

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Western :
Aries Construction LLC, :
Notice of Apparent : Case No. 14-0702-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Ms. Sarah Parrot, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 1:30
p.m. on Wednesday, July 2, 2014.

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APPEARANCES:

Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
Section Chief
Public Utilities Section
Mr. Werner L. Margard, III,
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Mr. Wieslaw J. Walawender

On behalf of the Respondent.

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1 Wednesday Afternoon Session,
2 July 2, 2014.

3 - - -

4 EXAMINER PARROT: Go on the record. The
5 Public Utilities Commission of Ohio has called for
6 hearing at this time and place Case No.
7 14-702-TR-CVF, being in the Matter of Western Aries
8 Construction LLC, Notice of Apparent Violation and
9 Intent to Assess Forfeiture. My name is Sarah
10 Parrot, and I am the Attorney Examiner assigned by
11 the Commission to hear this case.

12 Let's begin with appearances of the
13 parties and we will start with the staff.

14 MR. MARGARD: Thank you, your Honor. On
15 behalf of the staff of the Public Utilities
16 Commission of Ohio, Mike DeWine, Ohio Attorney
17 General, William Wright, Section Chief, Public
18 Utilities Section, by Assistant Attorney General
19 Warner L. Margard, 180 East Broad Street, 6th Floor,
20 Columbus, Ohio 43215.

21 EXAMINER PARROT: Thank you very much.

22 And, Mr. Walawender, at this time if you
23 could state your full name and address for the record
24 and then also note the company's name on whose behalf
25 you are here today.

1 MR. WALAWENDER: Yes. Wieslaw
2 Walawender, 2919 Birch Avenue, Niagara Falls, New
3 York 14305, I am the owner -- sole owner of Western
4 Aries Construction, single-man operation.

5 EXAMINER PARROT: Okay. Thank you. Can
6 you spell your name for the record.

7 MR. WALAWENDER: W-I-E-S-L-A-W is the
8 first name, last name W-A-L-A-W-E-N-D-E-R.

9 EXAMINER PARROT: Thank you very much.
10 And it's your decision today to proceed without
11 counsel; is that correct, Mr. Walawender?

12 MR. WALAWENDER: Yes, it is. I couldn't
13 afford it.

14 EXAMINER PARROT: Thank you.

15 MR. WALAWENDER: \$3,000 for
16 representation.

17 EXAMINER PARROT: All right. Thank you
18 for that clarification.

19 At this time I will turn things over to
20 Mr. Margard if we have no preliminary matters to tend
21 to.

22 MR. MARGARD: We are ready to proceed,
23 your Honor.

24 EXAMINER PARROT: Very good.

25 MR. MARGARD: Call Mark Irmscher to the

1 stand, please.

2 EXAMINER PARROT: Okay.

3 (Witness sworn.)

4 EXAMINER PARROT: Please have a seat.

5 - - -

6 INSPECTOR MARK IRMSCHER

7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Margard:

11 Q. Please state your name.

12 A. Mark Irmischer, I-R-M-S-C-H-E-R.

13 Q. Mr. Irmischer, by whom are you employed?

14 A. By the State Highway Patrol, Motor
15 Carrier Enforcement Division.

16 Q. And what's your capacity? What's your
17 title?

18 A. MCEI, Motor Carrier Enforcement
19 Inspector.

20 Q. Would it be appropriate for me to refer
21 to you as inspector?

22 A. That's correct.

23 Q. Thank you, sir. Can you briefly describe
24 your duties and responsibilities as an inspector.

25 A. Well, I do most of my work out on the

1 interstates, stopping commercial vehicles for safety
2 reasons, doing thorough inspections on them. And we
3 have like three different levels of categories that
4 we deal with, the level I which is a full complete
5 inspection, level II where we basically just do a
6 walk around and check paperwork, and a level III is
7 just going to be a document check.

8 Q. And how long have you been performing
9 those duties?

10 A. With this division -- I have been with
11 the patrol it will be 23 years this August. I have
12 been with this division it's about 13 years.

13 Q. Do you have any special training or
14 certifications to perform this job?

15 A. Yes, sir. We have to complete a North
16 American Standard Course which is in detail. We have
17 to completely go over a whole commercial vehicle
18 that's involved, even with hazardous materials also,
19 and this has to be completed before we're allowed to
20 perform any inspections on our own.

21 Q. And is this something that you have to
22 renew like a driver's license?

23 A. No. We just have to keep up our total
24 inspections for every year to keep certified. Now,
25 once a year they do send us to in-service for

1 updates, if there's any changes like, for example,
2 logbooks. Once a year they'll send us back through
3 the academy just -- just to review if there's any
4 updates.

5 Q. Thank you, sir. Were you on duty on
6 December 29 of 2013?

7 A. Yes, sir.

8 Q. Do you remember being on duty that day?

9 A. Yes, sir, I do.

10 Q. And were you performing your regular
11 duties?

12 A. Well, actually that Sunday of
13 December 29, we were doing an actual special detail.
14 There was just a small group of us that was
15 concentrating on Interstate 71 that particular day.

16 Q. Is that your usual area of patrol?

17 A. No, sir, it is not, not normally.

18 Q. So this -- this is a day you would
19 remember. It's an unusual day?

20 A. Yes, sir.

21 Q. Okay. On that date, did you have
22 occasion to inspect a vehicle being operated by
23 Mr. Walawender?

24 A. Yes, sir.

25 Q. And do you remember that inspection?

1 A. Most of it I do, sir, yes.

2 Q. After completing that inspection, did you
3 prepare a report of your findings?

4 A. Yes, sir, I did.

5 MR. MARGARD: May I approach, your Honor?

6 EXAMINER PARROT: You may.

7 MR. MARGARD: Your Honor, I have marked
8 for purposes of identification as Staff Exhibit 1 the
9 Driver/Vehicle Examination Report dated December 29,
10 2013.

11 EXAMINER PARROT: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Irmischer, do you have before you
14 what's been marked as Staff's Exhibit 1?

15 A. Yes, sir.

16 Q. And is this the report that you generated
17 as a result of your inspection?

18 A. Yes, sir.

19 Q. And if you look at the top section of
20 that, it indicates an Inspection Level I-Full
21 Inspection; is that correct?

22 A. Yes, sir.

23 Q. So you conducted a full inspection of
24 this vehicle. Can you briefly describe for us how
25 you performed that inspection.

1 A. Well, when I approached the driver, my
2 normal procedure would be to ask the driver for his
3 driver's license, his medical card, and the logbook.
4 Then I proceed from there by doing a walk around the
5 vehicle starting at the front -- excuse me, starting
6 at the front of the vehicle working my way to the
7 rear.

