

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of FedEx :
Custom Critical, Inc., :
Notice of Apparent : Case No. 17-1960-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Ms. Anna Sanyal, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10:00
a.m. on Tuesday, May 8, 2018.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

APPEARANCES:

Scopelitis, Garvin, Light, Hanson & Feary, PC
By Mr. Timothy W. Wiseman
10 West Market Street, Suite 1500
Indianapolis, Indiana 46204

On behalf of the FedEx Custom Critical,
Inc.

Mike DeWine, Ohio Attorney General
Mr. William Wright, Section Chief,
By Mr. Warner L. Margard, III,
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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1 Tuesday Morning Session,

2 May 8, 2018.

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4 ATTORNEY EXAMINER SANYAL: Let us go on
5 the record.

6 The Public Utilities Commission of Ohio
7 has assigned for hearing at this time Case No.
8 17-1960. My name is Anna Sanyal. I'm the Attorney
9 Examiner assigned to this case.

10 At this time I will take appearances.
11 We'll start with Complainant.

12 MR. WISEMAN: Timothy Wiseman, counsel
13 for the Complainant, FedEx Custom Critical.

14 ATTORNEY EXAMINER SANYAL: We'll go with
15 the Attorney General.

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

23 ATTORNEY EXAMINER SANYAL: Mr. Wiseman,
24 if you are ready to proceed, you may present your
25 first witness.

1 MR. WISEMAN: Absolutely. Scott.

2 - - -

3 SCOTT A. McCAHAN

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

6 DIRECT EXAMINATION

7 By Mr. Wiseman:

8 Q. Mr. McCahan, could you give your full
9 name for the record, please.

10 A. Scott Allen McCahan.

11 Q. Grab my notes here. And you are
12 currently employed by whom?

13 A. FedEx Custom Critical.

14 Q. How long have you been with that
15 particular company?

16 A. Almost 36 years.

17 Q. And what is your current position?

18 A. Current position is senior manager
19 special assignment risk management.

20 Q. What was your position back in September
21 of 2015 when the PUCO investigation of your company
22 took place?

23 A. Senior manager safety and contractor
24 relations.

25 Q. Were you the primary contact with the

1 investigator during that particular investigation?

2 A. Yes.

3 Q. I believe your name was listed as the
4 maybe contact person in the investigative report
5 which the Attorney General has marked as Staff
6 Exhibit No. 1, just to clarify that. What -- what
7 type of operations is FedEx Custom Critical just
8 generally speaking?

9 A. FedEx Custom Critical is an exclusive use
10 motor carrier. We transport general goods. We're
11 exclusive use which means we have one shipment on a
12 truck at a time, not like your LTL carriers, and
13 essentially we're handling emergency-type freight
14 that's going door to door.

15 Q. How many truck drivers does FedEx Custom
16 Critical employ or utilize?

17 A. We have approximately 800 owners that
18 makes up about 1,150 trucks total. Drivers that are
19 qualified is around 2,100.

20 Q. Okay. And are all of those drivers
21 operating vehicles that require a commercial driver's
22 license, or CDL as it's commonly referred to?

23 A. Yes. We have some cargo vans that are
24 under the stipulations for a CDL, but we require all
25 of our qualified drivers to have a CDL.

1 Q. And does that also mean then that all of
2 the drivers are under yours and the federal DOT's
3 drug and alcohol testing regulations?

4 A. Yes.

5 Q. Does that include, for example,
6 post-accident testing?

7 A. Yes.

8 Q. Can you just briefly from your
9 understanding of being in the industry for 30 plus
10 years describe what are the obligations for transport
11 companies like FedEx to conduct post-accident drug
12 and alcohol testing to its drivers.

13 A. Obviously as the regs say, if there is
14 obviously a fatality, affiliation with a tow,
15 transport away for an injury, and then the motor
16 carrier is obligated within 8 hours to perform
17 alcohol testing and within 34 hours the drug testing.

18 Q. Okay. And is that after any accident
19 where one of those occurrences takes place, fatality,
20 tow away, or injury treated away from the scene or is
21 there some component that the driver has to be at
22 fault of some type?

23 A. No. It's -- it's if there is a citation
24 issued, then they need to be post-accident tested.

25 Q. Can you describe briefly what -- back in

1 2015 when this investigation took place what general
2 procedures and policies FedEx Custom Critical had to,
3 you know, ensure it was complying with the
4 post-accident drug and alcohol testing requirements.

5 A. Well, as part of our safety standards
6 which are a part of the owner-operator lease
7 agreement, we have it notated that any and all
8 accidents and incidents must be reported immediately.

9 And then from there we have accident
10 reporting screens in our freight management system
11 where the information is documented, and then in the
12 event that a -- one of the criteria, the citation,
13 the tow, the injury, the fatality, then it sets off a
14 page to our accident and -- our accident specialist
15 for further follow-up.

