

BEFORE THE STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
COUNTY OF SACRAMENTO

In the Matter of the Appeal of:)
WESTERN DISTRIBUTING COMPANY) CASE NO. 230914432
Appellants.)
_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS
Sacramento, California
Tuesday, March 17, 2026

Reported by:

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CSR No. 10621, RPR

Job No.:
61603 OTA(A)

1 APPEARANCES:

2

3 PANEL MEMBERS:

4 Sara A. Hosey, Lead ALJ

5 Veronica I. Long

6 John O. Johnson

7

8 FOR THE APPELLANTS:

9 Edwin P. Antolin, Attorney

10 Vieri Gaines, Taxpayer

11 Sterling Guadagni, Taxpayer

12

13 FOR THE CDTFA:

14 OFFICE OF TAX APPEALS

15 400 R Street

16 Sacramento, California

17 Ken Havens, Tax Counsel

18 Katie Frank, Tax Counsel

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I N D E X

E X H I B I T S

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WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Sterling Guadagni	11	23		
Vieri Gaines	30	51	77	

1 Sacramento, California; Tuesday, March 17, 2026

2 9:13 a.m.

3
4
5 ALJ HOSEY: We are now on the record. This is the
6 hearing for the consolidated appeals of Western
7 Distributing Company and its nonresident shareholders.
8 This is OTA Parent Case No. 230914432, et al. Today is
9 March 17th, 2026, and it is 9:13 a.m. We're currently in
10 Sacramento, California. I am lead Administrative Law Judge
11 Sara Hosey, and with me today are Judge Veronica Long and
12 Judge John Johnson.

13 Can I have the parties identify themselves for the
14 record, please, starting with appellants.

15 MR. ANTOLIN: Good morning. My name is Edwin
16 Antolin. I am counsel for the appellants. And with me
17 this morning is Mr. Vieri Gaines. He is the CEO of Western
18 Distributing Company and one of the shareholders; and also,
19 Sterling Guadagni, who is a manager at Western Distributing
20 and runs their beverage distribution business.

21 ALJ HOSEY: Oh, sorry. Can you move it a little
22 closer to you? You kind of have to be right on top
23 of it. Okay. Thank you. And welcome.

24 Moving to the Franchise Tax Board.

25 MR. HAVENS: Good morning. My name is Ken Havens

1 for the Franchise Tax Board. And my colleague will
2 introduce herself.

3 MS. FRANK: Hello. Katie Frank, also with the
4 Franchise Tax Board.

5 ALJ HOSEY: Thank you. Thank you. As stated in
6 the minutes and orders, the issues on appeal today are:
7 One, whether Western Distributing Company's divisions
8 operated as a unitary trade or business for the 2010
9 taxable year; two, whether Western Distributing Company was
10 required to use the trucking company regulations at
11 Regulation Section 25137-11 to source Western Distributing
12 Company's business income and does that regulation create a
13 separate apportionable tax base for trucking activities;
14 three, whether appellants have shown that the standard
15 apportionment formula unfairly represents Western
16 Distributing Company's California business activities and
17 that appellants' alternative apportionment formula is
18 reasonable; four, whether the individual shareholders of
19 Western Distributing Company are subject to tax on the
20 business income pursuant to Regulation Section 17951-4;
21 number five, whether appellants have shown cause for a
22 penalty abatement; and six, whether appellants are entitled
23 to interest abatement.

24 As for exhibits, we marked Exhibits 1 through 19
25 for appellants and A through Z for respondent, Franchise

1 Tax Board. Exhibits 1 through 19 and A through Z are now
2 admitted as evidence into the record.

3 (Exhibits 1 through 19 and A through Z admitted
4 into evidence.)

5 ALJ HOSEY: We're going to move to opening
6 statements, starting with appellants.

7
8 OPENING STATEMENT

9 MR. ANTOLIN: Thank you, your Honors. And good
10 morning. So as you noted, there are six issues at issue
11 here in this appeal. The main issue is whether the gain
12 from the sale of the beer distribution rights may be taxed
13 by California, whether any portion of that gain may be
14 taxed by California.

15 Those -- that gain cannot be taxed by
16 California. The beverage distribution rights that were
17 sold had nothing to do with California. Those rights
18 related to a business that operated solely within Colorado,
19 had no right to distribute outside of the geographic
20 location in Colorado, and could not legally sell outside of
21 Colorado. The beverage distribution business was not
22 licensed to sell any alcoholic beverages in California.

23 FTB claims it can tax a portion of those gains
24 claiming that Western Distribution Company's beverage
25 distribution business and the interstate transportation

1 business operated a unitary business. And what does the
2 FTB point to for this unitary business? They claim that
3 there was centralized management, functional integration,
4 and a vertically integrated business. But those claims are
5 mere threads. The connections are extremely thin and
6 typical of what you would find in any type of corporate
7 parent and division organization.

8 The FTB misreads the facts and misunderstands what
9 the actual facts are. The modest connections that the FTB
10 relies upon are not the type of integration that courts
11 have found constitute a unitary business. And then most
12 recently, just before the hearing, the FTB put in
13 additional exhibits that it claims support its view that
14 there is a unitary business. It put into evidence three
15 declarations signed by Mr. Gaines, the CEO, that relate to
16 federal court removal actions. And in those declarations,
17 Mr. Gaines stated that the principal place of business of
18 Western Distribution company was in Colorado.

19 The purpose of those removal declarations is to
20 establish diversity jurisdiction in federal court. It has
21 nothing to do with state tax or unitary tax issues. To
22 establish diversity jurisdiction in federal court, the two
23 parties -- the plaintiff and the defendant -- have to
24 establish that they are citizens of different states. And
25 under the law, for a corporation, it is viewed by the

1 federal law to be a citizen where it is incorporated or a
2 citizen in the state where its principal place of business
3 is located, which the courts -- the federal courts have
4 said means: Where is your headquarters? That is simply
5 what those declarations establish, that this corporation
6 was headquartered in Colorado.

7 It establishes nothing related to the issues
8 relevant here, and that is: Was there centralized
9 management? Was there integration of the beverage and the
10 transportation business? Was there vertical integration?
11 That law that establishes diversity jurisdiction has
12 nothing to do with those issues, and our view is that those
13 declarations are entirely irrelevant.

14 We have submitted declarations from eight
15 witnesses attesting to the separateness of the business,
16 and all of that establishes very clearly that the
17 businesses did not operate as a unitary business. They
18 were separately managed. They had separate operations.
19 They did not rely on each other for their business.

20 We have brought two witnesses today, the CEO,
21 Mr. Veiri Gaines, and the manager of the beverage
22 distribution business during the year at issue,
23 Mr. Sterling Guadagni. You have their testimony already,
24 but we want you to hear firsthand from them and also give
25 you an opportunity to ask them questions. They will

1 confirm that the beverage distribution business and the
2 transportation businesses were not engaged in a unitary
3 business, they operated separately.

4 And because there was no unitary business, the
5 beverage business gains from the sale of the distribution
6 rights cannot flow through to the shareholders under
7 Regulation 1751-4. It is not apportionable business
8 income. And alternatively, if the gain could be
9 apportioned, we have also raised the issue of the FTB's
10 application -- or we would say misapplication -- of the
11 trucking regulation 25137-11, the -- whether the standard
12 apportionment formula fairly represents the activities in
13 California and whether interest and penalties should be
14 abated. Thank you.

15 ALJ HOSEY: Thank you.

16 Just confirming with Franchise Tax Board that
17 you're waiving your opening statement?

18 MR. HAVENS: Yes, Judge. That's correct.

19 ALJ HOSEY: Thank you. We're going to go ahead
20 and move to testimony.

21 You wanted to call Mr. Guadagni first?

22 MR. ANTOLIN: Yes, your Honor.

23 ALJ HOSEY: Okay. Then I'll go ahead and swear in
24 Mr. Guadagni.

25 Can you please raise your right hand.

1 Do you solemnly swear or affirm to tell the truth,
2 the whole truth and nothing but the truth?

3 THE WITNESS: Yes.

4 ALJ HOSEY: Thank you.

5 Please begin when ready, Mr. Antolin.

6 MR. ANTOLIN: Thank you.

7
8 STERLING GUADAGNI,

9 Produced as a witness, and having been first duly
10 sworn by the Administrative Law Judge, was examined and
11 testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. ANTOLIN:

15 Q Mr. Guadagni, please describe Western Beverage
16 Distributing, which I'll call "Distributing" or "Beverage,"
17 and your role in the company in 2010.

18 A So in 2010, we were a beverage distributor of wine
19 and beer servicing the front range of Colorado, front range
20 being -- basically being Fort Collins to Pueblo, that
21 geographic area.

22 So we distributed brands like -- our largest brand
23 was Miller Brewing Company. We had Heineken, Sam Adams,
24 Sapporo, a large variety of beer brands and a few small
25 wine brands that were actually some of our own wine

1 brands. So we basically distributed these alcoholic
2 products to liquor stores, bars, restaurants, anybody with
3 a liquor license.

4 I started in the business as a driver early in my
5 college age and worked my way up through the
6 business. Started as a driver, worked up through sales,
7 management, and eventually in 2010 I was the operations
8 manager for the business.

9 It really was comprised -- there's two sides of
10 the distribution business. There's the sales side, which
11 is all the salespeople going out making account calls,
12 selling products, doing all the things that we need to do
13 to get the product out into distribution. And then there's
14 the operations side. In 2010, I was the operations manager
15 for Western Beverage.

16 Q Thank you. And can you describe in more detail
17 what the operations side consisted of and what it did?

18 A Of course. So on the operations side, I was
19 responsible for basically all of the product. So there was
20 a sales side and then the operations side. So I oversaw
21 all the purchasing of product coming in so that we had
22 product to sell. And then I would also manage a team of
23 warehouse people to manage the warehouse for bringing
24 product in, getting it stocked, and then getting it loaded
25 on trucks as orders came in. So there was a warehouse

1 crew.

2 And then there would also be a delivery crew,
3 which is the crew that would actually go out and make the
4 physical deliveries to the store. So everything to do with
5 the product side we handled on my end.

6 Q Thank you. So just to confirm, you were in charge
7 of purchasing inventory?

8 A Correct.

9 Q And were you also in charge of purchasing the
10 trucks?

11 A Yes. So it would -- when it came time to need
12 equipment, whether it was for the warehouse or for
13 delivery, I would work with different companies to purchase
14 equipment.

15 Q Could you describe the difference between the
16 trucks used in the beverage distribution business and in
17 the interstate transportation business?

18 A Of course. In the transportation business, they
19 have long-haul trucks which have sleepers on them. The
20 drivers are out weeks at a time. And they're big 50-foot
21 trailers basically designed to load full pallets of product
22 on.