8 Then after I complete the walk around,
9 then being that it was a level I inspection, a full
10 inspection, then I place wheel chocks out to prevent
11 the vehicle from rolling because I have to get under
12 the vehicle. Then I have the driver build his air
13 pressure all the way up as if he's getting ready to
14 drive away, to release all the brakes. Then I
15 proceed underneath the vehicle checking for air leaks
16 and brake measurements by having the driver apply
17 brake pressure for each wheel on the truck and
18 trailer, take all the measurements, put it on the
19 document.

20 Q. There is a section on Staff Exhibit 1
21 labeled "Brake Adjustments." Are these the
22 measurements to which you are referring?

23 A. Yes, sir.

24 Q. And what do these numbers represent?

25 A. Well, like, for example, on that axle

1 number -- this is a five-axle unit and the first No.
2 1 axle, that's going to be the steer axle and that
3 has a clamp 20 brake chamber and the amount of travel
4 that the brake is allowed to travel before it's out
5 of adjustment, there's certain specs on those. Then
6 just as long as the measurements are not in bold,
7 that means that they are not out of adjustment. So
8 in this particular case it goes back to the fourth
9 axle which is only the trailer itself that there was
10 one brake that was out of adjustment.

11 Q. How do you make that measurement?

12 A. I use what's called a carpenter's ruler.
13 It's 6 inches long and most of the brake travels
14 range anywhere from 1 inch to 3-1/2 inches so a
15 6-inch carpenter ruler is more than enough, and it's
16 easy for me to put in my pocket to carry with me at
17 all times.

18 Q. So this would have been an inspection on
19 the brake that you performed while under the vehicle
20 with a 6-inch ruler.

21 A. That's correct.

22 Q. And can you tell us a little bit more
23 precisely how you actually perform this measurement.

24 A. Well, there's a -- what's called a brake
25 chamber which has a pushrod that comes out of it.

1 Now, with the brake air pressure built up to
2 standards, as if the driver is going to drive away,
3 needs to be approximately 100 pounds pressure. The
4 brakes are released. I take a soapstone and mark the
5 pushrod at a rest position. Then I instruct the
6 driver when I make a fist, apply brake pressure, full
7 brake pressure. When he applies the brake pressure,
8 the pushrod, it will travel out. So that's where I
9 take the measurement from the chamber out to the
10 soapstone mark.

11 Q. And then subsequent to that you measure
12 the distance between the two soapstone marks?

13 A. Well, there's only going to be -- well,
14 from the brake chamber then the pushrod is coming out
15 when he applies the brake.

16 Q. I see.

17 A. So I measure from the chamber out to the
18 soapstone mark.

19 Q. Okay. And that's the procedure you use
20 every time you measure brakes --

21 A. Every time.

22 Q. -- for a level I inspection?

23 A. Yes, sir.

24 Q. And did you follow that procedure in this
25 instance?

1 A. Most definitely.

2 Q. And these findings reflected on this
3 report are true and accurate representations of the
4 measurements that you made on that date?

5 A. Yes, sir.

6 Q. Did you make any other findings as a
7 result of your inspection?

8 A. On axle No. 1 on the right side the brake
9 was in adjustment, but I had noticed grease, oil
10 contamination on the brake shoes at the time I was
11 doing the inspection.

12 Q. And did you do that while you were
13 underneath the vehicle?

14 A. Well, actually that one I could actually
15 see it from doing the walk around when I first
16 started doing the inspection because on the steer
17 axle I have him raise the engine compartment, and I
18 can look over the front wheel. So I don't need to
19 really get underneath it, but I did get under it in
20 this case just to verify that there was oil and
21 grease in the sight-hole.

22 Q. Were you able to identify exactly what
23 the substance was?

24 A. Not exactly. It's just an oil substance
25 that I could see.

1 Q. And did it just appear wet? Did it
2 appear dark? Or did it have -- what -- what
3 character did the substance on --

4 A. Well, it's like a -- I'll say like a wet
5 grease type of a visual on the brake shoes.

6 Q. Okay. Did you sample this grease at all,
7 or did you have any way of checking to determine what
8 it actually was?

9 A. No, sir.

10 Q. Now, should the brakes have any dampness,
11 fluid, anything on them at all?

12 A. No, sir.

13 Q. Did you make any other findings in the
14 course of your inspection?

15 A. The -- well, the reason for the stop it
16 was an obvious reason because I always try to put my
17 first violation as the reason, and in this case on
18 the trailer there's three lights right in the center,
19 they are called ID lights, and in this case the left
20 ID light was out when he drove by me so that was the
21 reason for the stop. That was the first violation.

22 The second violation is right -- right
23 front turn signal was inoperative and inside the cab
24 when I have the driver -- he has to pump the brakes
25 several times to get his pressure to drop down. When

1 it gets close to 60 PSI, there's supposed to be a
2 visual light and an audible alarm that comes on.
3 Well, in this case the audible alarm did not work,
4 but it did have a light. If he has neither, then
5 that's an out of service. They just have to have one
6 or the other to keep motivating down the road.

7 And the next violation was a left rear
8 turn signal which would be on the trailer and that's
9 mandatory that you have functioning turn signals on
10 left and right. His left rear was out at the time of
11 the inspection. And also on the trailer a right --
12 right side center marker, so that would be on the
13 passenger side, halfway up the trailer there's a
14 marker light there. That light was inoperative.

15 Then the next violation is the 20 percent
16 of brakes, being that he had a steer brake wet,
17 that's a defective brake. Then he had a brake out of
18 adjustment at 2-1/4 inch, that's another brake so
19 that's 2 brakes out of 10 that are bad so that puts
20 him in that 20 percent criteria which places the
21 vehicle out of service.

22 Q. But the percentage is based on the number
23 of brakes --

24 A. Yes.

25 Q. -- that do not comply out of the total

1 number of brakes on the vehicle?

2 A. Right. Yeah, once the percentage exceeds
3 20 percent then that places the vehicle -- in this
4 case 2 brakes out of the 10 is over the 20 percent.
5 Then the next violation is that steer axle that was
6 contaminated by oil. And the final, the last
7 violation, is going to be that axle 4 right side, the
8 brake adjustment.

9 Q. Now, on a couple of occasions you've
10 mentioned out of service and that's what the
11 designated OOS means --

12 A. Yes.

13 Q. -- on this report.

14 A. Yes, sir.

15 Q. And what does an out of service violation
16 mean?

17 A. If it's an out of service, it all depends
18 whether it's on the vehicle or the driver. In this
19 case it's on the vehicle. That means the out of
20 service has to be corrected before moving -- putting
21 the vehicle back into service.

22 Q. Now, were you present when these
23 corrections were made?

24 A. No, sir.

25 Q. You completed your inspection, provided

1 the driver with a copy of your report, and then left;
2 is that correct?