16 Q. Now, like most companies, trucking
17 companies, are your trucks driving 24 hours a day, 7
18 days a week across 48 different states?

19 A. Not any one given truck. We do operate
20 24/7/365. You know, our folks given the industry and
21 the emergency freight typically, you know, they'll
22 run a load, and then they may not have another
23 dispatch for, you know, 6, 8, 10, 24 hours.

24 Q. And the reason I ask that question, I was
25 just curious of how -- how you ensure a compliance

1 with the post-accident testing if you do have a
2 driver, you know, on a Sunday night involved in an
3 accident that requires testing. Do you use outside
4 vendors to help secure that -- that collection that
5 you need to do for the testing?

6 A. Yes. So we have obviously at that point
7 one of our accident specialists would be involved,
8 and then we are contracting with a company called DSI
9 that performs most of the prequalification testing as
10 well as post-accident testing.

11 Q. And is DSI a national company? They have
12 collection sites set up across the country?

13 A. They have a network of collection sites,
14 yes, that they deal with, so essentially we would
15 call them or if we know it's an area we've worked
16 with before, certainly we know, you know, where some
17 of them are, but we utilize DSA a lot.

18 Q. Great. Do you know if they have the
19 ability to send mobile collectors out, you know, to a
20 remote location? I believe one of the accidents at
21 issue in this case occurred at 12:30 a.m. on, you
22 know, two days before Christmas in the middle of
23 Wyoming. I'm just curious how you deal with a
24 situation like that.

25 A. They do -- again, they have a network of

1 collectors that are mobile. You know, certainly it
2 still comes down to the fact of somebody, you know,
3 agreeing to go out and doing it, but they do have the
4 network that we can reach out to.

5 Q. And under the regulations and 49 CFR Part
6 382 and Part 40, what is -- what is the testing
7 required to test? Is it urine? Hair? Blood?
8 What's the specimen of choice to be tested under the
9 regulations?

10 A. Urine.

11 Q. So you have to have the ability to
12 obviously have a collection of urine to do a
13 post-accident drug or alcohol test.

14 A. Yes.

15 Q. Okay. What do the regulations in your
16 understanding require if you're not able to do a
17 post-accident test within the required time periods?

18 A. The regulations you need to document --
19 you need to document step by step in a timeline the
20 actions that occurred that lead up to not being able
21 to do that if it happens.

22 Q. And did -- did FedEx Custom Critical back
23 in 2015 when the investigation occurred, did you keep
24 such written documentation for any accident that
25 required post-accident testing?

1 A. Yes.

2 MR. WISEMAN: Okay. I am going to, if I
3 may be permitted to, provide the witness with one of
4 our exhibits. I am not sure if this is in your list
5 of exhibits, so I am just going to identify it
6 separately. I've listed this FedEx CC Exhibit No. 1.

7 Q. And after you have had an opportunity to
8 just look at that, could you let -- explain what
9 these three documents are.

10 A. These would be the post-accident drug and
11 alcohol test documentation. This again lays out the
12 test that was missed and then it gives the timeline
13 of events that occurred leading up to the missed
14 test.

15 Q. Okay. And do you recall if these
16 particular documents were provided to the
17 investigator during the audit or investigation?

18 A. I don't remember if they were provided.
19 We certainly had them available.

20 Q. All right. And is your understanding
21 that -- well, let me strike that.

22 Under the regulations, as you know them,
23 is it a violation to do a post-accident drug testing
24 after the eight hours has elapsed during the --
25 that's required under the regulations?

1 A. Yes.

2 Q. In other words, the regulations say once
3 eight hours come, you have got to discontinue all
4 testing afterwards, correct?

5 A. Correct.

6 Q. And then document which you did, correct?

7 A. Yes.

8 Q. Now, let's look at the first page of what
9 I've marked as FXCC Exhibit No. 1. And just as a
10 point of clarification, the Notice of Preliminary
11 Determination doesn't really specify which incidents
12 were being assessed the civil forfeiture, so we are
13 kind of guessing here based on the investigative
14 report.

15 But there did appear to be three
16 accidents which -- which were cited as violations.
17 The first one on page 1 was an accident from
18 December 22, 2014, involving Steven Moreland. And
19 just to spell this out, Mr. McCahan, does this
20 document -- kind of document everything that FedEx
21 did to try to get that drug and alcohol test done in
22 time?

23 A. Yes.

24 Q. Okay. Was the drug test completed within
25 the required time period for this particular

1 accident?

