

ATTACHMENT 2:  
LESHER COURT DECISION

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STATE OF MICHIGAN.

IN THE TENTH DISTRICT COURT FOR THE COUNTY OF CALHOUN

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. C98-7326

MARTIN LESHER,

Defendant.

PRELIMINARY EXAM

BEFORE THE HONORABLE SAMUEL I. DURHAM, JR., DISTRICT COURT JUDGE

Battle Creek, Michigan - April 15, 1998

APPEARANCES:

For the People

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EXHIBITS: IDENTIFIED RECEIVED

None

1 Battle Creek, Michigan 49014

2 Wednesday, April 15, 1998

3 THE COURT: --C97-6706, this is People of the State of  
4 Michigan versus Martin Leshar who is present with counsel in  
5 this matter, Jack Pulley. The record should reflect that this  
6 matter is set for a motion--actually it's set on a motion to  
7 dismiss an evidentiary hearing on that particular issue.  
8 Justin McCarthy, assistant county prosecuting attorney, is  
9 also present on behalf of the People.

10 All right, I've had a rather lengthy discussion with  
11 counsel concerning this matter. I understand and have  
12 determined that we're gonna have to take some testimony on  
13 this case so how many witnesses do you intend to present at  
14 this time, Mr. McCarthy?

15 MR. MCCARTHY: One at this time, Your Honor.

16 THE COURT: All right. Let's have him sworn and bring  
17 him forward. Are there any preliminary matters, I guess,  
18 before we do this, Mr. McCarthy,

19 MR. MCCARTHY: I don't believe so.

20 THE COURT: Mr. Pulley?

21 MR. PULLEY: Nothing here, Your Honor, thank you.

22 MR. MCCARTHY: Kyle Cruse.

23 THE BAILIFF: Would you raise your right hand? Do you  
24 solemnly swear the testimony you're about to give to be the  
25 truth, so help you God?

1 MR. CRUSE: Please be seated. State your name for the  
2 record, spell you last.

3 THE WITNESS: Kyle Cruse, C-R-U-S-E.

4 THE COURT: Better spell your first name, too.

5 THE WITNESS: K-Y-L-E.

6 KYLE CRUSE

7 called by the People and sworn by the Bailiff; testified:

8 DIRECT EXAMINATION

9 BY MR. MCCARTHY:

10 Q. Good morning, Mr. Cruse. Could you please state how you're  
11 employed?

12 A. I work for the State of Michigan for the Department of  
13 Environmental Quality.

14 Q. And what are your duties with the Department of Environmental  
15 Quality?

16 A. I'm an Environmental Quality Specialist with the title of the  
17 Scrap Tire Program Coordinator.

18 Q. All right. How long have you been so employed with the  
19 department and--

20 A. Well, I've worked for the State for 28 years, for the  
21 Department of Environmental Quality since its inception since  
22 we split from the DNR and I've actually worked in the tire  
23 program since about 1985.

24 Q. Okay. Is it Dr. Cruse or Mr. Cruse?

25 A. Mister.

1 Q. Okay. Thank you. Now, Mr. Cruse, you're familiar with the  
2 Scrap Tire Law in general this would be MCL, Michigan Compiled  
3 Law 324.16901, correct?

4 A. That's correct.

5 Q. And you're familiar with the definitions as within that  
6 statute. Is that correct?

7 A. I believe I'm fairly familiar with that, yes.

8 Q. How did you become familiar with this statute in particular?

9 A. Actually my--my work began in the scrap tire program. I was  
10 trying to find a solution for the problem that we had around  
11 this state--

12 Q. What--

13 A. --with scrap tires.

14 Q. Well, I guess, backing up for a moment, what is that problem  
15 that you had with the State?

16 A. What was occurring was massive accumulation of tire piles  
17 which was resulting in infestation of mosquitos and public  
18 health concerns for the diseases that were carried in those  
19 tire piles by mosquitos and other factors. Some of the  
20 massive tire fires that we've had around the country and in  
21 the--in the state of Michigan, and then some of the financial  
22 responsibility. A lot of these sites were abandoned and we  
23 were returning back to the state, and so this was going on for  
24 a period of time and they were looking for a solution not only  
25 in Michigan, but nationwide trying to solve the problem what

1 we were going to do with all these tire piles.

2 Q. What was your role in trying to resolve this--

3 A. Initially I--

4 Q. --problem?

5 A. --oversaw a study that was contracted by the state of Michigan  
6 to try and determine what was going on, what needed to be done  
7 and what were the recommendations that we should do. Out of  
8 that study that was done by an independent contractor,  
9 regulations, some kind of a form of new regulation other than  
10 just treating these tires as solid waste needed to be  
11 developed.

12 Q. In regard to the statute, did you partake in the drafting of  
13 the statute or--or help in that drafting?

14 A. Yes. It was rather coincidental. At the same time that the  
15 department study indicated some kind of a regulatory scheme  
16 was necessary, a legislator proposed introducing some type of  
17 legislation to represent his client or his constituent and--

18 MR. PULLEY: Your Honor--

19 THE WITNESS: --I was asked to--

20 THE COURT: I'm sorry. Mr. Pulley.

21 MR. PULLEY: I'd like to register an objection to this  
22 line of testimony. It is hearsay without exception. It is  
23 also hearsay being presented by an advocate for a specific  
24 point of view and therefore unreliable hearsay, and I would  
25 suggest that this is not an appropriate line of question for

1 this witness.

2 THE COURT: All right. Any response to that, Mr.  
3 McCarthy?

4 MR. MCCARTHY: Yes, Your Honor, this is an evidentiary  
5 hearing and for that we're--we're presenting this evidence  
6 regarding the legislative intent. I suppose I could qualify  
7 Mr. Cruse as an expert on the legislative intent in this  
8 matter, if that is--

9 THE COURT: There is no such thing as an expert on  
10 legislative intent.

11 MR. MCCARTHY: I guess. So I--I guess if the--the basis  
12 of his testimony, as--as we talked about in chambers prior to  
13 coming out here, was that he was going to testify as to  
14 legislative intent. So I think that necessarily would--would  
15 bring into the fact that there is some hearsay that would have  
16 to be presented by--by this witness to the Court. There is no  
17 legislative intent that we know of that's in any of the  
18 reports.

19 THE COURT: There's nothing in writing from our  
20 legislature concerning the legislative intent, is what you're  
21 telling me?

22 MR. MCCARTHY: Not that I'm aware of.

23 THE COURT: Would you agree with that, Mr. Pulley,  
24 apparently?

25 MR. PULLEY: No, sir, I think there is something in

1 writing, Your Honor, it's called our statute and this is where  
2 if we want to see what the legislator--legislature the state  
3 intended, we'd look to the statute.

4 THE COURT: All right. Well, obviously the Court can  
5 interpret legislative intent from the way they draft statutes.  
6 In fact that's the primary way, but also the Court can look  
7 beyond the statute in situations where there is some question  
8 as to the interpretation of a particular statute or the way it  
9 was done. And I recognize that in this case this witness is  
10 an advocate for one particular side, but that by itself does  
11 not disqualify him. That goes more to the weight, not the  
12 admissibility of his testimony and when we--and since this is  
13 an evidentiary hearing, legislative intent is relevant to this  
14 particular defining by the Court. I'm gonna allow it for that  
15 purpose, but I recognize he's an advocate and I do give it the  
16 proper weight in that regard, but its admissibility, I think,  
17 is--is--is allowed in this particular matter. You may  
18 continue.

19 MR. MCCARTHY: Thank you, Your Honor.

20 BY MR. MCCARTHY:

21 Q. Sir, in--before we broke there what--you were saying, I guess,  
22 that you were contacted by a legislator?

23 A. Well, the department was contacted by a legislator that wanted  
24 to draft some language to help his constituent resolve the  
25 problem of how tires were being collected and where they were

1 going, and how they were being managed. And the department  
2 also had a desire to do that and I was assigned by my  
3 supervisors to assist the legislature in crafting the language  
4 and the legislation that was drafted.

5 Q. Now you say you were assisting the legislature in crafting the  
6 language. What rule did you take?

7 A. Well, actually we met at committee hearings with the different  
8 legislators and their aides, with different constituents that  
9 had input on there with the lawyer for the legislative service  
10 bureau that actually did the legalese crafting of the language  
11 and actually I drafted some of the language myself that I  
12 recommended--

13 Q. Okay.

14 A. --that was approved by the department for this.

15 Q. This took place back in 1987?

16 A. Specific year, I--it could have been anywhere from '87 to '89.  
17 There were several different bills that were introduced that  
18 didn't go anywhere, were reintroduced and the language and the  
19 direction of the law was changed over a period of three or  
20 four years before one was finally passed.

