

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Rex :
Froedge, Notice of :
Apparent Violation and : Case No. 16-0869-TR-CVF
Intent to Assess :
Forfeiture. :

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PROCEEDINGS

before Mr. James Lynn, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 1:00
p.m. on Thursday, September 15, 2016.

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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
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Mr. Rex Froedge

On his own behalf.

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1 Thursday Afternoon Session,
2 September 15, 2016.

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4 ATTORNEY EXAMINER LYNN: Let's go on the
5 record at this time.

6 The Public Utilities Commission of Ohio
7 has assigned for hearing at this time and place Case
8 No. 16-869-TR-CVF, in the Matter of Rex Froedge,
9 Notice of Apparent Violation and Intent to Assess
10 Forfeiture. I am Jim Lynn, the Attorney Examiner
11 assigned to hear this case.

12 At this time we will have the appearances
13 of the parties. We'll begin with the Ohio Attorney
14 General's Office.

15 MR. MARGARD: Thank you, your Honor. On
16 behalf of the transportation staff of the Public
17 Utilities Commission of Ohio, Mike DeWine, Ohio
18 Attorney General; William Wright, Section Chief,
19 Public Utilities Section; by Assistant Attorney
20 General Werner L. Margard, 30 East Broad Street, 16th
21 Floor, Columbus, Ohio.

22 ATTORNEY EXAMINER LYNN: Thank you.

23 And, Mr. Froedge, if you would indicate
24 your name and address, please.

25 MR. FROEDGE: Rex Froedge, De Motte,

1 Indiana, 9043 Hensley Drive.

2 ATTORNEY EXAMINER LYNN: Thank you. All
3 right. As far as our proceedings today, we will
4 first hear from the staff, Mr. Margard and his
5 witnesses. And, Mr. Froedge, you will have an
6 opportunity to state your opinions as well.

7 MR. FROEDGE: Right.

8 ATTORNEY EXAMINER LYNN: With that in
9 mind, Mr. Margard, would you like to call your first
10 witness.

11 MR. MARGARD: Thank you, your Honor. I
12 would call Trooper Bryan Hann, please.

13 ATTORNEY EXAMINER LYNN: Mr. Hann, could
14 you couple up to the witness stand, raise your right
15 hand, please.

16 (Witness sworn.)

17 ATTORNEY EXAMINER LYNN: Thank you. Have
18 a seat.

19 And, Mr. Margard, please continue.

20 MR. MARGARD: Thank you, your Honor.

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TROOPER BRIAN K. HANN

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Good afternoon. Please state your name
and business address for us.

A. My name is Trooper Brian K. Hann. I'm
assigned out of the Motor Carrier Enforcement out of
the Bucyrus District Headquarters. My report
location is the Ohio Turnpike Post 90, the milepost,
which is rated Exit 118. We do have a P.O. Box if
you want that, P.O. Box 524. We don't get mail
delivered there but there is no number to the
address.

Q. Fine. Thank you. And you are employed
by the State Highway Patrol --

A. Yes, sir.

Q. -- motor Carrier Enforcement Division?

A. Yes.

Q. And what are your duties and
responsibilities in that position?

A. I am -- I handle mostly roadside
inspections on commercial, Hazmat certified, I check
Hazmat vehicles. I can do level III, level II, level

1 I inspections. I look for violations on commercial
2 motor vehicles and conduct inspections on roadside.
3 I also carry on with my trooper duties enforcing the
4 laws around handling crashes. I even do educational
5 stuff where I travel to trucking companies or
6 something and talk to drivers about safety and stuff
7 like that.

8 Q. How long have you been at the Motor
9 Carrier Enforcement Division?

10 A. I am on my second year.

11 Q. And do you have other prior experience
12 with the Patrol?

13 A. Yeah. I've been with the Patrol over 22
14 years as a trooper on the road. I've worked side by
15 side with other motor carriers before I actually got
16 into this position.

17 Q. Now, this was something for which you had
18 to obtain additional training, additional
19 certification?

20 A. Yes. I had to go through I think it was
21 six different classes through our academy. We are
22 trained by outside certified instructors to get
23 certified in AB and then all the different Hazmat
24 certifications.

25 Q. Thank you, sir. Trooper Hann.

1 A. Yep, yes, sir. That's all right.

2 Q. Were you on duty on February 4 of 2016?

3 A. Yes, sir.

4 Q. And in the -- what was your job
5 assignment on that date?

6 A. I was on patrol doing motor -- commercial
7 motor vehicle inspections.

8 Q. In the course of your duties on that
9 date, did you have an opportunity to inspect a
10 vehicle being operated by Mr. Froedge?

11 MR. MARGARD: Am I pronouncing that
12 correctly?

13 A. Yes, I did.

14 Q. And as a result of that inspection, did
15 you have occasion to generate an examination report?

16 A. Yes, I did.

17 Q. And, sir, do you have an independent
18 recollection of that inspection? Do you remember
19 that inspection?

20 A. Yes, I do remember quite a bit of it.

21 Q. Okay. Very good. Thank you.

22 MR. MARGARD: Your Honor, may I approach?

23 ATTORNEY EXAMINER LYNN: Yes, you may.

24 Q. Trooper Hann, I have given you a two-page
25 document marked for purposes of identification as

1 Staff Exhibit No. 1. Can you identify that document
2 for me, please.

3 A. This would be a copy of the
4 Driver/Vehicle Examination Report which I initiated
5 and completed.

6 Q. This was prepared by you; is that
7 correct?

8 A. Yes.

9 Q. And do you have any -- have you reviewed
10 this prior to testifying today?

11 A. Yes.

12 Q. And do you have any corrections or
13 changes to make to this? Does this accurately
14 reflect your inspection on that date?

15 A. From what I can -- this copy looks a
16 little different than the copy I reviewed. For some
17 reason at the bottom "Special Checks" shows up a
18 little different on the way mine prints. But, no,
19 no, it looks like all the violations and stuff. Yes,
20 it looks like the report I submitted.

21 Q. The actual submission that you refer to
22 is done by computer; is that correct?

23 A. Computer, that's correct.

24 Q. Okay. Now, can you tell me what caused
25 you to inspect Mr. Froedge's vehicle on this date?

1 A. Our dispatchers gave out a call of a
2 vehicle towing another vehicle, commercial vehicle,
3 and that people felt that it was unsafe. There was
4 parts flopping around and possibly in danger of
5 falling off the vehicle being in tow.

6 Q. I note in the "Inspection Notes" on the
7 first page of Staff Exhibit 1 it says that you
8 received a complaint and that's the complaint to
9 which you are referring?

10 A. Yes, from our dispatch.

11 Q. Okay. And you were able to locate and
12 identify the vehicle and pull it over for inspection.

13 A. Yes.

14 Q. The report indicates that you performed a
15 level II inspection; is that correct?

16 A. Yes.

17 Q. And what does that entail, please?

18 A. Level II is I am going to check all the
19 documents, paperwork. I am going to do they call it
20 a walk-around. I'm going to check lights, fire
21 safety, both the extinguishers and triangles. I'm
22 going to check the driver's log, his registration. I
23 am going to run the DOT numbers to make sure that
24 they have operating authority and also check load
25 securement.

1 Q. Now, in the course of your inspection,
2 you had occasion to take photographs?

3 A. Yes, I did.

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

5 ATTORNEY EXAMINER LYNN: Yes.

6 Q. Trooper Hann, I have handed you a
7 multi-page document that I have marked for purposes
8 of identification as Staff Exhibit No. 2. If you
9 would review that for me, please, and tell me, if you
10 will, if these were the photographs that you took at
11 the time of your inspection.

12 A. Yes.

13 Q. And these accurately reflect the
14 documents and the scene as you recall it; is that
15 correct?

16 A. Yes.

17 Q. I am going to ask you to turn back to the
18 examination report, if you would, please, sir, and
19 direct your attention to the "Violations" section.
20 And generally what goes into this section as you are
21 preparing your report?

22 A. This -- when I do my inspection reports,
23 if I have a violation either on the driver, the
24 truck, or the trailer, if there is a trailer
25 involved, I will document the violation in this -- in

1 this section, and usually if it needs a little more
2 explaining, there's a section where I can type in
3 an -- a further explanation.

4 Q. And so you would type in the violation
5 code or the section code and then it populates?

6 A. Yeah, it will populate like a general, I
7 believe -- I don't know -- like a general violation.
8 And then if it needs a little more explanation, there
9 is another section that I can type in a little more
10 to clarify what the violation is.