2 A. Yes, it was.

3 Q. And based on your review of this
4 document, why was the alcohol test not able to be
5 completed?

6 A. It's due to the time the notification of
7 the accident involving a tow, no citation had been
8 given. The citation was actually issued 2 hours and
9 20 minutes after the accident occurred, and then we
10 found out about it at 7:50 in the morning.

11 Q. Okay. And do you have -- just to make
12 this point, do you have 24-hour access to, you know,
13 help your drivers and help the process of getting the
14 drug and alcohol test conducted after hours?

15 A. Yes.

16 Q. But in this case you just weren't able to
17 get that process rolling within that eight-hour
18 window?

19 A. Correct.

20 Q. Okay. Do you believe that you made
21 all -- the company made all reasonable attempts to
22 secure the alcohol test within the required time
23 period?

24 A. Based on the information we had, yes.

25 Q. And based on your understanding of the

1 regulation, should you be held in violation for not
2 conducting the post-accident alcohol test in this
3 instance?

4 A. Given the regulation indicates that, you
5 know, certainly you need to perform the post
6 accident, in the event you can't, that you document
7 it, which we have done in this case.

8 Q. Yeah. So in your view as long as you
9 documented the attempts made to secure a test within
10 a very short window, that would be compliant with the
11 regulation as you understand it.

12 A. Yes. And I would just add that, you
13 know, obviously we attempt to do these because we did
14 go ahead and complete the drug test so.

15 Q. Great. And if you look at the second
16 page, which is the second of the three accidents,
17 involving a Michael Bridgett, this one occurred on
18 February 4; again, I would ask you on this one, was
19 the drug test timely completed for this particular
20 accident?

21 A. Yes.

22 Q. Okay. And on the alcohol test, based on
23 your review of this document today, what was the
24 reason that the test was not conducted within such a
25 short eight-hour window?

1 A. No. 1 was -- let's see, accident occurred
2 at 2000 hours. Sorry. I left my glasses in the car.

3 Q. Do you want to borrow mine?

4 A. I can do it. It just takes me a minute
5 to read it.

6 ATTORNEY EXAMINER SANYAL: Take your
7 time.

8 A. So, again, when we reached out in the
9 morning to No. 1, we were notified of the citation
10 given in association with the tow. Knew there was a
11 tow; didn't know there was a citation. The alcohol
12 obviously had expired prior to us getting that
13 information. The drug test was completed on time.

14 Q. So sometimes you're kind of -- especially
15 when accidents occur at 10 o'clock at night like this
16 one, if your driver doesn't give you accurate
17 information or contact you immediately after the
18 accident, it's -- would you say it's difficult to get
19 that test done within the required eight-hour window?

20 A. It is. We have all the processes set up
21 within our system and in our SOPs to capture the
22 data. If we know of the data, it will get in, and
23 then it will alert the accident specialist. In this
24 particular case we didn't know of a citation.

25 Q. Okay. And do you provide training to

1 drivers on their obligations to immediately notify a
2 company whenever there is an accident?

3 A. It's the obligation -- again, it's in the
4 owner-operator lease agreement so every
5 owner-operator knows in there and it's their
6 responsibility to ensure their contracted drivers are
7 following those standards.

8 Q. Okay. And then just the final page there
9 which I think was both a missed drug and alcohol test
10 so counts as two violations under the regulations,
11 this is a driver by the name of Chaune Duffy. Can
12 you take a look at that third page of Exhibit 1 and
13 just advise us as to what happened on this one that
14 caused the drug and alcohol test to be missed.

15 A. So this was one where the accident -- the
16 two vehicles were not together after the impact. Our
17 vehicle had to get stopped and proceeded down. The
18 officer had never brought them together. He was not
19 told that there was going to be a tow. His
20 impression was there was not going to be a tow. And,
21 therefore, when the officer was done with him, he let
22 him go, and he was not aware at that point in time.

23 Q. What's the significance of not -- not
24 having the tow? Why is that important to the
25 analysis?

1 A. Well, the tow is -- it's one of the
2 criteria associated with the citation that, you know,
3 requires post accident.

4 Q. So if one of the vehicles isn't towed,
5 you would not be required to do a post-accident test.

6 A. That's correct. In this case that's what
7 it was.

8 Q. In fact, wouldn't the DOT regulations
9 prohibit you from doing a post-accident drug test
10 when it's not allowed for under the regulations?

11 A. Yes.

12 Q. Okay. So on this particular accident,
13 you did not -- FedEx did not find out that it was an
14 accident that required testing until it looks like,
15 you know, seven days after the accident occurred.

16 A. That's correct.

17 Q. Which would be outside both the 8-hour
18 window for alcohol and 34 or 32 hours for drug.

19 A. Yes, 32.

20 ATTORNEY EXAMINER SANYAL: I have a quick
21 question for the witness while you're preparing. On
22 the first page of Exhibit FXCC 1, is EMSI the company
23 you noted that you contract with?

