can't recollect right then, but it was in April
18 they came to me about it, and I joined them in May.

19 Q. April of 2011?

20 A. Yes.

21 Q. Your first job was replacing Brad Parham as in
22 country manager?

23 A. Subletting transfer, you know, switching out, you
24 know, transfer. He got two months. I got two months.

25 Q. So you weren't replacing him? You were --

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

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

5 A. No, he didn't.

6 MS. FIERST: Page 14, line 23.

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

10 A. The process of it?

11 Q. Yeah.

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

18 Like, if you got humvees, you need one truck, one
19 40-foot for the two of them to pick up. So we analyzed
20 the list, and then we call GHL to tell them we need this
21 many trucks at this location.

22 Q. Okay. And what was the next step?

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

1 military that they are authorized to come on base to
2 pick up the retrograde equipment.

3 And that could be a long process with the
4 security on the base.

5 Q. Was -- security on the base was very tight?

6 A. Yeah, it's very tight.

7 Q. Okay. So, after a truck has arrived at the base,
8 is there a period that has to -- that it has to wait?

9 A. Yes.

10 Q. Okay.

11 A. It's got -- when it comes on the base, it's got
12 to get in a line which the rest of the trucks -- with
13 the rest of the trucks. And they looks at it which is
14 the Afghani police, for the Afghani police. They look
15 at and they get in line to go to the soak yard.

16 Q. Okay.

17 A. And soak yard, it stayed there for a day.

18 Q. Okay.

19 A. Just in case they got bombs on the trucks.

20 Q. Right.

21 A. They don't want us going on base, and that place
22 is way far from the base where they wait.

23 Q. Okay.

24 A. After the soak yard, they go to a CRSP yard.

25 Q. What is that?

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

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

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

13 Q. Does the military load the truck?

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

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

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

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

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

1 So the military takes that memo, but we write down
2 information for -- to give to the military, me and the
3 guy that actually works the yard. And then they go
4 back -- we go back to the military, the SDDC 800 31st
5 people does that.

6 They make the memo and give it back to us, and we
7 give it to the escort that's escorting the truck route.
8 And then he gives it back to the truck driver after
9 they're leaving the base.

10 Q. And then what does the truck driver do with the
11 BCM?

12 A. He keeps the BCMs and goes back to his yard,
13 wherever that yard is, like where they go back to
14 Kandahar because they ain't got no yard in Leatherneck
15 because it's too dangerous there.

16 So they go back way down -- they go down to
17 Kandahar and then they got a yard there at Kandahar
18 where they store the equipment until we tell them it's
19 time to go to the border because we got naval clearance
20 paperwork at the border.

21 Like Chaman border, they go to do clearance
22 there, too. And then after we know the truck is clear
23 to the border, we tell the truck driver to take that
24 equipment, piece of equipment down to Chaman border to
25 clear the border to go to Pakistan to get on the boat.

1 Q. So the truck driver has the BCM when they
2 leave --

3 A. Yes.

4 Q. -- Leatherneck?

5 A. Yes, any base. They got to have a BCM before
6 they leave.

7 Q. All right. And does the BCM permit them to cross
8 the border into Pakistan?

9 A. No, they got to wait at the border as the -- I
10 guess it's Security Packers that handle it, the
11 Pakistani side of it where they have permission to go
12 across. It's probably a day or two wait before they get
13 clearance for them to go across, but they got to take
14 that memo and show it to them.

15 Q. Now, can the -- can the process of getting the
16 border crossing memo, I mean, can that -- can that take
17 some time?

18 A. It's the same day.

19 Q. It's given in the same day?

20 A. Yes.

21 Q. Same day as what?

22 A. As they load the truck. As soon as they load the
23 truck, we go back, get the paperwork. They make the
24 BCM. We go back and give it to the escort, and then
25 they escort the truck off the base with the memo.

1 Q. And the military gives the BCM?

2 A. Yes, the military does the BCM. We cannot do
3 BCMs.

4 Q. Okay. Is there ever a delay in the process of
5 generating BCMs?

6 A. I stay there and make sure it's done on my part,
7 make sure it's done right.

8 Q. Right.

9 A. Because sometimes they misspell the guy's names
10 and all that or they miss a number here or there or
11 miscorrect the number. So I make -- I'm there to make
12 sure the BCM is done correctly. That's why we got us on
13 ground, to make sure it's done and not a delay in
14 information.

15 MS. FIERST: Line eight on the same page.

16 Q. Okay. So, do you recall -- I'm sorry.

17 Okay, do you recall if there was a standard
18 operating procedure at that point for in-gating truck?

19 A. I know I contact the military and ask them what's
20 the in-gating process and they tell me. And then
21 they'll tell us what we needed to get like on the
22 border -- the placard that goes with the truck. They'll
23 say what kind of placard we need to use and all that.

24 They'll send us, as a matter of fact, an example
25 of a placard, and we just have to put the truck driver

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

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

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

6 You got to make sure you got the right process at
7 that time. It could change because of a lot of attacks
8 going on there. They got to change the process
9 sometimes.

10 And sometimes the people copy -- the drivers
11 actually copy that placard and try to get back on base.

12 Q. Why would they do that?

13 A. It's a crooked country. They're trying to get --
14 I mean, that's what they do. They -- I mean, that's why
15 the military say, well, we've got to have our stamp on
16 the bottom of it, of the BC -- of the placard.

17 Q. Right.

18 A. If they don't have that stamp, that's why they
19 changed it, too. They changed that while I was there to
20 a stamp on the bottom where they have the names of the
21 SDDC, because the drivers would be making copies and
22 putting different dates, and then -- to get back on
23 base.

24 Q. So while you were -- while you were sending
25 trucks -- while Tamerlane was sending trucks to

1 Leatherneck, they changed the process for issuing
2 placards?

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

8 MS. FIERST: Page 33, line 18.

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

11 A. Yes, myself.

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

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

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

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

1 Q. When did you have that problem?

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

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

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

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

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

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

3 MS. FIERST: Page 36, line 22.

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

6 A. Whose job was it?

7 Q. Yeah.

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

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

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

15 Q. Right.

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

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

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

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

5 A. Yes, we do know in advance.

6 Q. You do?

7 A. Because we got a list --

8 Q. You do?

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

10 Q. But does that list change?

11 A. Does the list change?

12 Q. Yes.

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

19 Q. Okay.

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

22 Q. Right.

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

25 Q. So as the list of units changes --

1 A. We change our list.

2 Q. -- you change your list?

3 A. Yes.

4 Q. And then does the number of trucks that you need
5 changes?

6 A. It's kind of how the process go, yes.

7 Q. Okay.

8 A. Yes.

9 Q. And the type of trucks that you need can change?

10 A. Yes, on the weight of it and all the pieces of
11 equipment that we're picking up.

12 Q. Okay.

13 A. Yeah, it could change.

14 Q. Whether the truck needs sides or shouldn't have
15 sides?

16 A. Shouldn't have sides at all. That's the problem.
17 We asked for no sides but they send it any way.

18 Q. Okay.

19 A. And because -- I don't know if they're limited
20 with trucks or what, but we ask them. We know what
21 specific types of trucks we need. And when they come
22 with the wrong -- the stuff we don't even ask for, with
23 the sides, and then they got some trucks that got
24 flatbeds, but they got that little bar that sticks on
25 the side of them. They can't put a vehicle on like

1 that.

2 MS. FIERST: Page 41 line 11.

3 Q. Right. Would they comply with your request, the
4 trucking company, to -- would comply with your request?

5 A. Sometimes, sometimes not, you know.

6 Q. Okay.

7 A. And if that didn't -- they would learn after
8 because the truck company -- the military is not going
9 to pay for trucks they didn't use.

10 Q. Uh-huh.

11 A. They're not.

12 Q. Right.

13 A. So -- and that's how we would sometimes eat the
14 cost.

15 MS. FIERST: Page 42, line one.

16 Q. Was -- was GHJ -- in your opinion, were they
17 responsive when you asked them to -- for example, send
18 more trucks to Leatherneck? Did they do that?

19 A. Were they responsive to it?

20 Q. Yes.

21 A. If I can get them by phone, the Roshan phones, if
22 I could get them by phone.

23 Q. If you could?

24 A. Yeah, if I could get them.

25 Q. Were communications difficult in the Leatherneck

1 region?

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

6 Q. Right.

7 A. -- in the area of the base.

8 Q. Right.

9 A. Because they know attacks comes in at night, and
10 so they cut off all communication or detonation devices.
11 Now they got to -- today they got these devices where
12 they can block your phone off right at the place where
13 the truck's coming in, the soak yard. Apparently they
14 got devices that shut off any communication whatsoever
15 because they can trigger a bomb.

16 Q. So when you -- when you were able to get ahold of
17 GHJ to ask them to send more trucks to Leatherneck,
18 would they do it?

19 A. They'll do it.

20 Q. Okay.

21 A. They'll send trucks.

22 MS. FIERST: Page 63, line three.

23 Q. Were you also involved in loading trucks in
24 Jalalabad?

25 A. Was I involved with it?

1 Q. Yeah, with GHL?

2 A. I can't remember off hand.

3 Q. Where's Jalalabad?

4 A. Jalalabad near the Torkham border.

5 Q. Near Torkham? Okay. Is that another dangerous
6 place?

7 A. Jalalabad?

8 Q. Yes.

9 A. Yes.

10 Q. Okay, did you ever go there?

11 A. Yes.

12 Q. You did?

13 A. Had no choice to go there.

14 Q. Why is that?

15 A. Because with -- when GHL decided to get out of
16 the game, I had to do a transfer between two trucking
17 companies, too, and seems like they couldn't do it
18 by themselves. So I had to go down there and babysit
19 these guys, because -- because what they had, they
20 dropped the equipment to Jalalabad. They picked it out
21 of Jalalabad, dropped it off in Jalalabad trucking yard,
22 holding yard, storage yard.

23 So when GHL decided to quit the game altogether
24 and just quit the project, I made up a spreadsheet
25 showing all the devices, all the equipment they're

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

3 Q. Right.

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

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

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

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

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

1 Q. This is in Jalalabad?

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

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

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

19 MS. FIERST: Page 67, line eight.

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

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

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

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

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

10 MS. FIERST: Page 68, line 21.

11 Q. Yeah.

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

16 Q. Right.

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

19 Q. Okay.

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

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

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

1 Q. Right, right. Now, the event that you're
2 describing at Jalalabad, okay?

3 A. Uh-huh?

4 Q. Did that involve cargo that was to be cross
5 loaded?

6 A. It involved cargo where they -- where they say
7 they stopped the job at, and they left it there.

8 Q. Right.

9 A. So that's why me and Fahad had to go down there
10 and straighten it out with the new trucking company we
11 had after GHL said they quit.

12 Q. It was off loaded in Jalalabad, the cargo?

13 A. Into the storage yard, stacked on top of each
14 other, military equipment stacked on top of each other.

15 Q. What kind of equipment?

16 A. Trailers, trucks, humvees, all different
17 military. You see military equipment, all different
18 types we had in there and generators, all of it. But
19 the trucks personally were stacked for or five high on
20 top of each other when I got there.

21 Q. How many units are you talking about?

22 A. I can't give you a count off the top of my head,
23 but it was a lot of them, a lot, a lot of military
24 equipment there.

25 MS. FIERST: Page 71, line 16.

1 Q. What about -- what about customs clearance at
2 Torkham, was that -- did -- were there any problems
3 clearing customs at Torkham?

4 A. Well, that was handled by a different company for
5 customs clearance.

6 Q. Were there problems with it?

7 A. Sometimes it was.

8 Q. What were those problems?

9 A. The equipment not there yet, the equipment's got
10 to be there at the border to clear. We find sometimes
11 the trucks broke down and they didn't report it to us.

12 Q. Right.

13 A. Or the truck went somewhere else because they got
14 the trackers on it which tell us where the truck is at.
15 So we had a company that do the tracking for us that
16 found this guy is still in Kabul when he's supposed to
17 be at the border. Why is this trucks not being -- then
18 we had to call them up and say, hey, why is this truck
19 there.

20 Q. So there would be a problem not knowing with the
21 truck was?

22 A. It's a problem, the truck not being where it's
23 supposed to be at a certain time because these trucks
24 leave at a -- like I say, about ten trucks left at the
25 same time from Kabul. They got to the border. Only

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

6 Q. Uh-huh.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MS. FIERST: Page 76, at line eight.

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

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

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

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

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

3 Q. Right.

4 A. So when the truckers don't show up together, they
5 held each other up. We're not holding them up. They
6 hold their self up because they didn't go together.

7 Q. Right.

8 A. Say why didn't you show up together? Where were
9 you at? We got to ask the trucking company, hey, where
10 your guys at?

11 MS. FIERST: Page 85, line 14.

12 Q. Do you recognize Exhibit 10?

13 A. Yes.

14 Q. What is it?

15 A. This is a hand receipt I made up to -- for the
16 transfer of the units to different companies. And they
17 use this. They use this in Chaman because I couldn't
18 get down there.

19 So, what happened was, they -- the company that
20 took over down there, and GHL came together and
21 inventoried the equipment they got. So they signed off
22 on this saying that they handed over this piece of
23 equipment to the new company.

24 MS. FIERST: Page 90, line 15.

25 Q. Do you know -- do you know what conversations GHL

1 had with Khairullah? Do you know if --

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

3 Q. Okay.

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

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

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

10 Q. Really?

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

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

16 THE COURT: All right.

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

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

21 THE WITNESS: I do.

22 THE COURT: You may proceed.

23 MS. FIERST: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. FIERST:

1 Q. Good morning, Mr. O'Brien.

2 A. Good morning.

3 Q. Mr. O'Brien, let's start by giving the jury a
4 little bit of information about your background. Can
5 you tell us where you grew up?

6 A. I grew up in Queens, New York. I grew up in area
7 Corona Regal Park, Lefrak City area, across the street
8 from the projects in Queens.

9 Q. And have you served in the military?

10 A. I have. I did four years in the Marine Corp,
11 from 1990 to 1994.

12 Q. And was that after high school?

13 A. It was. I was 17 years old. I got my parents'
14 permission. My mom didn't want to sign off on me. My
15 dad wanted me to get a haircut and get a swift kick in
16 the butt.

17 Q. After your service in the Marine Corp, did you
18 pursue further education?

19 A. I did. For a couple years, I bartended, you
20 know, worked on kitchen floors, construction, that kind
21 of thing. But ultimately I used my Connecticut -- there
22 was a Connecticut Combat Veterans Benefits For Education
23 as a result of Desert Storm service.

24 So I wound up going to college at Southern
25 Connecticut State University -- after which I continued

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

4 Q. And what was your degree at Tufts University?

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

8 Q. Let's --

9 A. I'm sorry.

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

13 A. That's okay, thank you.

14 Q. Let's talk about your background in logistics.
15 Can you tell us about the first job that you had where
16 you obtained a background and some experience in the
17 logistics field.

18 A. Absolutely. In 2002, I was brought on as a
19 student career entry program Department of Commerce,
20 International Trade Administration Foreign Commercial
21 Service.

22 It was an obscure little agency, largely
23 responsible for assisting U.S. companies in
24 getting exports out of the United States and into
25 country overseas.

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

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

9 Ultimately, the Near East Desk's responsibilities
10 increased to include everything from the Levant, Syria,
11 Lebanon, Israel, out to Kazakhstan, down to the border
12 of India, and out to the border of China to include the
13 Kyrgyz Border.

14 In that capacity I would work with mostly small
15 businesses, primarily defense contractors, given that
16 region, assisting them in getting materials into
17 country, working with my foreign counterparts, whoever
18 might be at the import desk and working with them
19 directly and saying, how do we assist in getting items
20 into theater.

21 Because of the time that I was working there,
22 2002, obviously the Afghan war had gun at that time. We
23 wound up assisting quite a few companies in getting
24 their products into Afghanistan to assist those
25 companies executing their mission, their contract

1 mission.

2 As -- when Iraq started in 2003, again we began
3 working more aggressively. By 2003 I had transitioned
4 into a new role at Commerce Department going from
5 student career entry into actually a full-time position.
6 And that's when I was more actively engaged in working
7 with my foreign colleagues as well as the U.S. Embassies
8 in various locations, or the counterparts of different
9 agencies that might have certain missions to accomplish.

10 Q. And, what was your next position after the
11 Department of Commerce that provided you additional
12 experience in the logistics field?

13 A. Sure, from 2004 to 2006, I wound up going to the
14 Fletcher School, of -- again at Tufts University where I
15 wind up studying Islamic culture and strategic analysis.

16 In 2005 the Commerce Department had transitioned
17 into a Department of Defense think tank called the
18 Gypsum Center for Counterterrorism Studies where I was
19 studying the Iranian use of logistics trends to support
20 their non-state arm groups throughout the region.

21 So, how does Hezbollah, for instance, get its
22 weapons into Lebanon or its money into Syria or areas of
23 that nature?

24 After I graduated, I wind up going to work
25 briefly for a company while I waited for AmeriCares to

1 come on board. I worked for a customs house down in
2 Wall Street, a company called Charter Brokers. It was a
3 brief job, about three months, doing primarily imports.

4 But then I wind up working for AmeriCares for
5 2006 to 2008.

6 AmeriCares was an NGO. It was run by the best
7 friend of George H. Bush, a man name Bob McCauley.
8 The -- Barbara Bush was our ambassador at large. We
9 also had a lot of involvement with a gentleman named
10 John Negro Ponte at that time.

11 I'm sorry, John Negro Ponte. I think it's
12 N-E-G-R-O, P-O-N-T-E.

13 The primary mission in that role was for me to
14 work with medical suppliers, whether it's donated
15 medical aid or purchased medical aid to include
16 medicines, pharmaceuticals, medical supplies, to build a
17 shipment that would go into -- from my region which was
18 the Middle East and Eurasia. That included all the
19 former Soviet Union. That included areas previously,
20 behind the iron curtain, Eastern Europe. It also
21 included all the Middle East, Central Asia, Southwest
22 Asia and North Africa.

23 I would build a shipment of medical supplies,
24 pharmaceuticals. I would then take that shipment -- I
25 would work with the logistics team to get it on to

1 transports. I would then fly out to meet that shipment,
2 working with local governments, to then take that
3 shipment and the local truckers or local brokers, to get
4 that shipment ultimately to its end designation,
5 whatever the designation would have been, for AmeriCare.

6 So, as an example, if I was working in say
7 Uzbekistan, we'd have a shipment that would come into
8 Tashkent. But it might be in the strategic interest of
9 either the U.S. Government to get a shipment down to
10 Bukhara which is close to the Turkmen Afghan border.

11 So, I would fly into Tashkent in advance of the
12 shipment. I would work with the Uzbeks to ensure that
13 materials -- those material would then move on to one of
14 those border cities.

15 And then once at those border cities, conduct
16 inventories, making sure things weren't showing up on
17 the black market and then make sure they were actually
18 using those materials appropriately and effectively.

19 Q. All right. How about additional experience in
20 the logistics field, was there any job that you had
21 after Department of Commerce and after AmeriCares that
22 provided you additional experience in the logistics
23 field?

24 A. Absolutely. In 2008, I was recruited by a
25 company at the time called Blackwater. Ultimately it

1 became Xe Services. I was the director of logistics.
2 My job was to oversee all their logistics operations for
3 all of their agencies that this served throughout the
4 world. They had had a serious problem at the time.

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

13 I wound up bringing them from 4,000 violations to
14 zero. I wound up negotiating with the Commerce
15 Department and the State Department to reduce any kind
16 of fines and penalties as a result of these issues that
17 they had had in the past, and began working on some of
18 the challenges that they had had to include in some
19 cases cargo shipments being held up for upwards of
20 200 days, things of those nature -- of that nature,
21 working a port agents and port authorities for foreign
22 governments to assist them in extricating their stuck
23 materials.

24 Q. How about after Xe Services, do you have
25 additional experience in the logistics field after Xe

1 Services?

2 A. After Xe Services, I formed Tamerlane Global
3 Services. So for the last three years, it's been --
4 Tamerlane has been my life, with the exception of
5 occasional time I get a chance to hang out with my wife
6 and my babies.

7 Q. Okay. So Tamerlane first got off the ground in
8 the fall of 2010, is that what you just said, three
9 years?

10 A. That's correct, in October, 2010.

11 Q. Okay. Let's talk about how you started
12 Tamerlane. What did you do to get the company up and
13 running?

14 A. At first, it was -- first it was legal zoom. I
15 mean, I literally, you know, it was a thought, an idea
16 to eventually go into some kind of supply chain
17 logistics consulting in the future.

18 I was in the process of getting an MBA at William
19 and Mary at the time, so I was working full time and I
20 was going to -- I was going to school at night.

21 And, when I first started out, it was a
22 relatively, you know, small movements, you know, few
23 hundred bucks here, a few hundred dollars there, customs
24 clearance type, that kind of thing.

25 I was working at George Scientific as a

1 consultant at that time. The thought process was, well
2 if this thing doesn't really take off, you know, I need
3 to have some kind of security in some way.

4 Again I was married. I had an older daughter at
5 that time. We started out with a, you know, few moments
6 here and there. I think I did about 2,000 bucks in sale
7 in October.

8 I cashed out my 401K, my personal savings. I
9 took \$30,000 of every dime I had and poured it into this
10 company getting a business plan together, getting a --
11 working with the IT company Go Daddy at the time to try
12 to get a website going. Really wheeling and dealing,
13 calling folks telling them what I was going, what I was
14 going to do for them.

15 And again it was about 2,000 bucks in sales. And
16 I remember at the end of the month of October, I wound
17 up looking at 2,000 in sales. I had just put \$35,000
18 down. I was like, oh my Lord, I'm screwed.

19 Then, in November, sales started picking up. And
20 in Thanksgiving my wife decides to tell me that she's
21 pregnant and I was at a kind of holy Jesus moment. I
22 can't brief I just started a company and this is all
23 happening, so. Then it really started taking off.

24 Q. Mr. O'Brien, in your response you talked about
25 the beginning you had small movements, customs clearance

1 type stuff. Although obviously the jury's gotten some
2 background on the logistics of moving cargo up to this
3 point, can you describe for us what you mean when you
4 say small movements, customs clearance stuff?

5 A. Sure. There were a number of companies that had
6 again, commercial operators working primary in
7 Afghanistan. We were offering our services as well in
8 Pakistan and anywhere else that I had previously worked.
9 But, Afghanistan and Pakistan were where it started.

10 Some of these commercial companies may be small
11 construction companies, maybe larger construction
12 companies, they would do work in the U.S. Embassy. They
13 might be doing work at a base or something of that
14 nature.

15 I had pretty tight relations with the freight
16 forwarding community in Sterling, Virginia. Those are
17 the logistics providers based out of Dulles Airport. So
18 they would come to me and say hey, Jim, we've got a
19 small movement, couple pallets, maybe a container that
20 needs to move from point A to point B. Can you assist
21 us? Can you also work with us to ensure that it's done
22 right, make sure that the customs clearance is done.

23 So I would actually do the documentation work or
24 work with the broker and agent in country to ensure that
25 the -- the customs clearance was done properly.

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

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

8 In fact, in June 2010 is a good example. Just
9 prior to leaving, I had taken over management. We had a
10 20-foot container on Bagram that was specially designed
11 for one of our agency clients. We would have small
12 aircraft that would come in, deliver cargo, and then
13 would be trans-loaded onto either vertical options,
14 helicopters or it would be transferred onto small
15 aircraft.

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

22 On occasion if it was something that was
23 considered diplomatic pouch, that is, it has a sensitive
24 document inside, I myself would take that diplomatic
25 pouch from Bagram as it arrived and bring it into Kabul

1 and go to the US Embassy as part of what was a State
2 Department contract at the time with Xe Services.

3 But even before that, so as far as when I started
4 Tamerlane, quite a bit of experience moving these small
5 types of cargo.

6 And then, of course, between the Department of
7 Commerce and the AmeriCares experience, I had quite a
8 bit of experience working on customs clearance issues
9 and so forth.

10 Q. Okay. So, in the beginning of Tamerlane's
11 existence, you're doing only movement of commercial
12 cargo, right?

13 MR. FRANCO: Objection, leading.

14 THE WITNESS: That's correct.

15 THE COURT: Sustained.

16 BY MS. FIERST:

17 Q. And when is it that you first -- is there a point
18 in time where you come to do movements with the U.S.
19 military?

20 A. The U.S. military cargo really kicks off. It's
21 late November of 2010. So about six to seven weeks into
22 this movement, we get approached by Liberty Global
23 Logistics, Mike Chapell. Mike Chapell was the -- he's
24 not the chief operating officer. He was probably their
25 director of ops, as such. He was their senior guy in

1 operations.

2 Mike Chapell had had a need for a secure storage
3 yard near the Torkham border. He was working with a
4 company called Waterlink. Waterlink at the time was
5 having challenges with regard to the movement. So he
6 came and approach me. We had breakfast. We discussed
7 the operation, taking over the cargo from Waterlink to
8 be able to store it securely. And that's when we began
9 that. We began that in late November, early December.
10 After which in December, early December at some point in
11 time, Mike Chapell and Liberty Global Logistics had an
12 issue with Waterlink where they ultimately decided to
13 transition all the cargo to us.

14 MR. FRANCO: Objection.

15 THE COURT: When there's an objection,
16 please stop, Mr. O'Brien.

17 THE WITNESS: Of course.

18 MR. FRANCO: Foundation and hearsay, what
19 Mr. Chapell is telling him about the issues.

20 MS. FIERST: I don't understand the
21 foundation objection. He's describing the engagement
22 that he took on with Liberty.

23 THE COURT: But he's telling us now about
24 what Mr. Chapell told him about what happened with the
25 other company which would be hearsay.

1 Objection sustained.

2 BY MS. FIERST:

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

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

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

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

15 BY MS. FIERST:

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

19 A. The --

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

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

1 to bring cargo all over the world.

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

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

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

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

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

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

1 What happened was, Innovative itself had provided
2 an operations plan, a statement of work as such to
3 Liberty. That was actually -- that was based on our
4 plan. In fact, it was a mirror image of our plan. We
5 had submitted it to Innovative not realizing that
6 Innovative was going after the same work with Liberty
7 that we were going after.

8 So we received our statement of work from Liberty
9 that we were going to work for Innovative that mirrored
10 exact language that I used, to the point where in some
11 pages they had forgotten to take out Tamerlane --

12 MR. FRANCO: Objection, relevance.

13 MS. FIERST: Your Honor, I think he's
14 describing the background of how he first -- Tamerlane
15 first came to work with Liberty.

16 THE COURT: Okay. Well, I've allowed you
17 some leeway. I'll sustain the objection.

18 Let's see the relationship between --
19 between Tamerlane and GHL which is why we're here.

20 THE WITNESS: Ultimately, the --

21 THE COURT: There wasn't a question. She's
22 going to ask you a question.

23 THE WITNESS: I apologize.

24 MS. FIERST: In order to get there, Your
25 Honor, Mr. O'Brien is first explaining the establishment

1 of the contract between Liberty and Tamerlane.

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

4 BY MS. FIERST:

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

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

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

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

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

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

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

1 trucking. I mean, I've heard a lot about trucking in
2 general, but it's actually quite more than that.

3 Liberty Global Logistics has a boat coming into
4 Karachi to pick up cargo, in the case of retrograde
5 movements. So working with Liberty team, it began very
6 early on in terms of understanding what was happening
7 with regard to the boat itself. What was their vessel
8 rotation? What was the berthing dates that they
9 intended to hit in Karachi? What was material handling
10 equipment that was necessary in Karachi? What was the
11 type of material that was at each base? What were the
12 base in-gating procedures? How did that coordinate with
13 their what's called the required due date, the RDD that
14 was based on the contract, the required lift date, RLD?

15 The required lift date was, the military would
16 say, you have to pick up the cargo by this particular
17 date or you're past performance will be hurt as a
18 condition of contract; understanding what the RLD was,
19 the RDD, the day the cargo had to be delivered. You
20 have to get that cargo by this particular date, or your
21 pass performance will be hit; understanding what the
22 border issues may be.

23 So, there's a string of parts that included one
24 section of that which was trucking. It was actually
25 moving the cargo from point A to point B.

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

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

7 A. Absolutely. Initially when I first started
8 Tamerlane Global, I had known Masud Roshan from my days
9 at Xe Services. Maybe a few months earlier I had met
10 him and he and I had worked together along with Abdullah
11 Gharjy on the collection of cargo that had been hit in
12 Pakistan in June 2010.

13 So I knew who he was, and I knew that he had a
14 trucking company. I also had trucking vendors at that
15 time, a few trucking vendors that I had using either
16 with Xe Services or with AmeriCares prior to joining Xe
17 Services.

18 When I went to Masud Roshan and spoke with Masud
19 Roshan and said, I'm opening this company. I am going
20 to need trucking assistance, and I think this thing is
21 going to take off. I think we're going to do pretty
22 well.

23 Can you give me your truck prices? Would you be
24 interested in working with me? We had that meeting in
25 Starbucks in Arlington in late September, early October.

1 I want to say it was October 5th or 6th, sometime around
2 that timeframe.

3 We had this meeting at Starbucks. He agrees. I
4 hand him over a price list of different bases that I
5 anticipate having to move cargo from. He provides me
6 that list back. And that's when we begin doing these
7 small commercial movements in October, increasing in
8 November, and then naturally, we wind up transitioning
9 from the commercial side to some of those military
10 movements that we inherit as part of Retrograde 1. And
11 then I turned to him for him and his company for
12 assistance with regard to future movements, Universal
13 Services Contract movements in January.

14 Q. Now, Mr. O'Brien, what you just referred to as
15 Retrograde 1, did that go -- did that movement or that
16 project go by another name?

17 A. It did. It started out as Torkham. It was a
18 Torkham security contract. It was originally based to
19 provide security at the Torkham border.