23 In the distribution business, we're using a much
24 smaller truck. You're probably familiar with, you see them
25 on the streets, the Budweiser truck rolling down the street

1 and it's got the roll-up doors on the side. So we would
2 pick up product. We would have, you know, probably a
3 thousand cases on a truck of mixed products. It could be
4 two-, 300 different items on a truck. So all those are
5 hand-loaded on a truck at night and then a delivery driver
6 would go out. So the type of equipment that we used was
7 very specialized for the distribution industry.

8 Q Thank you. Did you have an administrative staff
9 within the beverage distribution division?

10 A Yes. We had an administrative staff that really
11 kind of worked with the customer service department. So
12 they were supporting salespeople for customers who called
13 in. And there was also a credit department. So they would
14 handle all the collection of ARs from our accounts. There
15 was about three people we had that managed all the
16 collections of accounts. And so they reported to that
17 office manager-type position, and then they would manage
18 all the customer service staff. We had a couple customer
19 service people that would answer all the calls and deal
20 with customers that were calling in and get information to
21 the salespeople.

22 Q Did you also send out your own invoices in the
23 distribution business?

24 A That's correct. Every delivery made would have an
25 invoice. It was really before electronics were popular in

1 the industry. So it was paper invoices. So we would go
2 out with paper invoices.

3 (Court reporter interrupts.)

4 THE WITNESS: Before we -- there was a lot of
5 technology. Today we, you know, we all use iPads and
6 electronic signatures and everything. At that point in
7 time, it was all just paper. So when a driver went out to
8 make a delivery, he would deliver the goods, the customer
9 would sign for the product so that we had a signed invoice
10 that we would return to the office and then scan in.

11 So we had to manage all those invoices and -- for
12 our recordkeeping. And if there was any disputes, we could
13 refer to those invoices.

14 Q (By Mr. Antolin) Thank you. So just to confirm,
15 you kept the books for the beverage distribution
16 business -- or the administrative staff that you just
17 described kept the books for the beverage distribution
18 business?

19 A That's correct.

20 Q Thank you. About how many people were in the
21 operations side and how many people were in the -- the
22 sales side?

23 A It was roughly a hundred people on the sales side.
24 There was Grant Bauer, who was the vice president of sales,
25 so he was -- pretty well led that division. And then he

1 would have a group of district managers, and each district
2 manager would have four to five salespeople underneath
3 them. So there was about a hundred people in total on the
4 sales side.

5 In delivery, we had about 40 different drivers.
6 We also, again, had supervisors that would supervise those
7 delivery staff and, you know, cover vacations or whatever,
8 manage. We would do all the hiring, firing, managing all
9 of the staff ourselves.

10 And then I think I -- in the warehouse we probably
11 had about another 20 people. We ran three shifts. So
12 during the week we ran 24 hours. During the first shift,
13 which would be about 6:00 in the morning until 2:00 in the
14 afternoon, that was when product was coming into the
15 warehouse so we were unloading trucks coming in with
16 product.

17 The afternoon shift was stocking the
18 warehouse. So we had a back stock area and then a pick
19 area so they would stock from the back stock to the pick
20 area.

21 And then at night we would pull all the orders and
22 load the trucks from that picking area. And that was
23 pretty well our process. So Monday through Friday we were
24 a 24-hour operation and then closed on the weekends.

25 But --

1 Q Thank you. Were the CEO and CFO of Western
2 Distributing Company involved in the beverage distribution
3 division operations?

4 A No.

5 Q Who was in charge of the day-to-day operations?

6 A Grant and myself. Obviously Grant, as I
7 mentioned, running the sales side of it. And then I ran
8 the operations side of it.

9 Q Did you ever have discussions with the CEO of --
10 and the CFO of Western Distributing Company?

11 A They would check in on occasion with us to see how
12 things were going, see what was happening. If there was
13 any large purchases that we needed to make like trucks or
14 forklifts that were significant, you know, investments, we
15 would check in with them to let them know what we were
16 doing and make sure they were aware of any, you know, large
17 expenditures that we needed to make.

18 Q How did the beverage distribution division
19 interact with the corporate accounting group?

20 A Not a lot. Our staff would roll up numbers to --
21 to the corporate. So on the accounting side, on the sales
22 administration staff, Grant had a staff of people that
23 worked for him that rolled up numbers and would report
24 those to corporate.

25 And the same with our office manager on the

1 operations side. They would roll up information to the
2 uppers. But, really, we managed all that information. We
3 kept -- it was easiest for us to keep track of a lot of our
4 own financials because we could get realtime information
5 and keep on top of how our performances were doing, what
6 our work expenditures were. So it was easiest for us to
7 really track everything ourself and to just roll those
8 numbers up.

9 Q Thank you. I understand the corporate office
10 wrote checks from a single checking account to pay for the
11 expenses of the beverage distribution business. Can you
12 explain how that process worked?

13 A Yes. So anytime we made purchases, especially
14 inventory purchases, we made all those decisions. We
15 worked with forecasting and projecting and we would send in
16 all the POs to our suppliers to get the goods shipped to
17 us. And we would then take all those invoices -- so upon
18 delivery -- well, the first start, we start with the
19 PO. And then we ship that to the -- to the supplier. Then
20 they would ship us the goods on a bill of lading. And then
21 they would send us an invoice.

22 So we would take the bill -- the purchase order,
23 match it up to the bill of lading, match that up to the
24 invoice. We would then code all the expenses on that
25 invoice to wherever they went. So cost of goods sold,

1 freight, tax, we would do all the coding so that everything
2 went to the correct category. And then we would just
3 submit those for payment.

4 Q Thank you. I understand the corporate office also
5 ran payroll for the employees of the corporation. Can you
6 describe how the payroll process worked?

7 A Sure. Yeah. So we managed everybody's hours and
8 time and -- and we would just really submit all the -- all
9 that to the payroll department to handle all the
10 appropriate things that needed to be done with payroll.
11 But we managed all of our staff. We controlled their time,
12 made sure that they were working hours that they were
13 supposed to be. If they were not, if they had vacation, if
14 they had whatever going on, we would manage all their time
15 and just roll that up to the payroll department too for
16 them to handle payout.

17 Q Thank you. Did the beverage distribution division
18 share employees or equipment with any other division or the
19 corporate office?

20 A No.

21 Q Thank you. Could you describe how the inventory
22 that you purchased is transported to your warehouse?

23 A Sure. So when we would place orders with our
24 suppliers, they would arrange transportation getting to us.
25 For example, Miller Brewing Company, they had breweries

1 across the United States from California to Milwaukee to
2 Texas to South Carolina. And because they had all those
3 different locations, they would arrange all the freight to
4 get to us. And most of our suppliers worked that
5 way. They would -- they would arrange all the
6 transportation.

7 Like Miller, they would ship us beer on boxcars
8 and -- which is the -- on the train, which is a complicated
9 procedure. And, obviously, they were doing it across the
10 country. So with their large network of shipping, they --
11 it was easiest for them to manage shipping all the product
12 to us. And pretty well every supplier wanted to control
13 shipping. They didn't want distributors, you know, using
14 companies that would overcharge freight rates. So they
15 always managed it.

16 They would deliver it to us. Either they would
17 deliver it to us with a freight charge on the invoice or
18 they would actually include the price of freight in the
19 cost of goods that they sold to us. Various suppliers
20 would handle it in different formats.

21 Q What percentage of your inventory was received by
22 transportation arranged by the manufacturer?

23 A Almost all of it.

24 Q Okay. Thank you. Could you take a look -- I have
25 in front of you the FTB's Exhibit N, which are a series of

1 transportation invoices. I understand -- have you looked
2 at those invoices?

3 A Yes.

4 Q Can you describe what is going on with respect to
5 those invoices?

6 A So on that invoice, it shows that there are
7 several different orders picked up by one truck. One of
8 the things I mentioned earlier is that we had some of our
9 own wine brands. So we would buy wine from California
10 wineries and we would have our own name on it. And so we
11 kind of have our own brands that we distributed, and it was
12 just kind of an old family tradition. When we would buy
13 wine like that, it was never a full truckload worth of
14 wine. We would buy a couple pallets at a time.

15 One thing about Western Distributing
16 Transportation Company is they're what's called a full-load
17 carrier, so they only book a full load. So if I only had
18 two or three pallets to ship, it wouldn't make sense for me
19 to pay for an entire load when all I have, two or three
20 pallets. So a lot of times we would use outside carriers
21 who work in what's called an LTL market, which is
22 less-than-truckload carrier, which Western Distributing is
23 not. We would hire companies like that.

24 On rare occasions where we had multiple suppliers
25 and a close proximity, we could negotiate enough to combine

1 these orders to create a full truckload, therefore, making
2 the freight rate reasonable on a per-case basis to get it
3 to us. So it would be a way for us to pick up our own
4 wine. Since our wine was ours, the shipper was not
5 responsible for freight so we had to -- we had to figure
6 out how to get it to us ourselves.

7 Q And when you arranged shipping for your own wine
8 to be shipped to your warehouse, did you use other
9 transportation companies other than Western Distributing
10 Transportation Corp on occasion?

11 A Yes. Like I said, most the time if we only had a
12 couple pallets to pick up, it wouldn't make sense to use
13 Western Distributing. Because the rate was too high on a
14 small order like that, so we would contract with other
15 companies.

16 Q And when you're contracting for shipping of your
17 own wine, what -- how does that process work when you're
18 wanting to hire a transportation company?

19 A Basically, we had a couple different people we
20 would work with. We could get a rate from Western
21 Distributing Transportation Company. And I also had
22 brokers that I worked with that would go out and find these
23 less-than-truckload carriers. So a lot of times we would
24 just use a broker. We would give them the information
25 about where the load is picking up at, how many pallets or

1 how much weight or how much space depending on what they
2 were looking for, and then they would negotiate with these
3 carriers to find who we could get the best rate from. And
4 then we would compare those rates and make our decision
5 based on the best rate available.

6 Q So for these transactions, you had the
7 independence to use any transportation company you wanted?

8 A Yes.

9 Q And when you used Western Distributing
10 Transportation Company, did you pay market rates?

11 A We did.

12 Q Thank you.

13 MR. ANTOLIN: No further questions.

14 ALJ HOSEY: Thank you. I'm going to check with
15 the Franchise Tax Board to see if they have any questions
16 for Mr. Guadagni.

17 MR. HAVENS: Yes, Judge, we do have a few
18 questions.

19 ALJ HOSEY: Okay. Please begin when ready.

20

21 CROSS-EXAMINATION

22 BY KEN HAVENS:

23 Q So, Mr. Guadagni, for the taxable year ended 2010,
24 which I'll refer to as the year at issue, was Western
25 Distributing Company or WDC a Colorado S Corporation?