24 THE WITNESS: Back in '14 -- we had made
25 a change in January of '15, so in '14, it was EMSI.

1 I think we signed the contract in January of '15 just
2 for a new vendor which was DSI.

3 ATTORNEY EXAMINER SANYAL: Thank you for
4 the clarification.

5 Q. (By Mr. Wiseman) Just lay a couple of
6 groundworks on the other violations that were
7 assessed in the Notice of Preliminary Determination,
8 one of them may be kind of immaterial since there
9 were no monetary assessments made, but there was a
10 citation for failing to keep minimum records of
11 inspection and vehicle maintenance found at this
12 particular investigation.

13 Can you briefly describe what your
14 process is to ensure that all vehicles that are
15 operated under your DOT authority are properly
16 maintained and inspected. What's your, you know,
17 requirements to maintain and keep those records?

18 A. So our maintenance program requires that
19 there are two DOT inspections per year so one every
20 six months and then in between those six months
21 there's a maintenance recap that is required to be
22 sent in as well.

23 Q. And these -- just to clarify all of these
24 trucks are not owned by FedEx. They are owned by
25 individual contractors who lease them to FedEx,

1 correct?

2 A. Correct.

3 Q. So your requirement is that they have the
4 annual periodic DOT inspection done twice which is
5 twice what the DOT requires, correct?

6 A. Yes.

7 Q. And they also submit periodic maintenance
8 records showing what work they've done on their
9 truck.

10 A. Correct.

11 Q. And, again, that is spelled out from the
12 owner-operator lease as a contractual requirement to
13 do this?

14 A. It's actually in a separate maintenance
15 kind of program document that each agreement does
16 touch on the maintenance, but the requirements are
17 actually in a separate maintenance program.

18 Q. Yeah. And as I look at the audit report,
19 again, I don't know what violations, particular
20 occurrences that are referenced in the Notice of
21 Preliminary Determination, but it shows that the
22 investigator looked at 125 separate vehicles and
23 found 3 instances where there was insufficient
24 records. So do you occasionally do internal audits
25 to make sure that your contractors and drivers are

1 complying with the maintenance requirements?

2 A. Yes.

3 Q. Do you have a means to take those trucks
4 off the road if they're not -- if they have a
5 delinquent inspection or delinquent in getting their
6 maintenance records in to you?

7 A. If they are in violation of the lease
8 agreement, then, yes, the truck would be taken out of
9 service until they are brought into compliance.

10 Q. And then the final violation relates to
11 drivers preparing Driver/Vehicle Inspection Reports,
12 or commonly referred to DVIRs, and they found 24
13 violations in the investigative report which is Staff
14 Exhibit No. 1 out of 26 checked. Can you explain
15 what your understanding of the DVIR requirement is
16 under the DOT regulations?

17 A. So the -- every -- at the end of every
18 workday, drivers are required to do a daily vehicle
19 inspection report. If there is a defect, then that
20 must be notated and recorded and subsequently --
21 subsequently repaired.

22 Q. And do you know in this particular
23 instance how the investigator determined that there
24 wasn't -- well, let me strike that.

25 Did the DOT change its rules before this

1 audit that said that motor carriers no longer had to
2 keep -- retain DVIRs where there was no defects
3 noted?

4 A. Yes. I don't remember exactly when it
5 changed. I do know before it was required every day
6 regardless of defects. The rule did change where you
7 were only required to submit one if there was a
8 defect.

9 Q. Yeah. So -- so in this case the
10 investigator determined that there was a defect. Do
11 you know how he determined that there was a defect
12 for those 24 vehicles listed in the report?

13 A. Yeah. I don't remember exactly. I know
14 most of them, if not all, were off of roadside
15 inspections for that day where there was a defect
16 noted but then there was no DVIR associated with
17 that.

18 Q. And do you know if the investigator asked
19 for any kind of repair records to show whether that
20 defect at -- noted on a roadside inspection had been
21 corrected before the end of the day when the DVIR
22 would have been completed?

23 A. Can you ask your question again?

24 Q. Yeah. And it's been a couple of years,
25 so you may not have a recollection of it, but do you

1 remember if the investigator asked to see any type of
2 repair records for the roadside defect showing that
3 the repairs had been made before the end of the day
4 when the DVIR would have been required to be
5 completed?

6 A. I honestly don't remember.

7 Q. Okay.

8 A. I don't believe so, but I don't remember.

9 Q. And back in 2015 when this investigation
10 occurred, did you have an electronic DVIR system, or
11 was that still paper at the time? Do you remember?

12 A. I honestly can't remember that either.

13 Q. Okay. Just to clarify that you were
14 mentioning before the hearing that now your company
15 has an electronic DVIR system. Can you explain how
16 that works just so we know what we are referring to?