3 A. Then plus I did -- I offered to give the
4 driver some local mechanic phone numbers also being
5 he's from out of town just to try to help the driver.

6 Q. Is that a standard practice?

7 A. For me it is, sir. If it's something
8 from out of town, out of state, they don't know the
9 local mechanics so I just provided him with some
10 numbers if he wants to use them.

11 Q. And where did that list come from? Is
12 that something Patrol generates?

13 A. No. It's just a list that I generated on
14 my own just to try to help the drivers out.

15 Q. It's not an official or some kind of
16 approved list?

17 A. No, sir; no, sir.

18 Q. Do you recall anything else about the
19 inspection?

20 A. Just other than I remember the driver
21 saying that he contacted the mechanic, the one that
22 was close to there, and if I recall, he said it was
23 going to be several hours before he can come out.
24 And I told him, I said, well, I have no control over
25 that but here is another mechanic on the list.

1 You're welcome to use him if you want, but he's a
2 long ways from there.

3 Q. Okay. Do you recall anything else about
4 the inspection that would be pertinent?

5 A. The turn signal, I recall the driver
6 vaguely telling me that it's working now but what he
7 did to correct it, whether he tapped on it, I don't
8 know. I don't remember that.

9 Q. Do you have any recollection of seeing it
10 operative?

11 A. Eventually I did see it work, yes.

12 Q. So in the course of your inspection you
13 asked him to turn on the turn signals.

14 A. Exactly, yes.

15 Q. And when he turned on the turn signal at
16 your direction, it did not work; is that correct?

17 A. That's correct.

18 Q. But at some point later it was operative.

19 A. That's correct.

20 MR. MARGARD: I have no further questions
21 of Inspector Irmischer. Thank you, your Honor.

22 EXAMINER PARROT: Thank you very much.

23 MR. MARGARD: And I would call Mr. Joe
24 Turek to the stand, please.

25 (Witness sworn.)

1 EXAMINER PARROT: Please have a seat.

2 - - -

3 JOE TUREK

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Margard:

8 Q. Good afternoon. Would you please state
9 your name for the record.

10 A. My name is Joseph Turek, T-U-R-E-K.

11 Q. By whom are you employed?

12 A. Public Utilities Commission of Ohio.

13 Q. And in what capacity, please, sir?

14 A. I have two roles. I am staff attorney
15 for the transportation department. I also am a
16 supervisor within the compliance division of the
17 transportation department.

18 Q. And in what capacity are you testifying
19 today?

20 A. As a supervisor within the compliance.

21 Q. And tell me what your duties and
22 responsibilities are as a compliance supervisor.

23 A. I basically just help the chief of the
24 compliance with the day-to-day tasks. I review
25 cases, deal with any issues that pop up, really just

1 kind of dealing with everyday problems.

2 Q. Can you briefly describe to us what
3 happens to one of these cases once a report is
4 uploaded to the Commission.

5 A. Sure. Once a report is uploaded to the
6 Commission we send out a fine letter we call it. In
7 this case it would be a Notice of Apparent Violation
8 and Intent to Assess Forfeiture. It's called the NIF
9 letter. The Respondent it goes to then has a chance
10 to have a conference with the staff. It may settle
11 at that time. If it doesn't, then the Respondent can
12 request an administrative hearing. Before that we
13 would send what's known as a Notice of Preliminary
14 Determination. If it doesn't settle, then the
15 Respondent would request an administrative hearing
16 and that's where we are today.

17 Q. Did you have any involvement with this
18 case prior to the request for hearing being filed --

19 A. No.

20 Q. -- that you recall?

21 A. No.

22 Q. Have you reviewed the Commission's file
23 in this case prior to your testifying today?

24 A. Yes.

25 Q. You mentioned a couple of different

1 notices, a Notice of Intent to Assess Forfeiture.

2 A. Uh-huh.

3 Q. And a Notice of Preliminary
4 Determination.

5 A. Yes.

6 Q. Were those notices sent to the Respondent
7 in this case? Do you know?

8 A. Yes.

9 Q. And based on your opinion, were they
10 submitted, served in a timely fashion?

11 A. Yes.

12 Q. And what's the purpose of those notices?

13 A. Just to alert the Respondent of the
14 violations that were found and what the monetary
15 penalty is for them, if any.

16 Q. And their rights?

17 A. And their rights as to request a
18 conference after the first notice or request an
19 administrative hearing after the NPD.

20 Q. And so a conference was conducted in this
21 case?

22 A. Yes.

23 Q. And a Notice of Preliminary Determination
24 was sent following that conference.

25 A. Yes.

1 MR. MARGARD: Your Honors, may I
2 approach?

3 EXAMINER PARROT: You may.

4 MR. MARGARD: Your Honor, I have marked
5 for purposes of identification as Staff Exhibit 2 the
6 Notice of Preliminary Determination sent to the
7 Respondent on March 19, 2014.

8 EXAMINER PARROT: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Turek, do you have before you what's
11 been marked as Staff Exhibit 2?

12 A. Yes.

13 Q. And this is, in fact, the Notice of
14 Preliminary Determination sent to the Respondent; is
15 that correct?

16 A. It is, yes.

17 Q. And this is a document that is maintained
18 as part of the Commission's files?

19 A. Yes.

20 Q. Now, this document sets forth the alleged
21 forfeiture amount in this case; is that correct?

22 A. Yes.

23 Q. Can you describe how that forfeiture
24 amount is determined, please.

25 A. Yes. The compliance division maintains a

1 fine schedule of violations that are grouped as group
2 1, 2, 3, and 4 violations. There's also hazard
3 violations. That's not relevant here. And each
4 violation falls into one of those groups and
5 depending on each group there is a different --
6 different dollar amount for each group of violation.

7 Q. Are fees assessed for violations that are
8 not out of service?

9 A. Not for groups 1, 2, and 3 -- not for
10 groups 1, 2, and 3.

11 Q. On Staff Exhibit No. 2 we see a number of
12 violations that have a group 0.

13 A. Yes.

14 Q. Does that signify merely there is no
15 assessments for those?

16 A. Yeah. Those are nonassessable so they
17 are nonassessable, there's no fine. There's no fine
18 for those violations.

19 Q. Okay. There are two group 1 violations;
20 is that correct?

21 A. Yes.

22 Q. And it indicates that the total of the
23 group 1 violations is \$250.

24 A. Yes.

25 Q. Are there separate assessments for each

1 of these violations?

2 A. The fine schedule dictates that for two
3 group 1 violations found in an inspection the fine is
4 \$250. Had there been one violation, one group 1
5 violation, it would have been 100, two is \$250.

6 Q. Thank you, sir. And the group 2
7 violation is \$50, correct?

8 A. Yes. One group 2 violation is \$50.

9 Q. Now, how were these -- these fine amounts
10 determined? Do you know? I understand you have a
11 schedule. Is there some standard or national?