21 Q. I believe the--you indicated to me earlier that this was 1990  
22 when that was finally passed?

23 A. The actual statute that we have today initially, Act 133, was  
24 passed in 1990 became effective January 1 of 1991.

25 Q. Has that statute been amended?

1 A. Yes, several times.

2 Q. In regard to the definition in paragraph J, being scrap tire,  
3 that definition, has that been amended?

4 A. No, the definition for scrap tire was the original.

5 Q. All right. Now in regard to defining that term, scrap tire,  
6 did you look at other states and their legis--their  
7 legislation and their statutes regarding this problem?

8 A. That was one of the items that we looked at. There was a  
9 couple other states that had passed laws and some that were  
10 working on legislation. Minnesota passed the--the first  
11 statute that we have specifically for scrap tires.

12 Q. Okay.

13 A. I think Wisconsin came in.

14 Q. Michigan was probably sixth or seventh down the line.

15 Q. All right. Did you notice, through your review or your  
16 research into those statutes, that there is some enforcement  
17 problems with the way they had defined a scrap tire?

18 A. I had concern for that based on what I'D learned over the four  
19 or five years of being involved with tires and how tires were  
20 collected and how you would possibly determine and regulate  
21 the control, the collection, the transportation, the storage  
22 of tires, and so that particular definition was of major  
23 concern on how we--

24 Q. What were some of the enforcement problems that you saw in the  
25 other states?

1 A. Well, one of the biggest problems was actually deciding what  
2 tires we wanted to regulate and not wanted to regulate.

3 Q. And what exactly did you--did you find as a problem?

4 A. Well, depending on who was looking at the tires, some had  
5 value, some didn't.

6 Q. So in your research into what was gonna be classified as a  
7 scrap tire, there was some states that were using a value  
8 determination of--of what a scrap tire was?

9 A. There was some things along the way which said a tire that has  
10 no more value or has ceased to have value or different  
11 bearing, but that was one of the ones that left a question  
12 about what tires we were really talking about.

13 Q. Okay. What problems did you see with--with using the value  
14 type of definition?

15 A. Well, it'd be virtually impossible for a regulatory agency to  
16 hire enough staff and train staff well enough to go out there  
17 and compete in the tire industry and decide and make a  
18 definitive judgment about what tire should be regulated and  
19 shouldn't be regulated in--

20 Q. What--what were the problems that you faced specifically?

21 A. Well, we had tire piles in the State that existed up to a  
22 million tires or more. And to question the owner of those  
23 tire piles, they all had value. They were being accumulated  
24 on a speculated nature and they suggested that some time in  
25 the future they'd have some value for them. When in fact the

1 majority of 'em really had no value for vehicular use.

2 Q. Given these problems in perspective problems if--if the state  
3 of Michigan had drafted such a statute with that type of  
4 definition and then trying to enforce that, did you come up  
5 with an alternative definition to--

6 A. Yes.

7 Q. --a scrap tire?

8 A. Yes.

9 Q. And what was that definition?

10 A. In fact the definition that's in the statute I believe was my  
11 initial draft and the purpose--

12 MR. MCCARTHY: If I could approach the witness, Your  
13 Honor.

14 THE COURT: Yes.

15 BY MR. MCCARTHY:

16 Q. I'm handing you a copy of the Michigan Compiled Laws and  
17 paragraph J. Could you review that and read that for the  
18 Court?

19 A. J, says, "Scrap tire, means a tire that is no longer being  
20 used for its original intended purpose."

21 Q. Thank you. Focusing on the term, being used, what does that  
22 term, through your discussions and through the crafting of  
23 this legislation, what was that term considered to be  
24 interpreted as?

25 A. What my belief is when it was drafted and what the

1 department's position on it is, that it means that it's on a  
2 steel rim and on the--on a vehicle, actually supporting that  
3 vehicle, and used to transport that vehicle wherever it moves.  
4 In other words, actually in use, on a rim, mounted on a  
5 vehicle.

6 Q. As to new tires, how's that supposed--if I could back up for a  
7 moment, suppose that there's a Goodyear or some other tire  
8 company produces a number of tires and they deliver 'em to  
9 some retailer that sells these tires. Those tires, then, are  
10 not being used, is that correct, at that point in time?

11 A. Well, I would say at that point they're not being used.

12 Q. Okay.

13 A. That's correct.

14 Q. Are they still scrap tires?

15 A. No.

16 Q. Okay. Why not?

17 A. The intent--what was proposed here is that a new tire sitting  
18 in a showroom for sale has obvious value to, I think, anybody  
19 that looks at those. That was not what was being determined  
20 the problem of growing mosquitos, being out in a field  
21 someplace, not creating a fire hazard or a financial  
22 responsibility. And so the way it was looked at to decide was  
23 the tire had to be used first before it fell into the  
24 definition. And so it was put in front of that, that it's no  
25 longer being used, meaning that it had been used at some time

1 in the past, but is not now in use.

2 Q. Okay. So the fact that the--that proceeding, being used, is a  
3 term--or the two terms, no longer being used, that--that was  
4 to indicate that at one time this tired was used for its  
5 intended purpose. It's no longer being used for its intended  
6 purpose if it's not affixed to a wheel and therefore it's a  
7 scrap tire--

8 A. That's correct.

9 Q. --is that a correct statement?

10 A. That's correct.

11 Q. Okay. So, therefore, new tires don't fall within that because  
12 they--they haven't been used previously?

13 A. That's correct.

14 Q. You stated that there was some discussion about placing value  
15 on tires and whether that--whether a tire that was valueless  
16 would be considered scrap, that in fact you noticed that there  
17 were some problems, what about used tire sellers or people  
18 that sell used equipment and some of that used equipment may  
19 be tires. Are they considered to be selling scrap tires or  
20 what--what--how are they--what's the enforcement--what's the  
21 intent of the legislator as far as those individuals?

22 A. It was recognized that some tires that had use, had been used,  
23 may have some value for one purpose or another. It may be to  
24 use on a vehicle. It might be as fuel. It may have some  
25 other purpose from being a plant potter to just about anything

1 that you might see a tire used for that people might use it.  
2 But it still was creating problems for the State in the  
3 accumulation of those and how they were being handled and so  
4 even through it had value, it still was--fell into the  
5 definition of being a scrap tires that we wanted to know who  
6 was hauling it, where it was going, how it was being handled,  
7 and that most importantly that they were managed in compliance  
8 with the mosquito and fire and financial responsibility  
9 things. We wanted to make sure that those things were still  
10 being regulated. The study showed that that needed to be done  
11 and that's kind of where the legislation went.

12 Q. So it's possible that there are some individuals then, as the  
13 statute is now written, enacted, and being enforced, that have  
14 tires that are being sold in commerce, but you still consider  
15 and the department still enforces those as scrap tires then?

16 A. That's correct.

17 Q. Okay. I believe later on in the statute, this is--the statute  
18 was enacted with a series of statutes, sixteen point--or  
19 324.16901 is your definition section of the statute. There's  
20 a later a section of the statute that says, "Retailers that  
21 receive scrap tires must dispose of those scrap tires to a  
22 certified scrap tire disposal," or something to that effect?

23 A. That's correct.

24 Q. What's being used to define that as a scrap tire then? Is--is  
25 that same definition, that same scrap tire definition being

1 used to--in that statute?

2 A. Yes, there's only one definition of a scrap tire in the  
3 statute.

4 Q. It's not being enforced in any other way or should not be  
5 enforced--

6 A. No.

7 Q. --in any other way?

8 A. No.

9 Q. Okay. Thank you.

10 MR. MCCARTHY: At this time I have no further questions.

11 THE COURT: Thank you. Mr. Pulley, you may cross if you  
12 wish.

13 MR. PULLEY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. PULLEY:

16 Q. Mr. Cruse, my name is Jack Pulley. I'm the counsel  
17 representing Mr. Leshar. I won't take a lot of your time, but  
18 I do have a couple of questions. You described at the  
19 beginning of your testimony that the problem Michigan was  
20 facing was the massive accumulation of tire piles that were  
21 burning and creating havens for mosquitos and other disease  
22 vectors, is that correct?

23 A. Yes, I believe that's my statement. Yes.

24 Q. Could you characterize some of these? We had--does the fire  
25 that we had in Kalkaska fit that definition?

1 A. Kalkaska?

2 Q. Last fall I believe it was about a--

3 A. No, we had one in Grand Traverse County. We had one in Clare  
4 County. We had one in Osceola County. I'm not sure of  
5 Kalkaska County.

6 Q. All right. All right. These are hundreds of thousands of  
7 tires though?

8 A. Well those ranged anywhere I believe from a 150,000 to  
9 probably 2 million, plus.

10 Q. All right. Now I'd like to focus--oh, were any of those  
11 tires--were any of those fires characterized by tires being  
12 mounted on wheels and being the majority of the tires in the  
13 pile?