17 A. Yes. We use the Omnitrac's in cab two-way
18 communication system, and one of the apps or programs
19 on it is the electric DVIR, so essentially instead of
20 filling out a piece of paper, they are filling out
21 the DVIR electronically through that application on
22 the Omnitrac's unit, and then when they do that, it
23 submits it in to us.

24 Q. So, now, that entire process is done
25 electronically so you would just print out the

1 electronic file when requested during an
2 investigation.

3 A. Yes.

4 Q. And back when it was all paper driven,
5 was it part of the driver's daily log, or did you
6 have a separate DVIR report that was completed?

7 A. It was part of the driver's daily log.

8 MR. WISEMAN: Okay. It was like a
9 tearaway at the bottom; is that how it worked?

10 Okay. No further questions.

11 ATTORNEY EXAMINER SANYAL: Mr. Margard,
12 cross-examination?

13 MR. MARGARD: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Margard:

17 Q. We talked some about the type of testing
18 that's performed post accident. Are there
19 restrictions or requirements with respect to what
20 kind of facility can perform these tests?

21 A. That I don't know because we actually --
22 like I say, we utilize our vendors to supply the
23 locations or find the locations. Certainly it's
24 going to be a location that can perform a DOT alcohol
25 test.

1 Q. When you say you rely on the vendor, do
2 you rely on the vendor exclusively?

3 A. Well, we are -- we manage the process,
4 but we're working with the vendor to find the
5 location, to find a qualified vendor. At that point
6 it could be the vendor. It could be us that are
7 actually going to set up. Most times it's us that is
8 taking that information and getting ahold of the
9 driver and sending them to the location.

10 Q. That's what you mean by managing the
11 process?

12 A. Yes.

13 Q. Okay. What determines when you manage it
14 yourself and when you turn it over to a vendor?

15 A. Again, that would be if it's in a
16 location where we have used a vendor in the past,
17 then we will certainly just go ahead and send the
18 driver to that location. It would be -- because,
19 again, FedEx Custom Critical, we have our
20 headquarters in Uniontown, Ohio. We have no other
21 facilities throughout the United States so,
22 therefore, certainly the areas we work in we know the
23 testing facilities but there are areas where we are
24 not going to be familiar with what facilities are
25 available.

1 Q. And from those circumstances you are
2 relying on your vendors?

3 A. We will reach out to a vendor for
4 assistance, yes.

5 Q. And if you're not familiar with
6 facilities in the area and if your vendor has no
7 resources in those areas, what do you then do?

8 A. We would probably reach out to one of our
9 sister companies. I can tell you I cannot remember a
10 vendor not having a facility available but.

11 Q. You indicated that your operations are
12 nationwide, correct?

13 A. Yes.

14 Q. And you operate in a number of areas that
15 are fairly remote.

16 A. We do.

17 Q. What special arrangements have you made
18 to ensure that testing can occur in remote areas?

19 A. Other than really working with our
20 vendor, DSI, to make sure that, you know, we've got
21 most of our areas covered, that's what we've done.

22 Q. You indicated that you have safety
23 standards that require that accidents be reported
24 immediately. Is this all accidents?

25 A. Yes, any accident or incident.

1 Q. Okay. And who is responsible for
2 reporting that?

3 A. The driver.

4 Q. And to whom do they make that report?

5 A. Typically it will come into our
6 operations area. There are times if it's during the
7 normal workday they may call into safety itself which
8 at that point a safety person would put in the
9 accident report, and then the accident specialist
10 would take it from there.

11 Q. And this is for all accidents regardless
12 of whether there is injury, tow; all accidents are
13 reported.

14 A. Yes.

15 Q. And it is the company's expectation that
16 this be reported immediately.

17 A. Yes.

18 Q. But this is merely specified in the
19 owner-operator agreement?

20 A. Yes, in the safety standard and the
21 owner-operator agreement.

22 Q. Is there any other form, any other means
23 by which the driver is informed of this obligation?

24 A. There's what's called a contract or
25 handbook, if you will. It just has policies and

1 procedures. The safety standards are a part of that
2 agreement or that handbook. That would be -- is
3 given to every owner again to do what they want. The
4 thought is it goes into the trucks so the drivers
5 have it there for reference.

6 Q. So various documents are given to drivers
7 that put things in the truck. Is there any training
8 that's provided to these drivers to explain the
9 contents of these agreements or these manuals?

10 A. That's the owner-operator's obligation
11 under the agreement to do so.

12 Q. Okay. So the answer is FedEx provides no
13 such training; is that correct?

14 A. Correct.

15 Q. Okay. Now, you also indicated when a
16 report comes in, and presumably it's a report that
17 satisfies the various conditions that triggers
18 post-accident testing, some kind of a screen is
19 created, some kind of a document; is that correct?