11 Q. And you indicate the unit -- unit 1 in
12 this case is the vehicle and the D designation is for
13 the driver; is that correct?

14 A. Yes.

15 Q. Let me -- let me direct your attention to
16 the specific violations and let's start with the
17 first one. It's denoted 385.337B. Do you see that
18 reference?

19 A. Yes.

20 Q. And can you tell me what this violation
21 is and how you determined that the company was in
22 violation of that section?

23 A. The violation is "operating in violation
24 of the FMCSA operational out of service order for
25 failure to permit safety audit." How I come about

1 that is you run a DOT number on we use an Aspen
 2 program. It's supposed to be real time. It will
 3 show up -- it's usually I think in red it will show
 4 up that there's an issue with the operating
 5 authority. Then I can go to actually the FMCSA
 6 website. I'll open that and double -- dealing with
 7 something as serious, I will double-check. I will
 8 run that and confirm it. There is also an 800 number
 9 which can be called to speak to someone directly that
 10 can check I think in your office. I am assuming they
 11 have an office that I am calling, and they can verify
 12 what I am requesting at the time.

13 Q. Okay. If I ask you to turn to Exhibit 2,
 14 the photographs, on page 7, you refer to the DOT
 15 number. That's the number that's displayed there; is
 16 that correct?

17 A. Yes.

18 Q. And that's the number you would have put
 19 into the Aspen program.

20 A. That's correct.

21 Q. And what did you discover when you did
 22 that on this date?

23 A. Well, I can remember the Aspen program
 24 showed up red, and it had operating authority issue.
 25 So then that's when I went over to the FMCSA website

1 and ran the same number and got the same
2 out-of-service violation.

3 Q. And do you know why the company was
4 placed out of service?

5 A. Other than what it says here, failure to
6 permit a safety audit. I would -- I remember talking
7 to Rex about it, and I think he made a call to
8 someone back at the office, but I was going off of
9 what I had in front of me at the time.

10 Q. Okay. Do you know what the safety audit
11 refers to here?

12 A. To me I think -- the safety audit I
13 believe is what's done out in the field where an
14 inspector goes to like the trucking company or
15 something and checks their paperwork and makes sure
16 they have everything in order, if I am not mistaken.

17 Q. So this would indicate that it either had
18 not been done or was not timely done in some fashion?

19 A. From what I -- from the knowledge I would
20 have there at the side of the road, yes.

21 Q. Okay. Thank you. Let me direct your
22 attention to the second violation which is the
23 failure to secure load. Now, I'll note for the
24 record that no forfeiture is being assessed for this
25 violation but how did you determine that the company

1 was in violation of this section?

2 A. When I was doing my walk-around, there
3 was an exhaust pipe that was on -- I would have to
4 look at the picture -- the one side, it was just
5 sitting there flopping, and at the time it only had
6 one bolt.

7 Now, the photos were taken after the
8 driver had an opportunity to put some straps on it,
9 I've learned now before, I take pictures prior to
10 letting somebody, but he had put that red strap on.
11 It was just sitting there moving around freely. I
12 think there was like one bolt holding it on. To me
13 it was in danger of working itself loose and falling
14 off because it was moving back and forth when I
15 pulled him over. There's also a picture of a fairing
16 there with a strap on it that was sitting there
17 flapping vigorously in the wind as he was going down
18 the road.

19 Q. And we are referring to the
20 photographs --

21 A. Page 6.

22 Q. -- page 6?

23 A. Yes, sir.

24 Q. And you are indicating that the red strap
25 was added after your inspection?

1 A. Yes. It was added as I was doing my
2 inspection. I brought it to the driver's attention,
3 and he wanted to make it right. He got out and put
4 some straps on it.

5 Q. Was the yellow strap added as well?

6 A. Yes.

7 Q. Okay. Thank you.

8 ATTORNEY EXAMINER LYNN: Trooper Hann, a
9 question. It looks to me as though if you go to page
10 5 of Exhibit 2, is this a tractor? What I would
11 describe as a tractor hauling another tractor?

12 THE WITNESS: Yes. I think he has -- he
13 has like I think it -- a fifth wheel type tow device
14 and this was a -- I mean, it looked like either a
15 wrecked or one that needed repaired or something.

16 ATTORNEY EXAMINER LYNN: All right. All
17 right. Thank you.

18 Mr. Margard, back to you.

19 MR. MARGARD: Thank you, your Honor.

20 Q. (By Mr. Margard) Trooper Hann, let me
21 direct your attention now to the third violation
22 noted there, the Section 392.2, and that's a failure
23 to pay UCR fee. Do you know what the UCR fee is?

24 A. Unified carrier registration fee.

25 Q. And how did you determine that the

1 company was in violation of this section?

2 A. It's also the same when you run the DOT
3 number on the Aspen program when you go all the way
4 to the bottom, UCR section, and you can check to see
5 if they have paid the UCR fee for that year.

6 I also -- if there is an issue with that,
7 I will go to the FMCSA website, and when you bring it
8 up, there is another tab you can click on for UCR and
9 it will tell you whether or not they have paid for
10 the operating year you are dealing with.

11 Q. And you would have done that in this
12 case.

13 A. Yes, sir.

14 Q. And you would have confirmed that, in
15 fact, the UCR fee had not been paid.

16 A. Yes, sir.

17 Q. Thank you. Direct your attention to the
18 fourth violation. This is the driver violation,
19 correct?

20 A. Yes, sir.

21 Q. This says the "driver failing to retain
22 previous 7 days records of duty status." How did you
23 determine that Mr. Froedge was in violation of this
24 section?

25 A. I asked him if he had a logbook, and he

1 produced a logbook for me to inspect. According to
2 my picture, I think I also documented there, not
3 current. On 1-30 of 2016, 10 a.m. off duty was his
4 last entry that I had to inspect in front of me.

5 Q. And that's demonstrated by the -- the --

6 A. The pictures which I took.

7 Q. Okay. Very good. Thank you, sir. The
8 next violation is an "inoperable required lamp."
9 Now, there are two such violations, one for a towbar
10 behind the vehicle and one for a left front turn
11 signal.

12 A. Yes, sir.

13 Q. How did you determine for each of these
14 that the company was in violation?

15 A. During my Level II or walk-around
16 inspections, I have the driver -- I do a light check.
17 I will have him operate the turn signals, brake
18 lights, anything that's required, high beams, low
19 beams, marker lights. On the left rear of the towbar
20 when he put on his left rear signal, it didn't flash.
21 It didn't operate. According to the Federal Motor
22 Carrier out-of-service guidelines, any inoperable
23 lights in the rear, turn signal left or right is an
24 out-of-service violation. The inoperable light on
25 the front did not work but that is not an

1 out-of-service violation according to the
2 out-of-service criteria.

3 Q. The out-of-service violation is noted in
4 the column that says "OOS." That signifies out of
5 service, correct?

6 A. Yes, sir.

7 Q. And so there is a yes for the rear light
8 and an N, no, for the front turn light, correct?

9 A. Yes.

10 Q. And then the final violation is for an
11 unsecured fire extinguisher. Can you describe for us
12 how you determined the company would be in violation
13 of this section, please?

14 A. Same thing, when I am doing my
15 inspection, I'll ask the driver if he has his fire
16 extinguisher. I will check to see, one, it has a
17 charge; and, two, that it's safely secured within the
18 cab. I also ask for triangles and stuff like that.

19 Q. And his fire -- he had a fire
20 extinguisher, yes?

21 A. You know, I specific -- I think it was
22 just -- yeah, I think he had one, but it was just
23 sitting on the floor of the cab. I specifically
24 don't remember the specifics on that one.

25 Q. Okay. That's fine. Thank you. And

1 after you've completed your report, do you print this
2 out and give a copy of it to --

3 A. Yes. I will go up to the driver and say
4 these are the issues that we are dealing with, and
5 then I will usually tell them what the course of
6 action is going to be. If it's going to be an
7 out-of-service violation, especially up on the
8 turnpike, I will usually escort them to a safe
9 location before I place them out of service.

10 Q. And do you recall whether you did this in
11 this instance?

12 A. Yeah. I took Exit 110 which is State
13 Route 4 just to the north there, there is a
14 Strawberry Hill gas station with a large gravel
15 parking area.

16 MR. MARGARD: Thank you, your Honor. I
17 have no further questions for the trooper.

18 ATTORNEY EXAMINER LYNN: I have no
19 questions at this time, but you are under oath, so I
20 may ask you some questions later.

