

Large Filing Separator Sheet

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1 A. No. You brought it up in someone else's
2 testimony.

3 Q. Okay. Why is it important to correct the
4 date, in your mind?

5 A. Well, let me see. Let's go back to this,
6 this Exhibit D.

7 Q. Sure.

8 A. I wasn't there that date.

9 Q. You weren't where?

10 A. Jefferson Port.

11 Q. Were you present when the repairs were
12 made?

13 A. Yes.

14 Q. Okay. So you're basically saying that the
15 person that made the repairs slapped down the wrong
16 date there, and you're just trying to correct that?

17 A. Actually, no. I was here this date. You
18 guys can take that date for what it's worth.

19 Q. I don't understand what that means. I'm
20 sorry.

21 A. You're trying to trap me in a corner on
22 this.

23 Q. I'm just trying to understand.

24 A. This date is a mistake. I pointed it

1 out. If I see a mistake, I point it out.

2 THE EXAMINER: Let's take a break, like
3 ten minutes, and we'll be back.

4 MR. WRIGHT: Can I finish this line of
5 questioning? I'm almost done.

6 THE EXAMINER: Okay. Do you have another
7 question?

8 MR. WRIGHT: Perhaps just another question
9 or two. Now, I may have some after that, but I just
10 want to finish this document, Your Honor.

11 By Mr. Wright:

12 Q. So, again, I'm not -- don't think I'm
13 trying to trap you. I'm trying to understand your
14 testimony; okay? Just a moment.

15 Your Honor, let's go ahead and take a
16 break.

17 THE EXAMINER: All right.

18 MR. WRIGHT: Let's take a break.

19 (Recess taken.)

20 THE EXAMINER: Let's go back on the
21 record.

22 MR. WRIGHT: Thank you, Your Honor.

23 By Mr. Wright:

24 Q. Just one, maybe two final questions here,

1 Mr. Tigner. You previously testified, have you not,
2 that Mr. Haskins, you feel, did not put you out of
3 service and said have a good trip and sent you on your
4 way; right?

5 A. Yes.

6 Q. And you also testified that you didn't
7 actually get around to reading the inspection report
8 that Mr. Haskins provided you with. You don't dispute
9 that he did provide you with a copy of that report?

10 A. No.

11 Q. Back in June of '06. And you didn't read
12 that report until sometime much later; correct?

13 A. Correct.

14 Q. How do you explain your testimony on the
15 one hand that says Mr. Haskins said that he was not
16 going to put you out of service, how does that jibe
17 with the report itself which you now know, since you
18 read it, does place you out of service?

19 A. I can't get my mind around an answer for
20 that question. Does that seem fair?

21 Q. Okay. That's fair. You do understand,
22 having read the report, that the report does indicate
23 you were out of service?

24 A. Yes.

1 Q. The report does?

2 A. Yes.

3 MR. WRIGHT: That's all the questions I
4 have, Your Honor.

5 THE EXAMINER: Any on redirect?

6 MR. EDWARDS: Just a few items, Your
7 Honor.

8 REDIRECT EXAMINATION

9 By Mr. Edwards:

10 Q. Tell me if I'm wrong, but your
11 understanding was that you were not out of service when
12 you left the inspection on June 5th, 2006, and that you
13 could have the fraying cracks repaired after the
14 trailer was unloaded?

15 A. That's the impression I had of what was
16 happening, yes.

17 Q. Okay. And you admitted you didn't read
18 the report at the time of the inspection or after the
19 inspection. You didn't read the report when you
20 stopped for a drink when you were still at that exit.
21 You didn't read the report at any time up to the
22 inspection by South Dakota the next day?

23 A. That's correct.

24 Q. Did you rely on the officer's statement

1 that he wasn't going to place you out of service when
2 you continued on your trip?

3 A. Yeah, that's what I relied on.

4 Q. State's counsel asked you about your
5 familiarity of out-of-service criteria, the specific
6 frame measurement or crack measurement, weld
7 measurement that would apply to this case. Based upon
8 what the officer told you at the time of the
9 inspection, did you have any reason to go look it up?

10 A. None.

11 Q. There was some back and forth about the
12 date of repair on the Ohio inspection receipt. You
13 pointed it out freely yourself. You were the one to
14 point it out that it's dated June 5th, 2006, the same
15 day that you received the inspection. If it, in fact,
16 had been repaired that day, would we even be here?

17 A. No.

18 Q. Because when you got to South Dakota the
19 next day, the problem would have been repaired?

20 A. Right, yes.

21 Q. Nothing further.

22 THE EXAMINER: Any recross?

23 MR. WRIGHT: No further questions, Your
24 Honor. Thank you.

1 THE EXAMINER: You're excused.

2 (Witness excused.)

3 THE EXAMINER: You indicated you have
4 rebuttal witnesses, Mr. Wright?

5 MR. WRIGHT: Yes, sir, Your Honor, and
6 I --

7 THE EXAMINER: Excuse me. You have no
8 more witnesses; is that correct?

9 MR. EDWARDS: No, Your Honor.

10 MR. WRIGHT: As I indicated earlier, I
11 would appreciate a few minutes. My goal, believe me,
12 and it's been a long day for everybody, will be to keep
13 this as brief as possible. I think we can do that, but
14 I'm going to need a few minutes to discuss this with
15 Mr. Haskins.

16 THE EXAMINER: We'll go off the record at
17 this point.

18 (Recess taken.)

19 MR. WRIGHT: Your Honor, we do have
20 hopefully very brief redirect -- excuse me, rebuttal
21 for Mr. Haskins.

22 OFFICER PHILLIP HASKINS,
23 being by The Examiner previously duly sworn, as
24 hereinafter certified, testifies and says further as

1 follows:

2 THE EXAMINER: You're still under oath.

3 THE WITNESS: Yes sir.

4 REDIRECT EXAMINATION

5 By Mr. Wright:

6 Q. Mr. Haskins, as a result of the inspection
7 performed on June 5, 2006, did you observe and cite and
8 write up a violation that was properly an
9 out-of-service violation?

10 A. Yes.

11 Q. And this had to do with the cracks you
12 found on the frame; correct?

13 A. Yes.

14 Q. Did you measure those cracks?

15 A. Yes.

16 Q. Now, with respect to the three inches --
17 you indicated that there were two cracks approximately
18 three inches each. How precise would that measurement
19 have been?

20 A. Fairly accurate, although I was measuring
21 the crack on my back reaching up into the trailer to
22 try to identify the extent of the defect.

23 Q. Now, you previously testified that you
24 have a good working familiarity with the out-of-service

1 criteria; is that right?

2 A. Yes.

3 Q. Do you understand that the out-of-service
4 criteria specifies that a crack must be three inches on
5 a frame to place that, in this case, the trailer out of
6 service?

7 A. No. That's not accurate.

8 MR. WRIGHT: Your Honor, may I approach
9 the witness, please?

10 THE EXAMINER: You may.

11 By Mr. Wright:

12 Q. I'm handing you what has been previously
13 been marked as Respondent's Exhibit F. Do you see that
14 (indicating)?

15 A. Uh-huh.

16 Q. What is that? That's an excerpt of what?

17 A. That is a description from the
18 out-of-service criteria. Actually, it's an appendix to
19 the Federal Motor Carrier Safety Regulations. It's the
20 language that's written as the out-of-service criteria
21 that apply to the extent of the violation.

22 Q. Okay. Now, is the answer to my prior
23 question, that is, did the out-of-service criteria
24 specify that a crack, frame crack has to be three

1 inches, is that answered by that particular excerpt?

2 A. It is.

3 Q. Could you please read for me A(2), please?

4 A. Yes. This says, of the frame, "Any
5 cracked, loose, or broken frame member adversely
6 affecting support of functional components such as
7 steering gear, fifth wheel, engine, transmission, body
8 parts, and suspension."

9 Q. Does it specify how long the crack has to
10 be?

11 A. No.

12 Q. In your opinion, did the cracks that you
13 observed adversely affect support of functional
14 components as stated in A(2)?

15 A. Yes.

16 Q. Okay. After you performed your inspection
17 and prepared your report, did you give a copy of it to
18 Mr. Tigner?

19 A. I did.

20 Q. Did you go over that report with Mr.
21 Tigner?

22 A. Yes, I did.

23 Q. Did Mr. Tigner -- did you ask Mr. Tigner
24 if he had any questions about that report?

1 A. Normally, I do, yes.

2 Q. Would you have any reason to believe you
3 didn't in this case?

4 A. It's a standard policy that I follow.

5 Q. Did he have any questions?

6 A. None.

7 Q. Did Mr. Tigner even engage in much
8 conversation with you at all during the course of this
9 investigation?

10 A. No. I remember very little dialogue
11 between myself and the driver.

12 Q. Is that typical for you when you're doing
13 inspections, you try to stay focused on what you're
14 doing?

15 A. No. I do try to establish some degree of
16 dialogue to identify the driver's condition and also to
17 make him aware of what my intentions are.

18 Q. Kind of set the stage?

19 A. Yes.

20 Q. Okay. Did you show Mr. Tigner the cracks?

21 A. Yes.

22 Q. Did you tell Mr. Tigner that you could
23 place him out of service, but you weren't going to for
24 those cracks?

1 A. That is something that I would not -- type
2 of language I would not use in an inspection.

3 Q. Why not?

4 A. Because it is contrary to our policies and
5 guidelines, and it's just not something that
6 professionally I would do.

7 Q. You've been doing this for 21 years, did
8 you tell us earlier?

9 A. Yes.

10 Q. And during that time, I believe you
11 indicated you probably performed thousands of Level II
12 inspections?

13 A. That's correct.

14 Q. You probably on numerous occasions have
15 written up out-of-service violations. Would that be
16 accurate?

17 A. Yes.

18 Q. Have you ever made that kind of a
19 statement --

20 A. No.

21 Q. -- during the course of one of your
22 investigations?

23 A. No, sir.

24 Q. That's your reputation on the line, isn't

1 it?

2 A. Yes.

3 Q. Now, after the inspection was performed,
4 you proceeded on the ramp off of I-70, up the ramp to
5 I-42. You were in front of Mr. Tigner's vehicle; is
6 that right?

7 A. I can't recall that, but that is
8 accurately the location in which the inspection
9 occurred and the departing facts most likely, correct.

10 Q. Okay. And the reason you did that,
11 allowed the vehicle to be moved, up the ramp was to
12 provide an opportunity for Mr. Tigner to get the
13 repairs made; correct?

14 A. Yes.

15 Q. In fact, there were options available to
16 him -- do you know personally whether or not that kind
17 of welding work could be done at any of the facilities
18 at the London exit?

19 A. I do know they perform mechanical repairs
20 at those facilities, the extent of which I don't know,
21 but I do know that there are facilities there that do
22 repairs.

23 Q. Okay. So regardless of the timing of you
24 explaining to Mr. Tigner that the trailer was out of

1 service, you applied judgment in that instance, did you
2 not, to allow the vehicle to be moved to a safe haven?

3 A. Yes.

4 Q. And for what you thought were going to be
5 repairs made at that time?

6 A. Yes.

7 Q. In fact, when you left Mr. Tigner's
8 vehicle that day, did you not leave believing that he
9 was, in fact, going to have the repairs made?