14 A. Well, in fact the one site was an active tire collector that  
15 was grating and sorting tires for resale that were stored  
16 there to be transported off and moved and sold. Some of them  
17 had rims, some of them were stacked around the edge.

18 Q. Do you know--

19 A. All kinds--all kinds burned.

20 Q. I'm--I'm--my question is--perhaps it was a little vague. Were  
21 the majority of those tires mounted on rims?

22 A. I can't answer--

23 Q. Okay.

24 A. --whether the majority were or not. I didn't see the site  
25 specifically at that time. I would suggest that probably, no,

1 they were not.

2 Q. Now you have testified that the new tires that have obvious  
3 value and are in a showroom, are maybe even that they were  
4 received from the manufacturer, even though they are not on a  
5 vehicle and technically would fit the parts of the  
6 definitions, but since they had not originally been on a  
7 vehicle, they would not be considered scrap tires. Is that  
8 correct?

9 A. Because they hadn't been used.

10 Q. That's right. Now I had a dear relative one time who when  
11 they purchased a car, the first thing they do is go down to  
12 the tire shop and have the tires removed and replaced, I  
13 think, with another brand. Now since these tires had been on  
14 a vehicle, is it--my understanding--is it to be my  
15 understanding that under section 902, I believe it is, that  
16 the retailer would be receiving a scrap tire and therefore it  
17 must be disposed, would that be correct?

18 A. It doesn't have--well, what you--I guess I need a  
19 clarification on disposed of?

20 Q. All right. What--what disposal--

21 A. When you said disposal.

22 Q. Would you please offer your definition of the word, disposal,  
23 to the Court?

24 MR. MCCARTHY: I object at this point, Your Honor. I  
25 believe the witness is confused. If counsel could rephrase

1           that.

2           THE COURT: Why don't you rephrase that I think?

3           MR. PULLEY: Certainly.

4 BY MR. PULLEY:

5 Q.    You have testified that you were there as this statute was  
6       being drafted. Let me read to you, section 902A. "A retailer  
7       who receives scrap tires in this State shall dispose of the  
8       scrap tires." My question to you is, as that term, disposed,  
9       is used in that provision, what does it mean?

10 A.   I believe that passed in 1993 as an amendment to the statute  
11       and it goes on to say that he must dispose of those at a  
12       registered collection site, at a landfill, or with a  
13       registered scrap tire hauler. Meaning that they are  
14       regulated, they must be handled in compliance with the law.

15 Q.   And, disposed, means in that context?

16 A.   I believe what it means in that is he has three options for  
17       where those tires may go--

18 Q.   Okay.

19 A.   --to those three options.

20 Q.   He may landfill 'em, or--

21 A.   Take them to--

22 Q.   --dispose of them at a registered scrap tire collection site.

23 A.   That's correct.

24 Q.   Would this dealer have--be in compliance with this law if he  
25       were to take those new tires off my uncle's vehicle and sell

1       them?  Would he be violating that law?

2  A.    No.

3  Q.    No?

4  A.    Not necessarily.

5  Q.    And considering this is--this statute--this provision says, "A  
6       retailer who receives shall dispose," that--how--how could he  
7       not be violating this law?

8  A.    I would suggest that by reselling them that he's not disposing  
9       them, he's putting them back into the marketplace.

10 Q.    So they are not scrap tires then?

11 A.    Yes, they are, but he's not required to be a registered  
12       collection site unless he has over a minimum amount.

13               MR. PULLEY:  May I approach the witness, Your Honor?

14               THE COURT:  Yes.

15 BY MR. PULLEY:

16 Q.    I think there may be a little confusion here.  The provision  
17       that I'm referring to is 902A.

18 A.    Mm-mm.

19 Q.    Would you take a moment and read that, please?

20 A.    Okay.

21 Q.    Thank you.  Now that provision uses the term, shall dispose,  
22       does it not?

23 A.    I believe it does.  Yes.  It says, "He shall dispose."

24 Q.    It does not say, "May dispose," but it says, "Shall."  That's  
25       a mandatory term, is it not, in legislative structure--

1 construction, Mr. Cruse?

2 A. I would suggest that's true.

3 Q. Let me restate my question then. If the retailer who received  
4 my uncle's off a brand-new car, these would be scrap tires and  
5 then he must dispose of them under this provision, is that not  
6 correct?

7 A. I think the--again, we'll have to take a look, and I'm not an  
8 attorney sitting here. Is the mandate that, he shall dispose,  
9 or is the mandate that, he shall dispose at a collection site  
10 or with a registered hauler or with a landfill?

11 Q. Now let me--let me ask--let me ask, would he have the  
12 opportunity to say, these tires that I have received are not  
13 scrap tires, but they're high quality used tires and that I  
14 can sell them in my shop. Would he have that authority or  
15 would he be violating the law if he did that?

16 A. He's not in violation of selling the tires, but they are scrap  
17 tires. They have been used. I'm assuming that the vehicle  
18 was driven there, in your scenario.

19 Q. The vehicle was driven there.

20 A. Okay. So they were on the road. They had been used.

21 Q. And so they would be scrap tires.

22 A. Even though they were high value.

23 Q. Even though they were high value and therefore under this he  
24 has to dispose of them.

25 A. If he dispose of them, he has to do it in three different

1           manners.

2   Q.    But he has an alternative?

3   A.    You just gave an alternative that he could sell them. He's  
4       not in violation for selling a used tire or a scrap tire for  
5       that matter.

6   Q.    So he's not in violation for selling a used tire?

7   A.    Or a scrap tire. Which it's the same.

8   Q.    In a--I believe it was in a previous version of the statute,  
9       Mr. Cruse, there was a provision that required certain work to  
10      be done by the State to develop markets for scrap tires. Do  
11      you remember that provision?

12  A.    There wasn't in the original statute. There was an amendment,  
13      I believe, last year.

14  Q.    Last year.

15  A.    July of '93 I think there was a--

16  Q.    All right.

17  A.    --Last-minute amendment that was stuck in there requiring the  
18      department to do some assistance.

19  Q.    And could you tell the Court what work has been done in this  
20      area to develop those markets?

21  A.    Actually the department, for the last number of years even  
22      before that statute was amended, has assisted any business  
23      company that has wanted to have information. I have been the  
24      major source of working with those industries and agencies and  
25      companies trying to give the best advice we can as to how to--

1 Q. All right. And what type of--  
2 A. --maximize and manage scrap tires.  
3 Q. Thank you. Thank you.  
4 A. And what type of markets have been developed in this area for-  
5 -  
6 Q. Well--  
7 A. --scrap tires?  
8 Q. Okay.  
9 A. We currently in the State, besides the retreading promotional  
10 items that was done on the Clean Michigan Fund a few years ago  
11 trying to promote--  
12 Q. Mm-mm.  
13 A. --the maximized use of retreaded tires trying to take useable  
14 casings and maximize their reuse, looking at that as the  
15 highest in the hierarchy of reuses of tires. Secondly, it  
16 was trying to take tires and grind them back into crumb rubber  
17 and the most--best use would put it back into making new  
18 tires. Grants have been given in the State--5 million dollar  
19 grant to a National Rubber in Flatrock. Currently there is a  
20 scrap tire granulator that in fact does just that. On  
21 schedule, about a million tires this year--  
22 Q. Okay.  
23 A. --they will use.  
24 Q. Are they paying for these scrap tires?  
25 A. No, sir.

1 Q. They're not?

2 A. No, sir. They're charging.

3 Q. They are charging. So in other words, if you have a scrap  
4 tire, you must pay somebody to dispose of it or reuse it?

5 A. I know of nobody in the State or for that matter anywhere else  
6 in the country with the exception of possibly Bias Ply Tires.  
7 They may pay your transportation to get 'em there.

8 Q. And they--

9 A. They don't have a value setting there.

10 Q. Thank you.

11 MR. PULLEY: I have no further questions.

12 JUDGE: Any redirect on this witness?

13 MR. MCCARTHY: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MCCARTHY:

16 Q. Mr. Cruse, in regard to those--it's still possible though that  
17 someone who fancies themselves as a used tire sales--salesman,  
18 salesperson, may want to purchase some tires taken off their  
19 car, tires that would fall under your scrap tire definition?

20 A. Correct.

21 Q. Correct?

22 A. Mm-mm.

23 Q. And still have in their possession, therefore, scrap tires?

24 A. That's correct.

25 Q. Okay.

1 A. That's part of the industry right now.

2 Q. Okay. So in your--in the scenario that was just posed to you  
3 by Mr. Pulley that there--there could be some individuals or  
4 some companies that are buying those tires, those scrap tires,  
5 rather than receiving a fee to collect them?