21 THE WITNESS: Okay. Yes, sir.

22 ATTORNEY EXAMINER LYNN: Take your seat.

23 Mr. Margard, do you have any additional
24 witnesses?

25 MR. MARGARD: Do you want?

1 ATTORNEY EXAMINER LYNN: Sorry.

2 Mr. Froedge, do you have any questions of the
3 witness?

4 MR. FROEDGE: No, not at this time.

5 ATTORNEY EXAMINER LYNN: Thank you for
6 the reminder.

7 MR. MARGARD: Thank you. Thank you, your
8 Honor. I would like to call Mr. Tom Persinger to the
9 stand, please.

10 ATTORNEY EXAMINER LYNN: Mr. Persinger,
11 please come forward.

12 (Witness sworn.)

13 ATTORNEY EXAMINER LYNN: Please have a
14 seat. Thank you.

15 - - -

16 TOM PERSINGER

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

19 DIRECT EXAMINATION

20 By Mr. Margard:

21 Q. And if you would, please, sir, state your
22 name and your business address.

23 A. My name is Tom Persinger, business
24 address 180 East Broad Street, 4th Floor, Columbus,
25 Ohio 43215.

1 Q. Mr. Persinger, by whom are you employed
2 and in what capacity, please?

3 A. I'm employed by the Public Utilities
4 Commission of Ohio in the Transportation Department
5 in the Compliance Division.

6 Q. And what are your duties and
7 responsibilities in the compliance division?

8 A. My duties include determining fines
9 associated with roadside inspections.

10 Q. And how long have you performed that
11 particular job?

12 A. Over five years.

13 Q. Prior to your testifying today, did you
14 have an opportunity to review the Commission's file
15 with respect to Mr. Froedge?

16 A. Yes, sir.

17 Q. And did that file include the
18 Vehicle/Driver Examination Report that was marked as
19 Staff Exhibit 1?

20 A. Yes, sir.

21 Q. And the photographs marked Staff Exhibit
22 2?

23 A. Yes, sir.

24 Q. Would you please describe for us, sir,
25 how a civil forfeiture is determined for violations

1 of Motor Carrier Safety Regulations?

2 A. Forfeitures are determined after the
3 inspection is uploaded from the inspector at
4 roadside. They are imported into our system, and
5 then depending on the violation that's written, many
6 of the violations will have a particular dollar
7 amount assigned to them based upon the group of
8 violation that they are in.

9 Q. Are you talking about a group -- there is
10 some kind of a schedule or something that determines
11 what the amount of the forfeiture would be?

12 A. Correct. We generally follow the CVSA
13 recommended schedule for fines.

14 Q. When you say generally, your fines are,
15 in fact, consistent with the --

16 A. Yes.

17 Q. -- Commercial Vehicle Safety Alliance?

18 A. Yes, sir.

19 Q. And this schedule is used on all civil
20 forfeiture cases involving violations of the Motor
21 Carrier Safety Regulations?

22 A. Yes, sir.

23 Q. Consistently applied for all carriers and
24 all drivers?

25 A. For the most part. There may be small

1 variability like history that are taken into account
2 but generally it's across the board the same sort of
3 fine associated with each violation regardless of
4 carrier.

5 Q. Were any of those variables or issues
6 involved in this case?

7 A. No, sir.

8 Q. Thank you.

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

10 ATTORNEY EXAMINER LYNN: Yes.

11 Q. Mr. Persinger, I handed you two
12 documents, one marked Staff Exhibit 3 and one marked
13 Staff Exhibit 4. They are both dated March 23 of
14 2016 but are different in content. Do you recognize
15 these documents?

16 A. Yes, sir.

17 Q. And are these documents part of the
18 Commission file with respect to this case that you
19 reviewed prior to testifying today?

20 A. Yes, sir.

21 Q. Let's -- let's take these one at a time,
22 if we can. Let me ask you if you would please refer
23 to Staff Exhibit No. 3 and tell me what this document
24 is, please.

25 A. This document is a notice of preliminary

1 determination letter.

2 Q. And this was directed to whom?

3 A. Mr. Rex Froedge.

4 Q. Froedge, I think, is --

5 A. I apologize. I am not good with
6 pronunciation.

7 Q. I am too if I mispronounce so. And these
8 violations are -- I note it has a case number with a
9 C following it.

10 A. Yes, sir.

11 Q. And that stands for carrier; is that
12 correct?

13 A. Correct. These have violations that are
14 attributed to the carrier/company's record.

15 Q. So those violations denoted by unit 1 on
16 Staff Exhibit 1, the inspection report?

17 A. Correct.

18 Q. Okay. What I would like to do is take a
19 look at these specific violations and ask you about
20 the determination of these -- these assessments, if I
21 can, please. So let me direct your attention first
22 to the one that is coded 385.337B. Do you see that
23 reference?

24 A. Yes, yes, sir.

25 Q. And that indicates it to be a group 4

1 violation?

2 A. Yes, sir.

3 Q. Can you briefly describe -- you mentioned
4 the groups. Can you briefly describe what these
5 groups signify.

6 A. Any of the -- depending upon the group of
7 violations it is in, there can be differing --
8 differing levels of fines on it to take into account
9 different levels of importance per violation since
10 some violations are more irking, more serious than
11 others.

12 Q. And the forfeiture that is assessed here
13 is \$2,750; is that correct?

14 A. Yes, sir.

15 Q. And that's the amount that is specified
16 by the schedule you used by the staff?

17 A. Yes, sir.

18 Q. The violation immediately following it,
19 the 392.2, also a group 4 violation.

20 A. Yes, sir.

21 Q. And this is a failure to pay the UCR fee?

22 A. Yes, sir.

23 Q. Did Trooper Hann accurately describe what
24 this is?

25 A. Yes, sir.

1 Q. And the specified fee for this violation
2 is \$500; is that correct?

3 A. Correct.

4 Q. Now, there follow some totals and I note
5 that there is a -- a group 0 and a total of no
6 forfeiture for group 0. These are a number of
7 violations for which no forfeiture is assessed. Can
8 you please explain why that's the case?

9 A. Based upon what's prescribed in the
10 schedule, those violations were -- were deemed not to
11 be at the appropriate level to place a fine on.

12 Q. Okay. There is a line that says total of
13 group 2 and \$50. And I presume that that refers to
14 the code 393.9, "Inoperable Required Lamp" above?

15 A. Yes, sir.

16 Q. I noted there wasn't something in that
17 forfeiture column but that's what that \$50 refers to;
18 is that correct?

19 A. Correct.

20 Q. And so the total amount of the forfeiture
21 in this case was \$3,300; is that correct?

22 A. My form is showing \$3,250.

23 Q. Oh, I'm sorry.

24 A. My Exhibit 3?

25 Q. Yes. That's for the total of group 4,

1 correct?

2 A. Oh, for group 4, yeah, \$3,250.

3 Q. And \$3,300 for all of the violations.

4 A. Correct.

5 Q. Carrier violations. Glad we clarified
6 that. Thank you. Now, in your opinion were these
7 forfeiture amounts correctly determined?

8 A. Yes, sir.

9 Q. Okay. Let me ask you now to turn to
10 Staff Exhibit No. 4. And also sent to Mr. Froedge
11 but this is a case number that ends with the letter D
12 denoting this is the driver violation, correct?

13 A. Yes.

14 Q. The violation that was noted by the
15 letter D on Staff Exhibit 1, the examination report.

16 A. Correct.

17 Q. And there's a single violation here and
18 it's the retaining duty status records and that's a
19 group 1 violation, correct?

20 A. Yes, sir.

21 Q. And the specified amount for that is
22 \$100; is that correct?

23 A. Correct.

24 Q. And that is the total forfeiture that is
25 being assessed against Mr. Froedge as the driver; is

1 that correct?

2 A. Correct.

3 Q. And in your opinion was this amount
4 correctly determined?

5 A. Yes, it was.

6 Q. Thank you. Now, were -- based on your
7 review of the file, did Mr. Froedge receive all of
8 the notices that he was required to be provided under
9 the Ohio Administrative Code?

10 A. Yes, sir.

11 Q. Do you have before you Staff Exhibit 1,
12 the examination report?

13 A. Yes, I do.

14 Q. Let me just briefly direct your
15 attention, if you would, to the second page that is
16 designated "Locally Defined Fields." Do you see that
17 box?

18 A. Yes, sir.

19 Q. And it notes that this was not a for-hire
20 carrier.

21 A. Uh-huh.

22 Q. So this is a private carrier; is that
23 correct?

24 A. That's what the inspection indicates.

25 Q. Okay. Now, private carriers also have to

1 have DOT numbers.

