

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<p>CORLISS RESOURCES, INC.,</p> <p style="text-align:right">Respondent,</p> <p>and</p> <p>TEAMSTERS LOCAL 174, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS,</p> <p style="text-align:right">Union.</p>	<p>Case Nos. 19-CA-093237 19-CA-093281 19-CA-102190 19-CA-104557 19-CA-105226 19-CA-106514</p>
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**CORLISS RESOURCES, INC.'S BRIEF IN SUPPORT OF ITS
LIMITED CROSS-EXCEPTIONS TO ALJ'S DECISION**

Dated: May 5, 2014

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. Introduction	1
II. Background Facts	1
III. Sturdivan’s Extensive History of Accidents and Carelessness	3
IV. Williamson and Rousseau Concluded that Termination was Warranted	4
V. The ALJ Erred in Concluding that CRI Failed to Satisfy its <i>Wright Line</i> Burden that it Would have Terminated Sturdivan Regardless of Sturdivan’s Union Sentiment or Protected Activity	6
VI. The ALJ Erred in Finding that other CRI Drivers had been Disciplined Less Harshly than Sturdivan	9
VII. The ALJ Erred in Finding that an Adverse Inference was Warranted Because Scott Corliss did not Testify	12
VIII. Conclusion	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Aero Detroit</i> 321 NLRB 1101 (1996)	13
<i>Dish Network</i> 359 NLRB No. 108 (2013)	8, 12
<i>Harrison Ready Mix Concrete and Supply Co.</i> 316 NLRB 242 (1995)	8, 12
<i>Transcon Lines</i> 259 NLRB 1424 (1982)	8, 12
<i>Riverdale Nursing Home</i> 317 NLRB 881 (1995)	13
<i>Wright Line</i> 251 NLRB 1083 (1980), <i>enforced</i> , 662 F.2d 899 (1st Cir. 1981), <i>cert. denied</i> , 455 U.S. 989 (1982)	1, 13
 <u>OTHER AUTHORITY</u>	 <u>PAGE</u>
29 U.S.C. § 8(a)(3)	9, 14
29 U.S.C. § 8(a)(4)	9, 14

Corliss Resources, Inc., Respondent (“CRI”) respectfully submits this Brief in Support of its Limited Cross-Exceptions to Administrative Law Judge Jeffrey Wedekind’s (“ALJ”) March 24, 2014 Decision (“ALJD”).

I. Introduction

The ALJ erred in failing to conclude that CRI satisfied its *Wright Line* burden of demonstrating that it would have reached the same termination decision regardless of Sturdivan’s Union support or protected activity. *Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982). (ALJD 24:10-23.)

The evidence presented at the hearing clearly established that Sturdivan was terminated after he rear-ended another CRI dump truck, in light of his prior history of accidents and careless driving incidents. Tr. 352, 828, 834-54, 1149:10-11, 1374:8-10, 1380-82, 1386-87, 1397-1407; CRI Exhs. 11-16, 30-31; GC Exhs. 21-22. No other driver has remained employed despite having three accidents in less than three years. The ALJ erred in concluding that CRI failed to establish that it would have terminated Sturdivan after his October 29, 2012 accident, regardless of Sturdivan’s Union support or protected activity. Contrary to the ALJ’s decision, CRI satisfied its *Wright Line* burden.

II. Background Facts

On October 29, 2012, Sturdivan rear-ended another CRI dump truck at the intersection of Highway 410 and Warner Avenue in Enumclaw, Washington. ALJD 19:36-37; Tr. 828-29, 1148, 1151-53; GC Exhs. 21-22; CRI Exhs. 23-24. Paul Dykes (“Dykes”) was the driver of the dump truck rear-ended by Sturdivan. ALJD 19:37-39. After being struck by Sturdivan’s dump truck, Dykes exited his truck and approached Sturdivan, who was still in the cab of his truck. Tr. 1148-49. Dykes asked Sturdivan if he was okay, and if he intended to get out of his truck to

inspect the damage. Tr. 1149:9-10. Recognizing that his accident history put his job in jeopardy, Sturdivan replied, “It doesn’t matter. I am fired anyway.” Tr. 1149:10-11.