1 A I don't know that I know the answer to that.

2 Q Okay. Were you a shareholder of WDC in that year?

3 A Yes.

4 Q And in that year, were you a resident of Colorado?

5 A Yes.

6 Q Did you personally file a California nonresident
7 tax return for the year ended 2010?

8 A I don't recall.

9 Q Okay. So during the year at issue, did you hold
10 an EVP position within WDC's beverage distribution
11 division?

12 A Can you clarify EBP [sic]?

13 Q So my understanding is that you held a VP position
14 within WDC's beverage distribution company; is that
15 correct?

16 A Again, I'm sorry, can you clarify EBP?

17 Q Executive vice president.

18 A I was -- I was the operations manager.

19 Q Understood. Okay. Did you ever hold a position
20 as a safety officer for WDC and its divisions?

21 A I was part of a safety council that we had for our
22 department.

23 Q So just to clarify, were you ever a safety officer
24 for WDC and its divisions?

25 A No.

1 Q So were purchase orders submitted to WDC for
2 processing and disbursing?

3 MR. ANTOLIN: I'm -- excuse me. I'm having
4 trouble understanding. Could you please speak slower?

5 MR. HAVENS: Certainly.

6 MR. ANTOLIN: Sorry.

7 ALJ HOSEY: Mr. Havens, maybe just back up a
8 little bit. I think it's just a little like --

9 MR. HAVENS: A little bit too much?

10 ALJ HOSEY: Yeah. Perfect.

11 MR. ANTOLIN: There's a little feedback or
12 something.

13 ALJ HOSEY: Yeah. There's a little bit of
14 feedback or something. I think that's a little bit better.

15 MR. HAVENS: Sorry about that.

16 ALJ HOSEY: That's okay. Thank you.

17 Q (By Mr. Havens) So were purchase orders from the
18 beverage division submitted to WDC's central office for
19 processing and disbursing?

20 A Well, purchase orders were, once they were signed
21 for, they were submitted to corporate just for payment
22 purposes.

23 Q And was payroll conducted by WDC's central office?

24 A Yes.

25 Q How about onboarding, was that conducted by WDC's

1 central office?

2 A No. When somebody was hired, we handled all of
3 the -- the onboarding for our individual departments. They
4 were different enough that the Departments handled them
5 themselves.

6 Q So to be clear, at his -- or at Exhibit 2, line
7 20, Chris Boggs testifies that the corporate office
8 processed payroll for the divisions and onboarded all new
9 employees. Is that incorrect?

10 A I'm not familiar with his statement on that.

11 Q Okay. Did WDC have a centralized employee
12 handbook with policies that employed -- that applied to all
13 of WDC's divisions?

14 A They were more specific because every division was
15 so different in the way they were handled. We had a
16 handbook that was specific to our division and the jobs
17 that we do within our division.

18 Q So was there a generalized WDC handbook, employee
19 handbook?

20 A I don't recall.

21 Q So you don't recall if employees of the divisions
22 were required to sign acknowledgment of the policies in the
23 WDC handbook?

24 A Again, for our individual departments, we would
25 have handbooks. And I believe they signed those. I don't

1 remember the specific details.

2 Q So did the beverage distribution division use the
3 transportation division for shipment of beer from
4 California to Colorado?

5 A Very few, but yes.

6 MR. HAVENS: No further questions, Judge.

7 ALJ HOSEY: Okay. Thank you.

8 Mr. Guadagni, I'm going to ask the panel if there
9 are any questions for you just for clarification about your
10 testimony. I'm going to start with Judge Johnson.

11 Are there any questions for Mr. Guadagni?

12 ALJ JOHNSON: Hi, Mr. Guadagni.

13 THE WITNESS: Hi.

14 ALJ JOHNSON: Can you hear me okay? Okay. You
15 mentioned that numbers would be rolled up and sent up to
16 corporate, they'd have sort of oversight on large
17 purchases. They'd be aware, obviously, of hiring and
18 firing because they handled payroll.

19 How often would these sort of decisions that were
20 being done by the beverage industry or beverage division
21 seek pre-approval from corporate?

22 THE WITNESS: Very little. Again, unless it was
23 something significant, we -- we handled our business.

24 ALJ JOHNSON: Okay. For any of those that
25 required pre-approval or, perhaps, after-the-fact

1 evaluation, how often would corporate sort of deny the
2 request or the proposed actions by the beverage division?

3 THE WITNESS: I can't think of a specific
4 occasion.

5 ALJ JOHNSON: Thank you.

6 No questions.

7 ALJ HOSEY: Thank you. I'll go to Judge Long.

8 Were there any questions for Mr. Guadagni?

9 ALJ LONG: Yes. I do have a couple questions for
10 you. My first question is when you testified about the
11 numbers being rolled up to corporate. Can you tell me what
12 that means?

13 THE WITNESS: So -- so in the operations side, we
14 would roll up all of our purchases, all of our expenses,
15 you know, all of our payroll, anything that we could
16 provide to create a financial statement, which we basically
17 created ourselves. Again, for a timely manner, we wanted
18 to be able to see things as fast as we could so we knew how
19 we were doing. So on the operations side, again, all of
20 our expenses, all of our labor and all those things we
21 would roll up.

22 ALJ LONG: So the data entry was done at your
23 division level?

24 THE WITNESS: That's correct.

25 ALJ LONG: Okay. And then my next question was so

1 you testified that there's no shared employees between
2 these two different divisions that we're talking about, and
3 I just want to confirm that's correct. So not warehouse
4 staff, not mechanics, none of that? No shared employees?

5 THE WITNESS: None at all.

6 ALJ LONG: All right. Thank you.

7 That's all my questions.

8 ALJ HOSEY: Thank you. Thank you, Judge Long.

9 I have no questions, so I just want to thank you
10 for your testimony today and you're free -- I don't think
11 we'll need any other testimony from you. So thank you.

12 THE WITNESS: Thank you.

13 ALJ HOSEY: I appreciate it.

14 Mr. Antolin, did you want to call your next
15 witness?

16 MR. ANTOLIN: Yes. Thank you, very much.

17 ALJ HOSEY: Is Mr. Gaines? All right.

18 I'm going to swear you in, Mr. Gaines.

19 THE WITNESS: Yeah.

20 ALJ HOSEY: Can you hear me?

21 THE WITNESS: I can hear you. Well, I can see
22 you.

23 ALJ HOSEY: Okay. Hello.

24 THE WITNESS: Thank you for --

25 ALJ HOSEY: Can you please raise your right hand.

1 Do you solemnly swear or affirm to tell the truth,
2 the whole truth and nothing but the truth?

3 THE WITNESS: Yes, I do.

4 ALJ HOSEY: Thank you, sir.

5 THE WITNESS: Thank you.

6 ALJ HOSEY: Mr. Antolin, please begin.

7 MR. ANTOLIN: Thank you.

8
9 VIERI GAINES,

10 Produced as a witness, and having been first duly
11 sworn by the Administrative Law Judge, was examined and
12 testified as follows:

13
14 DIRECT EXAMINATION

15 BY EDWIN ANTOLIN:

16 Q Mr. Gaines, can you please describe Western
17 Distributing Company and your role in the company?

18 A Yeah. I first want to say thank you for
19 accommodating me with the hearing. I drove a race car for
20 way too many years and obviously didn't wear adequate
21 protection and I'm pretty severely handicapped, so this
22 helps a lot.

23 My role with Western Distributing Company, well, I
24 was kind of born and raised in Western Distributing
25 Company. My grandfather Guido Mapelli and Adolph Coors

1 were fishing buddies back in the '30s -- uh, 1930s -- and
2 they spent a lot of time fishing and talking about various
3 things. And so we became, at prohibition, 1933, we became
4 the first distributor of Coors beer legally, and it grew
5 from there.

6 At some point in time, Adolph Coors and Grandpa
7 decided that they would go their separate ways because
8 Coors wanted to distribute their own product and my
9 grandfather wanted to branch out into other alcoholic
10 beverages, beers and wines. So that happened in the -- in
11 the '40s.

12 And I joined the company when I was -- well,
13 early, early on in my teens, and did odd jobs -- washed
14 trucks, cleaned toilets, whatever needed to be done -- and
15 worked my way through the organization doing anything from
16 delivery to washing trucks and learning the business.

17 We were a very small business back then. As a
18 matter of fact, I was telling Ed that back then we did 80
19 percent of our yearly business in the months of November
20 and December because we were -- we were skewed toward
21 holidays and celebrations. And in those days, we didn't
22 have the ski industry, we didn't have the other things that
23 dictated how the business went.

24 So we grew along. In -- we got into the wine
25 business a little bit, started -- we became the largest

1 independent wholesaler in the United States at one time
2 distributing wines and beers and liquor in the state of
3 Colorado.

4 It was a lot of fun. Growing up, exciting times.
5 Back in those days you drank to celebrate and you drank to
6 forget, and those were kind of the rules of the
7 road. Today there's a lot more options and more ways to
8 have fun, I guess. So things have changed significantly.

9 In the '70s, I was having a hard time getting
10 product from California to Denver, and it just seemed to be
11 the trucking companies were controlling the business more
12 than we were. And during some times of the year when they
13 weren't moving produce, they had a lot of trucks for
14 us. And during the produce season -- back then, there was
15 definitely seasons, for produce seasons. And when produce
16 season was on, they couldn't find a truck for us. Well,
17 our customers want wine whether they can -- you know,
18 produce season or not.

19 So we started with a few trucks. I think there
20 were three at the time. And I want to say it's in the
21 '70s, I want to say it's '75, '77-ish, that we had three
22 trucks. And they would go to Kentucky and get Jim Beam and
23 they would go to California and get wine. And the -- well,
24 we got Bacardi rum out of Florida.

25 So we kind of got this truck line going. And

1 after a while, it became obvious that that was its own
2 entity, that you couldn't really run a liquor business and
3 a trucking company because they were so diverse. So we
4 kind of branched out with the trucking company. We bought
5 more trucks. We hauled more products. We were in
6 different buildings and had our own management to do that
7 function.

8 Also, the beverage business over the years has
9 ebbed and flowed. Probably the biggest change that we had
10 is we were a large Miller distributor. And Miller,
11 actually, in Colorado, it was kind of embarrassing but we
12 actually outsold Coors a little bit.

13 And they didn't like that. Coors didn't like
14 that. Which was unfortunate because I was good friends
15 with a lot of the Coors family. But -- so they -- they put
16 together a joint venture -- a sale, I don't know, whatever
17 you want to call it -- whereas Coors and Miller combined.
18 And in most areas, it was a -- it was a combination because
19 it made sense to deliver both products out of one truck
20 instead of two trucks.

