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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Admiral :
Merchants Motor Freight, : Case No. 08-612-TR-CVF
Inc./James N. Tigner :

PROCEEDINGS

Before Kerry K. Sheets, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-F, Columbus, Ohio, called at 10:00 a.m. on
Wednesday, July 30, 2008.

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9 On behalf of the Respondent.

10 Also present, Thomas Forbes, Transportation
11 Staff.

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19
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21
22
23
24

1	INDEX			
2	- - -			
2	WITNESSES		PAGE	
3	OFFICER PHILLIP HASKINS			
	Direct Examination by Mr. Wright		5	
4	Cross-Examination by Mr. Edwards		33	
	Redirect Examination by Mr. Wright		61	
5	Recross-Examination by Mr. Edwards		69	
6	JAMES N. TIGNER			
	Direct Examination by Mr. Edwards		79	
7	LARRY WOOLUM			
8	Direct Examination by Mr. Edwards		92	
	Cross-Examination by Mr. Wright		124	
9	Redirect Examination by Mr. Edwards		137	
10	JAMES N. TIGNER (Cont.)			
	Direct Examination by Mr. Edwards		146	
11	Cross-Examination by Mr. Wright		179	
	Redirect Examination by Mr. Edwards		203	
12	REBUTTAL TESTIMONY			
13	OFFICER PHILLIP HASKINS			
14	Redirect Examination by Mr. Wright		206	
15	Recross-Examination by Mr. Edwards		213	
16	STAFF EXHIBITS	ID'D	REC'D	
17	1 - Driver/Vehicle Examination Report	6	226	
18	2 - Federal Register, Section 393.201	27	226	
19	3 - Driver/Vehicle Examination Report	63	226	
20	RESPONDENT EXHIBITS			
21	B - Driver/Vehicle Examination Report	229	236	
22	D - South Dakota Examination Report	115	236	
23	F - CVSA section on Frame Members	117	236	
24	G - CVSA section on Suspension	117	236	

	RESPONDENT EXHIBITS (Cont.)	ID'D	REC'D
1			
2	H - Code of Federal Regulations, Title 49, Section 396.9	41	236
3			
4	I - Code of Federal Regulations, Title 40, Section 393.201	110	236
5	J-O - Photographs	52	236
6	P - C.V. of Larry Woolum	100	236
7	Q - Diagram of frame and cracks	54	236
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

1 Wednesday Morning Session,
2 July 30, 2008.

3 - - -

4 THE EXAMINER: I'll call the hearing. The
5 Public Utilities Commission of Ohio is set for hearing
6 this time and place, Case No. 08-612-TR-CVF in the
7 matter of James N. Tigner. My name is Kerry Sheets.
8 I'm the Attorney Examiner for the Commission, and I've
9 been assigned to hear this case. May I now have the
10 appearances for the parties, please, starting with
11 Staff.

12 MR. WRIGHT: Thank you, Your Honor. On
13 behalf of the Transportation Staff, the Ohio Attorney
14 General's Office, my name is William L. Wright,
15 W-r-i-g-h-t. Our address is 180 East Broad Street,
16 Columbus, Ohio. Our ZIP code is 43215. I'd also like
17 to note that present with me is Tom Forbes,
18 F-o-r-b-e-s, with Transportation Staff.

19 THE EXAMINER: Thank you, Mr. Wright.

20 And now for the Respondent.

21 MR. EDWARDS: Thank you. Benjamin Edwards
22 of the Law Offices of John L. Alden on behalf of the
23 Petitioner, James N. Tigner.

24 THE EXAMINER: Very good. Do we have any

1 preliminary matters to take care of this morning?

2 MR. WRIGHT: I don't believe, Your Honor.

3 THE EXAMINER: Do you have witnesses to
4 call, Mr. Wright?

5 MR. WRIGHT: Yes, Your Honor, we do. Are
6 you ready to proceed?

7 THE EXAMINER: Yes.

8 MR. WRIGHT: Your Honor, at this time, we
9 would call to the stand Phillip Haskins, please.

10 OFFICER PHILLIP HASKINS,
11 being by me first duly sworn, as hereinafter certified,
12 testifies and says as follows:

13 DIRECT EXAMINATION

14 By Mr. Wright:

15 Q. Good morning, Mr. Haskins. Would you
16 please state your name for the record, full name.

17 A. Phillip Haskins.

18 Q. Is that with one L or two?

19 A. Two Ls.

20 Q. Okay. By whom are you employed?

21 A. State of Ohio, Public Utilities
22 Commission, Transportation Department.

23 Q. What is your job title?

24 A. Hazardous Materials Investigative

1 Specialist.

2 Q. How long -- tell me a little bit about
3 your duties, if you will.

4 A. My duties are conducting inspections of
5 motor carriers and transporters of hazardous materials
6 in compliance with the Federal Motor Carrier Safety
7 Regulations and the Federal Hazardous Materials
8 Regulations.

9 Q. And how long have you been performing in
10 this function?

11 A. Twenty-one years.

12 Q. Have you received training along the way?

13 A. Extensive, ongoing training required by
14 the Federal Motor Carrier Safety Administration, and
15 the State of Ohio requires ongoing certifications
16 annually along with specific training for various types
17 of transportation topics and regulatory functions.

18 Q. Okay. Now, with regard to this particular
19 case, you performed an inspection, did you not?

20 A. I did.

21 MR. WRIGHT: Your Honor, at this time I
22 would like to have marked as Staff Exhibit No. 1 a copy
23 of the Driver/Vehicle Examination Report for an
24 inspection done on June 5, 2006.

1 THE EXAMINER: Very good. So marked.
2 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
3 PURPOSES.)

4 MR. WRIGHT: Do you need a copy?

5 MR. EDWARDS: I have a copy.

6 By Mr. Wright:

7 Q. Mr. Haskins, I'd like to ask you to
8 identify what has just been marked as Staff Exhibit No.
9 1, please.

10 A. This is a copy of a vehicle inspection
11 report that I conducted June 2006 on a motor carrier
12 operated by Admiral Merchants Motor Freight.

13 Q. Okay. And the driver indicated there
14 would have been a Mr. James Tigner?

15 A. Correct.

16 Q. This report, you prepared this report, did
17 you not?

18 A. I did.

19 Q. Okay. And a copy of this report would
20 have been provided to the driver upon completion of the
21 inspection; is that correct?

22 A. Yes.

23 Q. Before we talk about the report, I'd just
24 like to establish some protocol with you, if I could.

1 Typically, when you do an inspection, upon completion
2 of that inspection, do you provide the driver with a
3 copy of the report; is that right?

4 A. Yes.

5 Q. You will have already signed the report at
6 that time?

7 A. Yes.

8 Q. Can you tell me a little bit more about
9 what you do, then, at that juncture?

10 A. At the beginning of the inspection I
11 obtain various documents and records from the motor
12 carrier. The driver produces those to me, such as a
13 registration of the vehicle, who he was employed by,
14 driver's credential, a CDL license, federal medical
15 certificate, shipping documents, all of the information
16 that I could collect from him to begin the inspection
17 report.

18 Q. Once you have assembled all of this
19 documentation, once you have completed the inspection,
20 is it your typical practice then to go over the report
21 with the driver?

22 A. Yes.

23 Q. Did you do that in this case?

24 A. Yes.

1 Q. Is it typically your practice at that
2 time, when you've completed going over the inspection
3 report, to ask the driver if he or she has any
4 questions about the report?

5 A. Yes.

6 Q. Did you -- do you recall doing that in
7 this instance?

8 A. It is standard policy that my dialogue
9 includes that with all drivers.

10 Q. No reason to believe that you wouldn't
11 have done that in this instance?

12 A. That is correct.

13 Q. Okay. Do you recall whether -- well,
14 strike that. In your opinion, based on your
15 observations, did Mr. Tigner understand the contents of
16 the report?

17 A. I believe he did.

18 Q. Do you believe he understood the results
19 of your inspection?

20 A. I believe he did.

21 Q. Did he participate in the inspection?

22 A. Yes. The driver presents a limited role.
23 I pretty much do the physical examination of the
24 vehicle, but the driver is present during the entire

1 inspection and completion.

2 Q. Let's turn to the report itself. Why did
3 you stop this vehicle?

4 A. The vehicle was transporting plaquable
5 hazardous materials. The PUCO Transportation
6 Department does do a data-driven inspection policy. In
7 this case, the vehicle is considered to be in one of
8 our categories of a vehicle that represents a transport
9 of hazardous materials that we customarily do vehicle
10 inspections upon.

11 Q. Is that what -- I direct your attention to
12 the part of your report titled Locally Defined Fields.
13 Do you see that?

14 A. Yes.

15 Q. In the middle grouping there, the last
16 entry, it says, "Reason Code: HINT"?

17 A. Yes.

18 Q. Is that what you just explained?

19 A. That is exactly what I explained.

20 Q. All right. Now, this occurred on,
21 according to the report, on June 5, 2006; is that
22 correct?

23 A. Yes.

24 Q. Where were you located when the stop was

1 made?

2 A. I stopped the vehicle at the bottom of the
3 exit ramp in London, Ohio, off of Interstate 70 at Exit
4 No. 79 in London, Ohio.

5 Q. Was that at or near a construction zone?

6 A. Yes, it was near a construction zone.

7 Q. Okay. You conducted the inspection
8 roadside; is that right?

9 A. I did.

10 Q. In your opinion, was the location of the
11 vehicle at the time you inspected it unsafe or
12 dangerous in any way?

13 A. No. I believed it to be a safe location
14 at the exit ramp because I was not immediately
15 alongside the traveled portion of the highway. The
16 vehicle was actually stopped on a berm at an exit ramp.

17 Q. Now, according to the report, you
18 performed a Level II inspection; is that right?

19 A. That's correct.

20 Q. Can you generally tell me what that is?

21 A. A Level II is termed to be a walk-around
22 inspection. There are six different types of federally
23 prescribed inspections. A Level II inspection involves
24 a vehicle portion of the inspection where I walk around

1 the vehicle, examining all the physical evidence that I
2 can see, but it does not include a brake inspection, of
3 the braking components of the braking system of the
4 vehicle.

5 Q. Now, you just indicated, I believe, that
6 as part of the Level II you look at all things that you
7 can visibly see; is that correct?

8 A. Yes.

9 Q. Is that what your testimony was?

10 A. Yes.

11 Q. In this instance -- and we'll talk more
12 about this in a minute, but what caused you to --
13 strike that. Did you visibly see the cracks in the
14 vehicle, which, again, we'll speak about in a minute?

15 A. I observed a welded portion of the
16 mainframe rail while doing the walk-around inspection.
17 It's customary to look closely at welds because they
18 can reveal deficiencies that weren't properly corrected
19 or damage that has been resurfaced as a problem, and
20 this is why -- that is when and where I noticed the
21 cracked frame, was found on the trailer.

22 Q. Simply because you were doing a Level II
23 inspection, Mr. Haskins, do you believe that -- strike
24 that. Having noticed the area that had previously been

1 welded, you examined it further and discovered the
2 cracks? Is that your testimony?

3 A. That's accurate, yes.

4 Q. Do you believe -- well, strike that. Have
5 you performed hundreds of Level II inspections?

6 A. I would estimate thousands.

7 Q. Thousands?

8 A. Yes.

9 Q. Fair enough. So you're pretty well-versed
10 in what a Level II inspection would entail?

11 A. Yes.

12 Q. And in this instance, do you believe that
13 anything you did -- well, strike that. If you visibly
14 notice a problem with a vehicle, you're not free to
15 ignore that problem, are you?

16 A. No.

17 Q. To do so, in your mind, would it be
18 irresponsible?

19 A. Yes.

20 Q. And by "problem," I'm saying safety
21 problem.

22 A. Yes.

23 Q. Okay. Now, in this particular instance we
24 had two vehicles. We had a power unit, and we had a

1 trailer; is that correct?

2 A. That is.

3 Q. And according to your report, I'm looking
4 under the Vehicle Identification section now, Unit 2
5 would refer to the trailer; is that right?

6 A. It does, yes.

7 Q. Okay. At the far right-hand corner
8 there's a designation OOS, and underneath for item two
9 it says "yes." What does that mean?

10 A. That means that the condition discovered
11 in the violation section would warrant an
12 out-of-service condition.

13 Q. Now, moving down into the Violation
14 section, there are two references to Section
15 393.201(a). Do you see that?

16 A. Yes.

17 Q. What is that?

18 A. That's the federal code section that deals
19 with the deficiency in the area of frames and frame --
20 cracked frames.

21 Q. Okay. Is that listed twice because you
22 found multiple cracks?

23 A. That is true.

24 Q. Incidentally, I don't recall if I asked

1 you this or not, but I will, do you recall what
2 materials Mr. Tigner was hauling when you identified
3 those as Class 3 flammable hazardous materials?

4 A. Yes. He was hauling non-bulk, packaged,
5 Class 3 flammable roofing material adhesive.

6 Q. Okay. Now, how many cracks did you
7 actually observe?

8 A. I discovered two cracks.

9 Q. Can you explain for the bench where those
10 cracks were located?

11 A. Yes. On the trailer, on the driver's side
12 portion of the trailer, near the front axle, in the
13 mainframe rail and web area of the trailer. The
14 trailer had been repaired with welds, and these welds
15 had become deficient and had re-cracked in the same
16 area.

17 Q. So, basically, you're saying the cracks
18 appeared in an area that had previously been
19 compromised in some way?

20 A. That's correct.

21 Q. Okay. In your opinion, did the cracks
22 represent a dangerous safety condition?

23 A. Yes, significant enough to meet the
24 federal out-of-service which declares the vehicle out

1 of service.

2 Q. And why do you say that?

3 A. Because it was sufficient enough that it
4 met the definition of a frame crack that is in the
5 language of the out-of-service criteria.

6 Q. Now, did you mark the cracks?

7 A. Yes, I believe I did.

8 Q. How did you do that?

9 A. With chalk.

10 Q. And why did you do that?

11 A. To identify the crack for repairs.

12 Q. Is that to say that you, at some point,
13 then, physically showed the cracks to the driver, Mr.
14 Tigner?

15 A. I believe so. It's normally my standard
16 procedure to do that.

17 Q. Did you measure the cracks?

18 A. Yes.

19 Q. How?

20 A. I have a tape measure that I measure
21 various deficiencies and brakes, and the tape measure
22 is used to identify exactly the extent of the crack.

23 Q. And what did your measurement of the two
24 cracks show?

1 A. Referring to my notes, I can see that
2 there were two locations that were cracked with
3 three-inch length, long cracks in the frame rail.

4 Q. Did you show the cracks to Mr. Tigner?

5 A. I believe I did.

6 Q. Okay. Again, that would be your typical
7 practice?

8 A. That is, yes.

9 Q. Okay. Do you recall whether or not he
10 disputed or took issue with your measurements?

11 A. No. Had he had issue with them, I would
12 have made notes, made specific notes identifying that
13 the driver may have not agreed with me, because it may
14 have been -- that would be significant later on in the
15 compliance issue of whether or not the crack was
16 disputed at the time of violation.

17 Q. Do you recall whether or not you actually
18 measured the cracks with him present and observing?

19 A. I would say he probably wasn't there. I
20 was probably doing -- when he was at the controls of
21 the vehicle, I was doing my inspection.

22 Q. Now, according to the -- the part of the
23 report that indicates Locally Defined Fields, the
24 middle grouping, next to last line indicates that you

1 did not take photos?

2 A. I did not.

3 Q. Okay. So you, obviously, took no pictures
4 of the cracks themselves?

5 A. No, sir.

6 Q. Why not?

7 A. Customarily, photos are -- photographic
8 evidence is taken at the inspection location or crash
9 scene to assist in the furtherance of the
10 investigation, to provide this documentation to the
11 Compliance Division to further explain any situation
12 that couldn't be adequately explained. I felt that by
13 documenting the location and the extent of the defect,
14 I chose not to take photos.

15 Q. And having pointed it out very clearly,
16 the location of the cracks to the driver?

17 A. That's true.

18 Q. Do you recall whether or not Mr. Tigner
19 had any reaction whatsoever when you showed him the
20 crack?

21 A. No, I don't remember any significant
22 dialogue that was out of the ordinary, routine
23 inspection and follow-up.

24 Q. Now, after measuring the cracks and

1 ascertaining that they were at least three inches in
2 length, is that when you proceeded to place the trailer
3 out of service?

4 A. No. I note to the driver in my dialogue
5 with the driver after the completion of the inspection,
6 when I present him the actual inspection report, do I
7 make him aware of the fact of the defect and the extent
8 of the problem.

9 Q. Again, in this case, you have no reason to
10 believe that you did not follow your typical routine?

11 A. That's true.

12 Q. Okay. When you got to that point in
13 time -- well, strike that. So you performed a roadside
14 investigation, and do I understand your report to
15 indicate, as well as your earlier testimony, that this
16 was near the vicinity of the London off ramp, off of
17 I-70?

18 A. Yes.

19 Q. How close physically, roughly, do you
20 recall were you to the ramp where you pulled -- made
21 the stop?

22 A. We were on the exit ramp, on the marked
23 shoulder; so probably less than a hundred yards from
24 the end of the exit ramp.

1 Q. Okay. Now, let's focus on the -- you've
2 explained that at the end of the process, when you were
3 going over the inspection report with Mr. Tigner,
4 that's when you would have indicated that the trailer
5 was out of service; correct?

6 A. Yes.

7 Q. And, in fact, the report that you would
8 have gone over with him at that time makes it clear
9 that the trailer was out of service, does it not?

10 A. Yes.

11 Q. Okay. Do you recall what you told Mr.
12 Tigner?

13 A. After I presented the document, inspection
14 report to the driver, I explained to him that the
15 repairs had to be corrected and that at this location
16 there were various facilities where he could choose to
17 obtain service to make those repairs.

18 Q. Do you recall, based on your observations
19 at that time, did Mr. Tigner understand that the
20 trailer was out of service?

21 A. I believe him to understand that, yes.

22 Q. Did you find him to be fairly -- to be
23 conversant and cooperative during your inspection?

24 A. Yes.

1 Q. Under federal regulations where a vehicle
2 is placed out of service, is it correct that that
3 vehicle cannot be operated again unless and until
4 needed repairs have been made?

5 A. Yes.

6 Q. Okay. Now, you just mentioned a minute
7 ago, I believe, in the response that you physically
8 escorted Mr. Tigner, his vehicle and trailer up the
9 ramp to a truck stop or near a truck stop?

10 A. I remember following him to the end of the
11 exit ramp. We are not permitted to recommend any
12 specific facility for repairs. I only made him aware
13 of the fact that it could be repaired at the exit.

14 Q. So you did indicate to Mr. Tigner that
15 there were repair options available to him at that
16 location?

17 A. Immediately at the exit, yes.

18 Q. Could Mr. Tigner have theoretically
19 unhitched the trailer and still operated the power
20 unit?

21 A. Yes, he could have.

22 Q. Assume for me for purposes of this
23 question that he did that; okay?

24 A. (Witness nods head.)

1 Q. Would that have been stickered with a
2 bright orange out-of-service sticker?

3 A. If he would have parked the vehicle and
4 disconnected the power unit, yes, the vehicle would
5 have been -- would have received an out-of-service
6 sticker in that situation.

7 Q. When you -- before you left Mr. Tigner
8 after having escorted him up to the end of the off
9 ramp, did Mr. Tigner, during the investigation or
10 anytime, indicate that he intended to have the repairs
11 made at that location?

12 A. I don't recall any specific dialogue, only
13 the fact that I was explaining to him the condition of
14 the report and the particulars of the report, the time
15 and date and location of where the inspection was
16 completed.

17 Q. But you believe you did leave Mr. Tigner
18 understanding full well that he could not move that
19 trailer again unless and until the welding had been
20 performed on the cracks?

21 A. Yes.

22 Q. And would that have been, in your opinion,
23 a lengthy repair?

24 A. Not normally. A frame can be repaired at

1 the right location with the right condition probably
2 within -- or approximately an hour.

3 Q. Okay. But you're not permitted to
4 recommend a particular repair outlet there?

5 A. No. No, we are not.

6 Q. But there were multiple ones, to your
7 understanding, that were available, that would have
8 been available to him?

9 A. Yes.

10 Q. Okay. So you went over the report with
11 Mr. Tigner. You indicated to him that the trailer was
12 out of service and could not be operated again until
13 repairs were made; is that right?

14 A. That's correct.

15 Q. Now, as part of placing the trailer out of
16 service, did you sticker the trailer with one of the
17 out-of-service stickers?

18 A. I did not.

19 Q. What's the purpose of using one of those
20 stickers?

21 A. The purpose is to identify that the
22 commercial vehicle is requiring to be in need of repair
23 and that if the repairs aren't made, the sticker does
24 not come off, basically to alert the public or to any

1 other local -- or any enforcement personnel that the
2 vehicle is in an out-of-service condition and must be
3 repaired.

4 Q. So it's notice really to that universe, if
5 you will?

6 A. Yes.

7 Q. All right. Now, in this instance you
8 indicated you did not use a sticker. Why not?

9 A. The location of the inspection would have
10 been difficult for the carrier to get repairs on a
11 frame on the side of the road. It was in my judgment
12 to allow the vehicle to move to any one of those
13 facilities for repair in the immediate area. I was
14 allowing the vehicle to be moved; therefore, I didn't
15 want to place the out-of-service sticker on the
16 vehicle.

17 Q. When you left Mr. Tigner that day, did you
18 have any reason to believe that he was not going to
19 have the repairs made at one of the installations there
20 at the London exit?

21 A. No. I had no reason to believe that he
22 would not have made repairs.

23 Q. That would have been the most convenient
24 thing available to him, to have the repairs made, would

1 it not?

2 A. Yes, it would have.

3 Q. Would it be accurate to say, Mr. Haskins,
4 that you have a good working understanding of the Motor
5 Carrier Federal Regulations?

6 A. I do have knowledge of those regulations,
7 yes.

8 Q. And that's important to you, to enable you
9 to effectively function in your job, is it not?

10 A. Yes.

11 Q. Would it also be fair to say that you --
12 you indicated in some earlier questions that you
13 received training from time to time, that that training
14 includes keeping you updated on changes in federal
15 regulations that might apply to the areas you work in?

16 A. It does.

17 Q. Okay. Now, on the inspection report,
18 under the Violations section, I'd like to direct your
19 attention there, there are -- there's a reference to
20 393.201(a). Do you see that?

21 A. Yes.

22 Q. What is that?

23 A. That is the section and paragraph of the
24 Federal Motor Carrier Safety Administration rule book

1 that deals with that specific type of deficiency, frame
2 cracks.

3 Q. Now, has it always been the case that
4 trailers could be written up for this violation?

5 A. No, not under that specific rule.

6 Q. Okay. How is it that you understood --
7 well, strike that. Do you understand that currently
8 this kind of violation is properly citable under
9 393.201(a) for a trailer?

10 A. Yes, it is.

11 Q. Was it your understanding that that was
12 the case at the time you wrote this up for an
13 inspection done on July 5, 2006?

14 A. Yes.

15 Q. What is the basis for your understanding?

16 A. By reading the section of the federal
17 regulations and identifying that that was the
18 appropriate section number that applied to frame
19 deficiency.

20 Q. So is it your belief that -- or is it your
21 understanding that the fed's position changed with
22 respect to the applicability of this kind of a
23 violation to trailers?

24 A. Yes. There were some changes that they

1 published that included more specific language of what
2 type of vehicles were subject to those requirements,
3 and it did become effective. Trailers was written into
4 the regulations through a correction by the federal
5 regulations.

