

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Yeah Man :  
Trucking, Inc., Notice of :  
Apparent Violation and : Case No. 15-1679-TR-CVF  
Intent to Assess :  
Forfeiture. :

- - -

PROCEEDINGS

before Mr. Bryce McKenney, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at  
10:00 a.m. on Tuesday, March 8, 2016.

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APPEARANCES:

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On behalf of the Staff of the Public  
Utilities Commission of Ohio.

Rion, Rion and Rion, LPA, Inc.  
By Mr. Bradley D. Anderson  
130 West Second Street, Suite 2150  
P.O. Box 10126  
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On behalf of Yeah Man Trucking, Inc.

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1 Tuesday Morning Session,  
2 March 8, 2016.

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4 EXAMINER McKENNEY: Let's go on the  
5 record. Good morning. The Public Utilities  
6 Commission of Ohio calls for hearing at this time and  
7 place, Case No. 15-1679-TR-CVF, being In the Matter  
8 of Yeah Man Trucking, Inc., Notice of Apparent  
9 Violation and Intent to Assess Forfeiture.

10 My name is Bryce McKenney. I'm the  
11 Attorney Examiner assigned by the Commission to hear  
12 this case. At this time I'd like to take appearances  
13 of the parties. We'll begin with Staff.

14 MS. MESSENGER: Thank you, your Honor. On  
15 behalf of the Staff of the Public Utilities  
16 Commission of Ohio, Natalia Messenger, Assistant  
17 Attorney General, 180 East Broad Street, Columbus,  
18 Ohio 43215.

19 EXAMINER McKENNEY: Thank you.

20 MR. ANDERSON: On behalf of Yeah Man  
21 Trucking, I'm Bradley Anderson of Rion, Rion and  
22 Rion, 130 West Second Street, Suite 2150, Dayton,  
23 Ohio 45402.

24 EXAMINER McKENNEY: Thank you,  
25 Mr. Anderson.

1           Before we went on the record, briefly,  
2   Ms. Messenger, you wanted to make a note that the  
3   parties have agreed to some matters in this case; is  
4   that right?

5           MS. MESSENGER: Yes, your Honor. The  
6   Respondent has agreed not to dispute the flat tire  
7   violation and he has also stipulated to the fact that  
8   he has received the Notice of Preliminary  
9   Determination. Your Honor, I'd like to mark the  
10   Notice.

11           EXAMINER MCKENNEY: That would be Staff  
12   Exhibit 1?

13           MS. MESSENGER: Staff Exhibit 1, yes.

14           EXAMINER MCKENNEY: It will be so marked.

15           (EXHIBIT MARKED FOR IDENTIFICATION.)

16           MS. MESSENGER: May I approach?

17           EXAMINER MCKENNEY: You may.

18           Since you've stipulated to the receipt of  
19   the NPD, am I correct that you have no objection to  
20   the admission of the NPD?

21           MR. ANDERSON: That's correct.

22           EXAMINER MCKENNEY: So admitted.

23           (EXHIBIT ADMITTED INTO EVIDENCE.)

24           EXAMINER MCKENNEY: Ms. Messenger.

25           MS. MESSENGER: Yes, your Honor. I would

1 like to call Inspector Doug Mowen to the stand.

2 EXAMINER McKENNEY: Please raise your  
3 right hand.

4 (Witness sworn.)

5 EXAMINER McKENNEY: You may be seated.

6 - - -

7 DOUGLAS MOWEN

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

10 DIRECT EXAMINATION

11 By Ms. Messenger:

12 Q. Can you, please, state your name and spell  
13 your last name for the record.

14 A. Yes. It's Doug or Douglas Mowen,  
15 M-o-w-e-n.

16 Q. And your business address?

17 A. 1275 Experiment Farm Road, Troy, Ohio.

18 Q. Who is your employer?

19 A. The Ohio State Highway Patrol.

20 Q. What is your position with the Highway  
21 Patrol?

22 A. I am a Motor Carrier Supervisor,  
23 Enforcement Supervisor.

24 Q. What are your duties as a supervisor?

25 A. Well, I'm a motor carrier inspector as

1 well. So we inspect trucks, you know, semis, buses,  
2 and evaluate, you know, determine if there's  
3 violations or not violations, and then I have four  
4 people that work underneath of me.

5 Q. How long have you been with the Highway  
6 Patrol as an inspector?

7 A. As an inspector, 2014.

8 Q. What are your certifications and training?

9 A. I'm certified in North American A, North  
10 American B, which is truck and for all versions of  
11 the truck. I'm certified in hazardous materials,  
12 cargo tanks, buses, school buses.

13 Q. Were you on duty on June 7th, 2015?

14 A. Not initially, no. I was off on that  
15 morning. I was called out.

16 Q. Okay. You were on duty then when you were  
17 called?

18 A. Right. I was called around 7:00 in the  
19 morning to come to a crash on Interstate 70.

20 Q. Okay. And that was on June 7, 2015?

21 A. Yes.

22 Q. Okay. Were you in uniform that day?

23 A. Yes, I was.

24 Q. And in a marked vehicle?

25 A. Yes, I was.

1 Q. Did you inspect a vehicle that resulted in  
2 your preparing a report?

3 A. Yes, I did.

4 Q. And, today, do you have an independent  
5 recollection of that inspection?

6 A. Yes.

7 MS. MESSENGER: Your Honor, I'd like to  
8 mark the Examination Report as Staff Exhibit 2.

9 EXAMINER MCKENNEY: It will be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 EXAMINER MCKENNEY: You may approach.

12 Q. Inspector Mowen, do you recognize this  
13 document?

14 A. Yes, I do.

15 Q. What is it?

16 A. This is the printed inspection report.  
17 After we do an inspection we type it into our  
18 computer with our findings and all the information  
19 about the inspection.

20 Q. Was it prepared by you?

21 A. Yes, it was.

22 Q. And how did you prepare it?

23 A. I typed it into our computer that is in my  
24 marked vehicle.

25 Q. Was this inspection report prepared in the



1 ordinary course of your duties?

2 A. Yes.

3 Q. Was it prepared at the time of the  
4 inspection?

5 A. Yes.

6 Q. Is this an accurate representation of the  
7 report you created at the time of the inspection?

8 A. Yes, it is.

9 Q. What do the numbers in the "Report Number"  
10 at the top represent?

11 A. The Report Number is the number that the  
12 PUCO, the Public Utilities Commission, and the feds  
13 use to track what they are. My unit number is 3263,  
14 and then the number of inspections that are on that  
15 computer at that time which is 1812.

16 Q. Okay. And what time did the inspection  
17 take place?

18 A. I started the inspection at 7:30 in the  
19 morning and I ended it around 8:15.

20 Q. What was the inspection level for this  
21 inspection?

22 A. It's a Level II which is considered a  
23 walk-around inspection.

24 Q. And what does that entail?

25 A. Check lights. You check the paperwork.

1 There was only so much paperwork due to a crash and  
2 the driver wasn't there, but we did have his driver's  
3 license number. We then do a walk-around of the  
4 truck and just look at all the different -- see if  
5 there's anything wrong with the truck at the time.

6 Q. Okay. Was this report accurate at the  
7 time you inputted it into the computer?

8 A. Yes, it was.

9 Q. And what do you do with this report once  
10 you finish putting the information in?

11 A. After it's finished, we then what they  
12 call "upload" it into the computer system and it  
13 comes to the Public Utilities Commission.