20 Ultimately, when Liberty said come get the cargo
21 and begin moving this cargo, take it from Waterlink,
22 that's when we took it from Waterlink. And it
23 transitioned from a security contract, Torkham, to what
24 was the very first retrograde movement, thus Retrograde
25 1.

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

5 A. That's correct.

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

8 A. Initially, these were not military movements.
9 These were -- let me take it quick step back. There is
10 a whole lot of commercial activity as such in
11 Afghanistan like going from Dominoes to McDonald or
12 something.

13 MR. FRANCO: Objection, Your Honor. This is
14 not responsive.

15 THE COURT: Sustained.

16 THE WITNESS: These were not military
17 movements. These were commercial movements that were
18 going from base to base.

19 MR. FRANCO: Objection.

20 THE COURT: When the objection is sustained,
21 that means, you should stop.

22 THE WITNESS: Okay.

23 THE COURT: Your lawyer will ask a new
24 question.

25 THE WITNESS: Sorry, Your Honor.

1 THE COURT: No problem.

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

5 THE COURT: Oh, we don't do read backs here.

6 MS. FIERST: Fine. My question asked Mr.
7 O'Brien to explain when he talked about asking Mr.
8 Roshan for prices from the bases, was that military, the
9 movement of military cargo? And that's what he was
10 responding to.

11 THE COURT: I sustained the objection. Next
12 question.

13 BY MS. FIERST:

14 Q. Mr. O'Brien, can you describe what types of
15 movements you were initially discussing with Mr. Roshan?

16 A. These were commercial companies movements between
17 bases or other locations within Afghanistan, primarily
18 ISAF locations or NATO locations. ISAF, is the
19 International Security Assistance Force for Afghanistan.

20 Q. So, commercial companies, if I understand you
21 correctly, commercial companies, not the military, were
22 asking for the movement of goods or equipment from
23 military bases to other locations?

24 MR. FRANCO: Objection, leading.

25 MS. FIERST: I'm not leading. I'm trying to

1 understand whether that was his testimony, Your Honor.

2 THE COURT: Well, the question that suggests
3 the answer is leading.

4 BY MS. FIERST:

5 Q. Mr. O'Brien, could you describe where these
6 commercial companies are asking you to pick up the cargo
7 and drop off the cargo?

8 A. On various U.S. military bases throughout
9 Afghanistan or in government affiliated facilities
10 throughout Afghanistan, in some cases Pakistan. And
11 then to move them to other military bases or ISAF
12 locations or NATO locations throughout Afghanistan or
13 Pakistan.

14 Q. So then, is it correct that gear or equipment is
15 coming off of military bases that's not being moved by
16 the military?

17 MR. FRANCO: Objection, leading.

18 THE COURT: If you want to direct him to a
19 particular area, you can do that. Just say I'm changing
20 gears to move to this particular area.

21 But when you give him the answer to the
22 question in the question, it's leading. So I'll sustain
23 the objection. Next question.

24 Question that begin "what", "describe" and
25 "how" are not leading.

1 MS. FIERST: I understand, Your Honor. I
2 didn't think the question was leading. Clearly that
3 wasn't my intention.

4 THE COURT: That's fine. I'm the judge.
5 I'll be the judge of that. Next question.

6 MS. FIERST: I was just expressing that I
7 didn't intend to offend the Court, Your Honor.

8 THE COURT: Please know that I'm not
9 offended by anything the lawyers do.

10 Please do not take anything from my
11 demeanor, ladies and gentlemen.

12 There's no personal mention of you. I'm
13 sure you're going to present this witness as you have
14 throughout the trial. I'm very happy to have you go on,
15 please.

16 MS. FIERST: Thank you, Your Honor.

17 BY MS. FIERST:

18 Q. Mr. O'Brien, can you describe then the difference
19 between when a commercial company asks for the movement
20 of equipment or goods versus when the military asks for
21 the movement of goods or equipment.

22 A. I can. The difference would be when you have a
23 commercial company that has to move goods between a
24 different locations, some location. Typically, the
25 commercial company has a contract that dictates the

1 terms of which it needs materials of some kind.

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

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

10 The military takes no responsibility for that,
11 unless it is in the contract itself, that the military
12 will take responsibility for that movement.

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

18 With a military movement, it's different. With a
19 military movement, the military has service providers
20 already designated. Again, the Universal Services
21 Contract. It is cargo that is owned by the military.
22 It is designated to the military in one of two ways.
23 Either it is part of the military's own gear. So it may
24 be part of a unit. It could be part of the actual base
25 operations, or the Defense Contracting Management

1 Agency, DCMA has decided that the cargo that they have
2 in their hands is considered government furnished
3 equipment, government furnished property, or it's
4 customer furnished equipment, customer furnished
5 property that has since been transitioned into
6 government custody.

7 In those cases, the U.S. military will take over
8 responsibility for organizing the movement of the cargo.
9 They're two different types of movements.

10 Q. The commercial movements that you first discussed
11 GHL handling, where were those going? Were those --
12 well, let me just ask that first.

13 A. Early on, the majority of the movements were
14 going from Bagram to Kabul, specifically from Bagram
15 Airbase to the U.S. Embassy in Kabul or Camp Eggers or
16 Camp Phoenix.

17 On occasion, the commercial movements would go a
18 little bit further, perhaps Mazari Sharif or a brand new
19 Marine Corp/agency facility called Camp Stone that was
20 being build at the time in Iraq, which is on either side
21 of the country.

22 Q. Did those early commercial movements go
23 international, for example, into Pakistan or other
24 countries surrounding Afghanistan?

25 A. On occasion it would, but it would be rare that

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

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

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

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

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

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

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

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

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

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

8 So, for example, if I've got two humvees that are
9 a certain weight, certain length, this may be able to
10 fit on a 40-foot truck. Maybe I'm able to take two
11 containers or one container on a truck. I may have to
12 move a 20-foot truck or lowboy based on the dimensions
13 of the particular cargo.

14 That conveyance analysis would be designated and
15 we would also look at how many trucks can we get on base
16 based on the base that we were working in, what was the
17 operations template that could be established, what were
18 the needs of the particular contract?

19 For instance, in case of the Universal Services
20 Contract, it never changed. It was also you needed
21 straps, tarp, thing of this nature, chains and what
22 personnel might be required in order to efficiently
23 ensure that the cargo was moved.

24 THE COURT: You're talking about flatbed
25 trucks; is that right?

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

3 THE COURT: All right, thank you.

4 THE WITNESS: So we would take this
5 conveyance analysis, put it together, create an
6 operations plan that was required on a task force by
7 task force movement, doing task force by task force
8 bases, put that together into a Word document, and I
9 would present the overall spectrum which a line item by
10 line item requirements that we would perform that was
11 provided then to Liberty Global Logistics who would
12 ultimately forward that up to the prime run by what's
13 called OCLASWA. That's the Ocean Carrier Clearing
14 Authorities for Southwest Asia.

15 Q. And, you talked about a conveyance analysis. Is
16 that something that you put together? You talked about
17 receiving a conveyance analysis from the U.S.
18 Government. Can you talk about what the conveyance
19 analysis is?

20 A. That's right. The conveyance analysis that would
21 come from the U.S. military was essentially a basic
22 list. The conveyance analysis would be a list of TCNs,
23 transportation control numbers, unique identifiers
24 essentially for each piece of cargo. It would have the
25 dimensions of the cargo itself, what kind of cargo was

1 moving? Where was the cargo? Where did the cargo need
2 to go?

3 And then, from there, we would then -- we would
4 produce our own conveyance analysis which was taking a
5 look at the cargo itself and determining what were the
6 assets that were necessary based on a line item by line
7 item basis.

8 So, if I had 600 pieces, look at the dimensions
9 of the 600 pieces and know do I need 100 trucks? Do I
10 need 200 trucks? What kind of trucks? Were are they
11 moving, et cetera. That's what a conveyance analysis
12 would entail.

13 Q. What types of distances were the assets being
14 asked to travel?

15 A. It depended on the movement. In most cases, the
16 distance was from a base typically on an eastern side of
17 Afghanistan always to Karachi. But it was always
18 typically on the eastern side. On occasionally we would
19 do a western movement.

20 To put this in the perspective for the folks that
21 are sitting here in the jury box, I know you saw the map
22 of Afghanistan. Think Washington, D.C. to Dallas,
23 Texas, I mean in terms of a distance perspective.

24 So you're talking about a distance that would
25 typically go that way. Based on the routing itself, the

1 routing may change as conditions on the ground changed.

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

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

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

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

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

15 A. Sure. In normal circumstances, based on what was
16 happening at the border, a movement would have -- you
17 would have Bagram. A cargo would be collected. It
18 would ultimately get to Kabul. It either might be
19 trans-loaded into Kabul on Pakistani trucks or Pakistani
20 trucks may be allowed onto Bagram Base, depending on the
21 political and security conditions at the time.

22 If conditions were normal, it would move from
23 Bagram, off to a Jalalabad road, out through the Torkham
24 Pass, which is in -- not really northeast portion of
25 Afghanistan, but north compared to Chaman.

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

4 In some conditions, in the event of the border
5 happened to be closed or a challenge of some kind at the
6 border in Torkham, they would take the cargo from Bagram
7 along what's called the Ring Road. That would go down
8 to Kandahar. And then from Kandahar, it would then
9 shoot out towards the Chaman, and then through Chaman,
10 to the border in the south, through Quetta, and then
11 ultimately into Karachi.

12 Just to again put this in perspective, I know the
13 map is not up today, but Afghanistan is sort of a -- to
14 again put this in context with regard to the movement
15 itself, Afghanistan I kind of describe as sort of an egg
16 with arm popping out of it on it's side, tilted. It's
17 not exactly a circle as such, but there's a road that
18 connects many of the major cities. It's called the Ring
19 Road. It happens to start up from the north, right
20 outside of the Uzbeks border, a town called Mazari
21 Sharif, in and around Hairatan. And then it comes
22 around in a circle that connects many of the major
23 cities and then ultimately comes back up to an area
24 called Herat or Turgundi which is just north of Herat
25 which is the Turkmen border.

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

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

11 A. That is absolutely false.

12 Q. Tell us why?

13 A. The conveyance analysis from the U.S. military
14 was clearly given to anybody that was moving. They give
15 out a list of what the cargo was, and then as they put
16 the list out, the conveyance analysis would then be
17 determined by us as we drew this out, the process I had
18 just described a few movements ago.

19 We would flip that conveyance analysis back to
20 Liberty Global with our operations plan, and that would
21 go to OCLASWA for approval.

22 Essentially the contracting officer would have to
23 approve of the plan, the conveyance analysis, and
24 essentially what would be the ultimate charges for this.

25 The military on occasion may change the number

1 slightly, two or three trucks off, two or three trucks
2 on. But those slight variances may be one or two trucks
3 off at the time of operational need. But when you
4 started that movement, we knew exactly how many -- and
5 we knew what operations plan are.

6 And in every single instance of every single
7 movement, Global Hub Logistics received a conveyance
8 analysis. They received a list, and they received
9 operations plans, every one.

10 Q. Now, when you say the list, what list are you
11 referring to?

12 A. The military's cargo list that they anticipated
13 moving the cargo.

14 Q. How about the location, the -- the origination
15 point and the designation point, did that change during
16 these movements?

17 A. Never. The -- the designation of cargo from
18 point A to point B was always the same. It was from the
19 originating base to Karachi. That's where the boats
20 would ultimately pick up the cargo.

21 Q. What kinds of things would change? Were there
22 any things that would change along the way?

23 A. There are. Again you might have a slight change
24 in terms of conveyance. For instance, you may have 540
25 units originally. That might change to 503. You might

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

5 The only thing that would really change to any
6 great degree would be in the event that geopolitical or
7 geostrategic risks may occur that create a challenge for
8 movement at a border.

9 For instance, the borders, the Federal Revenue
10 Board, FRB in Pakistan controls all customs issues at
11 the borders, in Torkham and in Chaman. They do not have
12 symmetry with the folks in Islamabad. So Chaman may
13 have separate rules than Torkham may have.

14 And this would be -- this would cause a great
15 deal of confusion for both the U.S. military and for the
16 truckers in general.

17 So, as a good example, the reason why we had to
18 move cargo from Torkham border, but not cross a Torkham
19 border to take it instead south to the Chaman border in
20 January of 2011 was because Torkham decided that it
21 wanted to see what was inside U.S. military containers.

22 U.S. military said, absolutely not. You will not
23 break our seals. You will not look inside those
24 containers.

25 So U.S. military said, does the same rule apply

1 in Chaman? No. Let's move it to Chaman. And that's
2 what happened. We move the cargo through the southern
3 border, even though it created a larger degree of
4 expense.

5 But otherwise, conditions never changed, except
6 for these extraneous activities.

7 Q. When there were the changes to the number of
8 units that you referred to a minute or two ago, who
9 caused those changes?

10 A. U.S. military would typically cause those
11 changes. And U.S. military can make a decision based on
12 its operational needs or it could determine, as what
13 happened with TF Strike 1 to pull the cargo due to poor
14 performance.

15 Q. Okay. Well, let's -- let's back up for a minute
16 and try and make sure we understand which movements
17 we're talking about at issue in this case.

18 What are the movements that GHL worked on for
19 Tamerlane?

20 A. With the exception of some of the smaller
21 commercial movements that I described earlier, the
22 movements that they worked on were Retrograde 1, again
23 also referred to as Torkham, TF Warrior, TF Hammer, TF
24 Strike 1. Then there were a series of five movements,
25 Retrograde 11, SMU-1, LOGCOM Z2, you had Strike 2 and TF

1 Curahee.

2 Q. And, where were those last five movements that
3 you described, where were the goods being moved from and
4 to in those five movements?

5 A. Primarily the goods were moving from either
6 Kandahar Leatherneck to Karachi, with the exception of
7 TF Curahee which had a significant portion of cargo
8 moving from Sharana which is a base in Eastern
9 Pakistan -- or Afghanistan, excuse me, near the
10 Pakistani border or Jalalabad.

11 Q. So, the origination point was either Kandahar,
12 Leatherneck or Sharana? Is that what you just said?

13 A. Or Jalalabad, yes.

14 Q. And the designation point?

15 A. Karachi, in all cases.

16 Q. Now, you also heard some testimony about a
17 Ramrod, Ramrod 3+1. What is that?

18 A. Ramrod 3+1 didn't exist. Ramrod 3 -- Ramrod is a
19 forwarding operation base that's affiliated with the
20 Kandahar Airfield. Ramrod 3+1, we don't know how the
21 truckers got word to go over there and pick up cargo,
22 but they did. It was a mistaken pickup, and the
23 military ultimately transitioned it into our custody,
24 the cargo into our custody because it had already been
25 collected.

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

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

7 Ramrod was one of the forward operating bases
8 that existed at the time. We had been consigned the
9 cargo since it was a mistaken pickup. But, yes,
10 ultimately it was a retrograde movement that was to go
11 to Karachi.

12 Q. Did you consider it an independent movement?

13 A. No, nor did the U.S. military.

14 Q. How did you consider it?

15 A. It wind up being rolled up into, I believe,
16 Retrograde 11 is where the cargo ultimately gets
17 consigned to. There was also two other movements, SMU-1
18 and SMU-5. I'd have to take a look at the notes.
19 Unfortunately, I don't have the notes in front of me to
20 decide where they decided to designate the cargo.

21 Q. When you say the cargo ended up getting consigned
22 to it, what does that mean?

23 A. When it gets consigned, if you have cargo that's
24 being picked up, again as part of the conveyance
25 analysis, is the consignment a cargo? So the list would

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

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

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

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

20 Q. And tell us about the process of trying to engage
21 Global Hub Logistics in business. What was the
22 conversation between you and Mr. Roshan about getting
23 into business together?

24 A. Again, originally it was I've got Tamerlane
25 Global Services. It's going to be a small project. I'm

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

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

7 We were working at the time in -- at George
8 Scientific on another project involving trucking on a
9 larger scale, fuel contract that GHL was trying to
10 attain where Masud was asking for my assistance with
11 regard to how to price out and how to actually draft up
12 an operations plan with a woman named Sandy Ibrahim, in
13 order to go after a contract on behalf of George and
14 Global Hub.

15 So while working this I said, you know what? I
16 can do it better. I can build a better mousetrap and I
17 can actually make this work. Would you like to come?

18 And again it was, we were excited. We were
19 happy. Good to go.

20 I was provided a price list, and the prices came
21 in so crazy high. I mean it was one of those, wait a
22 second, guys. I turned back to Masud and handed him the
23 list and said, Masud, I got to tell you something. Your
24 prices are way out of whack here. I know what the
25 prices are. I have price lists from other truckers.

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

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

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

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

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

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

17 THE COURT: Of what year?

18 THE WITNESS: Oh sorry, 2010, Your Honor.

19 BY MS. FIERST:

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

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

1 that would be used. So --

2 Q. Continue.

3 A. So if it had to go from Bagram to Kabul, I need
4 this price for 20-foot truck. Bagram to Kabul for a
5 40-foot truck. And what I explained to Masud at the
6 time when I gave him the price list was these are
7 government contractors. They need to have lists in
8 order for their bids to happen. Therefore, I need this
9 price list to stand for at least a year. He agreed.
10 He'd stand for it for at least a year with regard to
11 these smaller commercial movements.

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

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

21 And then it would be literally on a transactional
22 basis. It would be one of those, I've got an e-mail.
23 I've got a shipment from point A to point B. Based on
24 your price list, it's price X. Will you complete the
25 movement? Yes. Okay. The cargo is coming in this

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

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

6 A. Not at that point.

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

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

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

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

1 retrograde cargo movements?

2 A. Yes. In May of 2011, we received word from
3 Liberty Global Logistics that they were less expensive
4 options in the market and what could we do about our
5 pricing. We went back to Global Hub, said here is the
6 pricing you provided on the original list. Can you beat
7 these? Can you bring this down? This is where
8 ourselves and Liberty are -- understand where the
9 challenges may be in these particular routes, security,
10 and what have you. And so we went back to them in May
11 for some modified movements. I want to say it was about
12 ten different routes, maybe seven, something along those
13 lines, of the number of routes and then the type of
14 conditions under those routes.

15 THE COURT: Let's take the morning recess
16 now for 15 minutes.

17 (Court recessed at 11:32 a.m. and reconvened
18 at 11:48 a.m.)

19 THE COURT: You can bring the jury out, Mr.
20 Toliver. Thank you.

21 You may be seated.

22 All right, counsel. You may proceed.

23 MS. FIERST: Thank you, Your Honor.

24 BY MS. FIERST:

25 Q. Mr. O'Brien, before we took our break, we were

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

3 A. Correct.

4 Q. Was there any agreement on the term or length of
5 the agreement between Tamerlane and Global Hub
6 Logistics?

7 A. There was none.

8 Q. So, how about the handling of charges other than
9 the point-to-point charge that you discussed earlier.
10 For example, there's been testimony in this case
11 regarding security. Was there any discussion regarding
12 how security would be handled?

13 A. Not at the early stages. Security was typically
14 something we would pick up on -- when a movement was
15 issued to us. We would raise the issue of what security
16 was needed, and they would provide a cost accordingly.

17 Q. There's also been testimony about how security
18 was charged, whether it was per truck or otherwise. Can
19 you discuss that, Mr. O'Brien?

20 A. Absolutely. In every single instance with the
21 exception of one instance, we charge per truck.
22 Security was always charged per truck.

23 In one case, it was TF Strike 1, it was charged
24 per CCN. Now, this is how we would charge. And there's
25 a reason for that.

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

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

8 MR. FRANCO: Objection.

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

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

14 THE COURT: All right.

15 THE WITNESS: The -- we were engaged by
16 Liberty to send a team to Kandahar to manage Security
17 Packers' movement to ensure that the cargo would move
18 out of Kandahar safely and in a timely manner.

19 Again, GHL was not part of TF Strike 1
20 initially. The original bid for TF Strike 1 was
21 provided by Security Packers to Liberty. We were not
22 involved in that particular bid. And the way the
23 Pakistanis would charge for security was on a per TCN
24 basis. So that would be on each individual piece.

25 So when ourselves and Liberty and Security

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

10 MS. FIERST: Objection, objection.

11 THE COURT: What's the objection?

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

14 BY MS. FIERST:

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

16 THE COURT: Sustained.

17 BY MS. FIERST:

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

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

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

1 THE COURT: All right.

2 THE WITNESS: That invoice had in fact -- it
3 was shown yesterday.

4 THE COURT: All right, next question. Thank
5 you.

6 BY MS. FIERST:

7 Q. How about -- so in the one instance on Strike 1,
8 security was charged per TCN. Is that your testimony,
9 Mr. O'Brien?

10 A. Only in the TF Strike 1 it was charged --

11 MR. FRANCO: Objection.

12 THE COURT: Remember you have to stand when
13 you object in here, so I know you're objecting.

14 MR. FRANCO: Sorry.

15 THE COURT: That's all right.

16 THE WITNESS: Sir, can I speak to that
17 matter, sir?

18 THE COURT: Restate your question, please.

19 BY MS. FIERST:

20 Q. So, in terms of charging for security per TCN
21 versus per truck, which were the movements -- how did
22 the break down go in terms of which movements were
23 charged which way?

24 A. In every single movement with the exception of TF
25 Strike 1, which we did not initially provide a quote on,

1 we charged per truck.

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

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

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

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

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

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

1 yourselves and Security Packers. Understood. Security
2 Packers would run the trucking, and Security -- we would
3 just do the base management.

4 For our purposes, that didn't sit well for us
5 because we looked at this as oh-oh, we may be cut out of
6 trucking and moving forward. We may actually be out of
7 the trucking business if everything goes to Security
8 Packers in Pakistani. We won't be able to make as much
9 money we were making. And that would kind of stink
10 because Security -- sorry, good management fees were
11 typically about \$100 per TCN. Whereas the trucking was
12 running closer to around the \$5,000 mark or somewhere
13 thereabouts. So there's a big difference in terms of
14 what we could make from a revenue perspective.

15 We wanted to engage GHL, our trucking partner and
16 see if we get some of the trucking. However, there was
17 no opportunity early on.

18 At some point in time, and I don't know when but
19 it was around the same time as this movement, the
20 security team on Kandahar decided that Pakistani
21 truckers were a direct threat to the U.S. military and
22 would not allow Pakistani truckers to come on to the
23 bases in Afghanistan.

24 The Pakistanis chose to go the shuttle program.
25 That is they would choose a few Afghan truckers to pick

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

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

9 THE WITNESS: Yes, it does, sir.

10 THE COURT: All right.

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

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

22 That's when Liberty turned to us and said,
23 can you provide a trucking solution? And we turned to
24 Global Hub. I actually met with Masud Roshan personally
25 myself at Pat Troy's Bar in Alexandria. And over beers,

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

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

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

16 MR. FRANCO: Objection, Your Honor.

17 MS. FIERST: I don't think he's testified to
18 anything that he was told.

19 THE COURT: He said they were angry. He
20 didn't state what the Pakistanis said.

21 Objection overruled.

22 THE WITNESS: We eventually talked to the
23 Pakistanis -- I talked the Pakistanis into accepting our
24 Afghan trucking solution on the basis of a per truck
25 cost. That would then have profits cut three ways in

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

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

11 BY MS. FIERST:

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

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

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

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

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

1 Q. How did demurrage work on these retrograde
2 movements?

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

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

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

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

19 As far as demurrage is concerned, it's important
20 to point out that nobody hates curve balls more than a
21 contracting officer, and they will call you out on it as
22 a contractor, subcontractor, or contractor. If you
23 bring a price up, and you say this is the price to move
24 it, you better have a pretty good reason for changing
25 the price later on.

1 MR. FRANCO: Objection, Your Honor.

2 THE COURT: What's the objection?

3 MR. FRANCO: Nonresponsive.

4 THE COURT: Overruled. Next question.

5 BY MS. FIERST:

6 Q. How about additional expenses like there's been
7 testimony regarding straps or chains or belts or tarps?
8 What are those items, Mr. O'Brien?

9 A. In order to safely move the cargo from
10 Afghanistan to Pakistan, it is determined by the
11 military that they want to have straps, chains and tarps
12 over their cargo in order to ensure that the cargo
13 doesn't fall over. For the tarps, it's to protect
14 against occasional -- any kind of rocks or things such
15 as debris destroying the cargo. There was also an
16 assumption that tarps would hide the nature of the cargo
17 that was traveling underneath the tarp to try to limit
18 the potential for attack in transit.

19 This was a condition of the USC6 contract and it
20 made its way into our operations plan that we would
21 share with GHL prior to re-movement.

22 Q. So, was there any agreement or discussion with
23 Mr. Roshan regarding the payment by Tamerlane of things
24 like straps, belts, chains or tarps?

25 A. Not initially, no. Initially, we were pretty

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

6 After the movement had completed, Mr. Roshan when
7 he tried to change the invoice and increase the invoice
8 by \$400,000 on us, say what are the \$400,000 charges
9 for? I had already given him \$50,000 more than he had
10 originally tried to invoice us in the first time. One
11 of the excuses that he used was for chains, straps and
12 tarps.

13 I say guys, this is not a surprise. This is part
14 of the con opts. It's already in there. However, I
15 figured, you know, if it's coming out of your pocket,
16 we'll reimburse you. But I had to reimburse them out of
17 my pocket. It was not a chargeable back to the contract
18 because, again the con opts and the contract had
19 explicitly stated that you had to have chains, straps,
20 and tarps.

21 Q. All right. How about any other types of expenses
22 that you discussed with Mr. Roshan in advance of these
23 movements beginning that Tamerlane would or wouldn't pay
24 for on these movements? Were there any others, Mr.
25 O'Brien?

1 A. No. Typically, the -- not typically. In every
2 case, I need you to move the cargo from point A to the
3 point of Karachi. It has to go from point A to the
4 point of Karachi. Got to complete. You've got your
5 truck and your security charge.

6 There might be -- in fact, EITV devices, that was
7 a separate charge. We were purchasing the EITV devices
8 from the Pakistanis. We were purchasing additional
9 security from the Pakistanis and port management fees
10 from the Pakistanis.

11 So because we had these purchases on the Pakistan
12 side, our focus with regard to our engagement with GHL
13 was, I need X number of trucks. I need -- these are the
14 types of trucks I need. Can you meet this price, or
15 will you honor the price you had earlier provided in the
16 event of those instances in which we had a price list
17 already established and the security price. That was
18 it.

19 Q. How about any agreement between Global Hub and
20 Tamerlane regarding when GHL would get paid for these
21 movements? Was there any?

22 A. No, there was no agreement as to when GHL would
23 get paid for these movements. Each movement would
24 change. We operated as we got an invoice of the clean
25 invoice, a final invoice, we would try to pay as quickly

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

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

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

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

23 A. I have.

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

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

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

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

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

11 So, for instance if I'm moving cargo from point A
12 to B and I get a certain payment when it hits the
13 border, I may get say 25 percent or something of that
14 nature.

15 Q. Was there any agreement between Tamerlane and
16 Global Hub Logistics regarding advances or progress
17 payments?

18 A. Again with the exception of Task Force Warrior in
19 which we offered it to them, there was no such
20 agreement.

21 Q. Was Tamerlane ever provided advances by Liberty
22 for any of the movements that Tamerlane performed for
23 Liberty?

24 A. Once.

25 Q. So, when -- you talked about paying when you got

1 a clean invoice, right, Mr. O'Brien --

2 A. Yes.

3 Q. -- a minute ago. What did you mean when you said
4 that you would pay when you got a clean invoice?

5 A. Dealing with GHL was a disaster. I mean, I
6 cannot tell you how bad it was with regard to invoice.
7 We would receive invoices for items we had already paid
8 for. We would receive invoices that were higher in
9 cost. We would receive invoices for things -- it was
10 always an attempt to renegotiate the price after we
11 would provide the invoice. It was literally like trying
12 to hit a spinning wheel. It was crazy.

13 I would have to literally stop what I was doing,
14 operations where I was doing, whenever I was traveling,
15 stop, take a look at these often cockamamie invoices,
16 take a look at what I had received as quotes and go line
17 item by line item and come back to them and say, guys,
18 you have X. You gave me price for X. What's this?
19 You're charging me this. You have price for this,
20 you're charge me this. What's this? What's that?

21 And it would go back and forth and then there
22 would be an attempt to renegotiate the price after the
23 fact. And I would explain, guys, I base my pricing on
24 what you gave me. Now you're coming back to me asking
25 me for more money, and I would be called a cheap guy. I

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

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

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

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

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

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

1 So the process that would be undertaken was, I
2 received the invoice. Again, I'd stop what I was doing,
3 whatever I might be working on at that time, take a look
4 at what they charging me. And then I would have to look
5 back at the prices that I used and the e-mails or the
6 price list that were exchanged to determine what the
7 costs would be.

8 Once I looked at that, then I would also have to
9 look with my finance team at the time and say, did we
10 pay this? Did we pay this? Yes, no, did -- is this the
11 cost we gave? So we would go back and forth.

12 Literally, I'd have to write notes on the
13 invoice, find the e-mails and the e-mail chains. Just
14 to understand we have kept every single e-mail as a
15 company so that -- because we consider ourselves defense
16 contractors, we kept every e-mail.

17 So I go back to every single e-mail that was sent
18 and turn it over to these -- to the GHL team and say,
19 security is not \$2,700. It's \$1,800. Here's the e-mail
20 where you quoted us \$1,800.

21 Here is this particular truck cost. It's not
22 \$550, it's \$500, whatever it would be. And we would
23 literally go over each one.

24 And again I would can get back colorful language.
25 I would get back -- and by the way, I'm no angel. But

1 you get back all kinds of, you know, these, how dare
2 you. Why are you trying to cheap skate us, et cetera,
3 et cetera.