6 MR. WRIGHT: Your Honor, at this time, I'd
7 like to have marked as Staff Exhibit No. 2 an excerpt
8 from the Federal Register. This would be dated Monday,
9 August 15, 2005.

10 THE EXAMINER: So marked.

11 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
12 PURPOSES.)

13 MR. WRIGHT: Thank you.

14 By Mr. Wright:

15 Q. Are you familiar with that document, Mr.
16 Haskins?

17 A. I am.

18 Q. What is it?

19 A. The Federal Register is the manner in
20 which the federal regulations are changed and updated.
21 They publish these rules or these corrective actions
22 daily to show that they are an ongoing set of rules
23 that requires changes and clarification.

24 Q. Now, there's a lot of text on this

1 particular page of Staff Exhibit 2. Could you -- what
2 portion of Staff Exhibit 2 do you believe is relevant
3 to what we're talking about here today?

4 A. The relevance here is in the third column,
5 on the right margin, dealing with the Section 393.201 -
6 Frames, and it gives the date in which the history of
7 the rule was published and the corrective language that
8 the Federal Motor Carrier Safety Administration
9 provides to include changes to that specific
10 regulation.

11 Q. And this goes on to -- does this indicate
12 that -- well, what does FMCSA stand for?

13 A. Federal Motor Carrier Safety
14 Administration.

15 Q. Okay. And does the text that you just
16 referred to here indicate that they amended their
17 policy as it relates to 393.201?

18 A. It does.

19 Q. All right. Now, if you could explain how
20 that amendment works?

21 A. This actually becomes the federal
22 regulation. The Federal Register is amended and
23 changed to correct or to change the actual regulation
24 language. In this case, the Federal Motor Carrier

1 Safety Administration inadvertently failed to include
2 the trailer in that definition, and by the Federal
3 Register corrections, they allowed the language to be
4 changed to include the word trailer.

5 Q. So it's your understanding that this
6 document, I guess for lack of a better term, served as
7 a preamble for later changes to the actual federal
8 regulations themselves?

9 A. Yes, that's correct.

10 Q. And if I understood what you just said,
11 the change that occurred brought trailer within the
12 definition of commercial motor vehicle; is that right?

13 A. Yes.

14 Q. Again, this would have occurred -- this
15 document is dated well before the January 5, 2006,
16 inspection; is that correct?

17 A. Yes.

18 Q. I'm sorry, I said January. June 5, 2006.

19 A. Almost a year.

20 MR. WRIGHT: Your Honor, if I may have a
21 moment?

22 (Discussion off the record.)

23 By Mr. Wright:

24 Q. Mr. Haskins, are you familiar with the

1 document I'm holding here in my hand (indicating)?

2 A. Yes, sir.

3 Q. Is this your Bible, if you will?

4 A. It's half the sets of rules that we
5 enforce.

6 Q. Okay. And this is captioned Federal Motor
7 Carrier Safety Regulations Handbook?

8 A. Yes.

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

11 THE EXAMINER: Yes. Go ahead.

12 By Mr. Wright:

13 Q. First, I'd like you to tell me the date on
14 this, if you will.

15 A. February 2006.

16 Q. Now, Mr. Haskins, I want to direct you to
17 Page 490 of this document, Subpart J. Could you read
18 this all the way to the end of Section A?

19 A. Subpart J, dealing with frames, 393.201,
20 "The frame or chassis of each commercial motor vehicle
21 shall not be cracked, loose, sagging, or broken."

22 Q. And I would like to direct your attention
23 now to Page 379, Subsection 390.5, Definitions. Could
24 you please read from the definition of commercial motor

1 vehicle?

2 A. It means, "Any self-propelled or towed
3 motor vehicle used on a highway in interstate commerce
4 to transport passengers or property when the
5 vehicle" -- A, Has a gross vehicle weight rating or
6 gross combined weight rating, or gross vehicle weight
7 rating, or gross combination weight of 10,001 pounds or
8 more, whichever is greater; 2 --

9 Q. That's fine. So is it your understanding
10 that these two changes to the federal regulations, the
11 change between 393.201 to use the term commercial motor
12 vehicle and then the definition under 390.5 of
13 commercial motor vehicle, encompassing not only the
14 power unit but whatever is being towed, is that the
15 basis of your understanding that the 393.201 violation
16 was correct at the time it was written up as part of
17 this inspection?

18 A. It is.

19 Q. In June of 2005?

20 A. Yes.

21 Q. All right. Thank you.

22 (Discussion off the record.)

23 MR. WRIGHT: Your Honor, I think that's
24 all the questions we have. Thank you, Mr. Haskins.

1 THE EXAMINER: Do you have any questions
2 for the officer?

3 MR. EDWARDS: Yes. Thank you, Your
4 Honor. If I may approach with my first exhibit, this
5 document is marked as Exhibit A, if you'd like to see a
6 copy (indicating).

7 THE EXAMINER: It will be Respondent's
8 Exhibit A.

9 MR. EDWARDS: Okay, Respondent's Exhibit
10 A. Because of the fact that the caption of the case
11 actually lists Admiral Merchants Motor Freight and not
12 James Tigner, I want to make it clear by this document
13 that Admiral Motor Freight has authorized our office to
14 represent it in this proceeding.

15 MR. WRIGHT: That's what this letter says.
16 I mean, are you intending to question the witness about
17 this document?

18 MR. EDWARDS: No, just as a preliminary
19 matter I wanted to share that.

20 MR. WRIGHT: Okay. That's fine. And
21 you're calling this, Ben, you're calling this Exhibit
22 A?

23 MR. EDWARDS: Yes.

24 THE EXAMINER: What did you say?

1 MR. WRIGHT: Could we go off the record
2 for just a minute, please?

3 (Discussion off the record.)

4 THE EXAMINER: Let's go back on the
5 record.

6 CROSS-EXAMINATION

7 By Mr. Edwards:

8 Q. Good morning, Officer Haskins.

9 A. Morning.

10 Q. I'm going to be asking you some questions
11 this morning. If there's anything that I'm asking you
12 that you're not clear on or if I don't ask it so you
13 understand the question, please ask me to rephrase it.
14 I'll be happy to do so. You indicated that the
15 inspection of Mr. Tigner's vehicle on this day, June
16 5th, 2006, took place on the roadside near the bottom
17 of the exit ramp at Exit 79 near a construction zone.
18 Do you remember how close to the roadway Mr. Tigner's
19 vehicle was when it was stopped?

20 A. It was parked on the shoulder of an exit
21 ramp, so it would have been at least 20 feet from the
22 traveled portion of the highway.

23 Q. So there was 20 feet between the driver's
24 side left most edge of the vehicle and the white line

1 delineating the right side of the roadway?

2 A. The traveled portion of the highway, not
3 the exit ramp.

4 Q. Okay. Can you describe in detail the
5 vehicle that was being driven by Mr. Tigner when it was
6 stopped?

7 A. The vehicle was a power unit with a
8 flatbed trailer transporting building materials,
9 including some hazardous materials.

10 Q. And the trailer was loaded; correct?

11 A. It was loaded, yes, sir.

12 Q. You indicated that it was your procedure
13 to go over the inspection report at the conclusion of
14 the inspection with the driver; is that right?

15 A. Yes. That's the normal policy.

16 Q. You also indicated that you've conducted
17 thousands of these inspections in your --

18 A. In my career, yes.

19 Q. Do you specifically remember in this
20 particular instance that you went over this inspection
21 report with Mr. Tigner?

22 A. No, I can't state that I went over it in
23 any kind of detail with Mr. Tigner.

24 Q. So you don't specifically remember if you

1 told Mr. Tigner that his trailer was being placed out
2 of service?

3 A. The dialogue would have included that. I
4 would have explained to him that the trailer would
5 require repairs immediately.

6 Q. But you don't specifically remember
7 telling him that?

8 A. I don't remember the exact dialogue, but I
9 would have told him that upon presenting the inspection
10 report to him.

11 Q. That's your procedure, but you don't
12 specifically remember doing it in this case?

13 MR. WRIGHT: Objection, Your Honor. He's
14 answered the question.

15 THE EXAMINER: Yes, I think he has
16 answered the question. Let's move on.

17 By Mr. Edwards:

18 Q. You indicated in your inspection of the
19 trailer that there were some welds, and I believe the
20 inspection notes and your testimony this morning has
21 indicated that the cracks that you observed were
22 actually in the welds themselves; is that correct?

23 A. Yeah. The previously welded area had
24 cracked, yes.

1 Q. Do you remember observing any cracks in
2 the actual frame or cross member or whatever piece of
3 the trailer we're talking about itself?

4 A. The frame rail was repaired at a time and
5 date prior to my inspection, and the discovery of the
6 frame deficiency was about the immediate area of the
7 welded area.

8 Q. You say that the frame was repaired. How
9 do you know that that weld was a repair and not an
10 original from the manufacturer?

11 A. It appeared to have had a different
12 workmanlike effect. It was a different color than the
13 actual frame. It had obvious newer evidence of work
14 that had been done.

15 Q. Okay. So if the cracks that you observed,
16 and you said you observed two cracks, they're in the
17 weld itself, and you just read the regulation, Section
18 393.201(a) --

19 A. Yes.

20 Q. And that regulation states --

21 A. Any cracked, loose, sagging or broken
22 frame rail -- I don't have it before me.

23 Q. Okay. I can provide you with another
24 copy.

1 MR. WRIGHT: Here, I've got one right here
2 for him. There's 201.

3 By Mr. Edwards:

4 Q. Can you read that Section A again for me?

5 A. Yes. "The frame or chassis of each
6 commercial motor vehicle shall not be cracked, loose,
7 sagging, or broken."

8 Q. What part of that -- what part of the
9 frame or chassis applies here? You said it was a weld
10 that was cracked or there were welds that were cracked.
11 The frame itself was not cracked; correct?

12 A. It becomes part of the frame. The crack
13 that was done previously is a part of the actual frame
14 which was cracked.

15 Q. How do you know that that weld there, if
16 it was a repair, was even necessary to be put there?

17 A. I don't.

18 Q. So if there was a weld that had been
19 placed there by somebody after the manufacture of the
20 trailer and it was entirely unnecessary, it contributed
21 no structural strength to the trailer, in no way
22 enhanced the safety of the frame, and that weld
23 cracked, how would that be a violation of regulations?

24 MR. WRIGHT: Objection to both the form of

1 the question and the speculation that it calls for.

2 MR. EDWARDS: Okay. Let me rephrase the
3 question.

4 By Mr. Edwards:

5 Q. You indicated that it is possible that
6 there could be a totally unnecessary weld placed on the
7 trailer frame; correct?

8 A. That's possible, yes.

9 Q. If there was a crack in that weld, that
10 would not be a violation of the regulations; is that
11 correct?

12 A. If the crack is identified in a condition
13 that would be described in the out-of-service criteria,
14 that would be a condition where an out-of-service
15 condition would exist. In this case, the crack was in
16 a location that was greater than one and one half
17 inches in the mainframe rail or the web area that is
18 described as an out-of-service condition in the
19 out-of-service criteria; therefore, the condition and
20 the location of the crack warrants it to be placed out
21 of service.

22 Q. So if I understand that response
23 correctly, if someone puts in a weld on a trailer frame
24 regardless of whether it's necessary or not and

1 regardless of whether it actually enhances the
2 structure and the safety of the frame, if there is a
3 crack in that that's of a specific size that meets the
4 out-of-service criteria, that would be a violation of
5 the regulations?

6 MR. WRIGHT: Your Honor, if I may, I'll
7 object again. Is this a hypothetical question that
8 you're asking?

9 MR. EDWARDS: Let me rephrase the
10 question.

11 MR. WRIGHT: Okay.

12 MR. EDWARDS: I don't want to make it a
13 hypothetical question, and perhaps I misstated it.
14 By Mr. Edwards:

15 Q. Let's not imagine any hypothesis. Let's
16 not imagine anything. Let's not even talk specifically
17 about this situation. Let's talk about the federal
18 regulations.

19 A. Okay.

20 Q. You read the federal regulations here, and
21 I'm trying to understand your response as to whether
22 welded parts of the frame, if they are of a certain
23 size, whether they're a repair or whether they're
24 original to the vehicle, if they meet -- the only

1 criteria is if they meet a certain size, if that's a
2 violation of the regulations requiring an out of
3 service?

4 A. If it meets the language, yes.

5 Q. Okay. You indicated that it is your
6 procedure to mark the cracks during an inspection with
7 chalk?

8 A. Yes. I do carry chalk to identify
9 deficiencies in that manner.

10 Q. In this particular inspection on June 5th
11 of Mr. Tigner's vehicle, do you specifically remember
12 marking the areas that you found with chalk?

13 A. I have no independent memory, but I do
14 procedurally do that. I do discover those and identify
15 those in that manner.

16 Q. Okay. Just to make it a hundred percent
17 clear, you intended to place this vehicle out of
18 service; is that correct?

19 A. That's correct.

20 Q. But you didn't mark the vehicle with an
21 out-of-service tag?

22 A. I didn't apply an out-of-service sticker
23 on the vehicle, no, sir.

24 Q. And your reasoning for that was because

1 you wished Mr. Tigner to actually move the vehicle to
2 have it taken to a repair facility forthwith to be
3 repaired?

4 A. Safely removed from the side of the road
5 to a location where the repairs could be made, yes.

6 MR. EDWARDS: If I may approach again with
7 another exhibit?

8 THE EXAMINER: Go ahead.

9 MR. EDWARDS: This is Respondent's Exhibit
10 H.

11 By Mr. Edwards:

12 Q. Officer Haskins, can you identify that
13 document?

14 A. Yes. It is a section of the same Federal
15 Motor Carrier Safety Administration set of regulations
16 under a different chapter, Part 396.

17 Q. Can you read the Section 396.9(c) that's
18 marked with an arrow there?

19 A. "Motor vehicles declared out of service.
20 Authorized personnel shall declare and mark out of
21 service any motor vehicle which by reason of its
22 mechanical condition or loading would likely cause an
23 accident or a breakdown. An Out of Service Vehicle
24 sticker shall be used to mark vehicles out of

1 service."

2 Q. The inspection report in this case
3 indicates that these are out-of-service violations,
4 these two violations of the code, Section 393.201(a).
5 You indicated you intended to place this out of
6 service -- this vehicle out of service; however, you
7 did not place the out-of-service vehicle sticker on the
8 trailer as required by 396.9(c); is that right?

9 A. I did not place an out-of-service sticker
10 on the vehicle, no, sir.

11 Q. Typically, based on your experience with
12 placing vehicles out of service, what is your normal
13 procedure there? Do you allow the vehicles to be
14 moved? Do you red tag them? Do you not allow the
15 vehicles to be moved?

16 A. In this case, a frame defect is a
17 condition where a side of the road repair is not
18 practical. The location of the vehicle and proximity
19 to repair facilities less than 300 yards from the
20 location would have been more prudent to allow the
21 vehicle to be repaired at one of those facilities. I
22 had to allow the vehicle to be moved. Therefore, I
23 didn't utilize an out-of-service sticker.

24 Q. You indicated the vehicle was loaded with

1 flammable hazardous materials. Wouldn't it be a safety
2 risk to perform a weld on a trailer that contained that
3 material?

4 A. In my judgment, no. A repair --
5 experienced workmen could make the repairs without
6 exposing any unnecessary risk to the cargo.

7 Q. In your experience, do you know if that is
8 done?

9 A. Yes. I've seen it done.

10 Q. Where a trailer has flammable HazMat
11 loaded onto it and it's undergoing a repair to the
12 frame by welding?

13 A. I've actually seen bulk transporters make
14 repairs in that category, tank trucks.

15 Q. Either during your inspection or
16 afterwards, when you concluded the inspection and you
17 were going over the inspection report with Mr. Tigner,
18 do you remember him having to move you out of the
19 roadway because you were too close to the passing
20 traffic?

21 A. No, I don't recall that.

22 Q. Okay. Do you recall telling Mr. Tigner,
23 when you parted with him, to have a safe trip?

24 A. That is a normal term that I would use to

1 a driver. I don't remember specifically the dialogue,
2 no.

3 Q. At the beginning of your testimony you
4 indicated that there was a protocol by which you select
5 hazardous material vehicles to be inspected. Do you
6 have any sense of the proportion of vehicles loaded
7 with HazMat that are inspected?

8 A. I don't know if I understand the question.
9 The percentage of vehicles transporting hazardous
10 materials compared to not hazardous materials or how
11 many vehicles are inspected compared to the actual
12 shipments?

13 Q. Yeah, compared -- the latter. Out of the
14 total number of hazardous material shipments going
15 along, how many of those percentagewise would be
16 inspected?

17 MR. WRIGHT: Objection, Your Honor. It
18 has no relevance to anything we've talked about today.

19 MR. EDWARDS: I'll rephrase the question.

20 THE EXAMINER: Yes, or if he can provide
21 an answer.

22 THE WITNESS: I might be able to provide
23 the answer.

24 MR. WRIGHT: Are you overruling the

1 objection, then, Your Honor?

2 THE EXAMINER: Let's let him restate it.

3 MR. WRIGHT: Okay.

4 By Mr. Edwards:

5 Q. In your employment duties, what is your
6 particular protocol or criteria or how is your protocol
7 or criteria applied to -- I'm having trouble with the
8 question. In your particular duties, of the HazMat
9 vehicles transporting HazMat loaded at the time, what
10 percentage of those do you stop and inspect?

11 MR. WRIGHT: You're referring just to Mr.
12 Haskins?

13 MR. EDWARDS: Just to Officer Haskins'
14 duties.

15 THE WITNESS: I couldn't qualify that,
16 because there's really no statistic that I could use to
17 identify total number of transportation vehicles that I
18 see. US DOT estimates that there are over 100,000
19 shipments of hazardous materials in the U.S. each day.
20 We conduct probably, as a division, around 10,000
21 inspections per year, and I probably do 1,000 of those;
22 so I would say less than five percent. It would be a
23 small percentage.

24 By Mr. Edwards:

1 Q. When the inspection was over and you
2 stopped talking with Mr. Tigner, what happened then?
3 Who was the first to leave the scene?

4 A. I think we left -- if I recall, I believe
5 we left at the same time and traveled up the exit ramp
6 to the intersection of US-42.

7 Q. Were you in front or behind Mr. Tigner's
8 vehicle?

9 A. I don't -- I don't recall. At times I do
10 stop vehicles in front for safety -- putting them in a
11 location where I want to inspect them, but I also
12 inspect -- stop the vehicle from behind as well.

13 Q. Okay. Do you remember, when Mr. Tigner
14 and you sort of parted ways, separated, you know, went
15 in different directions, do you remember where Mr.
16 Tigner went?

17 A. No. I do remember the vehicle --
18 independently recollecting that the vehicle traveled up
19 the exit ramp, but I have no vivid direction of travel
20 or location where he went after that.

21 Q. Do you remember, if he would drive his
22 vehicle to the end of that exit ramp -- there's an
23 intersection there, I would presume?

24 A. Yes.

1 Q. Direction left, direction right?

2 A. (Witness nods head.)

3 Q. Is there a direction forward to get back
4 onto the highway?

5 A. Yes, there is. It's kind of asymmetrical,
6 but, yeah, you could get back to the interstate through
7 that intersection, yes.

8 Q. If Mr. Tigner would have gotten directly
9 back onto the highway, would you have done anything?

10 A. And not made the correction and just kept
11 going?

12 Q. Yes.

13 A. If I would have observed that, yes, I
14 would have stopped him.

15 Q. Because you would have realized he wasn't
16 going to have his vehicle repaired?

17 A. Obviously.

18 Q. Okay. You indicated that you measured
19 these cracks in these welds and your notes indicate
20 that they're three inches. Do you remember, were both
21 welds, were both cracks three inches, or is that the
22 total number of inches?

23 A. From my notes, I would say that they were
24 three inches long each.

1 Q. Each one?

2 A. Yes.

3 Q. When you measure something like that, how
4 precise are you?

5 A. Very precise. Pretty much it has to meet
6 the out-of-service criteria exactly, and in this case,
7 it would have been greater than one and a half inches;
8 so I am certain that they're measured accurately.

9 Q. So both of the cracks were measured to be
10 exactly three inches, each one?

11 A. Yes.

12 Q. What time was this inspection?

13 A. The inspection started at 11:50 a.m.

14 Q. Do you remember how long you'd been
15 working that day?

16 A. No, sir.

17 Q. Do you have a regularly scheduled shift
18 that begins at a certain time?

19 A. Yes, sir.

20 Q. What time is that?

21 A. Seven a.m.

22 Q. Do you wear corrective lenses?

23 A. I do not.

24 Q. Do you remember whether Mr. Tigner read

1 through this inspection report before he signed it?

2 A. No, I don't remember. I presented it to
3 him, and my signature was completed and was provided to
4 him upon receipt for a signature.

5 Q. Do you get a copy back at the time of the
6 inspection with his signature on it?

7 A. No, sir. My copy is electronic.

8 Q. So you hand the paper to Mr. Tigner?

9 A. Printed copy goes to the driver, yes.

10 Q. And you don't actually confirm whether he
11 signs it or not at that time?

12 A. No, sir.

13 Q. So he could sign it later on?

14 A. He could.

15 Q. So if you don't specifically remember
16 whether he read it through and you don't ask him to
17 read it -- or you don't remember asking him to read it
18 through and sign it before giving it back to you, you
19 can't tell us whether or not he read it and was aware
20 that the violations marked on here were out of service
21 of not?

22 A. I can only testify that I presented it to
23 him. It was explained to him. Whether or not he read
24 it or not or signed it, I cannot say.

1 Q. Do you routinely check the driving records
2 of the drivers whose vehicles you inspect?

3 A. It's a policy that we have to.

4 Q. What were your findings in this particular
5 inspection as to Mr. Tigner's driving record?

6 A. I can't recall if he had any significant
7 driving issues. Had he would have been ineligible or
8 disqualified, it could have obviously been another
9 violation and he would have not been permitted to -- in
10 this case, there were no significant findings.

11 Q. If you do find things on the driving
12 record such as other violations of safety regulations,
13 does that prompt you to do anything more than you would
14 if you didn't find such things on the record?

15 A. Yes.

16 Q. What are those things that you're given?

17 A. If the driver is identified as being
18 disqualified or unlicensed through our system. We have
19 to identify through the LEADS program, the Law
20 Enforcement Automated Data System, through the highway
21 patrol to confirm any information that may be outside
22 the State of Ohio jurisdiction.

23 Q. Okay. But if the license is valid but the
24 driver has multiple violations, whether it's

1 speeding or moving violations or equipment violations,
2 does that prompt you to take any stronger look? Does
3 that up the level of inspection you're doing in a
4 case?

5 MR. WRIGHT: Objection, Your Honor.
6 Again, I believe the witness has already testified that
7 he took a look at the driver's history, found nothing
8 significant. Those were the facts in this case.
9 Anything more is beyond what the facts show.

10 THE EXAMINER: I'll let him go ahead and
11 answer.

12 THE WITNESS: Would you repeat just the
13 last sentence, please?

14 By Mr. Edwards:

15 Q. Sure. If you don't find the
16 disqualification but you do find multiple violations,
17 moving violations or equipment violations, does that
18 cause you to up your level of inspection or increase
19 your scrutiny of the driver of the vehicle?

20 A. No.

21 Q. In this particular instance, you stated
22 you didn't place the out-of-service sticker on the
23 vehicle because you wished the vehicle to be taken to a
24 repair facility?

1 A. That's correct.

2 Q. Strike that. I don't have a question
3 there. Sorry. There was no reason, in your opinion,
4 for -- to have Mr. Tigner's vehicle towed from the
5 scene?