14 Q. Okay. Who is the carrier identified on  
15 this report?

16 A. Yeah Man Trucking.

17 Q. And how did you identify the carrier?

18 A. Through the DOT number on the side of the  
19 truck, and then it also has the names, but the DOT  
20 number is what we pull our reports off of.

21 Q. Where did the inspection take place?

22 A. It took place right at Mile Post 24 where  
23 the accident scene happened.

24 Q. How did you come to inspect this vehicle?  
25 How did you come upon the vehicle?

1           A.       I was called out to come by Sergeant  
2 Thorne. She was on the scene and I was called out.  
3 I actually was trying to get one of my other guys to  
4 come to the scene and they were all busy that day, so  
5 then I went and took the inspection as the supervisor  
6 to make sure somebody was there.

7           Q.       Okay. Can you describe what you saw as  
8 you pulled up to the accident site?

9           A.       Yeah. Actually, I pulled up at an angle  
10 behind the truck and the first thing I saw was the  
11 brake chamber hanging. That was the very first thing  
12 I saw.

13                   EXAMINER MCKENNEY: I'm sorry. What did  
14 you see hanging?

15                   THE WITNESS: A brake chamber.

16                   EXAMINER MCKENNEY: A brake chamber.

17                   THE WITNESS: Yeah. On the very last  
18 axle.

19           Q.       Okay. Referring back to Staff Exhibit 2,  
20 the Report, if you look down, the last violation  
21 listed in that violation section you listed  
22 393.48(a). What does that section provide?

23           A.       That -- just if a -- the codes that we  
24 have to use through the feds, the Federal Motor  
25 Carrier Safety Administration, the codes we have to

1 use, if there's a brake chamber hanging or if there's  
2 something to that effect, that is the code that we  
3 use, the 393.48(a).

4 Q. Okay. Can you read the violation  
5 description for that section?

6 A. It says "Inoperative/defective brakes -  
7 axle 6 left brake chamber mounting bracket is not  
8 connected to chamber."

9 Q. Can you describe what an axle 6 left brake  
10 chamber mounting bracket is?

11 A. Where the brake chamber connects into the  
12 mounting bracket, it's held in by bolts, those were  
13 not in there. So it was, I don't want to say  
14 dangling down, but it was dangling.

15 Q. So what does the bracket connect the brake  
16 chamber to?

17 A. The bracket makes it solid so the brake  
18 chamber doesn't move around when the brakes are being  
19 applied. So the chamber itself doesn't move.

20 Q. What is the effect of the chamber hanging,  
21 not being connected to the bracket?

22 A. Well, if it's just hanging it could cause  
23 the brakes not to work effectively. But the bigger  
24 thing is if the pushrod would ever happen to break,  
25 it could cause that brake chamber to bounce, which

1 could cause another auto accident.

2 Q. And what is a pushrod?

3 A. That is the back part of the brake where  
4 it moves in and out of the brake and that is what  
5 affects -- so when the pushrod moves in and out, that  
6 makes the brakes work to the drum.

7 Q. So it's connected to the brake chamber?

8 A. Correct.

9 Q. Okay. If the brake chamber were connected  
10 to the mounting bracket would it be hanging from the  
11 truck? Would it be visible from the back of the  
12 truck?

13 A. If it were connected?

14 Q. If it were connected.

15 A. Yes. Because it was a dump truck, the way  
16 it was, when you pull up right behind it you would  
17 see it.

18 Q. And there's a difference? You can clearly  
19 see the difference when you pull up whether it's  
20 connected or whether it's hanging?

21 A. Yeah. Yes.

22 Q. Referring back to the report, can you  
23 explain what the "Crash" column indicates there?

24 A. The "Crash" column is when we were doing  
25 the inspection when we are at a crash, it's based

1 upon knowledge, general knowledge. We are  
2 determining if there's a violation of the truck if it  
3 was caused by the crash or as a result of the crash  
4 or if it's something that was not.

5 So the ones where I have the "Y," for  
6 example the front bumper on the left side, that was  
7 where the truck and the other truck hit, that was as  
8 a result of the crash. The left front turn signal  
9 being broken off and inoperable, that was as a result  
10 of the crash because that's where the crash hit.

11 Where I have then the one -- the one tag,  
12 what they call tag axle, that's one of the center  
13 axles had a flat tire, I'm not sure if that was  
14 caused because it was near the front, if there was  
15 anything that could have caused it to be flat.

16 The other one was clear on the back right  
17 side tire that they weren't disputing, that was  
18 nowhere near where the crash itself was, so that  
19 wouldn't have caused that tire to be flat. And we  
20 determined the brake chamber, that wasn't really near  
21 where the -- so we said no, it wasn't as a result of  
22 the crash.

23 Q. Let's back up a little bit. Can you  
24 describe what the circumstances were of the site you  
25 pulled up to; how the accident had occurred?

1           A.       The dump truck had pulled out -- started  
2       to pull out, was coming off of a construction lane,  
3       and it came out and another semi clipped the front  
4       corner, so that's where it hit the front corner. And  
5       then the resulting of the rest of the crash happened  
6       after that. But all that was for this particular one  
7       was it just kind of clipped that front corner. So it  
8       cut the front tire, the front end, bent the front  
9       bumper and broke the turn signal.

10       Q.       And how did you determine that?

11       A.       Well, the turn signal glass was right  
12       there, and then just from speaking to the other  
13       officers on the scene of what they had seen, you  
14       know, from as a result of the crash.

15       Q.       Okay. So could this accident have caused  
16       the mounting bracket to disconnect from the chamber?

17       A.       Not in my opinion, no.

18       Q.       And why is that?

19       A.       Because it wasn't near where the crash  
20       actually happened. It was on the back end of the  
21       truck and that had no damage as a result of the  
22       crash.

23       Q.       Why is it important to have the bracket  
24       properly connected?

25       A.       Well, for two reasons. Number one, though

1 I wouldn't say the brakes won't work, they may not  
2 work as efficiently as they should. And the second  
3 reason is if that pushrod, that I explained earlier,  
4 were ever to break off, it could be bouncing down the  
5 road and cause other accidents.

6 Q. And if the chamber breaks off, that tire  
7 would have no brakes; is that accurate?

8 A. If the chamber broke off?

9 Q. Yes.

10 A. That particular axle for that tire,  
11 correct.

12 Q. Okay. Did anyone else take a look at the  
13 rear of the vehicle to see this violation?

14 A. Yes.

15 Q. And who was that?

16 A. Sergeant Yvonne Thorne. She was on the  
17 scene as well.

18 Q. How did you determine that the driver  
19 violated Section 393.48(a)?

20 A. Just by the -- well, then we looked at it  
21 closer when we did the actual walk-around and looked  
22 at it closer to see that it wasn't attached.

23 Q. Okay. After the inspection, you completed  
24 the report. Did you sign the report?

25 A. Yes, I did.



1 Q. Did you give the driver a copy of that  
2 report?

3 A. We didn't give it because the driver  
4 wasn't there, he had already left to go, I believe,  
5 for a drug test, but we put a copy, I believe --  
6 well, I know I did, I gave a copy of it to the  
7 trooper who was investigating the accident to get a  
8 copy to the company.