20 A. Yeah, inside of our freight management
21 system so our customer service dispatch system there
22 is a screen, it's an accident report screen is what
23 we call it, and basically it captures the basic
24 information, date, time, place, you know, injuries,
25 tows, transport away, contact information, that

1 general information from the scene.

2 Q. And is all of that inputted, if you will,
3 by the person who's contacted about the information
4 of the accident by the intake person?

5 A. Yes.

6 Q. You indicated that this sets off a page.
7 What do you mean? Can you explain what happens?

8 A. In other words, we have -- there's flags
9 in the accident report for let's just say tow and
10 citation. Let's say they are both marked yes.

11 Q. Okay.

12 A. So that triggers post-accident events.
13 So what happens is the input flags it as a yes in
14 each of those and then what happens is it's an
15 automatically -- the system is programmed to
16 automatically set up and page our accident specialist
17 who then gets involved any time of day.

18 Q. And that happens automatically.

19 A. Yes.

20 Q. And these are the 24/7 people that your
21 counsel was referring to?

22 A. Yes. Our accident -- we have an accident
23 specialist on call 24/7.

24 Q. What are the duties and responsibilities
25 of your accident specialists, please?

1 A. They take the input from the accidents,
2 they will enter it, they may assign an adjustor.
3 Depending on the accident obviously they'll ensure --
4 if it requires post-accident testing, then they'll
5 start obviously the testing process and the
6 documentation process. And then really they are
7 entering it and preparing the information to send up
8 to our risk management and legal department --

9 Q. Okay.

10 A. -- if needed.

11 Q. I want to drill down a little bit there.
12 You mentioned an adjustor strictly for insurance
13 claim purposes or?

14 A. Yes.

15 Q. Okay. And then you indicated that they
16 start the process for ensuring the testing. I want
17 you to walk through that step by step for me exactly
18 what do they do to initiate this process?

19 A. Okay. So once they are aware that it's
20 going to happen, they will alert the driver to say,
21 okay, this requires post-accident alcohol and drug
22 testing. At that point they will immediately try to
23 find the closest facility available to send the
24 driver to. If their truck certainly is drivable and
25 they have been released from the scene, they can

1 drive there. If not, they can take a cab. We've
2 sent people out to transport, found another driver to
3 go take the driver to the facility.

4 Q. They notify the driver by radio? By
5 phone?

6 A. By phone.

7 Q. Okay. All of the drivers are required to
8 have phones?

9 A. They are not required, but they have
10 phones.

11 Q. And if they don't have a phone, they can
12 be contacted by radio?

13 A. They can be contacted on the Omnitrac
14 system in the truck.

15 Q. Are they -- you had mentioned that these
16 specialists do follow up. Is part of that follow-up
17 maintaining regular contact with the driver?

18 A. Yes.

19 Q. And is there any particular standard as
20 to how often that should occur?

21 A. Well, currently today there is follow-up
22 occurring every 30 minutes.

23 Q. Well, we want to focus obviously on the
24 2014-2015 sort of time frame. Was the expectation
25 different then?

1 A. Not for our accident specialists.

2 Q. So they would have been in contact with
3 the driver at least every 30 minutes.

4 A. If they are aware there was a post
5 accident required, yes.

6 Q. And they would only have been aware if,
7 in fact, the intake person had triggered the
8 necessary screens, the necessary pages, and so forth.
9 Otherwise there would be no contact with the driver;
10 is that correct?

11 A. Yes, correct.

12 Q. Now, you also indicated it's then their
13 responsibility to find the nearest facility, and we
14 talked a little bit earlier about the services you
15 use. To the extent that you don't have one of these
16 services in that general vicinity, what efforts do
17 your specialists make to find such a facility?

18 A. Again, it's rare that it happens, but I
19 can tell you that we have reached out, you know,
20 we're part of FedEx Corporation, so we have sister
21 operating companies that are large and operate across
22 the U.S. as well, so we have actually reached out to
23 them before, No. 1, to see if they have a facility
24 that they are aware of that we have not been aware
25 of.

1 Q. Well, your counsel provided you with an
2 Exhibit FXCC 1 --

3 A. Yes.

4 Q. -- that briefly discussed the efforts
5 made for three different incidents. With respect to
6 these indents, was the company aware of facilities in
7 the vicinities of each of these accidents?

8 A. Let me read through it before I say that.
9 So in the first situation, again, we found out 7
10 hours and 10 minutes after the accident so that left
11 us 50 minutes at that point to get it completed.
12 There was just no way to get it done in that time
13 frame. So in that situation there was obviously a
14 collector because we got the drug test completed.