6 A. No, because of the location to the
7 proximity of the repair facilities that were in the
8 immediate area.

9 MR. EDWARDS: Just a moment, Your Honor.

10 (Discussion off the record.)

11 MR. EDWARDS: One or two further
12 questions. If I may approach again?

13 THE EXAMINER: Go ahead.

14 MR. EDWARDS: At this time, I'd like to
15 enter in Respondent's Exhibits J through O.

16 By Mr. Edwards:

17 Q. Officer Haskins, looking at these photos,
18 and I understand you may have never seen these photos
19 before because you indicated you did not take any
20 photos, can you identify the vehicle depicted here?

21 MR. WRIGHT: Objection, Your Honor. This
22 is highly irregular and improper, asking the witness,
23 who took no photos, has admitted he took no photos,
24 trying to have him sponsor photos that were taken of

1 some truck by someone at some time unknown. This is
2 entirely improper, and I move to strenuously object to
3 it.

4 THE EXAMINER: Okay. I'll let you go
5 ahead and answer that question because I'll have to
6 have a better foundation for these photos.

7 MR. EDWARDS: These photos can be admitted
8 at a later time, Your Honor, through the testimony of
9 our witness. I just merely want to pose the question
10 to Officer Haskins if any of these -- if this frame
11 that's depicted here looks familiar to him.

12 THE EXAMINER: I'll let him go ahead and
13 answer.

14 THE WITNESS: On Photo J, would that be --
15 By Mr. Edwards:

16 Q. Yes.

17 A. Yeah, it is a familiar view of an
18 undercarriage of a frame on or about where the defect
19 was discovered.

20 Q. Of course, you cannot say whether or not
21 it is in fact, but --

22 A. No.

23 Q. Is it possible or is it conceivable that
24 this is the trailer you inspected --

1 MR. WRIGHT: Objection.

2 Q. -- operated by Mr. Tigner on that day?

3 MR. WRIGHT: Objection. Purely
4 speculative, Your Honor.

5 THE EXAMINER: You're going a bit far
6 afield, Counsel, at this point.

7 Go ahead and answer it.

8 THE WITNESS: It could be, yes.

9 THE EXAMINER: Okay.

10 MR. WRIGHT: Your Honor, I would like to
11 note a continuing objection if we have to. The witness
12 should not be forced to speculate about something that
13 he has never seen before up until just a few minutes
14 ago. That's entirely improper and --

15 THE EXAMINER: I think we've had just
16 about all we can get from this witness about these
17 photos. You'll have to do it with your witness.

18 MR. EDWARDS: Okay. There's really only
19 one other question I have, then. If I may approach
20 again, one further exhibit for this witness, Exhibit Q,
21 Respondent's Exhibit Q (indicating).

22 By Mr. Edwards:

23 Q. Are these drawings of what look like frame
24 members -- the cracks that you found in this particular

1 case, can you describe if any of the cracks on this
2 depiction are the type of cracks that you found on this
3 trailer operated by Mr. Tigner?

4 MR. WRIGHT: Your Honor, before the
5 witness answers the question, can we have some
6 foundation for this document, what it is, where it came
7 from, please?

8 MR. EDWARDS: Certainly. Just a moment.
9 (Discussion off the record.)

10 MR. EDWARDS: This is an excerpt from the
11 workbook for the Federal Motor Carrier Safety
12 training.

13 By Mr. Edwards:

14 Q. Perhaps I should begin by asking you,
15 Officer Haskins, if this depiction looks familiar.
16 Have you seen it before?

17 A. I've seen some resemblance to documents
18 I've seen before, yes.

19 Q. So if I ask my question again, how does
20 this depiction -- can you describe -- from your
21 findings at this inspection of Mr. Tigner's vehicle,
22 describe how the cracks or the deficiencies you found
23 show up on this drawing, if they do.

24 A. There aren't any depictions on these

1 drawings. These are specific examples of what cracks
2 could look like. In the situation of the Admiral
3 Merchant vehicle, it was in the area of the -- the
4 frame rail is attached to the radius, and there was a
5 three-inch long crack in that area. I believe it is --
6 the out-of-service criteria mentions specifically, it's
7 a one and one half inch -- a minimum of a one and one
8 half inch crack in the frame rail extending to the
9 upper or lower radius.

10 Q. Okay. When you say radius --

11 A. That's the bend in the frame.

12 Q. It's the bend in the frame. Now, the
13 frame part, I don't want you to use any specific --

14 A. Frame beam, the frame beam.

15 Q. Okay. What shape is it on this vehicle?
16 The part we're talking about that had the crack weld,
17 what shape is it? Is it like a U-shape, like the one
18 on the top here? Was it an L-shape or --

19 A. Flat piece of the I-beam, flat piece of
20 the mainframe rail.

21 Q. Okay. So the mainframe rail is sort of an
22 I-beam shape?

23 A. Yes.

24 Q. And the radius on that, where would that

1 be?

2 A. Where it attaches to the frame, actually
3 the decking of the platform of the trailer.

4 Q. So there's a flat platform, and then
5 there's an I-beam underneath it?

6 A. (Witness nods head.)

7 Q. And what we're talking about is a crack in
8 the weld connecting the I-beam to the platform?

9 A. Actually in the beam itself, in my
10 opinion, is where the beam is welded.

11 Q. What's the beam?

12 A. The frame rail, the actual frame
13 component.

14 Q. On the frame rail is a part of the I-beam
15 sticking out?

16 A. Yes.

17 Q. At the top or the bottom?

18 A. In the center portion of the actual frame
19 component.

20 Q. Okay.

21 (Discussion off the record.)

22 By Mr. Edwards:

23 Q. I'm trying to understand it. There's an
24 I-beam -- well, this is the -- let's say there's a flat

1 platform that's the trailer, the bottom part of the
2 trailer where the load goes. Below that there is an
3 I-beam running -- is it longitudinally along the length
4 of the trailer?

5 A. Yes.

6 Q. Okay. And the top of the I-beam would be
7 flat, because it would have the top horizontal bar of
8 the I?

9 A. Yes.

10 Q. In the middle of that, there's a weld
11 between that and the platform of the trailer; is that
12 right?

13 A. Yes.

14 Q. That's what we're talking about?

15 A. Yes.

16 Q. Okay. And from what direction did you see
17 this weld?

18 A. Horizontally.

19 Q. From underneath or above?

20 A. From a side view.

21 Q. From the side. So you're standing at the
22 side of the trailer looking on?

23 A. (Witness nods head.)

24 Q. And you're basically looking along the

1 platform?

2 A. Yes.

3 Q. And you see --

4 A. The attachment point.

5 Q. Okay. The edge at the top of the I-beam,
6 the flat or -- you're looking at it sideways on, so
7 it's just an edge to you?

8 A. Right.

9 Q. And then right along there there's a weld?

10 A. Yes.

11 Q. And along that weld were these cracks?

12 A. Yes.

13 Q. Okay. I understand.

14 (Discussion off the record.)

15 By Mr. Edwards:

16 Q. In this particular inspection do you
17 remember showing the cracks to Mr. Tigner?

18 A. I normally do. I can't have an
19 independent recollection of physically walking him to
20 the deficiency and showing him that, but that's
21 normally my procedure.

22 MR. EDWARDS: No further questions.

23 THE EXAMINER: Do you have any on
24 redirect?

1 MR. WRIGHT: The witness has been on for
2 an hour and 20 minutes. Can we take a five-minute
3 break?

4 THE EXAMINER: You may.

5 MR. WRIGHT: And while we're on the
6 record, I would like to inquire of Mr. Edwards, you're
7 planning on putting Mr. Tigner on the stand or not?

8 MR. EDWARDS: Yes.

9 MR. WRIGHT: That's your only witness?

10 MR. EDWARDS: No. We also have another
11 witness, the gentleman in the back. His name is Larry
12 Woolum.

13 MR. WRIGHT: And Larry Woolum, his
14 association with the case is what?

15 MR. EDWARDS: He has examined the
16 inspection report and has examined the trailer in
17 person, and his background will show the Commission --
18 he'll provide his opinion on what he's found in his
19 investigation.

20 MR. WRIGHT: One minute.

21 THE EXAMINER: We'll go off the record.

22 (Recess taken.)

23 THE EXAMINER: Go back on the record.

24 MR. WRIGHT: Your Honor, we do have just a

1 couple of questions on redirect.

2 REDIRECT EXAMINATION

3 By Mr. Wright:

4 Q. Mr. Haskins, part of any report on the
5 form that you used, Driver's Examination Report,
6 there's a place for Inspection Notes; is that right?

7 A. Correct.

8 Q. What do you typically -- do you typically
9 put in the Inspection Notes other than a description of
10 the violation itself?

11 A. Any relevant facts that would attribute to
12 more clarification or any specifics related to any
13 outstanding factors that would have been relevant as a
14 part of the inspection.

15 Q. I believe you indicated, did you not, that
16 you described Mr. Tigner as cooperative during your
17 investigation; is that right?

18 A. Yes.

19 Q. Did Mr. Tigner make any negative comments
20 to you at all about anything you inspected, about the
21 results or anything else --

22 A. No, sir.

23 Q. -- concerning this inspection?

24 A. No.

1 Q. Had he done so, would it typically be your
2 practice to note that in the Inspection Notes portion
3 of the report?

4 A. Yes. That would have been a fact that I
5 would have deemed relevant.

6 MR. WRIGHT: Your Honor, give me one
7 second here.

8 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
9 PURPOSES.)

10 MR. WRIGHT: Your Honor, may I approach
11 the witness?

12 THE EXAMINER: You may.

13 By Mr. Wright:

14 Q. Mr. Haskins, I'd like to direct your
15 attention to Page 2 of Staff Exhibit 1. That would be
16 the report, the inspection report that you filed?

17 A. Yes, sir.

18 Q. What's the purpose of Page 2?

19 A. Federal regulations require that a receipt
20 from the carrier be submitted and any corrective action
21 identified on the report, and the document must be
22 returned back to our division upon receipt of the
23 certification of repairs and receipt of the inspection
24 report.

1 Q. So -- I'm sorry, had you finished your
2 response?

3 A. Yes.

4 Q. I apologize. So this action is a
5 certification by a repair shop or whatever that the
6 repairs written up in the report have been made; is
7 that right?

8 A. Yes.

9 Q. Okay. All right. Now, you have before
10 you what we've just marked as Exhibit -- Staff Exhibit
11 No. 3?

12 A. Yes.

13 MR. WRIGHT: I'm sorry, I didn't give you
14 a copy, did I? There you are (indicating).

15 MR. EDWARDS: Thank you.

16 By Mr. Wright:

17 Q. Would that be essentially the
18 certification that you just described in your
19 testimony?

20 A. It is.

21 Q. And this would be a certification that
22 would pertain to the inspection that is the subject of
23 this case; correct?

24 A. Yes.

1 Q. Performed on June 5, 2006; is that right?

2 A. Yes.

3 Q. Involving a vehicle operated by Admiral
4 Merchants Motor Freight, Inc., and driven by Mr. James
5 N. Tigner; is that right?

6 A. Yes.

7 Q. Is that your signature at the bottom
8 left-hand corner?

9 A. It appears to be, yes.

10 Q. Okay. So this would have been -- if I
11 understood you correctly, you said when you're done
12 with the inspection, you go through it with the driver,
13 you sign the copy and give it to them, and they sign --
14 and the driver gets around to signing whenever; is that
15 right?

16 A. That's correct.

17 Q. Does that accurately describe your
18 testimony?

19 A. Yes.

20 Q. And this is your signature?

21 A. Yes.

22 Q. So this would have been part of that
23 report, then, presumably?

24 A. Yes.

1 Q. Under the certification. Okay. Now, what
2 does this certification appear to show?

3 A. This document is a faxed copy or a copy of
4 the actual inspection report. It shows that the
5 receipt of the repair and the corrective action was
6 signed and repaired on the 5th of June, 2006. Also, it
7 shows that the motor carrier was -- upon receipt of
8 this document, acknowledged the fact that the
9 deficiencies were corrected, and this document was
10 provided back to our office, as required by federal
11 regulation.

12 Q. Can you tell, looking at the Carrier
13 Certification, the place where it says Title, does that
14 look like the word "safety"?

15 A. Yes.

16 Q. That perhaps was the safety director for
17 the carrier or something like that?

18 A. It appears to be, yes.

19 Q. Okay. So Staff Exhibit 3 is a
20 representation made by the repair shop that the repairs
21 that needed to be made, and they're noted above, the
22 frame cracked in two places, that those repairs were
23 made and it purports to show that they were made on
24 June 5 of 2006, which happens to be the same day as the

1 inspection; correct?

2 A. Yes.

3 Q. There's no way of telling, of course --
4 well, can you tell from looking at the signature of
5 repairer where this might have occurred, any way to
6 tell or no?

7 A. No, sir.

8 Q. Okay. Just to make sure we're clear, what
9 Mr. Edwards had marked as Exhibits J through O, the
10 pictures --

11 A. Yes, sir.

12 Q. -- prior to today you'd never seen these,
13 had you?

14 A. I had not.

15 Q. And you obviously could not say one way or
16 another from the stand whether or not this is the same
17 vehicle that you inspected on June 5, 2006, or not; is
18 that right?

19 A. That's correct.

20 Q. Okay.

21 MR. WRIGHT: Your Honor, one second.

22 (Discussion off the record.)

23 By Mr. Wright:

24 Q. Mr. Haskins, I'd like to refer you to

1 Exhibit H, Respondent's Exhibit H (indicating). That
2 spells out what needs to be done to place somebody out
3 of service; right?

4 A. Yes, sir.

5 Q. Who is the important party to be notified
6 when an out of service occurs? Who is the most
7 important individual that needs to know what the
8 problem is?

9 A. The motor carrier and the general public
10 as well.

11 Q. Well, would it not be the driver?

12 A. The driver, yes.

13 Q. And it would be the driver because -- so
14 they understand what it is that needs to be repaired;
15 is that right?

16 A. Yes.

17 Q. Okay. Under the circumstances of this
18 case -- well, strike that. This case, is it fair to
19 say that the facts of this case are somewhat unique
20 given the close proximity of repair facilities to where
21 the roadside inspection was actually made?

22 A. Definitely.

23 Q. Is it fair to say that in your mind, based
24 on the way you wrote the report, based on your belief

1 that you likely went over that report with Mr. Tigner,
2 based on your belief that it's more likely than not
3 that you actually physically showed him the cracks,
4 based on the fact that you marked those cracks in chalk
5 so that they'd be clear for the repair shop to know
6 what to do, is there any question in your mind that the
7 person who is critical, is critical that knows what the
8 out-of-service problem is, is there any doubt in your
9 mind that that person, Mr. Tigner, knew that the
10 trailer had been placed out of service, regardless of a
11 lack of a sticker on it, and that he knew why it had
12 been placed out of service?

13 MR. EDWARDS: Objection. Speculating as
14 to Mr. Tigner's knowledge or state of mind.

15 MR. WRIGHT: Your Honor, I believe the
16 witness is allowed to testify about his observations.
17 I thought that's the way I framed the question. If I
18 didn't, I apologize.

19 THE EXAMINER: Go ahead and answer it, if
20 you can.

21 THE WITNESS: It appeared that the driver
22 had a complete understanding and knowledge of the
23 report, the signature, and the actual inspection and
24 all the relevant facts discovered.

1 By Mr. Wright:

2 Q. Including the fact that the trailer was
3 placed out of service?

4 A. Yes.

5 Q. And including the fact that repairs had to
6 be made to that trailer before it could be deemed
7 roadworthy again?

8 A. That's right.

9 MR. WRIGHT: One second, Your Honor.

10 (Discussion off the record.)

11 MR. WRIGHT: That's all we have. Thank
12 you. Oh, Your Honor, excuse me. I'm sorry. I would
13 like, in light of the fact that we have witnesses to
14 follow, I would reserve the opportunity to bring back
15 Mr. Haskins on rebuttal if we deem it necessary. We
16 have the burden here. We have the right to open and
17 close.

18 MR. EDWARDS: No objection.

19 THE EXAMINER: Do you have any questions
20 on recross?

21 MR. EDWARDS: Yes, thank you, just a few,
22 Your Honor.

23 RECROSS-EXAMINATION

24 By Mr. Edwards:

1 Q. You just testified to your observations
2 and indicated Mr. Tigner knew he was -- his vehicle was
3 being placed out of service. What specifically did you
4 observe?

5 A. The actions that occur at the end of the
6 inspection when I present the inspection report. He
7 also signed the inspection report, which is this
8 document here (indicating).

9 Q. We don't know if it was then or later.
10 You didn't see him signing it; right?

11 A. I can't recall, but this document does
12 provide a signature where the driver received a copy.
13 It was an inspection that had no other facts, and all
14 of the normal, routine dialogue was presented. Had
15 there been any discussion or disagreement, I would
16 have -- I would have documented that.

17 Q. It sounds like what you're trying to say,
18 if you had, in fact, told Mr. Tigner his vehicle would
19 have been placed out of service, he would either have
20 had to say yes, I understand, or he would have either
21 said nothing, or would have said no, I don't agree with
22 you; correct? But you don't remember any of that?

23 A. I don't remember any specific dialogue,
24 no, sir.

1 Q. So, yes or no, did you, in fact, tell Mr.
2 Tigner, tell him, that his vehicle was being placed out
3 of service?

4 A. Yes.

5 Q. You just testified, the last question,
6 that you don't remember any dialogue?

7 A. Procedurally, that is what's done. The
8 document is presented to him. The violations are
9 identified. The specific facts of date and location
10 are reviewed with the driver and presented to him upon
11 receipt of the inspection report.

12 Q. Again, do you remember in this particular
13 case specifically telling Mr. Tigner, not what the
14 routine is, not what your normal procedure is -- nobody
15 is perfect, obviously.

16 A. I understand.

17 Q. You can't do that in every single
18 inspection out of the 5,000 you've done. Do you
19 specifically remember telling Mr. Tigner that his
20 particular trailer on this day was being placed out of
21 service?

22 A. No, not specifically.

23 Q. Okay. A couple of other questions. When
24 you were placing this vehicle out of service, did you

1 place it out of service at the time it was pulled over
2 at the scene of the inspection or did you place it out
3 of service after it had been moved to go get repaired?

4 A. The violation is placed out of service
5 upon completion of the inspection. The vehicle was
6 permitted to move to a facility for repairs to be made,
7 but the actual act of placing the vehicle out of
8 service is upon completion of the inspection report.

9 Q. So at the time the vehicle was at the
10 scene of the inspection, it was placed out of service;
11 correct?

12 A. When the violations were discovered and
13 the document was completed.

14 Q. Do the Federal Motor Carrier Safety
15 Regulations allow you to allow a vehicle to be moved
16 after it's been placed out of service?

17 A. After the vehicle has received the
18 out-of-service sticker, it is prohibited to allow that
19 vehicle to move.

20 Q. And you testified that you didn't put the
21 sticker on there?

22 A. I did not allow -- I did not place the
23 sticker on the vehicle because of the prudence of
24 getting the repairs done in a safe location away from

1 the inspection.

2 Q. Although you admit that the regulations
3 require you to place a sticker on the vehicle if you
4 are placing it out of service?

5 A. Yes.

6 Q. And you don't know of any regulations that
7 allow you to permit the vehicle to be moved after it's
8 placed out of service?

9 A. The vehicle could be towed or escorted to
10 a location.

11 Q. Did that happen in this case?

12 A. I believe it was escorted to a facility
13 for repair.

14 Q. By whom?

15 A. By me.

16 Q. So you're testifying now that you escorted
17 this vehicle to a repair facility?

18 A. Off the exit ramp to the location where
19 the inspection occurred, yes.

20 Q. Tell me exactly what happened.

21 A. I followed him up the ramp, and I assumed
22 he was going to a repair facility.

23 Q. So assuming he was going to a repair
24 facility sounds a lot different than you personally

1 escorting him to that repair facility.

2 A. I am prohibited from having a facility --
3 recommending a facility over another. I couldn't take
4 him to one.

5 Q. But you could have given Mr. Tigner the
6 option of choosing one of these facilities?

7 A. Which I did.

8 Q. And what happened then?

9 A. We proceeded up the ramp to the exit, and
10 he was on his own to repair the defect.

11 Q. Do you remember seeing him do that?

12 A. No, sir.

13 Q. So your testimony is that he could have
14 either continued on his trip to his scheduled
15 destination or he could have proceeded directly to a
16 repair facility, but you don't know?

17 A. I do not know.

18 Q. Are there particular levels of out of
19 service? You talk about vehicles can't be moved when
20 they're placed out of service, but then you're allowing
21 him to take it to a repair facility. Where is the
22 distinction, then?

23 A. No distinction. In many cases we conduct
24 inspections that -- for example, at weigh stations.

1 That's a safe haven. If a violation is discovered at a
2 weigh station, the repairs are welcome to be made there
3 without moving. In this case, the vehicle was stopped
4 at an exit ramp, and the violations or deficiencies
5 were discovered, and it would be more prudent to have
6 the repairs made at one of these local facilities than
7 it would be at the side of the road.

8 Q. And you said that the regulations allow an
9 out-of-service vehicle to be either towed or escorted
10 to a repair facility; is that right?

11 A. Yes.

12 Q. Did that happen in this case?

13 A. In my opinion, it did.

14 Q. Because you drove up to the exit ramp and
15 so did Mr. Tigner?

16 A. Yes.

17 Q. But you didn't proceed with him to the
18 repair facility?

19 A. No.

20 Q. And he had at least three different -- he
21 had three directions that he could have proceeded in
22 once he got to the exit ramp?

23 A. That's correct.

24 Q. Did he have anywhere to go other than

1 where he went off the exit ramp?

2 MR. WRIGHT: Excuse me, Your Honor. Could
3 we have a clarification? When you say the exit ramp,
4 you are referring to where it would be running into
5 State Route 42?

6 MR. EDWARDS: The end of the ramp at the
7 intersection, yes.

8 MR. WRIGHT: Right. I'm sorry, I didn't
9 mean to interrupt the question.

10 By Mr. Edwards:

11 Q. Now, where were we? So Mr. Tigner could
12 have gone in one of at least three different directions
13 at the time you finally observed him?

14 A. I would say two directions.

15 Q. Which directions are those?

16 A. Left or right. If he went straight, he
17 would have gone back down the interstate, which would
18 have been prohibited.

19 Q. But he still could have done that?

20 A. Conceivably, yes, he could.

21 Q. And you can't say for certain that he
22 didn't?

23 A. No, sir, I can't.

24 Q. So, again, I ask you how is that escorting

1 him to the repair facility? You just admitted that he
2 could have gone back onto the interstate.

3 THE EXAMINER: I think we've covered this
4 before.

5 MR. EDWARDS: Can I have an answer to that
6 question, and then I'll cease with --

7 MR. WRIGHT: I believe we have, Your
8 Honor.

9 THE EXAMINER: I believe you have the
10 answer to the question. Let's proceed.
11 By Mr. Edwards:

12 Q. One final question, when you conducted
13 this inspection, you testified that you found these two
14 three-inch cracks on what you called the mainframe
15 rail. If you had seen any other cracks or crack welds
16 on any part of the vehicle, would those be noted on the
17 inspection report?

18 A. If they would have been meeting the
19 out-of-service criteria, yes, I would have identified
20 them as well.

21 Q. So if there were cracks that weren't an
22 out-of-service violation, not only would you not have
23 placed -- well, you obviously wouldn't have placed the
24 vehicle out of service for those, but you wouldn't have

1 even put them on the report?

2 A. No, sir.

3 Q. From your recollection, do you remember
4 seeing any other cracks in any part of the frame, any
5 other part of the trailer, including the welds?