2 A. Correct.

3 Q. And am I correct when a carrier obtains a
4 DOT number, that they are entered into the FMCSA New
5 Entrant Program? Are you familiar with that program?

6 A. Somewhat.

7 Q. And is it your understanding that the new
8 entrants after they have been assigned a DOT number
9 are required to undergo a safety audit?

10 A. Yes.

11 Q. And that's true for all carriers whether
12 or not they are private.

13 A. Correct.

14 MR. MARGARD: Thank you, your Honor. I
15 have no further questions for Mr. Persinger.

16 ATTORNEY EXAMINER LYNN: Likewise,
17 Mr. Persinger, to the officer's -- Trooper Hann, I
18 may have some questions for you later. I have no
19 questions right now.

20 Mr. Froedge, did you have any questions
21 of Mr. Persinger?

22 MR. FROEDGE: No.

23 ATTORNEY EXAMINER LYNN: Mr. Persinger,
24 you may take your seat.

25 Trooper Hann, if you could come back to

1 the witness stand. I do have a few more questions,
2 okay? Thank you. Have a seat. You are already
3 sworn in.

4 - - -

5 TROOPER BRIAN K. HANN
6 being previously duly sworn, as prescribed by law,
7 was examined and testified further as follows:

8 EXAMINATION

9 By Attorney Examiner Lynn:

10 Q. Trooper Hann, I have a question. If you
11 will go to Exhibit 2, page 7.

12 A. Yes, sir.

13 Q. Okay. It indicates F.R.C. Trucking and
14 US DOT No. 2466775. When you did your check on --
15 during the inspection, during the roadside
16 inspection, okay, this is the US DOT you entered into
17 your system?

18 A. Yes, sir.

19 Q. And the name of the carrier, did it come
20 up as F.R.C. Trucking? Do you recall?

21 A. I don't specifically remember. Sometimes
22 it will come up like the specific name and then there
23 will be a like they call dba name which might be the
24 initials, but I don't specifically remember.

25 Q. I was trying to figure out why it

1 indicates F.R.C. Trucking in these photos as the
2 carrier, I assume, associated with that US DOT, but
3 the inspection report indicates Mr. Froedge is not
4 only the driver but the carrier as well. That's why
5 I was a little confused about that.

6 A. Yeah. Sometimes you'll get like -- when
7 you run it, you will have a specific name, a long
8 drawn out name, and then if a company does the
9 F.R.C., down below it will have the dba name, or I
10 might have it backwards.

11 Q. I see. I see. And it was your
12 understanding in talking to Mr. Froedge that he was
13 not only the owner of the vehicle but also obviously
14 the driver as well.

15 A. Yes.

16 Q. I see. Okay. And you indicate here in
17 your inspection report notes, it says, "Driver
18 admitted the business he has is scrapping out truck
19 parts," I guess?

20 A. Yes. From talking to him that's what I
21 had noted, that he had bought this truck to take it
22 back to scrap it out and sell the parts or.

23 ATTORNEY EXAMINER LYNN: Okay. All
24 right. Thank you. No more questions at this time.
25 You can take your seat unless, Mr. Froedge, do you

1 have any additional questions?

2 MR. FROEDGE: No.

3 ATTORNEY EXAMINER LYNN: Okay. All
4 right. I have no further questions of either of
5 staff's witnesses right now. However, Mr. Margard,
6 did you have any additional questions?

7 MR. MARGARD: I have no further
8 questions. I have no further witnesses. And, your
9 Honor, I would respectfully move for the admission of
10 Staff Exhibits 1 through 4.

11 ATTORNEY EXAMINER LYNN: Mr. Froedge, did
12 you have any objections to admitting any of these
13 exhibits into evidence?

14 MR. FROEDGE: Yes. I mean, my turn?

15 ATTORNEY EXAMINER LYNN: So Exhibits 1,
16 2, 3, and 4, which were distributed to everyone
17 including yourself, did you have any objections to
18 admitting them into evidence?

19 MR. FROEDGE: No, no.

20 ATTORNEY EXAMINER LYNN: Thank you. Then
21 those will all be admitted into evidence.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 ATTORNEY EXAMINER LYNN: And,
24 Mr. Froedge, now, it's your opportunity to take the
25 witness stand.

1 MR. FROEDGE: All right.

2 ATTORNEY EXAMINER LYNN: If you would
3 like to come up here, please.

4 (Witness sworn.)

5 ATTORNEY EXAMINER LYNN: Okay. Thank
6 you. Please have a seat and describe your
7 perspective on any of these violations, what occurred
8 that day, and so forth.

9 - - -

10 REX FROEDGE

11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 THE WITNESS: Yeah. I do own F.R.C.
15 Trucking.

16 ATTORNEY EXAMINER LYNN: You are the
17 owner of F.R.C. Trucking?

18 THE WITNESS: Yeah. And I admit the DOT
19 number is out. It failed a safety inspection for
20 insurance. I had a woman come to my business and
21 doing paperwork, safety inspection. I was carrying
22 \$750,000. She thought I should care a million
23 because we are a bunch of ex-cons that I put to work.
24 I ain't going to lie to you. At the time I had,
25 what, six just got out of prison.

1 ATTORNEY EXAMINER LYNN: You had six
2 employees or something?

3 THE WITNESS: Ex-cons.

4 ATTORNEY EXAMINER LYNN: They were your
5 employees.

6 THE WITNESS: Just got out and built a
7 trucking business.

8 ATTORNEY EXAMINER LYNN: Help me out on
9 this, you made some reference to the US DOT number.

10 THE WITNESS: That's what it was. She
11 came out and seen us, what we were doing, picking
12 trucks up, coming to the yard and cutting them up,
13 and she thought we should have Hazmat control at the
14 yard.

15 Instead when she went back, she made a
16 report on my DOT that we should have Hazmat, you
17 know, pick up a truck we should have drained the oil
18 before -- that's what they name our businesses, you
19 know, you got to drain the oil and all the fuel out
20 and everything before you move anything. That's
21 what -- every week being towed, that's what's
22 supposed to be done.

23 ATTORNEY EXAMINER LYNN: This person that
24 came to your location.

25 THE WITNESS: She's a DOT lady.

1 ATTORNEY EXAMINER LYNN: Lady from the
2 Federal Department of Transportation.

3 THE WITNESS: Yeah. But she wasn't part
4 of picking it up. It was what we were doing after we
5 got the business is what she was more or less looking
6 at; you see what I mean? She didn't report and come
7 back three months later that I have to have Hazmat
8 and everything else. We're ex-felons. We can't have
9 Hazmat; you know what I mean? You know that. It
10 screwed up my DOT. All right?

11 ATTORNEY EXAMINER LYNN: How do you mean
12 exactly?

13 THE WITNESS: We can't -- I have got a
14 company working on it and everything. It's costing
15 me I don't know how much. We cannot get it
16 straightened back out.

17 ATTORNEY EXAMINER LYNN: Help me out on
18 this, Mr. Froedge. I'm going to ask you a few more
19 questions, okay? Apparently you did register with
20 the Federal Department of Transportation. That's how
21 you got a DOT number.

22 THE WITNESS: Exactly.

23 ATTORNEY EXAMINER LYNN: Somebody --

24 THE WITNESS: I run a dealership. We
25 started a dealership.

1 ATTORNEY EXAMINER LYNN: Let's focus on
2 F.R.C. Trucking. Someone from the Federal Department
3 of Transportation came to F.R.C. Trucking.

4 THE WITNESS: Right.

5 ATTORNEY EXAMINER LYNN: And they were
6 there to like inspect --

7 THE WITNESS: Inspect the paperwork.

8 ATTORNEY EXAMINER LYNN: -- your
9 operations or something?

10 THE WITNESS: Inspect our paperwork and
11 everything like that.

12 ATTORNEY EXAMINER LYNN: Okay. And you
13 are indicating what did that person determine?

14 THE WITNESS: She indicated we didn't
15 have enough insurance. She wanted me to carry a
16 million dollar policy.

17 ATTORNEY EXAMINER LYNN: All right.
18 Okay.

19 THE WITNESS: Which a million dollar
20 policy everybody knows is a little -- almost \$15,000
21 a year, and the truck we are using the year before
22 come over here to Ohio going to Illinois we might
23 have put 2,500 miles on a truck. It's pointless. So
24 underneath my dealership on your exhibit right here I
25 picked these trucks up underneath the exhibit. I

1 knew the DOT was out. My truck was sitting here in
2 Ohio because we ran back and forth across here to the
3 same place he stopped me.