9 Q. Okay. Did you submit this report to the  
10 Commission?

11 A. Yes.

12 MS. MESSENGER: That's all I have for  
13 Inspector Mowen at this time. I would like to  
14 reserve him for rebuttal.

15 EXAMINER MCKENNEY: Okay. A couple quick  
16 questions that I have and then we'll move to  
17 cross-examination.

18 Can you explain what axle 6 is, where  
19 exactly located on the truck this is?

20 THE WITNESS: Like, the first axle would  
21 be the steer axle, would be axle 1. And then if he  
22 has any of the little, I don't know if you've seen on  
23 a dump truck, the little drop down axles where they  
24 can add more, so for more weight they can add more.  
25 So the sixth axle actually is the last axle of the

1 truck in this particular instance.

2 EXAMINER MCKENNEY: Passenger side?

3 THE WITNESS: It was on the driver's side.

4 EXAMINER MCKENNEY: Driver's side.

5 THE WITNESS: Yeah. Left side. Axle 6,  
6 left side.

7 EXAMINER MCKENNEY: Thank you.

8 THE WITNESS: Uh-huh.

9 EXAMINER MCKENNEY: Mr. Anderson,  
10 cross-examination.

11 MR. ANDERSON: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Anderson:

15 Q. Inspector Mowen, you inspected this  
16 vehicle after an accident on I-70, right?

17 A. Yes, sir.

18 Q. And that accident involved a semi-tractor  
19 that struck the vehicle that you inspected before you  
20 got there, right?

21 A. Yes, sir.

22 Q. And did you ever learn how fast that  
23 vehicle was going at the time that it struck --

24 A. No.

25 Q. -- the --

1           A.       No, we don't -- that part of it we don't  
2 do. All we do is look at the trucks.

3           Q.       Okay. But if the greater the force that  
4 the truck is impacted with, the more likely there is  
5 to be damage that was caused by that accident, right?

6           A.       Right.

7           Q.       Okay. So if I told you that truck was  
8 going at least 60 miles an hour and even after impact  
9 it continued to travel another, you know, 1,000 feet  
10 before it overturned and killed somebody, that might  
11 impact how your determination as to whether or not  
12 the force of that impact might have caused some of  
13 these violations?

14                   MS. MESSENGER: Your Honor, I'm going to  
15 object to that question. I think it's speculating as  
16 to how fast the truck was going. There's no evidence  
17 of that on the record.

18                   MR. ANDERSON: It's a hypothetical  
19 question. He's offered an opinion as to what this  
20 was caused by. I'm offering a hypothetical as to  
21 whether or not that information would change his  
22 opinion.

23                   EXAMINER MCKENNEY: The objection is  
24 overruled. I'll allow you to answer to the best of  
25 your ability.

1           A.       I mean, to the best of my ability, I don't  
2 really have an answer. I mean, I wouldn't think that  
3 being on the very back axle, the destruction of the  
4 front of the truck wasn't so great that if it was  
5 hit, like you said, at 60 miles-an-hour, and I'm  
6 using your example, if it hit -- the front end of the  
7 truck was not completely destroyed like it had hit it  
8 at such a hard force. Okay? It bent the front  
9 bumper and it broke off a turn signal light and cut a  
10 front tire and that was really the only damage, major  
11 damage to the front of that truck.

12                       So if it would have -- I mean, if it would  
13 have spun it around, flipped it around, I can see  
14 what you were saying. But, in this instance, I  
15 didn't, you know, just from my opinion, that damage  
16 wasn't that great that it hit it that hard.

17           Q.       Okay. So your determination about whether  
18 or not it was caused by the crash is based  
19 principally upon the location of where the collision  
20 occurred and the other damage that you saw.

21           A.       Correct.

22           Q.       Okay. And you didn't review any other,  
23 like, the Highway Patrol report.

24           A.       No.

25           Q.       And you didn't -- you haven't seen any

1 accident reconstruction report.

2 A. No, sir.

3 Q. And you're not -- you're not an expert in  
4 accident reconstruction yourself.

5 A. No, sir.

6 Q. Okay. Now, you said when you came up  
7 behind it you said you saw it, the brake chamber  
8 dangling?

9 A. It was -- it was like this, you know, at  
10 an angle and it was not connected and I could see  
11 that because it's just one of those things we look at  
12 when we are coming up behind vehicles. That's one of  
13 the first things we look at, whether it be a dump  
14 truck, whether it be a semi-trailer, whatever, it's  
15 one of the kind of things we look for and look at.  
16 It just happened to catch my attention. It was at an  
17 angle, and I kind of pulled up at an angle, too,  
18 behind it.

19 Q. But if there are mudflaps on the back of  
20 the trailer -- or, this is a dump truck, on the back  
21 of the dump truck, would that obstruct your view?

22 A. Well, if they were all the way across, but  
23 that's not what I remember. They weren't all the way  
24 across.

25 Q. Did you take any pictures when you did the

1 inspection?

2 A. Yes, I did, but the next day when I went  
3 to upload them they were all corrupted. My camera  
4 had went bad on me. And I am someone who takes a lot  
5 of pictures when we do inspections, but it's just a  
6 bad luck day. They were all corrupted.

7 Q. We don't have any pictures.

8 A. I don't have any, no.

9 Q. Okay. So your recollection is -- well,  
10 what is your recollection about whether or not there  
11 were mudflaps on the back of the dump truck?

12 A. I -- I believe I remember them. If I'm  
13 just sitting here trying to remember, they were  
14 behind the tires.

15 Q. Just the tires?

16 A. But I -- but I don't even -- I just  
17 remember pulling up behind that truck and seeing a  
18 dangling brake chamber. I remember that.

19 Q. But you're not sure about the mudflaps.

20 A. No, I'm not.

21 Q. And it's a walk-around inspection. Does  
22 that mean would you get under it and crawl under it?

23 A. No, we did not do that.

24 Q. Okay.

25 A. That is called a Level I which is when we

1 get under and crawl under them on our creepers and  
2 everything. We did not do that. We didn't feel that  
3 we needed to do that.

4 MR. ANDERSON: Okay. All right. So I'd  
5 like to mark a couple of exhibits here. "Respondent  
6 Exhibits," is that how you want to mark it?

7 EXAMINER MCKENNEY: Sure. Respondent's  
8 Exhibit 1. We'll go off the record.

9 (Off the record.)

10 EXAMINER MCKENNEY: Let's go back on the  
11 record. Respondent's Exhibits 1 through 4 have been  
12 marked.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 EXAMINER MCKENNEY: Mr. Anderson.

15 MR. ANDERSON: Thank you.

16 Q. (By Mr. Anderson) Inspector, I'm going to  
17 show you what's been marked as Respondent's  
18 Exhibit 1. I'm going to represent to you that's a  
19 photo of the mounting bracket on axle 6 on that  
20 vehicle. It wasn't taken on that day.

21 A. It was or was not?

22 Q. It wasn't taken on that day.

23 A. Okay.

24 Q. So is this what the mounting bracket would  
25 appear to look like on that axle 6 if you were

1 underneath the vehicle?