4 But at the end of the day, we'd eventually come
5 down to guys, I've got the e-mails for you. Here's the
6 price. Honor the price you gave me.

7 Eventually, we'd negotiate something at the point
8 where they say, okay fine, I'll give you this. Here is
9 the invoice. I will pay.

10 Q. And, once you'd been able to verify or agree on
11 the charges for a particular movement, did Tamerlane pay
12 Global Hub Logistics?

13 A. Every single invoice that we had received, until
14 TF Strike 1 on -- and even TF Strike 1, we paid the
15 trucking charges on. Every single invoice was paid.
16 Every single invoice was paid. Every one of them until
17 this five movements incident.

18 Q. And is that something the payments that Tamerlane
19 has made to Global Hub Logistics, is that something you
20 can track at Tamerlane?

21 A. Absolutely. I had an entire finance team. We
22 have a CPA that worked with us, Witmer. I can track
23 every single payment that was made to GHL.

24 Q. Mr. O'Brien, I'd like to direct your attention to
25 Defendant's Exhibit 343.

1 A. I see it.

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

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

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

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

12 MS. FIERST: Thank you, Your Honor.

13 BY MS. FIERST:

14 Q. All right. Mr. O'Brien, if you could just orient
15 us to this particular document.

16 A. This particular document here is our payment
17 record, our internal payment document generated again by
18 QuickBooks, the accounting software that we use at
19 Tamerlane, that tracks every payment from the point at
20 which we received QuickBooks which is in November, which
21 we bought QuickBooks in November of 2010 until the final
22 payment that we made on July 18, 2011, after -- shortly
23 after Global Hub Logistics dumped its cargo off in
24 different points in Afghanistan.

25 Q. And, Mr. O'Brien, I'm just going to draw your

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

4 First of all, there's an entry -- I don't know.
5 There's an entry on the 7th line. It's a check dated
6 4/27/2011 for \$50,000.

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

8 A. I do.

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

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

13 A. I do.

14 Q. Can you tell us?

15 A. Yes, during the course of Task Force Warrior,
16 Task Force Warrior was originally quoted at
17 approximately \$1.2 million. That was what the cost
18 would be for Global Hub Logistics. And that's reflected
19 a few lines above in \$602,425. That was a 50 percent
20 payment that we are provided to Global Hub.

21 During the course of operations, Global Hub had
22 provided us with a lot of basic support, and we
23 recommended that, things like cellphones for Brad
24 Parham, things like making sure that chains and straps
25 and things of that nature were taken -- were purchased

1 on the ground.

2 When we finally got -- when we were able to cut
3 the final invoice based on pricing that had been
4 provided by Global Hub Logistics, the military had
5 reduced some of the cargo loads. Originally the
6 movement itself was an 800-unit movement. It then
7 dropped to 632 pieces for the final conveyance.

8 By going to 632 pieces, the price from
9 1.2 million had dropped to approximately \$1.17 million.
10 There was some variations in the types of trucks that
11 were used that increased pricing in some areas but the
12 total numbers had dropped.

13 So we explained to them, there's \$1.17 million
14 invoice is what we expect from you guys. Please cut us
15 an invoice. This is why. Here is the number of units.
16 Here is the price that you quoted, et cetera.

17 So we went through this line item by line item
18 with Global Hub Logistics. At the end of that, I said
19 guys, you give us a lot of support. I appreciate
20 everything you did. I'm going to give you -- I
21 voluntarily offered them a \$50,000 thank-you-very-much
22 program management fee that covered the cost that they
23 had taken out of pocket to support our team on the
24 ground.

25 That \$50,000 is my extra bonus as such to them,

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

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

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

9 A. Yes, I do, ma'am.

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

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

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

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

1 what's called the Office of Foreign Assets Control,
2 OFAC.

3 If you send money overseas above \$10,000, you
4 have to prove where that money went to. And there are
5 certain countries that are red flagged. Afghanistan is
6 one of them. Pakistan is one of them.

7 By nature of the area you're working in, these
8 are areas that have a high concentration of terrorist
9 activity and terrorist funding activity.

10 We had send \$300,000. Global Hub Logistics was
11 swearing up and down that it did not receive that
12 \$300,000. It freaked us out. We wound up taking a look
13 at that \$300,000 going where is it? Where is it? Where
14 is it?

15 If we go to the bank and say we just sent
16 \$300,000 to Pakistan, and we can't account for \$300,000
17 in Pakistan, where in a world of hurt. We can get
18 ourselves in trouble. And OFAC -- OFAC can shut us
19 down. They can freeze our accounts and begin to
20 investigate into what we're doing.

21 Are you sure -- we say this to Global, to Masud,
22 are you sure that that money was not received on your
23 side before we take this step, before we go to Bank of
24 America and initiate an investigation? Please tell me.
25 Are you sure that that money was not received? Yes,

1 that money was not received.

2 Ultimately, the money was tracked and came back
3 to our account with some kind of weird fee of \$20.
4 \$299,980 was returned back to us, thankfully. And then
5 we immediately sent back out the -- not immediately, but
6 within a few days, I guess, of receiving that money, a
7 week or so, an additionally \$300,000 to give that money
8 back over to where it needed to go, an alternative bank
9 that was provided by Masud Roshan.

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

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

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

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

3 A. I do.

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

6 A. Nothing was codified or put into a contract as
7 such. However, we were operating under that premise
8 where as we got business, we would engage Global Hub
9 Logistics first, and give them the opportunity to
10 execute the assignment. We did so with every single
11 movement that we had.

12 Q. Now, was that the case for the retrograde
13 movements?

14 A. There is --

15 Q. During the retrograde?

16 A. I'm sorry, ma'am. I apologize.

17 There wasn't a single movement of retrograde,
18 U.S. military movements that was not provided to Global
19 Hub Logistics at all.

20 I mean, every single one of those U.S. military
21 moments were provided to Liberty Global. The only time
22 we used an alternative vendor is when they dumped our
23 cargo in two pretty nasty locations.

24 Q. How about the commercial cargo movements?

25 A. With the exception of one instance, a series of

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

4 Like I said before, the original company started
5 out with small freight forwarders. We had folks that
6 were moving commercial cargo for contractors from base
7 to base, or base to say Kabul, the embassy or something
8 of that nature.

9 On those movements, there were a series of
10 movements that had come out of Dulles Airport into
11 Bagram that needed to move into other locations to
12 include Mazari Sharif, Kabul areas throughout
13 Afghanistan.

14 Angela Dean who was in charge of operations at
15 the time -- and just to point out, I was on every single
16 one of these e-mails and communications. Angela Dean
17 began reaching out to Global Hub Logistics and said, hey
18 we've got a movement as was her normal course of
19 business in early May. She was ignored. She continued
20 to reach out. She was ignored.

21 MR. FRANCO: Objection. Objection.

22 THE COURT: Sustained.

23 THE WITNESS: I noticed --

24 THE COURT: Hold on just a second.

25 Objection sustained means that you can't testify to

1 these things.

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

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

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

11 MS. FIERST: Fair enough.

12 BY MS. FIERST:

13 Q. Let me ask you, Mr. O'Brien, to look at
14 Defendant's Exhibit 58.

15 A. I see it, ma'am.

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

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

22 Q. And this is from March of 2011; is that right?

23 A. That is correct.

24 MS. FIERST: Your Honor, we would ask that
25 Defendant's Exhibit 58 be admitted into evidence and

1 published to the jury.

2 THE COURT: 58 will be received. You may
3 publish.

4 MS. FIERST: Thank you, Your Honor.

5 BY MS. FIERST:

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

8 A. I see it, ma'am.

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

11 A. This is a pick up request that Angela Dean is
12 sending again to Abdullah Gharjy with myself and Masud
13 Roshan in copy in which she's asking to have, in this
14 particular case, contracted cargo moved from Bagram
15 Airbase to looks like Kabul, Camp Integrity, Kabul which
16 was -- USTC run by Xe Services.

17 Q. And, is there a pick update listed there?

18 A. There is. The pick update is specific to 4
19 March.

20 Q. And then there's an e-mail above that right, Mr.
21 O'Brien?

22 A. There is.

23 Q. What is Ms. Dean communicating in that e-mail?

24 A. At that time, Ms. Dean is saying that the cargo
25 itself she gives all the details on the cargo. She then

1 follows up where she says, please be aware that the
2 cargo was delayed. It's going to actually arrive on
3 March 5th. She's alerting.

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

6 A. There is not.

7 Q. Okay. Let's look at the next e-mail. It's at
8 the bottom of page 55973 and the top of 55974.

9 A. I see it, yes.

10 Q. What's that e-mail, Mr. O'Brien?

11 A. Again, on March 7th, Angela Dean this is reaching
12 out to Abdullah Gharjy and someone who had been
13 introduced to us as an assistant, Hamadullah Faizi, with
14 again myself and Masud Roshan in copy, referencing the
15 same shipment, practically begging them to pick it up,
16 that it needs to be picked up and moved immediately.

17 Q. And then, what's -- is there a response finally
18 above that, Mr. O'Brien?

19 A. There is. There is a response on March 7th from
20 Abdullah stating that the -- that he would -- he did see
21 the earlier e-mails.

22 Q. And, was this an example of what you were talking
23 about a couple minutes ago, Mr. O'Brien, with reaching
24 out and not getting responses regarding commercial
25 movements?

1 A. That's correct. These customers were crucial,
2 critical to our business.

3 Q. Why were they crucial and critical to your
4 business?

5 A. For some of these smaller movements -- for some
6 of these smaller contractor movements, if you don't
7 execute on time for the contractor, the contractor
8 themselves get penalized and they turn back at us and
9 say, you guys didn't deliver my cargo. If we don't
10 deliver the cargo on time and a contract doesn't get
11 executed on time, A, it's bad because it hurts you as a
12 company, Tamerlane reputationally. It also hurts
13 Tamerlane because who wants to use a company that can't
14 deliver on time and put those contracts in jeopardy.

15 A lot of times --

16 THE COURT: Excuse me. Excuse me. What I'd
17 like to do is focus on this case. And I'm feeling like
18 I'm getting speeches as opposed to answers to questions.
19 So would you'd focus on specific questions and specific
20 answers about this case for this contract, please.

21 MS. FIERST: Yes, Your Honor. I'll see if I
22 can get a little bit more specific, although I do think
23 that Mr. O'Brien at least began his answer with a
24 response regarding delays by Global Hub --

25 THE COURT: I'll give you a chance to argue

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

3 MS. FIERST: Yes, Your Honor.

4 BY MS. FIERST:

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

8 A. There was. There were a few conversations to
9 that effect. And on April 1st of 2011, I actually
10 proposed what I thought would be a pretty substantial
11 agreement between the two companies.

12 Q. Can you tell us some more about that, Mr.
13 O'Brien?

14 A. Absolutely. Leading up to the conversation, we
15 had discussed about exclusivity, discussed about being
16 given a right of first refusal.

17 Earlier in the month of March, an exchange that I
18 had between myself and Masud, I wound up going to Masud
19 and explaining to him that I was concerned that GHL may
20 not be capable of handling the kind of business. I want
21 to give you guys the business, but right now, it's only
22 the two of you. It's only you and Abdullah, and you
23 need to be able to change.

24 Ultimately, we -- we thought we worked out our
25 differences. And I proposed on April 1st a pretty

1 substantive plan that would have us on an exclusivity
2 arrangement, on a right of first refusal, that would
3 also have broad reciprocity between the two companies
4 and also offer some assistance with regard to capacity
5 building for the Afghans.

6 At the end of the day, the majority of that
7 proposal was turned down because there was some profit
8 sharing issues that Global Hub did not want to get
9 involved in. So, that was turned down.

10 And the -- the contract that we ultimately tried
11 to provide to Global Hub on -- actually, I did provide
12 to Global Hub on June 7th, the MOU, had some of those
13 conditions that still survived, that offered exclusivity
14 and right of first refusal on June 7th when I personally
15 presented in Kabul.

16 Q. And when you say you personally presented it, you
17 said that was in Kabul in June?

18 A. That's correct. In June we finally were able to
19 draft an MOU. I had gone out to attorneys to get it
20 drafted. There was some concern about the U.S.
21 attorneys --

22 Q. I don't want you to talk about any conversations
23 with attorneys or anything like that, Mr. O'Brien.

24 A. My apologies, ma'am. We brought back -- we
25 finally had MOU that was designed, and I personally

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

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

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

11 THE COURT: Did you say 39-A?

12 MS. FIERST: Plaintiff's 39-A.

13 THE COURT: All right.

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

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

17 THE COURT: I have it.

18 BY MS. FIERST:

19 Q. All right. Mr. O'Brien, you saw this document
20 during Mr. Roshan's testimony. I'm going to direct your
21 attention to your conversation that's at the bottom of
22 the first page and the top of the second page.

23 Do you see where I'm pointing to, Mr. O'Brien?

24 A. I do, yes, ma'am.

25 Q. Okay. This e-mail refers to a conversation

1 yesterday. Do you see the subject line there?

2 A. Yes, ma'am.

3 Q. Do you recall the conversation?

4 A. Yes. At that point, I had conveyed my concerns
5 with regard to GHL's capacity to handle future business.
6 The business was beginning to expand. There was some
7 concerns at the border at the time. We had three trucks
8 that were inexplicably held up at the border.

9 We were providing information to the military
10 that was being provided to us by GHL. And the U.S.
11 military was in turn reporting that we were lying
12 because the EITV devices, enhanced in-transit visibility
13 devices were in fact indicating and we saw those EITV
14 reports that they presented to us were in fact showing
15 that Abdullah Gharjy was lying about the status of
16 cargo.

17 So I had called Masud Roshan and explained to him
18 that I cannot have lies. I cannot lie to the U.S.
19 military. I need reports. I need them right away. I
20 think you guys are overstretched. I think this is a
21 problem, and I need you to rectify these issues in order
22 to be able to execute these missions. Are you on board,
23 yes or no?

24 And another point of the conversation was I can't
25 have the small movements slipping through the cracks

1 either. The small movements are important. These
2 movements for these agencies are critical to our
3 business. And so I explained that to him on the phone
4 and then I wrote out some of these concerns in a follow
5 up e-mail to Mr. Roshan.

6 Q. Okay. And if you look at the top of the second
7 page, Mr. O'Brien, do you see the paragraph that begins
8 "independent of TF Hammer, will GHL continue working
9 with Tamerlane". Do you see where it says that on the
10 top of the second page?

11 A. I'm sorry. My apologies, yes.

12 Q. Okay. There it says "I've brought every
13 opportunity to you guys and grown GHL exponentially".
14 Do you see where it says that?

15 A. I do.

16 Q. Was that accurate on March 8, 2011? Did you
17 bring every opportunity to GHL?

18 A. It is.

19 Q. And then in the next paragraph, you've written
20 about writing Abdullah with the number of requests
21 without a response. Do you see where it says that?

22 A. I do.

23 Q. Can you tell us about that, Mr. O'Brien?

24 A. This is in reference to what I was speaking about
25 earlier in which I had -- Abdullah for some period of

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

7 MR. FRANCO: Objection, Your Honor, hearsay.

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

10 MR. FRANCO: Thank you.

11 BY MS. FIERST:

12 Q. If you can focus your response, Mr. O'Brien, on
13 the fact that here your statement in this e-mail that
14 you'd written Mr. Gharjy with a number of requests
15 without a response.

16 A. Correct. Ultimately, Abdullah stopped reporting
17 to us and had actually stopped reporting on local
18 movements as well.

19 Q. When you say he stopped reporting on local
20 movements, is that the -- is that -- does that pertain
21 to what we just looked at in Defendant's Exhibit 58
22 Ms. Dean's e-mail asking for a response or is that
23 something different?

24 A. It does.

25 Q. So, Mr. Roshan writes back to you there in the

1 middle of the first page, right?

2 A. Yes, he does.

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

5 A. That's correct.

6 Q. And his father as well, right?

7 A. Yes, ma'am.

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

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

16 Q. At there at the top of the page, do you see where
17 you referred to having sent a price quote request?

18 A. Yes, I do.

19 Q. And, then below that, Mr. O'Brien, you wrote that
20 you had dozens of projects in the works that require
21 pricing, right?

22 A. Correct.

23 Q. What were you expressing there?

24 A. There were a number of prices that were being
25 sought at the time. One of the price lists was for

1 movements from the Torkham border in and around
2 Afghanistan.

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

6 The Northern Distribution Network is the former
7 Soviet Union. And what we needed to do is find
8 ourselves an Afghan vendor that would be able to bring
9 up the cargo at Towraghondi, the border in Turkmenistan
10 which is one of the natural borders, crossing borders
11 into Afghanistan and move the cargo from the border
12 point throughout the different points within
13 Afghanistan, within the forwarding operating bases of
14 Afghanistan.

15 Q. So Towraghondi is -- I'm sorry that I am failing
16 my high school or college education -- Towraghondi is in
17 Afghanistan or it's in another country?

18 A. It's similar to Chaman for Pakistan. It's a
19 border crossing between Turkmenistan and Afghanistan.

20 Q. But it's in Afghanistan, or it's in Turkmenistan?

21 A. It's a trans-border point. So it is in
22 Afghanistan.

23 Q. Okay. And you wrote there to Mr. Roshan "if you
24 need more time, I understand. But I will have to return
25 to my old vendor relationships", right?

1 A. Correct.

2 Q. What were you telling him there?

3 A. If he can't work these deals out, I will have to
4 go back to the folks that I previously used,
5 specifically Emran Dawran and a couple of other small
6 companies that were regionally placed.

7 Q. Okay. You also -- I'm going to direct your
8 attention, now, Mr. O'Brien, to the continuation of that
9 conversation that we also sought the other day. It's
10 Defendant's Exhibit 60. So you can put that one aside.

11 This is an exhibit that's already been admitted
12 into evidence, Your Honor.

13 So, I'm going to ask -- is it up on the screen?
14 Thank you.

15 So, Defendant's Exhibit 60, do you see the oldest
16 e-mail in that string on page 9452, Mr. O'Brien?

17 A. Yes, ma'am.

18 Q. And the subject line, re conversation yesterday?

19 A. Yes, ma'am.

20 Q. Is this a continuation of the same conversation
21 we just looked at in Plaintiff's Exhibit 39-A?

22 A. It does. It looks like it's a little bit
23 intermingled, but yes, it is the same conversation as
24 yesterday.

25 Q. Okay.

1 A. When we just -- sorry.

2 Q. Right. I'm going to direct your attention to the
3 second page of the document, page 9451.

4 A. Yes, ma'am.

5 Q. Your e-mail there that takes up the majority of
6 that page, do you see where I'm directing you?

7 A. Yes, ma'am.

8 Q. So, what are you saying there specifically
9 regarding the last statement there about diversifying
10 basket or sticking with GHJ?

11 MR. FRANCO: Objection. The document speaks
12 for itself. It's what he's saying.

13 THE COURT: Overruled.

14 THE WITNESS: At this stage, we were having
15 concerns regarding GHJ's performance as it pertained to
16 the three trucks that were stuck at the border and, the
17 essential failure to respond on multiple e-mails that we
18 were providing as a company.

19 And so, I was asking him flat out, hey, I
20 need to know whether you're going to be there. Are you
21 going to be there or do I need to find some other
22 service providers? If that's the case, I'll find other
23 service providers. If you're my guy, I'll stick with
24 you.

25 BY MS. FIERST:

1 Q. And Mr. Roshan responded to this question, Mr.
2 O'Brien?

3 A. He did.

4 Q. On the prior page? What was --

5 A. Yes, he did.

6 Q. What was your understanding with -- direct your
7 attention to where he says, "let's also make sure all
8 your eggs are not in one basket". Do you see where it
9 says that?

10 A. I do.

11 Q. What was your understanding of that response from
12 Mr. O'Brien -- Mr. Roshan?

13 A. He was advising me to go out and seek other
14 vendors in case they got overloaded or overwhelmed.

15 Q. And did you wonder -- did you know whether GHL
16 was going to continue to work with Tamerlane at all at
17 this point?

18 A. Not at the point at which I read -- that I got
19 that e-mail, no. And that's why if you look at the line
20 above, I need to ask him. I need clarification.

21 Q. Did you have further conversations with Mr.
22 Roshan about whether GHL would continue working with
23 Tamerlane at all?

24 A. Do you mean after March 8th, ma'am?

25 Q. After March 8th, yes.

1 A. Yes, ma'am.

2 Q. Okay. I'm going to ask you to take a look
3 specifically -- well, do you have an independent
4 recollection of a conversation that continued the
5 March 8th dialog here?

6 A. Nothing that really comes off. I do -- as I
7 recall, I believe, Sardar Roshan also sent me an e-mail,
8 something to the effect, I'm glad that you are working.
9 But I'd have to actually -- I remember something to that
10 effect. I'm glad you guys are working these issues out.

11 Q. Now, another document that we looked at earlier
12 in this trial, Defendant's Exhibit 144, I'm going to ask
13 you to take a look at that, Mr. O'Brien.

14 A. Yes, ma'am.

15 Q. All right. Mr. O'Brien, we looked -- Mr. Roshan
16 was examined regarding this document. Do you recognize
17 this document, this conversation between you and Mr.
18 Roshan, and Mr. Gharjy, Defendant's Exhibit 144?

19 A. Yes, ma'am.

20 Q. All right. Mr. O'Brien, what was happening at
21 this point in time, May 26, 2011?

22 A. At this point in time, on May 26th, we had had 31
23 pallets of cargo that had been ignored at Bagram for
24 movement to local areas, some of these smaller
25 commercial movements that I described earlier.

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

4 I found out just through the grapevine in
5 general. I had just returned in from India. I worked
6 in India for the majority of the month of May. I had
7 just returned from India, was kind of catching up on
8 stuff.

9 I was watching what was going on. I found out
10 that GHL had found out what had occurred and were
11 concerned. And they had expressed those concerns.

12 So, I called Masud first while I was in Norfolk
13 Airport on my way to Tampa to explain to him, hey
14 listen, this is why they went out and did this. I told
15 him, you're ignoring our cargo. These small movements
16 are slipping through the cracks. Abdo is overwhelmed.

17 We can't -- bottom line is we're going to the
18 grocery store to get something that's critical, and the
19 doors are closed. I can't have that happen.

20 Are the doors always open or are they not?
21 What's the deal?

22 And so as I explained, I had a conversation with
23 him. I then wrote an e-mail as well to that effect to
24 follow up on some of the thoughts that were shared, that
25 I had expressed to Masud Roshan.

1 Q. And I'm going to direct your attention to the
2 first page of Defendant's Exhibit 144. Do you see where
3 there's an e-mail from Mr. Roshan where he says he tried
4 to call you but it goes straight to voicemail?

5 A. That's correct. That was then in transit to -- I
6 was on my way to Tampa at that point.

7 Q. So you recall this conversation that you had when
8 you landed in Norfolk from Tampa?

9 A. It was the other way around actually. I was on
10 my way to Tampa from Norfolk. I'm sorry. You're right.
11 When I arrived in Norfolk, that's when I wind up having
12 this phone call with him. My apologies.

13 Q. And, did you -- do you see in Mr. Roshan's e-mail
14 that's at the bottom of 41942 and the top of 41943. Do
15 you see that e-mail?

16 A. Yes, I do.

17 Q. On the top of page 41943, do you see where Mr.
18 Roshan wrote "it is up to you how you want to distribute
19 the work. But I will tell you now", and that sentence
20 continues. Do you see that sentence?

21 A. Yes.

22 Q. Did you and Mr. Roshan discuss Mr. Roshan's
23 statement that it was up to Tamerlane how Tamerlane
24 wanted to distribute the work?

25 A. I did. We had discussed that on -- well, we had

1 discussed that on the phone, but again, it's one of
2 those he was saying, you can use who you want to, but
3 you know, just be careful if you use somebody who's not
4 credible, something along those lines.

5 Q. Now, this movement that you're referring to where
6 Brad Parham engaged another company regarding the BAF
7 cargo, was that a military retrograde movement?

8 A. It was not.

9 Q. It was a commercial movement?

10 A. It was. It was one of -- it was actually the 31
11 skids that had accumulated over the course of time that
12 were sent by Lyndon on two carriers, Coin and Silkways
13 on behalf of an out-agency contract.

14 Q. I'm going to -- I'm going to ask you to look at
15 one more e-mail before we move to a different topic.
16 It's Defense Exhibit 197.

17 A. Yes, ma'am.

18 Q. Mr. O'Brien -- Mr. O'Brien, can you explain what
19 the Afghan Ops e-mail box is at Tamerlane?

20 A. The Afghan Ops is an internal distribution list
21 that goes to all the individuals involved in operations.
22 That includes myself, at the time, Adam Bonifant who is
23 the chief operating officer, the director of client
24 support, Angela Dean, and a number of the operators that
25 are working on the ground at any given point, Brad

1 Parham, Tim Timpson, David Gordon and some of the folks
2 from the client support, to include Sherri MacIntyre,
3 Jerry McDonough and few other folks that were a part of
4 these client support team. It was a catchall to ensure
5 that information was not slipping through the cracks.

6 Q. But you were a part of that e-mail list serve or
7 distribution box; is that correct, Mr. O'Brien?

8 A. Yes, ma'am. I'm on every distribution list.

9 MS. FIERST: Your Honor, we would ask that
10 Defendant's Exhibit 197 be admitted into evidence.

11 MR. FRANCO: No objection.

12 THE COURT: 197 will be received.

13 MS. FIERST: Thank you, Your Honor.

14 BY MS. FIERST:

15 Q. Mr. O'Brien, I'm going to direct your attention
16 to the middle of page 44737, so the second page in this
17 document.

18 A. Yes, ma'am.

19 Q. The second -- the subject line here says, re LNK
20 trucks, right?

21 A. Correct.

22 Q. But then if you see in this e-mail from Mr. Masud
23 Roshan in the middle of the page, the last paragraph in
24 his e-mail he says "on a different note". Do you see
25 where it says that?

1 A. Yes, ma'am.

2 Q. Do you have a recollection of Masud Roshan's
3 involvement in Global Hub work during June 2011?

4 A. I do. Yes, Masud Roshan was in Kabul at the time
5 covering for Abdullah Gharjy while Abdullah Gharjy was
6 in Canada. So he was handling some of the operations
7 activity while Abdo was handling a personal matter in
8 Canada.

9 Q. So, here in this particular paragraph that I
10 pointed you to, Mr. Roshan is talking about -- do you
11 see what Mr. Roshan is talking about, Mr. O'Brien?

12 A. Yes, ma'am.

13 Q. That -- there was some cargo that had been --
14 that needed to be picked up; is that right?

15 A. Yes, ma'am.

16 Q. Was that a military retrograde movement?

17 A. No, ma'am. That's the small unit cargo. Again,
18 that's the commercial cargo.

19 Q. Do you see Mr. Timpson's response at the bottom
20 of the first page and the top of the second page?

21 A. Yes, ma'am.

22 Q. What is Mr. Timpson saying there?

23 A. Mr. Timpson's responding to Masud Roshan's
24 earlier e-mail, where Masud is asking about a pick up
25 that had to occurred in Bagram on Thursday, that he was

1 responding to it appears to be Saturday night around
2 11:00 p.m. on Saturday night, so almost four days later
3 after it had to be picked up. And Tim Timpson is
4 explaining on that Sunday shortly after receiving that
5 e-mail that because there was no response from the GHL
6 team, that they decided they need to go with a different
7 vendor. Unfortunately, there was no contact from the
8 company for several days.

9 Q. All right.

10 A. I think -- looking at the line if you don't mind,
11 as I'm reading it here, we will still give your first
12 notice on shipment that needs to be picked up. If you
13 don't respond, what can we do?

14 Q. Thank you, Mr. O'Brien.

15 Did you have familiarity with the pricing of
16 other companies aside from GHL who were doing work
17 similar to what GHL was doing in Afghanistan?

18 A. When I first started the company, yes, I had a
19 price list established again on the smaller commercial
20 movements that I shared with GHL to see if they can beat
21 the pricing. This was again October of 2010.

22 Shortly afterwards, in January, no, because, the
23 USC was relatively new to us as well. So we were
24 unfamiliar with the kind of price that might be in the
25 market.

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

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

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

17 Q. Thank you, Mr. O'Brien.

18 I want to shift gears a little bit. Earlier in
19 response to a question about invoices, you talked about
20 bank accounts changing or making payments at the
21 direction of Mr. Roshan or GHL.

22 Do you remember that testimony?

23 A. Yes, ma'am.

24 Q. Can you tell me what your -- what you mean when
25 you're talking about different bank accounts?

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

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

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

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

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

1 Q. Let's talk a little bit more about the invoicing
2 and the challenges that you referred to a little bit
3 earlier with the invoicing.

4 Specifically -- excuse me, specifically with
5 respect to the military retrograde movements, can you
6 talk about some of the problems that you had with GHG's
7 invoices?

8 A. Absolutely.

9 MR. FRANCO: Objection. Relevance, unless
10 we have focus here, Your Honor. I don't think anything
11 other than the movements that were issued.

12 MS. FIERST: That's why I directed him to
13 talk about the military retrograde movements and not --

14 THE COURT: All right, focus on whatever
15 invoice you're talking about.

16 MS. FIERST: Thank you, Your Honor.

17 THE COURT: Uh-huh.

18 BY MS. FIERST:

19 Q. Mr. O'Brien, I'm going to ask you to take a look
20 first at Exhibit 100, Defendant's Exhibit 100. Pardon
21 me.

22 A. Yes, ma'am.

23 Q. All right. This is has already been admitted
24 into evidence so it can be published.

25 Mr. O'Brien, can you tell us what this e-mail is

1 concerning?