10 A. I had no reason not to think that he was
11 not going to get the repairs made.

12 Q. You did not actually observe him pull back
13 onto the interstate, did you? You were gone?

14 A. No.

15 Q. Okay. Did you, in fact, tell Mr. Tigner
16 something, words to the effect of drive safely or have
17 a nice day or something there at the end of your --

18 A. Most likely. I normally end the
19 inspection with have a safe trip, good luck, or
20 something to that effect.

21 Q. I want to show you exhibit -- Respondent's
22 Exhibit K. Do you have a copy of that?

23 A. Yes.

24 Q. So you have seen that; correct?

1 A. Yes.

2 Q. Does this depict what you observed on the
3 day of your inspection?

4 A. It depicts the general area in which I
5 would have found a violation of the defective frame.

6 Q. Okay. But the day -- according to your
7 report, and I want to make sure I understand this,
8 because I don't want to misrepresent anything here,
9 according to your report, you noted two cracks in a
10 previously welded area; correct?

11 A. Yes.

12 Q. So what you would have observed would have
13 been cracks themselves, not a solid weld?

14 A. Yes. I observed cracks.

15 Q. The cracks themselves, that is, in fact,
16 what is the subject of the out of service?

17 A. Yes.

18 (Discussion off the record.)

19 MR. WRIGHT: That's all I have. Thank you
20 very much.

21 THE EXAMINER: Do you have any question,
22 Mr. Edwards?

23 MR. EDWARDS: Yes. Thank you.

24 RECROSS-EXAMINATION

1 By Mr. Edwards:

2 Q. As you testified just now and as your
3 original testimony indicated, you intended to place
4 this vehicle out of service at the scene of the
5 inspection. However, then you allowed it to be moved
6 ostensibly to go to a repair service. You heard Mr.
7 Woolum's testimony about out-of-service vehicles, his
8 understanding that once they're out of service they
9 cannot be moved. Is that your understanding of the
10 regulations?

11 A. That's correct.

12 Q. Are you aware of any provision in the
13 regulations that allows you to permit a vehicle that's
14 placed out of service to be moved?

15 A. No.

16 Q. I think we went over 49 CFR, Section
17 396.9. You read it out previously, Subsection C, which
18 is on Exhibit H. That provision requires "an
19 out-of-service vehicle sticker shall be used to mark
20 vehicles out of service." It says "shall be used."

21 MR. WRIGHT: Before he answers, can I find
22 the document so he can have it in front of him? I'm
23 not finding that. Do you have an extra copy of that?

24 MR. EDWARDS: This is my last copy, and

1 it's not marked as an exhibit.

2 MR. WRIGHT: Do we have it up here?

3 THE WITNESS: Yes.

4 MR. WRIGHT: You're the one that needs to
5 have it. I wanted to make sure.

6 By Mr. Edwards:

7 Q. 396.9 of 49 CFR, Subsection C, the last
8 sentence says, "An out-of-service vehicle sticker shall
9 be used to mark vehicles out of service." Is your
10 interpretation of that you can do it if you want or is
11 that a requirement that you do that, that you place
12 that sticker on there?

13 A. It is an imperative command. However,
14 with the prudence of the location to available repair
15 facilities and the location where the inspection
16 occurred, I found it more professional and more safe to
17 allow the vehicle to proceed to a repair facility for
18 adequate repairs.

19 Q. There's nothing in this regulation that
20 says that, though; correct?

21 A. No, not that section.

22 Q. There's nothing in here that says you have
23 discretion to decide that on your own?

24 MR. WRIGHT: Objection, Your Honor. He's

1 answered the question.

2 By Mr. Edwards:

3 Q. One last question on this, did you
4 comply -- in Mr. Tigner's case, did you comply with 49
5 CFR, 396.9(c)?

6 A. In my opinion, I used all available
7 discretion to allow the vehicle to be repaired, to
8 identify the violation and to get the vehicle to a safe
9 location for the repairs to be effected.

10 Q. We just went over it, and there is no such
11 discretion in the regulation; correct?

12 A. Not under that paragraph, no.

13 Q. Are you aware of any other paragraph that
14 gives you that discretion?

15 A. Not at this time.

16 Q. Do you remember the term restrictive out
17 of service that Mr. Woolum testified to?

18 A. Yes.

19 Q. What's your understanding of that?

20 A. That they were permitted to -- commercial
21 vehicles, once placed out of service, were permitted to
22 go, I believe, approximately five miles to make
23 repairs.

24 Q. Was that restrictive out-of-service

1 provision in effect in June of 2006 when this vehicle
2 was placed out of service?

3 A. I don't believe so.

4 Q. You just testified in rebuttal, referring
5 to the appendix of the Commercial Vehicle Safety
6 Alliance out-of-service criteria. You marked out and
7 read out to the Commission here in your testimony
8 Subsection 2, "Any cracked, loose, or broken frame
9 member adversely affecting support of functional
10 components such as steering gear, fifth wheel, engine,
11 transmission, body parts and suspension." You
12 testified in your opinion this crack or these cracks
13 did adversely affect support of functional components;
14 is that right?

15 A. Yes.

16 Q. However, you testified -- you've
17 testified, Mr. Woolum has testified, and Mr. Tigner has
18 testified that there was no cracked frame member
19 involved. This is a cracked weld. A cracked weld is
20 not a cracked, loose, or broken frame member.

21 A. First of all, the welds do become part of
22 the frame.

23 Q. What do you mean by that?

24 A. Interpretations of the Federal Motor

1 Carrier Safety Regulations say that welds are
2 authorized and once welded becomes part of the frame.

3 Q. Can you point that out to me?

4 A. I could if I had a copy of the
5 regulations.

6 MR. WRIGHT: Which do you need?

7 THE WITNESS: Furthermore, the photographs
8 that are present here are possibly the area, but not
9 conclusive. I remember the deficiency being in that
10 general area, but the photographs that are presented
11 here were not taken by me and possibly not -- and were
12 not my observations.

13 By Mr. Edwards:

14 Q. So you don't remember if this is the area
15 that --

16 A. It is the general area, yes.

17 Q. What do you mean by "general area"?

18 A. Where I identified the crack.

19 Q. Well, where you identified the crack, is
20 it in the photo or not?

21 A. The area, yes. Not the crack.

22 Q. Okay. The crack isn't in the picture
23 because, as testimony has shown, it's been subsequently
24 repaired?

1 A. Yes.

2 Q. But is the place in these photos, is the
3 place where you measured this three-inch crack, is it
4 in the photo?

5 A. Yes.

6 Q. Or any one of the photos?

7 A. Yes.

8 Q. Can you point out to me where a three-inch
9 crack existed in any of the three photos that were
10 taken by Mr. Woolum on Saturday, the 26th of the July,
11 Exhibits J, K, and L?

12 MR. WRIGHT: Your Honor, the question
13 makes no sense. The witness already testified and as
14 counsel has suggested in his question, the repairs have
15 been made; so there's no crack to point out in these
16 pictures, given the event --

17 MR. EDWARDS: I agree that there's no
18 crack as it existed then that exists in these pictures,
19 but I'd like to see on these photos where that crack
20 was, because as testimony has shown, there's no
21 three-inch area for a crack to be.

22 THE WITNESS: These aren't my photos. I
23 didn't take the photos.

24 By Mr. Edwards:

1 Q. You're saying the photos were doctored or
2 altered?

3 A. I am stipulating and testifying the facts
4 from my memory. I can't testify to these photos, are
5 the actual defects.

6 Q. You didn't take any of your own photos?

7 A. I did not.

8 Q. So we're relying -- in order for the
9 Commission to find an out-of-service criteria offense,
10 we're relying solely on your recollection of what
11 happened two years ago, which, as you've pointed out in
12 your testimony both on rebuttal and in direct, is
13 foggy?

14 A. That's not the term I've ever used.

15 Q. Well, you're using vague terms like it's
16 in the general area, and you can't point to a specific
17 part of these photos where this crack existed. I mean,
18 are you saying that it's not on here?

19 A. I'm saying this is not my observations.
20 These are photos from a vehicle that may or may not be
21 the vehicle in question that I inspected. The general
22 area, yes, it appears to be a Fontaine trailer. It
23 appears to be the frame member where there's support of
24 the suspension. However, I can't testify that that's

1 the actual crack that I saw.

2 Q. You originally testified that you had -- I
3 think your recollection was that it was a precise
4 measurement of three inches on both cracks, and now
5 you're saying on rebuttal that you were on your back
6 underneath the trailer and the precision may not have
7 been what you originally stated?

8 A. From my notes I stated there were two
9 cracks three inches long found in that area. There was
10 no precise. How I measured it was on my back using a
11 tape measure. That is what I testified to.

12 Q. So these cracks could have been more or
13 less than three inches?

14 A. That's possible.

15 Q. Returning to the regulations, you state
16 that somewhere in the regulations it specifies that a
17 weld between two components on a vehicle becomes part
18 of the frame. Can you direct me to that provision?

19 A. There is an interpretation in that
20 section, under 393.201, that says once repairs have
21 been made, welds become part of the component.

22 Q. I think I have that somewhere, the
23 section, I mean. Let me see if we can find it.

24 MR. WRIGHT: Your Honor, may I approach?

1 Maybe I can give --

2 THE EXAMINER: You may.

3 (Discussion off the record.)

4 MR. WRIGHT: I think we have it. You're
5 talking about the modifications to Part 393.201?

6 THE WITNESS: Yes.

7 MR. WRIGHT: He now has a copy before him
8 so he can refer to your question.

9 MR. EDWARDS: Do you have another copy of
10 that? I think I have it somewhere.

11 MR. WRIGHT: The bill will be in the
12 mail.

13 MR. EDWARDS: Would Your Honor like a copy
14 to follow along, too?

15 THE EXAMINER: It's in the book; right?

16 MR. WRIGHT: Yes, it's in the book.

17 THE EXAMINER: It's Page 490 in the book.

18 MR. WRIGHT: That's fine. Do you want one
19 of these to follow?

20 THE EXAMINER: Do you intend to file that
21 as an exhibit?

22 MR. WRIGHT: No, but we certainly can cite
23 it in a brief.

24 THE EXAMINER: Yes.

1 MR. WRIGHT: I mean, we talked ad nauseam
2 about this particular regulation.

3 MR. EDWARDS: Well, we haven't talked
4 about this particular interpretation. I'm still not
5 seeing it.

6 MR. WRIGHT: May I approach?

7 THE EXAMINER: You may. Do you have a
8 copy of that page?

9 MR. EDWARDS: Page 490? Yes, I have
10 that.

11 MR. WRIGHT: February 2006 version of the
12 Safety Regulations to Mr. Haskins.

13 By Mr. Edwards:

14 Q. Can you direct me to what you're talking
15 about, Officer Haskins?

16 A. Under the interpretation of 393.201, the
17 federal regulations interpretations, the question asks,
18 "Are welded repairs or modifications to the frame of a
19 CMV violations of the" -- Federal Motor Carrier Safety
20 Regulations?

21 "Guidance: Welding would not be a
22 violation of the" -- Federal Motor Carrier Safety
23 Regulations -- "unless the process used for the metals
24 being welded or the location of the weld reduced the

1 safety of operation of the vehicle."

2 Q. Okay. So you're saying that to you means
3 that welds become part of the frame?

4 A. Yes, that's how I would see that, that
5 once welded.

6 Q. But as you just said, it says, "Welding
7 would not be a violation of the FMCSRs"?

8 A. We're not talking about welding. We're
9 talking about cracks.

10 Q. Okay. So how does this apply? I'm lost.
11 How does this support your statement that a weld
12 between two pieces of the frame somehow becomes part of
13 the frame, so that when you say any cracked, loose, or
14 broken frame member, a weld between two pieces of metal
15 somehow becomes a frame member?

16 A. I interpret that to be part of the frame.

17 Q. Based on Question 3 and the guidance to
18 Question 3?

19 A. And my reading of Paragraph 2, that it
20 would adversely affect the support of functional
21 components, including suspension.