6 A. No.

7 MR. EDWARDS: Okay. Nothing further.

8 THE EXAMINER: You're excused.

9 (Witness excused.)

10 THE EXAMINER: Do you have another
11 witness, Mr. Wright?

12 MR. WRIGHT: Reserving the right to recall
13 Mr. Haskins on rebuttal, no. That completes our case
14 at this juncture in chief, Your Honor.

15 THE EXAMINER: Very good. Let's go off
16 the record here for a minute.

17 (Discussion off the record.)

18 THE EXAMINER: Back on the record.

19 Do you have a witness to present?

20 MR. EDWARDS: Yes. Thank you, Your
21 Honor. We'll call James Tigner at this time.

22 THE EXAMINER: Raise your right hand.

23 JAMES N. TIGNER,

24 being by The Examiner first duly sworn, as hereinafter

1 certified, testifies and says as follows:

2 THE EXAMINER: Be seated.

3 DIRECT EXAMINATION

4 By Mr. Edwards:

5 Q. Can you state your name and address for
6 the record, please.

7 A. It's James N. Tigner. My address now is
8 51 Millstone Circle, Pataskala, Ohio.

9 Q. What's your occupation?

10 A. I'm owner/operator, truck driver.

11 Q. Were you employed in that capacity on the
12 5th of June, 2006?

13 A. Yes.

14 Q. Okay. How long have you been so employed?

15 A. Approximately 15 years.

16 Q. At the time of this inspection, you were
17 operating a vehicle for Admiral Merchants Motor
18 Freight?

19 A. Yes.

20 Q. How long had you been working for them?

21 A. Approximately four years at this point
22 (indicating).

23 Q. How long have you been hauling hazardous
24 materials?

1 A. I don't haul much of it anymore, but I had
2 been hauling it back about six years from now. I
3 hailed it under another carrier as well.

4 Q. So six years ago you were hauling HazMat
5 for a different company?

6 A. Yes, Handom (sic.) Eastern.

7 Q. And the four years of employment with
8 Admiral Merchants you'd been hauling HazMat?

9 A. For, like, the first three, two and a half
10 to three years. Now I don't do much HazMat.

11 Q. Okay.

12 A. I can clarify that, why. We go load by
13 load and it's what we're offered, and the shipper is no
14 long where it was, so I don't get offered much of that
15 HazMat.

16 Q. So your contract doesn't specifically just
17 relate to HazMat only?

18 A. No.

19 Q. Okay. So you can haul any type of
20 commodity?

21 A. Yes.

22 Q. Have you undergone any training on the
23 transportation of hazardous materials?

24 A. Yes. We have to take the state test,

1 update our training with our carrier. I believe it's
2 every two years.

3 Q. What is that training? Describe that.

4 A. It's a refresher course, question/answer.
5 I think it's a requirement for the PUCO or Federal
6 Motor Carriers that they have everyone upgrade every
7 two years. You have it on your license.

8 Q. So you have a hazardous materials
9 endorsement or you did at the time of this inspection?

10 A. Yes. I still carry one.

11 Q. And this periodic training that you
12 receive, you say there's question and answer. Are you
13 scored? Do you have to pass some kind of test to
14 continue to hold that certification?

15 A. Yes. It's a -- yes. It's a pass/fail.
16 It's a test. If you should happen to fail it, you can
17 get extra -- I don't know how to put it. You study it
18 until you know more and know enough to pass.

19 Q. Okay. Let's just start off, describe the
20 events of this day, June 5th, 2006, starting from, you
21 know, the point where the stop was made for this
22 inspection. Just describe what happened to me.

23 A. As we -- everyone pretty much knows, at
24 the point I was headed west on 70. Officer Haskins was

1 sitting in the median strip, and hazardous material,
2 I'm wearing the flag that says pick me; so he comes
3 out, pulls -- gets in front of me, indicates for me to
4 follow him off the ramp, so I follow him off the ramp.
5 We pull off the right side of the road the best we
6 can. It was really narrow. It was under
7 construction. Officer Haskins goes back, notified me
8 who he was. I notified him that I carry -- I have a
9 license to carry a concealed weapon and that I have no
10 weapon, and then we proceeded with, yes, registration
11 and operating authority. He asked to see my
12 documentation, my paperwork for my load, and informed
13 me that he was going to do a Level I inspection. He
14 goes back. We do the normal procedure, check the
15 taillights, check the turn signals, check the wipers,
16 and he comes back up to me and says, hey, I have
17 something I want you to see. And I get out of the
18 truck with him and follow him back to the trailer, and
19 traffic was really close to us on the ramp. The ramp
20 traffic was really close to us, and he crawls
21 underneath the trailer, and he's showing me a crack
22 where the suspension meets the bottom of the beam, the
23 main beam, and the vehicles coming down the ramp
24 became -- the trucks, cars, whatever, well, one of them

1 was pretty close. I caught Officer Haskins' feet with
2 my foot and slid it under and said you need to be
3 careful. And he showed me this crack in the suspension
4 and said, you know, I could put you out of service for
5 this, but under this situation I'm not going to. Okay.
6 So we walk back up to the truck. He says we'll get you
7 your paperwork and get you on your way; so I get in the
8 truck. He goes up to the Jeep, does an inspection
9 report, brings it back to me, hands it up through the
10 window, and says sign this and have a nice trip. We
11 pulled down the -- pulled up the ramp. He gets in the
12 left-hand lane. I get in the lane to his left, and we
13 part ways.

14 Q. At the time he was conducting this
15 inspection, where were you?

16 A. I was sitting in the cab of the truck
17 except for the time he wanted to show me the crack.

18 Q. He came and got you?

19 A. Yes.

20 Q. And you went back. Did he actually show
21 you the crack that he said he could place you out of
22 service on, but he wasn't going to?

23 A. Right.

24 Q. And you saw it?

1 A. Right.

2 Q. The crack?

3 A. At that point --

4 Q. One of the cracks?

5 A. Pardon me?

6 Q. Were there one or two cracks?

7 A. He showed me the one crack where the
8 suspension comes up against the bottom of the main beam
9 and a cross member, and it was cracked where it met the
10 cross member up only. It was not cracked on the main
11 beam.

12 Q. Okay. So from our description of the
13 crack, through Officer Haskins' testimony, what I was
14 trying to understand what was cracked, is that -- when
15 you heard that, did that agree with what you saw?

16 A. What I heard the day of the inspection or
17 what I heard here?

18 Q. No. What you heard today, when he was
19 describing it and I was trying to understand it, does
20 that agree --

21 A. Absolutely not.

22 Q. How so?

23 A. He was saying the crack was horizontal in
24 the main beam. Where it was a horizontal crack, but it

1 was between a cross member and a mounting bracket for
2 the suspension.

3 Q. The mounting bracket on the suspension,
4 this is for a wheel or an axle?

5 A. Yes. You have four mounting brackets per
6 axle, two in front, two in the rear, and it's what
7 holds the axles straight and lets them flex up and
8 down.

9 Q. Do you remember which axle it was?

10 A. It was the front axle of the trailer.

11 Q. Okay. Is that Axle 4-L?

12 A. Yes, numbered from steering axle back to
13 the trailer -- or to tractor and then the trailer. It
14 would be 4-L.

15 Q. Okay. At this time, I'd like to introduce
16 into evidence the exhibits I had previously provided to
17 you. I think they're exhibits -- here, I've got the
18 list -- Exhibits J through O, the six photographs. Do
19 you have those in front of you, Mr. Tigner?

20 A. No, not in front of me.

21 THE EXAMINER: You're going to have to
22 provide some foundation for those before they can be
23 admitted. If he's the witness that took them, if he's
24 the person that took them, then he can describe it.

1 MR. EDWARDS: He did not take them, but he
2 was present when they were taken.

3 THE EXAMINER: I guess he can reach some
4 interpretation about -- go ahead.

5 By Mr. Edwards:

6 Q. Do you recognize these photos, Mr. Tigner?

7 A. Yes.

8 Q. Where were these photos taken?

9 A. They were taken in the Flying J parking
10 lot and -- I have to clarify. L, J, and K were taken
11 in the Flying J parking lot.

12 THE EXAMINER: Exhibits what?

13 THE WITNESS: L, J, and K.

14 THE EXAMINER: Were what?

15 THE WITNESS: Taken in the Flying J
16 parking lot, Sunbury, Ohio.

17 By Mr. Edwards:

18 Q. Do you remember when they were taken?

19 A. Yeah. They were taken this past Saturday,
20 which would be -- I don't remember the date.

21 THE EXAMINER: What were they taken of?

22 THE WITNESS: That's the suspension of the
23 bottom of my frame and the suspension of my trailer,
24 the trailer that was inspected, what this is all over.

1 By Mr. Edwards:

2 Q. And who took the photos?

3 A. Larry, I believe, Woolum. I'm not real
4 good with names.

5 Q. And you were present when they were taken?

6 A. Yes.

7 Q. Did you see them at the time they were
8 taken?

9 A. I did not see a printed copy, but I saw it
10 on the digital screen.

11 Q. So Mr. Woolum took the photos, and you saw
12 them on his camera right after he took them?

13 A. Yes.

14 Q. And are they the same photos that you're
15 looking at marked Exhibit J, K, and L?

16 A. Yes.

17 Q. Those photos show your trailer?

18 A. Yes.

19 Q. Is it the same trailer that was inspected
20 by Officer Haskins on June 5th, 2006?

21 A. Yes.

22 MR. WRIGHT: Your Honor, I'm going to
23 object on a couple bases. Number one, if he actually
24 observed, as counsel's questions suggest, these photos

1 on the camera, that suggests that they were taken with
2 a digital camera, which should show a date on these
3 pictures. None is shown, number one. So other than
4 the witness' word that they were taken this weekend, we
5 have no knowledge of that or, frankly, any way to
6 disprove it. Number two, and more important,
7 relevance. These photos were taken, if it was
8 Saturday, July 27th, 2008, over two years after the
9 repairs to this trailer were certified as having been
10 made. So I can't tell nor can I disprove that these
11 photos have anything to do with the trailer that Mr.
12 Haskins inspected, but more importantly, we have
13 evidence that, from the carrier itself, that repairs
14 were made on June 5, 2006, so what pictures of anything
15 taken over two years later have to do with anything is
16 beyond me.

17 MR. EDWARDS: If I can respond?

18 THE EXAMINER: Go ahead, respond.

19 MR. EDWARDS: Thank you. On your first
20 point, the date, I'm not a professional photographer,
21 but I have two digital cameras and neither of them put
22 dates on the pictures when I take them. The second
23 point, we're going to go through this, and the other
24 three photos were actually taken at the same time.

1 They were dated. They show a date of I believe it's
2 June 6, 2006, and they were taken by South Dakota law
3 enforcement, I believe during the inspection, which
4 we'll get to. The photos that we're talking about
5 right now can be compared to the photos taken at the
6 time. They help the Commission understand what we're
7 talking about, what part of the trailer we're talking
8 about, where the cracks were. Admittedly, the vehicle
9 was repaired subsequently. We'll talk about that.
10 We'll see what was repaired. We'll see measurements
11 from one of the photos, what the -- the dimensions of
12 the frame component we're looking at, as well as a
13 description of what part of that was cracked. It's
14 extremely relevant and happens to form the basis of
15 what we're showing today, that the alleged cracks Mr.
16 Haskins saw failed to meet the out-of-service criteria.

17 MR. WRIGHT: Your Honor, I would like to
18 add one thing, if I might. My disagreement with
19 counsel's remarks aside, the witness to ask these
20 questions of would be the person that took the photos,
21 and this witness has indicated he did not.

22 MR. EDWARDS: Well, then, with the
23 Commission's permission, we can call the witness who
24 took the photos, if it can be agreed that Mr. Tigner

1 can be recalled following his testimony so that I can
2 present this case in what appears to me to be the
3 logical order.

4 MR. WRIGHT: Your Honor, not to belabor
5 the point, but we certainly would not agree to that.
6 This case did not fall out of the sky yesterday.
7 Counsel has had this several months. I don't know what
8 he's been doing with it, but to now spring this on us
9 the day of the hearing, and I guess the next witness is
10 going to testify about the examination he did of the
11 vehicle over the weekend, and, again, I would submit to
12 you that that's irrelevant, but -- and we're learning
13 about that for the first time today. I mean, that's --
14 that's prejudicial. It's unfair. It's a host of
15 things. You've got to have the person that took the
16 pictures to sponsor them and testify what they're
17 about. That's fairly basic lawyering, and to try to
18 bring these in through somebody else and let him ramble
19 on, commentary about these pictures, I think is wrong.
20 I don't think we have the basic foundation for these
21 photos to even come in, and, again, photos taken two
22 years after the fact strikes me as worthless for
23 purposes of what we're here about today in any event.

24 THE EXAMINER: Okay. I'll make my

1 ruling. I think you should authenticate these before
2 you have this witness testify, so why don't we do
3 that. Why don't you get -- is this the witness who --

4 MR. EDWARDS: Yes.

5 THE EXAMINER: Okay. So why don't you
6 proceed and do that.

7 MR. EDWARDS: Certainly, Your Honor. Mr.
8 Tigner can be called after Mr. Woolum's testimony,
9 then?

10 THE EXAMINER: Well, let's just -- we're
11 taking this out of order.

12 MR. WRIGHT: Why don't you just offer the
13 photos at that time, when he takes the stand.

14 MR. EDWARDS: I certainly could do that,
15 but then I couldn't have Mr. Tigner's testimony about
16 what he sees, his identification of what we're doing.
17 He has testimony directly relevant to the state of the
18 trailer both now and at the time of the inspection.
19 Mr. Woolum has no testimony to offer of the state of
20 the trailer at the time of the inspection. If I have
21 to show the photos with Mr. Woolum sponsoring them and
22 then I'm not able to have Mr. Tigner testify to the
23 photos, he can't make any comparison between the state
24 of the trailer at the time of the inspection and now,

1 and you've indicated that that's important.

2 THE EXAMINER: This is my ruling. Go on
3 with this witness. We'll swear him in, and you can
4 authenticate these photos, and then we'll go back to
5 this one; okay?

6 MR. EDWARDS: Thank you, Your Honor.

7 THE EXAMINER: Proceed and do that. Call
8 your witness.

9 MR. EDWARDS: Counsel for Respondent will
10 call Larry Woolum.

11 (Witness excused.)

12 THE EXAMINER: Raise your hand.

13 LARRY WOOLUM,
14 being by The Examiner first duly sworn, as hereinafter
15 certified, testifies and says as follows:

16 THE EXAMINER: Please be seated.

17 DIRECT EXAMINATION

18 By Mr. Edwards:

19 Q. Can you please state your name and address
20 for the record.

21 A. My name is Larry Woolum, W-o-o-l-u-m, 4264
22 Maynard Road, Delaware, Ohio.

23 Q. Where are you employed and what is your
24 current title?

1 A. I'm employed by the Ohio Trucking
2 Association, and I'm currently the Director of
3 Regulatory Affairs for the Trucking Association.

4 MR. EDWARDS: At this time I'd like to
5 offer into evidence another exhibit.

6 THE EXAMINER: Why don't we proceed with
7 the photos first while we've -- that's why we have him
8 up here; okay? Let's get these --

9 MR. EDWARDS: I'm sorry. Perhaps I
10 misunderstood. You just want him to testify now about
11 the photos and nothing else?

12 THE EXAMINER: Yes. Let's just
13 authenticate the photos first.

14 MR. EDWARDS: Okay.

15 By Mr. Edwards:

16 Q. I believe the photos are up there, Mr.
17 Woolum. Do you have a copy of Exhibits J, K, and L?

18 A. Yes.

19 Q. What's your experience with those photos?
20 Do you recognize those?

21 A. Yes. I took those photos approximately
22 9:30, 10:00 on Saturday, this past Saturday, the 26th
23 of July.

24 Q. I believe so.

1 A. I believe that's Saturday, the 26th. I
2 took them at the Flying J Truck Stop where I met with
3 Mr. Tigner to look at the trailer.

4 Q. What trailer was that?

5 A. The trailer was authenticated to be the
6 one that he was driving the day of the inspection in
7 '06.

8 MR. WRIGHT: Excuse me. Can I have the
9 response read back, please, to the question?

10 (Answer read back.)

11 MR. WRIGHT: I assume counsel is going to
12 clarify what "authenticated" means?

13 MR. EDWARDS: Yes. That was going to be
14 my next question.

15 MR. WRIGHT: Thank you.

16 By Mr. Edwards:

17 Q. Did Mr. Tigner tell you that this is the
18 same trailer that was inspected on June 5th, 2006?

19 A. He represented that to me to be the same
20 trailer, yes.

21 Q. Could you see that there was a
22 manufacturer's mark on that trailer?

23 A. It was a Fontaine trailer.

24 Q. Could you tell what year it was?

1 A. No.

2 Q. Okay. Specifically these photos, what are
3 we looking at in these photos? Let's take one of them
4 to start.

5 A. Using Photo J, I am sitting on the ground
6 looking towards the rear of the trailer. This is Axle
7 No. 4 on the driver's side. You can see the dual
8 tires, and in the center of the photograph you can see
9 the suspension portion of the axle underneath the frame
10 rail, and you can see welds on the bottom of the frame
11 rail to the suspension part, and on the left-hand side
12 you can see some welding to the cross member, and
13 that's what I was trying to depict in that photograph.

14 Q. So these welds that we're talking about
15 are basically in the middle of the photo, slightly off
16 to the left of the exact center of the photograph?

17 A. Yes. And comparing those welds to the
18 rest of the welds on the other parts of the suspension
19 and so on, those appeared to me to be factory welds.

20 Q. Okay. What did Mr. Tigner tell you about
21 this particular part of the vehicle? Why did you take
22 a photo of this?

23 A. He identified that part and specifically
24 the weld on the left-hand side there on the cross

1 member as the welds that were identified as being
2 cracked in the 2006 inspection conducted by
3 Investigator Haskins.

4 Q. So your understanding from listening to
5 Mr. Tigner on Saturday is that these welds,
6 specifically the one on the left side, is what Mr.
7 Tigner was shown by Officer Haskins that forms the
8 basis of the inspection?

9 A. Yes, the violation. The next photograph,
10 K, Exhibit K, this is a closeup of the same photograph
11 that I took being J, same positioning, only at this
12 point in time I focused and closed in on the exact
13 welding area, and you can see that there is a ruler
14 being held there by Mr. Tigner himself so that I could
15 take the photograph. On the left-hand side you can see
16 that there is a weld there that does not -- you can see
17 that it's larger and more of a different texture weld
18 than the original factory, what I assume to be factory
19 welds, along the bottom of the frame rail attaching the
20 suspension component. The weld on the left-hand side,
21 that is -- appeared to be welded maybe more than once,
22 a repair weld, is welding the suspension part to the
23 cross member, not to the main rail, frame rail.
24 These gaps -- you can see gaps in the welding. It's

1 not a complete weld all the way across, nor on the --
2 Exhibit J, you can see that the welding are more of
3 spot welds than complete welding all the way across.
4 And once again, this is consistent along the trailer
5 suspension parts that looked to me like it's factory.

6 MR. EDWARDS: Your Honor, would you like
7 me to just go through the rest of the photos to
8 authenticate them and not talk about his findings at
9 this time?

10 THE EXAMINER: Yes. Let's just
11 authenticate the photos at this time.

12 MR. EDWARDS: Okay.

13 By Mr. Edwards:

14 Q. Mr. Woolum, if you can proceed to the next
15 photo, Exhibit L.

16 A. L was the -- another photograph that I
17 took, a little bit out of focus, but it's basically the
18 same as K.

19 Q. Just a little bit more magnified?

20 A. It's out of focus, and it doesn't have the
21 measuring device held in there by Mr. Tigner.

22 Q. Okay. If we can move on to Exhibits M, N,
23 and O, do you have those in front of you?

24 A. Yes.

1 Q. You didn't take these photos, did you?

2 A. No, sir.

3 Q. You don't know who took these photos?

4 A. No, sir.

5 Q. They're not very good photos. Can you
6 tell from looking at these photos if this is the same
7 trailer that you inspected on Saturday, July 26th?

8 A. It appears to be the same trailer, the
9 same nomenclature, same area that I took photos of, it
10 appears. I can't validate that.

11 Q. Sure.

12 MR. WRIGHT: I'll note for the record an
13 objection that the witness was asked to speculate and,
14 in fact, did so, unable to conclusively determine that
15 those photos were the same.

16 THE EXAMINER: Excuse me, Mr. Wright?

17 MR. WRIGHT: I just object to the fact
18 that the question asks the witness to speculate as to
19 the Photos M, N, and O which the witness had previously
20 testified he did not take and I believe indicated
21 were -- he acknowledged were of somewhat poor quality.

22 THE EXAMINER: I think he's answered. Go
23 ahead.

24 MR. EDWARDS: Those are all the photos we

1 have. I believe that --

2 THE EXAMINER: M, N, and O, is that what
3 his answer applied to?

4 MR. EDWARDS: Yes, that last answer that
5 was referenced by counsel for the State, M, N, and O.

6 THE EXAMINER: It applied to the last
7 three photos, M, N, and O?

8 MR. EDWARDS: I'm sorry, Your Honor?

9 THE EXAMINER: His answer applied to the
10 last three photographs, M, N, and O?

11 MR. EDWARDS: Correct, Your Honor.

12 MR. WRIGHT: I suppose, Your Honor, in
13 addition to the objection, objection on speculation.
14 There's no foundation for these photos at all. He
15 didn't take them, and we don't know who did, so I would
16 move --

17 MR. EDWARDS: Agreed.

18 MR. WRIGHT: I would move that they be
19 stricken.

20 MR. EDWARDS: Your Honor, I'll have the
21 opportunity to reintroduce M, N, and O when Mr. Tigner
22 is able to testify. I'll agree that they're not
23 entered into evidence at this time.

24 THE EXAMINER: Okay. Let's proceed now

1 with the rest of --

2 MR. WRIGHT: Excuse me, Your Honor, if I
3 may. Do you have much more to do with this witness?
4 We would not have any objection to him completing this
5 witness.

6 THE EXAMINER: Yes, let's go off the
7 record.

8 (Discussion off the record.)

9 THE EXAMINER: Let's complete this
10 witness, and then we'll go back to Mr. Tigner.

11 MR. EDWARDS: Okay. That's fine.

12 THE EXAMINER: It makes it less
13 disjointed. Go ahead.

14 MR. EDWARDS: Thank you, Your Honor. If I
15 may approach, at this time I'd like to introduce
16 Respondent's Exhibit P, which will be identified by the
17 witness (indicating).

18 By Mr. Edwards:

19 Q. Mr. Woolum, can you identify that
20 document?

21 A. Yes. That's a resume' that I have put
22 together for myself.

23 Q. You prepared that document?

24 A. Yes, I did.

1 Q. What does that document contain?

2 A. Basically a description of my professional
3 experience.

4 Q. We'll go through that. What is the
5 subject matter of your professional experience?

6 A. I'm not certain I understand that.

7 Q. Okay. What field of study have you been
8 involved with in your employment?

9 A. My employment for the past 35 years has
10 been traffic safety, motor carrier compliance,
11 enforcement. I was with the Ohio State Highway Patrol
12 from 1972 till 1998, when I retired. I have been with
13 the Ohio Trucking Association as Director of Regulatory
14 Affairs for the past 9 plus years, providing education,
15 knowledge, sharing information with the trucking
16 industry. We represent approximately 1,000 motor
17 carrier members. My particular job requirements
18 require me to manage and be staff appointed personnel
19 for our Ohio Trucking Safety Council, the Ohio Trucking
20 Maintenance Council. I put on educational seminars
21 concerning the Federal Motor Carrier Safety Regulations
22 and the PUCO Motor Carrier Enforcement Regulations,
23 hazardous material regulations, cargo tank inspections,
24 and so on and so on. I've done this for the past 9

1 years, and prior to that my experience with the patrol
2 includes investigating crashes and inspecting vehicles,
3 certified by the Federal Motor Carrier -- I'm sorry.
4 It was the Office of Motor Carrier Federal Highway
5 Administration back then when I was certified to do
6 inspections, both motor carrier inspections and
7 hazardous material inspections, conducted my required
8 inspections annually to maintain my certification until
9 my retirement. I've acted as an instructor at the Ohio
10 Highway Patrol Academy on various safety issues,
11 including commercial motor vehicle enforcement, CDL,
12 Commercial Driver's License, International Register
13 Plan, International Fuel Tax Alliance, and many other
14 traffic safety topics. I was certified until about
15 2004 by the Attorney General as an instructor at the
16 Ohio Police Officers Training Academy, which I
17 instructed crash investigation, defensive driving,
18 Commercial Motor Carrier Enforcement Program and
19 various other required topics that police officers have
20 to take to maintain their -- to get their certification
21 to be a police officer in the State of Ohio.