2 A. This is concerning the TF Hammer invoice.

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

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

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

10 MS. FIERST: Mr. --

11 THE COURT: Objection overruled.

12 MS. FIERST: Thank you, Your Honor.

13 BY MS. FIERST:

14 Q. Go ahead, Mr. O'Brien.

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

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

21 THE WITNESS: All right, sir.

22 BY MS. FIERST:

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

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

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

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

13 On line item three, we had a higher price that
14 was being provided for the daily storage rate by about
15 \$10 a day, cumulatively a little bit more.

16 We had an issue with regard to detention. The
17 issue with detention, of course, is that we can charge
18 back the client for detention that is out -- that is
19 their fault. But if it's our fault or if it's GHIL's
20 fault, we didn't see why we should be charged that
21 number.

22 We have an issue with regard to one of the truck
23 charges that we called out into question. We -- I have
24 a number -- an issue with regard to the total number of
25 20-foot trucks that were used. Again that was inflated

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

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

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

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

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

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

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

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

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

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

23 A. It did.

24 Q. It --

25 A. It did get readjusted.

1 Q. It did get readjusted.

2 Let's talk about another -- let's talk about a
3 different issue, Mr. O'Brien, the reporting that you
4 referenced from Mr. Gharjy and the difficulty getting in
5 touch with him.

6 Can you -- speaking particularly about the
7 retrograde movements that are at issue here, can you
8 tell us about that?

9 A. Yes, the reporting was a disaster on more than
10 one occasion.

11 Q. And what was the impact to you based on that
12 disastrous reporting?

13 A. Any time we reported something that was
14 inaccurate, we would take that report, that inaccurate
15 report and forward it up to the chain based on whether
16 it was going directly to Liberty Global Logistics or to
17 the management team at SDDC.

18 I was also part of a call that was with the
19 Service Deployment and Distribution Command every week
20 as regarding status of different movements on behalf of
21 Liberty Global.

22 If we had a report that went up the chain, and it
23 turned out to be inaccurate, it hurt our credibility and
24 it would come down on us as being responsible for
25 turning in inaccurate reports.

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

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

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

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

15 MS. FIERST: Yes, Your Honor.

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

19 MS. FIERST: Fair enough.

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

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

1 Thank you.

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

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

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

8 THE COURT: You can get set up now.

9 MS. FIERST: Thank you.

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

12 MS. FIERST: Thank you, Your Honor.

13 BY MS. FIERST:

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

17 A. I do, yes, ma'am.

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

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

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

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

1 He was responsible for some of the vehicles, some of the
2 trucks that were moving from the Chaman border to
3 Karachi, Pakistan.

4 Q. And, did there come a point where there was an
5 incident involved -- involving Afzal regarding payment?

6 A. There is. Afzal had stopped moving the cargo
7 after we had paid for the NLC charges on May 8th. So,
8 to put this into context, the National Logistics Cell
9 which is the Pakistani military's sort of quasi-defense,
10 quasi-commercial form of protection of U.S. military
11 cargos moving through Pakistan had a fee associated that
12 they began to impose shortly after the Osama bin Laden
13 killing in early May 2011. And that fee was \$240. If
14 you did not pay that fee, your truck would have to wait
15 until you paid that fee.

16 Upon learning of the fee itself, we had the
17 Security Packers team pay the NLC charges and any
18 affiliated detention charges at the yard in Quetta, in
19 Pakistan. The trucks were then able to move forward,
20 and continue on to Karachi.

21 However, Afzal reached out to Security Packers
22 demanding money. We received a call from Afzal through
23 an interpreter explaining to us that he would not move
24 the trucks from Quetta until Global Hub Logistics paid
25 Afzal, at first what we thought was \$75,000. Ultimately

1 it turned out to be approximately \$11,200 or something
2 to that effect.

3 We instructed Security Packers to pay Afzal so we
4 could get the cargo moving ultimately. However, while
5 attempting to resolve the issue with Afzal prior to
6 resolving the issue with Afzal, I called -- I personally
7 called Abdullah explaining that Afzal had stopped the
8 cargo.

9 Initially, GHL between Abdo and Masud, said, yes,
10 Afzal is a problem. We'll handle it. Then, Abdullah
11 wrote me. I received an e-mail from Abdullah stating
12 that I must be a liar, that I'm coming up with a name
13 like Afzal. I explained to them that kids from Queens
14 don't typically come up with names like Afzal. Sorry.
15 I don't know who Afzal is.

16 I then go back to him. Masud recognizes and
17 actually acknowledges to me that he does know who Afzal
18 is and that he will handle Afzal.

19 Ultimately, Afzal gets handled by Security
20 Packers because I wrote a note stating guys, enough's
21 enough. We've got a \$1 million cargo movement here.
22 It's being held up for \$11,000 payment. Just pay the
23 man and we'll sort this out later, and that's what
24 happened.

25 Q. And what was your understanding of who was

1 responsible for the Afzal hold up?

2 A. Global Hub Logistics.

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

6 A. Very much so.

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

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

15 MR. FRANCO: Objection. Foundation for
16 that.

17 THE COURT: Sustained.

18 BY MS. FIERST:

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

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

1 and tazkira numbers in advance of a base movement.

2 So, if you were going on to the base itself, if
3 you're going to Leatherneck, you had to have a list of
4 who the truckers were that were coming to the base.

5 We asked GHJ for that list. It took a number of
6 days to receive it. But ultimately, we received the
7 list of 20 truck numbers, tazkira numbers and names.
8 Those truck numbers and names would then be used to
9 inform the base security team that those trucks were in
10 route to Leatherneck, inform the Service Deployment and
11 Distribution Command that those were the trucks that
12 were coming to pick up its cargo in order for them to
13 place the information into the International Booking
14 System, the IBS system. And then, we also were to use
15 that for the generation of placards.

16 On the front of the placard would state, LGL, SVC
17 cargo, the name of the trucker and the tazkira number
18 and that was essentially the pass for the trucker to
19 allow it to get pass the security point and into the
20 soak yard and ultimately collect the cargo.

21 So we received this list of 20 names, 20 trucks.
22 While the truckers were in route, this is Sunday before
23 Memorial Day in 2011, I received a call stating that --
24 from GHJ stating that the truckers were held hostage,
25 that there were ten truckers that were held hostage.

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

3 THE COURT: Next question, please.

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

5 BY MS. FIERST:

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

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

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

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

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

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

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

4 A. I am, yes, ma'am.

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

7 A. They are, yes, ma'am.

8 Q. Okay, thank you.

9 MS. FIERST: Your Honor, we would offer
10 Defendant's Exhibit 149 into evidence at this point.

11 THE COURT: 149 will be received.

12 MS. FIERST: Thank you, Your Honor.

13 BY MS. FIERST:

14 Q. All right. Mr. O'Brien, I'm going to focus your
15 attention on the very last page first, the initial
16 e-mail from Mr. Gharjy.

17 A. Yes, ma'am.

18 Q. And the last page of the document. And if you
19 look at that e-mail, Mr. Gharjy is providing a list for
20 today's trucks. Do you see that?

21 A. Yes, ma'am.

22 Q. Is that the -- the list that you were talking
23 about where truck numbers and names are provided?

24 A. That's correct.

25 Q. And, if you move forward in this e-mail, I guess

1 back in terms of the pagination, but forward in terms of
2 chronology, eventually, there's an e-mail from Mr.
3 Gharjy to the rest of the team on the bottom of the page
4 that's marked 15358 and then the top of 15359.

5 A. Yes, ma'am.

6 Q. Is this -- is this how you found out about the
7 allegation that trucks were taken into Taliban custody?
8 Do you recall how you found out?

9 A. Yes, ma'am. I'm not sure if I received an e-mail
10 first or a phone call first, whichever -- which -- how
11 the direction was. But this is the first time I
12 received in writing that there was an hostage event that
13 was being reported.

14 Q. All right. And, if you look at your e-mail at
15 the bottom of the first page -- or actually, rather, Mr.
16 Gharjy's follow up e-mail on the second page. Is this
17 discussing the same topic?

18 A. It is discussing the same topic. The truck
19 numbers here seem to be something that's different.
20 But, the topic is being discussed, yes, sir -- yes,
21 ma'am.

22 Q. And, was Mr. Gharjy telling you there in the
23 second line of the e-mail about what Global Hub was
24 doing to try to get the -- the truckers released? Do
25 you see there where it says a team will be dispatched?

1 A. Yes, ma'am.

2 Q. And, so was that your understanding of what GH
3 was doing?

4 A. That's correct, ma'am. Yes, ma'am.

5 Q. All right. And if you look at Mr. Roshan's
6 e-mail to you on the front of -- I'm sorry, on the first
7 page of the document, do you see in Mr. Roshan's e-mail
8 where he writes, "it's all getting nasty"? Do you see
9 that in the first paragraph?

10 A. Yes, ma'am.

11 Q. So, at this point in time, the Sunday that you
12 just described, the Sunday before Memorial Day, what is
13 your understanding of the situation with these trucks?

14 A. At this -- at this time, it was our understanding
15 that there were ten trucks that were still hostage, five
16 trucks that are returned to Kandahar and five trucks
17 that had moved on to Leatherneck and that they were
18 still held hostage at this point.

19 Q. And, based on what GH was telling you here, what
20 was your understanding of the gravity of the situation?

21 A. It was pretty dire. It was -- these men's lives
22 were in jeopardy.

23 Q. And what did you do with that information?

24 A. We were -- we did what we were obligated to do
25 which was inform Liberty Global Logistics, our client,

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

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

6 A. Yes, ma'am.

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

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

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

20 MR. FRANCO: Objection, relevancy.

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

23 THE COURT: Come to sidebar a moment,
24 please.

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

1 THE COURT: What is your objection?

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

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

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

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

18 THE COURT: I'm going to sustain the
19 objection to his belief. He can relate to whatever
20 facts he gathered, and that's it. I don't really need
21 to know what he thinks because it was based on his
22 opinion. He's here as a fact witness, not as an expert.

23 MS. FIERST: Let me ask this, Your Honor,
24 because I want to make sure I don't --

25 THE COURT: Sure.

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

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

8 MS. FIERST: No, there isn't.

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

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

15 MS. FIERST: That's exactly the point.

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

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

23 THE COURT: Thank you. Objection sustained.
24 (THEREUPON, side-bar conference was
25 concluded.)

1 BY MS. FIERST:

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

4 A. From whom, from Global Hub Logistics?

5 Q. Yes.

6 A. We were getting nothing.

7 Q. And why was that a problem?

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

10 MR. FRANCO: Objection.

11 THE COURT: Sustained. Next question.

12 BY MS. FIERST:

13 Q. Without providing what the military told you,
14 what kinds of problems did the failure to provide
15 information create for you?

16 A. It deeply hurt our credibility because we had
17 provided a report to the U.S. military that a security
18 issue had occurred, that ultimately caused lock down of
19 two U.S. military bases --

20 MR. FRANCO: Objection, objection.

21 THE COURT: Sustained. Move on. Move on.

22 MS. FIERST: Thank you, Your Honor.

23 BY MS. FIERST:

24 Q. Mr. Roshan -- Mr. O'Brien, I'm going to direct
25 your attention to Mr. Roshan's e-mail on the first page

1 of this document. This is a part of the same discussion
2 in which you were asking for the truck names, correct?

3 A. Yes, ma'am.

4 Q. Do you see where Mr. Roshan writes that the
5 trucks were released very quickly?

6 A. Yes, ma'am.

7 Q. And, that sentence continues "we did not know
8 that no one on your side had picked up on this or
9 considered the significance of it".

10 A. Yes, ma'am.

11 Q. What was your reaction when you read that?

12 MR. FRANCO: Objection.

13 THE COURT: Sustained.

14 MS. FIERST: I'm -- Your Honor, may we
15 approach or may I ask for -- what's the basis of the
16 objection?

17 THE COURT: The judge just ruled. Next
18 question.

19 BY MS. FIERST:

20 Q. Mr. O'Brien, when you saw that Mr. Roshan wrote
21 that no one had picked up on the significance of this,
22 what did you understand that to be saying?

23 MR. FRANCO: Objection.

24 THE COURT: Sustained.

25 BY MS. FIERST:

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

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

5 MR. FRANCO: Objection.

6 THE COURT: Sustained.

7 MR. FRANCO: Thank you.

8 THE COURT: Next question.

9 BY MS. FIERST:

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

12 A. We ultimately received a list of ten drivers that
13 were provided a few days later. And we provided those
14 lists -- that list to the U.S. military.

15 Q. How about --

16 A. We -- if I may.

17 THE COURT: No, next question. You've
18 answered the question. Next question.

19 BY MS. FIERST:

20 Q. There also was testimony regarding an incident
21 where GHL reported that a truck had been torched. Do
22 you remember that incident, Mr. O'Brien?

23 A. Yes, ma'am.

24 Q. Did you attempt to confirm the report that you
25 had received?

1 A. We did, ma'am, yes.

2 Q. And were you able to obtain information regarding
3 that report?

4 A. We were not, no, ma'am.

5 Q. Who did you ask for information regarding that
6 report?

7 A. Masud Roshan.

8 Q. Let me ask you, Mr. O'Brien, regarding
9 Exhibit 200. I'd like to direct your attention to
10 Exhibit 200, Defendant's Exhibit 200, pardon me.

11 MS. FIERST: This is a document that's
12 already been admitted into evidence, Your Honor.

13 THE COURT: All right.

14 BY MS. FIERST:

15 Q. Now, Mr. O'Brien, I will ask you some questions
16 about the most recent e-mails a little bit later, but I
17 wanted to direct your attention to the earlier e-mails
18 here.

19 A. Yes, ma'am.

20 Q. This conversation starts on page 16523, correct?

21 A. Yes, ma'am.

22 Q. Mr. O'Brien, can you describe for the jury what
23 Mr. Mafton and Mr. Bonifant are discussing here
24 regarding this issue in Torkham?

25 A. The issue that's being described in this

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

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

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

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

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

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

1 A. Yes, ma'am.

2 Q. Did Global Hub Logistics ever refuse a movement
3 because there was too much to do or things were moving
4 too quickly?

5 A. No, ma'am.

6 Q. I'd like to ask you to look at Defendant's
7 Exhibit -- rather, this is Plaintiff's Exhibit 407.

8 A. Should I keep this open?

9 Q. No, it probably makes sense to move it to the
10 side. Sorry about the jumping.

11 A. No problem. Yes, ma'am.

12 MS. FIERST: Your Honor, this exhibit, I'm
13 informed by Mr. Franco already is in evidence as well,
14 Plaintiff's 407.

15 THE COURT: All right.

16 BY MS. FIERST:

17 Q. Mr. O'Brien, you testified earlier about the
18 development of pricing with GHL. Right?

19 A. Yes, ma'am.

20 Q. Is this -- does this e-mail concern the
21 development of pricing, the series of e-mails from
22 May 16, 2011?

23 A. Yes, ma'am.

24 Q. Can you tell us the thrust of the back and forth
25 here between you and GHL?

1 A. Absolutely. We were bidding on a number of
2 projects, movements moving forward. We were bidding
3 high in certain cases based on the pricing that we had
4 previously received from Liberty Global Logistics.
5 Therefore, we had turned around to Liberty Global
6 Logistics to see if we could get a discount on certain
7 routes that were coming in too high.

8 Q. And I'll direct your attention to the e-mails --
9 the text is at the top of 39156. You can see your
10 "from" and "to" on the prior page, but the text is all
11 on 39156.

12 Do you see where I'm talking about, Mr. O'Brien?

13 A. Yes, ma'am.

14 Q. And there in the first line you've written, "the
15 problem we have is that your prices are coming in much
16 higher than what is being given to the SDDC". Do you
17 see where it says that?

18 A. Yes, ma'am.

19 Q. What was the problem with high prices or prices
20 higher than what was being given to the SDDC?

21 A. As I previously stated, it's an ID IQ contract,
22 and one of the determining factors was price. So, if
23 you came in too high, you weren't going to win the
24 cargo. The cargo would be issued somewhere else.

25 Q. I'm -- I'm going to direct your attention to page

1 39154.

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

5 A. Yes, ma'am.

6 Q. The page or so prior to that?

7 A. Yes, ma'am.

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

12 Do you see where it says that?

13 A. Yes, ma'am.

14 Q. What were you thinking at the time?

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Overruled.

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

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

4 We would charge accordingly to Liberty
5 Global Logistics as well as the costs that were
6 affiliated with the Pakistanis, our third partner,
7 Security Packers. That included the enhanced in-transit
8 visibility. That included port management fees from the
9 Pakistani side. And that also included the cost of
10 security on the Pakistani side.

11 We would put together the invoice and then
12 based on what the costs were, based on what the total
13 price was, we would then have some form of profit to
14 eventually divide among the three parties.

15 BY MS. FIERST:

16 Q. Were there ultimately profits to split among the
17 parties on that movement?

18 A. There was not.

19 Q. Why not?

20 A. The charges --

21 MR. FRANCO: Objection, foundation.

22 THE COURT: Foundation, please.

23 MS. FIERST: Your Honor --

24 Q. Mr. O'Brien, I believe you've testified to the
25 invoicing of the Strike 1 movement, right?

1 A. That's correct.

2 Q. Were you involved in the preparation and review
3 of the invoices for the Strike 1 movement?

4 A. Absolutely.

5 Q. Were you familiar with the charges that were
6 included in those invoices?

7 A. Yes, ma'am.

8 Q. Can you tell us why there were no profits to be
9 shared on the Strike 1 movement?

10 A. To begin with, first and foremost, the charges
11 for the trucks themselves that had come in from Global
12 Hub Logistics were high. They received. At the end of
13 the day, a total of \$459,700, which is what they charged
14 for the trucks.

15 The security charges from the Pakistani side were
16 charging the total contract at \$425 per TCN on the Pack
17 side, plus there were port management fees as well.

18 One of the challenges we have with TF Strike was
19 due to the poor performance that was occurring during
20 the movement, the U.S. military stripped away some of
21 the cargo to the conveyance list dropped. When the
22 conveyance list dropped, we had to adjust our invoice
23 downward. And when we stripped our invoice downward, it
24 actually ate up what would have been profit based on a
25 volume basis, ultimately, inversed.

1 Finally, there were additional charges that were
2 involved as well that were not initially anticipated to
3 include detention charges that ultimately were paid by
4 the security -- by Security Packers, the Pakistanis
5 involving the NLC hold up.

6 And then, looking at the invoice that was turned
7 in by GHL, there is extraneous charges, that had those
8 extraneous charges been added, they would actually have
9 been a much larger loss on the overall movement.

10 In total based on our records that we provided at
11 the time for Tamerlane, that is, we wind up taking a
12 loss of approximately \$75,000 when all -- all monies
13 were ultimately factored.

14 Q. All right. Mr. O'Brien, let me now, you know,
15 now it occurs to me, ask if you could put a certain book
16 aside and it may be the one I'm going to ask you to look
17 at now. It's the one that contains Defense Exhibit 200
18 that you looked at just a couple minutes ago. Sorry
19 about that.

20 A. Poor Mr. T's going to go --

21 Q. 200, yes.

22 A. Thank you, sir.

23 Yes, ma'am.

24 Q. Thank you, Mr. O'Brien. All right. So, we
25 looked at the lead up to these e-mails a couple of

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

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

7 A. Yes, ma'am.

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

12 A. Yes, ma'am.

13 Q. What -- what did you mean there?

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

18 MR. FRANCO: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: We had a number of issues with
21 regard to communication, the back and forth screaming.
22 I was guilty of it, too. I know that -- I was getting
23 hot at it.

24 Bottom line was, between the parties, we
25 were -- simply seemed like what had started out as a

1 great relationship was completely falling apart at this
2 stage.

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

7 Do you see where it says that?

8 A. Yes, ma'am.

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

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

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

17 A. Yes, ma'am.

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

22 Do you see where it says that?

23 A. Yes, ma'am.

24 Q. Was that accurate, Mr. O'Brien?

25 A. Yes, ma'am.

1 Q. These were the military's requirements?

2 A. That's correct. The military sets the -- the
3 required lift date and the required delivery date for
4 us, and we have to meet the timeframe that the military
5 sets.

6 Q. A little further down in that paragraph, Mr.
7 O'Brien, there is a sentence that begins, "we have
8 tried".

9 Do you see where that is?

10 A. Yes, ma'am.

11 Q. It says, "we have tried to give GHL every piece
12 of business".

13 Do you see where it says that?

14 A. Yes, ma'am.

15 Q. Is that accurate?

16 A. It is ma'am. Yes, ma'am.

17 Q. And, when you say you tried to give them every
18 piece of business, what do you mean by that?

19 A. Every piece of business we always turn to GHL
20 first. Any time that I was moving cargo, GHL was our
21 first call, our first e-mail as a company.

22 Q. And then in the next sentence you wrote "some of
23 the opportunities fell by the way side".

24 Do you see where it says that?

25 A. Yes, ma'am.

1 Q. What are you referring to there?

2 A. It referenced shortly thereafter, such as
3 Angela's 50-plus packages at Bagram. There were other
4 movements as well, the movement that I recently talked
5 to with regard to Tim Timpson's decision to move cargo
6 from Bagram. These are the commercial movements that I
7 described earlier from contractor to contractor to
8 cargo.

9 Q. So, times where you tried to call them but were
10 unable to get them to do the movement?

11 A. Even e-mails, yes, ma'am.

12 Q. Okay. And then in the next paragraph, I'm going
13 to direct you to the end of your paragraph there where
14 you wrote, "as customers, we hope that GHL would have
15 seen complaints as opportunities to improve. That has
16 not happened".

17 Do you see where it says that?

18 A. Yes, ma'am.

19 Q. What kinds of complaints were you talking about?
20 Tell us about the discussions that you had.

21 A. The complaints were, again numerous. One was the
22 complaints about invoicing in general. The complaints
23 involved the lack of responsiveness, especially to
24 Angela Dean who was in many ways, my number two or
25 number three, certainly number two operationally in some

1 cases.

2 The complaints were involved with the
3 communications breakdowns, the back and forth between
4 myself, the -- and my program management team and their
5 program management team.

6 And any time I would have a complaint of some
7 kind it seems it was pushed back, versus you're the
8 client. The client is always right, that kind of thing,
9 or how can we work this out to make it better.

10 Q. All right. So in the last paragraph there, you
11 write, "consequently, we will complete all the projects
12 currently in motion".

13 Do you see where it says that?

14 A. Yes, ma'am.

15 Q. What were the projects that were in motion at
16 this point in time, June 21, 2011?

17 A. The five moments that are in question in the
18 case, Retrograde 11, SMU-1, TF Curahee, LOGCOM Z2 and
19 Strike 2.

20 Q. All right. So Strike 1 was already completed and
21 it was the five that were the projects in motion?

22 A. Yes, ma'am.

23 Q. There in the next sentence, you write "if you
24 wish GHL to be considered for future projects, we will
25 gladly send the bids your way".

1 Do you see where it says that?

2 A. Yes, ma'am.

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

5 MR. FRANCO: Objection, leading.

6 THE COURT: Overruled.

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

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

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

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

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

3 A. Yes, ma'am.

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

7 A. Yes, ma'am.

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

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

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

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

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

17 A. Yes, ma'am.

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

22 A. Yes, ma'am.

23 Q. Do you recall receiving this e-mail?

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

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

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

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

13 MR. FRANCO: Objection.

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

16 You may ask him to describe the --
17 BY MS. FIERST:

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

21 A. As I stated --

22 MR. FRANCO: Objection, Your Honor,
23 relevance.

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

25 THE COURT: Overruled. He can answer.

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

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

15 BY MS. FIERST:

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

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

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

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

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

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

9 Q. All right. And, the next line there, "we are
10 working on invoice before handing all units over to
11 TLG". What was your understanding of that when you read
12 that line?

13 A. That -- my understanding of that was, we were
14 going to receive an invoice from GHL and that they would
15 hold our cargo hostage until we paid that invoice.

16 Q. All right. Let's look at your response, your
17 response on the bottom of 38047.

18 A. Yes, ma'am.

19 Q. So, there -- what are you doing with that?

20 A. I'm trying to clarify the situation here. Bottom
21 line, I'm asking Abdullah, hey, are you dropping out of
22 the military's moving? What's the deal here? Because,
23 two days ago, this was different. We had a different
24 understanding.

25 Q. And, in Mr. Gharjy's response to you there at the

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

4 A. Yes, ma'am.

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

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

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

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

20 A. I see why, yes.

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

1 Do you see where it says that?

2 A. Yes, ma'am.

3 Q. What's your understanding of what Mr. Gharjy's
4 intending to do there?

5 A. Now, this is changing it up a little bit more and
6 making it a little bit more difficult for us. In his
7 first e-mail, he states that the cargo has been loaded
8 and is moving and is going to go on to Karachi. The
9 cargo that hasn't been loaded, hasn't been picked up as
10 I interpreted it, would be our responsibility to turn
11 over to an alternative vendor.

12 Now what he's saying is the cargo that is -- has
13 been picked up is now going to be put in alternative
14 location for us to collect from these other alternative
15 locations unless they are well on their way to Karachi,
16 unless it's too late to pull them back.

17 Q. And then in the next line there, he wrote "the
18 remaining units will be released after we receive
19 payments".

20 Do you see where it says that?

21 A. Yes, ma'am.

22 Q. What's your understanding of that, Mr. O'Brien?

23 A. There was no question GHL was going to hold our
24 cargo hostage and we were really -- I was very concerned
25 about reading that one, that line.

1 Q. Why were you very concerned?

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

13 Q. And, why was it that you wouldn't be able to show
14 them what pricing was appropriate or inappropriate?

15 A. Because in the past, they had reacted so
16 negatively. Any time I showed them proof that they were
17 overcharging me, that now that they were holding cargo
18 in these alternative yards, even if I offered them
19 proof, what can I do about it other than pay the ransom
20 fee for my cargo.

21 Q. All right. I'm going to ask you to look now to
22 the last line in this e-mail.

23 A. Yes, ma'am.

24 Q. The last sentence, "TGL is -- has short paid and
25 is delinquent on several invoices".

1 Do you see where it says that?

2 A. Yes, ma'am.

3 Q. When you read that, what was your reaction? What
4 were you thinking?

5 A. I was hornet hot.

6 Q. You were what?

7 A. Hornet hot. I was mad as mad could be. I
8 couldn't believe he'd actually write this.

9 I tell you, we had paid every single dime, every
10 dime that had ever been invoiced had been paid up to
11 that point, except a TF Strike invoice that had only
12 been received hours before, a day before this had come
13 through.

14 For him to accuse us in an e-mail of short paying
15 him or being delinquent on payments when in fact, we had
16 paid hundreds of thousands of dollars more money than
17 that company had told us they would charge us.

18 Yeah, I was really mad about that one. And I
19 knew there was no way in my mind that I was ever, ever
20 delinquent on a payment. I couldn't believe he had the
21 audacity to write that.

22 Q. And Mr. O'Brien, when he wrote short paid, were
23 there any invoices up to this point that GHL had told
24 you were not fully paid?

25 A. Not one.

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

3 A. Yes, ma'am.

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

6 A. No, as previously stated, it was received only
7 about a day earlier. And it was hundreds of thousands
8 of dollars over what had originally been agreed upon
9 even discussed, let's just say. So, no. There was no
10 status to really give at this stage.

11 Q. Mr. O'Brien, you heard Mr. Roshan testify that at
12 the time they stopped performing, GHJ didn't have an
13 indication from Tamerlane how much more would be
14 required to complete the movements. Do you agree with
15 that?

16 A. Not at all. In fact, with regard to these
17 movements, Abdullah Gharjy was the party that received
18 the conveyance analysis first and then forwarded it on
19 to us because of a mistake in the e-mailing record.

20 MR. FRANCO: Objection, foundation.

21 MS. FIERST: I'm not sure I --

22 THE COURT: He's trying to ask him about the
23 foundation for his last statement. Is that right?

24 MR. FRANCO: Yes.

25 THE COURT: All right. If you'd lay a

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

3 BY MS. FIERST:

4 Q. Okay. So you're talking about the conveyance
5 analysis for these five moments, correct?

6 A. Yes, ma'am.

7 Q. So the conveyance analyses are what you described
8 earlier, correct?

9 A. Yes, ma'am.

10 Q. And, who received the conveyance analyses for
11 these movements?

12 MR. FRANCO: Objection. If there's proof of
13 these e-mails, documentations, that's what we should
14 see, not his opinion.

15 MS. FIERST: Your Honor, that's --

16 THE COURT: Overruled.

17 MS. FIERST: Thank you.

18 THE COURT: You can answer.

19 THE WITNESS: Major Ward had forwarded them
20 on to Abdullah Gharjy, who then forwarded them on to us.
21 In which case, we then wrote Major Ward to explain to
22 Major Ward that we should be copied in future
23 communications.

24 Q. And we saw earlier in the trial some of the
25 conveyance analyses and cargo lists that had been sent

1 to Mr. Gharjy, right?

2 A. Yes, ma'am.

3 Q. Now, what information would those cargo lists and
4 conveyance analyses have provided for Mr. Gharjy and
5 GHJ?

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

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

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

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

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

22 THE COURT: All right.

23 MS. FIERST: -- part of the movement.

24 THE COURT: Objection overruled.

25 THE WITNESS: Yes, ma'am. The numbers were

1 defined as to which conveyances -- which cargo needed to
2 move.

3 As cargo was removed from the base, Abdullah
4 Gharjy who was part of the border crossing memo process
5 along with our team, whether it's Tim Timpson or David
6 Gordon, were tracking TCNs that were then in essence
7 ticking off the box that was originally received.

8 So as the conveyances were moving out, that
9 TCN moved, that TCN moved. So Abdullah Gharjy who was
10 also involved in the operations at this stage, because
11 he was back in Afghanistan, would have had first-hand
12 knowledge as to which cargo was, in fact, still needed
13 to be picked up and what cargo was in route.