12 A. Yeah. We -- we try to follow pretty
13 closely the recommendation fine schedule from the
14 Commercial Vehicle Safety Alliance.

15 Q. And are the dollar amounts assessment in
16 this case consistent with those recommendations?

17 A. Yeah. The dollar amounts are consistent
18 with the process we use, is consistent with it.

19 Q. And is the procedure that you've
20 described here today consistent with the procedure
21 that's applied in each of these inspections?

22 A. Yes.

23 Q. And that procedure was followed in this
24 instance?

25 A. Yes.

1 Q. And you've reviewed both that procedure
2 and the fee assessments in this case and have found
3 them to be accurate; is that correct?

4 A. Yes.

5 Q. And they are fair and reasonable in your
6 opinion?

7 A. Yes.

8 MR. MARGARD: Thank you, your Honor. I
9 have no further questions of Mr. Turek.

10 EXAMINER PARROT: Thank you very much.

11 MR. MARGARD: Your Honor, that would
12 conclude staff's case and I would respectfully move
13 for the admission of Staff Exhibits 1 and 2.

14 EXAMINER PARROT: And Staff Exhibits 1
15 and 2 will be admitted into the record.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER PARROT: Mr. Walawender, at this
18 time you may call any witnesses and that would
19 include yourself. If you are preparing to testify,
20 please bring any documents with you to the witness
21 stand.

22 MR. WALAWENDER: You would like to
23 introduce Tom Hendler, he has been with me. Right
24 after the inspection we were talking on the phone so
25 whatever he has to say.

1 EXAMINER PARROT: Okay. So you both plan
2 to testify today?

3 MR. WALAWENDER: I will. I don't know.

4 MR. HENDLER: I will.

5 EXAMINER PARROT: Okay. I will leave it
6 to you to decide who it makes sense to start with,
7 likely you. Just go ahead and set your exhibits
8 there and raise your right hand for me.

9 (Witness sworn.)

10 EXAMINER PARROT: Please have a seat.
11 And because you are proceeding today without counsel
12 if you just wish to give your statement in a
13 narrative fashion and then once you've concluded let
14 me know that and at that point we'll allow staff to
15 ask any questions that they may have.

16 MR. WALAWENDER: Sure. Thank you.

17 - - -

18 WIESLAW J. WALAWENDER
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: The day began the 29th. I
23 picked up the load a few days before that in the
24 Rochester area. It was a -- it was a pantry food
25 service for the government load. It was a load of

1 onions, just typical transfer to the state of Texas
2 at that time. And as I recall, I left -- I stayed
3 home for about a day or so, and I normally during
4 those kinds of longer trips, I always do the
5 inspection around the truck to make sure everything
6 is in park. I did climb underneath the truck. I
7 have checked for lights. I have checked for other
8 safety things that are important to make a trip,
9 round trip that's over 4,000 miles.

10 I left that Saturday from home, I believe
11 around 6 p.m., maybe something like that. I drove up
12 to Northern Ohio and retired for the night. At that
13 point I think it was around Ashtabula, Exit 223, I
14 believe.

15 The following day in the morning I did a
16 walk around, did the pretrip inspection. It was a
17 cold day, so obviously it's -- takes a little bit
18 longer time, maybe 15 minutes. I didn't see anything
19 out of range that I could -- I could call truck
20 inoperable or unsafe on the road.

21 Began traveling around I would say 12
22 o'clock. Actually can I get my logbooks?

23 EXAMINER PARROT: Yes.

24 THE WITNESS: Okay. The pickup took
25 place on the 26th. I left home on the 25th around

1 10 o'clock at night. I positioned myself for the --
 2 I'm sorry, on the 26th for the 27th for the pickup.
 3 Obviously it's an onion place so it takes them
 4 forever to do it, but once they decided to, it's
 5 pretty quick, boom, boom, comes in in 15 minutes or
 6 so, it's in.

7 I brought the truck home on the 27th,
 8 actually to the vicinity of Buffalo, and Tom picked
 9 me up at that point. I went home because obviously
 10 it would be out of route, so I left it at the truck
 11 stop.

12 On the 28th I left at 6 -- 6:15 p.m. I
 13 drove to New Kingston, Ohio. I'm sorry, I was wrong.
 14 I stated New Kingston, Ohio, which is I took my break
 15 at 9:30 in the morning. I did DOT inspection,
 16 pretrip inspection. Traveled to Berkshire, Ohio,
 17 around 1 o'clock which is an Exit 131 which is Flying
 18 J. An hour -- an hour and 30 minutes lunch, I guess,
 19 and I don't recall specifics right now. What I do
 20 recall is that I did check for everything. I did
 21 walk around at that point and began traveling.

22 Within 10 minutes or so traveling I was
 23 pulled over by -- I mean, I see there was a service
 24 vehicle inspector. I didn't know who it was. And
 25 the vehicle traveled, flipped the lights on me. I

1 pulled to the side of the road, put my four ways on.
2 I stopped, exited the vehicle, went towards the
3 officer, and the officer exited the vehicle at that
4 point and told me to move on into the rest area.

5 So another quarter of a mile, half a
6 mile, whatever it was, he was following me and we
7 went to the rest area at that point and this is
8 correct. And at that point I was at the back of the
9 vehicle. I seen the lights on, the driver's side was
10 on. The back of the vehicle, if I recall correctly,
11 they were on, the lights were. The blinkers were
12 operating at that point because they were on. I
13 didn't go to the front of the vehicle. I don't know
14 that.

15 And upon the inspection nothing really
16 sounded out of the ordinary. In fact, I have been
17 inspected by this officer in the past, if I recall
18 correctly, on Route 3 at the rest area a number of
19 times, at least four times in the past. Never had
20 any problem, major problem like that.

21 And what was interesting at that point is
22 that the officer did ask me to test for the valve,
23 the kick valve, and because that trailer had a little
24 problem before with the gladhand coming off I had a
25 little clamp in there so in order to get to the clamp

1 to actually disconnect the red line, I had to pull
2 that cable connecting the trailer, the electrical
3 cable, and I did pull that out, and at that point the
4 inspection takes place. I didn't know. The
5 inspector didn't tell me anything. He was giving me
6 demands, and I was following demands. I didn't
7 expect -- I had a pretty good relationship -- not
8 really relationship but working relationship with
9 this individual, so I never expected anything else.

10 At that -- after 20 minutes or so doing
11 the inspection and walk around and things like that,
12 the officer comes in with the -- with the report.
13 It's asking me pretty much -- I was sitting -- I was
14 in the driver's seat. He said, well, here is your
15 paperwork. Here is the report. Sign it here. So
16 normally -- I didn't question anything I was signing,
17 not signing. Basically I signed it. Then I saw the
18 paperwork. At that point he announced to me that I
19 am out of service.