After Sturdivan rear-ended Dykes, Sturdivan and Dykes loaded their trucks at CRI’s Enumclaw Plant (near the intersection where the accident occurred). ALJD 20:6-7; Tr. 1150-51. Sturdivan and Dykes then returned to CRI’s main Sumner Plant. ALJD 20:7-9; Tr. 1150-51.

At the main Sumner Plant, Sturdivan met with Human Resources Manager Shawna Williamson (“Williamson”).¹ Tr. 1152, 1372-73. Sturdivan completed his accident report. Tr. 1152, 1372-73; CRI Exhs. 23-24. Sturdivan admitted to Williamson that he was not focused that day (his “head is just not in the game right now”). ALJD 20:14-16, fn. 44; Tr. 1374. Sturdivan understood that his October 29, 2012 accident would result in termination due to his accident history. In fact, he admitted to Williamson that “the Union had said to him that, ‘The only thing that you can’t do is get in an accident, and give the company a reason to terminate you.’” Tr. 1374:8-10; *see* ALJD 20:13-14.

After Sturdivan completed his accident report on October 29, 2012, Williamson reviewed Sturdivan’s personnel file, including Sturdivan’s accident history, incident reports, and discipline. ALJD 20:23-21:24; Tr. 1376:12-15, 1378-80, 1383-84; GC Exhs. 21-22; CRI Exhs. 12-22, 30-31. CRI’s general practice is to review each incident and accident in a driver’s history when considering a discipline or termination decision. Tr. 860:8-12. The uncontroverted testimony established that CRI considers many factors in reaching discipline or termination decisions. Tr. 860:14-17, 1403-04; *see also* Tr. 834-68, 1397-1407. Such factors include: the driver’s years of experience; history of accidents; the time between accidents or incidents; severity of and the extent of dangerous or careless driving; and the totality of the circumstances in the final accident or incident at issue. Tr. 860:14-17. Dangerous and/or careless driving is

¹ Dykes also completed an accident report in Williamson’s office. Tr. 1152, 1375-76; CRI Exh. 24.

one of the most concerning issues for CRI. Tr. 860:15-24. Examples of dangerous and/or careless driving include: inattentive driving such as hitting another vehicle; losing sight or control of the trailer while driving; hitting something with a trailer; backing up into something; and not knowing your surroundings in your truck. Tr. 860:15-24. As Truck Supervisor Darrin Rousseau (“Rousseau”) testified, the trucks “are so big, so heavy, that you can do so much damage so easy and someone could get hurt.” Tr. 861:1-2, 6-13.

The uncontroverted evidence also established that CRI typically reviews both non-disciplinary incident reports and disciplinary write-ups in a driver’s file when considering discipline and termination decisions. Tr. 897:9-17. CRI considers the driver’s entire history. Tr. 897:19-23.

III. Sturdivan’s Extensive History of Accidents and Carelessness

Sturdivan’s recent history of accidents and discipline included the following, among other incidents: striking an ecology block at the Sumner Plant; losing the tub of his transfer truck, which slid out onto the reach of his transfer truck; and hitting a crosswalk pole with his trailer by cutting a corner too close. Tr. 831:12-20. Williamson reviewed the following accident histories, previous discipline, and incident reports in Sturdivan’s file:

DATE	EVENT	INCIDENT REPORT/ DISCIPLINE
7/13/05	Hit front dual wheel at Glacier scale; destroyed wheel.	Incident Report (CRI Exh. 22)
8/20/07	Failed to check fuel in morning and ran out of fuel.	Incident Report (CRI Exh. 21)
8/28/07	Tried to turn truck around on jobsite, and caught wheel on piece of steel on the curb; tire blowout.	Incident Report (CRI Exh. 20)
6/9/08	Hit front of trailer; forklift hit him while he was parked and waiting to be loaded; mud flap bracket and light were bent.	Incident Report (CRI Exh. 19)
8/29/08	While turning truck to dump, hit a manhole, breaking the manhole and denting the bumper of the truck.	Incident Report (CRI Exh. 18)

