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## *Trucking Firm With Criminal Past Hired to Transport L.C.B. Liquor*

On January 19, 1984, the Pennsylvania Crime Commission received information that Xpress Truck Lines, Inc. (XTL), 2500 East Butler St., Philadelphia, was negotiating with the Pennsylvania Liquor Control Board (L.C.B.) to distribute alcoholic beverages from an L.C.B. warehouse on Enterprise Avenue in Philadelphia.

Less than a year earlier, the trucking firm, its president, Anthony A. Cerone, and an employee, Marie C. Nowak, had been indicted in U. S. District Court in Philadelphia on mail fraud charges stemming from a scheme in which XTL used false invoices to inflate the cost of transported goods.

The firm was found guilty; the charges against the two employees were dropped.

The Pennsylvania Public Utility Commission (P.U.C.) was informed by the Crime Commission on January 30, 1984, that XTL had submitted an application for a P.U.C. license to haul alcoholic beverages. The P.U.C. also was apprised of the mail fraud conviction, which occurred on April 25, 1983.

A copy of the criminal indictment, which was handed up on February 22, 1983, was sent by the Crime Commission to the P.U.C.'s Law Division. That office advised that the mail fraud conviction would be taken into consideration by the P.U.C. in reviewing XTL's license application.

The next day, January 31, 1984, the Crime Commission informed Gary DiVito, the L.C.B.'s chief counsel, about XTL's mail fraud conviction. DiVito further was advised that the trucking firm had not yet received a P.U.C. license to transport alcoholic beverages and that the P.U.C. likewise had been made aware of the firm's criminal past.

DiVito stated that another firm, Holt Trucking, Inc., originally had the contract at the L.C.B.'s Philadelphia warehouse. He said that because of numerous disputes with Holt Trucking personnel, the L.C.B. had negotiated a new contract with XTL.

As a result, according to DiVito, Holt Trucking sued the L.C.B., claiming it had been unfairly excluded from the bidding process, a position that later was upheld by Commonwealth Court.

New bids were let and Holt came in the low bidder, causing the L.C.B. to break off its negotiations with XTL.

As a result, XTL then sued the L.C.B. for \$1.2 million in damages. Commonwealth Court also heard this case, ruling that the L.C.B. pay XTL some \$800,000.

DiVito stated that at this point Holt Trucking tried to back out of its contract, citing continuing difficulties in its relationship with the L.C.B.

Consequently, DiVito related, the L.C.B. reopened its negotiations with XTL, eventually awarding the trucking firm the contract to supervise the warehouse operation in Philadelphia and to supply 191 L.C.B. stores in Philadelphia, Chester, Delaware, Bucks and Montgomery counties with approximately 4.2 million cases of liquor and wine a year. The estimated value of the contract was \$11 million. In addition, the three-year contract, which had two renewable options, called for XTL to deliver "straight loads" from a pier in Philadelphia to L.C.B. warehouses in Lebanon and Kingston, Pa.

DiVito emphasized that the negotiations with XTL had become financially expedient because the \$800,000 judgment by Commonwealth Court could either be erased or at least negotiated once the contract was signed. He said that the contract had been sent to the state Attorney General's Office for review.

That office refused to approve it, indicating its decision was based on XTL's prior convictions. The L.C.B., in turn, instituted action in Commonwealth Court, arguing that the Attorney General's Office had overstepped its bounds by considering factors other than the document's legal soundness.

Commonwealth Court agreed, ruling that the contract should be enforced and that the L.C.B. should pay XTL \$825,000 as a result of the liquor board renegeing on its initial negotiations.

At a Public Utility Commission hearing on June 6, 1984, XTL requested a license to transport liquor for the L.C.B. At the hearing, DiVito testified that he was aware of the federal court convictions, stating that the day before the L.C.B. chairman was to execute the contract he had advised the board of the firm's criminal record.

DiVito further testified that he felt XTL was qualified to perform work for the liquor board in spite of the convictions and in spite of the fact the trucking firm did not possess a Public Utility Commission carrier license.

He also stated that there was litigation underway between XTL and the U. S. Customs Department which could jeopardize XTL's ability to pick up untaxed liquor at the port of Philadelphia.

The liquor board's chief counsel pointed out that if the L.C.B. had not contracted with XTL when it did, it would not have had a carrier for its liquor, a fact that could have resulted in millions of dollars of lost revenue to the state.

As of February 1, 1985, a decision by the P.U.C. on XTL's application for a license was pending.

The Crime Commission has since referred this matter for review to the appropriate Pennsylvania legislative committees.