22 Q. I don't see how the guidance anywhere says
23 that.

24 MR. WRIGHT: Your Honor, could you

1 admonish counsel to ask a question and stop testifying,
2 please?

3 MR. EDWARDS: That's fine.

4 THE EXAMINER: Yes, let's continue with
5 question-and-answer format.

6 MR. EDWARDS: I'll reserve that issue for
7 the briefing, if that's what we're going to do, because
8 I don't understand how that supports Officer Haskins'
9 testimony.

10 MR. WRIGHT: Strike the editorial
11 comment.

12 MR. EDWARDS: Just a moment, Your Honor.
13 I may be finished.

14 (Discussion off the record.)

15 MR. EDWARDS: Nothing further, Your
16 Honor.

17 THE EXAMINER: Anything further? Any
18 questions?

19 MR. WRIGHT: No further questions.

20 THE EXAMINER: You're excused.

21 (Witness excused.)

22 THE EXAMINER: Is there anything more?

23 MR. WRIGHT: I guess at this point, Your
24 Honor, I would go ahead and move all Staff exhibits

1 previously offered. I believe it was Staff Exhibits 1,
2 2, 3, and I apologize, I can't remember if we had a
3 fourth or not, but just to cover myself, I move
4 admission of all Staff exhibits.

5 THE EXAMINER: I will at this time admit
6 all the exhibits into evidence.

7 MR. WRIGHT: I'm sorry?

8 THE EXAMINER: I will admit all exhibits
9 into evidence at this time.

10 MR. WRIGHT: Of ours?

11 THE EXAMINER: Everybody's exhibits that
12 are offered into evidence.

13 MR. WRIGHT: Could we at least chat about
14 it and allow me to renew objections to any of the
15 exhibits that they've got? I now have a list.

16 THE EXAMINER: Yes, you can make an
17 objection.

18 MR. WRIGHT: Okay. All right. I must
19 have misunderstood. I'll wait until he moves them, and
20 then if we can go through them individually.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 THE EXAMINER: I'm assuming he'll make a
23 motion. Let's assume -- you can go ahead and do that.

24 MR. EDWARDS: Yes, Your Honor. At this

1 time, I'd like to move to have this case dismissed.
2 We've heard a lot of evidence this morning and this
3 afternoon, I hope most of it relevant. I know there's
4 been some irrelevant testimony here. I certainly can
5 share the blame for that, but what I think are the
6 critical issues in this case are the fact that the
7 State has failed to show that this cracked weld or
8 cracked welds violated the out-of-service criteria.
9 We've heard testimony as to what the out-of-service
10 criteria are from an acknowledged expert. We've read
11 the out-of-service criteria directly from the
12 regulation books, and there -- I can see no
13 interpretation of either the suspension out-of-service
14 criteria or the frame out-of-service criteria that
15 applies to the welds and the cracks in the welds that
16 were testified to by everyone. Furthermore, the State
17 has failed to comply with its own regulations, Federal
18 Motor Carrier Safety Regulations which require that a
19 vehicle placed out of service be red tagged as required
20 by 49 CFR 396.9(c). Officer Haskins has acknowledged
21 that he didn't place such a sticker on the vehicle.
22 He's acknowledged that the regulations do not allow him
23 to permit a vehicle to be moved once it's placed out of
24 service, yet he continues to allege that he intended to

1 place the vehicle out of service at the scene of the
2 inspection, and he believes that he, in fact, did
3 despite testimony of others to the contrary. I don't
4 see any way that this -- that these cracked welds
5 constitute an out-of-service violation, and I don't
6 believe that the State has met their burden of proof,
7 and I don't believe that Mr. Tigner can possibly lose
8 his driving privileges for 90 days on the basis of the
9 testimony we've heard today.

10 THE EXAMINER: All right. I'll take your
11 motion under advisement and I appreciate it. Do you
12 have another motion to make about the exhibits?

13 MR. EDWARDS: About the exhibits, I'd just
14 like to move to have other exhibits admitted. Those
15 are Exhibits A through Q.

16 MR. WRIGHT: Could we go through them
17 individually -- as a matter of fact, do you mind if I
18 come over there and stand next to you?

19 MR. EDWARDS: No.

20 (Discussion off the record.)

21 MR. WRIGHT: Your Honor, I think we're
22 ready to go down through these one at a time.

23 THE EXAMINER: Okay. Let's proceed.

24 MR. EDWARDS: Respondent moves to admit

1 Exhibit B, a copy of the June 5th, 2006, Ohio
2 Driver/Vehicle Examination Report.

3 MR. WRIGHT: We have no objection
4 certainly to that. And with respect to Exhibit A, Your
5 Honor, you know, we had previously stipulated that we
6 understand Mr. Edwards is representing Admiral Freight
7 in this case. As per the letter of May 19, 2008, that
8 he provided us, on that basis I believe counsel has
9 agreed to withdraw Exhibit A. Is that correct?

10 MR. EDWARDS: Agreed.

11 THE EXAMINER: What was Exhibit B again?

12 MR. EDWARDS: Exhibit B is a copy of the
13 inspection report from the PUCO, June 5th.

14 MR. WRIGHT: That would be Staff Exhibit
15 1.

16 THE EXAMINER: That's a Staff exhibit.
17 It's already being admitted?

18 MR. WRIGHT: Yes. That was one of our
19 exhibits.

20 MR. EDWARDS: Okay.

21 THE EXAMINER: Let's proceed.

22 MR. EDWARDS: Exhibit C, we'd move to
23 admit the -- actually, I don't know if I -- did I
24 proffer that? It's the longer version of the same

1 form, Your Honor. I don't even know if I proffered it,
2 because it's a two-page version of the same form.

3 THE EXAMINER: I don't have Exhibit C.

4 MR. EDWARDS: It's a State's exhibit,
5 because it has the inspector's notes, which the copy we
6 received at the time of the inspection did not.

7 MR. WRIGHT: Wait a minute.

8 THE EXAMINER: Is that the same thing as
9 one?

10 MR. WRIGHT: Is that it? Actually, I
11 think it's right there (indicating).

12 MR. EDWARDS: This has fields that one
13 doesn't.

14 MR. WRIGHT: Off the record, please.

15 (Discussion off the record.)

16 MR. EDWARDS: Exhibit D, move to admit
17 that, Exhibit D, the South Dakota Driver/Vehicle
18 Examination Report of June 6th, 2006.

19 MR. WRIGHT: Your Honor -- do you have a
20 copy of that handy, the inspection report? We'll note
21 a continuing objection to that. Again, absent any
22 ability to -- we will certainly stipulate that this was
23 supplied by the South Dakota Highway Patrol, but not
24 having any opportunity to cross-examine the person that

1 prepared this for what they did look at or did not look
2 at in the inspection they did in South Dakota, I would
3 submit that it should be offered only for the fact that
4 it is, in fact, a driver inspection report issued by
5 South Dakota and no inferences should be drawn from it
6 beyond that.

7 THE EXAMINER: Let's proceed.

8 MR. EDWARDS: Exhibit E, frame
9 out-of-service criteria, I don't know if that was
10 submitted or not. I don't believe it was. In fact, it
11 was actually marked F. I'm sorry.

12 THE EXAMINER: I have no exhibit. I do
13 not have Exhibit E.

14 MR. EDWARDS: Here's a copy of it. Do you
15 remember that? I will provide that to him. If I may
16 approach?

17 THE EXAMINER: You may. That is F?
18 You've got me confused. This is marked F. Did you say
19 E?

20 MR. EDWARDS: We're passing over E. There
21 is no Exhibit E.

22 THE EXAMINER: No Exhibit E. So now we're
23 down to F. Proceed.

24 MR. EDWARDS: Do you have any objection to

1 that?

2 MR. WRIGHT: I have no objection to F,
3 no.

4 THE EXAMINER: F. What's the next one?

5 MR. EDWARDS: Exhibit H.

6 MR. WRIGHT: What about E?

7 MR. EDWARDS: I'm sorry --

8 MR. WRIGHT: G.

9 MR. EDWARDS: Do you have Exhibit G, Your
10 Honor?

11 THE EXAMINER: No -- wait a second. Yes.
12 G was about suspensions, I think.

13 MR. EDWARDS: Yes, the out-of-service
14 criteria for suspension components. We'll move to
15 admit that.

16 MR. WRIGHT: We have no objection to
17 that.

18 MR. EDWARDS: Exhibit H, out of service
19 marking rule, do you have a copy of that?

20 THE EXAMINER: H, yes.

21 MR. WRIGHT: That's 396.9 CFR?

22 THE EXAMINER: Yes.

23 MR. EDWARDS: No objection.

24 MR. WRIGHT: Did you move it?

1 MR. EDWARDS: Yes.

2 MR. WRIGHT: We have no objection to that,
3 Your Honor.

4 MR. EDWARDS: I will move to admit Exhibit
5 I, 393.201.

6 MR. WRIGHT: Again, no objection on that,
7 to that.

8 MR. EDWARDS: If I could save time, move
9 to admit Exhibits J, K, and L, all photos taken by Mr.
10 Woolum.

11 MR. WRIGHT: We have no objection to that
12 with the caveat that it stands for nothing more than
13 pictures that were taken by Mr. Woolum. We don't know
14 necessarily that they're pictures of the trailer that
15 Mr. Haskins inspected, but with that caveat --

16 MR. EDWARDS: And the Commission is free
17 to make their own determination based on Mr. Woolum's
18 and Mr. Tigner's testimony. Then we'll move to admit
19 Exhibits M, N, and O, the photos taken by the South
20 Dakota Highway Patrol.

21 MR. WRIGHT: We obviously object to that,
22 Your Honor. There was no one here to properly
23 authenticate those photos. Given the quality of the
24 photos themselves, I would also argue that they're of

1 marginal value in any event, but to have anyone other
2 than the party responsible for taking those pictures
3 identify and authenticate them I think is improper,
4 and, in fact, I'm not even sure that we had anything
5 better than just a vague reference on the record that
6 these may reflect the same areas on the trailer or not.
7 I don't think that was even ever pinned down. So I
8 would object to their admission on both of those
9 grounds.

10 MR. EDWARDS: And the Commission can make
11 their own determination again --

12 MR. WRIGHT: And they're arguably
13 accumulative as well.

14 MR. EDWARDS: -- from Mr. Tigner's
15 testimony. Finally, we'll move to admit, well, two
16 others, Exhibit P, the C.V. or resume' of Larry Woolum.

17 MR. WRIGHT: No objection.

18 MR. EDWARDS: Then the last one we'll move
19 to admit is Exhibit Q, which is a representation from
20 the Commercial Vehicle Safety Alliance out-of-service
21 criteria depicting frame members.

22 MR. WRIGHT: May I see that? Just a
23 minute, Your Honor.

24 (Discussion off the record.)

1 MR. WRIGHT: Mr. Edwards, could you
2 represent again where this came from?

3 MR. EDWARDS: I believe it came from the
4 out-of-service criteria handbook or manual.

5 MR. WOOLUM: It is directly out of a
6 workbook that we have prepared, we being the Ohio
7 Trucking Association, in a periodic inspection training
8 that we have. We took that information out of the
9 out-of-service criteria as well as a training manual
10 from the Federal Motor Carrier Safety Administration.