21 It came down to us. And it's unfortunate that
22 we're in Colorado because we think we were the better
23 distributor, but the Coors family and the Miller families
24 decided to -- that it was time for us to sell. So we
25 sold -- we sold the company. It was very disappointing for

1 us because we had a lot of fun and we ran a great business
2 and -- but that's the way -- that's the way of the world.

3 So we're no longer the largest independent
4 distributor in the United States. We're a small wine and
5 other beer distributor, which Sterling described, and we
6 continue to do that today along with the transportation.

7 The transportation company has grown through the
8 years. We're -- we haul a tremendous amount of -- believe
9 it or not, we haul a tremendous amount of Coors beer out.
10 Even though we weren't a distributor anymore, we're one of
11 their prime trucking forwarders and we -- we'd bring a lot
12 of -- a lot of beer all over the United States.

13 So we also haul a tremendous amount of produce
14 from California. Back in those days, I told you produce
15 season. Well, we don't have a produce season anymore.
16 Produce sometimes comes out of the Central Valley.
17 Sometimes it comes out of Arizona. Right now, at this time
18 of year, it's kind of Arizona and Mexico. There's a little
19 shortage of produce right now.

20 But we're -- we're almost ready to switch seasons
21 where all the production -- the plants are being planted
22 and come up to the Central Valley, and we'll start hauling
23 that in. So we haul a lot of vegetables in. We haul a lot
24 of Colorado beef out. You're reading today about JBS, a
25 strike in Colorado. Well, that's the largest beef

1 processing plant in the United States, and we haul 50 loads
2 a week of beef. A lot of it goes to Japan. Comes through
3 California, goes to the port and all over.

4 I'm rambling. I apologize. But the -- I guess
5 the thing is, is we've enjoyed these companies. They're
6 totally, totally independent from each other. They're run
7 independently from each other. They all have their own
8 software systems. They all have their own management.
9 They -- they set and try to hit their yearly goals or
10 monthly goals and try to go forward to a plan that they put
11 together.

12 We -- we're cheerleaders. We have some other
13 businesses that we also have engaged entrepreneurs in,
14 people who want to make a really, really good product but
15 don't have the wherewithal and the -- to do so. We -- for
16 example, we had a little crankshaft company. We make
17 crankshafts for racing use only. It's considered one of
18 the best products made in the world, certainly the best
19 product made in the United States.

20 It started out with a fellow that was operating
21 out of his garage, and he had a knack for understanding --
22 you know what a crankshaft is inside a motor vehicle. It's
23 the thing that transfers the power from the -- to the
24 transmission and on back. But it's a -- we -- we got a
25 hold of this fellow. And the reason we got a hold of him,

1 because we were having a hard time buying crankshafts.

2 So we got together with this fellow. And he was
3 operating out of his garage, an oversize three-car garage
4 basically. He had a couple machines but understood the
5 dynamics of a crank shaft, what the metal does, what the
6 design does.

7 We invented -- he invented some things that are
8 used in racing today. For example, the crankshaft shape.
9 A crankshaft's spinning thousands of rpms inside of a
10 motor. It encounters wind resistance. So by shaping the
11 crankshaft in certain ways, we're able to increase the
12 efficiency of the crankshaft and also the strength of the
13 crankshaft.

14 And like I say, some of these things are being
15 used today. A drop of oil hitting a crank shaft at 10,000
16 rpm can rob 20, 30 horsepower. So we were instrumental
17 in -- in working through those issues. That's one example,
18 the crank -- we're selling a specialized crankshaft. It's
19 the highest price crankshaft on the market. It's also the
20 best crankshaft on the market. It's a very successful
21 business.

22 They guide their own. They buy their own
23 material. They do their own accounting. They do their own
24 purchase orders. They do their own sales. They do
25 everything themselves. Like the other divisions.

1 Fineline, we started out in the beer business,
2 right? We put all those decals on the sides of trucks:
3 Miller Beer, all those type of things. We were having a
4 hard time getting that done so we found a couple guys,
5 a couple entrepreneurs that were looking to make their
6 business better. Same thing as the crankshafts. We got
7 together with them. They were able to do a better job.
8 They were able to buy better equipment. They were able to
9 go out and increase sales.

10 And today, for example, if you go out to the
11 airport and you see Frontier Airlines and you see the
12 animal on the back tail of the plane, that's something we
13 do. We design, make, and install those -- those decals.

14 We've done work all over the United States. We do
15 a lot of special events. We do Denver Art Museum. We do
16 the Broncos. We've done stadiums -- football stadiums
17 across the United States. All because these couple guys
18 had the vision and the desire to make something great.

19 And they did it. And they did it because they did
20 it on their own because though were able to purchase the
21 right materials, they were able to hire the right people.
22 They were able to go out and market their product and
23 became successful at it.

24 That's a couple of examples of some of the things
25 we've done. We also make connecting rods. We have some

1 highly specialized shops that do some various things. But
2 the unique thing about them and all of them is that they're
3 all very, very independent. I don't remember how many in
4 2010 there were. I think there were 14 businesses or
5 whatever. They all had their own software. It's a
6 software that they purchased, they investigated, they
7 recommended, and they used to run their business on.

8 Sure, in the end, the dump came back to Western so
9 that we could make a financial statement so that we could
10 together judge the performance and the -- to track how
11 we're doing against projections and so on.

12 I've -- I've wandered away too much and I
13 apologize.

14 Q Thank you.

15 A I don't know. I'm sure I skipped a lot of things
16 that I should talk about.

17 Q Thank you. Thank you.

18 A And I'm sure you'll help me out.

19 Q Thank you. Appreciate that. Mr. Gaines, could
20 you describe your philosophy, your management philosophy or
21 business philosophy for having all of these different types
22 of businesses within the corporation?

23 A Well, I'm a -- I'm a real fan of an
24 entrepreneur. If somebody has the knowledge, the desire,
25 and wants to make a presence in the world, they're --

1 that's my type. I think I described Fineline, two guys
2 struggling putting decals on at night, weekends. They
3 really wanted to make a difference. And they did make a
4 difference.

5 We were able to give them the tools necessary
6 to -- one of them stayed on until a couple years ago and
7 one of them didn't last quite that -- well, he lasted a
8 couple years. But they -- they didn't want to get bogged
9 down with the taxes and the rough road parts of life. They
10 wanted to make a product the customers wanted. They wanted
11 to make a quality item. And they wanted to create a
12 business. And they did so.

13 So you asked what my -- I found a lot of those
14 people. I found the crankshaft guy in a -- in a garage,
15 and now it's a worldwide reputation item. And so is
16 Fineline and so is some of the others that have done very,
17 very well. And there's been a couple that failed.

18 Q Thank you. Did the corporate accounting office
19 prepare the corporate tax returns with the -- with the
20 outside accounting firm?

21 A Yeah, well, did they prepare? No. They -- they
22 hired accounting services, big companies. As you can
23 imagine, with all of those companies plus we're operating
24 trucks in 40-some states and paying tax everywhere we go --
25 we pay fuel tax, we pay road tax, we -- in some areas we

1 pay excise taxes, so our tax return is a -- is a
2 tremendously difficult -- I can't understand it. They say,
3 "Here, sign this." It's pages and pages. It's inches
4 thick of tax returns of -- from all over the place to
5 combine to -- you know, we pay a lot of tax in California.
6 We pay a lot of road tax. We pay a lot of full tax. By
7 the way, fuel's way too high.

8 And it just -- it requires the expertise. And
9 generally, we don't get our taxes filed until November,
10 December of every year. We file extension after extension
11 after extension trying to pull together all these numbers
12 to get the thing done. And when I say "we," the -- it's
13 not Western. It's the tax preparers. These are -- these
14 are large outfits: Plante Moran. Right now I think we're
15 with BDO. This is their expertise and this is what they
16 do. And then, of course, they advise us, you know,
17 different directions to try to save tax where we can.

18 Q Thank you.

19 A Bad words too. I'm sorry.

20 Q Mr. Gaines, could you describe how insurance was
21 handled?

22 A Insurance. Well, insurance is a great subject
23 because I -- we spend -- we spend right now, we spend
24 three-quarters of a million dollars a month on
25 insurance. Insurance industry for -- for businesses, you

1 primarily have to hire a broker. You can't just go to
2 State Farm or Geico on TV, you know, something like that.
3 You have to hire a broker. You have to sign a broker. And
4 the broker goes out and shops all the insurance companies
5 for rates.

6 Last year we were having a particular difficult
7 time because costs were going up so much. We interviewed
8 fifty -- I shouldn't say we. The insurance brokers
9 interviewed 52 different insurance companies trying to find
10 one that would handle all of our needs and at a fair
11 price. And even today our towing division, which is a
12 very, very large division, they -- all the insurance
13 companies say they're not going to insure tow trucks
14 anymore. And we don't do the chase around tow trucks. We
15 do the large format. We pick up semis. We pick up
16 windmills. We pick up -- we have these huge, monstrous
17 trucks that can do almost anything. But the insurance
18 companies don't want to do that.

19 So your question was -- and I apologize. I ran
20 off again. But the insurance is a -- is a interesting
21 subject because we have to go out and get all these various
22 insurance. You have to get insurance for delivering
23 product. We have to get insurance for -- we have a
24 division, the armored division. We are a hauler of large
25 dollar-value loads for the -- for the federal government.

1 We haul the paper from Texas up to Massachusetts that they
2 print the money on. They print the money at -- obviously,
3 at the mints. We haul money from -- from production to the
4 various fed offices, the fed banks, Federal Reserves. And
5 these shipments are in excess of many millions of dollars,
6 let me just say it that way, many, many millions of
7 dollars. All that requires insurance.

8 These brokers have to go out and they have to find
9 the insurance to cover all this. And we -- for example, we
10 employ on some of the large money moves as many as four or
11 five insurance companies to cover a single shipment.
12 Lloyds of London, you've heard of them. They're only large
13 enough and they'll only take a portion, so you have to find
14 multiple insurance companies to cover -- to cover some of
15 these loads.

16 So, yeah, insurance is a -- and I liken that to
17 the way we operate. We try to provide services and we
18 provide services for the insurance -- we provide services
19 for transportation for the money hauling and for property
20 insurance and all the things that -- truck insurance. Like
21 I say, it's three-quarters of a million dollars a month in
22 insurance premiums. It's enough to scare the heck out of
23 you.

24 But in today's day and age with the lawyers
25 advertising on TV, you get a truck hit you, come see us,

1 we'll get you lots of money. Boy, we hit -- we're getting
2 claims filed against us on a monthly basis. And the
3 insurance companies are struggling to find ways to combat
4 this. And we're helping them. We got cameras in all of
5 our trucks and we take pictures of anything that
6 happens. And we're able -- we're able to overcome some of
7 these things. I'm rambling again, sorry.

8 Q Thank you. No, you're doing great. Given how
9 different the divisions were, they're different businesses,
10 can you describe if the insurance policies for each
11 division was separately underwritten?