15 Q. But no effort was made to get alcohol
16 testing at that time?

17 A. We would have made an attempt. Again,
18 with 50 minutes left there just wasn't enough time to
19 get it done.

20 Q. Okay. So, again, the answer essentially
21 is we are up against eight hours, don't worry about
22 the alcohol test, but we still need the drug test?

23 A. No, we do worry about the alcohol test.
24 Obviously in this situation, again, with 50 minutes
25 left, if we would have had 7 hours and 50 minutes,

1 then we would have certainly probably been able to
2 find a collector and get it done, but with 50 minutes
3 left, I think your question did we try to find a
4 collector, we would have tried to find a collector.
5 Even if there is 50 minutes left, we would have tried
6 to get a collector.

7 Q. You did find a collector for the drug
8 test.

9 A. Yes.

10 Q. Are most drug test collectors also able
11 to do alcohol tests?

12 A. Yes. I would believe so.

13 Q. And vice versa?

14 A. I would believe so, yes.

15 Q. I do want to ask you about some of the
16 specifics here. You indicate that at 3 o'clock the
17 citation was issued to No. 1. First of all, how do
18 you know that the citation was issued at that hour?

19 A. Because in the morning -- so what occurs
20 if an accident happens in the middle of the night, a
21 report is put in. If there is nothing to trigger the
22 post accident, when our accident specialists come in
23 in the morning, then they start looking at the
24 accident reports that have come in, and they will do
25 follow-up calls to the driver just to get any finer

1 details that were not provided in the report. At
2 that time when they would have made the call, she
3 probably asked the question were you not issued a
4 citation, and at that point he probably said, yes, I
5 was and that's when she found out.

6 Q. So apparently what happened here and,
7 again, I am just trying to draw a conclusion based on
8 your document, the driver was issued a citation and
9 did not call that fact into the company.

10 A. Correct.

11 Q. Now, at that 3 o'clock hour, it says "FCC
12 agent did not follow up with driver." Is this one of
13 your accident specialists or what agent are we
14 referring to here?

15 A. No. This would have been one of our
16 third shift operations agents because, again, at this
17 point there was no trigger to set up the page to the
18 accident specialist, so it would have just been
19 whoever was handling the accident on third shift.

20 Q. Was it FedEx's vehicle that was towed?

21 A. I don't know.

22 Q. If it was, what becomes of the driver?

23 A. A lot of times they'll work with their
24 owner since we don't own the equipment and we don't
25 employ the drivers. Most times the drivers will call

1 the owner for assistance.

2 Q. And not FedEx so FedEx would not have
3 regular contact with a driver whose vehicle was towed
4 from an accident?

5 A. Not necessarily. If there's no freight
6 onboard, then at that point not necessarily. If
7 there is freight onboard, we would because obviously
8 we want to ensure the safe delivery of the freight.

9 Q. And do you know if there was freight
10 onboard with this incident?

11 A. I do not.

12 Q. Let me ask you to take a look at the
13 second page of that exhibit, if you would, please,
14 Michael Bridgett incident. Do you know when the
15 citation was issued in this instance?

16 A. 9:40 in the morning on February 15 of
17 2015.

18 Q. That's when the citation was issued?

19 A. No. That's when we were aware that the
20 citation -- a citation was given.

21 Q. If the citation had been issued earlier,
22 it would have been the driver's obligation once again
23 to notify the company, correct?

24 A. Correct.

25 Q. And apparently that did not happen --

1 A. Correct.

2 Q. -- if, in fact, it was issued earlier.

3 A. Correct.

4 Q. What is this notation at 7:30 that says
5 "Left messages for both drivers"?

6 A. Again, that would have been so since
7 there was no trigger in the middle of the night, when
8 our accident specialists come in in the morning, they
9 would have started processing what came in overnight.
10 And at that point they would have started reaching
11 out to the drivers, so they left messages for both
12 drivers. They obviously weren't answering their
13 phones.

14 Q. And I want to try to make sure I
15 understand these accident specialists then because a
16 couple of times you've referred to the fact they will
17 come in in the morning and follow up on things that
18 have happened overnight.

19 A. Yes.

20 Q. Do they follow up on all accidents even
21 if they are not triggered in the system as one
22 requiring post-accident testing?

23 A. Yes.

24 Q. Okay. So your system apparently would
25 not have reflected that there was a citation at the

1 time that the accident specialist saw this.

2 A. Correct.

3 Q. With respect to the third page, you note
4 on the 4-28 here "Vigillo"?

5 A. Vigillo.

6 Q. Vigillo, is this an FXCC employee?

7 A. No. Vigillo is an -- is a vendor we use
8 that they capture all kinds of CSA data and just
9 general data that we can use to go pull information.