11 MR. WRIGHT: This comes from a training
12 manual that the Ohio Trucking Association put together?

13 MR. WOOLUM: Yes.

14 MR. WRIGHT: That is one excerpt from
15 that?

16 MR. WOOLUM: Yes.

17 MR. WRIGHT: With that explanation, we're
18 fine with the admission of Exhibit Q.

19 MR. EDWARDS: No further exhibits.

20 THE EXAMINER: I'll make my ruling. I
21 will admit all of the exhibits into evidence at this
22 time.

23 MR. WRIGHT: Your Honor, I'm sorry, I'm
24 having a tough time hearing you.

1 THE EXAMINER: All of the exhibits are
2 admitted into evidence at this time. I agree with
3 Staff that some of the photos are marginally relevant,
4 but, however, we'll let the Commission see them and
5 make the judgment they will. Now, let's go off the
6 record and ask about briefing schedule.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 (Discussion off the record.)

9 THE EXAMINER: We'll go back on the
10 record. We've agreed to file simultaneous briefs on
11 September 24th, and that's it.

12 MR. WRIGHT: We're going to exchange at
13 4:00 that afternoon.

14 THE EXAMINER: Yes. With that said, I'll
15 consider this matter submitted on the record. Thank
16 you.

17 (Thereupon, the hearing was concluded at
18 4:41 p.m.)

19
20
21
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23
24

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings taken
4 by me in this matter on Wednesday, July 30, 2008, and
5 carefully compared with my original stenographic notes.
6
7
8

9 Valerie J. Sloas, Registered
10 Professional Reporter and Notary
11 Public in and for the State of
Ohio.

12 My commission expires June 8, 2011.

13 (VJS-472)
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STAFF Ex. 1



Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone #: (614)466-0429 Fax #: (614)752-9274

DRIVER/VEHICLE EXAMINATION REPORT

Report Number: OH3202303627
Inspection Date: 6/5/2006 Certification Date: 06/22/2006
Time Started: 11:50 Time Ended: 12:35
Inspection Level: II - Walk-Around Non-Bulk HM Insp.
Driver: TIGNER, JAMES M
License #: RD352260 State: OH
Date of Birth: 12/22/1965

ADMIRAL MERCHANTS MOTER FREIGHT INC

215 SOUTH 11TH STREET
MINNEAPOLIS, MN 55403-9837

Phone #: (812)332-4819 Fax #:
USDOT #: 124813 MC/MX #: 076268
State #:

Location: ROAD PATROL (LONDON, OH) MilePost: 79
Highway: I-70 Origin: COLUMBUS, OH Bill of Lading: 21671873
County: MADISON Destination: SIOUX FALLS, SD Cargo: HAZ MAT/BUILDING MATERIAL
Shipper: GENFLEX ROOFING CO INC

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License #	Company #	Unit VIN	GVWR	CVSA #	OOS#
1	TT	PTRB	2000	MN	G1028	4204	DRIVER	0		
2	ST	FONA	1997	OH	TNH2144	4204A48	DRIVER	0		YES

BRAKE ADJUSTMENTS: No brake measurements recorded.

VIOLATIONS :

Section Code	St	Unit	OOS	Lvl 6	Citation #	Verify*	Crash	Violation Description
177.804		2	N	N		N	N	Failed to comply with FMCSR while transporting HM
393.201(a)		2	Y	N		U	N	Frame cracked (axle 4 L)
393.201(a)		2	Y	N		U	N	Frame cracked (axle 4 L)

* N - Non-OOS or Driver OOS Violation; U - Unknown

HazMat: 3 Flammable, **Placard:** Yes **Cargo Tank:**

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> PASA Conducted Inspection	

Inspection Notes: target inspection (HINT) vehicle had defective frame (cracked in 2 locations at axle 4 L-front trailer axle where frame/main frame rail attach. 2 cracks 3" long (OOS)-previously welded area-cracked

Special Study Fields:

Special Study 1: HINT	Special Study 4:
Special Study 2: Y	Special Study 5:
Special Study 3: Y	

Locally Defined Fields:

Loaded by Carrier (Y/N): N	Loaded by Shipper (Y/N): Y	Ship Docs Prep by Carrier(Y/N): N
Ship Doc Prep by Shipper(Y/N): Y	Haz Class A: 3	ID # A: UN1133
Packing Group A: II	Gross Weight A: 1450	Haz Class B: 3
ID # B: UN1133	Packing Group B: II	Gross Weight B: 240
Haz Class C: 3	ID # C: UN1268	Packing Group C: II
Gross Weight C: 272	For-Hire Carrier: Y	Fatalities (Y/N): N
Driver Address: 210 CEDAR ST LOT #	Driver City: PATASKALA	Driver State: OH
Driver Zip: 43062	Photos Taken (Y/N): N/A	Supplemental Report #: N/A
Co-Investigator #: N/A	Reason Code: HINT	Paper Report #: N/A
Replacement Seal: N/A		

* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

Report Prepared By: P Haskins
Badge #: 3202
Copy Received By: TIGNER, JAMES M





Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone #: (614)466-0429 Fax #: (614)752-9274

DRIVER/VEHICLE EXAMINATION REPORT

Report Number: OH3202303627
Inspection Date: 6/5/2006 Certification Date: 06/22/2006
Time Started: 11:50 Time Ended: 12:35
Inspection Level: II - Walk-Around Non-Bulk HM Insp.

ADMIRAL MERCHANTS MOTER FREIGHT INC
215 SOUTH 11TH STREET
MINNEAPOLIS, MN 55403-9837

Phone #: (612)332-4819 Fax #:
USDOT #: 124813 MC/MX #: 076266
State #:

Driver: TIGNER, JAMES M
License #: RD352260 State: OH
Date of Birth: 12/22/1965

All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to motor carriers, shippers, and/or drivers.

ATTENTION DRIVER: This report must be sent to the motor carrier whose name appears at the top of this inspection report within 24 hours. If the inspection report cannot be delivered within 24 hours the driver must mail or fax the inspection report to the motor carrier.

ATTENTION MOTOR CARRIER: The motor carrier must examine this report and repair all the vehicle defects/violations noted above -AND- The motor carrier must sign the Certification of Repairs below and return the signed form to: Public Utilities Commission of Ohio-TASD; 180 E. Broad St.; Columbus, Oh; 43215-3793 -OR- Fax (614) 752-9274 within 15 days of the inspection. If "No Violations Were Discovered" then you do not need to return this report. Failure to return this report with the required certification can result in penalties up to \$1,000 per day for each day the violation continues, up to a total of \$10,000.

MOTOR CARRIER CERTIFICATION OF COMPLETED REPAIRS: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety & Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. A false certification of repairs is required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X Title: _____ Date: _____

Signature of Repairer: X Facility: _____ Date: _____

Report Prepared By:
P Haskins

Badge #:
3202

Copy Received By:
TIGNER, JAMES M



Section 393.87—Flags on Projecting Loads

Section 393.87 is being revised to make the requirements consistent with the American Association of State Highway and Transportation Officials' (AASHTO) Guide for Maximum Dimensions and Weights of Motor Vehicles and for the Operation of Nondivisible Load Oversize and Overweight Vehicles, GSW-3, 1991. The AASHTO publication provides guidance on the use of warning flags for vehicles and loads which exceed legal width or length, or which have a rear overhang in excess of the legal limit. The AASHTO guidelines call for the use of red or orange fluorescent warning flags which are at least 457 mm (18 inches) square. Because the AASHTO guide appears to cover the majority of the cases to which the current rule is applicable, and represents a consensus of State and industry practices, FMCSA is revising § 393.87 to adopt certain provisions of those guidelines.

Commercial motor vehicles transporting loads which extend beyond the sides by more than 102 mm (4 inches) or more than 1,219 mm (4 feet) beyond the rear must have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 457 mm (18 inches) square as opposed to the current requirement of 305 mm (12 inches) square.

With regard to the number of flags and their positions, a single flag at the extreme rear is required if the projecting load is 610 mm (2 feet) wide or less. Two warning flags are required if the projecting load is wider than 610 mm. Flags are required to be positioned to indicate maximum width of loads which extend beyond the sides and/or rear of the vehicle.

Section 393.94—Vehicle Interior Noise Level

FMCSA simplifies its regulation concerning the applicability of the interior noise levels in commercial motor vehicles. Section 393.94(a) and (d) make reference to certain vehicles manufactured before October 1, 1974, and grant motor carriers until April 1, 1975, to comply with the regulation. For vehicles operated wholly within Hawaii, carriers were given until April 1, 1976, to comply. Because these deadlines have passed, FMCSA is deleting the references from § 393.94. In addition, FMCSA is updating the reference to the American National Standards Institute (ANSI) specifications for sound level meters. Currently, § 393.94 references the 1971

version of ANSI S1.4, Specification for Sound Level Meters. FMCSA incorporates by reference the 1983 version and removing the footnote to paragraph (c). Information on the availability of the ANSI document is covered under § 393.7.

Section 393.95—Emergency Equipment on All Power Units

FMCSA eliminates the reference to lightweight vehicles in paragraph (a). The term became obsolete when the agency implemented the requirements of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31131 *et seq.*) and limited the applicability of part 393 to "commercial motor vehicles" as defined in that statute (53 FR 18042, May 19, 1988). Sections 393.95(a)(2)(i) and (a)(2)(ii) are being amended to remove obsolete references to vehicles equipped with fire extinguishers prior to July 1, 1971, and January 1, 1973, respectively. While some of these vehicles are still in operation, it is unlikely that the motor carriers are still using fire extinguishers that are more than 30 years old.

FMCSA revises § 393.95 to remove the specifications for bidirectional warning triangles manufactured prior to January 1, 1974. Such triangles are already prohibited on any vehicle manufactured on or after January 1, 1974. Therefore, only those carriers operating commercial motor vehicles manufactured before January 1, 1974, and equipped with warning triangles manufactured before that date, are affected.

FMCSA revises the requirements on the mounting of fire extinguishers to provide more specific guidance. Fire extinguishers are required to be securely mounted to prevent sliding, rolling, or vertical movement relative to the motor vehicle. Currently, § 393.95(a)(1) states only that the extinguisher be securely mounted.

With regard to extinguishing agents, FMCSA replaces the reference to the Underwriters Laboratories' (UL) Classification of Comparative Life Hazard of Gases and Vapors. The UL study was conducted in the 1950's and is considered obsolete information. UL has recommended that the FMCSA consider referencing the Environmental Protection Agency's regulations under Subpart G of 40 CFR part 82, Protection of Stratospheric Ozone. Subpart G implements section 612 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) by determining safe alternatives to ozone-depleting compounds. It is usually referred to as the "Significant New Alternatives Policy" (SNAP) program. The SNAP regulations take into consideration the toxicity of substitutes

for ozone-depleting compounds, but they also address potential impacts on atmospheric ozone, global warming and other issues related to human exposure and the environment. FMCSA is therefore requiring that fire extinguishers comply with the toxicity provisions of the SNAP regulations. While the other issues (ozone depletion, global warming, etc.) are important, there is no practical reason to address these issues in § 393.95.

Section 393.201—Frames

In its final rule published on December 7, 1988 (53 FR 49380), FHWA prohibited cracked, loose, sagging or broken frames. However, the agency inadvertently failed to include trailer frames. FMCSA amends § 393.201 to remedy this oversight by replacing "bus, truck and truck-tractor" with the term "commercial motor vehicles" in paragraph (a).

FMCSA revises § 393.201(d) to make the regulation more practical. Paragraph (d) was intended to prohibit welding on vehicle frames constructed of certain types of steel which is weakened by the welding process. However, the current wording is overly restrictive. To address this issue, paragraph (d) is being revised to allow welding which is performed in accordance with the vehicle manufacturer's recommendations.

In addition, FMCSA removes paragraph (f). Paragraph (f) states that field repairs are allowed. There is no practical reason for retaining this provision since there was never a requirement that the motor carrier repair its vehicle only at certain locations.