12 A Well, you know, as -- it's a great
13 question. Because some -- some of our divisions utilize
14 insurance in some of their operations so -- so little. For
15 example, some of our manufacturing, we don't get a lot
16 of -- we don't get a lot of injuries. We don't get a lot
17 of twisted ankles and bad backs and strained whatever. So
18 their insurance on that portion is lower and helps bring
19 the overall package down. But if you go to the
20 transportation side, we got truck drivers out there loading
21 and unloading and driving, and sometimes they jump out of a
22 truck too quickly, slip on some ice, our usage of our
23 insurance is a lot higher. So that -- that drags the rates
24 up a little bit.

25 So we've always been torn between finding the best

1 rates for each division -- or I should say each division
2 finds their own rates, but they've always been torn between
3 they can find a cheaper rate on maybe health insurance but
4 they can't find a cheaper rate on, say, property insurance
5 or manufacturing related instances.

6 So we have been pulled sometimes toward letting a
7 division go a separate route, but it usually ends up back
8 in the same pot because, because of the strength of the
9 overall numbers and the dollars involved, the insurance
10 brokers usually find the best deal. Plus, an insurance
11 broker, as I mentioned before, goes out and gets 52 -- puts
12 out 52 bids. The crankshaft maker can't possibly put out
13 more than three or four, you know. The neighbor down the
14 street, the church lady, whatever, that sells insurance on
15 the side can't possibly run a business that way. You have
16 to -- you have to rely on the professionals to help you do
17 those things.

18 Q Thank you. You mentioned that in some cases a
19 division could use their own broker and shop around for
20 prices?

21 A Yeah. And they do. And they've tried because
22 they -- you know, you get a guy that's making -- I keep
23 using crankshafts and that's not fair, but he's making
24 crankshafts. And he says, you know, I look at my numbers
25 and if my insurance costs weren't so high, I could make

1 more money. And -- and I guess I didn't mention, at some
2 point all these entrepreneurs get a cut of the action. So
3 they're interested in making money too, not just producing
4 a great product.

5 But so they're interested in getting a better
6 rate. And they -- and they have tried. It just seems that
7 we have -- when you -- when you buy the amount of insurance
8 we do and shop as extensively -- I shouldn't say we because
9 it's the insurance brokers that do all this work.

10 Q Thank you.

11 A So they just present us with the results and the
12 observations and the opportunity to choose what makes the
13 most amount of sense.

14 Q And were the insurance premiums allocated to each
15 division?

16 A Yes, absolutely. Everything's allocated to the --
17 each division. I don't care the -- we have an internal
18 form where they buy a pencil, we have a -- they get charged
19 for the pencil. So that's -- that's an extreme example,
20 but just to show you that that's how far down we go.

21 Q Thank you. Why did the company maintain a single
22 checking account?

23 A Well, because of its size, because of its expanse,
24 it's got to be an hourglass at some point in time for these
25 things to be watched. For the worst example I have is that

1 four years ago our crankshaft guy -- crankshaft keeps
2 coming up. I apologize. They're not the center of the
3 world. But the crankshaft fellow, he was able to get away
4 with almost a million and a half dollars before we caught
5 him. Because he was doing his own thing, billing his own
6 thing, and the front office didn't catch it in time.

7 Well, eventually we caught it. The cameras caught
8 it. The numbers all of a sudden didn't add up, and we were
9 able to do it. So -- I'm sorry, the question you asked
10 was?

11 Q I think you answered.

12 A Okay. Sorry.

13 Q Thank you. How about payroll, can you describe
14 how the payroll process worked?

15 A Well, payroll is a particularly tough thing
16 because of the rules of the land: The federal rules, the
17 state rules, the taxes, the health benefits, all the things
18 that are involved in making a payroll. I don't think
19 anybody does their own payroll anymore. I don't think you
20 can do your own payroll anymore. It's too complicated.
21 You've got 401 matching, you've got insurance, you've got
22 insurance you break down in the health and dental and
23 vision and all those things. It requires a mastermind to
24 be able to keep track of all this.

25 So there's a few payroll companies out there.

1 None of them are any good in my opinion. That was an
2 unsolicited. But they -- they're the ones that have to put
3 all this together. Plus, they have to turn in reports to
4 the state, to the feds, to the -- to everybody on who gets
5 what, when, and where. And all those reports have to be
6 done on a timely basis or there's big, big penalties.

7 So it's a very, very complicated process,
8 something that a crankshaft maker, you know, to try to do
9 that versus make a better crankshaft or more crankshafts,
10 something that helps him earn more money, is -- it just
11 doesn't make sense. Can they do it? Well, they
12 could. But it's a -- it's something really nobody wants to
13 touch. I don't think any of us want to touch it. It's
14 that difficult.

15 Q Thank you. Can you describe the line of credit
16 that the -- that was used to support the beverage
17 distribution business?

18 A Well, I think I mentioned before that at one time
19 we did 80 percent of our yearly volume in the months of
20 November and December. And because of that, there was a
21 huge inventory buildup. Because most of our suppliers at
22 that time had -- worked on a calendar year, they had sales
23 numbers to hit, and they would pressure us into buying more
24 inventories. And because we had more inventories and
25 because it was the end of the year and the time to go

1 fishing is when the fish are biting so we sold a lot more
2 merchandise.

3 What that means if you translate it down to the
4 bottom line is, is that we needed a whole bunch more money
5 than normally to buy this inventory, we needed a whole
6 bunch more money to sell this inventory and to basically
7 finance -- I hate that word -- but basically finance our
8 retailers because we gave them good deals also so they
9 extended themselves out and bought a lot of inventory.

10 So basically, between about the 1st of November
11 and about the 15th of April, we were in a position where we
12 needed extra money. And back in those days, a very
13 popular -- and I say back in those days because it's not as
14 popular today, but a very popular financing method was
15 inventory and accounts receivable financing, which is
16 perfect for what our needs were. So because our inventory
17 spiked so high and because our accounts receivable spiked
18 so high and because the banks were willing to loan on that
19 knowing that those bills would be paid, they extended us
20 big credit lines.

21 Q Thank you.

22 A Just for the -- for the beverage division. That's
23 the only one that encountered that type of action.

24 Q Thank you. Thank you. Earlier you mentioned that
25 back in the '70s, you bought the trucks, the interstate

1 trucks, thinking that you would use them to transport
2 inventory to the beverage distribution business and -- but
3 then you decided to separate those as two separate
4 businesses. Do you remember about when you made that
5 decision to have them operate separately?

6 A I apologize. I'm 77 years old and my memory's not
7 as good as it used to be. I remember we purchased some of
8 our few trucks -- first trucks in '76 and '77. There were
9 three of them. And --

10 Q Let me ask it this way. By 2010, were those two
11 businesses, the beverage business and the transportation
12 business, operating separately?

13 A Oh, by a long shot, yeah. I've got to say that we
14 separated them back in the -- I want to say the '90s, at
15 least as late as the '90s, perhaps in the '80s. You know,
16 if you gave me enough time and gave me enough hints, I
17 probably could come up with a better dating, but that's the
18 best I can do at this time.

19 Q Thank you. That's perfect. So you mentioned
20 earlier, I just want to confirm, that in the corporate
21 office you relied on the outside accounting firm and tax
22 experts to prepare Western Distributing's state tax
23 returns?

24 A Yes.

25 Q Thank you. Are there any shareholders who are tax

1 professionals?

2 A No.

3 Q Thank you.

4 A Thank God. Oh, sorry, sorry. I'm in the wrong
5 place to say that.

6 Q All right. So when the beverage distribution
7 rights were sold in 2010, could you please confirm that all
8 of the gains were reported by the shareholders to the State
9 of Colorado?

10 A Yes.

11 Q And all -- all Colorado state taxes were paid on
12 those gains?

13 A Yes.

14 Q Thank you.

15 A Yeah, we believe in paying our taxes. We don't
16 like coming here. It's a beautiful place, but, sorry, it's
17 not as pretty as Colorado.

18 Q Thank you.

19 MR. ANTOLIN: No further questions.

20 ALJ HOSEY: Okay. Thank you.

21 Mr. Gaines, are you doing okay?

22 THE WITNESS: I'm great.

23 ALJ HOSEY: Okay. I'm going to see if the
24 Franchise Tax Boards have any questions for you.

25 MR. HAVENS: Yes, Judge. We have questions --

1 ALJ HOSEY: Okay.

2 MR. HAVENS: -- for Mr. Gaines.

3 ALJ HAVENS: Okay. Go ahead, Mr. Havens.

4

5 CROSS-EXAMINATION

6 BY MR. HAVENS:

7 Q So, Ms. Gaines, for the taxable year ended 2010,
8 which, again, I'll refer to as the year at issue, was
9 Western Distributing Company a Colorado-based
10 S Corporation?

11 A Yes.

12 Q And for the year at issue, were you a resident of
13 Colorado?

14 A Year at issue was I arrested in Colorado?

15 Q Yeah. So for 2010, were you a resident of
16 Colorado?

17 A Oh, resident. My transcriber said arrested. Yes,
18 I was a resident. Yes. Sorry.

19 Q And during that year, in 2010, did you hold an
20 executive position within WDC?

21 A At NWDC. What is NWDC?

22 Q Within Western Distributing Company.

23 A Oh, okay. I had held the Executive CEO position
24 at that time in 2010, yes.

25 Q And you currently hold that same position,

1 correct?

2 A Yes.

3 Q And did you also hold a position on Western
4 Distributing Company's board of directors in 2010?

5 A You know, I guess so. Yes. I mean, there's only
6 five of us or whatever, if that much, and so it's not --
7 it's not a very structured, if you want to say. We have
8 coffee together and talk over problems, you know.

9 Q And what was your title on the board?

10 A Uh --

11 Q Were you the president of the board of directors?

12 A I think -- I think I've been CEO as long as I can
13 remember. I've held the title of president on and off
14 throughout the years, but I don't remember why or how.
15 Like again, those things weren't important to us on a
16 business basis.

17 Q Okay. So who were the other members of the board
18 of directors at that time, do you recall?

19 A Oh, well, my brother, obviously, was -- he was a
20 board member, a shareholder, and he helped Sterling and
21 Grant primarily on the -- on the beer and wine side. My
22 sister, who's a school teacher, she was a -- she wasn't on
23 the board. She was a shareholder at that time. And,
24 obviously, our CFO was a -- was a board member, Chris
25 Boggs. He retired. My sister retired, gave all her shares

1 back to the company. And I think that's a -- to the best
2 of my knowledge, that's it.

3 Q So --

4 A It feels like I'm missing something, but I'm --
5 can't think of what that is.

6 Q So just to confirm, in the year at issue, your
7 brother and your sister were on the board with you, and the
8 three of you together owned all of the voting shares of
9 Western Distributing Company; is that correct?