22 Q. When did you first become knowledgeable in
23 the field of these -- the Federal Motor Carrier Safety
24 Regulations?

1 A. 1988 I was given the responsibility to
2 work on the Commercial Driver's License Program. The
3 highway patrol is responsible for all the testing, both
4 knowledge and skills testing for that, for
5 certification and qualification of a Commercial
6 Driver's License for applicants through the State of
7 Ohio. I was given the task and the responsibilities of
8 writing policy and procedure, draft -- assisting the
9 Bureau of Motor Vehicles and the Public Safety attorney
10 in drafting legislation for Ohio to become compliant
11 with the Federal Motor Carrier Safety Act of 1986 that
12 required every state to issue a CDL that complied with
13 federal regs no later than April 1 of 1992. I was
14 trained to -- I was sent to Appleton, Wisconsin to be
15 trained as a -- train the trainer. I came back from
16 that training and trained all the driver examiners to
17 give the skills test for the drivers -- Commercial
18 Driver's License. After that, shortly after that, the
19 Ohio Highway Patrol became involved in the Motor
20 Carrier Safety Assistance Program through the lead
21 agency who is the PUCO Motor Carrier Enforcement
22 Division. We were asked to conduct inspections of
23 motor carrier vehicles, commercial motor vehicles,
24 as -- in conjunction with a traffic stop. At that

1 time, there was nobody in the highway patrol that was
2 certified to do the inspections. I was one of the
3 first people to take the test and take the course and
4 pass it, and then I was acting as the lead agent or
5 lead worker, supervisor, if you will, to assist in
6 additional training to the remaining troopers and
7 sergeants, and eventually that whole program became
8 what it is today where the PUCO roadside inspectors
9 were transitioned over to the highway patrol when
10 Governor Voinovich was in office. So I've been working
11 with motor carrier and PUC regs ever since 1988, and
12 very, very closely in my job descriptions I carefully
13 watch the Federal Register and notice the proposed rule
14 makings, and we at times draft responses to the federal
15 regs in their request for proposal and requests for
16 comments. So I'm very, very active with the federal
17 regulations and the PUCO.

18 Q. So you've been certified to conduct the
19 same Level II inspections of commercial motor vehicles
20 that Officer Haskins does?

21 A. Yes. In the past I have gone through that
22 course.

23 Q. And you've actually conducted those
24 investigations?

1 A. Yes.

2 Q. Out in the field?

3 A. As a State Highway Patrol representative,
4 yes.

5 Q. Okay. Are you also familiar with the
6 out-of-service criteria established by the Commercial
7 Vehicle Safety Alliance?

8 A. Yes, the Ohio Trucking Association and
9 myself as a member of the Commercial -- Commercial
10 Vehicle Safety Alliance. I attend those meetings, both
11 the workshop and the convention each year. I presently
12 serve as the secretary of the Industry Advisory
13 Committee. I attend the vehicle and the driver
14 training committees on a regular basis.

15 Q. Other than what you've already laid out
16 for the Commission, do you belong to any other
17 professional associations or organizations that are
18 relevant to this area of motor carrier safety?

19 A. National Safety Council. Formerly I used
20 to belong to the American Association of Motor Vehicle
21 Administrators. I was the Chairman of the Region 3
22 Engineering and -- Committee.

23 Q. Okay. Specifically, the federal
24 regulation dealing with the violation described on the

1 inspection report, 393.201(a), are you familiar with
2 that regulation?

3 A. Yes.

4 Q. Okay. Based on your understanding of the
5 regulation and your past experience, how does that
6 regulation apply to the investigation you conducted on
7 Saturday of the trailer belonging to Mr. Tigner?

8 A. Mr. Tigner has told me the focus of the
9 violation was the weld on the suspension component,
10 attaching it to the cross member, not the frame rail,
11 and it is my opinion that this violation is not
12 described in 393.201. If, in fact, that weld is the
13 one that Mr. Haskins has identified, then it's my
14 opinion it's not a violation of 201.

15 Q. Specifically, from the photo you're
16 talking about, Exhibit J, and then further magnified in
17 Exhibit K, it's the left side weld. In Exhibit K, is
18 that the weld that's directly above the tape measure
19 from basically the zero inch mark to two and a -- it
20 looks like two and a quarter, two and an eighth inch
21 mark?

22 A. That's the weld that I was told was the
23 weld in question.

24 Q. And the examination of the welds here,

1 there's this weld here we just talked about and there's
2 another weld on a different part of the vehicle
3 basically running between inches three and six and a
4 half --

5 A. Uh-huh.

6 Q. -- is that an original -- in your opinion,
7 is that an original weld or a repaired weld?

8 A. That appears to me to be a factory weld.

9 Q. And what part of the vehicle are we
10 looking at that's on the top of that weld?

11 A. On the top of the weld is on the frame,
12 the frame rail.

13 Q. The frame rail. What's below that weld?
14 What's where the tape measure is?

15 A. That's a suspension component.

16 Q. Is that like a bracket that holds the lead
17 spring on or something?

18 A. I would -- I can't say exactly. It's a
19 suspension part. It's a bracket.

20 Q. Okay. And what's the part of the vehicle
21 that's above the weld that runs from inch zero and two?

22 A. That is a frame rail running from side to
23 side.

24 Q. Okay. But it's not considered the main

1 frame rail?

2 A. No. That's a cross member, I'm sorry.

3 It's a cross member.

4 Q. A cross member?

5 A. Yes. I'm sorry. I didn't mean to
6 identify it as a frame rail. To me, I identify that as
7 a cross member. It supports the floor.

8 Q. It's not the main frame rail?

9 A. No.

10 Q. When Officer Haskins testified as to where
11 he observed these cracks that are listed on the
12 inspection report, how did he describe them, from what
13 you heard? Is it in agreement with the way you're
14 describing it?

15 A. He identified them as a crack in the frame
16 on Axle 4, left side.

17 Q. In your opinion, is that what you're
18 looking at here?

19 A. There's no crack in the frame.

20 Q. There's no crack in the frame. Is there a
21 crack --

22 A. That's not --

23 (Discussion off the record.)

24 By Mr. Edwards:

1 Q. Go ahead and continue. I didn't mean to
2 interrupt.

3 A. That is -- the thing I took a photo -- the
4 weld that I took a photo of is not a crack in the
5 frame, the frame rail.

6 Q. Does Section 393.201 apply to the weld
7 we're talking about running between zero and two inches
8 on this tape measure?

9 A. No.

10 Q. Does it apply to the weld running between
11 inches three and six and a half? If there had been a
12 crack in that weld, would that regulation, 393.201,
13 apply to that?

14 A. I'd have to look at 201(a) and read
15 exactly what it says.

16 Q. Okay.

17 A. That and the out-of-service criteria.

18 Q. Okay. Perhaps we should do that just to
19 clarify things since there seems to be a dispute
20 between what you examined and what Officer Haskins
21 testified to. You don't have a copy of the Regulation
22 393.201 up there?

23 A. Mine is back there on the chair.

24 Q. Okay. Well, we need to reference an

1 exhibit. I know it's already been introduced.

2 Did you introduce that as an exhibit,
3 393.201, the regulation?

4 MR. WRIGHT: I don't think -- no. No, I
5 did not put that in as an exhibit.

6 MR. EDWARDS: I have a copy of it.

7 MR. WRIGHT: I mean, I have one here.
8 393.201?

9 MR. EDWARDS: Yes.

10 MR. WRIGHT: I have it right here.

11 MR. EDWARDS: The Commission doesn't have
12 a copy of it, though; right? We'll go to Exhibit I.
13 At this time, we'd like to introduce Respondent's
14 Exhibit I (indicating).

15 By Mr. Edwards:

16 Q. Mr. Woolum, can you identify the document
17 marked as Exhibit I?

18 A. Yes. It's a copy of 393.201, Subpart J,
19 of the Federal Motor Carrier Safety Regulations, Title
20 49, CFR 393.

21 Q. And that's the same section referenced on
22 the inspection report of June 5th, 2006; correct?

23 A. Exactly.

24 Q. Can you read Section A for us?

1 A. "The frame or chassis of each commercial
2 motor vehicle shall not be cracked, loose, sagging, or
3 broken."

4 Q. In your professional opinion, does that
5 code section that you just read apply to the weld
6 that's above inches zero to two that you examined on
7 Mr. Tigner's trailer?

8 A. No.

9 MR. WRIGHT: Your Honor, clarification,
10 this witness is not offering a legal interpretation of
11 the regulation.

12 MR. EDWARDS: He's offering his
13 professional --

14 MR. WRIGHT: Which does not include --

15 MR. EDWARDS: -- opinion.

16 MR. WRIGHT: Which does not include any
17 training as a lawyer; correct?

18 MR. EDWARDS: Agreed.

19 MR. WRIGHT: Yes.

20 THE EXAMINER: He's testifying as to
21 Exhibit J at this point?

22 MR. EDWARDS: Exhibit K actually, the one
23 with the tape measure on it.

24 THE EXAMINER: Okay.

1 MR. EDWARDS: The weld immediately above
2 where the tape measure reads from zero inches to two
3 inches, that's what we're talking about.

4 THE EXAMINER: This is a photo he took
5 himself; is that right?

6 MR. EDWARDS: Correct, yes.
7 By Mr. Edwards:

8 Q. So, in your professional opinion, that
9 weld and any crack in that weld would not be a
10 violation of Section 393.201(a); is that correct?

11 A. That's my opinion.

12 Q. Okay. What's your understanding of the
13 condition of the vehicle when you witnessed it on July
14 26 of this year versus the vehicle's condition back
15 when it was inspected?

16 A. My understanding is that that specific
17 area that we've been talking about that I took
18 photographs of has been repaired more than once by a
19 weld.

20 Q. And in your opinion, looking at the welds,
21 does that look like a factory weld or a repair to you?

22 A. The one on the left, from the end of the
23 measuring tape to two inches, appears to me to have
24 been a repair weld as compared to the weld from three

1 inches to seven inches. That appears to be a factory
2 weld. That has not been retouched.

3 Q. And when you looked at the vehicle on
4 Saturday and you see this weld that's directly above
5 zero to two inches in Exhibit K, what's the length of
6 that weld, the total length of the weld as it is today
7 or as it was Saturday?

8 A. That's a true representation right there
9 as far as the length that starts approximately a
10 quarter inch from the end, so I would say it's no more
11 than one and three-quarters inch long at the most.

12 Q. Okay. Officer Haskins testified that he
13 found cracks that were three inches long. From the
14 edge of the cross member -- or from the edge of the
15 suspension component where the tape is hanging at inch
16 zero, how far is that to that frame rail? Is that less
17 than or more than three inches?

18 A. It's two and a half, two and -- about two
19 and a half inches from the frame rail itself.

20 Q. So even if that entire weld was cracked
21 clean through, is there a way that it could be three
22 inches long like Officer Haskins testified?

23 A. It doesn't appear to me that it could be.
24 You're talking about the length of that cross member

1 weld, and it appears to be less than three inches.

2 Q. And that's because starting at the edge of
3 the suspension component on the far left of the
4 picture, you've reached the frame rail above it at
5 about inch two and a half; right? So three inches,
6 you're at another part of the -- you're at the frame
7 rail? You're not where the suspension component meets
8 the cross member?

9 A. That's correct.

10 Q. And the other weld, from inch three to
11 about inch six and a half, you've testified is a
12 factory weld; correct?

13 A. It appears to be a factory weld to me.

14 Q. So that weld would have been there when
15 the trailer was made and certainly would have been
16 there on June 5th, 2006?

17 A. Yes.

18 Q. And it doesn't show any evidence of being
19 cracked?

20 A. Nope.

21 Q. And you don't see any evidence of it being
22 repaired?

23 A. No.

24 Q. Have you viewed the inspection report of

1 the South Dakota Commercial Motor Vehicle Enforcement
2 personnel --

3 A. Yes.

4 Q. -- that was taken the day after?

5 A. Yes, I have. I've looked that over.

6 MR. EDWARDS: At this point, I'd like to
7 introduce that exhibit. This is Respondent's Exhibit
8 D.

9 MR. WRIGHT: I'm sorry, what, Respondent's
10 exhibit what?

11 MR. EDWARDS: Exhibit D.

12 By Mr. Edwards:

13 Q. Mr. Woolum, Respondent's Exhibit D that
14 you've just been handed, can you identify that
15 document?

16 A. It appears to be a South Dakota Highway
17 Patrol, Motor Carrier Services inspection. The report
18 number is SD, David, 0030036608.

19 MR. WRIGHT: Your Honor, I'm going to
20 object, number one, on relevance grounds. The purpose
21 of this proceeding -- this was not issued by the State
22 of Ohio nor is this what we're talking about here
23 today. Number two, I can identify what this piece of
24 paper purports to be, but this witness didn't issue it

1 or anything else. You can't authenticate this document
2 through this witness. This was prepared by authorities
3 in South Dakota for crying out loud. This witness is
4 not competent to sponsor this exhibit, no way, no how,
5 and beyond that, again, this was not issued by the
6 State of Ohio. This is not the inspection report that
7 we're here talking about today. This is not what Mr.
8 Haskins prepared, and to the extent this witness is
9 being offered to rebut Mr. Haskins, you can't rebut him
10 with something he didn't do. This is -- this is
11 ridiculous, Your Honor. I strenuously object to this
12 coming in and this witness being allowed to testify
13 about anything relative to this. I mean, if counsel
14 wants to provide the whole thing as a record kept, you
15 know, in the normal course out in South Dakota, that's
16 fine. We'll let it speak for itself, but he can't
17 authenticate this document through this witness.

18 THE EXAMINER: Okay. Do you want to
19 respond to that?

20 MR. EDWARDS: Just briefly, Your Honor. I
21 was expecting to take this witness second. Mr. Tigner
22 could better identify this document since he was the
23 one who actually received it on the day that's dated on
24 the inspection. I did want to have Mr. Woolum's

1 testimony as to what he sees on the document, but
2 certainly I'm happy to try to introduce it with Mr.
3 Tigner's testimony, but, again, I'm taking the
4 witnesses in the order I didn't expect, so --

5 MR. WRIGHT: Well, what the document --
6 what the witness sees on the document means nothing to
7 anything. He's never seen the document before and --

8 THE EXAMINER: Why don't we save this
9 particular exhibit for Mr. Tigner, and you can go on to
10 another one.

11 MR. EDWARDS: Certainly, Your Honor.
12 That's fine. I certainly didn't mean to cause anguish
13 on behalf of the State. I don't mean to raise any more
14 blood pressure than we've already done.

15 MR. WRIGHT: The blood pressure is fine.

16 THE EXAMINER: Do you have any other
17 exhibits or questions?

18 MR. EDWARDS: At this time, no other --
19 well, I should double-check. I'd hate to make a
20 mistake here and have it objected to when Mr. Tigner is
21 testifying.

22 Yes, actually I'm going to have two more
23 exhibits, Your Honor, for this witness. These are
24 Respondent's Exhibits F and G.

1 By Mr. Edwards:

2 Q. Mr. Woolum, can you identify Exhibit F for
3 me?

4 A. F is a copy of the -- Page 33 out of the
5 federal -- I'm sorry, the Commercial Vehicle Safety
6 Alliance out-of-service criteria.

7 Q. You've seen this document before?

8 A. Yes.

9 Q. Are you familiar with it? Do you
10 understand it?

11 A. Yes.

12 Q. How does it apply in this situation?

13 A. In my opinion, it does not apply.

14 Q. And why is that? What's the basis for
15 that opinion?

16 A. Well, as you look at the diagram and as
17 you read through the out-of-service criteria, "Any
18 cracked, loose, sagging, or broken frame side rail
19 permitting shifting of the body onto moving parts or
20 other condition indicating an imminent collapse of the
21 frame," the violation that I was shown by Mr. Tigner,
22 that broken weld is not described in number one.
23 Number two does not describe it, and if it pleases the
24 Court, I could read it, if you like, or we can all read

1 it ourselves.

2 THE EXAMINER: Yes, why don't you just --
3 let's speed things up if you can. If it's necessary
4 for him to read it, then fine, but rather than go
5 through each part of the document, you ask just him if
6 he thinks it applies or --

7 MR. EDWARDS: All right.

8 By Mr. Edwards:

9 Q. On the out-of-service criteria, Section 4A
10 on Page 33, there's Subsections 1, 2, 3, 4, and 5, do
11 any of those apply to the welds that you saw or the
12 cracks that could have existed in them, the repair
13 welds on the trailer you saw on Saturday?

14 A. Utilizing the example of the flange, the
15 web, the radius of that frame rail on that page, one,
16 two, three, four and five do not describe or those
17 requirements of that out-of-service criteria are not
18 met by a crack in a weld on Mr. Tigner's axle, No. 4 on
19 the left side.

20 Q. And that's simply for the reason that
21 we're talking about different parts of the trailer; is
22 that right?

23 A. Exactly.

24 Q. Okay. Well, if Section 4A doesn't apply,

1 and you say this is a suspension cross member, let's
2 turn our attention to Exhibit G, the other one I handed
3 you.

4 A. Uh-huh.

5 Q. Can you identify that document?

6 A. It's copies of Pages 48 and 49, 50 and 51
7 of the out-of-service criteria from the Commercial
8 Vehicle Safety Alliance.

9 Q. And what section does this address?

10 A. It addresses suspensions.

11 Q. Okay. And that's what we're talking about
12 here, a suspension component; is that right?

13 A. Exactly.

14 Q. Okay.

15 A. As I identified it.

16 Q. Now, the violation that's listed on the
17 driver/vehicle inspection report form doesn't list any
18 violations of the out-of-service criteria for
19 suspension components; is that right?

20 A. No, it doesn't. It lists 393.201.
21 Suspension components are 207.

22 Q. Your investigation of this vehicle on
23 Saturday, did that reveal any -- even though it wasn't
24 charged in this case, did that reveal any violations of

1 the out-of-service criteria relating to suspension?

2 A. In my opinion, no.

3 Q. So if we go through Section 9A, one, two,
4 Section B, Spring Assembly, Section C, Composite
5 Springs, Section D, Torque, Radius, Tracking or Sway
6 Bar Components, Section E, Adjustable Axle, and that's
7 the end of that entire suspension out-of-service
8 criteria, none of those portions apply to this
9 situation?

10 A. They do not, in my opinion.

11 MR. EDWARDS: If I can just have a moment,
12 Your Honor, to go through the rest of my exhibits to
13 make sure there's nothing I need to introduce through
14 this witness.

15 I believe I submitted into evidence an
16 exhibit marked Exhibit Q during the testimony of
17 Officer Haskins. Does the Commission still have that
18 exhibit?

19 THE EXAMINER: Is this Q (indicating)?

20 MR. EDWARDS: Yes, that's it. Does the
21 State and Mr. Woolum?

22 MR. WRIGHT: Yes, we have that here.

23 By Mr. Edwards:

24 Q. Mr. Woolum, does that exhibit mean

1 anything to you? Can you identify that?

2 A. This is somewhat the same information that
3 is provided in the Commercial Vehicle Safety Alliance
4 out-of-service criteria. It's a depiction of a -- what
5 a frame rail is defined as. It depicts the different
6 components of the frame, the flange, the web, the
7 radius, and it identifies what CVSA identifies as a
8 straight crack and a sunburst crack, and then on the
9 back page it's basically a repeat of that. I'm looking
10 at 3-126. And then a brief review of 393.201 is
11 captioned on there, also.

12 Q. From your examination of Mr. Tigner's
13 trailer on Saturday, the 26th of July, did you find or
14 see any cracks in the frame, the frame rail, the
15 mainframe, anything to do with the frame that would be
16 covered under Section 393.201(a)?

17 A. No.

18 Q. Nothing further at this time.

19 THE EXAMINER: Very good. Would you like
20 to start your cross-examination examination now or --

21 MR. WRIGHT: I am happy to, whatever Your
22 Honor's pleasure is.

23 THE EXAMINER: Let's go till, I don't
24 know, 1:30 or so, and then we can take a short break.

1 <Discussion off the record.>

2 MR. WRIGHT: I'm happy to go ahead and
3 break now if you prefer to do that or we can go to
4 1:30.

5 THE EXAMINER: If you need more time, then
6 we can take a break.

7 MR. WRIGHT: I'm going to need some time
8 at the back end, Your Honor, to consult with Mr.
9 Haskins regarding rebuttal, and by that I don't mean 10
10 or 15 minutes in light of all that's coming into the
11 record that we've been made aware of for the first time
12 this morning; so I don't want to do anything to
13 jeopardize my ability to have that time that I know I'm
14 going to ask for. If your preference is for me to
15 start my examination, that's fine. I'm happy to do
16 that. I'm happy to take a few -- I'm happy to break
17 till 1:30 and see if I can maybe shorten it. It's your
18 choice.

19 THE EXAMINER: We'll do that, then. We'll
20 come back at 1:30.

21 MR. WRIGHT: Okay.

22 THE EXAMINER: And continue your cross.

23 (Lunch recess taken.)

24 THE EXAMINER: We'll go back on the

1 record. Mr. Wright, do you have any questions?

2 MR. WRIGHT: Yes. Thank you.

3 CROSS-EXAMINATION

4 By Mr. Wright:

5 Q. Good afternoon, Mr. Woolum. I'm Bill
6 Wright with the Attorney General's Office. I'd just
7 like to ask you a few questions about your testimony.

8 A. Sure.

9 Q. You are currently Director of Regulatory
10 Affairs for the Ohio Trucking Association; is that
11 correct?

12 A. That's correct.

13 Q. Can you describe for me -- well, strike
14 that. Does the membership -- would I be correct in
15 saying that the membership of the Ohio Trucking
16 Association would include a number of carriers; is that
17 right?

18 A. That's right.

19 Q. Members of the legal profession?

20 A. Yes, sir.

21 Q. That practice in that area?

22 A. Yes, sir.

23 Q. Other types of members?

24 A. We have allied industry members that

1 provide products and services to the industry.

2 Q. Could you give me an example?

3 A. Tire manufacturers, truck manufacturers,
4 phone services, cleaning services, Realtors, commercial
5 property Realtors, and so on.

6 Q. Okay. Would I be correct that Admiral
7 Merchants Motor Freight, Inc., would be one of your
8 members?

9 A. No, they are not.

10 Q. They are not? What about the John Alden
11 law firm?

12 A. Yes.

13 Q. They are? All right. You're being
14 compensated obviously to appear here today?

15 A. Yes.

16 Q. Okay. And who hired you?

17 A. The -- I was contacted by Ben Edwards from
18 the Law Offices of John Alden, and I'm being
19 compensated by the defendant, Mr. Tigner.