Section 393.207—Suspension Systems

In response to a petition from the Truck Trailer Manufacturers Association (TTMA), FMCSA is amending § 393.207 to prohibit any device which is capable of dumping air individually from either of the two axle suspension systems on a semitrailer equipped with air-suspended "spread" or "split" tandem axles. TTMA indicated that the petition was not intended to prohibit: (1) Devices that could exhaust air from both axle systems simultaneously, or (2) lift axles on multi-axle units. The petition is available for review in the docket.

According to the TTMA, about 30,000 semitrailers are manufactured each year with split tandem axles and air suspensions. These axles are not genuine tandems, but rather two single axles spaced at least 3,048 mm (10 feet) apart, the minimum separation required by the bridge formula [23 U.S.C. 127(a)] before each of them can carry the full 9,072 kg (20,000 pounds) allowed by

Staff Ex. 3

Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone: (614)486-0429 Fax: (614)782-8274

REC'D
FUGO
TRAN DATA SYS

06 NOV 16 PM 2:38

DRIVER/VEHICLE EXAMINATION REPORT
Report Number: OH3202303627
Inspection Date: 05/05/2006
Start Time: 11:50 AM End Time: 12:35 PM
Insp. Level: 2-Walk-Around, Non-Bulk HM Insp

ADMIRAL MERCHANTS MOTOR FREIGHT INC
215 SOUTH 11TH STREET
MINNEAPOLIS, MN 55403-0837
USDOT#: 00124813 Phone#: (612)332-4819
MIC/MUX: 076266 Fax:
State#:

Driver: TIGNER, JAMES M
License#: RD362280 State: OH
Date of Birth: 12/22/1966
CoDriver:
License#: State:
Date of Birth:

Location: ROAD PATROL (LONDON, OH)
Highway: I-70
County: MADISON, OH

BillPost: 79 Shipper: GENFLEX ROOFING CO INC
Origin: COLUMBUS, OH Bill of Lading: 21671873
Destination: SIOUX FALLS, SD Cargo: HAZ MAT/BUILDING MATERIAL

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License#	Company#	Vin#	GVWR	CYSA#	QOS#
1	TT	PTRE	2000	MN	G1028	4204	DRIVER			
2	ST	FONA	1997	OH	TN12144	4204A48	DRIVER			YES

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

Section Code	St	Unit	QOS	Citation #	Verify	Crash	Violations Discovered
177.804		2	N		N	N	Failed to comply with FMCBR while transporting HM
393.201(a)		2	Y		U	N	Frame cracked (axle 4 L)
393.201(a)		2	Y		U	N	Frame cracked (axle 4 L)

Hazard: 3 Flammable

Placard: Yes Cargo Tank:

Special Checks: No Data for Special Checks.

State Information:

Replacement Seat: N/A; For-Hire Carrier: Y; Fatalities (Y/N): N; Driver Address: 210 CEDAR ST LOT #213; Driver City: PATASKALA; Driver State: OH; Driver Zip: 43062; Photo Ref #: N/A; Supplemental Report #: N/A; Co-Investigator #: N/A; REN Code: HINT; Paper Report #: N/A;

"Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 395.8, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report. NOTE TO MOTOR CARRIERS: Please sign the below certification and return the report to the address which appears at the top of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

Signature Of Repairer X: [Signature] Facility: [Signature] Date: 6-5-06

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

Signature Of Motor Carrier X: [Signature] Title: [Signature] Date: 6/20/06

Signed Prior to Reading due to Bad Position
on Roadside in a Construction Zone

Report Prepared By:
P HASKINS

Radio #: 3202

Copy Received By:
TIGNER, JAMES M

Page 1 of 1



OH3202303627

Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone: (614)466-0429 Fax: (614)752-9274

DRIVER/VEHICLE EXAMINATION REPORT
Report Number: OH3202303627
Inspection Date: 06/05/2006
Start Time: 11:50 AM End Time: 12:35 PM
Insp. Level: 2-Walk-Around, Non-Bulk HM Insp

ADMIRAL MERCHANT'S MOTER FREIGHT INC
215 SOUTH 11TH STREET
MINNEAPOLIS, MN 55403-9837
USDOT#: 00124813 Phone#: (612)332-4819
MC/MX#: 076266 Fax#:
State#:

Driver: TIGNER, JAMES M
License#: RD352260 State: OH
Date of Birth: 12/22/1985
CoDriver:
License#: State:
Date of Birth:

Location: ROAD PATROL (LONDON, OH)
Highway: I-70
County: MADISON, OH

MilePost: 79 Shipper: GENFLEX ROOFING CO INC
Origin: COLUMBUS, OH Bill of Lading: 21671873
Destination: SIOUX FALLS, SD Cargo: HAZ MAT/BUILDING MATERIAL

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TT	PTRB	2000	MN	G1028	4204	DRIVER			
2	ST	FONA	1997	OH	TNH2144	4204A48	DRIVER			YES

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
177.804		2	N		N	N	Failed to comply with FMCSR while transporting HM
393.201(a)		2	Y		U	N	Frame cracked (axle 4 L)
393.201(a)		2	Y		U	N	Frame cracked (axle 4 L)

HazMat: 3 Flammable

Placard: Yes Cargo Tank:

Special Checks: No Data for Special Checks.

State Information:

Replacement Seal: N/A; For-Hire Carrier: Y; Fatalities (Y/N): N; Driver Address: 210 CEDAR ST LOT # 213; Driver City: PATASKALA; Driver State: OH; Driver Zip: 43062; Photo Ref #: N/A; Supplemental Report #: N/A; Co-Investigator #: N/A; RSN Code: HINT; Paper Report #: N/A;

* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report. **NOTE TO MOTOR CARRIERS:** Please sign the below certification and return this report to the address which appears at the top of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

Signature Of Repairer X: [Signature] Facility: [Signature] Date: 6-5-06

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

Signature Of Motor Carrier X: _____ Title: _____ Date: _____

Report Prepared By:
P HASKINS

Badge #:
3202

Copy Received By:
TIGNER, JAMES M

Page 1 of 1



EXHIBIT

B

South Dakota Highway Patrol
Motor Carrier Services
118 West Capital
Pierre, SD 57501-5070
Phone: (605)773-7125 Fax: (605)773-7144

DRIVER/VEHICLE EXAMINATION REPORT
Report Number: SD0030036608
Inspection Date: 06/06/2006
Start Time: 11:55 AM End Time: 01:09 PM
Insp. Level: 2-Walk-Around, Non-Bulk HM Insp

ADMIRAL MERCHANTS MOTOR FREIGHT INC
215 SOUTH 11TH STREET
MINNEAPOLIS, MN 55403-9837
Phone#: (612)332-4819 Fax#:
USDOT#: 00124813 ICC#: 076266
State#:

Driver: TIGNER, JAMES M
License#: RD352260 State: OH
Date of Birth: 12/22/1965
CoDriver:
License#:
Date of Birth:
State:

Location: JEFFERSON POE
Highway: 129
County: UNION

MilePost: 13 Shipper: GENFLEX ROOFING
Origin: COLUMBUS, OH Bill of Lading: 32955
Destination: SIOUX FALLS, SD Cargo: ADHESIVE 3 UN1133

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TJ	PTRB	2000	MN	PAG1028	4204	1XP5DB9X6YN520612			
2	ST	FONA	1997	OH	TNH2144	4204A48	13N148306W167892			

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
393.95(a)		1	N	WARNING	N	N	No/discharged/unsecured fire extinguisher. FIRE EXTINGUISHER NEEDS TO BE RECHARGED
395.13(d)		D	N	P41976HP	N	N	Driving after being declared out-of-service. VIOLATION OF OUT-OF-SERVICE ORDER ISSUED BY OHIO ON 06/05/06 32/12A/B.1

Haz Mat: 3 Flammable

Placard: Yes Cargo Tank:

Special Checks: No Data for Special Checks

*This certification MUST BE SIGNED by a company official (Safety Director, President, Owner, etc.) and returned within 15 days. Failure to return this report can result in penalties up to \$500. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

The undersigned certifies that all violations noted on this report have been corrected and action has been taken to assure compliance with the Federal Motor Carrier Safety and HM Regulations insofar as they are applicable to motor carriers and drivers.

Signature Of Motor Carrier X: _____ Date: _____

Report Prepared By:
MICHAEL OLSON

Badge #:
569

Copy Received By:
TIGNER, JAMES M

Page 1 of 1



EXHIBIT

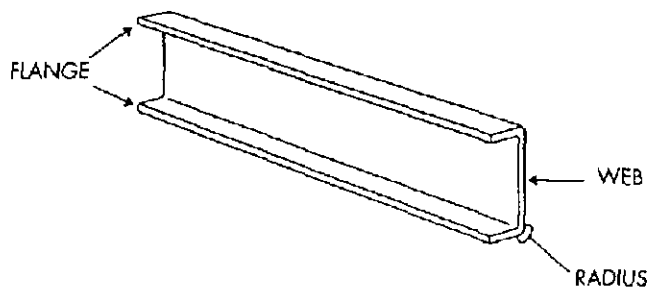
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*4. FRAME

*a. Frame Members

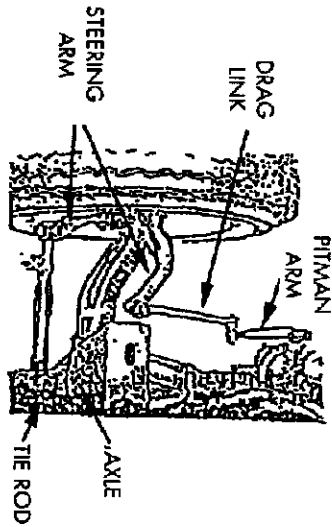
- (1) Any cracked, loose, sagging, or broken frame siderail permitting shifting of the body onto moving parts or other condition indicating an imminent collapse of the frame. (393.201(a))
- (2) Any cracked, loose, or broken frame member adversely affecting support of functional components such as steering gear, fifth wheel, engine, transmission, body parts and suspension. (393.201(a))
- (3) One and one-half inches (38mm) or longer crack in frame siderail web which is directed toward bottom flange. (393.201(a))
- (4) Any crack extending from the frame siderail web around the radius and into the bottom flange. (393.201(a))
- (5) One inch (25mm) or longer crack in siderail bottom flange. (393.201(a))

NOTE: Items (1) and (2) above, apply to all buses, including those having unitized (monocoque) construction. Items (3) and (4) apply only to buses having a body-on-chassis design, such as most school buses.



b. Tire and Wheel Clearance

Any condition, including loading, that causes the body or frame to be in contact with a tire or any part of the wheel assemblies, at the time of inspection. (396.3(a)(1))



- i. Nuts
Loose or missing on the rods, pitman arm, drag link, steering arm, or the rod arm. (396.3(a)(1))

- j. Steering System
Any modification or other condition that interferes with free movement of any steering component. (393.209(d))

- k. C-Dolly
 - (1) Missing or inoperable steering locks. (396.3(a))
 - (2) Steering not centered in the "zero" locked position. (396.3(a))

9. SUSPENSION

a. Axle Parts/Members

- (1) Any U-bolt(s) or other spring to axle clamp bolt(s) cracked, broken, loose, or missing. (393.207(a))
- (2) Any axle, axle housing, spring hanger(s), or other axle positioning part(s) cracked, broken, loose, or missing resulting in shifting of an axle from its normal position. (393.207(a))

NOTE: After a turn, lateral axle displacement is normal with some suspensions including composite springs mounted on steering axles.

b. Spring Assembly

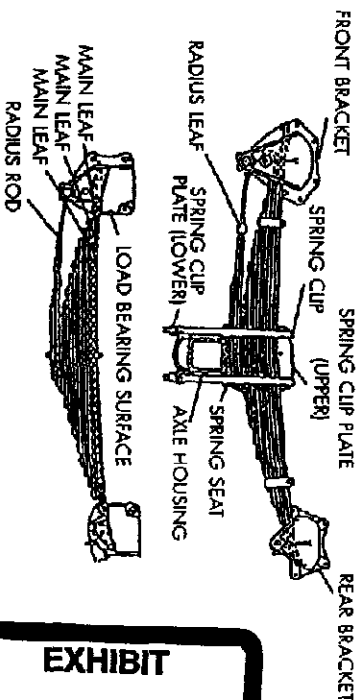
- (1) One-fourth or more of the leaves in any spring assembly broken. (393.207(c))
- (2) Any leaf or portion of any leaf in any spring assembly is missing or separated. (393.207(c))
- (3) Any broken main leaf in a leaf spring. (393.207(c))

NOTES:

1. Any leaf of leaf spring assembly is a main leaf if it extends, at both ends, to or beyond:
 - a. The load bearing surface of a spring hanger or equalizer.
 - b. The spring end cap or insulator box mounted on the axle.

c. A spring eye, further: Any leaf or a helper spring assembly is a helper main leaf if it extends, at both ends, to or beyond the load bearing surface of its contact pad, hanger, or equalizer.