6 A. My understanding of the question I was asked is, what the  
7 department had done in promoting markets. And I went  
8 immediately to the major markets that we have in the State.  
9 He didn't allow me to get to the fuel users, the 3 or 4  
10 million tire generating plants or power generating plants that  
11 use tires. When we're talking about 9 million tires a year  
12 being generated, I immediately went to the massive markets  
13 that we've tried to make available. Yes, in fact, that's, I  
14 believe, the reason why we have people in the tire business is  
15 because casings have value. I mentioned retreads as one of  
16 the place. There are people that will buy casings because  
17 they have value either as a used tire or as a retread. And  
18 that's part of the industry, part of the reason why they  
19 collect them. Many of them collect them for free. They don't  
20 get paid to take 'em. They take 'em and then they try to sell  
21 'em after the fact.

22 Q. If I can stop you right there then.

23 A. Sure.

24 Q. So it's possible then that--that these tires had value, they  
25 are being collected or somehow held maybe held to be sold or

1 resold or to be re-manufactured or retread and they're still  
2 considered to be scrap tires?

3 A. That's correct.

4 Q. And that--and that is why the term, used, was being used in  
5 the definition? Is that correct, is that part of the--that  
6 was part of the intent so that those tired would also be  
7 included in this scrap tire statute?

8 A. Because those were--because those are mixed into the flow, we  
9 were trying to regulate anything other than what was on a  
10 vehicle or what was new.

11 Q. The statute, that Mr. Pulley read to you regarding the  
12 disposal, do you recall if there's anything within that  
13 statute that said when that disposal had to occur?

14 A. Not for that particular one. And that was defined, I have to  
15 mention that that was specifically towards a retailer which it  
16 has a definition in the statute. We're talking about somebody  
17 that's a seller of new tires. They were given an exemption,  
18 certain exemptions, to allow them to have more scrap tires on  
19 their premises because they did deal in the change over of  
20 tires and used tires and--and so they were given, but they  
21 were also given an added responsibility that they had to track  
22 and keep records on where all those tires went and how many  
23 came in and how--where they went back out, and that included  
24 their tires that they sold as used tires.

25 Q. And once again those types of individuals or those types of

1 companies that may be in that category, those are also  
2 included in 324.16901, isn't that correct, or would you have  
3 to review that?

4 A. Let me see when you're saying 324.16901 which subsection? Are  
5 you talking about the definition, J?

6 Q. Well--

7 THE COURT: You might want him read that so we know what  
8 for --the record what he's talking about.

9 MR. MCCARTHY: Sure.

10 THE WITNESS: Yes.

11 BY MR. MCCARTHY:

12 Q. If you could read the definition.

13 A. The definition of collection site or--

14 Q. Yes, that part there--

15 A. Oh, okay, 16901 subsection C, "Collection site, means a site  
16 other than a landfill, a race course, a feed storage location  
17 that contains either of the following: One or more pieces of  
18 adjacent real property where 500 or more scrap tires are  
19 accumulated that is not associated with a retail operation as  
20 provided in subparagraph 2 or an automotive recycler as  
21 provided in subparagraph 3. Subparagraph 2, says one or more  
22 pieces of adjacent real property where fifteen hundred or more  
23 scrap tires are accumulated if that property is owned or  
24 leased by a person who is a retailer and is not associated  
25 with an automotive recycler as provided for in subparagraph 3.

1 Subparagraph 3, one or more pieces of adjacent real property  
2 where twenty-five more--or more scrap tires are accumulated if  
3 that property is owned or leased by a person who is an  
4 automotive recycler as defined in section 2A of the motor  
5 vehicle code 1949, Public Act 300, MCL 257.2A." That's what  
6 defines a collection site.

7 Q. I believe there's a section on there that defines what a  
8 retailer is.

9 A. Yes. "Retailer, means a person who sells or offers for sale  
10 new, retreaded, or re-manufactured tires to the consumer of  
11 this State."

12 Q. What paragraph is that in?

13 A. It's also 16901, subsection I.

14 Q. Thank you. And, so going back to Mr. Pulley's example and his  
15 reading of the corresponding statutes that he proposed to you,  
16 then, those--there's--those individuals still have scrap tire  
17 on their premises. Correct?

18 A. A retailer?

19 Q. Yes.

20 A. They may, if in fact, they accept them. Normal retail  
21 business, they sell new tires. The customer comes in, they  
22 want you to take off the tires they have on their car and they  
23 sell you new ones, the majority of the industry do take those  
24 tires back from the consumer, normally charge them a fee for  
25 doing that. At that point they've taken the responsibility

1 for a scrap tire.

2 Q. Okay. Thank you.

3 MR. MCCARTHY: I have no further questions.

4 THE COURT: Is there any recross on this witness?

5 MR. PULLEY: One moment, Your Honor. No further cross,  
6 Your Honor.

7 THE COURT: All right. I just have one question for you.

8 THE WITNESS: Yes, sir.

9 THE COURT: This law has been in effect for some number  
10 of years.

11 THE WITNESS: Mm-mm.

12 THE COURT: It's your--you've obviously been involved in  
13 numerous cases. Have you been involved in any court in which  
14 there has been an interpretation made on this issue?

15 THE WITNESS: On the definition of scrap tires?

16 THE COURT: Yes. Has it ever been raised?

17 THE WITNESS: Yes. It's been raised, but not in a court  
18 situation.

19 THE COURT: I mean a court interpretation--

20 THE WITNESS: No.

21 THE COURT: --of it? In any--

22 THE WITNESS: No court.

23 THE COURT: In all these years, no one has ever raised  
24 the issue?

25 THE WITNESS: Not in a court, no, sir.

1 THE COURT: All right. How many prosecutions have there  
2 been for the Scrap Tire Act, would you say?

3 THE WITNESS: The Scrap Tire Act? I don't--I can't  
4 answer the--how many hundred criminal violation under 169,  
5 plus numerous attorney lawsuits for violations of 115 that  
6 relate to tire piles.

7 THE COURT: All right. If there's nothing further, you  
8 can step down. Thank you very much.

9 THE WITNESS: Yes, sir.

10 THE COURT: Did you wish to offer any other testimony for  
11 purposes of the hearing?

12 MR. MCCARTHY: No, Your Honor.

13 THE COURT: All right, Mr. Pulley, you wanted to offer  
14 some testimony, I believe?

15 MR. PULLEY: Yes, I would like to call Mr. Leshar to the  
16 stand, Your Honor.

17 THE COURT: All right, have him step forward.

18 THE BAILIFF: Turn around and raise your right hand for  
19 me, please. Do you solemnly swear or affirm the testimony  
20 you're about to give this Court's the truth, the whole truth,  
21 and nothing but the truth, so help you God?

22 MR. LESHER: Yes, I do.

23 THE COURT: Spell it.

24 MARTIN LESHER

25 called by the Defense and sworn by the Bailiff; testified:

DIRECT EXAMINATION

1

2 BY MR. PULLEY:

3 Q. Please state your name and address for the court?

4 A. My name is Martin Leshner. I live in Bellevue, Michigan.

5 Q. And how long have you lived there?

6 A. Since 1969.

7 Q. And how old are--

8 A. Yes, '69.

9 Q. Yeah. And how old are you, sir?

10 A. I'm 59.

11 Q. Fifty-nine. When you moved to Bellevue, were you looking for  
12 work?

13 A. I had a job at the time that I moved to Bellevue.

14 Q. Was that--was that job with General Motors?

15 A. Yes, sir.

16 Q. And how long did you work there?

17 A. Twenty-seven years.

18 Q. And in what type of work did you do there?

19 A. I was a mechanic for industrial equipment.

20 Q. Did you have a business on the side, also?

21 A. Yes, sir.

22 Q. Would you please describe that for the Court?

23 A. I bought and sold used farm machinery.

24 Q. And did that used farm machinery include tires?

25 A. Yes, sir.

1 Q. And in the trade, are you referred to as the Trading Dutchman?

2 A. Yes, sir.

3 Q. And how long have you had that name--nickname?

4 A. Thirty-five years.

5 Q. All right. Is your business a growing and prosperous one or

6 one that is in decline?

7 A. I would determine it as one in decline.

8 Q. And why would that be?

9 A. Well, the farming industry has changed dramatically in the

10 last ten, twelve years, fifteen years.

11 Q. And do you expect to retire from this business in the near

12 future?

13 A. Very near future.

14 Q. All right. Is your home also located on your site?

15 A. Yes.

16 Q. All right. And how big is that site of operation? How many

17 acres do you have?

18 A. I have a total of 19 acres.

19 Q. All right. In gross terms, how much money did you receive

20 last year on the sale of used tires--an estimate if you would?