20 Q. Okay. When were you first contacted by
21 Mr. Edwards?

22 A. On this case, Wednesday, a week ago.

23 Q. A week ago today?

24 A. Yes.

1 Q. Okay. So that would be July 22 -- no.
2 July 23?

3 A. (Witness nods head.)

4 Q. Okay. And that was the first time anyone
5 had discussed this case with you; is that correct?

6 A. Yes.

7 Q. Now, according to your testimony you --
8 well, let's back up a minute. Strike that. You
9 presented us with what's been marked as Exhibit P, and
10 that is your -- essentially your curriculum vitae that
11 discusses qualifications, work history, education, and
12 various committees that you serve on; is that right?

13 A. Yes, sir.

14 Q. Is it fair to say that this is fairly
15 comprehensive in terms of your professional and work
16 experience?

17 A. There may be some omissions, but, yes,
18 fairly comprehensive.

19 Q. By and large?

20 A. By and large.

21 Q. All right. Now, you -- when were you
22 certified to do motor carrier, a Level II inspection?

23 A. It was January of '92.

24 Q. January of '92?

1 A. The best records that I have indicates
2 that I attended that two-week class and was certified,
3 passed the required testing in, I believe it was,
4 January of '92.

5 Q. Okay. When did you actually retire as a
6 member of the highway patrol?

7 A. December 1998.

8 Q. December 1998. Now, do you have any feel
9 for during that time period, that's the six years you
10 were involved in that, how many Level II inspections
11 you might actually have done?

12 A. It required a minimum of 32 to maintain my
13 certification, so I know I've done at least 32 each
14 year.

15 Q. Was it primarily enough to maintain your
16 certification?

17 A. (Witness nods head.)

18 Q. So it would be fair to say that it was
19 roughly 32 a year?

20 A. Thirty-two, yeah, or more.

21 Q. Okay. So this was not something you were
22 out doing every day, for example, like Inspector
23 Haskins?

24 A. No, not on a regular basis.

1 Q. That's fine. Now, have you ever driven a
2 truck?

3 A. Yes, sir.

4 Q. Could you enlighten me a little bit about
5 that?

6 A. When I was in college and prior to
7 college, in high school, I worked for a moving and
8 storage company, and prior to separating from them, I
9 did drive a straight truck, did drive a
10 tractor-trailer. As I testified before, I was one of
11 the first people to be trained for the CDL testing, and
12 the State of Ohio, the Highway Patrol, we trained every
13 examiner that administered the testing. We trained
14 them how to drive a tractor-trailer, and I successfully
15 passed that training, and I've -- on a personal use
16 basis, I have driven straight truck and
17 tractor-trailer.

18 Q. When you say "personal use," what are you
19 referring?

20 A. Not in regulated interstate or in trust --
21 commerce.

22 Q. All right. Now, you were asked a number
23 of questions by your counsel this morning about the
24 federal regulations and what they mean, and just so

1 we're clear, you are not an attorney by training;
2 correct?

3 A. No.

4 Q. And you're not offering a legal
5 interpretation of any of those regulations, are you?

6 A. I'm offering my opinion through my
7 experience.

8 Q. That's fine. Is it fair to say that in
9 recent years, let's just say from the time you retired
10 from the highway patrol to the present, you've been
11 principally involved in the role of an advocate on
12 behalf of the industry?

13 A. Yes.

14 Q. Whether that be working with regulations,
15 legislation, whatever it might be?

16 A. Uh-huh.

17 Q. All right. Now, again, looking at your
18 resume' here, Exhibit P, nowhere does this exhibit
19 indicate any training or expertise in welding, does it?

20 A. No.

21 Q. Okay. Now, let's start to talk about the
22 actual -- the actual reason you were hired for this,
23 this particular case. You were contacted by your
24 counsel to come and look at the trailer I guess at the

1 Sunbury Flying J Truck Stop; is that right?

2 A. That's right.

3 Q. July 26, 2008?

4 A. Yes.

5 Q. I believe I got the right date there.

6 And, again, that contact was made approximately one
7 week ago?

8 A. Yes, sir.

9 Q. Now -- oh, I'm sorry, there was a
10 question, another question. Your resume' also does not
11 indicate anywhere any working experience in doing
12 repair work on either tractors or trailers; is that
13 correct?

14 A. No, it does not indicate any.

15 Q. Okay. So you were contacted. You agreed
16 to consult, I guess, on this particular job. Is it
17 fair to say that the pictures -- let me make sure. I'm
18 a little confused. Do you have the pictures?

19 A. Yes.

20 Q. Exhibits -- am I correct that Exhibits K,
21 L -- wait a minute. Excuse me. Exhibits J, K, L were
22 pictures that you took?

23 A. Yes, sir.

24 Q. And Exhibits M, N, and O were pictures

1 that you did not take?

2 A. I did not take those.

3 Q. And you are unaware as we sit here today
4 of the photographer of those pictures, the source of
5 those pictures; is that correct?

6 A. I've been told where they came from.

7 Q. You have no personal knowledge?

8 A. I don't have any personal knowledge.

9 Q. Okay. And I believe you already stated
10 your opinion as to the quality of these photos being
11 somewhat on the poor side. Would that be accurate?

12 A. Yeah.

13 Q. And I believe you also testified -- well,
14 strike that. You cannot conclusively say whether or
15 not these photos were taken of the same trailer, the
16 same location, or anything else as to what we're
17 talking about today; correct?

18 A. I think I said they resembled what I took,
19 but --

20 Q. You don't know?

21 A. I don't know.

22 Q. You don't know. Okay. That's fine. Just
23 as -- strike that. The pictures you took, much of what
24 you indicated in your testimony, and please correct me

1 if I'm wrong, I'm not trying to mischaracterize, much
2 of what you did, the pictures you took, and I guess
3 some of the analysis that you did was based on
4 information, representations that Mr. Tigner had made
5 to you; correct?

6 A. Yes, sir.

7 Q. So to the extent Mr. Tigner was wrong in
8 anything he said, to the extent Mr. Tigner was untrue
9 about anything he might have said, that could
10 conceivably change some of your thought process?

11 A. Given the facts that Mr. Tigner and Mr.
12 Edwards have provided me, this is what I base my
13 findings and thoughts on.

14 Q. I'm not suggesting, by the way, that
15 anybody was lying to you, but the reality is that the
16 representations were made to you and you acted upon
17 those representations?

18 A. Absolutely.

19 Q. All right. So other than what was
20 represented to you, you cannot be certain that the
21 trailer you looked at on July 26 was, in fact, the same
22 trailer that Mr. Haskins looked at in June of 2006;
23 correct? You cannot be certain?

24 A. Cannot and -- I cannot be certain, given

1 it in that vein.

2 Q. Now, you -- nor can you be certain that
3 the trailer that you observed on July 26th was in the
4 same condition as that observed by Mr. Haskins in June
5 of '06; correct?

6 A. Two years apart.

7 Q. A lot can happen in two years, can't it?

8 A. Absolutely.

9 Q. And I believe you testified, did you not,
10 fairly early on this morning -- yeah, this morning,
11 we're now in the afternoon -- that repairs appear to
12 have been made --

13 A. Yes, sir.

14 Q. -- on this particular trailer; correct?

15 A. In that particular area that I was
16 discussing, yes.

17 Q. Let's talk about that, because I was a
18 little bit confused about something there, too. Could
19 you please get Exhibit K in front of you?

20 A. Okay.

21 Q. This is the one with the measuring -- with
22 the tape measure?

23 A. Uh-huh.

24 Q. Now, I want --

1 May I approach the witness, Your Honor?

2 THE EXAMINER: You may.

3 By Mr. Wright:

4 Q. I believe you testified, did you not, that
5 essentially from zero -- from zero to two, that the
6 weld there appeared to have been a repair weld?

7 A. Yes.

8 Q. Is that correct?

9 A. I agree.

10 Q. Fine. I just wanted to make sure I
11 understood that. Now, you were here throughout the
12 brief testimony that Mr. Tigner presented; correct?

13 A. Yes, sir.

14 Q. Okay. And I believe you heard him testify
15 that Inspector Haskins told him, and I'm paraphrasing,
16 but I think this is fairly close to a quote, that
17 Mr. Haskins told Mr. Tigner that I could put you out of
18 service but I won't, or words to that effect, have a
19 nice day?

20 A. Yes. I heard that.

21 Q. Now, if Mr. -- well, let's go back to the
22 days when you were doing your inspections to retain
23 your certification or otherwise, any over and above the
24 32, if there were any. When you were out in the field

1 doing that, if you observed something that you thought
2 was a violation, would you ever say something like that
3 to somebody, like a driver?

4 A. I could put you out but I'm not going to,
5 have a nice day?

6 Q. Yes, out of service.

7 A. Out of service, yes. I'm paraphrasing.

8 Q. Yes. As a professional, would you say
9 that to somebody?

10 A. Well, I've got to, you know, think
11 about -- I wore two hats back then, one being a state
12 trooper and one being a Motor Carrier Enforcement
13 Officer. State trooper, you enforce all traffic laws,
14 all equipment laws in the State of Ohio. Motor Carrier
15 Enforcement agent, you enforce the PUCO regulations and
16 you enforce the federal regs. Yeah, I can say, under
17 the traffic laws, I could have said yeah, I could have
18 given you a citation for this, but I'm not going to,
19 you need to slow down because there is an absolute
20 speed limit. Over in the federal regs, the federal
21 regs are a little more specific.

22 Q. Let's focus on that hat, if we could.

23 A. Okay. I could put you out of service for
24 this but I'm not going to, I don't know when I would

1 use that phrase because if it was out of service, I was
2 responsible to put you out of service, if it was
3 out-of-service criteria. The first thing is that it
4 had to meet the out-of-service criteria.

5 Q. I understand. With that same hat on and
6 as a Motor Carrier Safety inspector, if you were to
7 find something that qualified under out of service and
8 ignore it, that would be downright unprofessional,
9 would it not?

10 A. Well, you're not doing your due diligence.

11 Q. You're not doing your job, are you?

12 A. You're not doing your job the way you're
13 supposed to.

14 Q. Okay. All right.

15 A. I mean, if you knowingly recognize a
16 violation and you don't take action, you're not doing
17 your job.

18 Q. Okay. Just one minute, Your Honor.

19 (Discussion off the record.)

20 MR. WRIGHT: Give me one second, Your
21 Honor. I think I may be about done.

22 I guess one final question.

23 By Mr. Wright:

24 Q. Is it fair to say, Mr. Woolum, that your

1 resume', curriculum vitae, whatever you'd like to call
2 it, that outlines again your work history, education,
3 so on, this includes everything that you feel is
4 important to -- in your function as Director of
5 Regulatory Affairs or any other hats you want to use,
6 your experience, in other words?

7 A. You can't put your experience on paper.
8 If you're asking me if I'm a certified welder, no.
9 Have I welded? Yes. Do I know and recognize welds?
10 Yeah. But am I a trained welding engineer? No. You
11 know, common sense, there's a lot of common sense --
12 you learn a lot of things on the road, and, you know,
13 to put that down in writing, it's very, very difficult.

14 Q. There's a lot of common sense that's
15 applied out in the field every day, too, isn't there?

16 A. Absolutely.

17 Q. By inspectors?

18 A. Absolutely.

19 Q. Thank you. That's all we have.

20 THE EXAMINER: Any questions on redirect?

21 MR. EDWARDS: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 By Mr. Edwards:

24 Q. Mr. Woolum, you heard the testimony of

1 Officer Haskins about him placing Mr. Tigner's trailer
2 out of service at the scene of the inspection and then
3 telling -- or somehow instructing Mr. Tigner that he
4 should proceed to a repair facility in the immediate
5 vicinity to be repaired. Is doing that -- is allowing
6 that to be done, is that in compliance with the Federal
7 Motor Carrier Safety Regulations?

8 A. The federal regs, they used to have a
9 restricted out of service, that the officer could do
10 the inspection, determine that a vehicle meets the
11 out-of-service criteria, and then allow that person to
12 proceed to a designated location, and I can't remember
13 exactly in the '90s when they did away with that. It
14 was absolutely after I got trained and before I retired
15 that they came out and they said there is no more
16 restricted out of service, so --

17 Q. That was in the '90s, you say?

18 A. Yeah, it's in the '90s. So, therefore,
19 officers, and, you know, I was in general headquarters
20 at Licensing and Commercial Standards, and I was
21 involved in supervision and management of the Motor
22 Carrier Enforcement Unit writing policies and
23 procedures and so on; so, you know, we told our
24 officers that if you stop and inspect a driver, a motor

1 carrier, a vehicle, a commercial motor vehicle, and you
2 start determining that this vehicle may meet
3 out-of-service criteria, you need to start thinking
4 about moving that vehicle to a safe location or you may
5 have to order up a wrecker to move it if it's alongside
6 the roadway. You move it to a safe location, finish
7 your inspection, and then make a determination is this
8 vehicle out of service or not. Or if you determine
9 that it's out of service by an obvious, gross violation
10 or defect, you place the vehicle out of service, and it
11 doesn't get moved unless it is repaired or taken by a
12 tow truck if the violation still does not remain on the
13 ground or you escort it to a facility, a safe haven,
14 and then place it out of service. Now, you know, we
15 instructed our officers that you can take it to a
16 service plaza, you can take it to a truck stop, but you
17 don't make recommendations on who to call or anything
18 like that. Tell them, say, hey, you know, call whoever
19 you want to repair it, call your own company, talk to
20 your chief maintenance director about getting it
21 repaired, but you're out of service at this location,
22 and you place the out of service decal on it at that
23 time.

24 Q. So a vehicle that's placed out of service

1 at the scene of an inspection, the regulations require
2 that that sticker be applied to the vehicle; correct?

3 A. Yes, sir.

4 Q. And if it's out of service at the scene of
5 the inspection, let's say it's a crack in the frame of
6 the trailer as cited on this inspection report, is it
7 in compliance with the regulations to allow that
8 vehicle to be driven a foot, a mile, half a mile to a
9 repair facility?

10 A. If it's placed out of service, no. If
11 it's not placed out of service yet, you escort it up.
12 If there's -- to a location, a safe haven, and then
13 place it out of service. You know, that's fine. And
14 that's the prudent thing to do, is to move it off the
15 roadway, off the side of the road, take it to a
16 location where repairs can be made, and then place it
17 out of service, place the decal on it at that point in
18 time.

19 Q. So, in this situation, if the vehicle
20 wasn't placed out of service and it was permitted to be
21 taken to a nearby location to be repaired, then the
22 inspection would technically sort of be continuing.
23 The officer would then make a determination does the
24 repair render it not an out-of-service violation, in

1 which case I'm not going to place it out of service, or
2 would he make a determination, no, this vehicle is
3 still out of service and then at that point place it
4 out of service and put a sticker on it?

5 A. Yes.

6 Q. Okay. The regulations that were in effect
7 at the time of this inspection in June of 2006, there
8 was no restricted out of service? There's no way that
9 an officer could place a vehicle out of service and
10 then allow it to be driven after that?

11 A. And I agree with that, and I may -- if I
12 may add, when the regs got changed and they made
13 violating an out-of-service order a disqualification on
14 the CDL, this is when all states had to get on board
15 together and make a determination about inspections and
16 out of service and what has to be repaired to bring the
17 vehicle back into service and so on, because one state
18 may say you had to repair everything on the inspection
19 form. Another state would say, no, you just have to
20 repair it to the point it's no longer out of service.
21 All states had to get together on that so that
22 everybody is enforcing it the same way, because drivers
23 were getting disqualified for violating out-of-service
24 orders. One state it would be a violation, and another

1 state it may not be a violation.

2 Q. So as the law stood in 2006, in June, a
3 driver who operates a vehicle that's been placed out of
4 service under the regulations would face
5 disqualification of his Commercial Driver's License?

6 A. Once convicted, it comes back to the state
7 of origin on the license. That state is required to
8 disqualify upon receiving a conviction.

9 Q. When you first spoke with me a week ago
10 about this case, obviously I was making representations
11 to you about my client and what the facts of the case
12 were and what I thought was the applicable law;
13 correct?

14 A. Yes, sir.

15 Q. When you met with Mr. Tigner on Saturday,
16 the 26th, and you made an investigation of the
17 trailer --

18 A. Yes, sir.

19 Q. -- was that your own professional
20 independent investigation?

21 A. Yes, sir.

22 Q. If I had told you something or if I did,
23 in fact, tell you something that didn't agree with what
24 you saw in your investigation, what would you do about

1 that?

2 A. I'd tell you I don't agree with it.

3 Q. And your testimony would, therefore, on
4 the stand today be different than what you provided?

5 A. Absolutely.

6 Q. There was some testimony on your
7 cross-examination about whether it would be appropriate
8 for an officer to tell someone well, I could place you
9 out of service for this but I'm not going to, and I
10 think your conclusion was that you wouldn't be doing
11 your job as Motor Carrier Enforcement and making sure
12 that the roads are safe if you did that in a situation
13 where you knew the vehicle was out of service; correct?

14 A. Yes, I said that.

15 Q. Well, what about a situation where you
16 placed the vehicle out of service but then you allowed
17 it to move to a repair facility or where you thought it
18 was going to be going to a repair facility and you
19 didn't escort it all the way to that repair facility,
20 would you consider that doing your job?

21 A. Not to the extent that I personally feel
22 should have been done, no.

23 Q. What about a situation where you inspect a
24 vehicle, you looked at it, you see some defect, you're

1 not a hundred percent sure it's an out-of-service
2 violation, it could be, but you don't know for sure,
3 you know, there's some defect, maybe it's a crack,
4 you're not sure if it meets the out-of-service
5 criteria, so it could be a violation that you report,
6 but you wouldn't place the vehicle out of service or it
7 could be an out-of-service violation, what about in
8 that situation? At that point would you maybe say to
9 somebody, well, I could probably put you -- or I could
10 put you out of service for this but I'm not going to?

11 A. That would be misleading to the
12 individual. If it meets the out-of-service criteria,
13 then it meets it. If it doesn't, you list the
14 violation on the inspection form, but it's not an
15 out-of-service violation.

16 Q. What would you do in a situation if you
17 weren't sure it was an out-of-service criteria?

18 A. All my training and all the training that
19 I provided to law enforcement, when in doubt, you
20 don't. That's the training to law enforcement.

21 Q. Why is that?

22 A. When you're in doubt, you're not sure of
23 the violation, you don't enforce it.

24 Q. And that's because of the potential impact

1 it could have on the driver?

2 A. Exactly. You know, that goes for traffic
3 law or motor carrier and everything. I mean, you know,
4 people don't get cited because they think you were
5 doing over the speed limit. You're absolutely sure
6 that they were over the speed limit before you cite
7 them. And the second part of that is in training the
8 officer then goes and researches the violation so that
9 he or she knows what to do the next time they see that
10 violation.

11 Q. You wouldn't have an opportunity to do
12 that at the time of the inspection, though?

13 A. Sure.

14 Q. You'd take the time to double-check the
15 regulations to see whether it was an out of service --

16 A. The communication that's available
17 nowadays with cell phones and stuff like that, you can
18 always get somebody else's assistance or have another
19 officer arrive at the scene to help support, to
20 collaborate, if necessary.

21 MR. EDWARDS: Nothing further, Your
22 Honor.

23 MR. WRIGHT: One second.

24 (Discussion off the record.)

1 MR. WRIGHT: No question.

2 THE EXAMINER: You're excused.

3 (Witness excused.)

4 THE EXAMINER: You said you want Mr.
5 Tigner back now?

6 MR. EDWARDS: Yes. I believe at this
7 time, Your Honor, we will call James Tigner.

8 THE EXAMINER: You are still under oath.

9 JAMES N. TIGNER,
10 being by The Examiner previously duly sworn, as
11 hereinafter certified, testifies and says further as
12 follows:

13 DIRECT EXAMINATION (Cont.)

14 By Mr. Edwards:

15 Q. Just to briefly bring everybody up to
16 speed where we were, you've already given your name,
17 address, your occupation. You've been so employed as a
18 commercial driver for 15 years. You've had HazMat
19 training. You've taken the periodic testing and passed
20 that, and you maintain a CDL and HazMat endorsement; is
21 that correct?

22 A. Yeah.

23 Q. You also talked about your experience on
24 the day of the inspection, June 5th, 2006. You

1 testified that the officer here, Officer Haskins, told
2 you verbally that he was not placing you out of service
3 but that he could; is that correct?

4 A. Yeah. When he took me back and showed me
5 the defect and pointed it out to me, I could put you
6 out of service for that, but under the circumstances,
7 with the load you have, he said I'm not going to, just
8 get it repaired at the first opportunity.

9 Q. And what was your response?

10 A. I told him I would. And when the
11 inspection was done, he handed me the paper, and I said
12 thank you.

13 Q. Did you really look at the cracks at the
14 time? Did you have a chance to investigate it and
15 inspect it? Did you form any kind of determination on
16 your own whether this was an out-of-service violation?

17 A. I did inspect the cracks at the time.
18 Actually, Officer Haskins was under the trailer. He
19 literally touched them and pointed them out. I was
20 stooping under the trailer with him as well, so I did
21 actually see them. I didn't agree that they were out
22 of service, and the fact that he wasn't putting me --
23 he was telling me he wasn't putting me out of service
24 made me think that they weren't. The other thing was,

1 as has been mentioned, there are four of these points
2 on this trailer, and over -- this was 2006, so this
3 trailer was picked up late in '97. Over all those
4 years and over all the inspections -- I've been
5 inspected in Ohio -- especially in Ohio, other states
6 as well -- no one has ever pointed those cracks out,
7 and they keep cracking. I keep repairing. They keep
8 cracking. I keep repairing, but these cracks have been
9 evident, the same state that Officer Haskins saw it,
10 for many inspections, and no one has ever said it was
11 out of service. I've had Ohio DOT went underneath my
12 trailer, truck, trailer, the whole thing, and very
13 helpful. He come out from underneath it with a list, a
14 handwritten list, said these things are not violations,
15 but you might want to look at them, just -- just
16 because they -- this is showing a little wear, this is
17 showing a little wear, checking these things out. No
18 one has ever -- and I believe those cracks were on --
19 one of those cracks was on that list at that time.

20 Q. When was that, before or after this
21 inspection?

22 A. Before.

23 Q. Okay. Do you have any sense of how many
24 times this trailer has been inspected and found to not

1 be out of service?

2 A. Over the pretty much four years of hauling
3 hazardous material out very, very often, I would say it
4 was inspected approximately 15 times and never was it
5 put out of service, and I know the cracks were there
6 because I check my equipment out once in a while. As a
7 matter of fact, I had checked my equipment shortly
8 before his inspection. I pulled it out of service
9 myself, not because it wouldn't pass an inspection, but
10 because it was becoming -- I mean, at the time -- it
11 wasn't going to be long before it needed brakes, and
12 when I do brakes, I do brake drums, I do wheel seals, I
13 do wheel bearings, if necessary. I had just had it out
14 of service just a few weeks prior to this inspection
15 and did all these. So I have seen them. I've repaired
16 them, and it's -- you don't go under every day and
17 check that spot and all four spots and have it welded.
18 You probably won't know if one of them cracks, and no
19 one has ever said it was out of service prior to
20 Officer Haskins, and he didn't say it. He wrote it.
21 He said it wasn't.

22 Q. Before you begin hauling for a particular
23 trip, do you do a pretrip inspection of your vehicle?

24 A. Yes. Every day we're required to do an

1 inspection, but every day I do an inspection because --
2 there's more than one reason. Number one is my family
3 is out there. The other is I'm required by law. One
4 of the main ones is it's just too expensive to break
5 down on the road. You're better off to find it where
6 you're parked, ready to leave, because I can't search
7 out facilities. You know, I get air in a tire. I can
8 add oil. So, yes, it's inspected every trip.
9 Basically every day there's a certain level of
10 inspection that goes on.