2. The radius rod leaf, in springs having such a leaf, has the same function as the torque or radius components referenced in item 9.d. "Torque, Radius, Tracking or Sway Bar Components" and should be treated as such a component for purposes of Out-of-Service. (393.207(c))



EXHIBIT

9

- Adjustable axle assembly (sliding sub frame) with more than one-fourth of the locking pins missing or not engaged. (393.207(b))

[Code of Federal Regulations]

[Title 49, Volume 5]

[Revised as of October 1, 2007]

From the U.S. Government Printing Office via GPO Access

[CITE: 49CFR396.9]

[Page 471]

TITLE 49--TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

PART 396 INSPECTION, REPAIR, AND MAINTENANCE--Table of Contents

Sec. 396.9 Inspection of motor vehicles in operation.

(a) Personnel authorized to perform inspections. Every special agent of the FMCSA (as defined in appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation.

(b) Prescribed inspection report. The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections conducted by authorized FMCSA personnel.

→ (c) Motor vehicles declared "out of service." (1) Authorized personnel shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked "out of service" until all repairs required by the "out of service notice" have been satisfactorily completed. The term "operate" as used in this section shall include towing the vehicle, except that vehicles marked "out of service" may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an "out of service" vehicle shall not be operated unless such combination meets the performance requirements of this subchapter except for those conditions noted on the Driver Equipment Compliance Check.

(3) No person shall remove the "Out of Service Vehicle" sticker from any motor vehicle prior to completion of all repairs required by the "out of service notice".

(d) Motor carrier disposition. (1) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within 24 hours, the driver shall immediately mail the report to the motor carrier.

(2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.

(3) Within 15 days following the date of the inspection, the motor carrier shall--

(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier Official, Title, and Date Signed" portions of the form; and

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business or where the vehicle is housed for 12 months from the date of the inspection.

(49 U.S.C. 3102; 49 CFR 1.48(b))

[44 FR 38526, July 2, 1979, as amended at 49 FR 38290, Sept. 28, 1984; 57 FR 40964, Sept. 8, 1992; 68 FR 56208, Sept. 30, 2003]

EXHIBIT

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[Code of Federal Regulations]

[Title 49, Volume 5]

[Revised as of October 1, 2005]

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[CITE: 49CFR393.201]

[Page 448]

TITLE 49--TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION--Table of
Contents

Subpart J Frames, Cab and Body Components, Wheels, Steering, and
Suspension Systems

Sec. 393.201 Frames.

Source: 53 FR 49402, Dec. 7, 1988, unless otherwise noted.

(a) The frame or chassis of each commercial motor vehicle shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) Parts and accessories shall not be welded to the frame or chassis of a commercial motor vehicle except in accordance with the

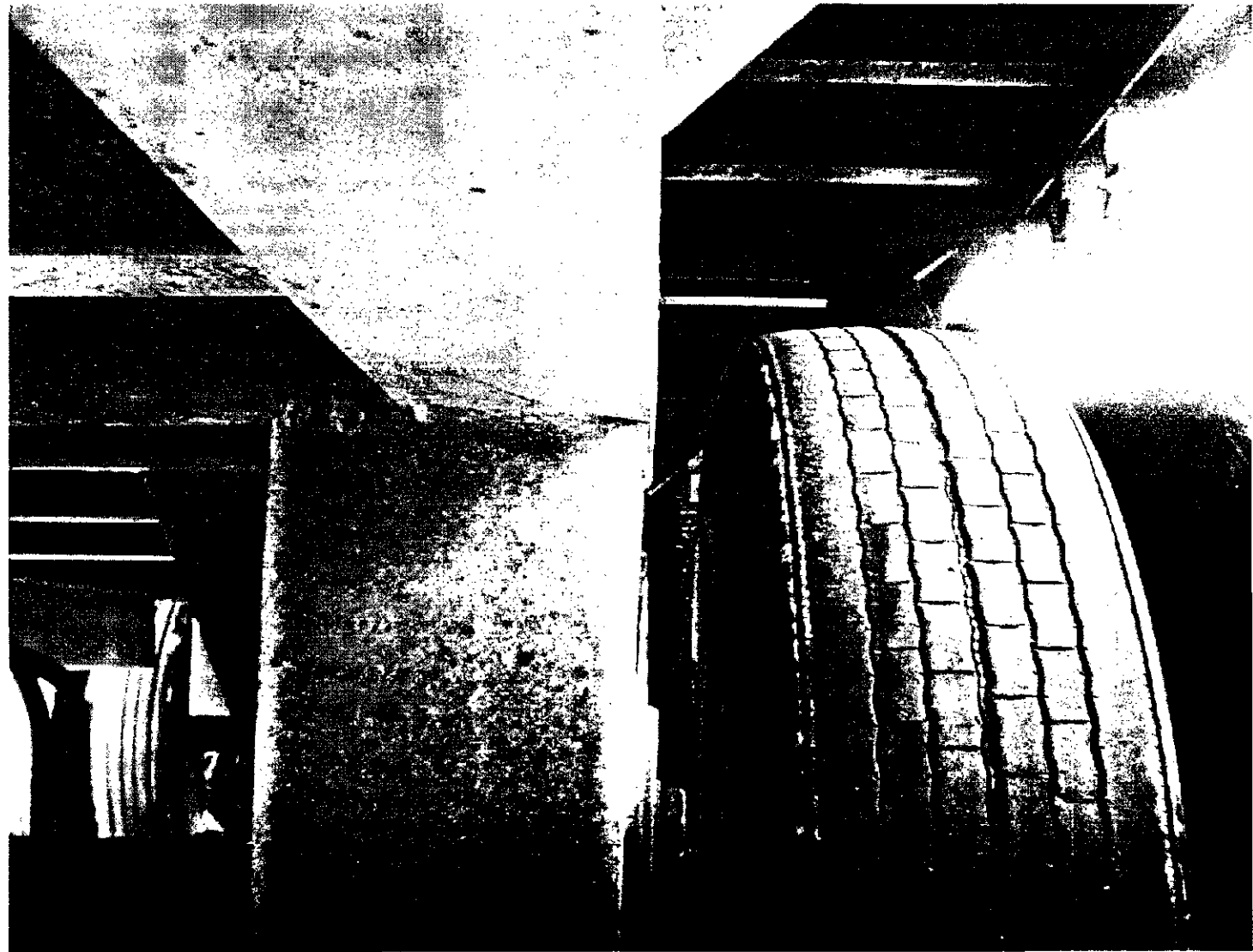
EXHIBIT

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vehicle manufacturer's recommendations. Any welded repair of the frame must also be in accordance with the vehicle manufacturer's recommendations.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

[53 FR 49402, Dec. 7, 1988, as amended at 70 FR 48055, Aug. 15, 2005]