20 And at that point I exited the vehicle.
21 The officer was walking to his service vehicle on the
22 back, and I basically asked which -- which items are
23 in question. And he did tell me at that point in his
24 vehicle there was oil on the front, the brake on the
25 trailer was out of adjustment, and light wasn't

1 working. The first thing what I did was I went to
2 the front of the trailer, I pushed on the cable, put
3 my blinkers on, went back. In fact, prior to going
4 to that I actually pulled the whole light out because
5 I thought maybe there was a wiring problem. It
6 wasn't really because as long as I had everything
7 out, I went back and pushed the cable back, and it
8 was blinking. I reinstalled everything all together.

9 Then I went after this, I told the
10 officer about it is working now, exactly what he
11 referred in the testimony. At that point I went and
12 looked -- I was kind of dumbfounded because the
13 brakes on the trailer was pretty -- actually pretty
14 new, about 5,000 or so, new drums, the chambers were
15 pretty new, and stuff like that. I was sort of
16 dumbfounded how that could happen. What I did note
17 there was a -- there was a chalk mark that seemed to
18 be in, the further mark, than any other three stamps.
19 So that was one thing that I noticed. I didn't
20 measure that because I didn't have a tape. I didn't
21 have any way to do that.

22 Then I crawled on my knees around the
23 truck on the driver's side and I am looking and I see
24 some wetness there but I -- it was from the bottom
25 up. It wasn't from the top. It was actually a

1 little bit on the side too, so I'm thinking where is
2 this coming from? So I took -- I went to my driver's
3 side to my cab. I got the napkin because any time
4 you have wetness in a brake -- brake drums it will
5 carry over, splash all the way around. So the
6 leaking -- leaking hub will actually cause all kinds
7 of problems because it will contaminate the metal,
8 and it is definitely going to contaminate the brake
9 shoes which is pretty much they are junk, you can't
10 do anything with.

11 So what has happened was -- what has
12 happened was I pulled the napkin. It was actually a
13 napkin from my, I guess, dinner and I took -- there
14 was an opening on the drum. I ran it through with my
15 finger, and the napkin, white napkin, I didn't see
16 anything really. I mean, there was dust. That's
17 what it was. I walked back to the officer. I asked
18 about the officer to reinspect the vehicle. And he
19 basically told me he is not going to do that, that I
20 need to call the mechanic, and the mechanic is going
21 to reinspect for me which I was actually dumbfounded
22 by that statement myself.

23 MR. HENDLER: I think at this point you
24 should see the pictures.

25 THE WITNESS: I am going to introduce

1 them because -- right now.

2 EXAMINER PARROT: I was going to mention
3 if you do have documents, please make sure you refer
4 to them and then we'll just --

5 THE WITNESS: At that point when I walked
6 to the officer and I asked him to inspect it, he
7 refused to do that basically and I asked at least
8 four times and then my idea was, I said, okay, this
9 is a problem. Let me go to the Freightliner dealer.
10 It's not that far. You can follow me. I go in
11 there, I push into the service line. Let's find out
12 what's going on here. And the officer said no. You
13 have to pretty much call somebody, some mechanic,
14 come over here and fix it on the spot.

15 At that point he did pull this -- this --
16 this particular piece of paper which is in his
17 testimony, actually he has a list of several -- I
18 think 12 different shops, and he did mark -- put a
19 mark to Heavy Duty Service, X; next one Rusty's
20 Towing, X; and Ernie's Truck Service, X. The officer
21 did that.

22 EXAMINER PARROT: Okay. So let's give a
23 copy to counsel, Mr. Margard.

24 MR. MARGARD: I want to make sure she
25 sees it.

1 EXAMINER PARROT: One for me and one for
2 the court reporter. Thank you.

3 Let's go ahead and we'll mark this
4 Respondent's Exhibit 1.

5 THE WITNESS: Okay.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 THE WITNESS: So at that point I was -- I
8 don't need by any means to call the question of any
9 kind of arrangements. But what I did was -- I
10 actually -- honestly I was -- I wasn't happy what was
11 happening, but it was actually I found it helpful at
12 least there was a list to know who to call.
13 Especially I -- I would have driven the truck if
14 there was a way to do it to the Freightliner dealer
15 and pretty much have them check it out because that
16 was pretty much the only place that was open on
17 Sunday.

18 But obviously at that point I was out of
19 service. So I did make a phone call first -- on the
20 back of my little thing I have my little notes, my
21 little scribbly notes. The first one I called was
22 Bill of Heavy Duty Service, and I did find the
23 individual a little bit on the heavy side. He pretty
24 much told me he has to come in to see the vehicle
25 first, going to charge me \$266 and about 45 bucks for

1 some kind of a service -- to start with 300 some
2 bucks before he actually comes and takes a look at
3 the vehicle.

4 At that point I think that's a little bit
5 too expensive, so I am going to keep my luck at that
6 point going, so I called Rusty Towing Service and
7 whoever responded, it was a lady how responded, they
8 said they don't do the service on the road on Sunday.

9 Next one was Ernie's Truck and Tire
10 Service. And after several rings, the gentleman
11 responded. He actually was proven -- I mean, he
12 was -- he was attentive to what I had to say, pretty
13 good demeanor I think on the phone, so I kind of -- I
14 need help. Come and help me here. And I explained
15 to him what it was on the report and he said, well,
16 first of all, I don't know -- I don't know what is
17 the -- what is your VIN number, how I am going to
18 pick up the parts because he was in London, Ohio,
19 which is right around -- his travel lane was to come
20 close or go through the area where the dealer was
21 which would have the parts.

22 So I went on my internet because I have
23 internet in the truck. I checked out for -- for the
24 phone number. I called the service people and
25 they -- I spoke with George by the way on the back of

1 my little thing here. And I basically said I am
2 primary -- I have a problem with leaking seal
3 possibly. He goes, well, if it's leaking seal, then
4 you are talking seal, you're talking at least shoes.
5 You need that. He said service guys come in,
6 depending how bad it is, he probably has a torch, if
7 there is contamination of the drum, he can burn it
8 off, some of it. They recommended even a drum, but
9 they didn't have it in stock at that point.

10 So I said, well, just send -- I will send
11 the man by the name of Ernie. I called him back, go
12 and pick it up, those parts, charge me for those
13 parts, bring it in, bring your service truck, jack it
14 up, and let's be done with this.

15 So Ernie did come about 5 o'clock at that
16 point. 3:45, it was about an hour, maybe an hour and
17 a half from that point when I first contacted him.
18 He had the parts. He jacked the truck up and at that
19 point -- let me see, I will give you the exhibit
20 here.