2 A. Underneath the vehicle, I believe so. I  
3 mean . . .

4 EXAMINER MCKENNEY: Is this the mounting  
5 bracket?

6 THE WITNESS: Yes.

7 Q. What part of that is the mounting bracket?

8 A. Well, this part here.

9 Q. Okay. You're indicating at the bottom,  
10 the part that's bolted down in the bottom right part  
11 of the photo --

12 A. Right.

13 Q. -- and across to the left?

14 A. Correct.

15 Q. Okay. Is there any part of that what's  
16 there which is not part of the original equipment on  
17 that truck? Do you know?

18 A. I can't -- from that picture I can't tell.

19 Q. Okay. Let me -- let me show you --

20 A. I wish you had a better picture.

21 Q. Let me show you Respondent's Exhibit 3.  
22 Does that help at all?

23 MS. MESSENGER: Your Honor, I'm going to  
24 object to these photos and the representation that  
25 they are of the same truck and of the same bracket.



1 There are no time stamps on the photos of when they  
2 were taken and we also don't know that this is  
3 actually that same truck.

4 EXAMINER MCKENNEY: The objection is  
5 noted. However, at this point he's not moved to  
6 introduce these into the record -- or, admit these  
7 into the record. So we'll note the continuing  
8 objection to the admission of these until a  
9 foundation has been laid or the photos have been  
10 established as reliable. At this time you may use  
11 them as a demonstrative exhibit for demonstrative  
12 purposes.

13 A. Have you got a picture of the whole  
14 assembly at one time?

15 Q. I'll give you Exhibits 1, 2, 3, and 4.

16 A. Because, I mean, they're a lot of the  
17 same.

18 Q. It's different angles of the same thing.

19 A. Yeah, of the same thing. Where it was  
20 fastened in and how they were hanging was in front of  
21 the part that was not -- which would have been this  
22 part, because the pushrod, the pushrod part was not  
23 the part that was hanging. It was the front side  
24 that is hanging, so because the pushrod is still  
25 connected, okay? This part is not. It's the

1 pushrod. The other side that was not connected back  
2 here, the bolts were not in, so which causes it to  
3 hang like that and it's still connected into the  
4 pushrod, but the part of it was dropped down.

5 EXAMINER MCKENNEY: Mr. Anderson and  
6 Inspector Mowen, we have a lot of "here's" and  
7 "there's" and "that's." This is going to make for a  
8 really muddy record to review. So just try to do  
9 your best to clarify what you mean when you're saying  
10 "this" and "that" and pointing to the photos.

11 THE WITNESS: I'm sorry.

12 EXAMINER MCKENNEY: I know it's going to  
13 be difficult. Just try to do the best you can.

14 A. The very front edge of the brake chamber  
15 also mounts in and it is the part that was dropped  
16 down. The back part where the pushrod comes out and  
17 goes in, that part was fine, that part was connected  
18 to the pushrods. The brakes would work, but it  
19 wasn't connected in to the mounting, what I call the  
20 "mounting bracket," maybe I used the wrong wording  
21 when I did it, but to me that's the mounting bracket,  
22 to the axle, okay, that's where the bolts were  
23 missing.

24 Q. Okay. So you said the brakes would work,  
25 right?

1 A. Yes.

2 Q. Okay.

3 A. Maybe not to their max effect, but they  
4 will work, yes. If somebody hit the brakes, even  
5 with that pushrod going in and out, it will still  
6 work, just maybe not to their max effect.

7 Q. Okay. Did you do any testing to  
8 determine --

9 A. No, I did not, because all I did was list  
10 what we saw which was the mounting bracket not  
11 connected.

12 Q. Okay. So you didn't get in the truck.

13 A. No.

14 Q. You didn't move it at all or anything like  
15 that.

16 A. No. And the reason we did not do that is  
17 even though the mounting brackets weren't there,  
18 there was -- having spoken to the troopers who were  
19 on the scene, there wasn't anyone saying, "Oh, my  
20 brakes didn't work," anything like that, where I  
21 needed to check the effectiveness of the brakes,  
22 because that wasn't a part of the crash.

23 Q. That wasn't an issue for them at all.

24 A. No, as a part of the crash. If somebody  
25 would have said -- if the driver had said "My brakes

1 didn't work," yeah, I would have rolled it and we  
2 would have checked every break and, you know,  
3 everything. But we didn't have to do that because  
4 that really wasn't a part of the determination of the  
5 crash.

6 Q. Okay. So your view of the -- of this  
7 brake chamber was based upon the view from the rear  
8 of the vehicle?

9 A. Well, and then once we started the actual  
10 inspection, I then got a closer look and saw that.  
11 You know, initially, you see things and then when you  
12 do the closer inspection you actually get in there  
13 and you actually look at it and I could see the bolts  
14 were not fastened in.

15 Q. Okay. Have you ever seen a dump truck  
16 that had an extra bracket put on there to help  
17 stiffen the brakes and prevent damage to the brakes?

18 A. I can't say that I have, no. I just  
19 haven't.

20 Q. I mean, is it possible that what you saw  
21 that didn't have a bolt in it was that extra bracket  
22 and not the bracket for the mounting chamber?

23 A. Well, again, it wouldn't have been --  
24 there was nothing holding that front portion, that's  
25 what I'm saying. There's a possibility that

1 something could have been in there, another bracket,  
2 but in the very front of where it fastens up to the  
3 axle, that part is where the bolts were missing and  
4 that's where it was causing it to lean.

5 MR. ANDERSON: That's all the questions I  
6 have right now.

7 EXAMINER MCKENNEY: Thank you.

8 Redirect, Ms. Messenger?

9 MS. MESSENGER: Yes, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Ms. Messenger:

13 Q. Are you familiar with generally a  
14 construction zone --

15 A. Yes.

16 Q. -- when you're driving down the highway?  
17 Are there typically reduced speeds in construction  
18 zones?

19 A. Yes.

20 Q. Was there a reduced speed in this  
21 construction zone?

22 A. Yes, there would have been.

23 Q. Okay. And you were describing -- the  
24 pictures that the Respondent's counsel showed you,  
25 were they representative of what you saw that day?

1           A.       No.

2           Q.       So there was a portion of the brake  
3 chamber -- the brake chamber was still connected to  
4 the dump truck, is that right, it was still connected  
5 to something?

6           A.       The pushrod was still connected. The  
7 front part was what was not connected where the bolts  
8 were missing.

9           Q.       Okay. If there was another bracket, did  
10 you see an extra bracket on the truck?

11          A.       I didn't see anything else.

12          Q.       So even if there was another bracket on  
13 there, is it accurate to say the chamber was not  
14 connected to anything on that end?

15          A.       Correct.

16               MS. MESSENGER: Okay. That's all I have,  
17 your Honor.

18               EXAMINER MCKENNEY: Okay. Thank you,  
19 Ms. Messenger.

20               I have no further questions. You may step  
21 down.

22               THE WITNESS: Thank you.

23               EXAMINER MCKENNEY: You may call your next  
24 witness.

25               MS. MESSENGER: Yes, your Honor. I would

1 like to call Sergeant Yvonne Thorne.

2 EXAMINER MCKENNEY: Please raise your  
3 right hand.

4 (Witness sworn.)