11 Q. This is over ten years ago, so I don't
12 expect you to remember this, but do you remember when
13 you picked up this trailer -- you bought it new;
14 correct?

15 A. It was bought -- my brother bought it. I
16 did not have the credit. My brother bought it, and I
17 bought it from him later; so for all intents and
18 purposes I have the legal rights to do everything with
19 it, control it. Mercer Transportation and Tandem
20 Transport in Ohio -- yes, I picked up the trailer up
21 new and have had it hands-on all the time.

22 Q. Regardless of the ownership issue, you've
23 been operating this trailer for how long?

24 A. Since it was picked up in late '97.

1 Q. So over ten years ago?

2 A. Yes.

3 Q. Do you remember at that time, when it was
4 brand new, from Exhibit K, this photo, do you remember
5 this area? Do you remember if there was a weld over on
6 the left-hand side between the side rail and the
7 suspension cross member?

8 A. I don't have that photo up here.

9 Q. First off, can you identify those photos?
10 That's where I should start.

11 A. Yes. These are the photos that Larry and
12 myself took last Saturday morning.

13 Q. Which ones are those? There's six that I
14 handed you.

15 A. That would be J, K, L -- just J, K, L.

16 Q. And those photos were taken Saturday by
17 Larry Woolum; is that right?

18 A. Yes.

19 Q. You were present when they were taken?

20 A. Yes.

21 Q. This particular area I'm talking about on
22 Exhibit K, the weld over to the left between, like,
23 inches zero and two, do you remember what that looked
24 like when the vehicle was new? It's over ten years

1 ago.

2 A. Yes and no. Yes, there was a weld there.
3 Did that weld look like this weld? No.

4 Q. That weld has been repaired over the
5 years?

6 A. Yes. It's been ground down, rewelded. As
7 Officer Haskins has stated and Larry, you can tell the
8 difference between a factory weld, which is all mig or
9 tig, versus most repair shops. Most of them repair
10 with a stick welder, and they have a different
11 appearance.

12 Q. Do you have experience in welding?

13 A. Yes, sir. I took a small course in high
14 school, agriculture and mechanics, which included a
15 welding course, and I did factory maintenance for a
16 couple of years prior to going on the road, which
17 entailed a lot of welding.

18 Q. Have you done any welding since then?

19 A. Just my own repairs, repair for a friend,
20 yard trailer, not professionally.

21 Q. Okay.

22 A. Actually, I got to correct that. After
23 the factory maintenance, I did high electrical work,
24 high signage; so I've been on a few of these buildings

1 downtown and welded signs up over the years, for about
2 two and a half years, so I had outside, exterior
3 welding as well.

4 Q. Okay. And from your experience, then,
5 being able to differentiate an original weld versus a
6 repair, you've indicated that the repair on the left
7 side -- excuse me, the weld on the left side has been
8 repaired?

9 A. Yes.

10 Q. Tell me what you know about this weld
11 between inches three and six and a half along this
12 frame rail, I believe, which is above it?

13 A. That's -- that weld -- I mean you're going
14 to get in a lot of terminology. That weld was made
15 with a mig. It's a particular type of welder, and
16 since I've always owned the trailer, the factory did
17 that repair, you know, in the construction of the
18 trailer.

19 Q. So it appears to you to be a factory weld?

20 A. Yeah.

21 Q. Have you ever seen it crack?

22 A. No.

23 Q. Has it ever been repaired?

24 A. No.

1 Q. And when you've had this trailer inspected
2 over the years, you said it's been inspected 15 or more
3 times, the weld over on the left, as you said, that's
4 been -- well, there's a factory weld. Then it's been
5 repaired a few times, who knows how many times. When
6 those inspections were taking place, was that weld in
7 different states at the time? You know, was one time
8 it was a factory weld, another time it had been
9 cracked, another time it had been repaired when it was
10 viewed, if you know?

11 A. Yes. And as I said, there's four of these
12 spots. I mean, there's four of these spots on this
13 trailer, exactly the same spot. Two are left-handed
14 manufactures, and two are right-handed manufactures,
15 the side of the trailer. There's four of these
16 identical spots, and, yes, they have been cracked
17 during inspections, but I can't testify that this one
18 was cracked in another inspection, but I can testify
19 that one of those other four were, because it's very
20 hard to keep all four welded at the same time.

21 Q. And out of the four --

22 MR. WRIGHT: I'm sorry, you trailed off at
23 the end. It's very hard to?

24 THE WITNESS: Keep all four welded at the

1 same time without one of them cracking.

2 By Mr. Edwards:

3 Q. And over the period of time that these
4 welds, these four welds have been inspected, they've
5 been in varying states of cracking or repair, and the
6 vehicle, other than this inspection on June 5th, 2006,
7 has never been placed out of service for this?

8 A. No. Correct.

9 Q. After Officer Haskins handed you the
10 inspection report and told you to have a nice trip,
11 what happened then?

12 A. We both pulled away.

13 Q. Who was in front?

14 A. He was in front, and he pulled up to the
15 left-hand turn lane, and I pulled up to the center.

16 Q. I do recall you did mention that. He
17 turned left, is that right, at that intersection?

18 A. Yes.

19 Q. Which way did you go?

20 A. I turned to the right.

21 Q. You turned to the right? Where were you
22 going?

23 A. I figured, after Officer Haskins was
24 finished, I needed to catch my paperwork up, because we

1 had been there for approximately an hour alongside the
2 road, I went and got something to drink and went on my
3 way.

4 Q. Okay. You didn't read the inspection
5 report at the time of the inspection, like when you
6 were at the scene of the inspection; correct?

7 A. No.

8 Q. Did you read it when you pulled off to the
9 right?

10 A. Actually, no.

11 Q. Okay. When did you sign it? Your
12 signature is at the bottom on one of the copies they
13 have. Do you remember?

14 A. I'm going to start out with honestly, I
15 don't remember, and then if you want, I'll speculate.

16 Q. No, no.

17 A. Because I don't think --

18 Q. We want to know what you remember. We
19 don't want any guessing. So if you don't remember, you
20 don't remember. What happened then? What happened --
21 well, you -- what happened after you had stopped?

22 MR. WRIGHT: At what point are we?

23 MR. EDWARDS: I'm sorry. Let me be more
24 specific.

1 By Mr. Edwards:

2 Q. The inspection was over. You got your
3 paperwork. Officer Haskins went to the left. You went
4 to the right. You stopped, got a drink, caught up on
5 paperwork, and then what happened?

6 A. I headed to South Dakota.

7 Q. Okay.

8 A. I headed to my destination.

9 Q. And then what happened when you got to
10 South Dakota?

11 A. Well, one thing -- this was the beginning
12 of a 72-hour DOT --

13 THE REPORTER: "72-hour" --

14 THE WITNESS: DOT schedule -- I don't know
15 the legal term, but it's where they keep the scale
16 houses, PUCO, they have to run, per federal
17 regulations, so many hours, 72 hours straight, keep
18 certain places open all over the country. So I get to
19 South Dakota. I got flammables. There's not a chance
20 I'm not going to be inspected when I roll through their
21 port of entry and scale houses. They pulled me --

22 MR. WRIGHT: Wait a minute, Your Honor. I
23 would like to object to the question and answer and
24 move that they be stricken. What happened in South

1 Dakota is irrelevant. We're focusing on an inspection
2 that was done in Ohio. What happened after the
3 inspection and he went on his way to South Dakota is
4 irrelevant to whether or not his vehicle was correctly
5 put out of service in Ohio.

6 MR. EDWARDS: If I can respond, Your
7 Honor?

8 THE EXAMINER: Go ahead.

9 MR. EDWARDS: I believe it's directly
10 relevant. One of the key issues here is whether Mr.
11 Tigner was aware that he was placed out of service.
12 His behavior at his next inspection the next day in
13 South Dakota is critical to that, and, furthermore, the
14 Commission had asked me at the beginning of the hearing
15 to explain why we're here, what the reasoning is behind
16 why we're here, and the reason we're here is based upon
17 the events in South Dakota the next day.

18 MR. WRIGHT: Your Honor, excuse me, just a
19 minute. The impressions about how Mr. Tigner conducted
20 himself in South Dakota, in fairness, I can't test
21 those. That's a case that should have been made to
22 South Dakota authorities; hey, wait a minute, my guy
23 didn't think he was out of service, what are you doing
24 here. I can't test that in any meaningful way what

1 happened in South Dakota or how he acted, his demeanor
2 or whatever in South Dakota. I can only test what
3 happened in London, Ohio on June 5th, 2006, involving
4 an inspection by Mr. Haskins. Now, come on. That --
5 that's blatantly unfair, Your Honor, and irrelevant.

6 THE EXAMINER: Excuse me. You can
7 cross-examine this witness.

8 MR. WRIGHT: That's my point, I can't.

9 THE EXAMINER: Yes, you can.

10 MR. WRIGHT: I can in no meaningful way
11 test what he said or did or how he acted in South
12 Dakota.

13 THE EXAMINER: You can cross him on his
14 testimony right here today. Now, I'll let you go ahead
15 with this line of questioning, but I expect you to be
16 on point and to wrap it up fairly soon. Go ahead.

17 MR. EDWARDS: Thank you.

18 By Mr. Edwards:

19 Q. Let's try to go through this quickly, Mr.
20 Tigner. You were inspected the next day in South
21 Dakota; is that right?

22 A. I was stopped for an inspection.

23 Q. Before that, did you have a reasonable
24 expectation that your vehicle would be inspected?

1 A. Yes, because of the 72-hour -- I was
2 heading into the 72-hour DOT thing, so based on
3 anyplace that I happened along, they were going to
4 inspect me because of the HazMat.

5 Q. At the time that you were stopped in South
6 Dakota, based upon what Officer Haskins told you the
7 day before, you were firmly in the belief that your
8 vehicle was not out of service?

9 A. That's correct.

10 Q. South Dakota conducted an inspection?

11 A. Upon entering into the building, which
12 they flip a light, you park, you walk inside, for
13 people who don't know how it works, they notified me
14 they were going to do a Level II inspection or the same
15 level of inspection, I'll put it that way, because it
16 is confusing to me at this point. So when he told me
17 he was going to do a Level II inspection, the norm in
18 the trucking industry out there is that one state will
19 recognize another state's inspection for up to three
20 days. So I asked him if that was the case, and he said
21 that it was. So I handed him a copy of Officer
22 Haskins' inspection.

23 MR. EDWARDS: I think I provided this to
24 the Commission earlier, Exhibit D. Does everyone have

1 that?

2 MR. WRIGHT: What is that?

3 MR. EDWARDS: It's a copy of the South
4 Dakota Highway Patrol Driver/Vehicle Examination
5 Report.

6 THE EXAMINER: Yes.

7 MR. WRIGHT: Yes, we have it.

8 By Mr. Edwards:

9 Q. Mr. Tigner, do you have a copy of that?

10 A. Not up here.

11 Q. Let me provide you with another copy of
12 that. Just briefly identify that document for me.

13 A. Well, this is a copy of an inspection
14 report. I believe this is a federal form, if I'm not
15 mistaken, but I believe it's a federal base for the
16 form, provided by South Dakota, after handing them my
17 inspection from Ohio.

18 Q. And is that the inspection report you
19 received from the highway patrol on the date of the
20 inspection on June 6, 2006? Is that what they gave
21 you?

22 A. Yes. This is a copy of that, yes.

23 MR. WRIGHT: Excuse me just a minute.

24 What were you referring to again, Ben? Were you just

1 referring to Exhibit D when you say "what they gave
2 you"?

3 MR. EDWARDS: I'm sorry. Yes, Exhibit D.
4 By Mr. Edwards:

5 Q. Is Exhibit D a copy of what you received
6 from the South Dakota Highway Patrol on June 6, 2006?

7 A. Yes.

8 Q. Does it list there a violation of any
9 cracked frame on your trailer?

10 A. No.

11 Q. Did they do an inspection?

12 A. Yes.

13 Q. What did they tell -- did they tell you
14 anything about what they found?

15 A. Well, it's pretty much written right
16 here. Under the second violation it says they were
17 holding me for driving an out-of-service vehicle,
18 violation of out of service.

19 Q. And that's because you handed them your
20 inspection report from the day before which says
21 there's two frame cracks; out of service, yes?

22 A. That's correct. But this inspection, the
23 same level of inspection done in South Dakota the next
24 day, he didn't find any frame cracks that were out of

1 service because they're not listed here in the
2 violation column.

3 Q. Do you know for a fact that he looked?

4 A. Seeings how he's the one -- this officer
5 in South Dakota, and I'd have to -- Michael Olson is
6 the one who took photographs.

7 (Discussion off the record.)

8 THE WITNESS: Michael Olson is the DOT in
9 South Dakota, is the one who took these, these
10 photographs.

11 THE EXAMINER: Which photos are you
12 referring to?

13 THE WITNESS: I'm sorry, O, M, and N.

14 MR. WRIGHT: Once again, Your Honor, you
15 tell me how I can test that. I don't have Officer
16 Olson here; okay? I'm not suggesting Mr. Tigner is not
17 telling the truth, but the reality is I have no way to
18 test that one way or another. I respectfully disagree
19 with your earlier ruling. Cross-examining this witness
20 won't get me that information, because I can't -- he
21 can say yea, and I can't dispute that, because I don't
22 know what they did out in South Dakota nor do I think
23 it's relevant, but -- you know, I don't have a
24 statement. I don't have a witness, a live person.

1 THE EXAMINER: You heard my ruling, Mr.
2 Wright. Did you hear my ruling?

3 MR. WRIGHT: I did hear your ruling,
4 but --

5 THE EXAMINER: Let's proceed. Do you have
6 any other questions as to this witness?

7 MR. EDWARDS: Yes, Your Honor, just a few
8 about South Dakota, if I'm permitted, and then I'll
9 continue with testimony about the --

10 THE EXAMINER: Given what's relevant here,
11 what more about South Dakota do you want to ask?

12 MR. EDWARDS: I was going to have Mr.
13 Tigner identify these photographs.

14 THE EXAMINER: He just did.

15 MR. EDWARDS: And then indicate what the
16 result was of the inspection and the violations
17 discovered in South Dakota.

18 THE EXAMINER: Well, we have the result of
19 the examination report, and I think he just told us
20 what he knew about the codes, so you can ask him -- get
21 on with the result of the inspection, then. Ask him
22 what that was.

23 MR. EDWARDS: Okay.

24 By Mr. Edwards:

1 Q. What was the result of the inspection
2 conducted by the South Dakota patrol on June 6th?

3 A. Okay. What they listed here in their
4 violations column is my fire extinguisher needed to be
5 recharged, which is not -- is not out of service. Of
6 course, as we already mentioned, operating the
7 out-of-service vehicle is the only other thing they
8 found, but they held me and made me post bond under the
9 Ohio, and as a result, I had to go to court in South
10 Dakota and was found guilty of operating a vehicle out
11 of service even though their officer said it shouldn't
12 be out of service on this form right here. It's not
13 hearsay. It's a piece of paper.

14 MR. WRIGHT: Can I have the answer,
15 please, the last part of the answer read back,
16 everything from posting bond on?

17 (Answer read back.)

18 THE EXAMINER: Do you have any other
19 questions?

20 MR. EDWARDS: Yes, I do. Thank you, Your
21 Honor.

22 By Mr. Edwards:

23 Q. You just referred to testimony in court in
24 South Dakota; is that right?

1 A. Yeah.

2 Q. You challenged the violation in South
3 Dakota; is that right?

4 A. Yes, yes.

5 Q. Okay. What happened? Did you have an
6 attorney? Did you go to court?

7 A. I had an attorney. We went to trial. We
8 went -- I don't know how to put this. It went back and
9 forth. When it was all over with, the judge found me
10 guilty even though her officer gave me the clean
11 inspection and said that she could not overrule Ohio,
12 even if it was in error.

13 Q. So your understanding was that the finding
14 in South Dakota of you violating an out-of-service
15 order was based upon the inspection done here in Ohio
16 the day before that says there were two out-of-service
17 violations found?

18 A. That's correct. I did leave out one thing
19 that happened at this inspection. That is when -- they
20 wouldn't let me leave till he photographed the
21 cracks -- crack and had to have it repaired, who is the
22 person who signed the Ohio form and misdated it, but it
23 does also give the location, and I don't think we have
24 a Port Jefferson, Ohio.

1 Q. Going back to the Ohio Driver/Vehicle
2 Examination Report from the day before, June 5th,
3 there's someone who signed next to "Signature of
4 Repairer"?

5 A. Yes.

6 Q. And then next to that is "Facility," and
7 you think that reads what?

8 A. I don't have it to look at. It's either
9 a -- it's either Port Jefferson or Union County.

10 MR. EDWARDS: Does everyone else have a
11 copy of Exhibit B?

12 MR. WRIGHT: Wait a minute.

13 MR. EDWARDS: You can use your own
14 exhibit.

15 MR. WRIGHT: We've previously marked this
16 as three, Staff 3, I believe.

17 MR. EDWARDS: Your State's Exhibit 3.
18 Okay.

19 MR. WRIGHT: Is that different?

20 MR. EDWARDS: Well, it's earlier because
21 it doesn't have the other signature on it, but,
22 otherwise, it's identical. I don't know which is
23 easier to read, but I'm happy to provide you with
24 either.

1 MR. WRIGHT: Okay. Go ahead.

2 MR. EDWARDS: Do you have a copy of that
3 that I can use for a moment?

4 MR. WRIGHT: Yes. Here's an extra copy
5 right there.

6 By Mr. Edwards:

7 Q. This is State's Exhibit 3, and there was
8 somebody who signed next to "Signature of Repairer,"
9 and then there's something written next to "Facility"
10 on that same line?

11 A. Yes.

12 Q. What does that say to you? What do you
13 read that to be?

14 A. I can't read the signature. I have it on
15 a receipt that I don't have with me today, but it says,
16 "Facility: Jefferson Port."

17 Q. And the date?

18 A. The date he misdated.

19 Q. The date says what?

20 A. The date says 6/5/06.

21 Q. And when was the vehicle repaired?

22 A. Well, the vehicle was repaired the same
23 date of this Exhibit D. They wouldn't let me leave
24 until it was repaired, so the inspection date was

1 6/6/06, so it was repaired on 6/6/06. I go as far as
2 to say after 1:09 p.m.

3 Q. So when you drove the vehicle from Ohio on
4 the 5th of June and you got to South Dakota and were
5 inspected, the vehicle had not been repaired at that
6 point; correct?

7 A. No, sir.

8 Q. And the vehicle was repaired after the
9 inspection in South Dakota, and that's because they
10 said you needed to repair it because of what was
11 written on the Ohio inspection report; is that right?

12 A. Correct, told me that they were going to
13 follow the regulation and I couldn't -- that vehicle
14 couldn't be operated until it was repaired per Ohio's
15 inspection report.

16 Q. Even though they independently concluded
17 it wasn't an out-of-service violation?

18 A. Correct.

19 MR. WRIGHT: I object, Your Honor. I'm
20 not sure that properly characterizes the testimony of
21 this witness. When you're referring to "they," you're
22 referring to South Dakota authorities?

23 MR. EDWARDS: (Nods head.)

24 MR. WRIGHT: I'm not sure that the facts

1 in the record indicate that they had arrived at the
2 determination that there was no out-of-service
3 violation, as opposed to simply -- that their form
4 simply lists the Ohio out of service.

5 MR. EDWARDS: Well, the form, as we see,
6 doesn't show anything about a frame crack; correct?
7 And that's the -- the form speaks for itself.

8 MR. WRIGHT: That's correct. It merely
9 sites the reference to the Ohio inspection.

10 MR. EDWARDS: Mr. Tigner offered
11 testimony, and we can repeat it or have it read back to
12 you, that they performed an inspection, and they told
13 Mr. Tigner that they didn't find any out-of-service
14 violations. You don't remember that?

15 MR. WRIGHT: I don't. I apologize.

16 MR. EDWARDS: Well, maybe it wasn't
17 clear. I'll ask one question, and then we'll let this
18 line of questioning drop.

19 By Mr. Edwards:

20 Q. Mr. Tigner, South Dakota Highway Patrol
21 conducted the inspection on your vehicle on June 6,
22 2006; correct? Two questions.

23 A. Yes.

24 Q. Did they find any cracks in your trailer

1 frame which they believed to be an out-of-service
2 violation?

3 A. No.

4 Q. Okay. Would it be fair to say that if you
5 knew -- if you had read the inspection report from Ohio
6 before you got to South Dakota, that you would not have
7 handed it to them when they said they were going to
8 conduct an inspection if you realized that it said
9 these violations were marked as out of service?

10 A. That makes me sound a little more deviant,
11 but first -- I'll back it up a little bit. Had I read
12 the report before I left, I would have never left. Had
13 I read the report later down the road to South Dakota,
14 to be honest, no, I wouldn't have showed it to them. I
15 would make them at least look for it.

16 Q. At no time did Officer Haskins, during the
17 inspection or before he left and you left, at no time
18 did he tell you he was placing you out of service?

19 A. No.

20 Q. At no time did he place an out-of-service
21 sticker on the vehicle?

22 A. No.

23 Q. When you left, you were under the
24 impression you were not out of service?

1 A. He told me that verbally. I wasn't under
2 the impression.

3 Q. Before this happened you had some
4 understanding of out-of-service regulations; correct?
5 You knew that if a vehicle is placed out of service,
6 you're not allowed to operate it?

7 A. Yes.

8 Q. Have you ever violated an out-of-service
9 order before?

10 A. No.

11 Q. Either knowingly or unknowingly?

12 A. No, no.

13 Q. Had this trailer ever been placed out of
14 service before June 5th, 2006?

15 A. Not before or after.

16 Q. Do you have an understanding of the
17 out-of-service criteria for cracks in trailer frame
18 members?

19 A. I have a basic understanding.

20 Q. And your opinion is that this is or is not
21 an out-of-service violation?

22 A. That's my opinion, and a lot of
23 inspections that don't list it agree.

24 Q. Have you talked to the manufacturer of the

1 trailer about the welds, about this situation, about
2 maintaining the vehicle in compliance with the
3 regulations?

4 A. Yes. I've had quite a few conversations
5 with Fontaine Trailer trying to get some documentation
6 on exactly how big these welds are supposed to be and
7 what their testing strength is supposed to be so that I
8 could see where I was at before this trial, and they
9 started out acting like they were going to be helpful,
10 and then they just stonewalled me. I got virtually no
11 useable information.

12 Q. You requested some specifications or some
13 documentation about this particular trailer?

14 A. Yes, and they sent me one page of at least
15 24 pages because it's Page 24 of the document from
16 Hendrickson suspension, and they said that --
17 basically, I think they're afraid somebody is going to
18 sue them, so they're trying to say, well, you go to
19 Hendrickson. Hendrickson said we don't have to do with
20 how it's mounted. So I got two companies pointing
21 their finger at one another, and no one really giving
22 me any helpful information.

23 Q. The photos that were taken June 6, 2006,
24 you testified were taken by South Dakota Highway Patrol

1 and the photos that were taken by Larry Woolum on
2 Saturday earlier this week -- or last week, are those
3 pictures of the same vehicle?

4 A. Yes, absolutely.

5 Q. Are they pictures of the same area of the
6 vehicle?

7 A. They are pictures of exactly the same
8 part, exactly the same area. We have one at a little
9 bit different angle.

10 Q. And when Officer Haskins took you back to
11 your vehicle after he conducted his inspection and
12 pointed out these cracks which he told you were cracks
13 that he could place you out of service for but he's not
14 going to, are they depicted in these photos? Is the
15 location that he pointed out to you on these photos?