4 ATTORNEY EXAMINER LYNN: Mr. Froedge, you
5 said you knew the DOT number was out.

6 THE WITNESS: Yeah.

7 ATTORNEY EXAMINER LYNN: That is, you are
8 indicating that someone came to your location --

9 THE WITNESS: Yes. She put us out of
10 service.

11 ATTORNEY EXAMINER LYNN: From the Federal
12 Department of Transportation, she investigated
13 whatever she was going to investigate. She was
14 saying you needed more insurance.

15 THE WITNESS: Right.

16 ATTORNEY EXAMINER LYNN: And because you
17 didn't have the additional level of insurance at that
18 time what were you told? Like don't do any more
19 operations until you get that insurance or what?

20 THE WITNESS: No. I have a dealership
21 too.

22 ATTORNEY EXAMINER LYNN: You have a
23 dealership. What do you mean exactly?

24 THE WITNESS: He ran me off my DOT. If
25 he would have ran me off my plates in the --

1 displayed in the windshield, it's right in your
2 picture, last picture, which is my dealer plates, my
3 dealer plates are State of Indiana, I can go anywhere
4 with my dealer plates. I was picking my own property
5 up with my dealer plates. You see I had titles of
6 both vehicles.

7 ATTORNEY EXAMINER LYNN: You are a
8 dealer.

9 THE WITNESS: I have transports.

10 ATTORNEY EXAMINER LYNN: You are
11 referring to dealer license plates.

12 THE WITNESS: Right. There in the
13 windshield I have got them displayed.

14 ATTORNEY EXAMINER LYNN: Hold on. Now
15 you are referring to Staff Exhibit 2.

16 THE WITNESS: The last page.

17 ATTORNEY EXAMINER LYNN: The last page.
18 Hold on there just a minute.

19 THE WITNESS: I mean, the plates on the
20 truck are legal. They are legal. They still have
21 plates that was still -- wasn't expired. They are
22 legal.

23 ATTORNEY EXAMINER LYNN: Whoa, whoa.
24 Help me out. When you say the dealer plates --

25 THE WITNESS: Dealer plates --

1 ATTORNEY EXAMINER LYNN: -- so you are
2 saying where -- are you saying that when you were --
3 you have a tractor and you are towing what I can see
4 in the picture is another tractor, and you are saying
5 that this other tractor you use dealer plates like --

6 THE WITNESS: I transport. I am an
7 exporter.

8 ATTORNEY EXAMINER LYNN: You transport.

9 THE WITNESS: I do it every day on these
10 plates. Now, I don't -- if I use the DOT, I have
11 to -- if I buy a vehicle at an auction, underneath
12 the DOT I have got to drain the oil out to transport
13 it. If I run it underneath my dealer plate, I don't
14 have to do it. Everything is legal and that's what I
15 had displayed in the window. He took a picture of
16 it.

17 ATTORNEY EXAMINER LYNN: Okay. Hold on.
18 You are saying that you're a dealer, so you are a
19 dealer as far as do you restore these tractors?

20 THE WITNESS: I buy and sell.

21 ATTORNEY EXAMINER LYNN: You buy them and
22 sell them. Okay. So you are saying that you were
23 towing a tractor then that you had bought at auction
24 or something.

25 THE WITNESS: Yeah, right down the street

1 about 2 miles.

2 ATTORNEY EXAMINER LYNN: And are you
3 saying that you had bought it at auction, and you are
4 a dealer of these?

5 THE WITNESS: Yeah. Most of the time
6 they give you a license plate to leave with.

7 ATTORNEY EXAMINER LYNN: Well, hold on
8 now. You had bought it and, therefore, what you are
9 thinking you were not operating under the US DOT
10 number then?

11 THE WITNESS: Right, exactly, because
12 it's not required on my dealer plates to run a US DOT
13 number. But to give you -- when you go through the
14 scale house, you pull in there and they see you got
15 your dealer's and everything you go through. But
16 most of the time if I don't have it on there, they
17 keep arguing I need a DOT. They said you have got --
18 everybody does it but this is -- this woman, she just
19 didn't like us at all and, you know.

20 ATTORNEY EXAMINER LYNN: So if I am
21 understanding your comments correctly, what you are
22 saying is that --

23 THE WITNESS: All I do is transport
24 trucks.

25 ATTORNEY EXAMINER LYNN: Let me try to

1 summarize it because this is something that's
2 unfamiliar to me.

3 THE WITNESS: Okay.

4 ATTORNEY EXAMINER LYNN: So you -- you
5 are a dealer and you buy these -- you buy these
6 tractors and you apparently must restore them or
7 something or maybe scrap them, either way. The point
8 is you are saying you buy them and because of that
9 you are operating -- when you tow them, you are doing
10 so as a dealer of these vehicles that you bought.

11 THE WITNESS: Right.

12 ATTORNEY EXAMINER LYNN: And you are
13 saying that you -- therefore, you have a license
14 plate from apparently your State of Indiana that says
15 you are a dealer. But you are also thinking that
16 when you do that kind of towing on these vehicles
17 that you have purchased, that the US DOT number
18 doesn't really apply under those circumstances; is
19 that what you are saying?

20 THE WITNESS: It applies under an
21 apportion plate -- not -- apportion plates are on
22 semis. They won't give you an apportion to go from
23 truck to truck to truck. This truck is just being
24 moved one way. I have got one way.

25 ATTORNEY EXAMINER LYNN: Applies under

1 apportion.

2 THE WITNESS: For semis that's being used
3 daily. What I do is transport.

4 ATTORNEY EXAMINER LYNN: Okay. But not
5 as far as --

6 THE WITNESS: That's why you see my
7 transports I have got both titles the way it states.

8 ATTORNEY EXAMINER LYNN: Hold on.

9 THE WITNESS: That's why we had copies of
10 the titles.

11 ATTORNEY EXAMINER LYNN: Before we go any
12 further with the point, I will tell the court
13 reporter where you are looking at, okay? So we have
14 Staff Exhibit 2, page 4.

15 THE WITNESS: Where I just purchased
16 them.

17 ATTORNEY EXAMINER LYNN: And let's see
18 now, the upper photo it says State of Ohio salvage.
19 The lower photo says -- it says assignment of
20 ownership. Okay. So you are indicating what you
21 towed. Then you purchased --

22 THE WITNESS: Yeah. I purchased it but
23 my truck was sitting over here but I was pulling
24 underneath my dealer plate instead of DOT so. I am
25 not pulling for hire. It's all mine. There is no

1 hire. MC number doesn't apply if you are not pulling
2 for hire.

3 ATTORNEY EXAMINER LYNN: And your MC
4 number is?

5 THE WITNESS: That's one of the charges.
6 The MC number doesn't apply to me because I am not
7 pulling for hire. I don't have no authority to pull
8 for hire. Never applied for it. I don't need it.

9 ATTORNEY EXAMINER LYNN: Okay.

10 THE WITNESS: As a dealer, I don't need
11 it.

12 ATTORNEY EXAMINER LYNN: You have a US
13 DOT number.

14 THE WITNESS: Yes.

15 ATTORNEY EXAMINER LYNN: And you --

16 THE WITNESS: I had the semi legal to
17 pull trailers and stuff.

18 ATTORNEY EXAMINER LYNN: I see.

19 THE WITNESS: That's all I was doing with
20 it and it was sitting over here in Ohio and she
21 had -- you know, she sees us picking up trucks on a
22 dealership and everything and yet she's like what do
23 you do with this? Every once in awhile we pull
24 trucks. She said if you pull something, it has to
25 have all the oil out of it. I said have you ever

1 picked up another truck and tried to drain the oil
2 out of it? She got real mad. I tried to talk to the
3 woman.

4 ATTORNEY EXAMINER LYNN: This is the --
5 this is the inspector from the Federal Department of
6 Transportation?

7 THE WITNESS: It wouldn't help you are
8 standing with -- a bunch of ex-cons are standing
9 there. You know, we are a bunch of -- we have all
10 been out, you know, spent a lot of time together. We
11 have all been out. We started a business together,
12 tattooed up and they were all hanging out.

13 ATTORNEY EXAMINER LYNN: Okay. So,
14 again, you are a dealer in these kinds of vehicles
15 that you bought. And apparently you sell them or
16 scrap them. But what you are saying, help me out,
17 you got the US DOT number because why again?