14 BY MS. FIERST:

15 Q. Mr. O'Brien, I want to direct your attention to
16 Defendant's Exhibit 146.

17 A. Thank you, sir.

18 Yes, ma'am.

19 Q. All right. Mr. O'Brien, when GHL stopped
20 performing in the middle of the movements, what did you
21 do to pick up the pieces, essentially?

22 And I'm asking this not with reference to this
23 e-mail, Mr. O'Brien.

24 A. Okay. When -- I'm sorry. Then can you please
25 repeat the question. I apologize. I was looking at

1 this e-mail. I'm sorry about that.

2 Q. When GHL stopped performing in the middle of the
3 five movements, what did you do? What did Tamerlane do
4 to essentially pick up the pieces?

5 A. The first thing we did was we pulled the program
6 management team together, asking them what's going on
7 with the different conveyances, where is the status of
8 different trucks, what's happening with regard to
9 specific cargo.

10 We also began to do our inquiries with regard to
11 the enhanced in-transit visibility devices, to ensure
12 that cargo that was supposed to be in certain places,
13 the EITV devices are those GPS tracker-type devices
14 where cargo might be located and cross referencing where
15 we thought cargo was against conveyance analyses that
16 had previously been provided versus cargo that may or
17 may not have already picked up and where it may be
18 located.

19 Once we had identified that some of the cargo may
20 still be in the north, some of the cargo may be in the
21 south, some of the cargo may be in Karachi. They were
22 spread out throughout Afghanistan. We then began to
23 engage regional truckers that had greater or lesser
24 capacity within those particular zones.

25 At the same time, the -- I directed the PMs on

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

5 Q. And, now looking at Defendant's Exhibit 146, I
6 didn't mean to throw you a curve ball with the fact that
7 this concerns an earlier time, Mr. O'Brien.

8 But, did you have an opportunity to look at this
9 document?

10 A. If you can just give me one moment, please.
11 Thank you.

12 Q. Sure.

13 A. Yes, ma'am.

14 Q. All right. What -- Mr. O'Brien, what is this
15 document discussing?

16 A. This is in reference to the beginning of
17 Retrograde 11 as it pertained to the need for trucks to
18 collect U.S. military cargo on Camp Leatherneck.

19 Q. Okay. And we discussed this a little bit
20 earlier, right, this late May, early June time period at
21 Leatherneck?

22 A. Yes, ma'am.

23 Q. And --

24 MS. FIERST: Your Honor, at this point, we
25 would ask that Defendant's Exhibit 146 be admitted into

1 evidence.

2 THE COURT: 146 will be received.

3 MS. FIERST: Thank you, Your Honor.

4 BY MS. FIERST:

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

7 A. Yes, ma'am.

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

10 A. Yes, ma'am.

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

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

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

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

17 Q. At this point in late May?

18 A. Yes, ma'am.

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

21 A. Yes.

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

23 A. Yes, ma'am.

24 Q. "It will cause major problems".

25 A. Yes, sir.

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

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

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

11 A. With the exception of the potential operation on
12 security issues that can occur, I just didn't think it
13 was proper in general. I thought it would slow down the
14 efficiency of the operation. It didn't make sense.

15 If you can get the trucks, and you work with what
16 you got, work with the tools you got. Again, let's get
17 the job done. And then let's work on either
18 improvements or moving on.

19 But, what we didn't want to do was create those
20 kinds of challenges that may cause additional trucks to
21 slow down. We also would have to, in that case, work
22 with our Service Deployment and Distribution
23 counterparts, SDDC counterparts to explain to them that
24 we had a new vendor coming on, new truck, new placards,
25 new names. Drivers may be changed.

1 So there was a number of those housekeeping
2 details and issues that we really didn't want to get
3 into at that time.

4 Q. And those were the things -- were those the
5 things that you were forced to do in late June?

6 A. Yes, ma'am.

7 Q. Mr. O'Brien, I would like to direct your
8 attention now to Defendant's Exhibit 391.

9 A. Thank you, sir.

10 Yes, ma'am.

11 Q. All right -- I just lost my own place.
12 Exhibit 391 I believe has already been admitted into
13 evidence. So it's up there on the screen.

14 Now, this e-mail, Mr. O'Brien, you've seen this
15 e-mail before, correct?

16 A. I've read it hundreds of times, yes, ma'am.

17 Q. When did you first learn of this e-mail, Mr.
18 O'Brien, this e-mail -- the e-mail that has sometimes
19 been referred to as the Yorio e-mail?

20 A. I had learned about the e-mail on Sunday,
21 June 26th, a couple days after this e-mail had been
22 sent. I had learned about it from a phone call from our
23 prime client, Liberty Global Logistics.

24 Q. And, were you provided a copy of the e-mail?

25 A. Eventually, I was provided a copy in mid July by

1 Major Max Ward.

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

4 A. Yes, ma'am.

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

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

11 A. At first, I was completely confused as to why
12 anybody would be discussing such an e-mail in general.
13 I had no idea what was the reference to. The original
14 name that had been given to me was an e-mail from a
15 Rojario (phonetics).

16 Ultimately, it turned out to be Joe Yorio, which
17 I found out later on in the day, as the e-mail was read
18 to me.

19 I was -- there's -- I can't even describe the
20 amount of emotions I was having. First of all,
21 obviously I was angry and upset. I couldn't believe
22 that an e-mail was being sent to my client, to the U.S.
23 military and Liberty stating that I wasn't paying my
24 subcontractors.

25 And that -- the next -- not only upset, I had a

1 wife that was pregnant, that was about to give birth six
2 weeks from now. I was upset.

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

5 MS. FIERST: I understand.

6 THE COURT: Next question. Next question.

7 BY MS. FIERST:

8 Q. Let's go through the specific statements in this
9 e-mail, Your Honor -- Mr. O'Brien.

10 A. Yes, ma'am.

11 Q. If you look at the first paragraph there and I
12 know we've -- this e-mail's been looked at before, but
13 I'm -- I want the jury to hear your view of this e-mail
14 as well.

15 The last sentence of the first paragraph there,
16 actually, the second to last sentence, you see where it
17 says, "however, GHL has continued to have problems with
18 Tamerlane"?

19 A. Yes, ma'am.

20 Q. What was your -- what was your understanding of
21 that statement? What's GHL saying there?

22 A. That Tamerlane was causing problems for Global
23 Hub Logistics. They were -- these good guys were
24 getting beaten up by bad Tamerlane.

25 Q. How about the next sentence? The next sentence

1 refers to miscommunication, misrepresentation, and
2 recent payment issues.

3 Do you see where it says that?

4 A. Yes, ma'am.

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

7 Did you believe there were any recent payment
8 issues?

9 A. Absolutely not.

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

12 A. No clue, ma'am.

13 Q. How about miscommunication? I mean, you've
14 talked about the difficulty of communicating with GHL.
15 What was your reaction to miscommunication?

16 A. I'm pretty communicative, pretty blunt. I was
17 kind of surprised to hear I was miscommunicating.
18 Anybody couldn't interpret what I was saying, that's a
19 problem.

20 Q. And how about the line following that, "which has
21 culminated in the situation they find themselves in".
22 Do you see where it says that?

23 A. Yes, ma'am.

24 Q. What was your understanding of that statement?

25 A. GHL's communicating to the military that it had

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

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

6 Do you see where it says that?

7 A. Yes, ma'am.

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

11 Do you see where it says that?

12 A. Yes, ma'am.

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

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

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

20 A. Yes, ma'am.

21 Q. Now, in the last part of that sentence, they say
22 that the company and -- and that the -- they "cannot
23 further tolerate the problematic working relationship
24 with the company and its president which has put the
25 customer, freight and ultimately GHL employees in

1 jeopardy".

2 Do you see where it says that?

3 A. Yes, ma'am.

4 Q. Did you put the customer in jeopardy?

5 A. Never put the customer in jeopardy, ever.

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

8 A. Because if you're accused of trying to get U.S.
9 military personnel in some way harmed, that's a
10 pretty -- that's pretty nasty stuff. That's a pretty
11 nasty accusation to make, and I'm -- by the way, I'm a
12 marine veteran.

13 Q. How about the freight, putting the freight in
14 jeopardy. What was the impact of that allegation?

15 A. We never put the freight in jeopardy. We didn't
16 put the freight in jeopardy. We hired who we thought
17 were the best contractors at the time to move freight,
18 move cargo and used security companies to ensure that
19 the freight was protected.

20 Q. And what about the assertion that you put GHL
21 employees in jeopardy?

22 A. Putting GHL employees in jeopardy was
23 preposterous. It's Afghanistan. It's dangerous. We
24 all know it's dangerous. If you're a vegetarian, don't
25 work at McDonald. If you're in freight, Afghan freight

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

3 Q. How about the following paragraph, Mr. O'Brien.
4 That paragraph begins "GHL is fully prepared".

5 Do you see where I'm talking about?

6 A. Yes, ma'am.

7 Q. So, GHL informs the U.S. Government there that
8 GHL is fully prepared to defer the remaining shipments
9 to TGL. That's you guys, right?

10 A. Yes, ma'am. It's a typo on their part, but yes,
11 ma'am.

12 Q. "And transfer the delivery responsibility to
13 them, which they do not have the resources to
14 accommodate".

15 Do you see where it says that?

16 A. Yes, ma'am.

17 Q. What was your reaction to the assertion that
18 Tamerlane did not have the resources to accommodate the
19 remaining shipments?

20 A. That was a clear attempt to undermine our
21 credibility with the client by saying we didn't have the
22 resources to accommodate, to actually finish this
23 movement.

24 Q. Did you have the resources to finish the
25 movements?

1 A. Yes, ma'am. And that's proven in the fact we
2 ultimately moved the cargo to Karachi.

3 Q. Now, you heard Mr. Roshan testify about his
4 understanding that the U.S. Government hates it when a
5 company doesn't pay its subs. What was the implication
6 in that suggestion in this e-mail? What was the
7 implication to you?

8 A. The implication would be, and he's right, if you
9 are accused of not paying your subcontractors, the U.S.
10 military takes it very seriously and will come down upon
11 you pretty heavily until you either rectify the
12 situation or you can prove that you, in fact, have
13 maintained your obligations as a respect -- and with
14 respect to your subcontractors.

15 To the point where they can actually suspend you
16 from doing movements if they so choose or even terminate
17 your contract if you're found to be guilty of not paying
18 your subcontractors. It's a pretty serious -- it's a
19 very serious charge.

20 Q. All right. Exhibit -- Defendant's Exhibit 249.

21 A. Thank you, sir.

22 Yes, ma'am.

23 Q. Defendant's Exhibit 249 also has been admitted
24 into evidence, what's up on the screen there as well.

25 Defendant's Exhibit 249, you've seen this e-mail

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

2 A. Yes, ma'am.

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

6 A. Yes, ma'am.

7 Q. Right around the same time period?

8 A. Yes, ma'am.

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

13 A. Yes, ma'am.

14 Q. Now, in the first paragraph there, I'm sorry, in
15 the second paragraph there, the first sentence, do you
16 see where Mr. Roshan wrote, "I apologize for any
17 inconvenience this situation may have caused you, and
18 I'm disappointed that it had to come to this with our
19 logistics partner"?

20 A. Yes, ma'am.

21 Q. What's your understanding of that sentence?
22 What's Mr. Roshan saying there?

23 A. That he is -- he is sorry that he has to pull the
24 military into this and that his logistics partner,
25 Tamerlane Global Services, caused them to act in the

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

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

6 A. Yes, ma'am.

7 Q. What was your understanding of that statement?

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

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

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

16 Do you see where it says that?

17 A. Yes.

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

21 Do you see where it says that?

22 A. Yes, ma'am.

23 Q. What's your understanding of that line?

24 A. My understanding of that line is that GHL, a
25 company that had been founded about a year and a half

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

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

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

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

13 A. Yes, ma'am.

14 Q. -- Mr. O'Brien.

15 A. Yes, ma'am.

16 Q. So, you've already seen earlier in this case the
17 documents that have been introduced, the various forms
18 of the Strike 1 invoice that have been introduced,
19 right, Mr. O'Brien?

20 A. Yes, ma'am.

21 Q. I'll first direct your attention to Defendant's
22 Exhibit 208.

23 A. Yes, ma'am.

24 Q. All right. So, this invoice is issued June 22nd,
25 right?

1 A. Yes, ma'am.

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

4 A. Yes, ma'am.

5 Q. Do you recall when Strike 1 had been completed?

6 A. Yes, ma'am. It was towards the end of May that
7 the final cargo arrived into Karachi. I don't recall
8 the exact date. May have been June 1st, but it was
9 right about that time.

10 Q. All right. And the following page after the one
11 that's on the screen, the second page of this e-mail is
12 the invoice itself, right?

13 A. Yes, ma'am.

14 Q. Now, that invoice was -- was that invoice
15 accurate?

16 A. Not at all, ma'am.

17 Q. All right. Let's look at the Defendant's
18 Exhibit 263. Do you have Defendant's Exhibit 263?

19 A. Sorry. Yes, ma'am, I apologize.

20 Q. So, this e-mail, Mr. O'Brien, this is an exchange
21 among you, Mr. Gharjy, and Mr. Roshan, correct?

22 A. Yes, ma'am.

23 Q. And, what's -- what's going on here in this
24 series of e-mails, Mr. O'Brien, and I'll direct your
25 attention to the page 23074.

1 A. Yes, ma'am. So early on, we received the Strike
2 invoice about a day and a half later. Two days later, I
3 write back essentially asking for some clarification
4 with regard to the Strike invoice and what are these
5 extra charges. What's this extra charge for convoys,
6 back demurrage charges that -- at that point, I had
7 recollected as being paid for by Security Packers, but I
8 may have been wrong. So I was trying to figure it out
9 at the time.

10 I also provided the invoice that we gave to
11 Liberty to GHM to see. So I say attach the invoice we
12 charged Liberty. So I gave that to them. This is what
13 we actually charged Liberty. You can see where we're
14 charging security, et cetera, et cetera, the EITV
15 devices.

16 And bottom line is I'm trying to understand why
17 Abdullah, who we had provided a ton of business to, was
18 trying to charge us hundreds of thousands of dollars
19 more than had ever been agreed upon and then trying to
20 charge an extra \$84,000 for profits.

21 I'm asking at the end, kind of at a loss here,
22 why would you do this? Why?

23 Q. And at the top of the page there, Mr. O'Brien,
24 excuse me, there you say "we had a rate agreed of 2,800
25 KAF". That's Kandahar, right?

1 A. Yes, ma'am.

2 Q. "To Karachi plus one third of the profitability
3 on a final rate of 4,100 to the client"?

4 A. Yes, ma'am.

5 Q. Can you explain just so we're sure we understand
6 the rate there.

7 A. Sure. The -- again the profitability discussion
8 was something we had with them early on. We had all
9 agreed that we split the profit three ways.

10 With regard to the -- the 4,100 minus 2,800,
11 4,100 was what we were charging Liberty Global
12 Logistics. And they told us that their cost per truck
13 was \$2,800.

14 So, we were taking 4,100, subtracting out the
15 difference, dividing it by three, and then any charges
16 that may have been extraneous to that, we then
17 ultimately reduce profitability.

18 Q. And then are you saying there that the -- was the
19 issue that 2,800 was not the rate that was included?

20 A. At this time, we had no basis to determine
21 whether or not they were lying to us or not. We had the
22 Pakistani screaming up and down, but we had no way to
23 know.

24 Q. And what do you mean when you wrote "there was no
25 break out from Karachi to Chaman and Chaman to KAF" --

1 to yes, KAF?

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

7 Q. Defendant's 208.

8 A. Defendant's 208. If you see on the chart here,
9 Abdullah was charging us again. This is pretty
10 consistent with the way it always happened, an
11 additional charge of some kind from KAF to Chaman. He
12 was adding an extra 1,000 bucks here, \$800 there, \$1,400
13 there per unit, so an extra of 146,000 -- roughly
14 \$150,000 more than anything that had ever been
15 discussed.

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

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

21 A. Yes, ma'am.

22 Q. Now, I want to direct your attention to page
23 23073. So, as this discussion continues, the page
24 before that --

25 A. Okay, sorry.

1 Q. -- in Defendant's Exhibit 263.

2 A. Yes, ma'am.

3 Q. So, your e-mail to Mr. Gharjy there at the top
4 part of the page?

5 A. Yes, ma'am.

6 Q. So, in that top line there, I think that top line
7 actually is that explaining what you were just
8 discussing, Mr. O'Brien?

9 A. Yes, ma'am.

10 Q. And, you say, "however, with your extra charges
11 that margin will further drop".

12 Do you see where you say that?

13 A. Yes, ma'am.

14 Q. What extra charges were you talking about?

15 A. The extra charges that were related to demurrage
16 charges that were all of a sudden coming out.
17 This preposterous need to move an entire convoy to take
18 one piece of cargo off and bring it back to Kandahar,
19 the demurrage charges that seemed to be accumulating
20 exponentially were going out of nowhere. These were the
21 kind of charges I was referring to.

22 Q. All right. And in the next sentence there, you
23 say, "as I have said many times, the U.S. Government
24 allows a maximum of five percent net margin per the FAR.
25 The gross margin can be higher but the net cannot, or

1 you trigger a DCAA audit".

2 You see where it says that?

3 A. Yes, ma'am.

4 Q. What do you mean by that?

5 A. As far as the U.S. Government is concerned with
6 regard to the logistics, they set certain barriers at
7 which the defense contracting auditing agency will begin
8 to trigger audits.

9 So allowing a maximum of five percent net margin,
10 that right there, I really should be saying, that's what
11 triggers the audit which is what I clarify in the next
12 line.

13 What happened with logistics companies are
14 there's a particular sensitivity the U.S. Government
15 towards gouging as it pertains to logistics and to these
16 in general. At about the same time as this writing,
17 nine companies had been debarred for gouging the U.S.
18 Government on logistics.

19 MR. FRANCO: Objection, foundation.

20 MS. FIERST: I think he's testifying to his
21 personal knowledge, Your Honor.

22 THE COURT: That's why I'm -- objection
23 overrule.

24 THE WITNESS: Nine companies had been --
25 thank you, sir. The nine companies had been debarred

1 from doing government work with U.S. contractors after
2 their returns which are monitored by the DCAA hit
3 certain thresholds that triggered an audit.

4 And it turned out that as the U.S.
5 Government looked into their numbers, that they had been
6 overcharging. The most serious case being a company
7 called Agility that had worked previously in logistics
8 in Iraq and Afghanistan. But other major companies,
9 companies significantly larger than mine, such as D.B.
10 Schenker, BAX Global, CEVA, Talopeda, a number of
11 companies in logistics that had overcharged for things
12 that had not occurred.

13 So what I'm explaining to them here is, you
14 know what guys, if you're going to charge us this stuff,
15 fine. You can make the biggest gross margin you want.
16 Your net margin is going to be over five percent, and it
17 will trigger a DCA audit.

18 If we get audited and this stuff didn't
19 occur, and you're charging the government, we're
20 charging the government for stuff that didn't happen, we
21 can get in some serious trouble. So, let's nip this in
22 the bud now. Did this really occur?

23 BY MS. FIERST:

24 Q. And you mentioned during your response, debarred,
25 which every time that word comes up I think of disbarred

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

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

6 THE WITNESS: No, sir, but --

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

9 MS. FIERST: I just knew the word had been
10 mentioned in the e-mails, Your Honor. I wanted to make
11 sure the jury had context for it.

12 THE COURT: These jurors are very
13 sophisticated. They all live here.

14 MS. FIERST: I don't doubt that.

15 THE COURT: Don't argue. Ask the next
16 question.

17 BY MS. FIERST:

18 Q. Mr. O'Brien, do you remember when you -- at what
19 point in time you received revised Strike invoices after
20 this conversation?

21 A. Yes, ma'am. We received them on July 1st, a new
22 invoice that was significantly reduced by approximately
23 155,000 or thereabouts, 150,000.

24 Q. And, was that the last Strike 1 invoice that you
25 received?

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

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

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

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

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

13 A. Yes, ma'am.

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

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

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

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

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

24 The Strike 1 invoice, has that been paid?

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

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

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

5 A. Absolutely not.

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

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

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

15 A. No, ma'am.

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

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

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

1 Now, that was a -- let me clarify. Not only did
2 they stop moving, but then the invoices we did receive
3 and I did review were so preposterously out of whack, so
4 hyperinflated, they had no bearing whatsoever on any
5 price list that had ever been provided and none of the
6 movements included -- excuse me. Most of the movements
7 included in those invoices had never been discussed
8 before because we had -- we did not hire GHL to conduct
9 those movements in the first place.

10 Q. Just to make sure I understand that last answer
11 when you say you didn't hire them to conduct the
12 movements in the first place, what are you referring to?

13 A. We had hired GHL to move the cargo from the
14 various bases as it pertained to the movements to
15 Karachi.

16 That's what we had hired them to do. They did
17 not perform that task.

18 Q. Now, what were the repercussions of GHL's mid
19 movement stoppage for Tamerlane?

20 A. They were enormous. To begin with, the -- we
21 were immediately held to task by the Service Deployment
22 and Distribution Command and Liberty Global Logistics to
23 begin a coordination effort and a clean up effort with
24 regard to our operations.

25 Essentially we were placed under a microscope

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

4 MR. FRANCO: Objection. Can we approach?

5 THE COURT: Yes.

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

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

10 THE COURT: Okay.

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

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

22 MR. FRANCO: Absolutely.

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

25 MR. FRANCO: Sorry.

1 THE COURT: I didn't mean to cut you off.
2 What's the second or third thing? I didn't want to cut
3 you off.

4 MR. FRANCO: The second part of it is
5 they're not going to be able to tie any of these, quote,
6 repercussions to any dollar figures.

7 There is arguably one with regards to
8 Liberty, but that's it, and that's 125,000, and that's
9 loosely related to bad performance, not tortious
10 interference.

11 THE COURT: Okay.

12 MS. FIERST: That's not entirely accurate,
13 Your Honor. It is related to the poor performance
14 caused by GHL and Tamerlane's performance on these
15 movements. It's at least relevant and he can't say --

16 THE COURT: He wasn't saying it wasn't
17 relevant. He's saying that's the only thing economic
18 that you have. So let me ask you to focus on his
19 question which is when Mr. O'Brien talks about
20 repercussions, the only repercussions that would be
21 recoverable would have to be ones that were tied to
22 economics; is that right?

23 MS. FIERST: Well, if you're talking about
24 damages, yes, but the word I used was repercussions not
25 damages.

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

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

12 Now, they're somewhat intertwined because
13 the Yorio e-mail is part of the tortious interference,
14 and the tortious interference is part of the defamation.
15 But, Your Honor, the repercussions are more broad than
16 the monetary damages.

17 And, if he's going to testify about the
18 impact operationally to Tamerlane, it's his business.
19 If there's a quantifiable impact to him --

20 THE COURT: Tell me what you mean by that.

21 MS. FIERST: If he loses business as a
22 result, if he talks about, you know, being essentially
23 breached for some period of time because of this poor --

24 THE COURT: Is that what he's going to say?

25 MS. FIERST: Yes, that's in part what he's

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

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

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

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

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

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

20 MR. FRANCO: That's -- there's so much to
21 this, Your Honor, that I think needs to be discussed.
22 One, we're talking about a performance issue, and she's
23 saying it's -- it's a tortious interference damage.
24 Liberty did say in some e-mail, listen, you need to
25 clean up things. There were performance issues on these

1 movements. That's a contract related thing between
2 Liberty and GHL.

3 But, what -- what they are hoping to
4 bootstrap is other opportunities which are never defined
5 by Liberty. We've taken Mr. O'Brien's deposition. It
6 was never defined by them. There's no contract by name.
7 There's no amount of the contract. It's all just let's
8 throw out a whole bunch of stuff without tying it
9 together in the hopes of creating the notion of damages.

10 And while she says the Yorio e-mail, we're
11 not talking about the Yorio e-mail now. He's talking
12 about the repercussions to the business for the
13 movements, and she's not eliciting any damage related to
14 the Yorio e-mail. She's trying to talk about how the
15 business was impacted.

16 And again, we don't have quantifiable -- we
17 know it's not in the record. We know it from discovery.

18 MS. FIERST: That's not accurate, Craig.
19 That's not accurate to make that representation.

20 THE COURT: Okay. Well, you have to direct
21 your comments to me. What I wanted to ask you earlier
22 was if you had some evidence that Liberty beached -- to
23 use your term, withheld delivery or movement
24 opportunities from Tamerlane and you said you have
25 evidence of that?

1 MS. FIERST: Yes, Your Honor.

2 THE COURT: You have a documents that say
3 that?

4 MS. FIERST: Yes, yes.

5 THE COURT: Well, focus on those. And if
6 they have some monetary impact, because this only deals
7 with the tortious interference claim. The defamation
8 claim, he's not talking about defamation right now.

9 MS. FIERST: And in fairness, my question, I
10 believe part of -- again, I don't know exactly what he's
11 going to say.

12 THE COURT: Yes, you do. Yes, you do.

13 MS. FIERST: No, Your Honor, because it
14 depends on whether he's thinking operationally,
15 financially. But he also could talk about what they had
16 to do as a result of Global Hub Logistics stopping.

17 THE COURT: I thought he already testified
18 to that. He hired another trucking company. He
19 arranged for the shipment to be moved. Is there more
20 he's going to say about that?

21 MS. FIERST: I can't say what he's going to
22 say.

23 THE COURT: I want to take it all down for a
24 second, just one second. Everybody take it down for a
25 second and to compartmentalize what is taking place.

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

4 MS. FIERST: Right.

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

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

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

12 MS. FIERST: Correct.

13 THE COURT: Okay.

14 MS. FIERST: And he has the \$125,000 penalty
15 that Mr. -- reduction whatever you want to call it, that
16 Mr. Franco testified to earlier -- that I believe Mr.
17 Wellner testified to that.

18 THE COURT: Okay.

19 MS. FIERST: I think he may testify about
20 the operational impact to him of having to sort of --
21 don't shake your head -- of having to --

22 THE COURT: You all need to look at me and
23 not each other.

24 MR. FRANCO: I was just looking down,
25 thinking to myself.

1 MS. FIERST: When I was asking questions and
2 I find it a little bit offensive, frankly.

3 The impact to the business of having to, you
4 know, essentially have your person drop out in the
5 middle of it and what they had to do to accommodate
6 that.

7 THE COURT: He's already testified about
8 that, that he had a staff meeting. He sent people in
9 different directions. He hired a new company, got Emran
10 involved. That's already been testified to. There's
11 nothing more about that, unless there was some bill for
12 it and there's no bill for that, right?

13 MS. FIERST: I don't think so. I mean again
14 I don't know whether he will say that they hired extra
15 people or anything like that.

16 THE COURT: He hasn't said that yet.

17 MS. FIERST: Correct, correct. But the two
18 things that come to mind, and I can check my notes --
19 the two things that come to mind are the cover costs and
20 the penalty from Liberty.

21 THE COURT: Okay. Well, that's fine. Those
22 will be actionable as it relates to the contract claim,
23 your counterclaim for contract and set off because the
24 cost of cover and the cost incurred to complete the
25 movement are certainly recoverable.

1 If you're going to go to the Yorio e-mail,
2 then you have to turn it back to the Yorio e-mail and
3 ask specific questions about what harm, if any, was done
4 in relationship with Major Ward, in relationship to some
5 super guru in the government saying Tamerlane is a lousy
6 company because they don't pay their subcontractors.
7 That's what you testify to about damages.

8 Of course damages are presumed if you have
9 more about that. That is a way to compartmentalize.
10 You can't just say I was mad. My wife was mad at me. I
11 was out on vacation.

12 That's not helpful. Those are not damages
13 that are recoverable.

14 MS. FIERST: And just to be clear, Your
15 Honor, obviously I think both Mr. Roshan and Mr.
16 O'Brien, because they are sole or primary owners of this
17 company, have taken these things very emotionally. And
18 I think it's expected that that would come out.

19 I understand Your Honor's concern, but it's
20 not as if he was encouraged to do that. It's just how
21 he feels.

22 THE COURT: I appreciate that. I'm just
23 saying that the lawyers and judges have to know and we
24 have to focus on what's admissible and what's not and
25 try to keep it out of that, because that doesn't help

1 US.

2 Is there something more you want to say?

3 MR. FRANCO: Those were the big issues. I
4 completely agree with Your Honor's ruling. They can
5 elicit evidence what they paid the follow on contractors
6 for these particular movements and the Liberty thing.

7 What I'm worried about is the -- and he's
8 testified to in deposition, magical lost profits.
9 That's what I thought he was going to start testifying
10 about, the repercussions without any foundation, without
11 any tying into any particular contract and I wanted to
12 bring that to the Court's attention. It wasn't those
13 two items which I think --

14 THE COURT: Is there a number he wants to
15 say about lost profit?

16 MS. FIERST: I don't expect him to say any
17 sort of magic number, certainly not.

18 THE COURT: Don't -- is he going to testify
19 about a number for lost profits?

20 MS. FIERST: In response to this question, I
21 don't --

22 THE COURT: No, in response to any question
23 this afternoon.

24 MS. FIERST: Lost profits, no. I don't
25 think -- no, I don't expect him to do that.

1 THE COURT: Okay. I'm going to send the
2 jury out and make sure he doesn't.

3 MS. FIERST: I'm sorry.

4 THE COURT: I'm going to send the jury out
5 and then we will have a conversation to make sure he
6 does not do that.

7 I don't want a mistrial.

8 (THEREUPON, side-bar conference was
9 concluded.)

10 THE COURT: Ladies and gentlemen, I want you
11 to step out for just a few minutes. I'm going to have
12 you come back in a few moments. I need to talk to the
13 lawyers about one item.