5 EXAMINER MCKENNEY: You may be seated.

6 - - -

7 YVONNE THORNE

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

10 DIRECT EXAMINATION

11 By Ms. Messenger:

12 Q. Good morning. Can you state your name and  
13 spell your last name, please.

14 A. Sergeant Yvonne, Y-v-o-n-n-e, Thorne,  
15 T-h-o-r-n-e.

16 Q. And your business address?

17 A. 1275 Experiment Farm Road, Troy, Ohio  
18 45373.

19 Q. And who is your employer?

20 A. The State of Ohio.

21 Q. What is your position with the State of  
22 Ohio?

23 A. I am a Sergeant in charge of the  
24 commercial motor vehicle section.

25 Q. The section of what?

1           A.       It includes troopers, motor carriers,  
2 school bus inspectors, load limit.

3           Q.       And that's a section of the Highway  
4 Patrol?

5           A.       Yes.

6           Q.       And what is your position?

7           A.       It's considered Commercial Enforcement  
8 Coordinator. I oversee the troopers. I'm also  
9 certified in North American A, Part A, Part B,  
10 hazmat, general hazmat, bulk hazmat, school buses and  
11 passenger buses, and oversee all the troopers and  
12 civilians in the school bus program, motor carrier  
13 and commercial motor vehicle troopers' inspections  
14 and reports.

15          Q.       And how long have you worked for the  
16 Highway Patrol?

17          A.       I've been employed by the Highway Patrol  
18 28 years. I've been in this section since  
19 December 2010.

20          Q.       Were you on duty on June 7th, 2015?

21          A.       Yes, I was. I was working an off-duty  
22 specialty position actually for the construction  
23 company, to provide, I guess, law enforcement  
24 protection, let's say, on the interstate during their  
25 construction work.



1 Q. Did you witness the accident that took  
2 place on the --

3 A. No, I didn't witness the accident. I came  
4 out probably within an hour of the accident itself  
5 for this off-duty specialty. While in my patrol car  
6 I had heard them advise that there was a fatal  
7 involved with a commercial motor vehicle, so I went  
8 there direct and at that time discussed it with the  
9 other officers about getting a motor carrier  
10 investigator there since technically I was assigned  
11 to the Jurgensen Construction Company.

12 Q. Did you call an inspector out to inspect  
13 the vehicle?

14 A. I called Motor Carrier Supervisor Mowen to  
15 see if he was able to get any other motor carriers  
16 there to inspect. He called me back and said he  
17 would be en route.

18 Q. Can you describe what you saw as you --  
19 can you describe your role in this inspection with  
20 Inspector Mowen?

21 A. After I left the scene where the  
22 commercial tractor-trailer had struck the pedestrian  
23 and the dump truck, maybe a quarter-mile west of this  
24 in the eastbound lanes of I-70, so I walked up to  
25 that area and met Inspector Mowen there and then

1 asked him if he would like me to assist him with the  
2 truck inspection.

3 Q. You were present at the time that he was  
4 walking around and inspecting the vehicle?

5 A. Yes.

6 Q. Can you describe what you saw?

7 A. There was just, in my words, somewhat  
8 minor damage to the front left corner of the dump  
9 truck considering another semi had struck it. The  
10 bumper was moved out, there was some debris from the  
11 turn signal lens there. Other than that, there was  
12 no major damage to the actual truck itself.

13 He pointed out the brake chamber and then  
14 we went ahead and we did the lights. I assisted him  
15 with doing the lights. I actually did the turn  
16 signals and the horn for that part of the inspection.

17 Q. Did you see the brake chamber?

18 A. Yes, I did.

19 Q. Did you see if it was connected to the  
20 mounting bracket?

21 A. It appeared to be hanging down, but with  
22 the pushrod it was still somewhat connected.

23 Q. Was it connected to the mounting bracket  
24 on the axle?

25 A. No, it wasn't.

1           Q.       Was there any damage to the rear of the  
2 vehicle?

3           A.       No, there wasn't.

4           Q.       In your opinion could the accident have  
5 caused this violation?

6           A.       There was no damage to that part of the  
7 vehicle. It was just the very front corner of the  
8 dump truck. So, in my opinion, the crash, itself,  
9 did not involve that brake chamber.

10          Q.       Have you ever witnessed or responded to an  
11 accident where a brake chamber has broken off of a  
12 truck and --

13          A.       Caused damage.

14          Q.       -- yeah, caused damage on the highway?

15          A.       Yeah. As a trooper, when I was working at  
16 the Piqua patrol post on Interstate 75, I had an  
17 incident with a minivan, had a baby in the backseat  
18 luckily behind the driver. A brake chamber went  
19 through the front windshield, struck the right front  
20 passenger seat and ended up landing in the back  
21 passenger seat.

22          Q.       Can you describe why it's important for  
23 the chamber to be properly connected to the mounting  
24 bracket?

25          A.       It can cause serious damage to another

1 vehicle. Also, vehicles would try and avoid it. But  
2 mainly just an object coming out with such force can  
3 cause serious damage.

4 Q. In your opinion can the brake function  
5 properly if it isn't connected to the mounting  
6 bracket?

7 A. Yes.

8 Q. And if the chamber were to break off,  
9 would the brake function properly?

10 A. Probably not. It would affect the spring  
11 and the pushrod.

12 MS. MESSENGER: Okay. I have nothing  
13 further for Sergeant Thorne.

14 EXAMINER MCKENNEY: Cross?

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Anderson:

18 Q. Sergeant, do you recall -- you walked  
19 around the vehicle?

20 A. Yes, sir.

21 Q. Do you recall what the mudflaps on the  
22 rear of the vehicle looked like?

23 A. To the best of my recollection there were  
24 not mudflaps completely across. I'm almost positive  
25 that there were just the two mudflaps, the right and

1 left side.

2 Q. Did you take any photographs?

3 A. No, I didn't. It was Inspector Mowen's  
4 report. I was just there assisting him.

5 MR. ANDERSON: No further questions.

6 EXAMINER McKENNEY: Sergeant, in your  
7 opinion would the brakes have been capable of  
8 operating as they were?

9 THE WITNESS: Without actually going  
10 underneath and watching the brakes being applied and  
11 seeing if the pushrod extended out properly, I can't  
12 say.

13 EXAMINER McKENNEY: Okay. Redirect?

14 MS. MESSENGER: I have nothing further.

15 EXAMINER McKENNEY: All right. Thank you.  
16 You may step down.

17 Ms. Messenger?

18 MS. MESSENGER: We have no further  
19 witnesses, your Honor.

20 EXAMINER McKENNEY: All right.

21 MS. MESSENGER: Your Honor, I would like  
22 to move for the admission of Staff Exhibit 2, the  
23 Inspection Report.

24 MR. ANDERSON: No objection.

25 EXAMINER McKENNEY: No objection?

1 MR. ANDERSON: No objection.

2 EXAMINER MCKENNEY: It will be so  
3 admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER MCKENNEY: Mr. Anderson, would  
6 you like a minute?

7 MR. ANDERSON: I think we're ready to go.

8 EXAMINER MCKENNEY: All right.

9 MR. ANDERSON: I call Dane Buckingham.

10 EXAMINER MCKENNEY: Please raise your  
11 right hand.

12 (Witness sworn.)