18 THE WITNESS: Just to have it.

19 ATTORNEY EXAMINER LYNN: Just to have it
20 in case?

21 THE WITNESS: When you are -- when you
22 are pulling trailers, you know, go after a trailer,
23 whatever. I mean, I got 3,500 miles in a year and I
24 paid \$7,000 and something in plates and insurance on
25 it to have this woman walk in and destroy a business

1 by saying we are Hazmat. We're not. That's the
2 whole argument with them. There is no -- these --
3 the officer knows this ain't a Hazmat control.

4 TROOPER HANN: I didn't -- I didn't
5 inspect it as a Hazmat.

6 THE WITNESS: That's why my DOT is being
7 out because they won't reset it for me. We've tried.
8 Oh, my God.

9 ATTORNEY EXAMINER LYNN: So your
10 contention is that as a dealer --

11 THE WITNESS: Yeah, I am. I can pull
12 with my dealer plates. I can go to auctions. I go
13 to auctions all over.

14 ATTORNEY EXAMINER LYNN: And so you're
15 saying for -- if you go to an auction, purchase
16 something as a dealer of these kinds of vehicles, you
17 don't need a US DOT number.

18 THE WITNESS: No.

19 ATTORNEY EXAMINER LYNN: But you did
20 obtain a US DOT number at some point in time because
21 you thought you might use it at some point later or
22 something.

23 THE WITNESS: Pull semi trailers or
24 something. You haul a load or something; you know
25 what I mean?

1 ATTORNEY EXAMINER LYNN: Semi trailers be
2 it private carrier or for hire?

3 THE WITNESS: Well, as he knows, if you
4 pull a boat with a -- you got the vehicle loaded, the
5 trailer loaded on the back, you got to have a DOT
6 number; isn't that correct?

7 TROOPER HANN: What was the question?

8 ATTORNEY EXAMINER LYNN: Well, let's --
9 tell you what, we'll --

10 THE WITNESS: I'm pretty sure that's how
11 that works.

12 ATTORNEY EXAMINER LYNN: Okay. All
13 right.

14 Mr. Margard, have you heard any of this?
15 Do you need a few minutes to take it in and come up
16 with some questions?

17 THE WITNESS: I have got my registration
18 and stuff right there, shows dealer plates. You can
19 call the State of Indiana. There is no poundage or
20 anything because you are moving equipment. You are
21 not moving for hire. I go from auction to auction.
22 I am in Pennsylvania and Ohio.

23 ATTORNEY EXAMINER LYNN: You say you have
24 your registration. Would you like to introduce that
25 as evidence?

1 THE WITNESS: Yeah. That's our plates.
2 There's in -- I just renewed them.

3 ATTORNEY EXAMINER LYNN: This is -- thank
4 you. Now, this can be -- incidentally are these
5 copies?

6 THE WITNESS: No, those are not copies.

7 ATTORNEY EXAMINER LYNN: Those are not
8 copies, okay.

9 MR. MARGARD: Your Honor, I can have one
10 of my staff colleagues make copies.

11 ATTORNEY EXAMINER LYNN: Why don't we go
12 off the record a take a break for a few minutes.

13 Excuse me. Go off the record.

14 (Recess taken.)

15 ATTORNEY EXAMINER LYNN: Back on the
16 record.

17 Before we go any further we have what I
18 will call Froedge Exhibit 1 which is his Indiana
19 certificate of -- or vehicle registration. And,
20 Mr. Froedge, you are indicating this registration
21 shows that you are apparently a dealer --

22 THE WITNESS: Yeah, yeah. I didn't
23 provide the dealer license.

24 ATTORNEY EXAMINER LYNN: All right. It
25 says -- on this it says "Dealer Sequential

1 Transport."

2 THE WITNESS: That's sequential plates.
3 There's four.

4 ATTORNEY EXAMINER LYNN: I see. Okay.
5 But the part that says "dealer," apparently does that
6 indicate in any way you are buying and selling these
7 vehicles that you say you are doing?

8 THE WITNESS: Yeah.

9 ATTORNEY EXAMINER LYNN: Okay.

10 THE WITNESS: Yeah. That's how they are
11 paid for.

12 ATTORNEY EXAMINER LYNN: And if I can --

13 THE WITNESS: As a matter of fact,
14 there's insurance in there. We just paid the
15 insurance to renew everything about two weeks ago.

16 ATTORNEY EXAMINER LYNN: Off the record.

17 (Discussion off the record.)

18 ATTORNEY EXAMINER LYNN: Okay. Back on
19 the record, Karen.

20 Mr. Froedge, if I -- again, I was just
21 thinking of things you had said over the break. So
22 what you are indicating is that issues that come up
23 with the U.S. Department -- with your US DOT number
24 because when someone from the Federal Department of
25 Transportation visited your location, there was

1 disagreements about whether or not you were
2 transporting hazardous materials, that is, when you
3 would, say, buy these tractors and tow them, that
4 they didn't have oil drained out, gasoline drained
5 out, and so forth.

6 THE WITNESS: No. Well, anything you
7 pick up, even if I pick up at the auction, buy a
8 truck at the auction and drive it back, I had to have
9 oil. I told her you are not making no sense here.
10 It doesn't make sense for me to drain my -- you
11 know --

12 ATTORNEY EXAMINER LYNN: You were
13 disagreeing with the federal person on that matter.

14 THE WITNESS: Still are.

15 ATTORNEY EXAMINER LYNN: And that's the
16 explanation as far as issues coming up with the US
17 DOT number. Despite that you are saying because you
18 are a dealer in this type of business that when you
19 were towing on -- on the date of the inspection, the
20 fact you were a dealer and dealer license plates
21 covered you completely and, therefore, the US DOT
22 number didn't really matter on that date.

23 THE WITNESS: Right.

24 ATTORNEY EXAMINER LYNN: Mr. Margard, I
25 believe you had some questions for the witness?

1 MR. MARGARD: I do, thank you, your
2 Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Margard:

6 Q. Mr. Froedge, do you have the inspection
7 report in front of you?

8 A. Yeah, right here.

9 Q. Thanks. I am going to direct your
10 attention to the "Violations" section, and I just
11 wanted to make sure that we are clear on some of
12 these.

13 A. Okay.

14 Q. You haven't said anything to contest the
15 unsecured load violation.

16 A. Oh, the unsecured load it was kind of
17 hard to say. It was a wreck. I mean, it was a
18 mangled mess and I just picked it up not even 2 miles
19 from where I picked it up and I pulled off to stop,
20 tried to secure it. You know, you can see it was a
21 rollover. When you pick up stuff and wind, they are
22 all plastic, you know, you strap and you try to get
23 them under control.

24 Q. But you don't dispute the trooper's
25 testimony.

1 A. No, because it was flopping. I mean --

2 Q. The failure to pay the UCR fee.

3 A. That UCR fee is for somebody that's a
4 hired company. I'm not for hire. I'm private. I do
5 it all transporting, not -- I don't -- I am not hired
6 out.

7 Q. So you don't pay a URC fee for any of
8 your vehicles?

9 A. I pay a fuel tax. I pay -- when I come
10 in the state, I have got to pay your guys' fuel taxes
11 I pay every month or every three months, you know,
12 keep all receipts like that. It has to be paid.

13 Q. Okay.

14 A. And but we're not -- we don't have our
15 own authority.

16 Q. You don't dispute that the duty record
17 was not up to date.

18 A. On this one there is.

19 Q. Or that the lights were out, inoperable?

20 A. It was the towbar, wasn't it?

21 TROOPER HANN: The left rear towbar, yes.

22 THE WITNESS: Pushed all the way in,
23 that's all.

24 TROOPER HANN: It was out at the time.

25 A. Out at the time.

1 Q. What about the fire extinguisher was not
2 secured?

3 A. Yeah. Well --

4 Q. You are not contesting those as
5 violations.

6 A. Yes.

7 Q. So let's focus on the safety audit issue.
8 On that same exhibit, on Staff Exhibit 1, the trooper
9 noted that the safety audit was failed on April 22 of
10 2015. Does that sound accurate to you?

11 A. Right, right.

12 Q. So this is 10 months later.

13 A. Right.

14 Q. And during these 10 months, you have
15 testified you have been trying to get the safety
16 audit passed or tried to get the necessary paperwork,
17 but you were not successful.

18 A. Right.

19 Q. So, in fact, you had a DOT number and you
20 had failed the safety audit and you were operating
21 despite having failed the safety audit, correct?