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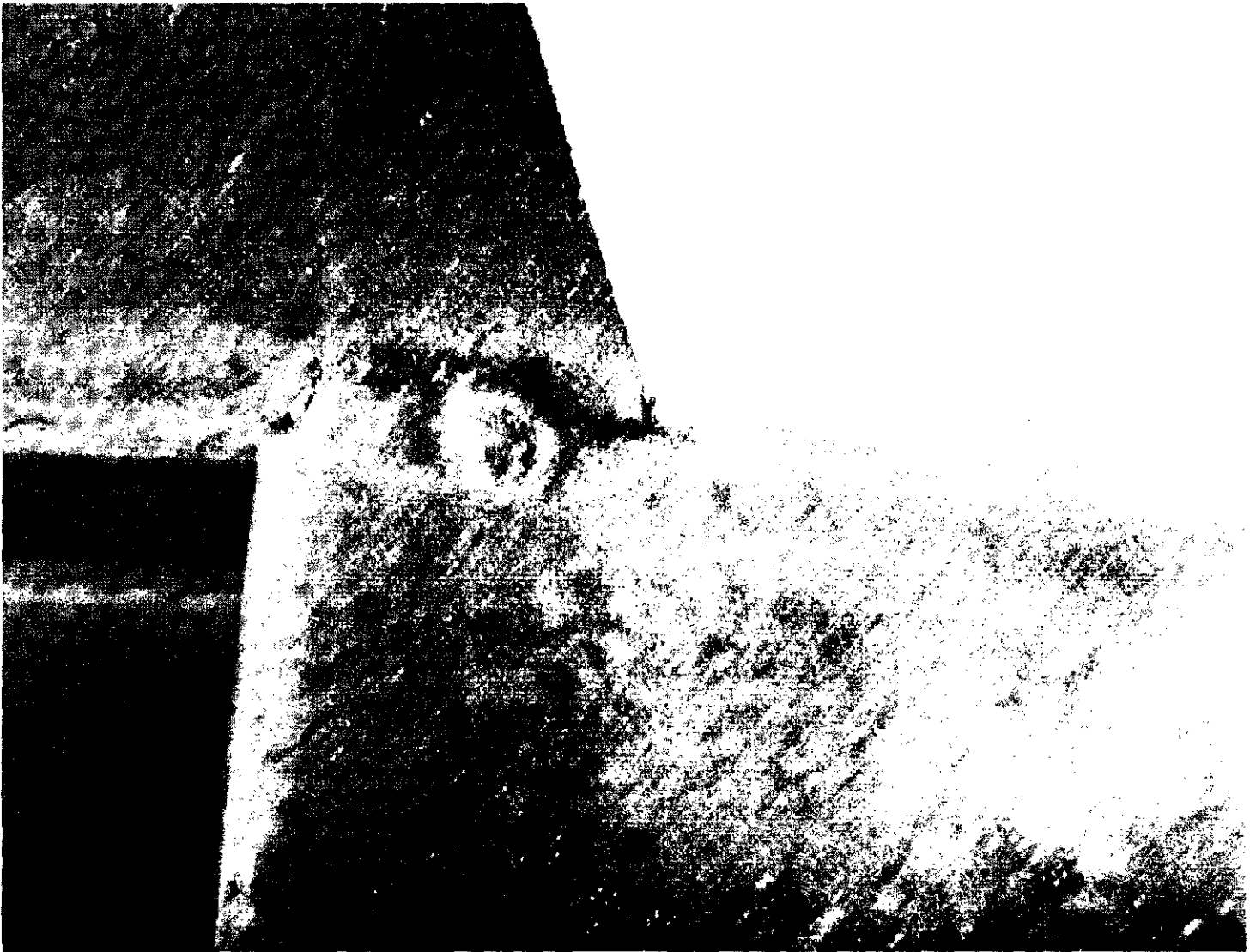
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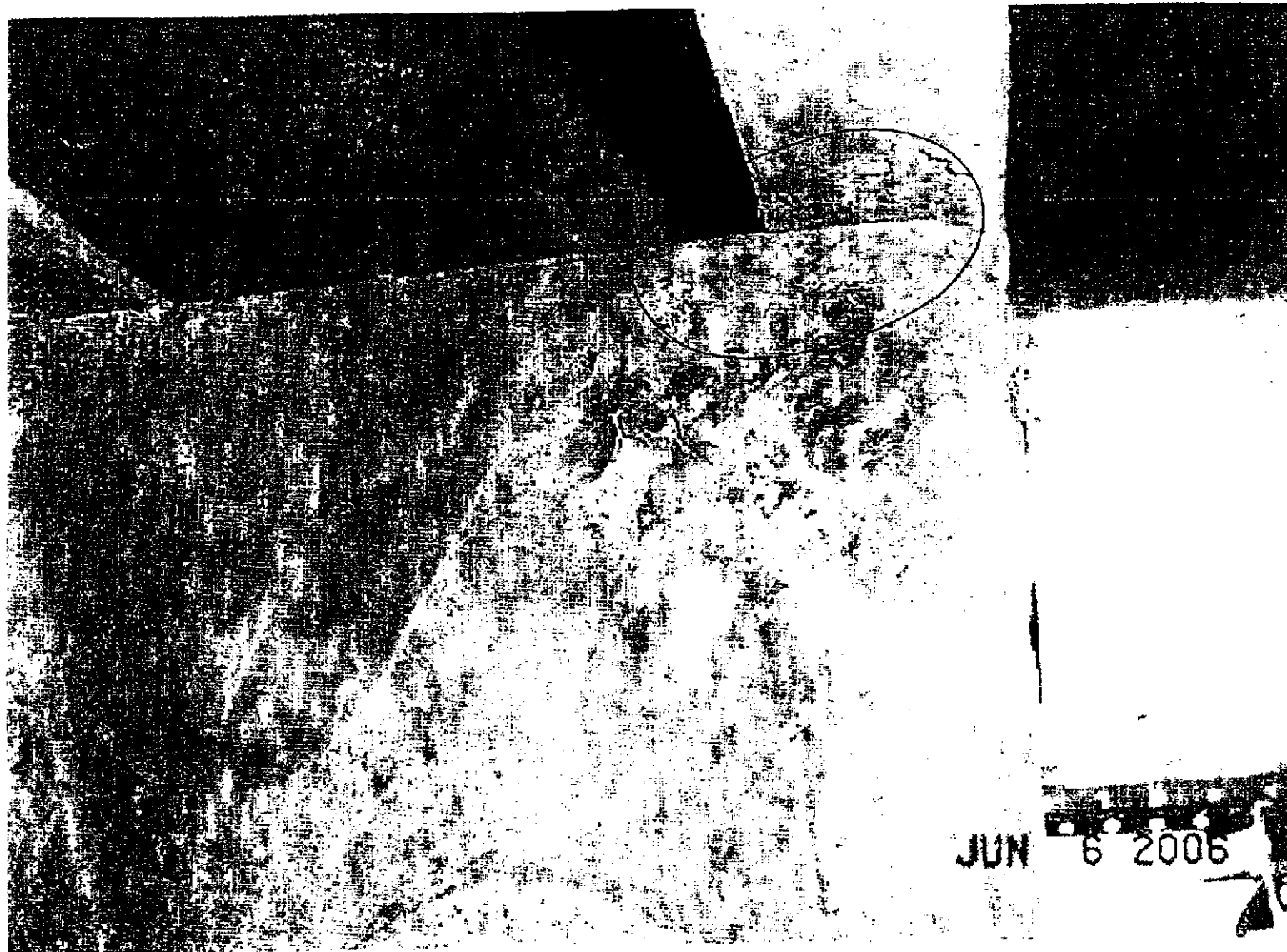
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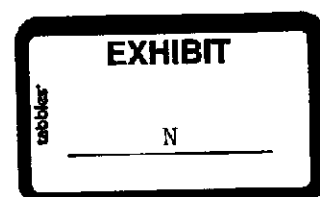
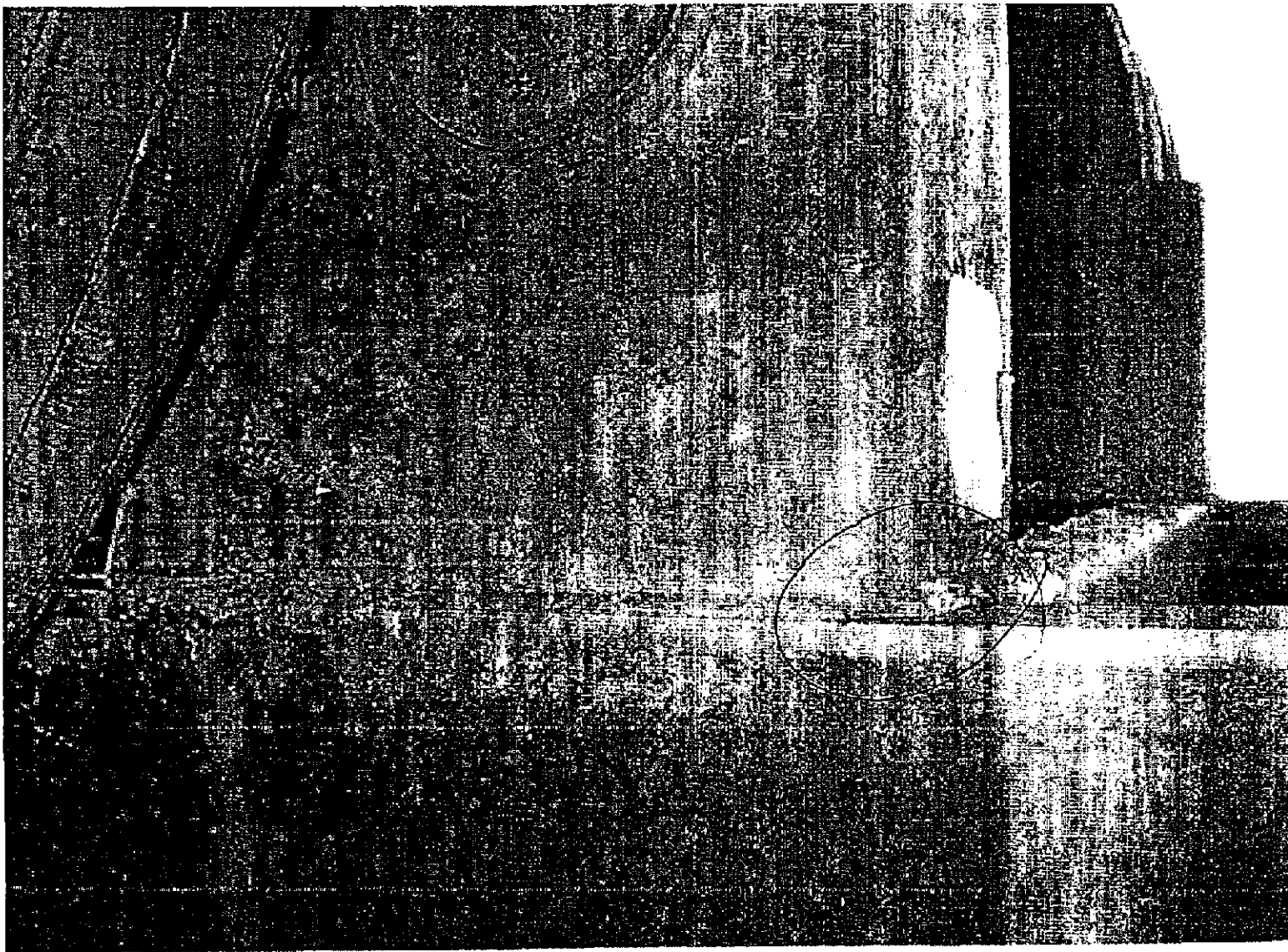
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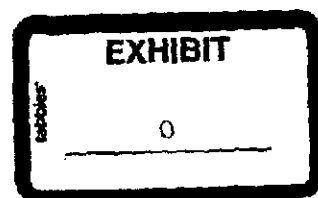
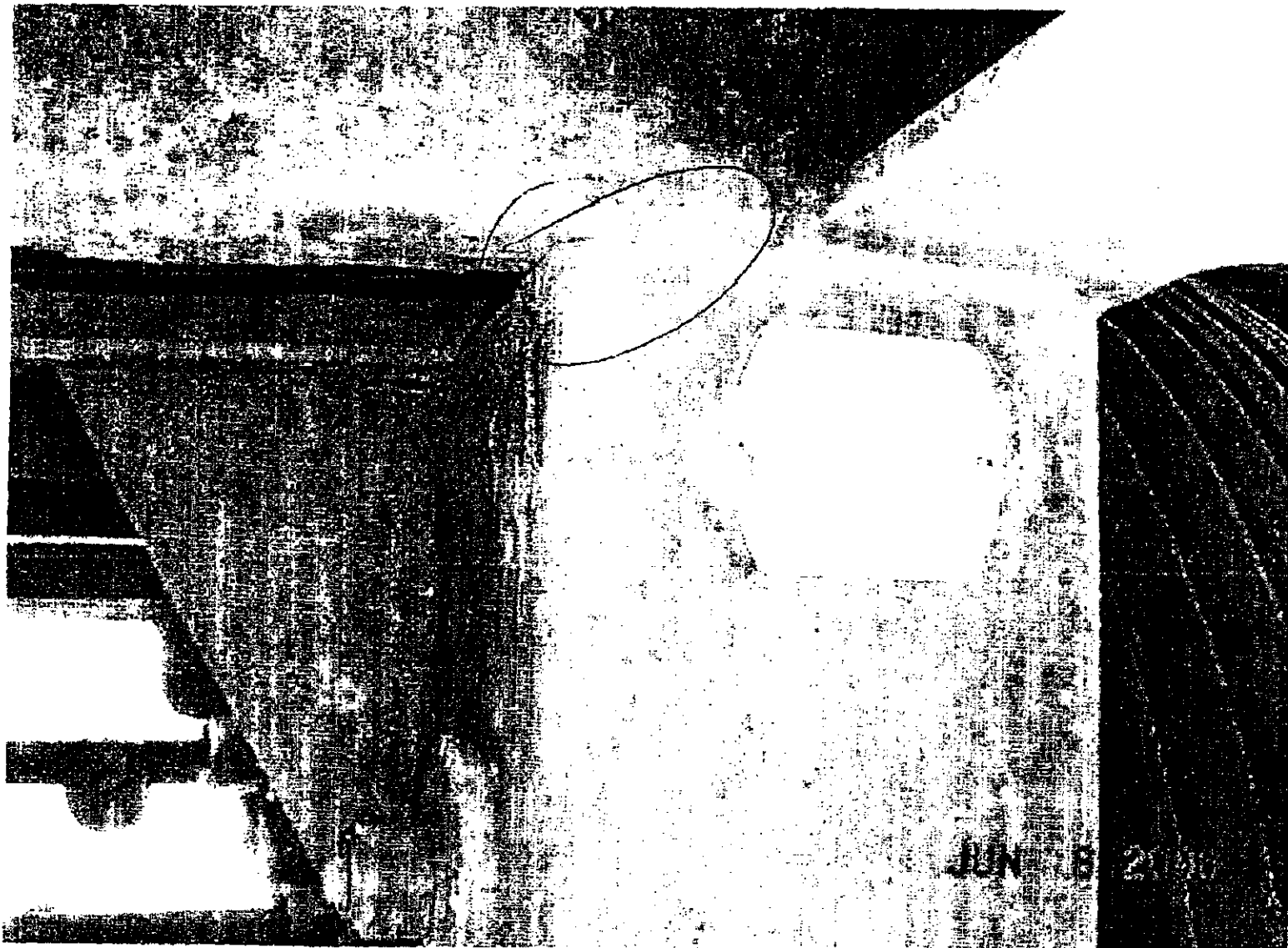
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Larry Woolum
Director of Regulatory Affairs
Ohio Trucking Association
50 West Broad Street
Suite 1111
Columbus, Ohio 43215

QUALIFICATIONS

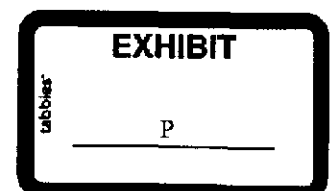
For the past 9 years and 7 months, I have been employed by the Ohio Trucking Association as the Director of Regulatory Affairs. My job duties include reviewing and understanding federal and state regulations that have an impact on the trucking industry. In an effort to keep the membership compliant, I coordinate the training and educational seminars directed toward the association membership. Providing explanation and researching particular compliance issues is a large part of my job responsibilities.