10 A I think -- I think my kids have -- all have some
11 shares.

12 Q So, yes, Mr. Gaines.

13 A And my brother's --

14 Q I'm specifically asking about the voting shares of
15 Western Distributing Company.

16 A The voting shares? No, the voting shares are
17 primarily just my brother, sister, and myself.

18 Q So for the year at issue, the three of you owned
19 all of the voting shares of Western Distributing Company?

20 A I believe so.

21 Q Okay. And did you own the majority of the voting
22 shares in that year?

23 A Yes.

24 Q Does the figure 84.12 percent sound about correct?

25 A It sounds correct.

1 Q So WDC, then, was a family business in the year at
2 issue?

3 A Yeah, I think so.

4 Q Okay. In your affidavit you state that WDC was
5 founded by your grandfather in 1933 as a family-run Coors
6 distributorship; is that correct?

7 A Yes.

8 Q And you further testified that --

9 A Well, let me back up. I think formally we
10 incorporated, I want to say, in 1946 or 1947. I don't know
11 what the structure was. I know 1933 was prohibition and
12 allowed grandfather to go out and sell Coors beer. I don't
13 know what the structure was between '33 and '47, but
14 something like that.

15 Q Understood. So in the 1970s, Western Beverage
16 acquired long-haul trucks to move Western Beverage's
17 alcohol beverage inventory; is that correct?

18 A I think I said that it -- I think we purchased
19 three trucks in around 1976, 1977, yes.

20 Q And at the time, in the late '70s and early '80s,
21 Western Distributing Corporation -- or, sorry, Western
22 Distributing Company and Western Distributing
23 Transportation Corporation were separate corporations; is
24 that correct?

25 A No. They've never been separate corporations.

1 Q So just to confirm, our exhibit here, we've got a
2 merger agreement at Exhibit H in which Western Distributing
3 Transportation Corporation is merged into Western
4 Distributing Company. Do you recall that transaction?

5 A I certainly don't recall that at all.

6 Q It was concordant with the merger of Mike
7 Diodosio. Do you remember that transaction, sir?

8 A Boy, you're talking a lot of years ago. That's a
9 name I hadn't heard in a long, long time. And I don't
10 recall what happened at that point in time. So I don't
11 know how to answer your question. At some point in time,
12 we did purchase Mike Diodosio Wholesale. They were out of
13 Pueblo, Colorado, and they were a company similar to
14 ours.

15 Q Understood. So in the '80s, did you and your
16 brother change the voting structure within Western
17 Distributing Company? Specifically, did you create voting
18 and nonvoting shares within WDC?

19 A I remember doing that. I have no idea what year
20 that might be. You could say the '70s, '80s. You could
21 say anything you wanted, and I -- I just remember the event
22 as a result of the tax preparer's suggestion that we --
23 that we create voting and nonvoting stock for possible
24 future estate planning.

25 Q I see. Following the merger, did you establish

1 Western Distributing Transportation Company as a separate
2 trade name under WDC?

3 A I don't know. I don't know when it was done. I
4 mean, we've always been Western Distributing Company. At
5 some point in time, we added a transportation and that
6 division became Western Distributing Transportation. You
7 had said "merger." I don't know what the merger is that
8 you're talking about.

9 Q Understood. So on -- let's shift gears. On
10 January 22nd of 2001, did you establish the Western
11 Beverage Distributing trade name under Colorado law?

12 (Court reporter interrupts.)

13 MR. HAVENS: Colorado law.

14 THE WITNESS: Boy, I mean, that's out of the --
15 out of the blue sky for me. I'm sorry. I -- I don't --
16 we've had Western Distributing trade name -- well, Western
17 Distributing Company -- Western Distributing Co. is a
18 corporate name, exactly. No. Western Distributing Company
19 is a -- is what we've been since 1940-whatever. Trade
20 names have come and gone. Winberg Crankshafts, Western
21 Beverage, Fineline, all those are trade names. They've
22 come and gone over the years. But we've always been
23 Western Distributing Company as a corporate entity.

24 Q (By Mr. Havens) So just to be clear, you don't
25 remember initiating the Western Beverage Distributing trade

1 name?

2 A Something tickles my brain that when we purchased
3 the Miller distribution rights, they wanted us -- they
4 wanted us to rename our company as Miller Distributing.
5 And we didn't want to do that. We didn't want to give up
6 our roots of Western Distributing Company because we had a
7 long success history and we felt it was important for the
8 customers to remember Western Distributing as well as buy
9 Miller beer. So I think at that point in time we settled
10 with Miller Brewing Company to rename the company Western
11 Beverage, and I'm -- I believe that's the incident that
12 you're talking about. Or -- strictly as a trade name.

13 Q Understood. So the Western Distributing Company
14 beverage distribution operations preexisted the trade name
15 and continued to exist after the sale; is that correct?

16 A Yeah. Western Distributing goes back to, like I
17 said, to 1940s and still exists today.

18 Q Understood. So did Western Distributing Company
19 sell beer distribution rights and related assets to High
20 Country Beverage Corporation and Miller Coors, LLC, in
21 2010?

22 A Yeah. That was kind of a funny deal because
23 different people wanted to do different things. But our
24 deal with Coors Brewing Companies was to sell -- to sell
25 all the Miller distribution rights. And for them, they

1 wanted to reassign or resell or whatever. We weren't privy
2 to what that transaction was, but they wanted to reassign
3 to I think there were two or three other wholesalers in
4 their network that -- where we sold the distribution rights
5 to.

6 Q And did you sign those sales documents in your
7 capacity as a CEO of WDC and a shareholder of WDC?

8 A Yes, I believe I did.

9 Q And the bulk of the beer distribution rights at
10 issue in the appeal were acquired prior to the
11 establishment of the Western Beverage Distribution trade
12 name; is that correct?

13 A I can't -- I can't remember that. I don't -- it
14 doesn't sound -- I mean, once again, it's Western
15 Distributing Company.

16 Q Understood. So the Western Distributing Company
17 is the --

18 A Western --

19 Q -- the entity that matters.

20 A I'm sorry.

21 Q Okay. On its original California tax return for
22 the year at issue, did Western Distributing Company and its
23 divisions claim to be engaged in a diversified unitary
24 trade or business?

25 A I don't know what a diversified inventory trade

1 business is, so I don't -- I don't -- and I don't know what
2 the California -- I don't know that. That would be --

3 Q Okay.

4 A -- something that the tax people probably would be
5 more able to answer than myself.

6 Q Okay. So for the years at issue, did WDC employ a
7 single checking account for all of the divisions?

8 A Well, we have one main checking account.

9 Q Okay. And was all division income deposited into
10 that checking account?

11 A Yes.

12 Q And were all expenses, to include the headquarters
13 and division expenses, paid out of that --

14 A Well, let me --

15 Q -- checking account?

16 A Let me back up. That's not a correct answer.
17 They might have -- some of them, because of location or
18 whatever, might transfer into a transfer account. But they
19 ended up into the main account.

20 Q Understood. Did you sign checks on behalf of WDC
21 and its beverage and transportation divisions?

22 A Yes.

23 Q And did the corporate office handle payroll for
24 all of the divisions?

25 A I think almost exclusively, yes. Like I said, I

1 think we -- we tried with one of the divisions at one time
2 to try a separate payroll service. And that didn't work
3 out for long so I don't have much memory about it.

4 Q Okay. You testified that WDC used a broker to
5 purchase insurance for all of the divisions of WDC to
6 secure savings due to the size of the policy; is that
7 correct?

8 A Well, I don't like the way you characterize it,
9 the -- we didn't hire them to do it. We hired them to --
10 to put together a package getting all the necessary
11 coverages for us to look at. Obviously, there's a lot more
12 that goes on there than what we're talking about.

13 Q And was price one of the elements that you
14 considered when judging between these policies, the various
15 offerings that the broker considered?

16 A There's so many things to consider when buying
17 insurance: Deductibles, policy limits, types of coverage,
18 you know. And we're so diversified that it's -- it makes
19 it even more complicated because you have manufacturing
20 concerns, you have installers up on forklifts or bucket
21 trucks hanging decals from airplanes. You have trucks
22 going up and down the road. You have money hauls that --
23 extreme use of insurance. So there's all kinds of -- it's
24 a very, very, very complicated thing, and I think a broker
25 is the right way to go. It's worked out well for us over

1 the years.

2 Q So for the year at issue, WDC purchased a single
3 Travelers policy that covered all divisions; is that
4 correct?

5 A A single what policy?

6 Q A single policy through Travelers insurance.

7 A A single policy -- traveler's insurance? I have
8 no idea what you're talking about. I have no idea what a
9 traveler's policy would be. Are you talking about a
10 personal policy?

11 Q Travelers was the insurance company, sir.

12 A Oh, Travelers -- Travelers Insurance Company. I'm
13 sorry. Travelers -- travelers -- I thought, travelers, I
14 thought my son and I are traveling here. We were
15 travelers. Yeah, Travelers was a huge insurance provider
16 at some point in time. And I couldn't tell you the years,
17 but, yeah. They were -- I don't believe we use them at all
18 today.

19 Q So did WDC's corporate office onboard division
20 employees?

21 A No. Well, each -- each center does their own
22 onboarding. So they hire, they fire, they do the
23 onboarding, they -- they vet, they check references, they
24 do interviews. They do everything into hiring an
25 employee.

1 The only thing they've got to do for corporate
2 when they fill out the payroll for us is check off the
3 boxes was -- you know, did they do this, do they do that.
4 But otherwise, each division did their own.

5 Q So as part of that box-ticking process, has WDC
6 ever employed an employee handbook providing employment
7 policies applicable to all divisions?

8 A Boy, that's a wide open one. We've always had
9 handbooks. And because the divisions are so different,
10 sometimes different divisions had different handbooks. But
11 the main book obviously was filled with the regulations
12 determining factors where -- like the fed EEOC, ADA, all
13 the things that go into today's modern-day employment
14 management have to be adhered to and have to be described
15 and have to -- has to be informed to every employee all the
16 time. That's a lousy answer. I'm sorry, but I'm thinking
17 as I'm going. I hope that helps you.

18 Q So, Mr. Gaines, did you serve as the EEOC
19 representative for WDC and its divisions?

20 A Unfortunately, yes. Ten years of it.

21 Q And as part of that process, were you involved in
22 litigation on behalf of WDC and its divisions?

23 A Yes, I was.

24 Q As part of the employee handbook onboarding
25 process, were employees required, employees of WDC and its

1 divisions, required to sign an acknowledgment of WDC's
2 policies?