21 I have Exhibit No. 2, your Honor, please.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. HENDLER: Do you need the trucking
24 stuff?

25 THE WITNESS: It is Ernie's Trucking

1 Service.

2 MR. HENDLER: Do you have it in the
3 picture?

4 THE WITNESS: Yeah, yeah, there is a
5 picture.

6 MR. HENDLER: Okay.

7 THE WITNESS: So Ernie basically jacked
8 the truck up, pulled the tire, pulled the wheel, and
9 basically he kind of looked at me, he says there is a
10 little bit of sweat on the inside of the hub but it's
11 used truck but there's no leakage here. He goes,
12 well -- he goes that will be -- that would be the
13 case where you really don't need those shoes.

14 So at that point he basically -- he
15 basically asked -- told me that there is no point of
16 changing -- he is going to change the wheel -- the
17 seal because he already took it out, so he is going
18 to change the seal, but he is not going to be
19 changing those shoes. And here is the copy and the
20 Exhibit No. 1, I guess.

21 EXAMINER PARROT: Make this -- we will
22 make this No. 3.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 THE WITNESS: And if we look at No. 3 --

25 EXAMINER PARROT: Mr. Walawender, sorry

1 to interrupt you, before we move on to 3, if you
2 could describe for us in more detail what Exhibit No.
3 2 reflects just to make sure our record is clear
4 today.

5 THE WITNESS: I took pictures of the
6 Ernie truck that responded to the service call.

7 EXAMINER PARROT: That's the photo on the
8 top of Exhibit 2 and what's the photo on the bottom?

9 THE WITNESS: That is the drum. That is
10 the drum that came off after -- right after taking it
11 off.

12 EXAMINER PARROT: This is Exhibit 3 now.

13 THE WITNESS: Exhibit 3 is the picture of
14 the shoes from the bottom to the top, and if you look
15 in the little openings where the rivets go, there
16 would be oil contamination and those holes will be
17 filled out.

18 MR. HENDLER: This picture here, Wies.

19 THE WITNESS: Yeah.

20 MR. HENDLER: This is the one, your
21 Honor, if I could approach?

22 EXAMINER PARROT: Let's give the
23 originals to Mr. Walawender. Thank you.

24 MR. HENDLER: Clearly indicates there's
25 no grease whatsoever.

1 THE WITNESS: So this was the one -- I
2 guess I had one more to present here.

3 EXAMINER PARROT: Okay. This is
4 showing --

5 MR. HENDLER: You have a partial here,
6 Wies.

7 THE WITNESS: Exhibit No. 3 is showing a
8 picture underneath this.

9 EXAMINER PARROT: And I am going --

10 THE WITNESS: The picture on the
11 bottom --

12 EXAMINER PARROT: I am going to re-mark
13 this as Exhibit 4.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 THE WITNESS: The date is wrong because I
16 was a little bit under the emotional stress here so
17 when I was setting up the battery, I thought it was
18 the 30th so --

19 EXAMINER PARROT: Okay. Exhibit 4,
20 again, what does this --

21 THE WITNESS: The Exhibit 4 is showing
22 the bottom -- the top picture is showing the bottom
23 of the shoe because I actually climbed underneath of
24 it and I took a picture like that.

25 EXAMINER PARROT: Okay. And on the

1 bottom?

2 THE WITNESS: Drum, a very close look at
3 the drum and all those we don't see -- we don't see
4 an oil contamination, direct oil contamination that
5 would affect the safety.

6 MR. HENDLER: The mechanic had written it
7 off in the exhibit.

8 EXAMINER PARROT: All right. We will
9 give you a chance to. Your turn next.

10 THE WITNESS: Okay. And I guess I have
11 one more here, one more here showing a very close
12 look, this is the top, the shoe where we look at the
13 rivets there is no -- there is no contamination,
14 direct contamination of that.

15 EXAMINER PARROT: And then the photo on
16 the bottom is also the shoe again it looks like; is
17 that correct? And this one we'll mark Exhibit 5.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 THE WITNESS: So quite honestly is I kind
20 of felt -- I would say I kind of felt I wouldn't say
21 prejudiced but some kind -- the officer didn't take
22 the time actually to reinspect that. I kind of --
23 kind of felt that was -- there was something missing
24 there I want to say. I don't want to -- as I said
25 many times, I have worked with this officer before.

1 He has been always decent before so I have no really
2 reason to call in question his character or anything
3 like that. I wouldn't do that.

4 But the same time I am a little bit in a
5 bind here because I already know why things happened
6 the way they did. Now, when Ernie responded, I also
7 asked him to measure the brake on the trailer that
8 was called in question by the officer doing his
9 inspection, the axle No. 4. Ernie went out there, he
10 measured, he came up with 1 inch. I don't know how
11 that happened. And the mark, the chalk mark was off
12 because after I got -- actually got to Texas and I
13 stopped at Home Depot and I got the measurement tape
14 and I put a little twine when the brakes were applied
15 and when they were released, the travel distance on
16 the stem was mismarked. Mistake? I don't know.

17 But those brake shoes, those brakes were
18 done, as I said, about 5,000 miles earlier or third
19 week of November. And the drums were brand new on
20 that trailer. The shoes were brand new on the
21 trailer. Brake chambers were not. The slack
22 adjustors were not but there is no reason why the
23 slack adjustors would be out like that. They don't
24 do it.

25 Now, one more thing I wanted to bring up.

1 The little light on the right side or passenger side
2 in the middle when I did walk around, I did find that
3 the bracket was pushed out, and the cable is actually
4 connected at that point.

5 So possibly, Officer, maybe there was
6 bump. I don't know what happened on that one, but on
7 that trailer it was never -- I mean, I put it back
8 together and the light went back, works, and I went
9 to Texas and on the way back lights were working.

10 The light on the top of the trailer, yes,
11 there was a burnout. That's the light that was but
12 the only thing is the officer said he pulled me over
13 for the obvious reason for no light on the top. I
14 don't believe I had a running light at that point
15 because it was not dark enough yet. So I don't know
16 how you can see which light is off if they are not
17 on? I don't know how that happens. So I wanted to
18 introduce a copy of the receipt, repair receipt.

19 EXAMINER PARROT: Okay. We will mark
20 this as Exhibit 6, Respondent's Exhibit 6.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 THE WITNESS: And I also wanted to
23 introduce to the court or to the hearing Commission
24 the copy of the receipt that -- for the purchase of
25 the seal and of the purchase of the shoes. In fact,

1 I brought the shoes with me if you would like to see.
2 There is a whole brand new box. I dragged them in
3 here if that's necessary.