22 A. Right.

23 ATTORNEY EXAMINER LYNN: Mr. Froedge, was
24 that --

25 THE WITNESS: That truck was sitting

1 since my DOT number has been out over here in Ohio.
 2 It wasn't -- I didn't come over here and get it so
 3 that's why I come and picked it up on my transport
 4 one way plate. That truck was sitting in the same
 5 place. That's why I came with the title to it.

6 Q. I understand. But you were operating
 7 that vehicle as part of your business then, right?

8 A. Well, I was bringing it back.

9 Q. For your business.

10 A. Right.

11 Q. Not for personal pleasure. This is for
 12 your business.

13 A. Yeah.

14 Q. Your dealership.

15 ATTORNEY EXAMINER LYNN: And, Mr.
 16 Froedge, was that federal inspector at your offices
 17 because of this --

18 THE WITNESS: No. It's one year, first
 19 year.

20 ATTORNEY EXAMINER LYNN: Hold on just a
 21 minute.

22 THE WITNESS: Initial thing.

23 ATTORNEY EXAMINER LYNN: Was that federal
 24 inspector at your offices because they were under --
 25 they were implementing a safety audit; was that it?

1 THE WITNESS: That was the first
2 inspection you get one year after you get your DOT.

3 ATTORNEY EXAMINER LYNN: I see. Okay.

4 THE WITNESS: I don't know.

5 ATTORNEY EXAMINER LYNN: Okay.

6 Q. (By Mr. Margard) What we refer to as the
7 new entrant audit.

8 A. Yeah.

9 ATTORNEY EXAMINER LYNN: Okay. Thank
10 you.

11 Q. All right.

12 A. You can see I had all the paperwork. She
13 wanted me to have more insurance.

14 Q. Let's take a look at this paperwork a
15 little bit. First of all, let me ask you to turn to
16 the packet of photographs and ask you to turn to page
17 3. And this is the registration for the cab that you
18 were driving at the time, correct?

19 A. Yes.

20 Q. This is an Indiana registration. You
21 were driving from Ohio; you were driving to Indiana,
22 correct?

23 A. Correct. The truck was here in Ohio.

24 Q. I understand but you were taking the
25 vehicle to Indiana.

1 A. Right.

2 Q. And this does indicate it has a DOT
3 number on it, indicates motor carrier responsible for
4 safety, designates your name with the dba, designates
5 by the way apportioned license plate, correct?

6 A. Right.

7 Q. That's the plate that was on the vehicle
8 when you were stopped and inspected, correct?

9 A. Right. But I should have took it off,
10 but you can see the plate on the front grill. The
11 one up in the windshield is where I have the plate.

12 Q. I understand. But the plate that was on
13 the vehicle was, in fact, the plate that matched this
14 registration.

15 A. I didn't have a screwdriver to take the
16 thing off. He didn't run it by that. He ran it by
17 the DOT. He didn't run it by the plate.

18 Q. If I ask you to take a look at Staff
19 Exhibit 1.

20 A. Right.

21 Q. And if I ask you to look at the box
22 labeled "Vehicle Identification," if I ask you to
23 look at the license plate number there, that's the
24 same license plate number that matched the
25 registration that's on page 3 of Staff Exhibit 2,

1 correct?

2 A. Right, yeah.

3 Q. And when you operate this vehicle, when
4 you come to Ohio to use this vehicle, do you use it
5 for purposes of hauling vehicles to Indiana?

6 A. Right.

7 Q. Okay. Just one note with respect to the
8 registration that you provided to us today.

9 ATTORNEY EXAMINER LYNN: It's Froedge
10 Exhibit 1.

11 MR. MARGARD: Thank you, your Honor.

12 Q. Froedge Exhibit 1, what -- tell me again
13 what this registration is for.

14 A. For the dealer plates that were in the
15 windshield of that truck.

16 Q. Oh, it was the plate that was in the
17 windshield of the truck. And this registration is
18 dated August --

19 A. That's a new one. I just upped it the
20 other day. It never ran out. I have never let them
21 lapse.

22 Q. You don't have the registration --

23 A. The old one? The old registration? I
24 don't know if we have got it in that bag down there
25 or not. It never ran out. If you ever let them run

1 out, you would be forever to get one back. They
2 just -- I renew them all the time.

3 ATTORNEY EXAMINER LYNN: Off the record
4 just for a minute.

5 (Discussion off the record.)

6 ATTORNEY EXAMINER LYNN: We are back on
7 the record.

8 THE WITNESS: But you can see this truck
9 was -- even though the DOT was out this truck was
10 still fully registered, fully insured. I had between
11 them plates -- the dealer plate right there I carry
12 \$750,000. I carry 750, two different policies. It
13 was over 7,000 some dollars worth of insurance, but I
14 didn't have enough. How much more do you want to
15 pay, you know? Now, I run strictly on my dealer
16 tags. I don't run on nothing else but that dealer
17 tag. I pay only 35 something, you know, without this
18 truck. Why keep a truck legal to do the same thing I
19 don't even need it for, the same business without
20 that? That's why I was picking it up on my dealer
21 tag. The State of Indiana there is a law I can go
22 anywhere on that tag.

23 Q. And you weren't in Indiana at the time of
24 the inspection, were you?

25 A. I go all the way to Pennsylvania. I am

1 over here two or three times a week. I come through
2 the scales on dealer tags. I go to Illinois. I go
3 everywhere. Stop at your scales. As long as you got
4 your titles with you and that dealer tag, you roll
5 and I had it displayed. I am going to tell you he
6 did get me on my logbook because I am sloppy on that.
7 I'm the worst.

8 ATTORNEY EXAMINER LYNN: So really the
9 only violation you are dis -- disagreeing with is
10 this matter of the safety audit?

11 THE WITNESS: Yeah, DOT, yeah, but, you
12 know, I could have been more about straightening the
13 truck up but it was mud. There was everything on
14 that truck. It was -- I bought it online, sight
15 unseen. When I picked it up, my truck was right down
16 the road, so I picked up another one to take with me,
17 pay for the trip.

18 MR. MARGARD: I don't have anything
19 further. Thank you.

20 ATTORNEY EXAMINER LYNN: Okay.
21 Mr. Froedge, you are indicating that your dealer
22 plates -- you have this plate which was in your
23 windshield.

24 THE WITNESS: Yeah, one on the back and
25 one on the front. Two of them, one on the front and

1 one on the back.

2 ATTORNEY EXAMINER LYNN: Thank you. You
3 can take your seat for a minute. Before you go,
4 Mr. Margard, is there any objection to admitting
5 Froedge Exhibit 1 into evidence?

6 MR. MARGARD: I'll only note I don't
7 think it's relevant and certainly isn't relevant to
8 the time of the inspection since it postdates it.

9 ATTORNEY EXAMINER LYNN: Okay. Well, we
10 will admit that into evidence then.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 ATTORNEY EXAMINER LYNN: Mr. Froedge, you
13 can take your seat. Thank you.

14 MR. MARGARD: Your Honor?

15 ATTORNEY EXAMINER LYNN: Yes.

16 MR. MARGARD: I would like to recall
17 Mr. Persinger on rebuttal.

18 ATTORNEY EXAMINER LYNN: Oh, please, go
19 ahead. Thank you. Mr. Persinger, you were already
20 sworn in but thank you.

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TOM PERSINGER

being previously duly sworn, as prescribed by law,
was examined and testified further as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. Mr. Persinger, you were present during
Mr. Froedge's testimony, correct?

A. Yes, sir.

Q. And you heard his explanation and his
justification for his conduct on the date of the
inspection.

A. Yes, sir.

Q. Let me ask you a few questions and see if
you can help clarify some things for us.

A. Absolutely.

Q. First of all, you understand that
Mr. Froedge was operating this vehicle as part of his
business.

A. Correct.

Q. That he was doing so in interstate
commerce.

A. Yes, sir.

Q. Okay. Do you understand that he had an
apportioned plate on the vehicle at the time it was
stopped and inspected?

1 A. I believe so.

2 Q. He indicates that he also had a dealer
3 plate that he had in the window. Can you observe
4 that in the photographs? Have you had a chance to
5 observe that?

6 A. Yes, sir.

7 Q. And of what relevance is that dealer
8 plate in your opinion?

9 A. The plates have absolutely no -- no
10 bearing in regards to the out-of-service violation.

11 Q. And why is that?

12 A. Because it's based upon the nature of the
13 business that's going on here where it appears that
14 he's hauling materials for his own business or
15 hauling this other -- this other truck or the truck
16 needing repaired and that's part -- it's part of his
17 business which it appears to be he is operating as a
18 private motor carrier since he is hauling -- hauling
19 product strictly for his own business interstate,
20 across state lines.