21 A. I'd say between 5,000 and 10,000.

22 Q. All right. And how do you customers use these tires?

23 A. Well, for example, a guy has a used farm machinery and he

24 comes there, he either needs a wheel that mighta rotted out or

25 he needs a tire to fit a wheel that he already has. He

1 doesn't want to purchase a new tire because it's a machine  
2 that don't get used that much.

3 Q. I see. So is he using the tire in the same way that it was  
4 manufactured--for the manufacturer's purpose, the original  
5 purpose?

6 A. Well, the original purpose it might have been on a automotive-  
7 -automobile.

8 Q. All right. But--

9 A. But somewhere down the line it had been put on a machine, but  
10 it's been on a machine when it come into my place.

11 Q. All right. But he's not using it, grinding it up and using it  
12 for fill or using it--

13 A. No.

14 Q. --or using it for--

15 A. No.

16 Q. --fuel?

17 A. No, he comes in to purchase it to use as--

18 Q. All right.

19 A. --a tire.

20 Q. How do you get these tires?

21 A. Well, we went through--as you know, we went through an  
22 intensive oh, I would say downsizing with machinery for--  
23 because of the county's regulations and so on and so forth, so  
24 we scraped down about six--

25 Q. Oh, excuse me. Excuse me, I asked--I must have misstated--my

1 questions is, how do you obtain the tires in the first place?

2 A. On machinery.

3 Q. On machinery? And do you go out and buy used tires an  
4 auction?

5 A. Mostly tractor tires.

6 Q. Mostly tractor tires? Could you provide just an estimate of  
7 the range of value, let's say, starting with a set of dualies  
8 for a tractor, what that would sell for from your lot down to  
9 some of your other tires?

10 A. Again that--that's depending on the season. Now--

11 Q. Assume the best season.

12 A. Okay. The best season it would be right now when they're  
13 going out to spring plowing or spring fitting of the ground  
14 and it would be--especially a year like this year would have a  
15 call for duals and they could range for from \$250 to \$700.

16 Q. For a set for dual tract--

17 A. For a set of duals.

18 Q. All right. And these are the tires that the DEQ want you to  
19 consider as scrap tires?

20 A. As scrap tires.

21 Q. How many tires do you have on your site right now?

22 A. I would say somewhere around 2,000.

23 Q. All right. And do you have any scrap tires that have no value  
24 on your site?

25 A. Yes, there's some there that does not have any value.

1 Q. And how many would you estimate those to be?  
2 A. I would say probably eight, 10 percent.  
3 Q. So somewhere around 200 to 300--  
4 A. Two hundred.  
5 Q. --tires?  
6 A. Two hundred, three hundred.  
7 Q. All right. Do you--all right. What do you do--what have you  
8 done with scrap--these scrap tires that you cannot sell?  
9 A. Well, I had taken some to a scrap yard and they charged me  
10 for--because they were on an axle, let's say for example, and  
11 I got rid of several that way. I had two semis come in and--  
12 and remove 'em.  
13 Q. And what did you pay to have those truckloads of tires  
14 removed?  
15 A. I think it was right around--they amounted to like a dollar a  
16 piece.  
17 Q. So you had to pay to get rid of these--  
18 A. Right.  
19 Q. --tires?  
20 A. Right.  
21 Q. And right now if you had to get rid of a tractor tire, what  
22 would it cost you to--to do that?  
23 A. I think the going rate of a tractor tire is around \$25.  
24 Q. So if you were out purchasing equipment and/or tires, would  
25 you buy scrap tires?

1 A. I never have, sir.

2 Q. Have you ever taken scrap tires from people who say, "Here,  
3 here is some money and take my tires? You get rid of them and  
4 I'll give you some money?"

5 A. I have never done that.

6 Q. In that 30 years, you have never engaged in that type of--

7 A. No.

8 Q. --scrap tire business?

9 A. No, sir.

10 Q. In your mind, how would you distinguish between a scrap tire  
11 and a used tire?

12 A. Well, a scrap tire in my definition would be a tire that has  
13 no use, period.

14 Q. Would it have any value?

15 A. In a case of grinding it up and using it for landfill or  
16 something like that, I would say--

17 Q. All right.

18 A. --as far as I'm concerned, no.

19 Q. But you do have and--and have obtained value for the tires  
20 that you market?

21 A. Right.

22 Q. All right.

23 MR. PULLEY: I have no further questions at this time,  
24 Your Honor.

25 THE COURT: Any cross for this witness?

1 MR. MCCARTHY: Just briefly, Your Honor.

2 THE COURT: All right, Mr. McCarthy.

3 CROSS-EXAMINATION

4 BY MR. MCCARTHY:

5 Q. Sir, what is the term, scraped out, mean to you?

6 A. Well, let's say we have a--a machine--let's say a combine. It  
7 has no more value. We--we cut it up and take it to a scrap  
8 yard. We take the tires off and the rims and tires have  
9 value, but the rest--maybe the motor if it had a motor, if,  
10 you know, that might have a value. The rest of it is just  
11 scrap.

12 Q. Okay. So--

13 A. It's obsolete.

14 Q. And that would include the tires on it?

15 A. No, the tires would not--there--there's still people that  
16 would use the tires sooner than buy new.

17 Q. You'd agree with me, though, that there are some of those  
18 tires that just have no--no treads. They can no longer be  
19 used, though, is that correct?

20 A. In what way are you--

21 Q. Well--

22 A. --suggesting?

23 Q. --some of the tires that you receive on those machinery when  
24 you say you scrap out a machine, a farm implement or some type  
25 of machine--

1 A. As long as they hold air and on a rim, I would say they had  
2 value.

3 Q. They had value, but could they be used as a tire again?

4 A. Oh, yes. I mean, it don't have to have tread to go on plow,  
5 for example.

6 Q. You'd agree with me then that they were used at one time,  
7 those tires?

8 A. Oh, yes.

9 Q. Okay. And you'd agree with me that far as those tires are  
10 concerned, they're no longer being used on that particular  
11 farm implement, correct?

12 A. Right, sir.

13 Q. Or machine. And you would also agree with me then that at  
14 that particular point in time when you scrap out one of those  
15 pieces of machinery, that you're talking off those tires,  
16 storing or taking 'em off that machinery at that point in  
17 time, correct?

18 A. Right, sir.

19 Q. And that machine is no longer running down the road, is that  
20 right?

21 A. It's not no longer in the field, yes.

22 Q. Okay. Or in the field, excuse me, thank you. At that  
23 particular point in time that tire isn't being used for its  
24 intended purpose then is it?

25 A. No, if it is not on the machine and I don't have it sold, it's

1 not being used. Correct.

2 Q. Thank you.

3 MR. MCCARTHY: I have no further questions.

4 THE COURT: Anything further, Mr. Pulley?

5 MR. PULLEY: Yes. I'd like just to follow up on that.

6 REDIRECT EXAMINATION

7 BY MR. PULLEY:

8 Q. While that tire that is--you are holding for sale is not being  
9 used, your customer will not--will use it, will he not, in its  
10 intended purpose?

11 A. That's why I have it.

12 Q. That's the only reason--

13 A. Right.

14 Q. --that you have it?

15 A. Right.

16 Q. --you don't--thank you.

17 A. Let's say for example that it's on a six-bolt rim. That same  
18 six-bolt rim can fit a multitude of farm machinery as long as  
19 it has six-bolt rim, six-bolt lugs. It could be--come off the  
20 back end of a steer axle on the combine, but it can be put on  
21 the furrow of a plow.

22 Q. I got you.

23 A. It still has a six-bolt.

24 Q. I'd like to ask one other question about rims. You have heard  
25 Mr. Cruse testify about the mosquito problems caused and I

1 guess they breed in the water that a scrap tire may hold. Now  
2 many of your tires have rims--rims on them, correct?

3 A. Majority of 'em.

4 Q. Majority of that.

5 A. That I do not have under cover.

6 Q. And therefore the water that may be in them is not as  
7 accessible to mosquitos for breeding purposes, are they?

8 A. Well, if it's on the rim, it don't collect water.

9 Q. Okay. Thank you very much.

10 THE COURT: Anything further?

11 MR. MCCARTHY: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MCCARTHY:

14 Q. You said a majority of your tires have rims on them, is that  
15 correct?

16 MR. MCCARTHY: If I may approach the witness, Your Honor?

17 THE COURT: Yes.

18 BY MR. MCCARTHY:

19 Q. I'm handing you People's Proposed number two, would you  
20 recognize that area that's depicted in that exhibit?

21 A. Yes.

22 Q. And what area is that?

23 A. That is bermed area in the corner lot.

24 Q. Do those--do those--and those--that bermed area contains a  
25 number of tires, does it not?

1 A. It--repeat that?

2 Q. I'm sorry, that bremed area contains a number of tires?

3 A. Right.

4 Q. And those tires, do they have rims on them?

5 A. A lot of 'em do, yes.

6 Q. A lot of them do?

7 A. Right. But the majority don't.

8 Q. The majority don't.

9 A. Right.

10 Q. I'm handing you what's been marked as People's Proposed  
11 Exhibit number one. That is a--that is a folder containing a  
12 number of pictures in side that. Do you recognize areas that  
13 area contained in those pictures?