16 A. Yes. On Exhibit O, there's a circled
17 area, and I -- there is a crack there. I'm not
18 disputing that.

19 Q. The circled area on Exhibit O, is that the
20 same area that's shown in Exhibit J and Exhibit K?

21 A. Yes.

22 Q. And the pictures shown on Exhibit K, for
23 instance, the best picture we have, the weld directly
24 above tape measure marks zero to two, is that exactly

1 where Officer Haskins directed you to?

2 A. Yes.

3 MR. WRIGHT: I'm sorry, could you repeat
4 your question?

5 MR. EDWARDS: Sure.

6 MR. WRIGHT: We're on K?

7 MR. EDWARDS: We're looking at Exhibit K,
8 the photo there.

9 MR. WRIGHT: Right.

10 MR. EDWARDS: There's a weld shown on the
11 left side between marks zero and two inches on this
12 tape measure. It's right above that.

13 By Mr. Edwards:

14 Q. Is that, Mr. Tigner, the exact spot that
15 Officer Haskins pointed out to you as being the issue
16 in the inspection on June 5th, 2006?

17 A. Yes.

18 Q. And he pointed up into the back of it and
19 said it's cracked on the back as well.

20 Q. What do you mean by the "back"?

21 A. Well, he said there were two cracks on his
22 paperwork or his inspection, later I find out there's
23 two cracks, and when he pointed it out to me, said this
24 is cracked here and he physically touched this, and he

1 pointed up around it and said and the back side is
2 cracked as well, which --

3 Q. We can't see the back side in this
4 picture?

5 A. No, you can't see the back side. You
6 can't see the back side picture or otherwise.

7 Q. How is that?

8 A. It's obscured by other pieces that are
9 folded in and -- that's a channel turned backwards, and
10 there are other parts that are bent around. It's very
11 obscured. You'd have to have at least a mirror and
12 flashlight to see it.

13 Q. Did Officer Haskins use a mirror and
14 flashlight to show it to you?

15 A. No. He just told me where it was, which
16 it made perfect sense if one side is cracked, you'd --

17 Q. So it's just the other side of the joint
18 between these two pieces of metal?

19 A. Correct. If I can refer to it, and which
20 Michael Olson, the DOT out in South Dakota, he kind of
21 laughed about it. He says he called it two cracks,
22 it's just one crack all the way through.

23 MR. WRIGHT: Objection, Your Honor. The
24 witness is testifying about what someone else told

1 him. I cannot test that statement with the person who
2 said it. That's classic hearsay.

3 THE EXAMINER: Okay. Let's limit
4 testimony in that regard. Do you have any other
5 questions?

6 MR. EDWARDS: Yes, just a couple more on
7 that topic.

8 By Mr. Edwards:

9 Q. This weld we were talking about here on
10 the left side of this Exhibit K above tape measure
11 marks, I keep saying, zero to two inches, is there any
12 way that that weld, either when it came from the
13 manufacturer or when it was repaired or when it was
14 cracked, could have been three inches long?

15 A. No, because the part -- it only overlaps,
16 as we've already heard from other people, this part
17 only overlaps that cross member approximately two and a
18 half inches; so even if you were welding from end to
19 end, the maximum weld would be two and a half, and the
20 one piece of useable information I did get was, which I
21 already knew this, you cannot weld all the way to an
22 edge and you cannot weld all the way to a radius. If
23 you do, they're guaranteed to crack.

24 Q. And we can see in the photo that there is

1 no weld in the corner there, the left side weld, but on
2 the right side of the weld there's a place there.
3 Obviously, the joint is clearly defined. There is no
4 weld there; correct?

5 A. Correct.

6 Q. And there's no weld over on the left side
7 of the edge either; correct?

8 A. Right. Everyone does due diligence to try
9 to leave that because it is very important.

10 Q. After the whole case was over in South
11 Dakota and they upheld the out-of-service violation
12 conviction, what happened then?

13 A. Months passed. The judge assured me that
14 it was just a ticket, and I was explaining to her I
15 didn't think it was. So months passed, and I get the
16 letter from the State of Ohio they're going to take my
17 driver's license because of the conviction in South
18 Dakota.

19 Q. What do you mean by take your driver's
20 license?

21 A. They're going to suspend my license. The
22 letter says 90 days.

23 Q. Okay. What did you do then, when you got
24 that letter?

1 A. That's when I recontacted you, which I
2 contacted when this originally all started, and I got
3 back in contact with you, and, you know, we need to try
4 and figure out how we're gonna get this stopped.

5 Q. So the suspension hasn't taken effect?

6 A. No. We've been able to keep it at bay
7 until we can find out what's going to happen with this.

8 Q. Okay.

9 MR. EDWARDS: Just a moment, Your Honor.

10 (Discussion off the record.)

11 MR. EDWARDS: Nothing further at this
12 time, Your Honor.

13 THE EXAMINER: Mr. Wright.

14 MR. WRIGHT: Yes, Your Honor. I have a
15 few questions.

16 CROSS-EXAMINATION

17 By Mr. Wright:

18 Q. Good afternoon, Mr. Tigner.

19 A. Good afternoon.

20 Q. It is Tigner; correct? Am I pronouncing
21 it right?

22 A. Yes.

23 Q. Let's start with this Exhibit K you were
24 just talking about -- well, as a preliminary to that,

1 you testified in response to a couple of questions from
2 your counsel that you're familiar with the
3 out-of-service requirements, the rules; correct?

4 A. Yes.

5 Q. And you're fairly familiar with them?

6 A. All drivers are somewhat familiar, fairly
7 familiar.

8 Q. Okay. Now, you were just questioned a few
9 minutes ago by your counsel about the width, I guess,
10 of the repair weld on the left. Do you recall that?

11 A. Yes.

12 Q. And I believe more specifically your
13 counsel indicated is there any way that that repair
14 weld extends to three inches; is that right?

15 A. Correct.

16 Q. And you indicated no?

17 A. Right.

18 Q. Why is three inches important?

19 A. That question to me?

20 Q. Yes. I'm sorry.

21 A. Because that's what Officer Haskins wrote
22 up, three-inch crack.

23 Q. Do you know what the out-of-service
24 regulations say to that point, how high -- wide the

1 crack has to be, how long the crack has to be?

2 A. I am not that familiar, but I do know
3 there are measurements for different cracks in
4 different areas.

5 Q. Okay. So -- well, strike that. You've
6 indicated previously in your testimony that when Mr.
7 Haskins discovered the cracks, he summoned you back to
8 see them; correct?

9 A. Yeah.

10 Q. And he showed you where they were;
11 correct?

12 A. Yes.

13 Q. You heard him testify that he actually
14 marked them with chalk. You didn't dispute that?

15 A. Actually, I do. I did not see any marks
16 and --

17 Q. Do you know whether --

18 A. There were no marks evident in South
19 Dakota when I looked again.

20 Q. In terms of the timing of when the marks
21 might have been placed at the inspection that Mr.
22 Haskins did, it's entirely possible he marked those
23 after you looked at it and returned to the cab, isn't
24 it?

1 A. No, sir.

2 Q. You were not with him the entire
3 inspection, were you?

4 A. No, sir.

5 Q. Okay.

6 A. May I finish that answer?

7 Q. I believe you answered my question.

8 THE EXAMINER: Let him finish the answer.
9 Go ahead.

10 THE WITNESS: You asked if he could have
11 marked them after he showed me the cracks. He
12 completed his inspection, came and got me. We went
13 back. He showed me the cracks. We walked back
14 together to my door. He continued forward to his
15 vehicle. He did not go back to my trailer after that,
16 after I was there. We walked away from that spot.
17 By Mr. Wright:

18 Q. Okay. All right. Now, you testified that
19 after the cracks were pointed out to you, that you
20 indicated to Mr. Haskins that you would get them
21 repaired at -- when he asked you to get those repaired
22 at the first opportunity, that was your testimony, you
23 indicated, you said, I will, is that right, or words to
24 that effect?

1 A. Yes.

2 Q. Okay. And I think from further testimony
3 you said basically that that would be at a time when it
4 was convenient for you to do that, i.e., when you were
5 getting brakes done and other things done, is that
6 right, get all the work done together? Is that
7 basically the point you were trying to make?

8 A. No, that's not accurate.

9 Q. Okay. Why not?

10 A. The earliest convenience to me was the
11 same as the statement of I'm not going to put you out
12 of service because of the situation you're in with the
13 flammables. So earliest convenience to me meant as
14 soon as I got the flammables off of my truck, which
15 would be the next day in the afternoon.

16 Q. Okay. So you dispute the testimony of Mr.
17 Haskins that the weld could have been performed with --

18 A. No, sir.

19 Q. -- with the load on the trailer?

20 A. I don't dispute it. I -- I don't have an
21 issue with it, but I -- a lot of shops don't like
22 having trucks in their shops, period. I've been turned
23 away from an oil change. They say get the HazMat off
24 and come back. So assumption on my part, maybe a

1 mistake, I figured it would be a little hard to find
2 someone to try to weld that while I was loaded.

3 Q. Even though you had several potential
4 repair options available to you at London?

5 A. Actually, that's not exactly correct
6 either, because there's -- there is a truck stop named
7 Pilot at that exit. Pilot has no shop, no repair
8 facility. TA, Truck stops of America or Travel Centers
9 of America, depending how it's known, is one of the
10 places that has refused to service my truck in the past
11 when I had flammables on.

12 Q. Do you have any proof of that as you sit
13 here today?

14 A. Do I have proof?

15 Q. Yes. Do you have proof of that?

16 A. No.

17 Q. Because that would be your basis for not
18 having gone there, wouldn't it?

19 A. Can you answer a question?

20 Q. There's a question pending to you, sir.
21 You have no proof -- you just made a statement that --

22 A. I don't know that TA has a weld shop.

23 Q. You don't know?

24 A. I don't know whether TA has a weld shop.

1 Q. Okay. So you don't know whether or not
2 they could have made the repairs? You don't know
3 whether they would have taken you on and performed the
4 repairs simply because you had hazardous -- you were
5 hauling hazardous materials; correct?

6 A. That's correct.

7 Q. Okay. Now, as I understood your
8 testimony, after the inspection was done, Mr. Haskins
9 escorted you up to the end of the ramp, where I guess
10 the ramp runs into State Route 42, he went left, you
11 went right; correct? That's what you testified to
12 already?

13 A. I testified that he escorted me onto the
14 ramp. I think I said he went left and went to the end
15 of the ramp in the left turn lane, and I went up to the
16 center of the ramp.

17 Q. Yeah, but you both went up the ramp, he
18 ahead of you?

19 A. I did not understand that as an escort.

20 Q. What's an escort mean to you? Did he have
21 his lights on?

22 A. At that point, no.

23 Q. Are you sure about that?

24 A. Yes.

1 Q. Okay. All right. You both proceeded up
2 the ramp. You went one way. He went the other.
3 That's your testimony; correct?

4 A. Yes.

5 Q. And the way you went is where some of
6 these truck stops were located. You said you went to
7 take a breather, get a drink, catch up on some
8 paperwork?

9 A. Actually, I said I wanted to get something
10 to drink and finish my paperwork up.

11 Q. How long were you there?

12 A. I can't testify to that.

13 Q. Sure, you can.

14 A. No, I can't, not without my paperwork
15 handy.

16 Q. When you have to do some paperwork -- was
17 it a half hour, 45 minutes? I don't care exactly.

18 A. I have documentation, if you want me to
19 get it. I won't give a time. It was a few minutes. I
20 will put it that way.

21 Q. Fifteen, 20?

22 A. I won't -- I won't declare if I got any
23 further than that without seeing my documents.

24 Q. Mr. Tigner, you've been able to recall

1 with remarkable clarity a lot of things you said, and
2 you can't give me a ballpark on how long you stayed
3 there?

4 MR. EDWARDS: Objection. This is after
5 the inspection occurred. We're talking about --

6 MR. WRIGHT: He --

7 MR. EDWARDS: -- getting a drink. How is
8 he going to remember that two years later? It had
9 nothing to do with the inspection.

10 MR. WRIGHT: You've been asking him about
11 things that happened ten years ago when he bought the
12 trailer.

13 MR. EDWARDS: And he didn't recall that.
14 It was fair. It was a shot in the dark, and he didn't
15 recall it.

16 MR. WRIGHT: Your Honor.

17 THE EXAMINER: Okay. I'll let him answer
18 the question. Can you provide an estimate of time that
19 you were at the truck stop?

20 MR. WRIGHT: I tell you what, I will
21 withdraw the question.

22 THE WITNESS: Fifteen minutes.

23 By Mr. Wright:

24 Q. It was at least long enough to catch

1 up on the paperwork and go inside and get drink; right?

2 A. Yeah.

3 Q. That's what you were doing there. Okay.

4 Now, at no time did you pull out the report that you
5 had just been handed that Inspector Haskins had gone
6 over with you and look at it, did you?

7 A. Absolutely not.

8 Q. Okay. Absolutely not?

9 A. I don't need to.

10 Q. Let's look at that. Let's look at that.
11 You claim Officer Haskins said I could put you out of
12 service but I won't, have a nice day, and I quote; is
13 that right?

14 A. Well, that's two conversations mixed into
15 one, but yes.

16 Q. That was your testimony, was it not?

17 A. I testified that Officer Haskins come and
18 got me, took me back to my trailer. We went under the
19 trailer. He showed me the crack. He said I could put
20 you out of service for this, but I'm not going to.
21 Then we walked back up. I got in my tractor. He said
22 I'm going to get your paperwork and you'll be on your
23 way. He went and got my paperwork, walked back, handed
24 it in the window, said here, you need to sign it, and

1 have a nice day.

2 Q. Now, you've heard Inspector Haskins
3 testify that his routine is, after he writes up an
4 inspection, to go over that report. He signs it, goes
5 over that report with the driver, and asks if there are
6 any questions. Is it your testimony that he didn't
7 follow that routine here?

8 A. Absolutely.

9 Q. It is?

10 A. Yes.

11 Q. What did he do? He just threw the report
12 in the window and said have a nice day?

13 A. He didn't throw it in.

14 Q. Did he hand it to you?

15 A. He handed it through the window.

16 Q. Is it in your experience -- are you
17 telling me that inspectors routinely don't go over
18 reports with you and tell you what their findings are?
19 It kind of defeats the purpose, doesn't it?

20 A. Can I get a definition of "routinely"?

21 Q. Common, commonplace.

22 A. Like one out of 100, one out of 200?

23 Q. You define the term and explain how you
24 define it.

1 A. I define the term it happens -- it's
2 happened twice that I can remember.

3 Q. Do you have any reason to believe or
4 disbelieve the testimony of Mr. Haskins that that is
5 the routine that he follows?

6 A. Only that it wasn't used with me.

7 Q. Only that it wasn't used with you. Okay.
8 You clearly feel you're stopped too often in the State
9 of Ohio, don't you?

10 A. Pardon me?

11 Q. You made the statement earlier that
12 suggested to me that you feel you are stopped in Ohio
13 way too much.

14 MR. EDWARDS: Objection. Irrelevant.

15 MR. WRIGHT: Your Honor, the witness has
16 been asked ad nauseam about the number of times he was
17 stopped while hauling hazardous materials in this
18 jurisdiction and other jurisdictions. I'm permitted to
19 ask a question like that.

20 MR. EDWARDS: You're asking him about his
21 feelings about being stopped and how many times he was
22 stopped.

23 MR. WRIGHT: Yes.

24 MR. EDWARDS: What does that have to do

1 with anything?

2 MR. WRIGHT: Attitude. Somebody cops an
3 attitude, acts out of defiance, says okay, whatever,
4 and goes their merry way, chooses to ignore what may
5 have been said or done.

6 MR. EDWARDS: Ask him about his attitude
7 during this particular inspection.

8 THE EXAMINER: Proceed.

9 By Mr. Wright:

10 Q. You weren't very pleased with this
11 inspection, were you?

12 A. Actually, I was very pleased.

13 Q. How so?

14 A. Because at the time -- we're talking about
15 the time of the inspection; right?

16 Q. Yes.

17 A. Yes. He showed me what was the defect,
18 and I thought he was letting me get away with something
19 other than I didn't -- I didn't think it was out of
20 service either. He said I'm not going to put you out
21 of service. Cool.

22 Q. But you have to acknowledge that your
23 familiarity with the out-of-service criteria only goes
24 so far. So you didn't really know at the time either,

1 did you, whether or not those cracks put you out of
2 service?

3 A. I was pretty sure.

4 Q. Pretty sure?

5 A. I'm not a lawyer, but I was pretty sure.

6 Q. But you don't know today what the
7 regulations say, whether they say three inches or
8 something else?

9 A. There's not a measurement on that
10 particular crack.

11 Q. That wasn't my question, sir. You don't
12 know today as you sit here what the requirements are
13 for a crack on a frame on a trailer to be placed out of
14 service?

15 A. I know what the requirements are on my
16 crack.

17 Q. Would they have differed between your
18 crack and somebody else's vehicle?

19 A. No, but different cracks differ. I
20 thought that was established.

21 Q. So you proceed on to South Dakota, having
22 represented to Mr. Haskins that you'd get it fixed, you
23 know, at your earliest convenience, right, at your
24 earliest opportunity?

1 A. Earliest opportunity, yes.

2 Q. So you proceed on down the road. You were
3 stopped a second time now by the State of South Dakota;
4 right?

5 A. Yes. They had their scales open.

6 Q. And as part of that inspection, you handed
7 in the Ohio inspection report which -- correct?

8 A. Again, I testified to the fact that most
9 states honor them for, like, up to three days, if you
10 still have it in the truck. Actually, it should have
11 been in lieu of an inspection. There would not have
12 been an inspection if that issue -- if the out of
13 service hadn't been on there.

14 (Discussion off the record.)

15 By Mr. Wright:

16 Q. I apologize. Maybe you can save me the
17 effort here with the math. How much time, roughly, had
18 elapsed from the time you left London, Ohio, the exit
19 off of 70, I-70, excuse me, and the time that you were
20 inspected by South Dakota? And I recognize there are a
21 couple hours -- maybe an hour change in time there and
22 everything else. How long would you have been -- how
23 much time had elapsed between then and there?

24 MR. EDWARDS: Objection. It's on the

1 documents.

2 THE WITNESS: Twenty-something hours.

3 By Mr. Wright:

4 Q. Twenty-something hours. Would you have
5 stopped at any point between Ohio and South Dakota in
6 the time you got --

7 A. Yes, I did.

8 Q. You did?

9 A. Yes.

10 Q. Okay. And that would provide you -- was
11 that to get food or --

12 A. Food and sleep.

13 Q. Food and sleep. Okay. Then you had
14 another opportunity that you could have looked at this
15 document, the Ohio inspection report; correct?

16 A. Had the officer handed it to me and said
17 that anything other than I was not being put out of
18 service, I would have.

19 Q. Let's look at that, because something is
20 not adding up here. Do you have a copy of the
21 inspection report in front of you?

22 A. Yes. This one here?

23 Q. Well, here (indicating). This is Staff
24 Exhibit 1 that I'm referring to. All right. By the

1 way, when did you finally get around to reading the
2 document?

3 A. When I handed it to South Dakota.

4 Q. You hadn't read it yet, had you?

5 A. No.

6 Q. So you became aware of it when they made
7 you aware of it?

8 A. Yeah. I think I testified to that.

9 Q. That's fine.

10 May I approach, Your Honor.

11 THE EXAMINER: Yes.

12 By Mr. Wright:

13 Q. Have you seen these before, this kind of
14 report before?

15 A. Yes.

16 Q. You've been inspected numerous occasions
17 in Ohio; right?

18 A. Numerous occasions everywhere. This is
19 the standard form.

20 Q. This is kind of the standard format that
21 is used for these inspections; right? For example,
22 it's similar, not the same, but it's similar to South
23 Dakota, for example?

24 A. Actually, these are the same. This is

1 what I saw. I don't know what that is. It's just a
2 little different. But these are the forms I seen
3 (indicating).

4 Q. Okay. Well, this has basically the same
5 information. It's got where you were stopped. It's
6 got vehicle information, so on and so forth.

7 A. You're saying that it does, and I've not
8 read the whole thing and I just got in trouble for
9 that.

10 Q. We'll use Staff Exhibit 3. This is the
11 certification you're familiar with; right?

12 A. Somewhat familiar.

13 Q. What's your familiarity with it?

14 A. Well, I get a few. You're told that if
15 you --

16 Q. Go ahead.

17 A. We get these when you get an inspection.
18 And have I ever had an out of service prior to this is
19 no. The only other time I've ever had an out of
20 service for something I did or didn't do it was
21 explained to me clearly, and I also was handed the -- I
22 was handed a certificate putting me back into service
23 because the mistake was corrected.

24 Q. Okay. Now, back to my question. Are you

1 familiar with this form? That's all I asked you.

2 A. Yeah, but as you can see, each time --

3 Q. Yes or no, sir. Are you familiar --

4 A. Somewhat.

5 Q. Are you familiar with this form?

6 A. Somewhat.

7 Q. Again, we're talking about Staff Exhibit

8 3. Is that your signature on that document?

9 A. Yes, it is.

10 Q. Okay. Now, I believe you testified --
11 first of all, is the handwritten note, the printed note
12 at the bottom yours?

13 A. Yes.

14 Q. All right. What's the significance of
15 that, of your handwritten statement? Why did you write
16 that on there?

17 A. Let's see, significance? I signed this
18 prior to reading, going to -- being in a roadside
19 inspection in a construction zone.

20 Q. Why did you write that? That's my
21 question.

22 A. Because that's really what happened.

23 Q. The reality is you didn't sign that
24 document until much later, long after the inspection

1 had been done, and you testified to that?

2 A. Yeah.

3 Q. So the fact that -- the fact that this
4 inspection was done on the roadside before you had an
5 opportunity to read this had nothing to do with it.
6 You signed it much, much later, after opportunities had
7 elapsed for you to have actually read the document and
8 signed it; right? That's really a meaningless
9 statement, isn't it?

10 A. I don't know how to answer that.

11 Q. I'll withdraw that. Who is this person
12 (indicating)? Who signed it at the bottom on behalf of
13 the carrier, do you know?

14 A. Again, I'm terrible with names, so --
15 yeah, I know who it is.

16 Q. Could you enlighten us as to --

17 A. Yeah. It's Sonya -- I believe her name is
18 Sonya Johnson.

19 Q. She is with Admiral?

20 A. She was with safety with Admiral at the
21 time.

22 Q. Okay. All right. And by signing that
23 document, do you know what she is certifying there on
24 behalf of the carrier?

1 A. Yeah.

2 Q. What is that?

3 A. That upon this date -- she's signing that
4 on this date, 6/20/06, that this vehicle was repaired
5 by this date of the defects here (indicating).

6 Q. Okay. So she is certifying, just as the
7 individual signing on behalf of the repairer is
8 certifying, that the repairs that were made were those
9 that appear further up on the document, i.e., the two
10 cracks that were observed by Mr. Haskins; is that
11 right?

12 A. Uh-huh.

13 Q. All right. Now, you -- you indicated, did
14 you not, that -- that the date -- there was a date
15 listed on this Staff Exhibit 3; is that correct?

16 A. Yes, the repair job.

17 Q. The repairs, according to your testimony,
18 were actually done when?

19 A. 6/6/06.

20 Q. The next day. Why did you feel the need
21 to point that out to us?

22 A. Because you had brought it up earlier.

23 Q. I hadn't even questioned you at that
24 point.