13 EXAMINER MCKENNEY: You may be seated.

14 - - -

15 DANE V. BUCKINGHAM

16 being first duly sworn, as prescribed by law, was  
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Anderson:

20 Q. Can you please state your full name.

21 A. Dane Vincent Buckingham.

22 Q. And your business address?

23 A. 6811 Folkerth Road, Greenville, Ohio  
24 45331.

25 Q. And it's F-o-l-k-e-r-t-h?

1 A. Yeah. I was going to spell that for her.

2 Q. Are you the owner of Yeah Man Trucking?

3 A. Yes.

4 Q. And how long have you owned Yeah Man  
5 Trucking?

6 A. I was incorporated in 2009.

7 Q. And about how many trucks do you have  
8 running right now?

9 A. 15 to 24, something around there.

10 Q. Okay. And are they -- what type of trucks  
11 do you run?

12 A. Dump trucks and semi trucks, pulling --  
13 the semis will pull trailers, numerous trailers  
14 sometimes.

15 Q. What type of work does your company do?

16 A. We mainly work for John R. Jurgensen or  
17 Barrett Materials doing state highway work.

18 Q. So it's almost exclusively, like, ODOT  
19 jobs?

20 A. 95 percent of what we do is for, yeah, the  
21 State of Ohio or ODOT.

22 Q. Okay. For your dump trucks, what is --  
23 well, for example, on the job that this truck that  
24 we're talking about today, the job it was working  
25 that night, what was entailed in that work, what was

1 the function of that truck?

2 A. We were -- that night I was personally  
3 there. We were on the milling crew that night. We  
4 were milling out right above Route 48. We were on  
5 I-70 westbound.

6 EXAMINER MCKENNEY: What do you mean  
7 "milling crew"?

8 THE WITNESS: Before we lay down new  
9 asphalt on the roads, we take up the old, the mill,  
10 you run in front of it, it shoots it in.

11 Q. Okay. So your dump trucks, you're not  
12 milling it, you guys are in the trucks, waiting for  
13 them to mill up the asphalt and then put it into your  
14 trucks?

15 A. Strictly just hauling the material.

16 Q. Okay. And this was a dump truck that was  
17 involved in this accident?

18 A. Yes, sir.

19 Q. Do you do anything with respect to your  
20 dump trucks to help prevent damage to the brakes or  
21 to modify them to make sure that they're --

22 A. The brake chambers, yes. There are --  
23 when we go to the paving crew, the paver pushes our  
24 trucks in the rear. And so, I weld other brackets  
25 onto the original axle to stiffen up the brake



1 chambers because once you get pushed with a paver,  
2 some pavers are all different, you don't know until  
3 you get out and look, when you're getting pushed  
4 they'll get bent and when they get bent then your  
5 brakes are going to wear crooked and then I get  
6 pulled over. So I try to keep everything as legal  
7 and straight as we can so we don't get tickets.

8 Q. So putting these extra brackets on the  
9 brake chambers, is that required?

10 A. No.

11 Q. Okay. So you could run without those and  
12 it's perfectly legal.

13 A. Yeah. It's just a safety modification to  
14 make everything stiffer, because once they bend, they  
15 bend down, they bend in, it just matters which way or  
16 what, the driver backs into or gets pushed with a  
17 machine.

18 Q. Okay. Now, you weren't driving this dump  
19 truck on that night, were you?

20 A. No, not that specific dump truck, no.

21 Q. Okay. Were you familiar with the  
22 condition of that truck before that accident that  
23 night?

24 A. Yes.

25 Q. Were the brakes operative on that dump

1 truck that night?

2 A. Yes.

3 Q. Okay. Before the accident, I mean.

4 A. Before, yes.

5 Q. Okay.

6 A. And after.

7 Q. Did you test, did you do anything to check  
8 them out?

9 A. They drove the truck away.

10 Q. Who drove the truck away?

11 A. The towing company didn't tow the truck.  
12 They drove it to the tow yard.

13 Q. Okay. So they drove it and the brakes  
14 were operative.

15 A. Yes.

16 Q. Including the axle 6, left side brake?

17 A. Every brake.

18 Q. Okay. Let me show you, I'm just going to  
19 give them all to you. You can tell me which one  
20 shows the best. Respondent's Exhibit 1 through 4,  
21 can you show me on those photographs -- first of all,  
22 when were those photographs taken?

23 A. I took them this morning of the same  
24 truck.

25 Q. The same truck, you took them this

1 morning. So it's not in exactly the same condition  
2 that it was on the day of the violation notice.

3 A. No. I changed what they wrote -- what  
4 they thought they wrote up.

5 Q. Okay. So let's get to the point. What  
6 did they see which wasn't really what they thought  
7 they saw.

8 A. Okay. I put -- on Exhibit -- every  
9 picture you can see here there's one bolt, on either  
10 picture you're looking at I have a bracket. If you  
11 look at Exhibit 3, it's welded straight to the axle  
12 housing and it comes up to the S-cam tube which is  
13 actually the brake chamber, what bolts to it.

14 MS. MESSENGER: I'm sorry. Excuse me.  
15 Can we -- ours aren't marked.

16 MR. ANDERSON: I'm sorry.

17 MS. MESSENGER: Okay. Thank you.

18 Q. All right. So Exhibit 3 we're talking  
19 about?

20 A. Yes.

21 Q. And you were indicating earlier, and I  
22 think what you're indicating is this bracket that's  
23 in the center left of the picture?

24 A. Yes.

25 Q. And then kind of goes up and to the right

1 and ends up being bolted on to something else.

2 A. The S-cam tube.

3 Q. That's the S-cam tube. Okay. That is the  
4 modification that you've made?

5 A. Yes. That's the one that's on most of all  
6 of my trucks, on the dump trucks.

7 Q. And what's the purpose of that bracket?

8 A. All it is is to stiffen up the S-cam tube,  
9 because you can see the tube is on the bottom of the  
10 picture and all it is is it comes straight over and  
11 then it comes straight up. And all that pressure,  
12 when you're getting pushed on the back of your truck,  
13 if your tires aren't big enough or the paver is  
14 different, it will push directly just on the brake  
15 chamber which puts all the pressure or pulling or  
16 pushing on the S-cam tube, which sometimes causes  
17 them to bend down or sideways, which makes your  
18 brakes run crooked if they're bent.

19 Q. Okay. So looking at Respondent's  
20 Exhibit 2 -- sorry, 3, right in the center where  
21 there's a bolt there on that bracket that you said  
22 that was welded on the left end and bolted on the  
23 right. Here there's a bolt in this picture, right?

24 A. Yes.

25 Q. But on the night of the accident, was that

1 bolted on the subject vehicle?

2 A. No, it was not.

3 Q. Okay. Did you look at that personally to  
4 see it?

5 A. Yeah, I got the ticket from them. The  
6 truck was thoroughly looked at after that accident by  
7 me, personally, because I don't want anyone going out  
8 and getting in another wreck just because I didn't  
9 know what all could have possibly been broke after  
10 that wreck.

11 Q. So was that bolt present on the night of  
12 the accident, on that supplemental bracket?

13 A. No, it wasn't.

14 Q. Okay. How about the bolt for the mounting  
15 bracket for the brake chamber, was that present?

16 A. There's -- all the bolts are always  
17 present. The brake chamber comes with studs and the  
18 only thing that holds the brake chamber on are two  
19 nuts and two block washers and, yes, they were  
20 present.