3 A I believe in one of the consent decree requests
4 from the EEOC was to inform all the employees -- which we
5 had already done, but they had to sign a piece of paper so
6 that they were informed of things like the ADA policies,
7 discrimination policies, all the -- all the federal
8 mandated stuff that you've got to do in today's world.

9 And it's changing. Every time there's a vote or
10 there's a legislative gathering, the rules change, as --
11 and you -- and you have to change that handbook every
12 single time they change it. If it's applicable to your --
13 your operation, which it normally is.

14 Q And, Mr. Gaines, were you also in charge of
15 arbitration on behalf of WDC and its divisions?

16 A In what period of time and what subject and
17 what -- what are you talking about?

18 Q Sir, we're specifically looking at the taxable
19 year ended 2010.

20 A I have no idea what you're talking about, sir.
21 I'm sorry.

22 Q Understood. Did you and Chris Boggs review
23 purchases made by the divisions?

24 A Well, we reviewed the numbers part especially. I
25 mean, obviously we had -- any time you purchase something

1 you have to -- you have to do some planning, preplanning,
2 guesstimations of revenue, expenses, potential profits plus
3 liabilities that go along with any type of purchase.

4 Q And -- and Western Distributing Company did those
5 sorts of projections?

6 A Yes and no. If a particular division wanted to
7 purchase something, they would do all that. And then they
8 would present their request and their pro forma to Chris or
9 to myself, mostly to Chris, but to verify and -- their
10 intent.

11 Q Okay. So just to confirm, division managers were
12 required to consult WDC executives to ensure there was
13 sufficient cash and plans for division expenses, even if
14 they were made in the regular course of WDC or the
15 division's business?

16 A I think that's correct.

17 Q Okay. In your capacity as CEO of Western
18 Distributing Company, did you sign a consent decree on
19 behalf of WDC and its divisions to settle an Equal
20 Opportunity suit brought by the federal government on
21 behalf of 58 employees of WDC divisions?

22 A Yes, I did.

23 Q And were you involved in the labor litigation
24 cases of Medina vs. Western Distributing Company, Inc.,
25 doing business as Western Transportation Distributing

1 Company and Cisneros vs. Western Distributing Company?

2 A I don't know. You said something in there that
3 confuses me. You said University of Western Distributing
4 Company?

5 Q So -- so the two cases --

6 A Can you re-ask the question, please?

7 Q Of course. The two cases at issue were Medina vs.
8 Western Distributing Company doing business as Western
9 Transportation Distributing Company and Cisneros vs.
10 Western Distributing Company.

11 A Okay. I remember those now.

12 Q Did you submit affidavits in support for removal
13 of those suits to federal court?

14 A Yes, I did.

15 Q And in those affidavits made on behalf of WDC's
16 divisions, did you testify that all operational, executive,
17 administrative, and policymaking decisions are made from
18 WDC's headquarters?

19 A I don't remember what the -- what it was
20 specifically, but I assume you have it and it's -- I mean,
21 we were facing some -- some people here, some ambulance
22 chasers -- I don't want to insult anybody -- but ambulance
23 chasers who had filed multiple -- and they're all
24 California cases, but multiple cases for employment issues
25 against Western Distributing Company.

1 Well, in order to avoid filing multiple cases with
2 the same plaintiff, our lawyers decided that we should kick
3 this thing up to federal court so that one case would
4 decide an issue and not have multiple cases. So in that
5 case, we signed that, whatever you described it as, in
6 order to accomplish that.

7 And we're talking about an employment lawyer that
8 put that together probably who wasn't as knowledgeable
9 about Western Distributing Company as -- as our normal
10 counsel would be. So -- but that's all it was. And by the
11 way, those cases were thrown out, dismissed and never
12 occurred.

13 Q So just to confirm, Mr. Gaines, this is your
14 signed affidavit in those cases; is that correct?

15 MR. ANTOLIN: Which -- which exhibit are you
16 referring to?

17 MR. HAVENS: We're referring to --

18 THE WITNESS: I don't know what I'm --

19 MR. HAVENS: Franchise Tax Board is referring to
20 Exhibits Y and Z specifically. W -- excuse me, W
21 and Y. And we have a copy if you'd like it.

22 MR. ANTOLIN: W, X, Y?

23 MR. HAVENS: Exhibits W and Y, specifically for
24 the Cisneros and Medina litigation.

25 THE WITNESS: Okay. I'm looking at -- what are

1 you referring to?

2 Q (By Mr. Havens) Specifically paragraph 3 of your
3 affidavit, sir.

4 A And what is your question?

5 Q Did you testify that management and administrative
6 functions were located in Denver and that the executive,
7 administrative, and policymaking decisions were all made
8 from the headquarters of WDC?

9 A Yeah, again, I'm -- I'm not a lawyer. But what I
10 was told is that, you know, that the law firm that did
11 this, Fox Rothschild, they handled the -- some of the
12 employee litigation. And they're located out of
13 California. And it was -- that was in April of 2021. So
14 I -- but, you know, it definitely is my signature. It --

15 Q Okay.

16 A It may be a little misleading as far as what
17 you're describing and what I'm thinking.

18 Q Okay. Let's shift gears again. In your
19 affidavit, you testified that you, in your capacity as CEO,
20 identified long-haul trucking as a vertical of WDC's
21 operation. Is --

22 (Court reporter interrupts.)

23 MR. HAVENS: Of course. I'll slow it down.

24 Q (By Mr. Havens) In your affidavit, you testified
25 that, as CEO, you identified long-haul trucking as a

1 vertical of Western Distributing Company's operations in
2 the '70s; is that correct?

3 A Well, you have multiple questions in there. Let's
4 see, in the '70s, I would -- I would say it was a vertical
5 operation. We just had trucks that belonged to Western
6 Distributing Company, and we were basically just a beverage
7 distribution company at the time. And transportation
8 wasn't born and all these -- a lot of these other things
9 weren't born yet.

10 So I would say at that time, yeah, it was
11 vertical, yeah. But then it became, as I testified
12 earlier, it became to the point where it needed to be a
13 separate operation so we separated it both physically and
14 operationally into separate buildings and separate
15 management and separate -- separate everything.

16 Q Okay.

17 A Did that answer your question?

18 Q Yes. So is Western Distributing Company a
19 registered common carrier with the Department of
20 Transportation?

21 (Court reporter interrupts.)

22 MR. HAVENS: Of course.

23 Q (By Mr. Havens) Was Western Distributing Company
24 a registered common carrier with the Department of
25 transportation?

1 A Yeah. You pretty much have to be. DOT rules my
2 life. As a matter of fact, the EEOC claim, which by the
3 way we won, it was because the Department of Transportation
4 wants us to follow certain rules and they -- it's mandated
5 that if these rules aren't followed, the driver can't drive
6 and we can't haul.

7 And the Department of Labor wants us to follow
8 other rules which says that if you can -- that we have to
9 accommodate them, even if they're unable to drive. So we
10 had two conflicting bureaus of the government trying to
11 decide what we should do.

12 And, quite frankly, that's why we won the case,
13 because you can't do that. We can't put a unqualified
14 driver in an 18-wheeler, 80,000 pounds going down the
15 highway impacting other citizens of the United States
16 because they're not qualified.

17 Q Did Western Transportation Company's
18 transportation division -- or, excuse me, Western
19 Distributing Company's transportation division ship Coors
20 beer into California?

21 A Shift core gear in California? Sorry, I --

22 Q Mr. Gaines --

23 A -- didn't understand that.

24 Q -- you talked about the transportation division
25 shipping beer, specifically Coors beer, into California.

1 Is that correct?

2 A What's core gear? Is my transponder not --

3 MR. GUADAGNI: Yeah, it's your translator.

4 THE WITNESS: Oh, it's my translator's -- it's
5 translating something different here. What did you say we
6 shifted in California?

7 Q (By Mr. Havens) Coors beer.

8 A Did we ship Coors beer -- well, that's close,
9 isn't it? I'll get a new one on the way home. Yes, we
10 ship a lot of Coors beer to California. Yes, sir.

11 Q And did the transportation division transport
12 alcoholic beverages from California to Colorado?

13 A Well, you got an open-ended -- we transported a
14 lot of things. Are you talking about for the purpose of
15 Western Distributing Company or are you talking about
16 general customers in -- because we ship beer for all kinds
17 of people --

18 Q Yes, Mr. Gaines --

19 A -- besides Western?

20 Q -- that's -- we're specifically asking for the
21 purposes of Western Beverage and for Western Importers.

22 A Is there a time period you'd like to include on
23 that? Because it's -- it's changed through the years.

24 Q So for 2009 and 2010, sir.

25 A Well, obviously, the -- the records that we have,

1 I know we -- we shipped some wine. I think Sterling said
2 we shipped some wine. I remember there's a small brewery
3 in San Francisco, Anchor Steam, that we shipped some into
4 Colorado with a transportation truck. But those were -- I
5 mean --

6 Q Okay.

7 A Yeah, we did. Okay.

8 Q Did Western Distributing Company's transportation
9 division conduct towing operations under the name of
10 Western Towing and Recovery?

11 A What is the question?

12 Q Did the transportation division conduct towing
13 operations under the trade name Western Towing and
14 Recovery?

15 A Well, we have a few. We have Western Towing. We
16 have Dillon Towing. We're a primary contractor for the
17 State of Colorado, Department of Transportation, and so we
18 have a couple, two, three different names there with a
19 couple, two or three different locations.

20 Q And were the towing operations capable of towing
21 both automotive truck and tractor trailers?

22 A We didn't do a lot and still don't do a lot of
23 automotive towing. We try to steer clear from that
24 business. We do primary large-scale trucking type of
25 towing, equipment moving type of towing. So we'll

1 transport extremely large excavators or forklifts or
2 different things beside large trucks.

3 Q So did the towing operations provide towing
4 services to other divisions of Western Distributing
5 Company?

6 A Well, generally, the way that works, if there's
7 a -- if there's a towing need, usually the state patrol
8 goes to what's called a rotator list. And they call the
9 first one on the list and work down the list until they get
10 somebody agreed to do that. So they're the ones that
11 assign that.

12 We generally are not -- I believe the Colorado
13 towing laws say you can't really go out and -- you can't
14 drive up and down the street looking for a tow. You have
15 to be assigned a tow, either by the owner or by the State
16 or whatever.

17 Q So same question, sir. Did you provide towing
18 services to other divisions of Western Distributing
19 Company?

20 A Well, it's just like all the other decisions, if
21 they were the best provider, low cost and service, then
22 they were given the opportunity to provide the service.

23 Q Understood.

24 A If we could find a towing company to do it
25 cheaper, then that division was obligated to save money

1 and -- and it's happened.