14 MS. FIERST: Your Honor, if I may, I don't
15 know whether you noticed the time. I didn't notice
16 whether this --

17 THE COURT: I do notice the time.

18 MS. FIERST: -- would coincide --

19 THE COURT: I'm paying attention. I have a
20 clock right in front of me. See it right here.

21 MS. FIERST: Sorry, Your Honor, just wanted
22 to be sure.

23 (Jury excused from the courtroom.)

24 THE COURT: Tell them less than five
25 minutes. Tell them less than five minutes.

1 suggests that.

2 THE WITNESS: Yes, sir. There were two
3 movements at the time that we wound up moving around the
4 same time.

5 The first one was Comanche earlier on in the
6 month of June. That was lost -- that was referenced to
7 by Mike Chapell which is an e-mail that has come into
8 evidence, in which Mike Chapell specifically references
9 our poor performance. And his very first line on there
10 is that J -- reference to Joe MaDeen, one of the
11 employees of Global Hub Logistics was useless and had
12 caused them to lose the movement and thus, we lost the
13 movement. That's Comanche.

14 There's a second movement that we do not
15 receive -- that we referenced as HM1. I do know that is
16 reference in communications, in which HM1 does go to
17 Liberty. Liberty communicates to us that they are not
18 going to use us on that movement. That e-mail I do know
19 has been brought into evidence as well. The total value
20 of that movement from a revenue respective is
21 approximately 950,000. I'd have to actually take a look
22 at the numbers exactly, sir, of which profit would have
23 been \$225,000, sir.

24 And that HM1 movement we know ultimately did
25 go out to one of our competitors at the time. And

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

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

7 MR. FRANCO: Your Honor, we've discussed
8 Comanche -- I'm sorry.

9 MS. FIERST: I just want to get it out of
10 the way.

11 THE COURT: Yes, we have discussed Comanche
12 before.

13 MR. FRANCO: And we've done the timeline and
14 we recognize that the Comanche is not awarded. It's
15 related to performance issues.

16 What -- we are here on contract claims and
17 tortious interference claims. It's certainly not
18 related to these contract claims, and it's certainly not
19 related to the tortious interference claim because it's
20 not related to any tort. It's related to performance
21 issues.

22 And the same with this HM1. Moreover, we
23 don't have any documentary evidence about the value of
24 that award. We don't have any documents from Liberty
25 about what they made on it and what they paid out their

1 subs on it or anything like that.

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

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

9 THE WITNESS: Yes, sir.

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

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

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

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

24 THE WITNESS: Yes, sir.

25 THE COURT: They decided not to use you. We

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

6 So that wouldn't have been a damage incurred
7 by Global. That would not have harmed Global's cost.
8 You could have gotten someone else to do that.

9 THE WITNESS: Sir, if I could, with regard
10 to HM1, sir, the reason why we did not get HM1 was
11 specifically referenced by Mike Chapell as what GHL had
12 done to us with regard to those five movements.

13 So because of what GHL had done in stopping
14 those five movements and creating problems for Liberty
15 Global Logistics, Liberty at that time decided it wasn't
16 going to use my company any more until we can prove that
17 we can get our house in order and in fact, does not come
18 back to us until November. And that's why they don't
19 award us HM1, sir.

20 THE COURT: All right. I understand that.
21 What I'm saying is they're not liable for that. GHL is
22 not liable for that as a contract damages or tortious
23 interference with contract damage.

24 That's just the ruling that I have to make.
25 So I don't want you to go into Comanche or -- I'm sorry.

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

5 All right. Thank you.

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

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

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

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

16 MS. FIERST: Okay.

17 THE COURT: Fifteen minutes, thank you.

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

20 THE COURT: You may be seated.

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

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

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

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

7 I had the impression it would be done by
8 1 o'clock tomorrow, the whole trial. Is that right?

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

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

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

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

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

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

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

3 MS. FIERST: I think when you are thinking
4 finish by 1, what -- do mean to the jury by 1 o'clock?

5 MR. FRANCO: That's what I assumed you
6 meant, Your Honor.

7 THE COURT: I meant conclude all the
8 evidence by 1 o'clock.

9 MR. FRANCO: Oh, conclude the evidence?
10 Yeah, I think that's --

11 THE COURT: So the instructions would be at
12 2 o'clock. We can get it to the jury before 5 o'clock
13 tomorrow.

14 MR. FRANCO: I think -- if I can start
15 cross-examination tomorrow at 10, then there's no doubt
16 about it, yes.

17 THE COURT: That only depends on which
18 Ms. Whitcomb-Fierst can finish today in the hour that's
19 left.

20 MS. FIERST: So it's all on me?

21 THE COURT: No, it's not all on you. I'm
22 not trying to limit you. I've said that three times.
23 I'm not trying to limit you.

24 I'll just tell the jury we think we can
25 finish tomorrow and they'll have the case by the close

1 of business tomorrow.

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

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

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

11 THE COURT: Okay.

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

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

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

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

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

25 You may be seated.

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

2 THE WITNESS: A bit, sir.

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

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

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

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

21 Mr. Toliver, can you close the blinds.

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

24 You may proceed.

25 MS. FIERST: Thank you, Your Honor.

1 BY MS. FIERST:

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

5 Can you continue with your response?

6 A. That's correct, ma'am.

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

10 MS. FIERST: Yes, Your Honor.

11 THE WITNESS: In total --

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

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

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

20 THE WITNESS: Yes, sir.

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

23 THE WITNESS: Yes, sir.

24 THE COURT: Money you had to pay for
25 Tamerlane.

1 THE WITNESS: Absolutely, sir.

2 What happened after the movements, after
3 GHJ's actions are that again, we are placed in the
4 microscope. We're required at that point to report our
5 progress, come up with a new plan, communicate to Max
6 Ward who is the major on the base in Kandahar, the most
7 senior officer on the base at the time who our new
8 subcontractor is going to be, how are we going to use
9 them, how we're going to deploy them, et cetera.

10 We had to ensure that we were providing
11 reports as well as substantiating information that was
12 being requested by the contracting officer of us to
13 provide to Anita Rice as to what was it that we had done
14 in terms of payments, et cetera.

15 So we had that scramble. We had the
16 scramble of lining up new vendors as well, getting
17 regional vendors as I mentioned before.

18 At that time we had used a company called
19 B&Q Logistics down in the south. We had a company
20 called Emran Dawran that was being used in the north.

21 And we began coordinating activity to
22 attempt to collect the cargo and get the cargo that was
23 abandoned at different locations to Karachi at that
24 stage.

25 We -- I mean, that's what we did at that

1 point -- at that point in time.

2 BY MS. FIERST:

3 Q. How about ultimately was there any sort of impact
4 from Liberty in terms of the way that these movements
5 were handled? Were there any monetary impact imposed by
6 Liberty on Tamerlane?

7 A. There was. There was a \$125,000 penalty that
8 Liberty charged on us, as well as additional discounts
9 that they requested on specific movements related to
10 particular TCN movements on the invoices.

11 MR. FRANCO: Objection, foundation.

12 THE COURT: Overruled.

13 BY MS. FIERST:

14 Q. With respect to the -- the amount -- what amount
15 did you just state?

16 A. There was a \$125,000 penalty that was charged
17 against us by Liberty Global Logistics as well as
18 certain discounts that they had requested based on
19 certain routes that had been impacted by GHL's actions.

20 Q. And on the \$125,000, how did that number -- how
21 was that number achieved, that dollar figure?

22 A. Liberty Global Logistics reached out to us,
23 explained to us that what had occurred required -- made
24 us move -- missed the RDD. We had missed the RDD. That
25 was indisputable. We had missed the RDD as a result of

1 what had occurred.

2 The required due date was to get the cargo to the
3 ship. We had missed three ships as a result of these
4 actions.

5 By missing those three ships, cargo returning to
6 the United States wind up missing its RDD, the final RDD
7 for delivery. As such, the costs that were incurred,
8 the additional costs of keeping ships either in port or
9 bringing ships back to port had cost Liberty Global
10 Logistics a sum of money. They told us \$250,000 and
11 that they were seeking that number.

12 THE COURT: I just want to know about what
13 he had to pay.

14 THE WITNESS: And we wind up negotiating
15 with Liberty Global Logistics and saying it's a lot of
16 money for us to pay out of pocket. It's a small
17 company. And they ultimately decided to cut us a break
18 and cut it in half and gave us a \$125,000 penalty versus
19 the \$250,000 penalty.

20 BY MS. FIERST:

21 Q. Mr. O'Brien, I want to ask you to look now at --
22 I'm sorry, Your Honor, one moment -- at some of the
23 particular invoices that are at issue concerning these
24 movements.

25 First, I'd like to direct your attention back to

1 an exhibit that you looked at earlier, Mr. O'Brien,
2 Defendant's Exhibit, I believe it's -- yes, 343.

3 A. Yes, ma'am.

4 Q. All right. Now, regarding the Strike invoice,
5 Mr. O'Brien, regarding the Strike invoice, you testified
6 a little while ago that there was a certain sum of money
7 that you paid on the Strike 1 -- on the Strike 1
8 movement. I think your testimony a couple of minutes
9 ago that you paid \$459,700 but contested the remainder
10 on the invoice.

11 Do you remember that?

12 A. Yes, ma'am.

13 Q. Okay. Can you -- gosh, it's small. Can you
14 identify for us where those entries are on this report
15 of payments that were made by Tamerlane?

16 A. Those are the two last line items \$400,000 paid
17 on July 6th and then \$59,700 paid on July 18th.

18 Q. And so those charges were made after the -- after
19 the e-mail from Mr. Gharjy informing you that they were
20 terminating the movements, right?

21 A. Yes, ma'am.

22 Q. And, why did you make those payments?

23 A. At the time we had no basis to deny the truck
24 charges. And once we come down to the \$2,800 number, we
25 had been told by Global Hub that was their cost. We

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

4 Q. All right. I want to ask you to look at --
5 sorry. One moment, Your Honor -- at Plaintiff's
6 Exhibit 1.

7 A. Plaintiff's Exhibit 1?

8 Thank you, sir.

9 Yes, ma'am.

10 Q. Now, Mr. O'Brien, this Plaintiff's Exhibit 1 I
11 believe is already in evidence and can be published if
12 we want.

13 This is -- can you describe for us what this is?

14 A. This is a series of invoices for movements that
15 are involved, the five movements that are currently in
16 question in the case from Global Hub Logistics to us.

17 Q. And did you -- this is dated August 3rd, right?

18 A. Yes, ma'am.

19 Q. Do you know whether this was the first invoice
20 that you received on these particular movements?

21 A. We received some invoices around late July, maybe
22 July 28th or something in that nature. I don't recall
23 the exact date. But I believe this is the first --
24 certainly of these movements that was in or around
25 August 3rd, yes, ma'am.

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

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

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

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

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

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

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

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

25 A. Yes, ma'am.

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

3 A. Absolutely, no question about it.

4 Q. Tell us why. What were the issues?

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

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

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

15 In this case, Leatherneck to Karachi, again
16 putting into perspective, is kind of a similar distance,
17 through a pretty tough neighborhood.

18 Q. I'm sorry. I think I might have lost you there.
19 The Leatherneck to --

20 A. Karachi movement.

21 Q. Is the equivalent of Washington to Dallas; is
22 that what you --

23 A. In terms of distance, in terms of the amount of
24 time. It takes about six -- if you were doing a
25 straight drive, six days, approximately to travel. So,

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

3 Obviously, the road conditions are different over
4 there. But, that's about the equivalent in distance.
5 And in terms of the overall cost, \$7,300, not disputing
6 \$7,300 on that particular route. But if you look at the
7 line item below, Leatherneck to Chaman, Leatherneck to
8 Chaman, GHL is essentially charging us for a price
9 that's again, not something we asked for.

10 But assuming we'd asked for this movement,
11 they're charging us nearly the same rate to go from
12 Washington, D.C. to Dallas, as it would be from
13 Washington, D.C. to Richmond.

14 I mean, the distance is so small in comparison,
15 proportionally, and they're charging charges for the
16 same rate. We had had --

17 THE COURT: Excuse me.

18 THE WITNESS: Yes, sir.

19 THE COURT: I want to focus on what you
20 agreed to as opposed to what was charged. Could you
21 answer that question?

22 MS. FIERST: That was going to be my next
23 question, Your Honor.

24 THE COURT: All right. Let me -- then ask
25 it.

1 BY MS. FIERST:

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

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

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

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

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

14 A. Yes, ma'am.

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

17 A. No, ma'am.

18 Q. How about for Phoenix to Chaman?

19 A. No, ma'am.

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

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

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

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

4 Can you do that, Mr. O'Brien?

5 A. Yes, ma'am.

6 THE COURT: Defendant's 16 or --

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

10 BY MS. FIERST:

11 Q. Okay.

12 A. Yes, ma'am.

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

15 A. Yes, ma'am.

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

19 A. Yes, ma'am.

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

23 A. Yes, ma'am.

24 Q. Do you see that page?

25 A. Yes, ma'am.

1 Q. Now, that one also at the top says TF LOGCOM and
2 Retro 11, KAF, right?

3 A. Yes, ma'am.

4 Q. Now, can you describe for us Plaintiff's
5 Exhibit 16, the cover e-mail there is dated July 17th,
6 right?

7 A. Yes, ma'am.

8 Q. Can you explain for us your observations
9 regarding these two invoices?

10 A. Between 2 and 16, ma'am?

11 Q. Yes, between -- Plaintiff's Exhibit 2 and then
12 the -- the analogous page for the same movement on page
13 44285 of Plaintiff's Exhibit 16.

14 A. The quantities of trucks and the routing has
15 changed between the numbers used on the 40-foot KAF to
16 Chaman, it has a quantity of 22 at a unit cost of 2,800.

17 Q. Which document are you referring to?

18 A. I'm so sorry. On Plaintiff's Exhibit 2, dated
19 August 3rd --

20 Q. Uh-huh.

21 A. -- they have a 22-unit had moved according to
22 this invoice, from KAF to Chaman.

23 Q. Okay.

24 A. At a rate of 2,800. And the total cost is
25 61,600.

1 Q. Okay.

2 A. On the Exhibit 16, or Plaintiff's Exhibit 16, the
3 TF LOGCOM and Retro 11 movement has a 40-foot KAF to
4 Karachi --

5 Q. Go to --

6 A. KAF to Chaman, I apologize, with only two units
7 that had moved at a unit cost of \$2,000 and a total of
8 \$4,000.

9 Q. Okay. So, the quantity there is the number of
10 trucks?

11 A. That's correct.

12 Q. So -- all right. So it goes from two trucks
13 on -- on July 17th to 22 trucks on August 3rd, right?

14 A. Yes, ma'am.

15 Q. And, GHL had completed their work by this point;
16 is that right?

17 A. Had they completed their work at this time?

18 Q. Yes.

19 A. They were no longer involved in our movements.
20 They had never completed the job we hired them for.

21 Q. And then the unit cost you said is different,
22 as --

23 A. Correct the unit cost as well. So on July 16th,
24 they're charging us \$2,000 for that movement, but on
25 August 3rd, they're charging us \$2,800 for that

1 movement.

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

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

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

9 A. Yes, ma'am.

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

12 A. Absolutely, ma'am. So, on Plaintiff's
13 Exhibit 16, which is the earlier invoice, there's a
14 40-foot KAF to Karachi, where the quantity is 29 and the
15 cost is \$2,800 at a line item cost of \$81,200, a total
16 line item cost.

17 On the August 3rd, the 40-foot KAF to Karachi has
18 changed from 29 units to 9 units and then a rate of
19 \$4,000 per movement, or approximately \$1,200 more per
20 unit with a line item cost of \$36,000, 2 weeks later.

21 Q. Okay. Now, the expenses that Mr. Roshan talked
22 about, the extra expenses that there's a separate
23 invoice for -- let me see if it's here in Plaintiff's
24 Exhibit 16 at the very back, the page that's marked
25 44290 and 44291.

1 A. Yes, ma'am.

2 Q. This is dated July 17th, this invoice referenced
3 extra charges, right?

4 A. Yes, ma'am.

5 Q. Was that expenses that you agreed -- that
6 Tamerlane agreed to pay to Global?

7 A. No, not at all. None of these -- none of these
8 e-mails -- inside this body, some of them we had already
9 paid outright, the miscellaneous charges and so forth
10 that we had given.

11 Some of them are charges for movements we had
12 already been charged before. And in some cases, they're
13 charging us -- their own employees charge us, which we
14 don't understand why we would have to pay for their
15 employees.

16 Some of them are for their own establishment of
17 an office where they paid for a satellite dish and other
18 type of information. Some of them, for instance, on the
19 customs clearance charges were charges that were
20 included in a cost of trucking and had never been
21 discussed before.

22 So, I mean some of these charges, sure, we would
23 have reimbursed in a normal -- in a normal
24 circumstances, but the bulk of these charges, absolutely
25 not.

1 Q. What about the program management fee that you
2 already testified to having paid that was shown on
3 exhibit -- Defendant's Exhibit 343. What was -- what is
4 the relationship if any between these extra charges and
5 that program management fee?

6 A. In the \$50,000 that I'd paid to Global Hub
7 Logistics as a thank you very much for the support that
8 you provided, the credit for Jim's phone in
9 January 18th, credit for Brad's phone, credit for Brad's
10 phone again in February, those were all part of the TF
11 Warrior movement that we gave additional funds to.

12 The Brad ticket from Kabul to Mazari Sharif, that
13 one I believe is involved in Hammer. I'd have to look
14 at the dates. I'm fairly certain that's for Hammer.

15 The Xenia Guesthouse would be for Strike 1, as
16 would Dave's -- Dave's phone would be for the later
17 movements that are involved in the case as well.

18 For the miscellaneous charges, the DHL costs,
19 those DHL costs were costs that were incurred as part of
20 projects that required the customs clearance documents
21 for invoices that we had already been invoiced on
22 earlier for some of the smaller local movements.

23 So, these DHL costs, I have no idea where that's
24 coming from.

25 Q. Okay. So in some of these weren't charges that

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

3 A. That's correct.

4 Q. How about -- let's talk for a moment about
5 demurrage. Mr. Roshan and Global Hub have put into
6 evidence certain demurrage invoices pertaining to the
7 five interrupted movements as well.

8 Do you recall seeing those?

9 A. I do. Yes, yes, ma'am.

10 Q. Did you receive -- you also heard Mr. Gharjy talk
11 about -- testify about Shafie Noorzai having reports or
12 documents that backed up the demurrage.

13 Do you recall that testimony?

14 A. Yes, ma'am.

15 Q. Did you ever get reports or substantiation for
16 the demurrage invoices in these five movements?

17 A. No, ma'am.

18 Q. Okay. Let's look at -- let's look at Defendant's
19 Exhibit 269.

20 A. Yes, ma'am.

21 Q. All right. Mr. O'Brien, I'm going to direct your
22 attention to the -- the third bullet point there.

23 A. Yes, ma'am.

24 Q. So, this is an e-mail from Mr. Gharjy to Major
25 Ward dated July 4, 2011, right?

1 A. Yes, ma'am.

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

5 Do you recall that testimony?

6 A. Yes, ma'am.

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

11 A. Yes, ma'am.

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

15 So, he writes "since two months, GHIL has
16 requesting Tamerlane and Security Packers to provide us
17 the report, but nobody provides us the report and let us
18 know what are the status of the received units".

19 Do you see where it says that?

20 A. Yes, ma'am.

21 Q. Do you know what he's talking about there?

22 A. The only thing I can think he's talking about,
23 that would be speculation --

24 MR. FRANCO: Objection. The answer is does
25 he know? He doesn't --

1 BY MS. FIERST:

2 Q. If you know, Mr. O'Brien.

3 A. I don't know what report specifically Abdullah is
4 referring to, no, ma'am.

5 Q. In you look in the next line, Mr. Gharjy wrote,
6 "this report will help us to calculate the truck
7 demurrage charges for our final invoice to Tamerlane".
8 Do you see where it says that?

9 A. Yes, ma'am.

10 Q. Had you already at this point on July 4th
11 received any invoices from GHL for demurrage on the TF
12 Strike project?

13 A. Yes, ma'am, twice absolutely, two separate
14 invoices, the first one on the 21st and then on the 1st
15 in which GHL had tried to charge us for demurrage
16 charges to which base -- on this line, they had no basis
17 to charge.

18 Q. And why do you say they had no basis to charge?
19 To connect the dots for us, what -- can you explain
20 that?

21 A. In Abdullah Gharjy's e-mail here, he's requesting
22 a demurrage -- he wants to be able to calculate truck
23 demurrage charges. He's seeking a report of some kind
24 from Major Ward, essentially asking him, you can get
25 that report so that he can then calculate his demurrage

1 charges to invoice us.

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

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

8 A. Yes, ma'am.

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

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

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

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

24 Do you remember that testimony?

25 A. Yes, ma'am.

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

2 A. On multiple occasions, from an operational
3 perspective we always want to keep a program manager --
4 I always want to keep a program manager in theater until
5 the end of the movement, that is until the project got
6 to Karachi.

7 The reason I wanted to have somebody in theater
8 was if something went wrong during the course of the
9 movement, they can respond to it. They can immediately
10 reach out to one of our Afghan colleagues and say, hey,
11 what's going on here, if necessary, such as when Tim
12 Timpson went to Jalalabad, if necessary, go out, see the
13 cargo, put your hands on it. Let's fix these issues.

14 That was the operation -- operating platform that
15 we had. And each incident, Brad Parham had left as soon
16 as the cargo was loaded, he would come up with a
17 different excuse or reason to come back.

18 Obviously, we sympathize with the reasons that he
19 had told us in June, his mother-in-law was passing. I
20 get that. That's a horrible tragedy.

21 But in previous movements, he had left early for
22 a number of -- sometimes cockamamie reasons.

23 Q. You testified that he finished his job. Do you
24 remember that testimony?

25 A. Yes, ma'am. I do remember that.

1 Q. And what did you consider -- what did Tamerlane
2 consider to be the completion of the -- the movement or
3 the completion of the assignment in Afghanistan?

4 A. In every case, we are always hired to move the
5 cargo from a base to Karachi. That -- we expected our
6 subcontractors to understand that and our program
7 managers to understand that.

8 You're staying in theater. Incidents will occur
9 between 1, 2 o'clock in the morning, eastern standard
10 time. We want to make sure somebody is there on the
11 spot who can manage the issue as they occur, not be here
12 in the United States, but actually manage them from
13 theater.

14 And so, completion of the movement was all the
15 cargo got to Karachi. Everything is good to go. Thumbs
16 up. Okay, you can come home.

17 Q. You also heard Mr. Parham testify about working
18 outside the office. Do you remember that testimony? He
19 was asked about telecommuting or -- I don't remember the
20 exact word that was used.

21 A. Yes, I do recall.

22 My management program -- my program manager
23 expected that when they come back to the United States
24 they would work from the office, while the program
25 manager in theater would go into Afghanistan and work on

1 the projects in Afghanistan.

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

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

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

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

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

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

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

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

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

25 A. No, he actually physically returned to the office

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

3 Q. Okay. And how do you know that?

4 A. I know that because I have reviewed documents and
5 records from that timeframe to make sure what I was
6 saying here today was accurate.

7 Q. All right. And where were you during this time
8 period, Mr. O'Brien? Start in early June, about when
9 Mr. Parham returns from Afghanistan.

10 A. So, I left the country on May 31st with Adam
11 Bonifant to go to Afghanistan. So I leave May 31st. I
12 arrive in Dubai on June 1st.

13 On June 2nd in Dubai, I receive my visa to go in
14 Afghanistan. And then on June 3rd, I fly into
15 Afghanistan.

16 As I'm flying into Afghanistan, Brad Parham in
17 fact is flying to Dubai because he's headed home to the
18 United States. So, he flies in on the 3rd, spends an
19 extra night in Dubai and then ultimately takes the
20 June 4th flight that puts him at home on the 5th.

21 MR. FRANCO: Your Honor, nonresponsive.
22 That's where he was on June 23rd.

23 MS. FIERST: And I think that's what he's
24 describing, Your Honor.

25 Mr. O'Brien, if you could continue with --

1 your focus explanation of where you were.

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

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

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

12 THE COURT: Excuse me. I'm not sure what
13 this has to do with this case. If you would just get
14 back to this case, that would be very helpful.

15 MS. FIERST: I think he's winding up to
16 there.

17 THE COURT: I know. We don't need a
18 chronological story of every place he's been. We want
19 to focus on what's involved in this case.

20 BY MS. FIERST:

21 Q. Let me ask you a slightly different question.

22 You heard Mr. Parham testify about a meeting that
23 took place sometime in June in the Tamerlane office.

24 Do you remember his testimony?

25 A. Yes, ma'am.

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

4 A. Yes, ma'am.

5 Q. -- his testimony?

6 A. Yes, ma'am.

7 Q. Do you remember that meeting?

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

13 Brad did not come into the office from June 27th
14 to July 1st. And Brad Parham was fired by me on
15 July 1st. I never saw Brad Parham in the month of June.
16 I did not see him in the month of May. I did not see
17 him in the month of June, and I certainly did not see
18 him in the month of July. That was a lie. He lied on
19 the stand.

20 Q. All right. So, did you tell Mr. Parham what he
21 testified to?

22 A. I'm sorry. Can you repeat that?

23 Q. He testified that there was this meeting in which
24 you said you weren't going to pay GHL. And he wasn't
25 very -- he was a little fuzzy on the time, but he said

1 it was in June. Do you remember that?

2 A. Yes, ma'am.

3 Q. Did you ever say that at some other point in --
4 with Brad Parham?

5 A. No, ma'am. In fact, Brad Parham's biggest
6 complain about me was that I did not speak to Brad
7 Parham often enough to placate his ego.

8 Q. And when, Brad Parham left the company, what --
9 did he have any particular -- tell us about his
10 departure specifically to that point of whether he was
11 talking with you or not regularly enough?

12 A. So, again, on -- towards the end of -- I'll tell
13 you how the lead up is if that's okay with regard to
14 Brad's dismissal.

15 On the 26th, Brad sends me an e-mail, 26th in the
16 evening stating he no longer wants to be an employee and
17 doesn't want to come to the office but he prefers to be
18 an IC.

19 At this stage, the 27th, the team is working on
20 the incidents that we had just found out about the day
21 before regarding the GHL incident and the operations
22 team was scrambling.

23 Brad Parham does not show up in the office on
24 Monday. He writes me an e-mail saying why aren't you
25 responding to my e-mail.

1 On Tuesday, he does not show up in the office.
2 Again the operation team is working together to try to
3 fix this issue.

4 Again he writes an e-mail, why aren't you
5 responding to my e-mail about me becoming IC. On the
6 29th he does write me again why aren't you responding to
7 my e-mail? I finally respond to him that, hey, Brad
8 we're all scrambling here working on this issue, these
9 five movements that have been dropped by GHL. Where are
10 you? And oh, by the way, if you want to turn into IC,
11 I've got no problem with that. But please understand
12 what my operational philosophy is with regard to
13 seamless integration support, and that I can't guarantee
14 an independent contractor work. I don't know when the
15 work is going to come as an IC.

16 Employees get guaranteed work. ICs don't. He
17 said he's going to write me. Nonresponse. He does not
18 show up on the 30th. He does not show up on the 1st.
19 Meanwhile the operations team is scrambling to fix these
20 issues. And finally I pull the trigger and release Brad
21 Parham on July 1st.

22 He then says that he's going to come in and ask
23 about bonuses he should receive for the five movements.

24 MR. FRANCO: Objection, Your Honor. This is
25 all hearsay.

1 MS. FIERST: Let's --

2 THE COURT: Sustained.

3 BY MS. FIERST:

4 Q. Let's turn, Mr. O'Brien, to Mr. Parham. Do you
5 specifically -- your knowledge -- do you have knowledge
6 of -- what do you know Mr. Parham's reputation for
7 truthfulness to be?

8 A. Mr. Parham had been -- he was not renewed on a
9 DEA contract --

10 THE COURT: Excuse me. We're only concerned
11 with what he knows his reputation to be without
12 referring to specific incidents, if that's what you're
13 trying to do.

14 BY MS. FIERST:

15 Q. And my question was what do you know Mr. Parham's
16 reputation for truthfulness to be?

17 THE COURT: Not referring to specific
18 incidents.

19 THE WITNESS: It is suspect at best.

20 BY MS. FIERST:

21 Q. Now, in fairness, Mr. O'Brien, were you upset
22 when GHL abandoned their work in the middle of the
23 performance?

24 A. Absolutely.

25 Q. Did you make comments to that effect at

1 Tamerlane?

2 A. Absolutely.

3 Q. Mr. O'Brien, I want to direct your attention now
4 to Defendant's Exhibit 345.

5 A. Yes, ma'am.

6 Q. All right. In -- what's been marked as
7 Defendant's Exhibit 305 -- I'm sorry, 345. Thank you,
8 345.

9 This is an e-mail between you and Mike Chapell at
10 Liberty -- Liberty Global Logistics, correct?

11 A. Yes, ma'am.

12 Q. And, can you describe -- after -- can you
13 describe after the -- after the five movements debacle,
14 what happened with Tamerlane's relationship with
15 Liberty?

16 A. Tamerlane's relationship with Liberty essentially
17 ceased as a commercial engagement. They stopped using
18 us. They did not use us for --

19 MR. FRANCO: Objection.

20 THE COURT: I'm listening.

21 MR. FRANCO: Your Honor, this relates to
22 what we spoke about at sidebar earlier.

23 THE COURT: If you would focus the question
24 and the timeframe and the particular project you're
25 referring to.

1 MS. FIERST: And the particular --

2 THE COURT: Project that you're referring
3 to.

4 MS. FIERST: I'm referring -- well, Your
5 Honor, if we could approach briefly.

6 THE COURT: Okay.

7 (Thereupon, the following side-bar
8 conference was had.)