14 A. Yes.

15 Q. And could you thumb through most of those pictures?

16 MR. PULLEY: Your Honor, I'm going to object to these  
17 photographs, as I understand that they were taken this week  
18 out at Mr. Leshner's place, but they have not been offered into  
19 evidence. They have not been authenticated and there has been  
20 no representation that they are representative of his facility  
21 and not simply localized photo shots. I don't think they're  
22 accurate.

23 THE COURT: What's the relevancy of whether they're on  
24 rims or not on the rims in this case?

25 MR. MCCARTHY: I believe that is the contention of Mr.

1 Pulley, his interpretation of the statute was they're on rims,  
2 and therefore they're scrap.

3 THE COURT: That's not his interpretation. Whether it  
4 has rims or not have rims, it's not his interpretation. His  
5 interpretation, as I understand it is, they're offered for  
6 sale to someone in the future whether they had rims or not,  
7 correct, Mr. Pulley?

8 MR. PULLEY: Yes. If I may--

9 THE COURT: So that's not relevant whether they have rims  
10 or not have rims.

11 MR. MCCARTHY: Correct, Your Honor, but through our  
12 discussion--through I believe his brief have part of his  
13 circumstantial evidence regarding whether they're used for  
14 sale, that sort of thing, is that they had rims on those  
15 wheels or in those wheels. I believe--according to his brief  
16 that his argument is that these are offered for sale and  
17 further corroborative evidence of that is that they have rims  
18 within those wheels.

19 THE COURT: All right, well, I understand what you're  
20 saying.

21 MR. PULLEY: If, Your Honor, if I may.

22 THE COURT: Yes, Mr. Pulley.

23 MR. PULLEY: The reason that I offer, I think, the  
24 evidence of rims are--is important in this case in a--in a  
25 small way is that they--a rimmed tire does not create the

1 environmental habitat for mosquitos that an open tire does.  
2 And therefore it--in my--it is our contention that it does not  
3 present the same environmental risk and disease vector habitat  
4 that was the originally--original problem that Mr. Cruse  
5 referred to.

6 THE COURT: Well that's certainly factually speaking,  
7 probably true. There are, of course, as I understand the  
8 testimony, are other reasons why we don't allow tires to be  
9 piled up besides mosquitos. They certainly can still be  
10 burned equally with rims or not rims on 'em. I don't frankly  
11 find it to be relevant. So I'll exclude it for that reason.  
12 Let's move on to something more relevant.

13 MR. MCCARTHY: Thank you. I have no further questions  
14 then.

15 THE COURT: All right. Mr. Pulley, anything further?

16 MR. PULLEY: I do not, Your Honor.

17 THE COURT: All right. All right, well, I guess--you can  
18 step down. Thank you very much. All right, well, that will  
19 conclude the evidentiary hearing in this matter on a motion to  
20 dismiss. All right, I'll take arguments at this time if you'd  
21 like to make an argument, Mr. McCarthy?

22 MR. MCCARTHY: Thank you, Your Honor. I think, Your  
23 Honor, keep it very brief, what we're discussing here is  
24 whether or not Mr. Leshner--the ultimate question is whether or  
25 not Mr. Leshner, as a matter of law, comes within the

1 definition of being a person who is collecting these scrap  
2 tires. And within that question is, what is a scrap tire?  
3 The definition of 324.16901, that being from the Michigan  
4 Compiled Laws is that a scrap tire in paragraph J is a tire  
5 that means--that is no longer being used for it's intended  
6 purpose. A scrap tire does not include a vehicle support  
7 stand. Your Honor, the People have presented the testimony of  
8 Mr. Kyle Cruse who is with the Department of Environmental  
9 Quality. He worked on this very statute and in fact--

10 THE COURT: Before you proceed with that, I knew I had a  
11 question for him. I forgot to ask it. If he's able to tell  
12 me what a vehicle support stand is.

13 MR. CRUSE: Yes, Your Honor. It's defined--

14 JUDGE: You're still under oath, you can testify from  
15 there.

16 MR. CRUSE: Okay. It's defined later on in the  
17 definitions as what it is. It's a piece of equipment used by  
18 many of the auto salvage dealers where they take a tire, mount  
19 it on the rim inflate it with air and then mount a second  
20 steel wheel on top of it and they use that to support their  
21 used cars or their wrecked cars that they're salvaging and  
22 taking parts off so that the cars don't sit down in the mud.  
23 This is something that the auto recyclers came in and wanted a  
24 special amendment to what a scrap tire was so that they didn't  
25 have to count those in their collection site numbers.

1 Q. Can you describe what exactly it looks like?

2 A. It is a wheel, steel wheel with a tire mounted on it,  
3 inflated, and then a second wheel or a rim standing on top of  
4 it, attached on top, and then the--the axles of the car  
5 actually sit in those. So it sits on the ground. The tire  
6 sits flat on the ground and the steel rim sits above it and  
7 they use that as mounting platform just to hold a wrecked car  
8 up on top of.

9 THE COURT: What do they do with the car? They remove  
10 the wheels off the car

11 MR. CRUSE: There are no wheels on the car. They take--  
12 so they don't--don't have to have--leave the wheels on the  
13 car. It's just--the vehicle there, it's waiting for somebody  
14 to come along and say hey, I need a part of a 1957 Chevy and  
15 they can go out there and what it does, it keeps 'em up out of  
16 the grass, keeps 'em up off the ground.

17 THE COURT: So there are four of these on every vehicle?

18 MR. CRUSE: In many of the salvage yards, the bigger  
19 salvage yards, they're not really on the vehicle. They sit on  
20 the ground and it's just a platform for the car to sit on top  
21 of.

22 THE COURT: Well there's four separate vehicle support  
23 stands or are there just two?

24 MR. CRUSE: Yeah, four. Four.

25 THE COURT: There's four.

1 MR. CRUSE: Yeah, one under each corner.

2 THE COURT: Okay. That makes some sense. Any--do you  
3 have any questions about that? I was just curious. I was  
4 gonna ask you that and forgot. All right, you can continue.  
5 Sorry.

6 MR. MCCARTHY: Thank you, Your Honor. In regard to this  
7 statute then, Your Honor, it appears that Mr. Leshar does fall  
8 within the statute. In fact he admitted that he has tires  
9 that are--at that point in time that are being--that were used  
10 in the past. They are no longer attached to farm equipment or  
11 other types of machinery and if they're no longer being used  
12 at that point in time and that they are sitting on his  
13 collection site.

14 Your Honor, the testimony has been from Mr. Cruse, is  
15 that is that there is definitely a concerted effort by the  
16 State legislature to define a scrap tire as being something  
17 that is no longer being used rather than something that has  
18 value. And as Mr. Cruse has testified, that there are many  
19 collection areas that may have tires and do have tires that  
20 are sold in commerce. But the fact is for the enforcement  
21 capability of the Department of Natural Resources now the  
22 Department of Environmental Quality for them to be able to  
23 enforce this to effectuate the enforcement regarding the  
24 disease potential of scrap tires, regarding the potential  
25 fires and the fire fighting capabilities, and means of

1 fighting a fire, and means of separating tires in such a way  
2 so that there is not a complete inferno of a million tires, in  
3 order to that, Your Honor, the State legislature has enacted  
4 this statute defining scrap tire in the terms of use, not in  
5 the terms of value, not in the terms of whether they're sold  
6 in commerce, not in the terms of whether they can be recycled  
7 again, but in terms of use. And so, therefore, under the  
8 statute as it is on the plain meaning of the statute in it's  
9 very words, is that it's whether there's a use of that tire  
10 for its intended purpose. And obviously the obvious intended  
11 purpose of a tire is to propel something--it's to support a  
12 vehicle and propel it down the road--or not propel it, but  
13 allow it to roll down the road or in a field or roll wherever  
14 a vehicle may travel. That's the obvious intended use. That  
15 the intended purpose of a tire. It's--although there is a  
16 vehicle support stand use to that tire, but there--the obvious  
17 intended--original intended purpose of that tire is to roll  
18 down the--down the highway or in--in a field. The next part  
19 of that statute it says that it's being used. It's gotta be  
20 on a--on a vehicle. It's gotta be attached to some vehicle,  
21 some machinery, and being used in--in that manner. And the  
22 term, no longer, as Mr. Cruse pointed out, no longer being  
23 used, implies that that tire at one time was used. So that  
24 exempts the new tires that come rolling off the Goodyear or  
25 the Firestone or the tire manufacturer line. They are not

1 being used. They are being manufactured. They are then  
2 transported to a place that sells tires or a automobile  
3 company. And at that point in time, they are attached and  
4 then sold in commerce and they're being sold, they haven't  
5 been used yet, they are awaiting to be used. So the tire  
6 statute is very clear then that it is no longer being used.  
7 In other words, it was used in the past. We're talking about  
8 used tires. And that they're no longer being used for the  
9 intended purpose. That is rolling down the road, attached to  
10 some vehicle, attached to some other type of machinery, used  
11 in that intended purpose whether it be a carnival machine or  
12 what have you.