21 Q. Let's talk about the cargo, if you will,
22 that he is hauling. He was pulling a truck, a
23 vehicle.

24 A. Uh-huh.

25 Q. And there's been some discussion here

1 today about hazardous material insurance and so
2 forth.

3 A. Uh-huh.

4 Q. Of what relevance is it that he was
5 hauling a truck?

6 A. Automobiles on the hazardous materials
7 table, they are considered a -- what's called a class
8 9 Hazmat where an easy way of describing it is class
9 9 is not required -- required to follow everything
10 that's required for hazardous materials. But some of
11 the requirements are still applicable. Like, for
12 example, you don't need a Hazmat endorsement to move
13 a class 9 material.

14 Q. When you say Hazmat endorsement, are you
15 talking about on the CDL?

16 A. On the commercial driver's license, yes,
17 sir.

18 Q. Would that have nonetheless been relevant
19 for the safety audit?

20 A. Yes, sir.

21 Q. That hazardous insurance because they are
22 dealing with hazardous materials would, in fact, have
23 been required.

24 A. Yes, sir.

25 Q. And so is it your opinion that this

1 inspection could have been conducted as a hazardous
2 materials inspection?

3 A. Yes, sir.

4 Q. Mr. Froedge indicated he failed his
5 safety audit because the inspector was requiring him
6 to have additional insurance for hazardous materials
7 purposes.

8 A. Yes, sir.

9 Q. Does that sound like an accurate
10 description to you?

11 A. It does.

12 Q. And he characterized or demanded that he
13 carry a million dollars' worth of insurance. Does
14 that sound accurate, or do you know how much
15 insurance he would have been required to carry?

16 A. Yes, sir. If you look in Section 387 of
17 the Federal Motor Carrier Requirements that cover
18 insurance, generally if you cover nonhazardous
19 material cargo, generally you are required \$750,000
20 worth of insurance. However, for lower level Hazmat
21 \$1 million of insurance is required there.

22 Q. Okay. Now, you also heard Mr. Froedge
23 talk about how routinely dealers in vehicles such as
24 he was suggesting the case today routinely operate
25 across the state and between states simply on dealer

1 tags.

2 A. Uh-huh.

3 Q. Is that your experience? Do you
4 understand that to be the case?

5 A. I'm not entirely familiar with his
6 industry.

7 Q. Is the fact that he, in fact, registered
8 with the DOT and had a DOT number the determinative
9 factor here?

10 A. Yes, sir.

11 Q. Because he was DOT registered, because he
12 was operating his business with DOT-registered
13 vehicles, that's the crucial consideration.

14 A. Correct.

15 Q. You also heard Mr. Froedge discuss the
16 UCR fee.

17 A. Yes, sir.

18 Q. Explain to us again what the UCR fee is.

19 A. Unified carrier -- UCR is called unified
20 carrier registration which is a required registration
21 for all commercial motor vehicle companies, carriers
22 regardless, if they are for hire or private, they are
23 required to register for the UCR.

24 Q. This is all commercial vehicles?

25 A. Interstate, yes, sir.

1 Q. All interstate commercial vehicles must
2 pay a UCR fee.

3 A. Yes, sir.

4 ATTORNEY EXAMINER LYNN: And,
5 Mr. Persinger, that would be true whether they are
6 for hire or private.

7 THE WITNESS: Correct.

8 ATTORNEY EXAMINER LYNN: For hire or not
9 for hire.

10 THE WITNESS: Correct.

11 MR. MARGARD: I think that's all the
12 questions I have for Mr. Persinger.

13 ATTORNEY EXAMINER LYNN: Thank you,
14 Mr. Persinger.

15 Mr. Froedge.

16 MR. FROEDGE: I have got a question.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Froedge:

20 Q. You talk about the MC number, right? You
21 have to have your own authority to get that; am I
22 correct?

23 A. Are you referring to the motor carrier
24 number?

25 Q. Yeah.

1 A. The motor carrier number --

2 Q. That's the DOT number, the MC number.

3 A. The MC number, that --

4 Q. You have to have your own authority to
5 acquire that.

6 A. For MC number it is my understanding that
7 is only required if you are considered a for-hire
8 carrier.

9 Q. Right. That's why we don't have it.

10 A. And from what I've read in the exhibits
11 and everything, you are considered a private carrier.
12 You are simply hauling product to your own business.

13 MR. FROEDGE: Right. Thank you.

14 ATTORNEY EXAMINER LYNN: Okay. No more
15 questions, Mr. Froedge?

16 MR. FROEDGE: No more questions.

17 ATTORNEY EXAMINER LYNN: Mr. Margard.

18 MR. MARGARD: Very briefly.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Margard:

22 Q. Were there any MC violations, MC
23 number-related violations in this case?

24 A. There was not.

25 MR. MARGARD: Okay. That's all. Thank

1 you.

2 ATTORNEY EXAMINER LYNN: Mr. Persinger,
3 thank you.

4 Officer or Trooper Hann, hopefully one
5 additional question.

6 TROOPER HANN: Sure.

7 ATTORNEY EXAMINER LYNN: Thank you. Have
8 a seat, please.

9 - - -

10 TROOPER BRIAN K. HANN

11 being previously duly sworn, as prescribed by law,
12 was examined and testified further as follows:

13 FURTHER EXAMINATION

14 By Attorney Examiner Lynn:

15 Q. Trooper Hann, am I understanding
16 correctly that you were discussing earlier in your
17 testimony the need for a US Department of
18 Transportation number. That then would apply
19 regardless of whether someone is operating for hire
20 or not for hire that is private; am I right about
21 that? That is someone who is operating as a for-hire
22 carrier or as a private carrier depending, I assume,
23 on the gross weight of the vehicle would need a US
24 DOT number.

25 A. That or to me if he is hauling

1 commerce --

2 Q. I see, okay.

3 A. -- interstate.

4 Q. Okay. And on the inspection report on
5 Staff Exhibit 1, under the section that says "Vehicle
6 Identification."

7 A. Yes, sir.

8 Q. Gross vehicle weight rate 52,000, is
9 that, I assume, for the combination? Is that the
10 tractor, the towing unit, as well as what was being
11 towed?

12 A. That number there, the GVWR, the gross
13 vehicle weight rating, is found usually on the
14 sticker inside the door. They vary. I opened the
15 door, and if they are readable, that's where you get
16 them from.

17 Q. So that actually was the gross rate of
18 the tractor that was --

19 A. No. That tractor weighed probably
20 about -- just the tractor weighed around 17,000
21 pounds. That's the gross vehicle weight rating on
22 what the axles -- from my understanding what the
23 amount of weight that they can -- they can haul.

24 Q. I see.

25 A. That's not the actual weight of the

1 vehicle.

2 Q. I see.

3 A. It's the rating of --

4 Q. Well, okay. And is the need for a US DOT
5 number, you mentioned you take into account somebody
6 is operating in commerce. Is gross weight rating
7 another factor as well?

8 A. Not for -- not for DOT number, no,
9 because you can have a smaller straight truck
10 that's -- that has a DOT number also.

11 ATTORNEY EXAMINER LYNN: All right.
12 Okay. Thank you.

13 Mr. Margard, any other questions at all?

14 MR. MARGARD: No, no further questions.
15 Thank you.

16 ATTORNEY EXAMINER LYNN: Well, we will --
17 I believe I have already mentioned this, we will
18 admit Froedge Exhibit 1 into evidence.

19 Mr. Froedge, I have no further questions.

20 Mr. Margard, apparently you have no more.
21 Mr. Margard, are you interested in doing a brief on
22 this case?

23 MR. MARGARD: Your Honor, I don't believe
24 the briefing is necessary in this instance, but if
25 you wish further clarification, we would be happy to.

1 ATTORNEY EXAMINER LYNN: Not really, no.

2 Okay. Mr. Froedge, a brief is a written
3 summary of the arguments. Mr. Margard has declined
4 on that and I'm -- your thoughts?

5 MR. FROEDGE: I would too.

6 ATTORNEY EXAMINER LYNN: You would
7 decline as well.

8 Thanks very much and thank you, everyone,
9 for attending. I believe that's all that we have to
10 take care of for today. Have a good afternoon.

11 (Thereupon, at 2:16 p.m., the hearing was
12 concluded.)

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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 Thursday, September 15,
2016, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6245)

- - -

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Case No(s). 16-0869-TR-CVF

Summary: Transcript In the matter of Rex Froedge, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on September 15, 2016. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.