9 MS. FIERST: When you were -- déjà vu when
10 we were here an hour or so ago. You asked if there was
11 evidence in the record regarding that Liberty beached
12 Tamerlane. Do you remember --

13 THE COURT: Yes.

14 MS. FIERST: Now we're in question mode. Do
15 you remember that discussion?

16 THE COURT: I do remember that.

17 MS. FIERST: This e-mail describes that very
18 beaching, Your Honor.

19 THE COURT: Where does it say that?

20 MS. FIERST: The first line of this e-mail.
21 So the e-mail is dated November 10th, 2011, right and
22 the first line of the e-mail -- here, you can look.

23 THE COURT: I have mine.

24 MR. FRANCO: I have --

25 MS. FIERST: That's fine. I don't mind.

1 THE COURT: I see that.

2 MS. FIERST: For once I'll be right next to
3 you.

4 It says "we're pleased to see you recover
5 from the challenges of a few months ago", and Mr.
6 O'Brien can speak to what that refers to. That there
7 was this beaching period, after their challenges, and
8 then they resumed working for Liberty in November.

9 THE COURT: This e-mail does not say that.
10 Does it?

11 MS. FIERST: It says -- it does not say
12 what?

13 THE COURT: Does not say that we stopped
14 using you for two months between August and November.

15 MS. FIERST: Well, it does say based on that
16 we are -- it says we are pleased to offer the Retro 28
17 move to Tamerlane. He can testify that he didn't work
18 for Liberty between June and November.

19 THE COURT: All right. Well, you gave the
20 impression that the e-mail said that. The e-mail didn't
21 say that.

22 Is that your objection?

23 MR. FRANCO: Well, if the e-mail is going to
24 be introduced, then it's hearsay. That's -- that never
25 came in in the deposition testimony at all that was read

1 into the record.

2 And two, again, we're not tying this to a
3 particular profit loss. And it's just going to be
4 confusing. So it's just prejudicial to talk about they
5 were on the shelf for a few months. What does that
6 mean?

7 The jury is not going to have any idea of
8 that without tying it. It's impossible to make it
9 relevant.

10 MS. FIERST: Your Honor, it does tie into
11 the defamation damages. That was the result of the
12 badmouthing, that Liberty as well as others, they took a
13 reputational hit. And so for some period of time, they
14 were persona non grata.

15 I understand that the e-mail does not put a
16 dollar value on it, but that doesn't mean there wasn't a
17 reputational hit and that the impact of their
18 reputational hit was that it was harder for them to get
19 work for some period of time.

20 THE COURT: All right, objection overruled.

21 MS. FIERST: Thank you, Your Honor.

22 (THEREUPON, side-bar conference was
23 concluded.)

24 BY MS. FIERST:

25 Q. I think you were in the middle of your answer.

1 THE COURT: Ask a specific question. Ask a
2 specific question.

3 If you're referring to the e-mail, refer to
4 the e-mail. If you're referring to something else,
5 refer to it specifically.

6 MS. FIERST: Yes, Your Honor.

7 With respect to Defendant's Exhibit 345,
8 Your Honor, at this time we would offer Defendant's
9 Exhibit 345 into evidence.

10 THE COURT: Received.

11 MR. FRANCO: Your Honor, I would note my
12 objection. It's hearsay.

13 THE COURT: Received. Go ahead.

14 BY MS. FIERST:

15 Q. So, all right, Defendant's Exhibit 345 is on the
16 screen there.

17 Mr. O'Brien, describe for us what happened with
18 the relationship between Liberty and Tamerlane following
19 the abandonment by GHL of the five movements in June.

20 A. The relationship stopped commercially. They
21 stopped using us.

22 Q. And, in the first couple -- first line of that
23 e-mail, do you see where Mr. Chapell has written, "we
24 are pleased to see you recover from the challenges of a
25 few months ago".

1 Do you see where it says that?

2 A. Yes, ma'am.

3 Q. Can you describe for me your understanding of
4 what Mr. Chapell is referring to as challenges?

5 MR. FRANCO: Objection.

6 THE COURT: Objection sustained.

7 BY MS. FIERST:

8 Q. Did you experience challenges in the months
9 following GHJ's abandonment of the five movements?

10 A. After GHJ's abandonment, with the exception of
11 that incident, we did not experience challenges. There
12 are no other challenges to which he can be referring
13 other than those.

14 Q. Okay. What did you have to do to sort of ramp
15 back up after the abandonment?

16 A. We had to change our personnel in terms of who we
17 had hired. We had to engage other services providers to
18 ensure we were covered. We employed a slightly
19 different strategy with regard to individuals that we
20 would hire as far as truckers are concerned and other
21 service providers.

22 And then ultimately, we had to go before the
23 Service Deployment Distribution Command and explain in
24 Bahrain which is what this e-mail is referencing, we had
25 to go to Bahrain to OCLASWA and explain what we were

1 doing to essentially make the corrections that we needed
2 to make to ensure that another GHIL incident never
3 happened again.

4 Q. And if you look at the second paragraph of this
5 e-mail, the Defendant's Exhibit 345, do you see where it
6 says -- that first word is basis. But -- I think in
7 context it might mean base.

8 But in any event, "it says basis your rates
9 supplied to Mike V earlier today, we're pleased to offer
10 the Retro 28 move to Tamerlane".

11 Do you see where it says that?

12 A. Yes, ma'am.

13 Q. Was that the first movement that Tamerlane got
14 from Liberty -- put that in context in terms of the five
15 moments and then this Retro 28 move.

16 A. This was the first award to Tamerlane by Liberty
17 Global for a cargo movement in six months. The last
18 order we had received was in May, late May, 2011. This
19 is coming in on November 10th. This is the first award
20 that we had received after that incident.

21 Q. All right. If you'd look at the top of the
22 following page.

23 A. Yes, ma'am.

24 Q. Do you see there's a reference there to required
25 delivery dates?

1 A. Yes, ma'am.

2 Q. Was that -- what does required delivery dates
3 there in this e-mail mean?

4 A. Required delivery dates are --

5 MR. FRANCO: Objection, Your Honor.

6 Relevance.

7 MS. FIERST: The requirement to deliver
8 cargo at a certain point in time is certainly relevant
9 to the dispute.

10 THE COURT: Only if it's part of this
11 contract case. Is this a part of the invoices before
12 the Court?

13 MS. FIERST: Is this a problem did you say?

14 THE COURT: Is this retrograde movement here
15 a part of the claim before the Court?

16 MS. FIERST: No, Your Honor. Retro 28, is
17 that your question?

18 THE COURT: Yes.

19 MS. FIERST: No, it's not.

20 THE COURT: Then it's irrelevant. Objection
21 sustained.

22 MS. FIERST: Thank you, Your Honor.

23 BY MS. FIERST:

24 Q. Mr. O'Brien, I'd like to ask you to look at
25 Defendant's Exhibit 220.

1 MS. FIERST: My apologies. All right.
2 Defendant's Exhibit 220, Your Honor, I believe this
3 exhibit was already admitted into evidence.

4 THE COURT: Ms. Bull, was 220 admitted?

5 MS. FIERST: Not in our case. It was not
6 admitted.

7 THE COURT: No, it was not admitted.

8 BY MS. FIERST:

9 Q. All right. I'm going to ask you to look at
10 Defendant's Exhibit 220, Mr. O'Brien.

11 A. Yes, ma'am.

12 Q. All right, Defendant's Exhibit 220 is a series of
13 e-mails from June 23rd, 2011. Well, that's the most
14 recent one, correct?

15 A. Yes, ma'am.

16 Q. And, your the addressee here, right?

17 A. Yes, ma'am.

18 Q. Now, Mr. O'Brien, can you tell us what's going on
19 in this particular e-mail?

20 MR. FRANCO: Objection.

21 THE COURT: The objection is?

22 MR. FRANCO: Hearsay.

23 THE COURT: All right. Your response.

24 MS. FIERST: I'm asking Mr. O'Brien for his
25 understanding. I'm not asking him to communicate what

1 was told to him, but for his understanding of what was
2 going on situationally.

3 THE COURT: Well, can he tell us that
4 without looking at the e-mail?

5 MS. FIERST: Perhaps he could.

6 THE COURT: All right, then ask that
7 question.

8 Objection sustained.

9 BY MS. FIERST:

10 Q. Mr. O'Brien, at this point in time, June 23rd,
11 2011, do you recall the discussions that you were having
12 with Liberty regarding trucks at Sharana?

13 A. Yes, ma'am.

14 Q. And do you recall discussions -- or do you recall
15 learning about Tamerlane and Liberty's failure to be
16 awarded the Comanche movement?

17 A. Yes, ma'am.

18 Q. Can you tell us your understanding of -- can you
19 tell us your understanding of -- can I at least get the
20 question out?

21 MR. FRANCO: I didn't say anything.

22 BY MS. FIERST:

23 Q. Can you tell us the understanding of the reasons
24 that Liberty and Tamerlane did not get the Comanche
25 movement?

1 MR. FRANCO: Objection, foundation, hearsay.

2 THE COURT: Okay, as we discussed
3 previously, you can ask him about what Liberty
4 represented to him, I guess, about what -- concerning
5 the Comanche, but --

6 MS. FIERST: Yes.

7 THE COURT: But as I understand it, we
8 already know what Liberty's relationship is with respect
9 to that contract. You have to ask that question first.

10 MS. FIERST: I'm sorry, Your Honor, I didn't
11 follow your comment. I apologize.

12 THE COURT: All right. The first question
13 is whether Liberty got a contract called Comanche.
14 Second question is whether -- well, that's the key
15 question it seems to me.

16 MS. FIERST: Fair enough, Your Honor. I
17 apologize for the --

18 THE COURT: No problem. No problem.

19 BY MS. FIERST:

20 Q. Are you aware of a movement known as the Comanche
21 movement, Mr. O'Brien?

22 A. Yes, I am.

23 Q. Was that a movement that Tamerlane and Liberty
24 worked on?

25 A. Yes, ma'am. That we worked on as a bid or as we

1 worked on in general?

2 Q. Were you awarded that movement?

3 A. We were not, ma'am.

4 Q. Why not?

5 A. We were not awarded that movement because there
6 were -- because Liberty did not get that movement. And
7 since Liberty did not get that movement, the reasons we
8 didn't get that movement were because of operational
9 concerns by the SDDC regarding recent issues as it
10 related to the five movements.

11 Q. Can you be more specific, Mr. O'Brien. Tell us
12 the operational issues.

13 A. Yes, ma'am. The reason why we didn't get the --
14 Comanche wasn't given to -- when I say we, I mean
15 Tamerlane and Liberty Global Logistics. Liberty Global
16 not getting the movement itself, was that Liberty didn't
17 get the movement because of operational issues at
18 Leatherneck with the specific reference to Joe MaDeen,
19 an employee of Global Hub Logistics.

20 There were issues at the border crossing in
21 Torkham as it pertained to cargo that was currently in
22 motion that had been cleared and then decided to turn
23 around. Again those were Global Hub Logistics' trucks.

24 And then there were internal communications
25 issues in which members of the Tamerlane team and Global

1 Hub Logistics were seen arguing amongst themselves in
2 communications that include the SDDC as well.

3 Q. So, in fairness, one of those was a Tamerlane
4 issue, right?

5 A. One of them would be a Tamerlane issue, no doubt.
6 As far as the other two were concerned, well, I mean --
7 GHL was our subcontractor, so, yes, I guess Tamerlane
8 also had to manage its subcontractor.

9 Q. Okay. Mr. O'Brien, let's look at Defendant's
10 Exhibit 167.

11 A. Thank you, sir.

12 Q. All right, Mr. O'Brien, Defendant's Exhibit 167
13 has been introduced earlier during the trial. You may
14 recall Mr. Roshan's testimony regarding this exhibit.

15 A. Yes, ma'am.

16 Q. Do you recall Mr. Roshan's testimony that it
17 wasn't possible for GHL to take away business from
18 Tamerlane because the retrograde movements would go to
19 big shipping companies that had assets Global didn't
20 have?

21 A. Yes, ma'am.

22 Q. What's your response to that? Do you agree with
23 that testimony?

24 A. I agree that he would not have been able to take
25 those contracts from those shipping companies. That I

1 would agree with. He would not be able to take it from
2 the large shipping companies, USC carriers and so forth.

3 Q. You mean Global by itself?

4 A. Correct, that's right. He wouldn't be able to
5 take it. He doesn't own a boat. He doesn't own a ship.

6 Q. And, looking at this e-mail, what does this
7 e-mail suggest to you?

8 MR. FRANCO: Objection.

9 THE COURT: Sustained.

10 BY MS. FIERST:

11 Q. Do you know the --

12 THE COURT: Last question.

13 MS. FIERST: Thank you, Your Honor.

14 Q. Looking at this e-mail, Mr. O'Brien, do you know
15 the companies that Mr. Roshan is referring to, the
16 shipping companies that's the subject of the e-mail?

17 A. I would only be able to guess since the list is
18 redacted. No, I couldn't answer, sorry.

19 THE COURT: He's answered, okay.

20 Ladies and gentlemen, thank you for your
21 time and attention today. Please do not discuss the
22 case. Don't permit the case to be discussed in your
23 presence and leave your notes in the jury deliberation
24 room.

25 You may be excused. Thank you.

1 You can step down, sir. You can step down.
2 (Thereupon, the witness withdrew from the
3 stand.)

4 THE COURT: 10 o'clock.

5 MS. FIERST: Thank you, Your Honor.

6 THE COURT: We're in recess.

7 (Court recessed at 5:03 p.m. and reconvened
8 at 5:09 p.m.)

9 THE COURT: I want to make sure I understand
10 what you all have done here. It looks like I have one
11 set of agreed instructions, and I have a set of Global
12 Hub and Masud's jury instructions and a set of Tamerlane
13 O'Brien's jury instructions. Are these the ones that
14 are contested?

15 MR. FRANCO: We have competing ones and the
16 Tamerlane and the Global Hub ones.

17 THE COURT: Okay, all right.

18 MR. FRANCO: And some are not competing but
19 one wants and the other just doesn't.

20 THE COURT: All right. I'm happy to take
21 them in whatever order you want.

22 MS. FIERST: One other issue, Your Honor, if
23 I may. In the joint proposed jury instructions, just as
24 sort of a reminder of the context, right around the time
25 that the jury instructions were filed with the Court,

1 the Court ruled on the remaining e-mail that was the
2 subject of the defamation claim.

3 So we tried our best at this point to remove
4 Mr. O'Brien's name from the jury instructions. And I
5 think we caught most of them, but I did find at least
6 one instruction that still mentions a defamation claim
7 against Tamerlane.

8 THE COURT: What page number?

9 MS. FIERST: That's on page 22, the
10 statement of the case instruction. If you look in
11 the -- wait a minute, I'm sorry.

12 THE COURT: I have it. I have it.

13 MS. FIERST: Okay, page 22, the first line
14 of that is accurate that Global and Tamerlane seek
15 damages against other for breach of contract. Then the
16 second sentence there refers to reciprocal claims for
17 defamation. So it would just have to say in addition,
18 Tamerlane seeks damages against Global and Roshan for
19 defamation and tortious interference with contractual
20 relations.

21 And I'm happy to submit that if you want.

22 MR. FRANCO: I would agree that modification
23 needs to be made.

24 THE COURT: We can make that change. Okay.

25 MS. FIERST: Okay. So the second sentence

1 will come out, and then I can just add defamation.

2 THE COURT: The second sentence will come
3 out.

4 MS. FIERST: I think that is --

5 MR. FRANCO: Yeah, and you'll add -- in the
6 third sentence which will become the second, you'll add
7 for tortious interference and defamation.

8 MS. FIERST: Right.

9 THE COURT: Let me let you see what I have
10 done and see if this is right. And use a red pen.

11 Carla, Carla, hand this to them, please.

12 MS. FIERST: End of the day.

13 MR. FRANCO: That looks perfect, Your Honor.

14 Your Honor, also on the joint proposed
15 instructions, pages two through eleven, I believe are
16 all really unnecessary at this point. Those are the
17 kinds of instructions to be given prior to the jury
18 hearing anything.

19 MS. FIERST: Well, the only -- yeah, the
20 only ones that I would say may -- Your Honor, may have a
21 version that -- that is given not in the beginning but
22 the end are the evidence in the case instruction and the
23 use of deposition instruction.

24 I don't know if there's anything -- I mean,
25 I guess the use of deposition we've already covered.

1 But the evidence in the case and an instruction about
2 what is and isn't in evidence I think is still relevant.

3 THE COURT: I think what Mr. Franco is
4 saying that instructions two -- pages two through seven
5 have already been given.

6 MS. FIERST: Right.

7 THE COURT: So we don't need those. Is that
8 right? Do you agree? I'm asking you a question. Do
9 you agree? Two through seven you don't need any more.

10 MS. FIERST: Pages two through seven of the
11 joint proposed instructions are now superfluous, agreed
12 Your Honor.

13 THE COURT: Okay. Then we won't use those.
14 Okay.

15 MR. FRANCO: The -- the next one is evidence
16 in the case, you know, I don't really have too much of a
17 problem with it except it seems like it's -- it's
18 forward looking. And now they'll have heard the
19 evidence and I -- it might need to be changed to reflect
20 the fact that --

21 THE COURT: These are actually the
22 instructions I give. I actually give this instruction
23 all the time.

24 MR. FRANCO: Okay.

25 MS. FIERST: Okay.

1 MR. FRANCO: That's fine.

2 THE COURT: Maybe I should instead of saying
3 "will consist" just take the word "will" out.

4 MR. FRANCO: Yes, that's exactly what I was
5 saying.

6 THE COURT: All right, thank you. We will
7 make that change, consist of.

8 MS. FIERST: And then the -- the next full
9 paragraph in that instruction also could be interpreted
10 as forward looking as well. Depositions also have been
11 received in evidence rather than may be or -- may be
12 played for you.

13 MR. FRANCO: Has been played by video.

14 THE COURT: Okay.

15 MR. FRANCO: Yeah. Maybe we should just
16 strike everything down to "deposition testimony is
17 entitled to the same consideration and is to be judged
18 insofar". I mean --

19 MS. FIERST: No, I --

20 THE COURT: I'll leave it in. Just change
21 it to have -- "depositions have also been received in
22 evidence".

23 MS. FIERST: Right.

24 THE COURT: "In some cases deposition has
25 been played for you by video".

1 MS. FIERST: Right.

2 THE COURT: Okay.

3 MR. FRANCO: I think that's certainly fine,
4 Your Honor.

5 THE COURT: All right.

6 MS. FIERST: Pages 10 and 11, the use of
7 deposition instruction and the first recess instruction
8 also seem, I think, we agree unnecessary.

9 MR. FRANCO: Joint motion to withdraw, Your
10 Honor, pages 10 and 11.

11 THE COURT: Okay. Withdraw pages 10 and 11.

12 MS. FIERST: Your Honor, Mr. Franco's
13 pointed out to me that on page 29, this is an
14 instruction entitled "employer's liability for
15 employee's conduct". And again, this e-mail goes both
16 ways, Roshan as to Global and O'Brien as to Tamerlane.
17 And so, the O'Brien of Tamerlane part of that
18 parenthetical should be stricken.

19 MR. FRANCO: I don't have a problem with
20 that. Mr. O'Brien is no longer a party --

21 THE COURT: Okay.

22 MR. FRANCO: -- per the Court's ruling.

23 THE COURT: On page 29, we are going to
24 remove the name "and O'Brien of Tamerlane".

25 MR. FRANCO: Yes, Your Honor.

1 MS. FIERST: There is an instruction on
2 intent, contractual intent which I think was one that
3 the parties are agreed on in terms of it being an
4 accurate statement of the law but agreed to sort of
5 defer to the end of trial to determine whether it's
6 actually necessary or supported by the evidence.

7 I'm not sure that it is, Your Honor.

8 THE COURT: What number is it?

9 MS. FIERST: This is on page 33.

10 THE COURT: You want to withdraw it?

11 MS. FIERST: Neither of us can remember who
12 submitted it in the first place, so I think it's --

13 MR. FRANCO: It certainly an accurate
14 statement of law. We don't disagree on that.

15 Does Your Honor see any need to instruct the
16 jury on intent in this particular case?

17 THE COURT: Well, I think that the word
18 should be given their plain and ordinary meaning is
19 important.

20 MR. FRANCO: Okay. Then we'll leave it.

21 THE COURT: I think that's important.

22 MR. FRANCO: We'll leave that in.

23 MS. FIERST: That's fine.

24 MR. FRANCO: Your Honor, without getting
25 to -- there are some that we will argue whether or not

1 they should be given at all. And I don't know that that
2 can be done until all of the evidence.

3 I think what we can resolve is the disputes
4 among who likes what better. But for example, there's a
5 waiver instruction that Ms. Fierst wants. I don't know
6 if you want to deal with that now. I don't think waiver
7 is appropriate in this case.

8 THE COURT: Well, I want to deal with any
9 disputed instructions I can right now. And I'll take
10 argument on all that right now. But you have to tell me
11 which ones you're referring to because they --

12 MR. FRANCO: Okay.

13 THE COURT: Typically, one side's letters
14 and the other side's numbers. You all have not done
15 that. So I have to figure out what instruction you're
16 referring to.

17 MR. FRANCO: If you look at the joint
18 instruction page 36, Your Honor, there's an instruction
19 while it is an accurate statement of the law, I do not
20 believe there is evidence of waiver in this case such
21 that it should be given to the jury.

22 THE COURT: Okay. He's objecting to waiver.

23 MS. FIERST: Excuse me, there's an objection
24 to waiver?

25 THE COURT: He's objecting to instruction on

1 page 36 to waiver. What would that refer to and how do
2 you see that in this case?

3 MS. FIERST: This would refer to the
4 arguments or some of the arguments that Global has made
5 pertains to an exclusivity arrangement, I believe is the
6 term that's been used in the testimony.

7 And so, to the extent that there was any
8 contractual right to an exclusivity, then the conduct of
9 the party or the expressed waiver of that right is at
10 issue in this case.

11 THE COURT: Okay.

12 MR. FRANCO: I withdraw my objection.

13 That's fair.

14 THE COURT: Okay.

15 MS. FIERST: On the disputed instructions,
16 Your Honor, I think we did do the lettering and
17 numbering.

18 THE COURT: All right. Who do you want to
19 take first? Let's take plaintiff's first, I guess.

20 MR. FRANCO: I'll go ahead if you'd like.

21 First the instruction that I would ask is
22 for the rights of first refusal on material to the
23 contract. And that is -- I cite the case --

24 THE COURT: Hold on, hold on. Hold on, hold
25 on.

1 My set does not have citations on them. Let
2 me look at the docket and see if I find it.

3 MR. FRANCO: It's at docket 142, Your Honor,
4 if that helps.

5 THE COURT: Okay.

6 MR. FRANCO: Your Honor, I would ask the
7 Court to give this particular instruction so that the
8 jury understands the law is that rights of first refusal
9 are material to contracts.

10 THE COURT: These don't have any citations
11 on them. That's all right.

12 Well, you're citing to a case?

13 MR. FRANCO: Yes, *In Re Gregern*, I believe.
14 It's a bankruptcy case that talks -- it's --

15 THE COURT: There's no jury trials in
16 bankruptcy court, Mr. Franco.

17 MR. FRANCO: I certainly understand that,
18 but I'm parsing the law, Your Honor, from -- that's an
19 accurate statement of the law that I think the jury
20 should hear.

21 THE COURT: All right.

22 MS. FIERST: It's actually *In Re Gregerson*.
23 It's a bankruptcy case from the Southern District of
24 Iowa. So in addition to it being bankruptcy court, it's
25 not Virginia, and it's certainly not the law in

1 Virginia.

2 We've cited cases undermining this finding
3 in *Gregerson* which by the way was very fact specific.
4 In the *Gregerson* case it pertained to shareholder's
5 right of first refusal, very different from the kind of
6 alleged right of first refusal that we have in this
7 case.

8 And the case that we cite in our objection
9 there at the bottom of the page here refers to a much
10 more analogous case that was in the Court of Federal
11 Claim. So it actually involved government contractors.
12 *See Miles Construction LLC versus United States* case 108
13 Federal Court of Claims, 792. It's a case from earlier
14 this year in which the Court of Federal Claims held
15 exactly the opposite, that the right of first refusal
16 doesn't necessarily burden either party with unperformed
17 obligations that would constitute a material breach.

18 So it says exactly the opposite in more
19 analogous circumstances. If he wants to argue that it
20 was a breach, then that's argument. But to give an
21 instruction that says the law in Virginia is that a
22 breach of a right of first refusal is a material breach
23 of contract, our argument, Your Honor, is that that's
24 inappropriate and not warranted by the law.

25 THE COURT: Okay. I'm going to refuse

1 plaintiff's proposed instruction one. First of all, I
2 don't think that it's accurate statement of law. It's
3 citing to a bankruptcy case, and I think you can argue
4 that if you'd like, but I don't want to make it a
5 statement of the law. That's a breach of the contract.
6 I think you all have to prove what the contract is and
7 that's a question of fact for the jury, what is the
8 contract and what are the terms of it.

9 What's the next objection, number two
10 privilege?

11 MR. FRANCO: Number two, this is privilege.
12 This is -- assuming that the defamation gets to the
13 jury, Your Honor, there is -- a person has limited
14 privilege to make defamatory statement. This is a
15 Virginia Model Jury Instruction. And Mr. Roshan has
16 gone on at length why he thought it was appropriate to
17 have -- for Mr. Yorio to e-mail to at least Major Ward
18 about information about the cargo and the like.

19 So I think it's an accurate statement of law
20 and the jury should be entitled to make that
21 determination on their own.

22 MS. FIERST: Your Honor, our response is
23 that the Court already considered this very issue in our
24 motions for summary judgment. And what the Court
25 concluded was that the Yorio e-mail was not privileged.

1 So there's no basis for an instruction, whether it's
2 accurate statement of the law or not where the Court
3 already decided the issue as a matter of law which was
4 what the defamation case law permits and encourages the
5 Court to do.

6 MR. FRANCO: If I may, Your Honor, I
7 recollected we were moving on summary judgment to assert
8 the qualified privilege, and you didn't grant summary
9 judgment. But I did not take that as you making a
10 finding of law that the qualified privilege doesn't
11 apply, because qualified privilege is typically a jury
12 issue when there's disputed facts. And at least, Mr.
13 Roshan has made it clear the reasons, and the jury has
14 heard the reasons why he thought it was important to
15 send the e-mail.

16 THE COURT: Just a second.

17 MS. FIERST: If I may, Your Honor, I think
18 the analysis that Your Honor went through when you
19 looked at the Yorio e-mail speaks directly to the second
20 paragraph in this proposed instruction. Excuse me.

21 The second paragraph of this proposed
22 instruction talks about statements could be privileged
23 because the author had an interest or duty in the
24 subject, and he made the statement to another person or
25 persons with similar interests or duty.

1 And Your Honor's concern was that this
2 wasn't an internal to an organization e-mail. But this
3 was between Mr. Roshan and Major Ward in the State
4 Department. There was no privity and there was no
5 common interest among the State Department officials and
6 Major Ward and the other folks at the Army and
7 Mr. Yorio.

8 So, there's no possibility of privilege
9 based on this model instruction which is an accurate
10 statement of Virginia law.

11 THE COURT: I understand what you just said.
12 I guess the question is whether in response to the
13 plaintiff's motion for summary judgment on privilege
14 that I make a judgment defendant was entitled to
15 judgment as a privilege.

16 Can you answer that question?

17 MS. FIERST: Yes, I understand, Your Honor,
18 that it was on cross motions for summary judgment. But
19 that doesn't change the Court's analysis as to who the
20 parties were at the time.

21 Simply because you were looking at the
22 e-mail in one light or another doesn't change the fact
23 that there is no common duty between those parties.

24 It's the military and then several levels
25 removed from it, an agent of Global and Global is making

1 those statements.

2 So, what the law provides is that there may
3 be a privilege in such circumstances where there's a
4 common duty -- similar interest or duty. And your
5 conclusion, Your Honor, which again was not based in
6 viewing the facts in one light or another. It's based
7 on who were the recipients and the senders of the
8 e-mail.

9 And, your conclusion that they -- there
10 cannot be a privilege among parties who don't share a
11 similar interest or duty, whether it comes up on our
12 motion or their motion, that -- the to and from of that
13 e-mail is still the same.

14 THE COURT: That's true, but I have the
15 impression that the Yorio e-mail was prepared at the
16 direction of and with the preparation of Mr. Roshan and
17 others from Global on Global's behalf. Is that right?

18 MS. FIERST: It was not others from Global,
19 but Mr. Roshan was involved in its drafting, yes.

20 THE COURT: And he directed Mr. Yorio to
21 send it because he thought that the government would
22 respond to Mr. Yorio's name and not his, because of
23 Mr. Yorio being a former military; is that right?

24 MS. FIERST: Yes.

25 THE COURT: Here is what I going to do. You

1 all can argue whether or not privilege applies. I think
2 it's a question of fact for the jury. So, I'm going to
3 give to the instruction to them. It appears to be a
4 proper statement of the law.

5 So plaintiff's two will be given for the
6 reason I just stated.

7 MR. FRANCO: The next one, Your Honor, is
8 witness credibility. It's my proposed jury instruction
9 three. And quite frankly, to do this justice, Your
10 Honor, the defendants have a counter witness credibility
11 designation at page two of theirs at docket number 146.

12 So, it's just we have competing
13 instructions. We both think a witness credibility
14 instruction should be given. I prefer the version that
15 is a little more direct and quite frankly shorter
16 because I think it's direct and to the point. And the
17 other one I find a bit wordy and confusing. That's
18 really all there is to it.