13 So therefore, Your Honor, the--the statute is very clear  
14 what a scrap tire is. The question then becomes, does it  
15 apply to Martin Leshar. Now you've heard the testimony that  
16 from Martin Leshar that he collects these tires. He buys  
17 these tires. He then sells these tires. That may be the  
18 case. The question is, does he have scrap tires? And does--  
19 and therefore does the statutes apply to him in regard to how  
20 one maintains scrap tires or how one sells scrap tires or how  
21 one holds scrap tires on a collection site. And the simple  
22 fact is, is that they aren't being used and you--you have  
23 testimony to that effect. So therefore, Your Honor, I'd state  
24 for the Court that the--the meaning of the scrap tire statute  
25 is very clear. You have someone who has worked on this

1 statute and drafted much of the legislation and indicates what  
2 a scrap tire is and what it was intend--and how this statute  
3 was intended to be interpreted, how it was intended to be  
4 enforced, and how--how it's written. And based upon that,  
5 Your Honor, I'd ask that this Court dismiss the motion to  
6 dismiss and deny it.

7 THE COURT: Thank you. Mr. Pulley.

8 MR. PULLEY: Thank you, Your Honor. Mr. McCarthy and I  
9 must have heard different testimonies because I think the  
10 statute is also clear, but I think it's clear in that it  
11 excludes Mr. Leshner's operation. The statute says that a  
12 scrap tire is defined as one that is no longer being used.  
13 And if you will recall Mr. Cruse's testimony he made the  
14 statement, towards the end when he was talking about markets,  
15 the scrap tires have no value. This is clearly the intent of  
16 the Michigan legislature when it passed this law in trying to  
17 address the fires, the terrible fires that we've had across  
18 this state in piles of hundreds of thousands of scrap tires.  
19 I think it's also clear because if you look at other  
20 provisions in the statute, the ones that I brought to Mr.  
21 Cruse's attention that says, a retailer who receives scrap  
22 tires, and you heard the analogy of my uncle going to trade in  
23 his--according to the statute, he must dispose of those tires  
24 and we all know what the word dispose of means and--but Mr.  
25 Cruse testified, oh, he could sell them, but they would be

1 scrap tires. That's not consistent with the statute because  
2 the statute says they must be disposed of. Selling is not a--  
3 a method of disposal. I don't care how far one tries to  
4 stretch the English language. So Mr. Lesher has been at his  
5 location for many, many years. He purchases equipment with  
6 tires and he resells them for their original intended purpose.  
7 And over those period of times he has had accumulated some  
8 scrap tires which he has either bermed, put in his bermed area  
9 or he has shipped off his site, in truckload quantities, over  
10 the last five years or more. These are scrap tires. The  
11 tires that he sells to his customers are not scrap tires. If  
12 the Michigan legislature wanted to cover a used tire dealer,  
13 they would have said so. There's no great mystery and--or no  
14 great reason why they omitted the term, used, except that they  
15 didn't want to cover it. And they have had three  
16 opportunities to amend the statute if this was really a  
17 problem. And I'd also suggest to you, to this Court, that  
18 this matter has been in front of the DEQ, I believe, since  
19 1991. And I personally would like to express my appreciation  
20 for the willingness of the DEQ to talk with Mr. Lesher and me  
21 about this and--but this long period of time tends to suggest  
22 that this isn't a very high priority and we agree with that  
23 and the reason it's not a--it's not a high priority is that  
24 really technically it isn't within the statute.

25 I'd like to end with this thought, Your Honor, an element

1 of our law right from the time of the Constitution was that  
2 laws are to be written so those who are subject to them can  
3 read them and understand their meaning. In this situation, it  
4 is clear what a scrap tire is and what a used tire is. And  
5 for us to, in this courtroom, to come up with a different  
6 definition is contrary to that fundamental purpose of our laws  
7 and that is to give a warning of what is proscribed conduct  
8 and what is not. We thank you for your time.

9 THE COURT: Mr. Pulley, thank you. Any further  
10 argument?

11 MR. MCCARTHY: No, Your Honor.

12 THE COURT: All right, well, I've listened to the  
13 testimony obviously of Mr. Cruse and of Mr. Leshar and  
14 ultimately the Court has to decide what the legislature  
15 intended when they drafted this particular statute and the  
16 operative words of course is the issue of whether or not what  
17 Mr. Leshar is doing falls within the definition of--of scrap  
18 tire. That definition is in the statute. Because it's in the  
19 statute, the Court must give it its--the Court must assume the  
20 legislature drafted it, must assume that the legislature knew  
21 what it was doing when it used the words as it used 'em. The  
22 definition as I understand it is, that a tire that is--a scrap  
23 tire is defined as a tire that is no longer being used for its  
24 original intended purpose. I've listened to the testimony of  
25 Mr. Cruse and his interpretation. Apparently he either

1 drafted it or was--in fact I think he said he drafted it, the  
2 original and it apparently hasn't been changed since day one.  
3 And surprisingly no one's ever addressed that issue in this  
4 State which I find somewhat unusual that if it were such a  
5 problem that it would have certainly been addressed by some  
6 court at some point, but I guess there's always a first time  
7 for everything. Now obviously I must assume the legislature  
8 meant what it said. Sometimes it, however, drafts language  
9 that they think that they mean what they say and it's  
10 difficult for a court to interpret it later. The Court is  
11 required, unless it's clear meaning is obvious in the language  
12 to consider legislative intent. The only testimony we have in  
13 that regard is Mr. Cruse apparently participated, in fact,  
14 drafted the language. I can't ignore that or obviously he is  
15 a part of the enforcement agency and I'll note parenthetically  
16 that that's not unusual for the enforcement agency to be the  
17 group that drafts legislation in this state. That's--to  
18 discount his testimony because he happens to be one of the  
19 people required to enforce it is--is something I'm not going  
20 to do since I do know that in many instances it's the actual  
21 agencies that end up asking for legislation in fact  
22 participate in it and often draft it. His interpretation is  
23 an interesting interpretation. Frankly in our earlier  
24 discussions in counsel chambers we didn't really dissect it  
25 that way and I've considered it very carefully as to what he

1 said about the situation. I'll note that his testimony is  
2 only important insofar as it leave or gives the Court some  
3 opinion or gives the Court some insight into what the  
4 legislature meant. His opinion is merely his own opinion and  
5 I would note that I'm not accepting his opinion in the classic  
6 sense of I agree what he said. It's only offered for purposes  
7 of determining legislative intent. I have to determine  
8 legislative intent from the language used and--and also from  
9 the testimony that he gave in terms of what the legislature  
10 intended, but primarily I'm looking at the language itself.  
11 Now I cannot ignore some words or emphasize other words and I  
12 note that the operative words are--are interesting in that the  
13 words, no longer, means something to the legislature. They  
14 put that in there for a reason. They obviously, being used,  
15 is also operative words that meant something to the  
16 legislature and, original intended purpose, also meant  
17 something. I think it's clear that the original intended  
18 purpose of a--of a tire obviously is to allow the propulsion  
19 of something down, I guess, to be more precise it allows  
20 movement of something. That's what tires are for since day  
21 when someone came up with the original tire. It doesn't  
22 matter if it's farm machinery, or whether it's a go cart, or  
23 whether it's an automobile. Clearly the term, tire, involves  
24 anything basically that--that allows movement of something  
25 else. Now whether it's two tires like on a motorcycle or four

1 on a vehicle. It is irrelevant. So it's clear that the  
2 original intended purpose is to allow movement of something.  
3 The other operative language of being used literally means  
4 being used at the time that whatever it is the tire in this  
5 case is being looked at. So it's clear to me that, being  
6 used, means what is that tire being used for at the time that  
7 you literally are looking at it, not what is contemplated in  
8 the future. I don't think, being used, can be interpreted in  
9 any other way. No longer, I hadn't thought of that, but Mr.  
10 Cruse has indicated the language was put in there because that  
11 refers to the interpretation of they wanted to make sure that  
12 it did not include brand-new tires. That are, you know, sold  
13 from a retailer, so they put in, no longer, to in effect  
14 indicate used tires. So the term, being used, has nothing to  
15 do with used tires. The term, no longer, is used tires. So  
16 we know that, no longer, at least in his interpretation or  
17 what's he's indicated was no longer was used and I hate to use  
18 the term, used, but, no longer, was the word that they put in  
19 to say used tires. Now the legislature drafted this  
20 particular statute and if that was their purpose, frankly I  
21 could have drafted it much better, but I--looking back after  
22 ten years and I'm looking back after it's been applied in  
23 practice and I recognize that's not fair. However, if I were  
24 to draft this, I certainly could have drafted it a little bit  
25 more clear, but it doesn't necessarily mean that that the

1 statute is unenforceable.