DATE	EVENT	INCIDENT REPORT/ DISCIPLINE
1/6/09	While at a jobsite, Sturdivan failed to set parking brake, and the truck began to roll. Sturdivan jumped back into the truck, then joked about the incident over the CB radio.	Incident Report (CRI Exh. 17)
7/17/10	While making a turn onto the street, the back axle hit a light pole (crosswalk); \$2,500 damage to trailer (Tr. 349:12).	Written Warning #1 issued on 8/2/10 (CRI Exh. 13-15)
8/2/10	Stereo fell out of holding case; Sturdivan closed his eyes and turned the truck to the left, and hit an ecology block.	Written Warning #2 issued on 8/10/10 (CRI Exh. 12)
4/25/11	While trying to get a rock out of the duals, Sturdivan hit it with a hammer, causing the rock to fly out and break a window.	Incident Report (CRI Exh. 16)
8/15/11	While transferring tub box into truck box, the trailer slid backwards; the tub box fell out onto the "reach."	Written Warning #3 issued on 8/20/11 (GC Exhs. 21-22; CRI Exhs. 30-31)
10/29/12	Rear-end accident; foot slipped off of brakes and he hit Truck #324 at the intersection; front bumper damage on Truck #317 (Sturdivan's truck); bent ICC bar on Truck #324 (Dykes' truck); and bent reach and license plate line; Dykes suffered neck, shoulder, and back injury.	Termination (CRI Exhs. 11, 23-24)

IV. Williamson and Rousseau Concluded that Termination was Warranted

After reviewing Sturdivan's file, Williamson reached the conclusion that termination was warranted. Tr. 1380:24-1382:8. Williamson considered the severity of Sturdivan's incidents and the likelihood that they could have harmed someone. Tr. 1381:8-10. Williamson "couldn't ignore the pattern" in Sturdivan's file. Tr. 1381:11. Williamson believed Sturdivan's accidents were a result of carelessness or lack of focus. Tr. 1381:25-1382:2. She believed he was a risk to himself and others on the road. Tr. 1382:2-4. Thus, she determined that termination was warranted. Tr. 1382:5-8.

Williamson also discussed Sturdivan's history with Rousseau, who was out of town on October 29, 2012. ALJD 21:26-27; Tr. 828:25-829:3, 829:23-830:3, 1384:23-1385:2, 829:23-

830:3, 1384:23-1385:2. Over the telephone, Williamson read to Rousseau the previous accidents, discipline, and incident reports in Sturdivan's file. ALJD 21:26-27; Tr. 831:5-7, 1385:7-13. Williamson and Rousseau discussed the appropriate level of discipline for Sturdivan in light of his history. Tr. 831:5-9, 1385:16-1386:5. Concerning to Rousseau were the number of inattentive and careless driving incidents in Sturdivan's record, the fact that Sturdivan repeatedly was unaware of his surroundings, Sturdivan's apparent distracted driving, and the proximity in time between his multiple incidents. Tr. 832:4-10. Thus, Rousseau's preliminary thoughts were that termination was warranted, given Sturdivan's history of careless driving incidents. Tr. 830-33.

Rousseau returned to work on October 31, 2012 and completed the investigation into the October 29, 2012 accident. Tr. 832:15-23. Rousseau reviewed Dykes' and Sturdivan's accident reports and talked to the shop about the damage to the vehicles. Tr. 832:20-23. Rousseau also reviewed the accident reports (including Dykes' reported injuries), and the incident history in Sturdivan's file. Tr. 834-854; GC Exhs. 21-22; CRI Exhs. 11-24, 30-31. Rousseau spoke with Williamson again after he completed his investigation. Tr. 833:7-9. Both Williamson and Rousseau agreed to terminate Sturdivan as a result of the October 29, 2012 accident, in light of Sturdivan's accident history and inattentive driving. ALJD 20:22-24, 21:26-27; Tr. 833:9-25, 1385:16-20. Contrary to the ALJ's analysis, CRI's termination and discipline decisions are not solely based upon prior discipline. Rather, CRI considers events that result in disciplinary action, as well as non-disciplinary incidents. Tr. 897.