4 EXAMINER PARROT: All right. Let's mark
5 the receipt for the brake shoes as Respondent's
6 Exhibit 7.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 THE WITNESS: It's here, the whole box is
9 here, and it's actually useless because it's a --
10 it's right here. When the brakes were taken out,
11 they were about 50 percent, and according to the
12 rivet you can see that. It was about a good quarter.
13 Did you get a copy of the receipt?

14 And now is a copy of the report that was
15 given to me by officer but it's kind of printed on
16 ghost paper. What it is it kind of disappears with
17 time. On the second page this is the original
18 signature of Ernie the mechanic which is what he
19 wrote right here. And he basically said "Right front
20 brakes shoes was dry (a drum too) wheel seal leaking,
21 sweating. Axle No. 4 right on trailer measure 1
22 inch." That's the mechanic's findings.

23 EXAMINER PARROT: All right. Let's mark
24 this copy of the report Respondent's Exhibit 8.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 THE WITNESS: The way I operate -- I want
2 to state to the Commission the way I operate if I
3 felt there was an equipment failure and not all those
4 evidence that I presented here, I wouldn't be here.
5 I would have paid a fine and there would be no
6 discussion. I would be wasting my time. Me and Tom,
7 we woke up and drove to be here for the whole night
8 and we are going to be driving another night. It's
9 about 360 miles one way. So it's more than about
10 money. It's about principle here. I think it's
11 about justice with just principle here, and I am
12 asking the Commission to basically and your Honor to
13 basically render the just judgment in this case.

14 That's what I am here for. So I think
15 that wraps up everything here.

16 EXAMINER PARROT: Okay. Then at this
17 point we'll see if staff has questions so have a seat
18 there and.

19 THE WITNESS: Okay. One more thing I
20 wanted to add because of the situation it did cost me
21 \$409 on the road and two days delayed delivery. It
22 was an issue. Government loads want to be on time,
23 so actually it was delivered on the 2nd of January
24 which meant I spent New Year's on the road. I
25 planned to be with my friend on the 1st in January.

1 Thank you.

2 EXAMINER PARROT: Thank you,
3 Mr. Walawender.

4 Mr. Margard, any questions?

5 MR. MARGARD: Just a couple of questions,
6 if I may, your Honor.

7 EXAMINER PARROT: You may.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Margard:

11 Q. Mr. Walawender, with respect to Exhibit
12 1, the list of repair providers, have you ever had
13 service done in this area before, this geographic
14 area?

15 A. Yes, yes, I did.

16 Q. Did you have a service provider you would
17 have chosen had you been able to?

18 A. If -- if that was -- I was going to make
19 a phone call. I didn't have those numbers on me at
20 that time, but I was going to make a phone call into
21 Freightliner which I certainly had access to because
22 I did purchase some parts from Freightliner before.
23 I know exactly where they are at and also other
24 trucks that was a transfer route at that point. If
25 the officer did allow me to do that, I would have

1 done just exactly that.

2 Q. You weren't prevented from calling those
3 places.

4 A. No, no. If the officer had allowed me to
5 drive --

6 Q. Okay.

7 A. -- the vehicle, that would be my choice.

8 Q. I understand. But given this you could
9 not drive your vehicle --

10 A. I would have called -- I would have
11 called AAA -- not AAA, the TA to send their service
12 vehicle because I have an account with them.

13 Q. Is there a reason you didn't call them?

14 A. I guess it was a -- I was surprised by
15 the whole situation. It's -- things were developing
16 pretty quick.

17 Q. You weren't told that you couldn't.

18 A. I didn't expect this to happen, let's put
19 it this way.

20 Q. Okay.

21 A. So I did call those numbers. The officer
22 wished to call those numbers. He kind of
23 recommended. I felt kind of obligated due to respect
24 to him. And that's what I did.

25 Q. And you don't have any problem with the

1 service that Ernie's Repair Service provided to you.

2 A. No. I mean, this was the only time I
3 actually worked with Ernie and this is the last time
4 I saw the gentleman. I never -- I never knew him
5 before. I never really have any dealings with him
6 before.

7 Q. The photographs you have given us, you
8 took these yourself?

9 A. Yes, I did.

10 Q. And with the camera, with a phone, or
11 something?

12 A. No. This was my -- this is actually my
13 camera that I carry.

14 Q. Oh, very good. Okay.

15 A. Right here.

16 Q. And these were taken the date of the
17 inspection, correct?

18 A. Yeah. Right immediately where the
19 service vehicle was on so that was the only way to do
20 it because everything was out.

21 Q. I understand.

22 A. And as I admit, I mean, I did -- I did
23 set up the date wrong. I thought it was the 30th.

24 Q. I just wanted to be certain you were the
25 one that took the pictures. Thank you.

1 A. I do honestly believe the discoloration
2 or some of the stuff the officer might have seen I do
3 believe on that there was a heavy-duty pothole. I
4 don't know if there was a pothole. When I came in,
5 there was some kind of delivery tanker at the Flying
6 J at that point. Possibly there was residue of that.
7 I don't know.

8 Q. Okay. Did, in fact, Ernie replace the
9 wheel seal?

10 A. He did because there was just no other
11 way around it at that point because once you take
12 those things out of the hub you don't want to
13 reinstall the old seal. It's going to leak at that
14 point really good. Please understand I do -- I do
15 have a mechanical experience myself, and I have
16 worked on those things so for the most part.

17 Q. Okay. Have you ever had inspection
18 violations before for issues with your lights?

19 A. There was in -- I recall there was state
20 of Mississippi in June of that year where one of the
21 wires broke on a -- on a valve but that was -- that
22 was out of service. I think that was an out of
23 service situation, and it was repaired there on the
24 spot. There was one time that was in the state of
25 Ohio that the officer up by Bucyrus was actually

1 claiming I was speeding. I went to the hearing, and
2 the prosecutor offered the exchange, so-called deal,
3 on the lights, whatever. Well, but other than that,
4 I mean, on those trailers for all practical purposes
5 you never know what the lights are going to do.

6 Q. Okay.

7 A. There is a fluctuation in weather. There
8 is a fluctuation in salt on the wires. If they are
9 off, I try to take care of the problem if there was a
10 problem existing. I wouldn't drive a vehicle with no
11 lights.

12 Q. I understand. I also understood you to
13 say that at the beginning of the inspection there
14 were a variety of things that you were plugging and
15 unplugging to enable the inspector to do his job.

16 A. He did ask me to drop the red line to get
17 to it. I had to disconnect the trailer with that --
18 with the plug in. There is a seven-prong plug in.
19 Possibly during the installing, it wasn't placed
20 correctly into it but I do remember specifically the
21 officer asked me to do that, the valve test, the
22 popoff valve test.

23 Q. I am just checking to see if part of your
24 testimony today maybe part of the reason for the
25 officer's findings was because maybe things weren't

1 tight at the time of the inspection.