21 Q. Okay. Can you show me in these other  
22 photographs?

23 A. Exhibit 1 is looking straight down at the  
24 slack adjuster and the S-cam tube with the other  
25 bracket I put on on the left-hand side.

1           Q.       Okay. So let's break that down. The left  
2 side, you see a bolt on the left side with the kind  
3 of rectangular bracket kind of going off to the  
4 picture to left and up, that's the supplemental  
5 bracket you put on.

6           A.       Yes.

7           Q.       Okay. And then show me the mounting  
8 bracket for the brake chamber.

9           A.       The mounting bracket is the S-cam tube.  
10 You'll see where there's two holes in it and then  
11 you -- the studs of the brake chamber go right  
12 through and you bolt on -- you put two nuts on them  
13 and the bracket is this, the whole L. It's shaped in  
14 an L, but then the tube's on the bottom, but it's  
15 called the S-cam tube.

16          Q.       Okay. So that's starting on the right, by  
17 this nut here.

18          A.       Yeah. And then it goes straight down to  
19 the circle.

20          Q.       Okay. It goes around and to the left  
21 and --

22          A.       And straight down.

23          Q.       -- down.

24          A.       Uh-huh. That's looking straight down at  
25 the ground.

1 Q. That's looking straight down.

2 A. Yeah.

3 Q. And that is the mounting bracket for --

4 A. Yes.

5 Q. -- the brake chamber.

6 A. Yes.

7 Q. Okay. And there's actually two nuts that  
8 are holding that on, correct?

9 A. Yeah. There's no bolts. Just two nuts.

10 Q. Just two nuts. And this was -- again,  
11 this was taken this morning?

12 A. I took it this morning.

13 Q. But, that night, did you look at it as  
14 well?

15 A. I did not look at it that night. I was  
16 not allowed to go by the truck.

17 Q. Okay. When did you look at it?

18 A. The next day I went to Englewood Towing to  
19 to pay for the truck and just was looking over the  
20 whole truck. And I don't -- the next day I went  
21 there, but we didn't pick up the truck until  
22 everything -- until the inspection and everything was  
23 cleared. So I did not look at this back, because I  
24 did not know I was getting wrote up for it. Right  
25 when I got the ticket is when I went and looked at it

1 and I knew someone messed up and that's the whole  
2 reason we're here.

3 Q. Okay. Between the time of the accident  
4 and the time that you looked at it, had there been  
5 any modifications made to the --

6 A. The truck had not been moved.

7 Q. Okay. So when you looked at it were the  
8 mounting brackets secure?

9 A. Yes.

10 Q. Was the mounting bracket to the brake  
11 chamber secure?

12 A. Yes.

13 Q. But what was missing was what?

14 A. The extra bolt in the bracket that I put  
15 in, to sturdy it, to sturdy it up.

16 Q. Okay. Would that -- the missing bolt on  
17 that extra bracket that you added, would that have  
18 affected the operability of the brakes?

19 A. None.

20 Q. Okay. The inspector said that the brake  
21 chamber, if you came up behind it you'd see that the  
22 brake chamber was hanging down. And we talked about  
23 mudflaps. Tell me about the mudflaps on the back of  
24 this truck.

25 A. On most of my trucks it is impossible to



1 see that, because on all the Yeah Man trucks the  
2 mudflaps go completely across the back of them,  
3 because hauling stone, gravel, and asphalt, we're  
4 going down the road, I don't want any of my  
5 windshields broken when I'm driving around the  
6 interstate.

7 And that's just something, I buy a lot of  
8 windshields, and I try to keep -- I try to keep all  
9 the dirt that knocks off the dump truck on the ground  
10 just for safety. It looks a lot better, because we  
11 put a lot more lights on it for looks and for safety.  
12 But it's impossible to see the back, underneath the  
13 truck.

14 Q. Okay. You talked about most of your  
15 trucks. Let's talk about this one dump truck. At  
16 the time of the accident, at the time of the  
17 inspection, did it have mudflaps all the way across  
18 the back?

19 A. Yes.

20 Q. Okay. So if you pulled up behind it,  
21 would you be able to see --

22 A. You can't see anything.

23 Q. You won't be able to see a brake chamber  
24 mounting bracket hanging down?

25 A. No. You can partially see some of the

1 tire on one of the inner tires on either side, that's  
2 it.

3 Q. Okay. So in order to see -- in order to  
4 see what we have pictured here in these photographs,  
5 Exhibits 2 and 3 which you've mentioned, what would  
6 you have to do?

7 A. Someone has to hold up the middle mudflap  
8 while you go underneath.

9 Q. Would you have to crawl under?

10 A. You don't have to crawl under. You can  
11 bend in under there, but you want to be pretty low  
12 because on all them mudflaps there's either oil or  
13 dirt on the bottom on the back side when you grab it.

14 Q. Okay.

15 A. You'd have to be on your hands and knees,  
16 yes.

17 Q. Otherwise, you're getting oil and grease  
18 on your back.

19 A. And you can't fit, yeah.

20 Q. Let's finish the pictures here. You  
21 described -- this was 1. You talked about 1 and 3.  
22 Let's talk about 2 then. What does 2 show?

23 A. 2 is just a different angle on the driver  
24 side. And I just wanted to show again that when you  
25 look in, when I just pulled up the mudflap or another

1     guy did earlier this morning, he pulled it up, and I  
2     snapped a picture of it of where I put the bolt in,  
3     because when you just first glance it looks like  
4     there has to be a bolt that goes in it.

5           Q.       Okay. So the bolt you're talking about is  
6     just left of center of this picture, right?

7           A.       Yeah.

8           Q.       And the bracket goes from there down to  
9     the lower left?

10          A.       Yeah. It's just the extra bracket I put  
11     on.

12                   EXAMINER McKENNEY: Is this the same  
13     truck?

14                   THE WITNESS: It's the same truck, same  
15     picture, yeah. All these trucks -- all this -- yes,  
16     it's the same truck.

17                   EXAMINER McKENNEY: Is this the same truck  
18     that was in the accident?

19                   THE WITNESS: Yes.

20          Q.       And we haven't talked about 4 yet. Tell  
21     me what angle we're looking at here.

22          A.       I was just holding the phone lower when I  
23     took the picture to -- again, when you're looking in  
24     at the brake chamber to see that that is the only  
25     bracket you see from the rear is that extra one I put

1 on. You have to be all the way up in there and look  
2 down.

3 Q. And on that earlier photograph which I  
4 think was Respondent's Exhibit 1 --

5 A. Yeah.

6 Q. -- you could see the two nuts on the brake  
7 chamber, correct?

8 A. Yes.

9 Q. But here on Respondent's Exhibit 4, can  
10 you see those two nuts?

11 A. No.

12 Q. Okay. So this is taken, Respondent's  
13 Exhibit 4 is taken from the driver's side as you're  
14 bent down low?

15 A. Yes.

16 Q. And you're trying to look at the brake  
17 chamber?

18 A. Yes.

19 Q. And this is what you see?

20 A. Yes.

21 Q. You don't even see those two nuts.

22 A. No.

23 Q. Respondent's Exhibit 1 where you can see  
24 the two nuts, what position are you in to look at  
25 that?

1           A.       I'm all the way into the axle housing,  
2 looking straight down, which you would have to be  
3 either to the side of the brake chamber between the  
4 wheel and the brake chamber or above it.