Williamson subsequently informed Scott Corliss (“Corliss”) of her and Rousseau’s conclusion that Sturdivan’s termination was warranted. Tr. 1386:20-1387:13. In response, Corliss said, “okay.” Tr. 1387:6-13. Sturdivan was therefore terminated for his October 29, 2012 rear-end accident, in light of his prior history.

V. **The ALJ Erred in Concluding that CRI Failed to Satisfy its Wright Line Burden that it Would have Terminated Sturdivan Regardless of Sturdivan’s Union Sentiment or Protected Activity**

The undisputed evidence on the record establishes that the sole reason for Sturdivan’s termination was his history of accidents and careless driving habits. *See* Tr. 352, 828, 834-54, 1149:10-11, 1374:8-10, 1380-82, 1386-87, 1397-1407; CRI Exhs. 11-16, 30-31; GC Exhs. 21-22. The culminating event was his accident on October 29, 2012. *Id.*

The ALJ erred in finding that CRI’s discipline decisions before the Union’s campaign somehow indicated that CRI would not have terminated Sturdivan for his October 29, 2012 accident. *See* ALJD 22:12-17, 24:10-12. Contrary to the ALJ’s findings, the fact that Corliss liked Sturdivan and did not previously terminate him for an earlier accident merely demonstrates how close Sturdivan was to termination if he caused yet another accident. An employer is not precluded from terminating an employee simply because it previously gave that same employee a “second chance” or a “third chance” to correct his behavior. Sturdivan’s inattentive and careless driving habits were a threat to himself and to other individuals on the road.² Sturdivan was given multiple chances to correct his behavior – not a free pass to continue engaging in

² The ALJ attempted to discount the severity of Sturdivan’s October 29, 2012 accident by characterizing the event as “accidentally bumping into the rear of another dump truck.” ALJD 19:36-37. Additionally, the ALJ attempted to minimize the incident by noting that Dykes did not miss work as a result of his neck, shoulder, and back injuries. ALJD 20, fn. 41. It is fortunate that Sturdivan did not instead rear-end a passenger vehicle, which likely would have resulted in much more extensive damage and injury. *See* Tr. 861, 1148. Regardless, the rear-end accident at issue caused a significant amount of damage to CRI’s dump trucks and caused injury to Dykes. Tr. 1148-52; CRI Exh. 23-24. Moreover, the termination decision at issue was not based solely on the severity of Sturdivan’s October 29, 2012 rear-end accident. Tr. 1376, 1378-84; GC Exhs. 21-22; CRI Exhs. 11-22, 30-31. Rather, the decision was also based on Sturdivan’s history of accidents and carelessness. *Id.*

careless and inattentive driving. Irrespective of Sturdivan's Union sentiment or protected activity, the fact remained that he rear-ended another dump truck. There were no mitigating circumstances. He had been warned multiple times to correct his careless driving habits. He failed to improve. He failed to learn from his repeated mistakes. He was not entitled to additional "second chances." CRI presented ample evidence that Sturdivan would have been terminated regardless of his Union support or protected activity.

The ALJ also erroneously concluded that Corliss made the final termination decision. ALJD 21:28. The evidence established that Corliss simply responded, "okay," to Williamson's statement that she believed termination was warranted. Both Williamson and Rousseau strongly believed that termination was warranted, given Sturdivan's history of accidents and carelessness. Corliss said, "okay" to the termination decision. Regardless of any animus harbored by Corliss, Sturdivan would have been terminated due to his accident history and pattern of careless driving conduct. Even Sturdivan recognized this. Sturdivan acknowledged to Dykes that the truck damage did not matter because he "would be fired anyway" as a result of the accident. Sturdivan asked Williamson if he would be fired after his October 29, 2012 accident.³ Even the Union recognized that Sturdivan's job was in jeopardy due to his accident and incident record. The Union advised Sturdivan prior to October 29, 2012, that he could not get into any more accidents, because termination would be appropriate if he did. Sturdivan failed to heed this warning. He knew that the consequence of yet another accident would be termination. The evidence presented at the hearing clearly demonstrated that Sturdivan would have been terminated after his October 29, 2012 rear-end accident, regardless of his Union support and/or protected activity.