2 A. It's possible. I don't know. I cannot
3 answer that. What I do know is when I went back,
4 when I pulled that little blinker on, that there was
5 a charge for that of \$50. I pulled the whole casing
6 out, all the wires, and I'm -- I flipped the lights
7 on, and I am doing that just trying to see if some of
8 the wires disconnected and the light was not coming
9 on at that point and I went back, I pushed it back,
10 and the light came back on.

11 Q. So clearly the light didn't work at one
12 point but did work at one point.

13 A. Well, it's probably -- what I am thinking
14 is probably the officer must have done the inspection
15 with the lights after this was done and that's him to
16 know that because I don't know that at that point.
17 It's probably due to the -- to the disconnection
18 because they are -- they are little -- little prongs.
19 They are split in half, and sometimes when you
20 have -- when you push it all the way back, things
21 don't connect.

22 Q. You're not -- you're not saying that the
23 officer was clearly lying about not seeing the light;
24 you're just saying there are circumstances why he
25 might not have seen it.

1 A. Absolutely.

2 MR. MARGARD: Okay. That's all I have.

3 Thank you.

4 EXAMINER PARROT: Thank you,
5 Mr. Walawender.

6 Next witness.

7 MR. HENDLER: Good. All right.

8 MR. WALAWENDER: You need to go up there,
9 Tom.

10 MR. HENDLER: Yep. I have been waiting
11 for this.

12 (Witness sworn.)

13 EXAMINER PARROT: All right. Have a seat
14 and it will be the same kind of thing. Just make
15 your statement in a narrative fashion and then we
16 will give Mr. Margard a chance to ask any questions
17 he might have when you're finished.

18 - - -

19 THOMAS HENDLER
20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: All right. My name is
24 Thomas M. H-E-N-D-L-E-R. I am a friend of Wies
25 Walawender. I have been a friend of Wies Walawender

1 since 1997. I know the man inside and out. He is an
2 excellent mechanic. He has all kinds of heavy
3 equipment and I mean heavy, super big, long things to
4 jack the truck with, compressor, you name the tool
5 he's got it. And when he goes out on these trips, he
6 does all these inspections. He checks things. No
7 one can expect a truck to go up and down these bumpy
8 roads and never have an issue whatsoever.

9 In this particular case the officer
10 claims that there was oil leaking into -- into the
11 cylinder, okay, or into the drum, okay? The pictures
12 clearly shows there was no oil leaking into
13 whatsoever. It may have been a grease seal issue but
14 that was repaired by the mechanic. The mechanic came
15 up there from the list and told Wies point blank
16 there is no reason for me to go any further because
17 there's nothing else wrong. He wrote it on the paper
18 and it's been proven, okay?

19 As far as I'm concerned, this thing
20 should be dismissed, okay? I'm not saying anybody
21 lied. I'm not saying anybody made any major
22 mistakes, but the facts of the case are what they
23 are. Now, if you are shutting him down and it was a
24 very important load, a timed load, if you are
25 shutting him down for a safety violation, all well

1 and good but when the mechanic comes up to the -- to
2 the unit and looks at it and says there is no safety
3 issue here and writes it down for proof, there should
4 not have been an issue at that point.

5 Now, Mr. Walawender should have in my
6 opinion been allowed to drive at least to the
7 Freightliner with your -- you in tail, okay, so it
8 would have been by a highly professional person that
9 works on those trucks, okay? It didn't happen in
10 this case. It should have. But all I am saying I
11 think this case should be dismissed on all those
12 merits. We put a lot of time and a lot of effort to
13 come down here, and I want that on the record. I
14 feel that strongly about it.

15 Any questions?

16 EXAMINER PARROT: Mr. Margard, questions?

17 MR. MARGARD: Just a couple, please,
18 thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Margard:

22 Q. You were not with Mr. Walawender --

23 A. At the time of the incident, no, I was
24 not. But he keeps in contact with me 24/7 when he is
25 on the road, when any issues come up, everything

1 else, so I know what he was telling me. I couldn't
2 tell you I visually saw it until I saw the pictures,
3 but when he came back with that truck, we went over
4 it.

5 Q. And you didn't conduct the pretrip
6 inspection with him?

7 A. No, sir, I did not. I mean, I call a
8 spade a spade. That's what it is. But I know that
9 man does his job. I know for a fact he changes his
10 own tires, does his own brakes, does his own lines,
11 everything because I have been there and I've watched
12 him and I have done it with him so I know what he is
13 supposed to be doing.

14 MR. MARGARD: Very good. Thank you. I
15 have nothing further.

16 EXAMINER PARROT: Thank you very much.

17 THE WITNESS: All right. Thank you.

18 EXAMINER PARROT: All right.

19 Mr. Walawender, did you wish to have these documents
20 submitted to the Commission for its consideration?

21 MR. WALAWENDER: Yes, please.

22 EXAMINER PARROT: Does the staff have any
23 objection to admission?

24 MR. MARGARD: One moment, please, your
25 Honor.

1 EXAMINER PARROT: You may.

2 MR. MARGARD: Your Honor, I have no
3 objection to the admission of the exhibits. However,
4 I would like to move to strike portions of
5 Mr. Hendler's testimony. Certainly to the extent
6 that he testified as to Mr. Walawender's character, I
7 have no problem with that testimony, his knowledge of
8 him and his experience as a driver and so forth. At
9 least insofar as it involves the incidents
10 surrounding this inspection, the gentleman was not
11 present either at the time of the initial inspection
12 or during the trip or during any of the incidents
13 that are at issue here. And while I certainly
14 appreciate his opinion and that he had an opportunity
15 to voice that opinion, it is not competent evidence
16 and should not be considered in rendering a decision
17 in this case.

18 EXAMINER PARROT: And I appreciate that,
19 Mr. Margard. I am going to deny the motion to strike
20 and allow the Commission to determine the appropriate
21 weight to give to Mr. Hendler's testimony. I believe
22 I heard you had no objection to the admission of the
23 exhibits.

24 MR. MARGARD: I do not.

25 EXAMINER PARROT: So with that the

Respondent's Exhibits 1 through 8 will be admitted
into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PARROT: Let's go off the record
at this point.

(Discussion off the record.)

EXAMINER PARROT: Let's go back on the
record. The parties have agreed to file a written
statement on addressing their positions in this case
for the Commission's consideration. Those written
statements will be due on July 30.

Is there anything else to come before us
today?

All right. Hearing nothing we are
adjourned. Thank you.

(Thereupon, the hearing was concluded at
2:44 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, July 2,
2014, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5889)

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/16/2014 11:15:50 AM

in

Case No(s). 14-0702-TR-CVF

Summary: Transcript in the matter of Western Aries Construction, LLC hearing held on 07/02/14 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.