19 THE COURT: What's the basis of your
20 instruction, Ms. Whitcomb-Fierst? Where did it come
21 from?

22 MS. FIERST: Thank you. It's the Model
23 Federal Jury Instructions, P76 -- Section 7601. So it's
24 also another Model Federal Jury Instruction manual, Your
25 Honor.

1 THE COURT: Okay.

2 MR. FRANCO: We need to get the Fourth
3 Circuit to give --

4 THE COURT: No, it's not that complicated.
5 I'm going to give plaintiff's three. Brevity is the
6 hallmark of great advocacy. You all can argue all the
7 rest of it. I'll give plaintiff's three. There's not
8 that much difference between the two, except the other
9 one is longer.

10 MR. FRANCO: The next one proposed by the
11 plaintiff is issues and burden of proof, Your Honor.
12 There -- there are -- that corresponds to the submission
13 on page four by Tamerlane at docket 146.

14 MS. FIERST: Actually, three, four, and
15 five, right?

16 MR. FRANCO: Starts on page four, on the
17 final version.

18 MS. FIERST: Yeah.

19 MR. FRANCO: I think the knob of the
20 difference between these is, I believe, mine -- I
21 shortened them when I'd say on each party has the burden
22 of proof in advancing its claim on the contract claims.
23 And then on the defamation claims, I referred to it
24 simply by the Yorio e-mail as defamation claims, because
25 that's really the e-mail they're advancing.

1 And I believe the Tamerlane version quotes
2 portions of the e-mail. And my understanding of
3 Virginia law and the reason I think mine is more
4 appropriate is you're supposed to look at defamation in
5 context. You're supposed to look at the entire
6 document, communication, to see if it's defamatory or
7 not.

8 And they're certainly going to be able to
9 argue the pieces that are cited in theirs, but I thought
10 that my version of just saying, hey, they're moving on
11 the Yorio e-mail. The Yorio e-mail is about -- is the
12 Yorio e-mail about Tamerlane and so on and so forth.
13 And I think that's simpler and more easily understood.

14 This jury is well informed as to what the
15 Yorio e-mail is at this point in time. And I think
16 that's simpler.

17 MS. FIERST: There's two issues, Your Honor,
18 with plaintiff's instruction. One is that it mentions
19 the contract claims in a more -- I understand
20 Mr. Franco's concise approach, but it combines was there
21 a contract and then did somebody breach it or the other
22 party breach it.

23 I think we've set it out as two separate
24 instructions. So that's the first major difference.

25 On the defamation part of this instruction,

1 Your Honor, the Virginia Model Jury Instructions on this
2 particular point, on issues of burden -- issues and
3 burden of proof for defamation what the Model Jury
4 Instructions directs is that you should insert the word
5 of the allegedly defamatory statement. So that's what
6 we've done with quotation marks rather than just refer
7 to an e-mail.

8 Now, whether words can be taken in or out of
9 context, whatever, what the Model Jury Instructions
10 direct is that those words should be in there. And
11 that's -- I think the support for and the genesis of our
12 instruction that we feel that ours is more carefully and
13 loyally, I think was the words we used, tracks the
14 format that's recommended and approved by the Virginia
15 Model Jury Instructions.

16 THE COURT: Okay. I'm going to give
17 defendant's issues and burden of proof instruction. I
18 think it's important to isolate out that they're
19 separate contract claims, not to combine them.

20 And concerning the defamation claim, I think
21 it is proper to set forth the statements in the issues
22 instructions. So I'll be giving it in that fashion.

23 Let me look at the tortious interference
24 question. I'm being told that there's a difference.

25 MS. FIERST: I actually think we reached a

1 resolution after we filed this on the tortious
2 interference instruction.

3 THE COURT: You what?

4 MS. FIERST: I think we reached a
5 resolution. There's not an objection to ours.

6 MR. FRANCO: Yeah, it used to say something
7 different, I think. Yeah, I think -- I think we've
8 resolved the tortious interference --

9 THE COURT: Can you make sure that I have
10 what you have, because I don't know --

11 MR. FRANCO: Docket 146 is right. Right,
12 it's contractual --

13 MS. FIERST: I think he's talking about the
14 separate tortious interference instruction.

15 THE COURT: Let me let you see this and tell
16 me if this is right or not.

17 Carla, hand this to them.

18 MR. FRANCO: Yeah, yeah. You have the right
19 one, Your Honor.

20 THE COURT: Okay. Then we will give that
21 one. We'll give the one that is the defendant's issues
22 and burden of proof instruction.

23 MR. FRANCO: Okay.

24 THE COURT: That will be given. All right.
25 What's the next objection?

1 MR. FRANCO: The next one is the defamation
2 finding instruction, Your Honor. This is proposed jury
3 instruction number five.

4 I'm going to short circuit this. I'll state
5 I'd still prefer the Yorio e-mail version. I understand
6 the Court's made a ruling at the finding. I do want to
7 reserve my right at the Rule 50, obviously, to argue
8 whether or not this should be given at all to the jury.

9 But, I understand how the Court will rule on
10 that particular one.

11 THE COURT: Does the defendant have a
12 competing instruction?

13 MS. FIERST: Yes, Your Honor.

14 THE COURT: Which one is it?

15 MS. FIERST: It is defendant's disputed
16 instruction number five, on page nine, and docket number
17 146.

18 THE COURT: Okay.

19 Ms. Whitcomb-Fierst, is it necessary for the
20 jury if they reach a conclusion that the defendant's met
21 its burden of proof to isolate out which statements they
22 deem to be defamatory?

23 MS. FIERST: Is it necessary for them to
24 point to which?

25 THE COURT: Yes.

1 MS. FIERST: I don't know that that's
2 required -- you're talking about in the verdict form,
3 Your Honor?

4 THE COURT: I'm looking at your proposed
5 instruction five which resets forth all the statements
6 that we said earlier in the instruction on defamation.
7 I'm wondering if it's necessary to have that in the
8 finding instruction when all of these statements came
9 from the Yorio e-mail.

10 MS. FIERST: Well, I'm not sure that it does
11 requires that, Your Honor. It's -- there's no debate
12 about whether certain statements were or were not said
13 by one party or another. And it's not as if they need
14 to find a certain number of statements defamatory in
15 order to qualify.

16 THE COURT: Well, my precise question is, if
17 I have this instruction like this, the jury will think
18 they have to go through each one and find that the
19 statement was false. I don't think they have to do
20 that. I think if they find any one of them false, that
21 would be enough.

22 MS. FIERST: Agreed.

23 THE COURT: So my thought would be that
24 plaintiff's five is sufficient for the finding
25 instruction. I'm just trying to make sure if there's

1 some reason to set forth again all the various
2 defamatory statements.

3 MS. FIERST: Well, Your Honor, again, we
4 have relied on the Model Jury Instruction which talked
5 about putting the words in there. If --

6 THE COURT: If there -- I'm sorry. They are
7 in the instructions concerning the issues. I'm just
8 wondering if you want to -- I don't think it's necessary
9 to repeat them again on the finding instruction.
10 They've heard that once.

11 MS. FIERST: Well then what I would ask,
12 Your Honor, if you're going to go more towards
13 defendant's instruction five, what would be important to
14 emphasize based on Your Honor's comments is that one or
15 more of the statements in the Yorio e-mail.

16 So, because otherwise, they may see this and
17 think, well, the whole Yorio e-mail wasn't false. So,
18 what do we do now?

19 To Your Honor's point that they don't have
20 to find the whole thing or every statement was false,
21 they would just need to find at least one statement in
22 there.

23 So putting those additional clarifying
24 points in defendant's instruction five would be
25 important, Your Honor.

1 THE COURT: All right. Then I'll give five
2 and I'll put in there if it is proven by the greater
3 weight of the evidence that one or more of the
4 statements in the Yorio e-mail, colon, and those five
5 factors, Global's five.

6 Would that do it?

7 MS. FIERST: Well, I think in the -- in the
8 first line, Your Honor, where it says Global and Roshan
9 wrote the Yorio e-mail, I think we would prefer -- the
10 language in the instruction is talking about the making
11 of the statements.

12 I don't know whether requiring a showing
13 that they wrote the Yorio e-mail deviates from that or
14 if it's the same thing in different words.

15 THE COURT: Never mind. I'm just going to
16 give your five because I don't want to spend another
17 half hour on this.

18 I think if you want it, I'll give it to you
19 and take the time to repeat all over again. I'm trying
20 to streamline it, but if you're concerned about it and
21 it's important to you, then I'm going to give it to you.
22 So I'm going to give defendant's five.

23 What's the next instruction?

24 MR. FRANCO: When looking at defendant's
25 five, Your Honor, is the Court then saying that I can --

1 all five of these -- all A through F are entitled to go
2 to the jury as appropriate then?

3 THE COURT: It's only one count. No matter
4 how many statements, it's only one count of defamation.

5 MR. FRANCO: I know, but I don't want the
6 jury to think that these particular statements
7 potentially are defamation, when, for example --

8 THE COURT: They have to decide these
9 statements are defamation. If they're not defamatory,
10 then they return a verdict for the plaintiff. They have
11 to decide in advance whether or not the plaintiff can
12 prove these statements are defamatory, right?

13 MR. FRANCO: Yeah. Some of them I just
14 don't think are defamatory as a matter of law. And I
15 guess that was the part I was getting at. Like, you
16 know, GHL had payment concerns. GHL had a difficult
17 situation which we found ourselves in. I don't know
18 that those are really actionable defamatory words. It's
19 part of the problem.

20 I mean we're parsing it out and giving them
21 options where some of them are. I don't think --

22 THE COURT: But it's all in one e-mail.

23 MR. FRANCO: It is in one e-mail.

24 THE COURT: I'm satisfied with the fact that
25 the only way they could return a verdict for the

1 defendant on the defamatory claim would be based upon a
2 statement contained in the e-mail.

3 It would have to be one of those statements
4 identified in the instruction on page five of this which
5 I've agreed to give on the issues instruction. Any one
6 of the five would have to be defamatory.

7 And I'm sure there's an instruction on
8 defamation of character that sets forth -- a general
9 instruction; is that right?

10 Is there a general defamation instruction
11 here?

12 MR. FRANCO: I don't think there is --

13 MS. FIERST: I know there's a presumed
14 damages instruction --

15 THE COURT: Right.

16 MS. FIERST: -- in the agreed instructions.

17 THE COURT: Okay.

18 MR. FRANCO: But that's not getting to
19 your -- I think your question, Your Honor, is -- and I
20 don't think there is one other than just to say are
21 these defamatory, because that's a decision to be made
22 by the Court, not by the jury.

23 Whether certain words or defamatory or not
24 is a matter of law. Whether certain things are opinions
25 are typically up to the Court. And that's my concern

1 about just wholesale putting each of these statements
2 in.

3 THE COURT: But these are the statements
4 that defendant contends are false and these are
5 demonstrable provable as false. Is that right?

6 MR. FRANCO: That is what the defendant
7 contends. I'm simply saying, Your Honor, I think some
8 of these as a matter of law cannot be defamatory. You
9 know, Global Hub had a difficult situation we found
10 ourselves in.

11 I think that's an opinion that they found
12 themselves in a difficult situation.

13 MS. FIERST: I think we're getting a little
14 ahead of ourselves in terms of --

15 MR. FRANCO: I can't -- I can't argue
16 opinion to the jury because that's the Court's decision.

17 MS. FIERST: I think the case law is clear
18 that statements -- defamatory statements can be made
19 expressly or by implication, particularly when, as
20 Mr. Franco acknowledged, they have to be taken in
21 context.

22 I think the argument there would be when
23 taken in context, the words there imply, if not state
24 overtly, things about Tamerlane's performance.

25 Mr. O'Brien testified to it and I think Mr.

1 Roshan gave his view, of course. But Mr. Roshan
2 testified to it as well.

3 I don't have a problem, Your Honor, trying
4 to rework that instruction.

5 THE COURT: I don't think we need to rework
6 it. I think I need to give the instruction. I think
7 that we've said many times that the issue here involving
8 the Yorio e-mail is allegedly makes false statements
9 about the relationship between Global Hub and Tamerlane
10 that are factually provable concerning payments and
11 putting -- customer and freight in jeopardy, whether or
12 not that's true or not is demonstrably provable, whether
13 or not the tasks were completable is provable.

14 Tamerlane did not have to resource to
15 accommodate complete movements. That can either be
16 proven or not proven.

17 And, arguably, the purpose of this was to
18 somehow cultivate the relationship between Global and
19 the government. That's what I thought you all were
20 arguing.

21 Is that what your argument is, Ms. Fierst?
22 If I'm not setting forth the argument -- if there's
23 something more you want to say, tell me what it is. I
24 thought that's what your defamation claim was.

25 MS. FIERST: That's right, Your Honor. You

1 can do that tomorrow afternoon, and I'll stay sitting.

2 THE COURT: No, what I'm saying is I want to
3 get this resolved now. I don't want to spend half an
4 hour tomorrow when the jury is here.

5 So, is there more, Mr. Franco, that you want
6 to say?

7 MR. FRANCO: I've said my piece, I think.

8 THE COURT: All right. Then the record is
9 made. The record's made. I'm going to give five.

10 And the reason I'm going to give the other
11 one, to repeat, is because you all cannot reach
12 agreement, and you're not required to. And I think that
13 Mr. Franco is entitled to know what the jury decides
14 about these e-mails.

15 But I think all they need to find is one or
16 more of them was false in order for them to return a
17 verdict. And if they ask a question about that, I'll
18 answer. But it seems to me that they can find their
19 verdict if they find "made one or more of the following
20 statements" is what the instruction says. So
21 instruction five will be given.

22 What's the next objection? I'm giving
23 defendant counter plaintiff's instruction five.

24 MR. FRANCO: That is it on ours, Your Honor.

25 THE COURT: Number six has been resolved,

1 tortious interference.

2 MS. FIERST: Yes.

3 MR. FRANCO: Yes. We'll accept theirs. It
4 was modified, I think, after we spoke on it.

5 MS. FIERST: In fairness, that's accurate,
6 Your Honor.

7 THE COURT: And which one is yours?

8 MS. FIERST: That is defendant's proposed
9 disputed instruction number four.

10 THE COURT: Hold on just a second.

11 MS. FIERST: Yes.

12 THE COURT: Defendant's counterclaim
13 instruction four is being given by agreement.

14 MS. FIERST: Correct.

15 MR. FRANCO: Your Honor, I want to make it
16 clear, and I don't know that I made myself -- I still
17 want to argue on the Rule 50 that some of this stuff
18 shouldn't go to the jury.

19 THE COURT: That's fine. You can argue
20 whatever you want. I just want to resolve the terms of
21 the jury instructions right now if I can.

22 MS. FIERST: And, Your Honor, just to make
23 sure that I've made my record on the objection on the
24 issue -- on the instruction for privilege. I obviously
25 made an argument, but we want to make sure we note our

1 objection to that instruction, no more argument but note
2 the exception.

3 THE COURT: All right, so noted.

4 MS. FIERST: I think we've resolved
5 instructions one and instruction two, Your Honor. Those
6 were ones we had --

7 THE COURT: These are yours? Let me get
8 them. Your one has been refused.

9 MS. FIERST: Correct. Two is in.

10 THE COURT: Two we're going to give.

11 MS. FIERST: Correct.

12 THE COURT: This is defendant's counterclaim
13 disputed instruction two.

14 MS. FIERST: Yes.

15 THE COURT: And then --

16 MS. FIERST: Three is the next one to take
17 up, Your Honor.

18 THE COURT: All right.

19 MS. FIERST: There is an instruction on
20 material breach of contract that we've already agreed
21 and that's already among the agreement submitted
22 instructions.

23 This separate instruction, Your Honor,
24 speaks to the failure to perform with respect to a
25 fundamental undertaking.

1 THE COURT: And is this from a case? It's
2 not from a Model Jury Instruction?

3 MS. FIERST: I believe this is from a case
4 and I'm going to have to ask Mr. Franco. It's from
5 the -- our citations are the Virginia Code, but
6 additionally the *Filak versus George* case, primary, Your
7 Honor and the *Horton versus Horton* case, two leading
8 cases on the subject of first material breach, that
9 speak to this issue, a fundamental undertaking in the
10 contract comprising a material breach.

11 MR. FRANCO: Your Honor, we already have
12 agreed at 45.400 of the Virginia Model on material
13 breach, and my argument is we already have an
14 instruction. Why do we need another?

15 THE COURT: Just a second. Which one of the
16 agreed instructions are you referring to? What number
17 is it?

18 MR. FRANCO: It's on page 34 on docket
19 number 145.

20 THE COURT: What is it you want this
21 instruction to do, Ms. Whitcomb-Fierst?

22 MS. FIERST: Express to the jury that the
23 failure -- I'm sorry, Your Honor. Did I interrupt you?

24 THE COURT: No.

25 MS. FIERST: Express to the jury that the

1 failure to perform -- I mean it's one sentence. So it's
2 not -- I understand Mr. Franco's concern is over
3 instructing the jury, but it's taking me longer to say
4 that than it would to give this instruction. So I don't
5 think that's a concern.

6 It's an accurate statement of the law that
7 the failure to "perform fundamental undertaking" is the
8 main phrase from that case, Your Honor, and that that
9 constitutes a material breach. I think that's going to
10 be at issue in this case.

11 THE COURT: Okay. I'm going to refuse three
12 because I think that 45.400 which you already have
13 covers it.

14 MS. FIERST: The next instruction, Your
15 Honor, number four, is the one that Your Honor just
16 accepted by agreement of the parties.

17 THE COURT: Okay.

18 MS. FIERST: And, similarly, number five,
19 the defamation finding instruction you already accepted.

20 THE COURT: Okay.

21 MS. FIERST: Now, we're up to -- considering
22 damages only if necessary. This is defendant's disputed
23 instruction number six.

24 THE COURT: Okay.

25 MS. FIERST: This is a -- again a Model Jury

1 Instruction and assist the jurors in how to approach the
2 topic. For those not educated in the law, it may not be
3 intuitive that it's necessary to prove damages and
4 damages should only be considered if necessary by
5 informing them that they shouldn't infer anything based
6 on the fact that they're getting an instruction about
7 damages. This let's them no, oh, the judge is telling
8 us about damages and how we should calculate damages.
9 That must mean -- and I know you already told them,
10 Judge, that just because I say something doesn't mean
11 you should take it as gospel. But jurors think
12 otherwise. And this is a concise instruction that's
13 consistent with the law on that.

14 THE COURT: All right.

15 MR. FRANCO: Your Honor, we already have one
16 damage Virginia Model Jury as agreed by the parties.
17 It's at page 37 of docket 145. It is directly from the
18 Virginia Model Jury Instruction 45.500. So, I don't
19 know why we need another instruction on damages.

20 MS. FIERST: Because they --

21 THE COURT: Okay, I'll give six.

22 MS. FIERST: Thank you, Your Honor.

23 THE COURT: It does add additional
24 information which is helpful.

25 What's the next one?

1 MS. FIERST: The next one, Your Honor, is on
2 the duty to mitigate. And this was one of our
3 affirmative defenses and we believe may be supported by
4 the evidence. And we want to be able to argue it in the
5 context of the law that Your Honor's provided to the
6 jury.

7 I don't think there's an argument regarding
8 the accuracy of this in terms of whether this is an
9 accurate statement of the law.

10 THE COURT: Okay.

11 MR. FRANCO: There has not been -- I'm
12 sorry.

13 MS. FIERST: Go ahead.

14 MR. FRANCO: Your Honor, my objection to
15 this, there has not been and there will not be a
16 mitigation argument from Tamerlane on what Global did.

17 Global did the work and then invoiced for
18 it. I don't see how it arises that Global has a duty to
19 mitigate in this case. It doesn't make sense
20 intuitively and that's my objection.

21 THE COURT: Okay. Well, let me ask you this
22 question. It appears to me from the evidence there's a
23 question of what Global agreed to do after receiving Mr.
24 O'Brien's e-mail of June 23, 2011. And the one
25 interpretation of the response to it is, we're going to

1 complete the project. Then there's another e-mail that
2 says, we will drop the goods in certain -- in a secured
3 location and wait for payment.

4 So it seems to me there is a question of
5 mitigation as it relates to whether the damages were
6 increased by the failure to deliver the goods to the
7 port as distinct from Tamerlane having to hire other
8 carriers and incur delay between the time the goods were
9 pick up from the secured location and taken to the port.

10 So it seems to me that that may be where
11 mitigation would apply.

12 What's your response to that?

13 MR. FRANCO: I'm not certain I --

14 THE COURT: You don't have to agree with it.
15 I'm just telling you the issue is whether this
16 instruction will be appropriate under the facts. I've
17 just given you a basis upon which it might be, and I'm
18 waiting for your response to it.

19 MR. FRANCO: I understood -- I'm not sure I
20 understood the fact pattern, but I think --

21 THE COURT: Let me say it out loud.

22 MR. FRANCO: I know you did. I'm sorry. I
23 apologize.

24 THE COURT: Okay.

25 MR. FRANCO: By Mr. Roshan and Global -- or

1 Global, I guess, in this case. I don't know that Roshan
2 should be a part of this just for the record because
3 Roshan is not a plaintiff any more.

4 When this was done, I think it should be
5 just Global Hub Logistics.

6 You would agree, Ms. Fierst?

7 MS. FIERST: I think to the extent that it
8 applies to the contract count, I think that's accurate,
9 Your Honor.

10 MR. FRANCO: That's the only claim that
11 we're advancing here, Your Honor, this point.

12 Global Hub Logistics had the duty to
13 minimize. To me, that is if they -- what -- I guess
14 what the argument is that they should stop doing all
15 work altogether and not incur the charges down to the
16 port of Karachi.

17 If they're going to argue that we shouldn't
18 have continued and we should have just stopped, then I
19 guess it's appropriate. But I didn't think that was a
20 part of the theory of the case.

21 THE COURT: Thank you. I'm going to give
22 instruction seven.

23 MS. FIERST: But I think --

24 THE COURT: For the reason I just stated and
25 we'll take out Roshan.

1 MS. FIERST: And also actually O'Brien in
2 the second paragraph. I think that's what Carla just
3 noticed as well.

4 THE COURT: And O'Brien the second paragraph
5 and the third paragraph -- the second and third
6 paragraph.

7 MS. FIERST: Your Honor, we included a
8 payment in release instruction. It's one sentence.
9 This was one of our affirmative defenses as well.

10 THE COURT: Tell me about the release part.
11 Where do you get the release from?

12 MS. FIERST: That if there were items that
13 Global -- that Tamerlane already paid for, then they
14 can't be asked to pay for them again.

15 In fairness as I said in the first Eastern
16 District action, it was unclear and may continue to be
17 unclear exactly what they're pursuing payment for,
18 whether there are any items they're pursuing payment for
19 that already have been paid by Tamerlane.

20 To the extent that they were already paid,
21 then they shouldn't be asked to pay for them again. And
22 this instruction in one sentence summaries that, Your
23 Honor.

24 THE COURT: I'm going to let you argue that.
25 I'm going to take that out. I think what the amount due

1 is and what amount Tamerlane claims it owes, which as I
2 understand Tamerlane claims it owes zero, I think does
3 not suggest release to me which requires some proof of a
4 release. I don't see one.

5 What's instruction nine, lost profits? What
6 is factual basis for lost profits?

7 MS. FIERST: Well, Your Honor, spoke to that
8 a little bit earlier, so I'm not sure what evidence we
9 will be able to get in on that subject. But this is an
10 accurate statement of the law with respect to what one
11 may prove on a tortious interference claim, that if
12 there's evidentiary support for damages in the form of
13 lost profits that were experienced by the
14 interfered-with party, they can be submitted. And it --
15 I mean it makes clear here that the -- you have to prove
16 the existence of lost profits. You have to prove the
17 amount of lost profits with a reasonable degree of
18 certainty.

19 I understand that Global's going to argue
20 they can't do that. They don't have evidence for that.
21 But our argument, Your Honor, would be that that
22 shouldn't preclude the giving of the instruction. If
23 they want to argue they didn't prove damages, that's an
24 argument.

25 THE COURT: Well, in order to prove -- let

1 me hear from him. Let me hear from him.

2 MR. FRANCO: Your Honor, lost profits we
3 certainly don't want the jury to speculate. There has
4 not been and will not be any evidence of lost profits in
5 this case.

6 There is the -- this is for tortious
7 interference, not for contract and not for defamation.
8 It's only relates to tortious interference.

9 And in this case, Your Honor's already ruled
10 the Comanche's obviously clearly unrelated to any
11 interference that alleged to have come from the Yorio
12 e-mail. And there is no other interference, damages
13 that can be adduced based on the discovery responses
14 that have been provided in this case, based on the
15 rulings Your Honor has already made.

16 I don't see how this could be -- quite
17 frankly, it would be part of my Rule 50 motion tomorrow.
18 You can't submit the tortious interference because
19 there's been no proof of damages connected to
20 interference.

21 THE COURT: I'm going to let you all argue
22 this on Rule 50 motion. For now I'm going to reserve
23 ruling on it. I will wait to see if there's any
24 evidence of lost profits.

25 MS. FIERST: Your Honor, one additional

1 item. I think Your Honor gave an instruction that we
2 had considered adding earlier today actually, when you
3 reminded the jury that there may be some witnesses who
4 don't end up coming or some people whose name they heard
5 who don't end up coming. We have actually prepared an
6 instruction on that. But if Your Honor doesn't feel
7 it's necessary in light of what you said today, then
8 we're fine with punting on it.

9 THE COURT: I don't think we need to have a
10 missing witness instruction. I think there's plenty
11 here for the jury to decide this case.

12 MS. FIERST: To be clear, though, it's not a
13 missing witness instruction in terms of the traditional
14 adverse inference should be drawn. You may have heard
15 names. They didn't come. That's fine.

16 THE COURT: I don't think we need to see
17 that. They will let us know if they have a question. I
18 don't think they will have a question about that. I
19 think the evidence in this case is more than sufficient
20 from the standpoint of the facts and all the documents
21 you have here, that both sides have submitted is more
22 than sufficient.

23 MS. FIERST: Thank you, Your Honor.

24 THE COURT: I think that covers it, is that
25 right?

1 The verdict forms, you all looked at the
2 verdict forms and you all okay with the verdict forms?
3 I just have one here. Both of you all have different
4 verdict forms, but it looks like it's just a plain
5 vanilla verdict form, meaning it has how do they prove
6 and what are the damages. That's normally what I give.

7 MS. FIERST: I don't know if we have a copy
8 of our verdict form with us.

9 THE COURT: I have both of them right here.

10 MS. FIERST: Excuse me.

11 THE COURT: I have both of them right here.
12 To me, they both look pretty much the same. One begins
13 with "do you find". The other begins "do you find".

14 Actually I think that yours is --
15 Tamerlane's verdict form --

16 MS. FIERST: Your Honor, I apologize. I'm
17 not sure that either -- that either of us have copies.

18 THE COURT: Let me hand you this. That
19 would save us -- here you go.

20 MS. FIERST: Thank you.

21 THE COURT: Uh-huh. Here's a red pen if you
22 want to put something on it. If you have any
23 suggestions give it back to me.

24 MR. FRANCO: Your Honor, I think the
25 fundamental difference between these and for your

1 consideration is in my proposed verdict form, I break
2 out proof, preponderance of the evidence, was it a
3 direct and proximate cause of the damages? What is the
4 damages in three, where Ms. Fierst does it in two.

5 And then, whereas hers is just liability
6 damages. And then in mine --

7 MS. FIERST: In a shocking turn of events,
8 my is briefer, I know.

9 THE COURT: How shocking.

10 MR. FRANCO: And then in the defamation and
11 tortious interference claims, I break out the findings
12 against Mr. Roshan, and Mr. -- and Global Hub Logistics
13 so that they could find, you know, as they saw fit.

14 If it's Roshan, yes. Global Hub Logistics,
15 no, or vice versa which I think is --

16 THE COURT: Is necessary.

17 MR. FRANCO: Is necessary.

18 MS. FIERST: So, essentially, I think what
19 we would propose is that we take our shorter contract --
20 questions and their more thorough defamation and
21 tortious and combine it.

22 THE COURT: I'll give you a copy of it. You
23 all can take a red pen and mark it up and give it to us
24 tonight.

25 MR. FRANCO: I like mine as is. I'm not

1 asking the Court to modified it in any way.

2 THE COURT: I'm not going to repeat the
3 proximate cause instruction in the verdict form.
4 That -- I don't think that's necessary. Just plain
5 vanilla. You find for the plaintiff or find for the
6 defendant, how much.

7 So we're going to leave, and we will let you
8 all take a red pen and you can do it in ten minutes and
9 give it to my law clerk, and we're done.

10 MS. FIERST: Thank you, Your Honor.

11 THE COURT: What I want you to do is hand it
12 to them, Carla. These are my notes of the instructions
13 conference. So you can take a look at it right now.
14 See if I have it right before I leave. So we can have
15 the instructions done by tomorrow morning.

16 MR. FRANCO: This is all in, okay.

17 THE COURT: I want you to take a look --
18 those are my personal notes right now and make sure that
19 my notes are correct.

20 Are my notes right?

21 MR. FRANCO: On the disputed ones, they are
22 perfect. There were a few changes to the joint ones. I
23 know Your Honor --

24 THE COURT: I made notes on those. If you
25 want to see those, you can look at those, too. Here

1 they are.

2 MR. FRANCO: Out of an abundance of
3 caution -- these look good, Your Honor.

4 THE COURT: Okay.

5 MR. FRANCO: Thank you.

6 THE COURT: All right. Then I think we're
7 in recess. Is that right?

8 MS. FIERST: Thank you, Your Honor.

9 THE COURT: All right, thank you.

10 (Proceeding concluded at 6:10 p.m.)

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