³ Williamson's response that she did not yet know if Sturdivan would be terminated reflected the fact that an investigation and review of Sturdivan's file still needed to be completed before she could make a final termination decision. *See* Tr. 831, 834-54, 860-61, 897, 1376-85.

The Board has held many times that a driver's preventable accident history is a non-discriminatory reason for the employee's termination. *See, e.g., Harrison Ready Mix Concrete and Supply Co.*, 316 NLRB 242, 242, 251 (1995) (employer lawfully terminated driver for overturning cement truck due to negligent driving; other drivers had similarly been terminated); *Transcon Lines*, 259 NLRB 1424, 1424-25, 1428 (1982) (employer lawfully terminated truck driver for minor scrape to top of his trailer against the eave of a building). Safety concerns are also non-discriminatory reasons for an employee's termination. In *Dish Network*, 359 NLRB No. 108, *1, 9-10 (2013), the Board affirmed the dismissal of 8(a)(3) and (4) charges involving a technician terminated for failing a safety survey and for disregarding safety policies on multiple occasions. The General Counsel argued that the employee was treated differently than other anti-union employees, focusing on one particular employee who may have been treated with more leniency. *Id.* The Board rejected the General Counsel's argument. *Id.* at *1. The Board explained that, even if one of the anti-union employees had not been fired for similar safety violations, this alone was insufficient to overturn the termination at issue. *Id.* Other employees had been disciplined for violating safety rules. *Id.* The employer had sufficiently demonstrated that it would have made the same termination decision, regardless of the employee's protected activities. *Id.* at *1, 9-10.

Here, CRI terminated Sturdivan after 11 events in his record involving accidents and/or carelessness. This decision was consistent with CRI's termination of other drivers with similar (or less severe) discipline and accident histories. CRI would have reached the same termination decision, regardless of Sturdivan's Union activities or sentiment. Furthermore, CRI would have made the same termination decision, regardless of Sturdivan's participation in a previous NLRB

hearing. Thus, the ALJ's conclusion that CRI violated Sections 8(a)(3) and (4) of the Act by terminating Sturdivan should be reversed.

VI. The ALJ Erred in Finding that other CRI Drivers had been Disciplined Less Harshly than Sturdivan

The ALJ also erred in his conclusion that other drivers' discipline histories were inconsistent with CRI's termination decision affecting Sturdivan. ALJD 23:3-24:8. CRI has similarly terminated other drivers for accidents and/or inattentive driving. Tr. 854-68, 1397-1407. CRI presented evidence of the following individuals who were similarly terminated:

NAME	EVENT	DATE TERMINATED
Joel DeHaven	Terminated when he rolled his trailer on a highway. One prior incident report when excavator ran into his truck and trailer (9/4/07).	9/26/08 (GC Exh. 34)
Joel DeHaven	Rehired on 3/15/11; terminated again when he backed into a Corvette at a stop light. Terminated for careless behavior and dangerous driving habits. Ineligible for rehire.	6/4/12 (GC Exh. 34)
Keith Bee	Terminated for a rear-end accident. One prior written warning (9/10/10 – backed over a soft/wet spot and got truck stuck; and failed to complete customer paperwork). Ineligible for rehire.	8/23/11 (CRI Exhs. 25-26)
Randy Brickell	Rolled over dump truck trailer. Ineligible for rehire.	6/30/11 (CRI Exh. 27)
Joseph Futch	Rear-ended a car. Prior history included: backed into and then pulled down mechanical gate and brick column (10/13/10 incident report); 1 written warning for an overweight ticket (10/24/08); 2 verbal warnings for blown tires/tire damage (6/30/09 and 4/21/09); 1 verbal warning for tailgating in icy conditions (1/26/09); 1 verbal warning for failing to lower truck box after dumping material, resulting in some damage (10/2/08); 1 incident report for damage to bumper while customer guided him backing into driveway (10/5/09). Ineligible for rehire.	11/19/10 (GC Exh. 33)
Mike Martin	Backed into a marked-off portion of a job site, sank in to the empty septic tank. Terminated after 1 previous verbal warning on 11/5/12. Ineligible for rehire.	11/13/12 (CRI Exhs. 28-29)