5           Q.       So you're inside --

6           A.       Tucked in.

7           Q.       -- the wheels at that point.

8           A.       Between them, yes.

9           Q.       Between them.

10           MR. ANDERSON:   Okay.  I think that's all  
11 the questions I have right now.

12           EXAMINER McKENNEY:  All right.  Thank you,  
13 Mr. Anderson.

14                       Cross-examination.

15                               - - -

16                               CROSS-EXAMINATION

17 By Ms. Messenger:

18           Q.       Just to clarify, were you driving the  
19 truck that was involved in the accident?

20           A.       No, not that night.

21           Q.       Okay.  And were you present at the time of  
22 the inspection?

23           A.       No.  We were not -- I was not allowed to  
24 go up there when they were inspecting it.

25           Q.       Okay.  You described your dump trucks

1 being pushed by something, putting some kind of  
2 pressure?

3 A. The paver, yes.

4 Q. Okay. And the pressure that it puts on,  
5 is it the axle?

6 A. The paver is supposed to push on your  
7 wheels, but sometimes there's different pavers for  
8 different applications and you don't know until you  
9 get there what you're going to be doing. But yes,  
10 sometimes if you get crooked in a paver or if it's a  
11 different application with a certain paver, it will  
12 push on your brake chambers instead of your wheels;  
13 some; some.

14 Q. And when it pushes on the brake chamber,  
15 would it cause the brake chamber to become  
16 disconnected from the mounting bracket?

17 A. No. It just bends the S-cam tube, which  
18 you can say is the mounting bracket.

19 Q. So it bends the bracket.

20 A. It bends the bracket, yes.

21 Q. Okay. It bends the bracket, but it  
22 wouldn't cause the bracket to break?

23 A. If you bend it far enough, the bracket,  
24 yes.

25 Q. Could break?

1           A.       The bracket could possibly break. I've  
2 had a lot of them bend, but none of them have broken  
3 so far.

4           Q.       Okay. So if it were to break, could that  
5 cause the brake chamber to hang from the truck?

6           A.       If it were to break, the whole brake  
7 chamber, S-cam tube, slack adjuster, and all,  
8 possibly would fall off if your S-cam which is inside  
9 of the S-cam tube which is hooked up to your brake --  
10 which is hooked up to your slack adjuster, would fall  
11 off.

12          Q.       Okay.

13          A.       If that makes sense. Because it will not  
14 fall off without your -- because the S-cam tube is  
15 inside of the wheel and that's what your brakes run  
16 on and it won't come out because it's put in from the  
17 other way, it's put in from the outside of the truck.

18               MS. MESSENGER: Okay. No further  
19 questions.

20               EXAMINER MCKENNEY: Redirect?

21                               - - -

22                       REDIRECT EXAMINATION

23 By Mr. Anderson:

24          Q.       Did you see any evidence that that had  
25 broken, that any of that had broken on this vehicle

1 that night?

2 A. It was not broken.

3 Q. Did you have to do any repairs to it other  
4 than replacing that one bolt?

5 A. No, nothing was done. And right when I  
6 got the ticket, I did not even put a bolt in there  
7 because I was so upset with how they wrote it up.

8 Q. You were talking about it being pushed by  
9 a paver.

10 A. Yeah.

11 Q. On the night of the accident was that dump  
12 truck being used -- was it being pushed by a paver at  
13 all?

14 A. No. We were on the milling crew. It was  
15 not paving.

16 Q. All right. So had you noticed any  
17 difficulties with that truck before that night in  
18 terms of any bending or breaking of any of these  
19 brackets?

20 A. I was not driving it that night. But my  
21 day driver, if anything at all was wrong with this  
22 truck, he would make sure I knew about it. He's very  
23 persistent.

24 Q. And you didn't get any such reports.

25 A. No.



1 MR. ANDERSON: I just move into evidence  
2 Respondent's Exhibits 1 through 4.

3 EXAMINER McKENNEY: We'll address that.  
4 Do you have another witness or would you like to  
5 rest?

6 MR. ANDERSON: I'm not sure. I'd like to  
7 confer with my client.

8 EXAMINER McKENNEY: Okay. Thank you for  
9 moving those in. I'll rule on the admission of the  
10 exhibits at the close of your case.

11 Mr. Buckingham, you may step down. I have  
12 no further questions.

13 Would you like a minute?

14 MR. ANDERSON: If I could, please.

15 EXAMINER McKENNEY: We'll take a 5-minute  
16 recess. We'll go off the record.

17 (Recess taken.)

18 EXAMINER McKENNEY: Let's go back on the  
19 record.

20 Mr. Anderson, anything further?

21 MR. ANDERSON: Nothing further, just the  
22 admission of the exhibits.

23 EXAMINER McKENNEY: All right. Thank you.

24 As noted earlier, there is a continuing  
25 objection to Respondent's Exhibits 1 through 4.

1 Ms. Messenger, would you like to explain your  
2 objection as to why these should not be admitted into  
3 the record?

4 MS. MESSENGER: Yes, your Honor. There  
5 was no proper foundation laid for the pictures.  
6 There's no time stamp. We don't know when they were  
7 taken; what truck they were on. So we're just  
8 objecting to them.

9 EXAMINER MCKENNEY: Mr. Anderson.

10 MR. ANDERSON: Mr. Buckingham testified  
11 they were taken this morning and they were from the  
12 truck in question. And we didn't try to suggest that  
13 they showed exactly the condition at the time. What  
14 we're trying to do is explain the anatomy of the  
15 brake system and I think it's helpful for that  
16 purpose and I think they should be admitted.

17 EXAMINER MCKENNEY: I agree that they are  
18 helpful for that purpose of demonstrating what is on  
19 the truck and what the parts of the truck are and,  
20 therefore, I allowed them to be used as demonstrative  
21 exhibits, but I find that they should only be used  
22 for that purpose and, therefore, they will not be  
23 admitted into the record in this case.

24 The record, itself, is clear they were  
25 used as demonstrative exhibits and they were helpful

1 in that manner, but because these do not or may not  
2 represent exactly what the truck had on it at the  
3 time of the crash or at the time of the inspection,  
4 they will not be so admitted.

5 Anything further from the parties?

6 MS. MESSENGER: Nothing from Staff, your  
7 Honor.

8 EXAMINER McKENNEY: Thank you,  
9 Ms. Messenger.

10 Mr. Anderson?

11 MR. ANDERSON: No, your Honor.

12 EXAMINER McKENNEY: Ms. Messenger, you  
13 reserved a witness for rebuttal. Do you not intend  
14 to call that witness for rebuttal?

15 MS. MESSENGER: I do not.

16 EXAMINER McKENNEY: All right. Seeing  
17 nothing further, we are adjourned.

18 (Thereupon, the proceedings concluded at  
19 11:12 a.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 Tuesday, March 8, 2016, and carefully compared with my original stenographic notes.

---

Carolyn M. Burke, Registered  
Professional Reporter, and  
Notary Public in and for the  
State of Ohio.

My commission expires July 17, 2018.

- - -

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**Case No(s). 15-1679-TR-CVF**

Summary: Transcript In the matter of Yeah Man Trucking, Inc., hearing held on March 8, 2016.  
electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke,  
Carolyn