2 Q Did Western Distributing Company also have a
3 maintenance shop under the name Western Truck and Auto
4 Maintenance?

5 A Yes.

6 Q And did Western Truck and Auto Maintenance provide
7 maintenance services to other WDC divisions?

8 A Yes.

9 Q Did Western Truck and Auto Maintenance offer
10 discounted services to employees of WDC and its divisions?

11 A Yes.

12 Q And did Western Beverage offer discounted
13 alcoholic beverages to employees of WDC and its divisions
14 for personal use?

15 A Does Western offer discounted -- we allow the
16 employees to purchase alcoholic beverages one day a
17 month -- I think it's one day a month, Sterling would know
18 better -- at employee prices.

19 Q Understood.

20 MR. HAVENS: No further questions, Judge.

21 ALJ HOSEY: Thank you, Mr. Havens.

22 And thank you, Mr. Gaines. I'm -- or excuse
23 me. Let me take a break now. I think we've been going
24 here for a while. So we're going to take a 15-minute
25 recess and we're going off the record.

1 (Recess taken at 10:58 a.m.)

2 (Session resumed at 11:15 a.m.)

3 ALJ HOSEY: Okay. We are now back on the
4 record.

5 Mr. Antolin, I think we're going to do some
6 questioning of Mr. Gaines, if that works for you.

7 Mr. Gaines, can you hear me?

8 THE WITNESS: It's -- it's coming up. Yeah.

9 ALJ HOSEY: Okay. Take your time. I'm going to
10 start with Judge Johnson.

11 Do you have any questions for Mr. Gaines?

12 ALJ JOHNSON: I have no questions at this
13 time. Thank you.

14 ALJ HOSEY: Thank you.

15 Judge Long, are there any questions for
16 Mr. Gaines?

17 ALJ LONG: Yes, please.

18 I'm going to start off, I am looking at Franchise
19 Tax Board's Exhibit P. I'll give you a moment to get that
20 in front of you. I would just like to confirm my
21 understanding that this shows the single insurance policy
22 for the 2010 year. Is that correct?

23 THE WITNESS: And what was the question? I'm
24 sorry?

25 ALJ LONG: Is it -- is it just one single

1 insurance policy for 2010 for all of the divisions?

2 THE WITNESS: I mean, it doesn't seem possible
3 with as -- as so many different factors that you'd have one
4 policy, unless it's a kind of a -- name in -- of
5 insured. It's got all the different company names. Well,
6 it says it's a general purpose endorsement. I don't know
7 what it means, but it -- it could be what you're saying.

8 ALJ LONG: Okay. Thank you. I just wanted to see
9 if you had any additional context to add. I'll go on to my
10 next question.

11 Let's see. I think this question's actually going
12 to be for Mr. Guadagni, if I may ask you a question.

13 Just to get an idea of a big picture sense, I want
14 to understand if you could estimate roughly how many trucks
15 Western Beverage had versus Western Trucking.

16 MR. GUADAGNI: Well, let's see. I think we said
17 we had 30 to 40 drivers on the beverage side so we would
18 have had roughly about that same amount of equipment, one
19 per driver. So maybe a few spares and things. So probably
20 in the 40 to 50 range in beverage delivery vehicles.

21 Transportation, I can't say I know. Obviously, I
22 wasn't involved in that division at that point in time so
23 it would be tough to give a good answer there.

24 ALJ LONG: All right. Thank you.

25 MR. GUADAGNI: Um-hum.

1 ALJ LONG: And let me just confirm. I should have
2 included this in my question. That's for the 2010 year,
3 roughly 40 to 50 trucks you think?

4 MR. GUADAGNI: That's correct.

5 ALJ LONG: Thank you.

6 MR. GUADAGNI: Um-hum.

7 ALJ LONG: Mr. Gaines, would you happen to know
8 roughly how many trucks Western Trucking had in the 2010
9 year?

10 THE WITNESS: Well, if we separate out the towing,
11 the towing is about twenty -- oh, 28 trucks. If we
12 separate out the armored trucks, there were 23 or 24 of
13 those at the time. The local delivery, we call it regional
14 freight delivery, was 15 trucks. And then the
15 over-the-road long-haul division was about I want to say
16 110-ish at that time.

17 ALJ LONG: All right. Thank you.

18 That concludes my questions.

19 ALJ HOSEY: Thank you, Judge Long.

20 I do have one clarifying question, too, for
21 Mr. Gaines or Mr. Guadagni.

22 Did Western Distributing Company have a corporate
23 advertising or marketing department?

24 MR. GAINES: No.

25 ALJ HOSEY: Okay. Thank you. Easy peasy. I

1 believe that's all the questions that we have from the
2 panel.

3 MR. ANTOLIN: May I please --

4 ALJ HOSEY: Yeah. I was going to say, please, if
5 you wanted to redirect while we have the witnesses here,
6 please go ahead.

7 MR. ANTOLIN: Thank you. I appreciate it.

8

9 REDIRECT EXAMINATION

10 BY MR. ANTOLIN:

11 Q So earlier -- this is for --

12 MR. ANTOLIN: Can you hear me?

13 ALJ HOSEY: (Nodding head).

14 MR. ANTOLIN: Thanks.

15 Q (By Mr. Antolin) Mr. Gaines, so earlier you were
16 asked a question about discounts for employees, and the
17 question asked about discounts for employees and divisions.
18 I want to break that down. Were there discounts provided
19 between divisions for -- to -- on sales to other divisions?
20 In other words, did the divisions give other divisions
21 discounts?

22 A No.

23 Q Did they charge the same rates that they would
24 charge third-party customers?

25 A Yes.

1 Q Did the divisions on occasion give discounts to
2 employees?

3 A Well, I think I mentioned, we gave -- we gave
4 employees an opportunity to buy liquor and wine once a
5 month. They also, employees, had the opportunity to have
6 their car or a neighbor's car -- whoever's car -- repaired
7 at our auto/truck repair shop.

8 So they -- they were allowed -- and they got a --
9 they got an employee discount to have their vehicle fixed
10 there. I think it was like 10 percent or something like
11 that.

12 Q Thank you. As far as purchasing, you testified
13 that each division had the authority and independence to
14 make their own purchasing decisions; is that correct?

15 A Yes.

16 Q And did they -- for everyday purchases, for
17 example inventory or to hire a new employee that would join
18 a division, did they need to have pre-approval from the
19 corporate office?

20 A No.

21 Q When a division wanted to incur a large purchase,
22 say a truck that cost over \$100,000, did they discuss those
23 types of purchases with the corporate office?

24 A Yeah. I guess I said no too quickly on the
25 previous question because when it comes to a very large

1 purchase, our tow trucks cost between 800 a -- \$800,000 to
2 a million dollars a piece. So, obviously, you just don't
3 go out and buy one of those. It has to -- that comes in
4 our yearly -- our yearly planning as to capital
5 expenditures and such which is discussed between the CFO
6 and the division heads, large equipment purchases or
7 abnormal type, you know. The day-to-day stuff, no. But
8 the -- when you get into the big stuff, yes.

9 Q Thank you. Thank you. And earlier you were asked
10 if the transportation division transported Coors beer from
11 Colorado to California. Can you describe what that -- if
12 those transactions had anything to do with Western
13 Beverage?

14 A Absolutely not. We -- we're allowed to bid, just
15 like any company can on moves. Coors usually posts
16 their -- their schedule twice a year. We're allowed to bid
17 on that along with any and every other carrier that wants
18 to. And the -- the loads are awarded to those that have
19 the best price and the -- and the best service.

20 Q Thank you.

21 MR. ANTOLIN: No further questions.

22 ALJ HOSEY: Thank you.

23 Franchise Tax Board, any other questions for the
24 witnesses?

25 MR. HAVENS: No, Judge. No other questions.

1 ALJ HOSEY: Thank you. I'm going to go ahead and
2 check with my panel.

3 Any other questions for the witnesses while
4 they're here? Judge Johnson?

5 ALJ JOHNSON: No further questions. Thank you.

6 ALJ HOSEY: Okay.

7 And Judge Long?

8 ALJ LONG: Yes. I just have one --

9 ALJ HOSEY: Go ahead.

10 ALJ LONG: -- further question, please.

11 Mr. Gaines, this follows up on the question you
12 were just asked by Mr. Antolin. You said that everyday
13 decisions did not require pre-approval but large decisions,
14 like buying a tow truck, would require pre-approval because
15 it's a very expensive purchase. For I think you said there
16 was a little over a hundred over-the-road trucks. Is that
17 the kind of purchase that's expensive enough to where the
18 company would -- the division would have to seek
19 pre-approval?

20 THE WITNESS: That's a -- you've got a couple
21 different areas there. So in our -- in our yearly
22 planning, for example, we know that we go through -- we
23 purchase approximately 30 to 40 new over-the-road trucks a
24 year. So basically, if that's what they've planned for,
25 that's what's in their budget, then they have the

1 opportunity to go ahead and do that. That's not arising
2 above and beyond budget.

3 It gets a little more specialized in my example
4 about the large tow truck only because the dollar amounts
5 all of a sudden jump up quite a bit. And in our cash
6 management of the company, we have to be able to budget for
7 these -- for the -- for those large purchases.

8 ALJ LONG: All right. That's all my
9 questions. Thank you.

10 THE WITNESS: Thank you.

11 ALJ HOSEY: Mr. Antolin, any other redirect?

12 MR. ANTOLIN: No redirect.

13 ALJ HOSEY: Okay. All right. Then I think we're
14 finished with your testimony. I want to thank both of you
15 for being here participating today. We are going to break
16 for today. The hearing will be continued tomorrow at
17 9:00 a.m. We are now off the record.

18 (Proceedings adjourned at 11:27 a.m.)
19
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE

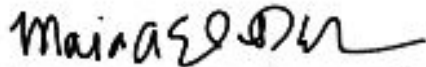
2 STATE OF CALIFORNIA)
3 COUNTY OF SACRAMENTO) ss.

4 I, MARIA ESQUIVEL-PARKINSON, do hereby certify
5 that I am a Certified Shorthand Reporter, and that at
6 the times and places shown I recorded verbatim in
7 shorthand writing all the proceedings in the following
8 described action completely and correctly to the best of
9 my ability:

10 COURT: Office of Tax Appeals
11 Hearing Room
12 400 R Street
13 ALJ: Sara A. Hosey, Lead ALJ
14 CASE: In the Matter of the Appeal of
15 Western Distributing Company
16 DATE: Tuesday, March 17, 2026

17 I further certify that my said shorthand notes
18 have been transcribed into typewriting, and that the
19 foregoing pages 1 through 81 constitute an accurate and
20 complete transcript of all my shorthand writing for the
21 dates and matter specified.

22 IN WITNESS WHEREOF, I have subscribed this
23 certificate at Sacramento, California, on this 17th day
24 of March, 2026.

25 

26 Maria Esquivel-Parkinson
27 CSR No. 10621, RPR

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