Joel Dehaven, Keith Bee, and Joseph Futch were also terminated after rear-ending other vehicles. GC Exhs. 33-34; CRI Exhs. 25-26. Sturdivan was treated no differently. Joseph Futch also had several prior incidents in his file, resulting in property damage. GC Exh. 33. Without any explanation, the ALJ found that the above comparators were distinguishable. ALJD 23:3-14.

When reaching the termination decision in the above examples, CRI management similarly reviewed the driver's entire file of discipline, accident histories, and incident reports to reach an appropriate discipline decision based upon the driver's record. *See* Tr. 834-54, 1398-1407. CRI reviews the driver's file in addition to considering any mitigating circumstances and/or the severity of the final incident leading up to the termination decision. *See id.*

The ALJ compared Bob Cummings' accident and discipline history to Sturdivan's October 29, 2012 accident. ALJD 23:16-23. However, Cummings has not been involved in as many accidents as Sturdivan. GC Exh. 32. His accident and property damage history is not as extensive as Sturdivan's history. *See id.* Thus, the fact that Cummings has not been terminated does not establish that CRI would not have terminated Sturdivan except for Sturdivan's Union support and/or protected activity.

The ALJ compared Brian Anderson's accident and discipline history to Sturdivan's October 29, 2012 accident. ALJD 23:25-31. However, Brian Anderson's discipline and accident history was not as extensive as Sturdivan's history of accidents and carelessness. *See* GC Exh. 30 (five incidents over the course of six years). The fact that Brian Anderson has not been terminated by CRI does not undermine CRI's decision to terminate Sturdivan after his October 29, 2012 accident, in light of his history of accidents and careless driving habits.

The ALJ also compared Jeff Cope's accident and discipline history to Sturdivan's

October 29, 2012 accident. ALJD 24:1-8. However, the ALJ failed to take into account the totality of the circumstances, including the severity of the incidents, the total number of incidents in Cope's history, and the amount of time in between accidents. *See* GC Exh. 31 (nine incidents over the course of nearly nine and a half years).

The ALJ also noted that CRI does not utilize a progressive disciplinary system. It is true that CRI does not utilize a strict progressive discipline system. Tr. 860. Instead, discipline and termination decisions are assessed on a case-by-case basis, factoring in the driver's history of accidents, discipline, and incidents, the surrounding circumstances of the event at issue, as well as any mitigating circumstances. *Id.*; Tr. 1403-04. However, the fact that CRI does not utilize a strict progressive discipline system does not infer that CRI's discipline or termination decisions are based upon whether Corliss or CRI management likes the driver or not. Rather, the testimony established that CRI management looks to the driver's years of experience, history of accidents or incidents, the time between accidents or incidents, the severity of and the extent of dangerous or careless driving, and the totality of the circumstances in the final accident or incident at issue. Tr. 860:14-17. There is no evidence that Sturdivan's Union sentiment or protected activity was a factor in the termination decision at issue here.

Contrary to the ALJ's conclusions, Sturdivan was given more chances than most drivers to improve his attentiveness while in a dump truck. *See* CRI Exhs. 12-31; GC Exhs. 30-35. In fact, both Rousseau and Williamson believed that Sturdivan should have been terminated after one of his previous accidents – before the October 29, 2012 accident – to be consistent with other termination decisions. Tr. 863:2-4. Instead, CRI gave Sturdivan multiple “second-chances” because they wanted to see Sturdivan succeed. Tr. 863:5-17. However, Sturdivan's carelessness did not improve. Thus, when Sturdivan rear-ended another dump truck on October 29, 2012,

CRI determined that it could not continue to employ Sturdivan. Tr. 863:18-22. CRI lawfully terminated Sturdivan, regardless of Sturdivan's protected activities. *See, e.g., Harrison Ready Mix Concrete and Supply, supra; Transcon Lines, supra; Dish Network, supra.* Sturdivan's Union sentiment, activity, and his participation in a previous NLRB proceeding had absolutely nothing to do with his termination. Tr. 845:18-846:16, 1386-87, 352:9-24.