2 Now the interpretation that Mr. Pulley has made, and I've  
3 reviewed his brief in that regard and his argument today, is  
4 that his client basically sells these tires. Many of them are  
5 tractor tires. I understand they're also car tires also in  
6 the in his business, but most of 'em are tractor tires at  
7 least the vast majority of them and that those tires are  
8 intended--some are on rims, some aren't, but they're all  
9 intended ultimately to be sold to a farmer to be used on, I  
10 assume his tractor. I was explained by Mr. Leshar that  
11 farmers who only use their tractors infrequently aren't gonna  
12 spend the kind of money for a brand-new tire which makes some  
13 sense to me. But ultimately the argument by Mr. Leshar  
14 through his counsel is that as long as he intends to sell  
15 those tires to a farmer then they are not, as a matter of law,  
16 a scrap tires. That interpretation would mean that it would  
17 not matter how many tires are there, and I'm pointing out once  
18 again that I'm not deciding the facts of this case, I'm not  
19 making a--I'm not sitting as the jury in this matter,  
20 determining whether he's guilty of the offense. I'm simply  
21 indicating that if that were the interpretation of this  
22 particular statute then and--and I could use the absurd one,  
23 obviously you could acquire a million tractor tires that are  
24 in good shape, take them off of a tractors, store them in your  
25 back yard, and according to that interpretation, the law would

1 not apply. Now clearly the law was intended to prohibit the  
2 large accumulation of tires, of any kind of tire, for purposes  
3 of well, the law was intended obviously to do away with these  
4 fires we all know about. Do away with mosquito infestation.  
5 To presume also not mentioned, I presume also to protect  
6 firemen that have to drive to these things so they can have  
7 easy access. The whole purpose of this law is also to protect  
8 people like firemen that's tended to be forgotten in this  
9 case, but I'm assuming that based on my own commonsense. So  
10 the whole purpose of this law is to prohibit the large  
11 accumulation of tires in one spot where the fires could start,  
12 where there could be mosquitos or breeding grounds for well  
13 for other animals too, I suspect rats and other animals as  
14 well, and to protect firemen that have to go put these things  
15 out. The law makes sense in that regard. And so clearly the  
16 intent of the legislature was to prohibit that kind of  
17 activity. They drafted the statute to be such that they  
18 wanted obviously to prohibit scrap tires and no where in this  
19 statute as I understand it from looking at it does it define  
20 what a used tire is or what a new tire is. They only define  
21 what a scrap tire is. So they clearly do not consider scrap  
22 tires to be new tires and they don't consider them to be used  
23 tires in the classic sense of the word. So they just try to  
24 define what a scrap tire is. And in looking at the language,  
25 after considering all that language--and before I make my

1 interpretation of that, I'll also respond to something Mr.  
2 Pulley said. He indicates that the one section where it says  
3 retailers must dispose of used tires in there according to the  
4 testimony and my reading of the statute there were three  
5 things you can do if you're retailer. As pointed out by his  
6 testimony it's not unlawful under this statute and nor can I  
7 find anything to indicate you cannot--that you can't sell a  
8 scrap tire. The law does not prohibit the selling of scrap  
9 tires. What it prohibits is the accumulation of a certain  
10 number of tires and beyond that then you have to under--you  
11 have to follow the regulatory--the regulation, but it does not  
12 prohibit you from selling them, so as I interpret this law, as  
13 long as you don't accumulate over 500 tires, you could sell  
14 500 tires every day as long as you don't give over 501. And  
15 if you're a retailer, you could sell up to fifteen hundred  
16 every day literally as long as you don't get to fifteen  
17 hundred and one. This statute has nothing to do with the  
18 selling of tires. And that retailer must dispose of, they're  
19 referring to what happens if he doesn't sell it and I think if  
20 you read it clearly, that's what it means because there is no  
21 prohibition about selling these tires. In fact there's  
22 nothing wrong with selling these tires. In fact, Mr. Leshar  
23 can sell all the tires he wants as long as he doesn't  
24 accumulate over 500 of them. He could sell 500 a day as long  
25 as he doesn't get to five hundred and first [sic] is my

1 interpretation of the statute and I think that's--that's  
2 clear. That doesn't prohibit him from selling these. But  
3 once he gets over 500 then he must follow the regulations. So  
4 in terms of all that argument, I'm going to conclude after  
5 careful analysis of the language I believe that the  
6 legislature intended, first of all, that if someone has over  
7 500--assuming they fall in the situation of Mr. Leshner. It's  
8 not argued he's a retailer or any of these other items, but if  
9 he gets over 500 tires, I do believe that the legislature  
10 intended that that tire, the tire that had been used  
11 previously that would be used at the--at the time of the  
12 looking at the tire literally that's being used for its  
13 original intended purpose. If it is a tractor tire, I agree,  
14 and I believe, and I'm gonna so find that that tire has to be  
15 on a steel rim and it has to be mounted on a tractor or an  
16 equivalent vehicle. I think that the interpretation must be  
17 that way because the others, I think, would lead to absurd  
18 results. So I'm going to find the legislature intended from  
19 the reading of the language after interpreting all of this, I  
20 believe that it intended to apply the used tires, that at the  
21 time you're literally looking at them, have to be mounted,  
22 have to be on a vehicle, whether it is an automobile tire or  
23 whether it's a motorcycle tire, or whether it is a tractor  
24 tire or any kind of tire as long as they were intended to be  
25 on some type of vehicle for movement purposes. I don't see

1 there can be any other interpretation. I believe the language  
2 no longer does refer to a used tire or a tire that has been  
3 used at some point and it has to be used for its original  
4 intended purpose. Being used, is operative language in the  
5 Court's mind. Being used, means literally at the time that  
6 they're there, it has to be used for that purpose. I believe  
7 that is the--what the legislature intended and I think that's  
8 a reasonable interpretation of this. So based on what I've  
9 heard, I'm gonna so rule that in this situation those tires if  
10 there are over 500 must have been on a rim, must have been  
11 mounted on whatever they originally intended to be mounted on,  
12 and that would be the interpretation the Court has made in  
13 this matter. Therefore obviously Mr. Pulley I'm denying your  
14 motion to dismiss at this time. All right, is there anything  
15 further for the record then in this case?

16 MR. MCCARTHY: No, Your Honor.

17 THE COURT: Mr. McCarthy. Mr. Pulley?

18 MR. PULLEY: No, Your Honor.

19 THE COURT: All right, gentlemen, I would like to thank  
20 you both for your advocacy in this particular matter. It was  
21 a difficult issue and I guess still is a difficult issue, but  
22 that's my interpretation of it. However, it may be right or  
23 wrong. And if you'll go ahead and prepare that order, Mr.  
24 McCarthy, for my signature.

25 MR. MCCARTHY: Thank you, Your Honor.

1 THE COURT: All right, if there's nothing further for the  
2 record at this time, then the Court will recess.

3 (Hearing concluded)  
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TRANSCRIPT CERTIFICATION

STATE OF MICHIGAN )  
10TH DISTRICT COURT) ss.  
COUNTY OF CALHOUN )

I certify that this transcript, consisting of 62 pages, is a true and complete transcript of the proceedings recorded by Connie Hurd Mead on April 15, 1998, and transcribed by Sharon E. Bradley, in the matter of THE PEOPLE OF THE STATE OF MICHIGAN v MARTIN LESHER, docket number C98-7326.

DATED: February 19, 1999

*Sharon E. Bradley*  
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Battle Creek, MI 49017  
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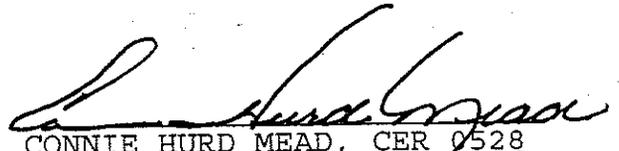
TRANSCRIPT CERTIFICATION

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