Conducting training on the regulations, managing the Ohio Trucking Safety Council and the Ohio Trucking Maintenance Council fall within my responsibilities. This requires constant monitoring of the Federal Motor Carrier Safety Regulations, Commercial Vehicle Safety Alliance Out of Service Criteria, the PUCO rules and regulations as well as the Ohio Revised Code.

Prior to joining the Ohio Trucking Association staff, I was a 26 year veteran of the Ohio State Highway Patrol. During that time, I attained the rank of Staff Lieutenant. I also had the opportunity to be responsible for many different programs and projects associated with traffic safety, and specifically motor carrier safety. Additionally, I was responsible for the training and guidance of as many as 120 motor carrier enforcement personnel as well as immediate supervisor and manager of office personnel.

During the last 10 years of my career with the Ohio State Highway Patrol, I was assigned to General Headquarters, at the Office of Licensing and Commercial Standards. In this position, I had the opportunity to play a role in drafting, introducing and implementing legislation for the Commercial Drivers License Program and the Motor Carrier Enforcement Program.

I am familiar with the legislative process, the Federal Motor Carrier Safety Regulations, the Ohio Revised Code and the Ohio Public Utilities Commission Rules and Regulations as they each pertain to motor carrier safety and hazardous materials.



WORK HISTORY

December 1998 – Present

DIRECTOR OF REGULATORY AFFAIRS, OHIO TRUCKING ASSOCIATION

January 1998 – December 1998

STAFF LIEUTENANT, OHIO STATE HIGHWAY PATROL

Administrative Officer for the Office of Licensing and Commercial Standards, General Headquarters. Responsible for providing organization, administration and guidance to the personnel assigned.

November 1990 – January 1998

LIEUTENANT, OHIO STATE HIGHWAY PATROL

Staff specialist for the Office of Licensing and Commercial Standards, General Headquarters. Responsible for training and supervision of personnel, organization, administration and guidance of the Motor Carrier Enforcement Program.

August 1988 – November 1990

SERGEANT, OHIO STATE HIGHWAY PATROL

Staff Specialist for the Driver and Vehicle Services Section, General Headquarters. Responsible for the implementation of the Commercial Drivers License testing program.

July 1980 – August 1988

SERGEANT, OHIO STATE HIGHWAY PATROL

Assistant Post Commander at the Castalia and Toledo Patrol Post. Responsible for the first line supervision of personnel and administrative duties associated with post operations.

October 1972 – July 1980

TROOPER, OHIO STATE HIGHWAY PATROL

Responsible for the enforcement of traffic laws, investigations of crimes involving state property, investigations of traffic crashes and encourage traffic safety.

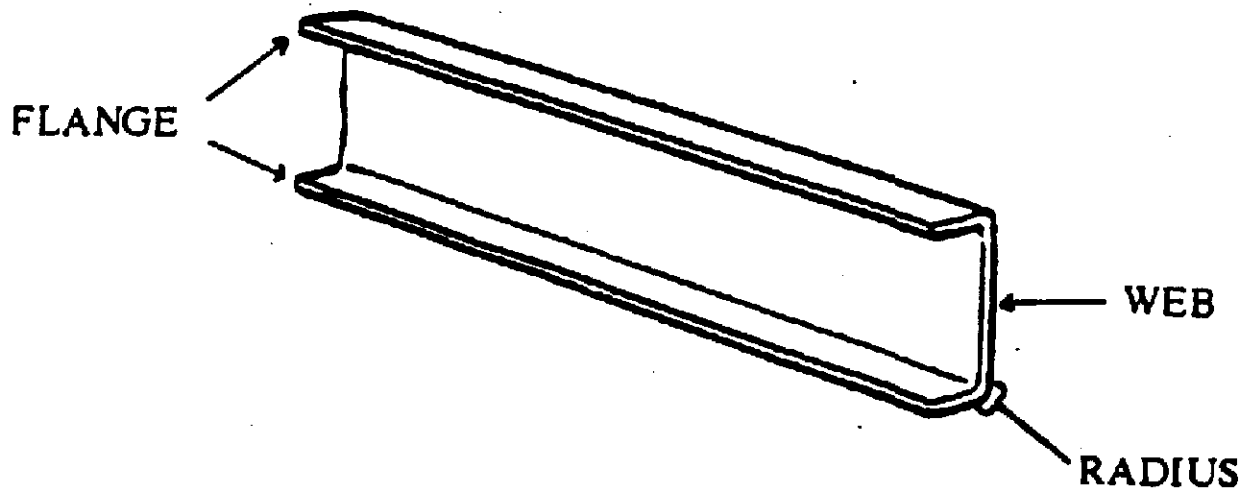
EDUCATION

1969 Graduated Allen East High School LaFayette, Ohio
1970 – 1971 Attended Bluffton College Bluffton, Ohio
July 1972 – October 1972 Graduated the Ohio State Highway Patrol 96th Academy Class
1987 – 2004 Office of Attorney General Ohio Peace Officer Instructor
August 1989 – National CDL Examiner Train – The – Trainer Program (AAMVA)
February 1991 – Police Instructor Training
1991-1998 – OSHP Academy Instructor
January 1992 – FHWA Office of Motor Carrier Enforcement Training
March 1992 – FHWA Office of Motor Carrier Hazardous Materials Enforcement Training
April 1993 - Allied Signal Air Brake Seminar
March 1993 – Motor Carrier Drug Interdiction Training (MCSAP DIAP)
February 2005 – North American Transportation Management Institute Motor Fleet Accident Investigation

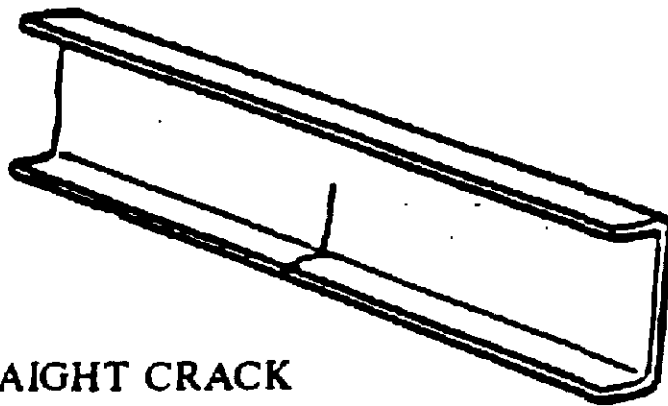
COMMITTEES

Past member of the Safety Council of Central Ohio Board of Trustees
Past Chairman of the American Association of Motor Vehicle Administrators Region 3 Engineering and Vehicle Inspection Committee
Past member of the Commercial Vehicle Safety Alliance (CVSA) Driver Committee
Current Secretary of the Industry Advisory Committee of the CVSA
Current member of the BWC Safety Congress Motor Carrier Committee
Current Member of the American Trucking Association Safety and Loss Prevention Council
Current Member of the American Trucking Association Maintenance Council
Current Member of the Commercial Vehicle Safety Alliance

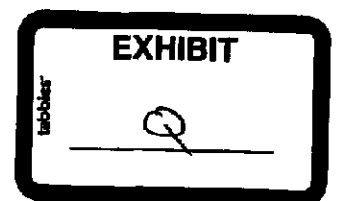
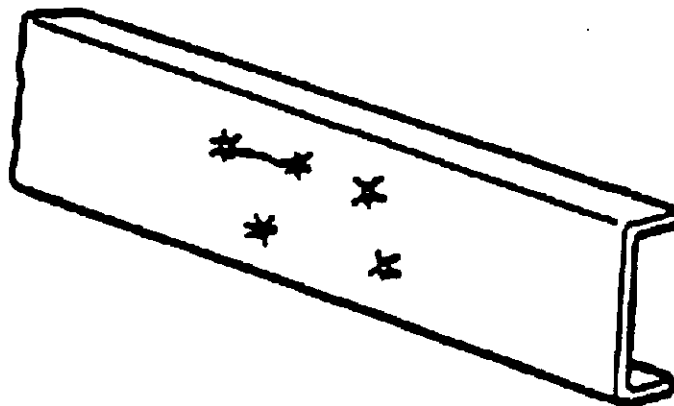
FRAME



STRAIGHT CRACK

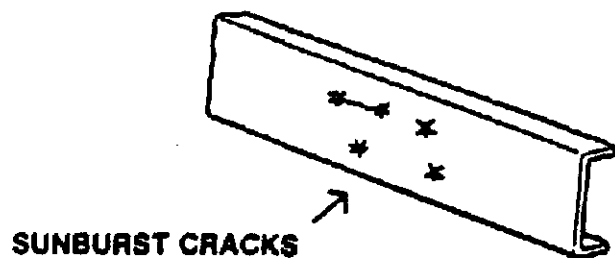
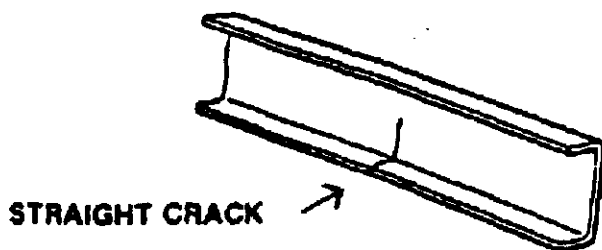


SUNBURST CRACKS





FLANGE AND WEB PORTIONS OF A FRAME RAIL



(Courtesy General Motors Corporation)

INSPECTING THE FRAME - A CHECKLIST

Component	Possible Defects	<u>393.201</u>
1. FRAME:	<ul style="list-style-type: none"> • Cracked, loose, sagging, broken • Broken or loose bolts or brackets • Accessories loosely bolted to frame • Holes drilled into top or bottom of rail flange, except where specified by manufacturer 	<u>393.201</u>
2. REAR END PROTECTION:	<ul style="list-style-type: none"> • Clearance between the bottom of the rear end protection and the ground greater than 30 inches with vehicle empty 	<u>393.86</u>
3. SLIDING SUB FRAME: (or sliding tandem)	<ul style="list-style-type: none"> • Cracked or loose frame members • Locking pins missing or not engaged (usually one pin on each side) 	<u>393.201</u>