VII. The ALJ Erred in Finding that an Adverse Inference was Warranted Because Scott Corliss did not Testify

In a footnote, the ALJ stated that an adverse inference was warranted with respect to Corliss' failure to testify. ALJD 24, fn. 51. However, the ALJ continued on to state that "an adverse inference is unnecessary here as there is nothing but speculation to support the Company's defense." *Id.* To the extent the ALJ based his decision on any adverse inference, CRI excepts to that adverse inference.

The ALJ's analysis relied heavily on the fact that Corliss previously decided to give Sturdivan another chance after an accident, instead of terminating him. *See* ALJD 21:27-31. The ALJ viewed this as evidence that Corliss made the final decisions regarding driver discipline and termination. However, the ALJ's analysis disregards the documentary evidence and other testimony on the record regarding the reasons for Sturdivan's termination. No adverse inference is warranted here because the termination decision was clearly tied to Sturdivan's accident on October 29, 2012, in light of his accident and inattentive driving record. There is no evidence on the record that Sturdivan's termination was in any way related to his Union support or protected activity. The termination payroll notice explicitly states that Sturdivan's accident history was the reason for termination. CRI Exh. 11 (signed by Corliss). Corliss undoubtedly knew he had previously given Sturdivan a "second chance" after a previous accident. *See* Tr. 1387. Sturdivan was not entitled to additional second chances to improve his inattentiveness and careless driving

habits. CRI has presented ample evidence that it would have terminated Sturdivan regardless of Union sentiment or protected activity. *See* Tr. 352, 828, 834-54, 1149:10-11, 1374:8-10, 1380-82, 1386-87, 1397-1407; CRI Exhs. 11-16, 30-31; GC Exhs. 21-22. An adverse inference is inappropriate here, where the evidence establishes the reason for termination. *See, e.g., Aero Detroit*, 321 NLRB 1101, 1116 (1996), in which the ALJ drew an adverse inference from what she thought was the employer's failure to provide data of attrition rates before November. The Board disagreed. *Id.* at 1104. The Board pointed out that there was evidence in the form of oral testimony about the turnover rate prior to November. *Id.* Thus, no adverse inference should be drawn. *See also Riverdale Nursing Home*, 317 NLRB 881, 881-82 (1995) (the Board rejected that "the judge's use of the adverse inference to fill [an] evidentiary gap," as it "sweeps too broadly...").

Similarly, here, no adverse inference is warranted because the documentary evidence and the testimony of CRI's management witnesses established that Sturdivan was terminated because of his history of accidents and carelessness. The culminating event was his October 29, 2012 rear-end accident. The termination form states that the reason for Sturdivan's termination was his accident history. CRI Exh. 11. Corliss' decision affirming the termination is found on the termination notice itself – Corliss signed it. *Id.* CRI has met its *Wright Line* burden of establishing that it would have terminated Sturdivan regardless of Sturdivan's Union support and/or protected activity. To the extent the ALJ relied upon an adverse inference to conclude otherwise, such adverse inference should be overturned.

VIII. Conclusion

For all of the above-stated reasons, CRI respectfully requests that the Board reverse the ALJ's conclusion that CRI violated Section 8(a)(3) and (4) of the Act by terminating Sturdivan after his October 29, 2012 rear-end accident.

Dated this 5th day of May, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2014, I caused to be filed with the NLRB Executive Secretary via the NLRB E-Filing system the above and foregoing "*Corliss Resources, Inc.'s Brief in Support of its Limited Cross-Exceptions to ALJ's Decision.*" I further certify that on May 5, 2014, true and correct copies of the same were served via electronic mail upon the following individuals at the email address specified for them as shown below; and paper copies of the same were mailed to the undersigned via U.S. Mail, First Class Postage prepaid, at the following physical addresses:

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Dated this 5th day of May, 2014.



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