10 Q. Would they have, for example, likewise
11 reported on the first two pages that there had been
12 an accident with a tow?

13 A. Yes. It should have been in there.

14 Q. But a vehicle was towed as a result of
15 this incident, correct?

16 A. Yes. No. 2 was towed, so it was the
17 other vehicle.

18 Q. Now, in your timeline at 11:50 it says
19 "#1 said he didn't see #2 unaware of tow." Can you
20 tell me if you know at what time the company became
21 aware of that information?

22 A. Which information?

23 Q. That No. 2 -- or that No. 1 obviously
24 then was aware of a tow. They had been told, said he
25 didn't see No. 1, was unaware of a tow.

1 A. Yes. He told us that the vehicle was
2 not -- there were going to be no tows affiliated with
3 this accident.

4 Q. I see. Okay. I'm going to turn briefly
5 to your inspection maintenance issues, and I
6 understand that there's no forfeiture associated with
7 this. You indicate all of the vehicles receive two
8 DOT inspections per year, correct?

9 A. Correct.

10 Q. And they're required to provide that
11 information to FXCC.

12 A. Yes.

13 Q. They also do an annual -- as I understand
14 it annual maintenance recap?

15 A. They actually do -- in between the two
16 six months, they do a quarterly maintenance recap.

17 Q. I want to make sure we're not mixing
18 there. You said in between so do they do that every
19 six months or do they do that every quarter?

20 A. So every six months we are getting a DOT
21 and a maintenance recap.

22 Q. And you would see both of those for all
23 of the vehicles that are under contract with FXCC.

24 A. Yes.

25 Q. Okay. And the obligation to provide that

1 information is again included in some kind of a
2 special maintenance program document, correct?

3 A. Yes.

4 Q. And are the drivers provided with any
5 specific training with respect to what documentation
6 they need to provide FXCC?

7 A. We have the inspection forms and the
8 maintenance recaps forms on our owner-operator
9 extranet that is there for the owners to go out and
10 get them if they need them.

11 Q. Now, you were also asked about internal
12 audits. How often are those performed?

13 A. Typically twice a year. I will say
14 they're not large scale audits, but we do pull just a
15 number of files and look at them.

16 Q. Samples.

17 A. Just samples.

18 Q. Okay. So you have no way of ensuring
19 that drivers, in fact, have submitted the required
20 inspection or maintenance reports.

21 A. Correct.

22 Q. And without those reports you have no way
23 of knowing whether, in fact, these vehicles are being
24 properly maintained, do you?

25 A. Well, we do because we have -- for the

DOTs our system is programmed so that when an inspection comes in, we have a data affiliated with that inspection. So, in other words, let's say he gets an inspection today which is May 8. We put that date in the system, so it knows six months later that another one is due to come in. So if we do not go in and update that date in six months, the truck will be pulled out of service for an inspired -- expired inspection. Now, that's for the two DOT inspections.

Q. Okay.

A. Not the maintenance recap but the DOT inspections.

Q. Okay. We are going to turn our attention now to the DVIR issues. And we talked a little bit about inspections and defects found on inspections. If the defect is found on an inspection and is not repaired, it is FXCC's expectation that the driver will prepare a DVIR for that vehicle for that day; is that correct?

A. That's correct.

Q. And presumably for every subsequent day until the defect or deficiency is repaired, correct?

A. Yes.

Q. If, in fact, the defect or deficiency was repaired, there would be a record of that as well,

1 would there not?

2 A. Yes.

3 Q. And this is more out of curiosity than
4 anything, your new electronic DVIR system, when did
5 you start using this?

6 A. Like I said, I honestly can't remember
7 when we implemented it.

8 Q. Subsequent to this review.

9 A. I believe it was.

10 Q. Okay.

11 A. I believe we were on paper back in 2015.
12 And the reason I believe that to be the case, if I
13 can just expand for a minute, is when we had the
14 audit, we had processes in place that if we had -- if
15 we found -- so we pull all the roadsides and we check
16 them and if we see a defect that we don't get a DVIR
17 from, then we have an SOP that clearly lays out -- we
18 have a business discussion with the owner that
19 reminds them of their obligation.

20 The reason I think we were on the paper
21 because when the audit occurred, we were advised to
22 go back and recreate the DVIRs which at the time I
23 interpreted, well, that's falsifying a document
24 because we are going back and recreating something
25 after the fact. So that's why I say I believe we

1 were on the paper at that point because we went back
2 and recreated it and, in fact, had our SOP updated to
3 go back and say in the event there is no DVIR, that
4 even if it's the next day, you go back and recreate
5 one.

6 Q. Okay. And I want to get back to that,
7 but with respect to your current -- your now
8 electronic system, this is something that the driver
9 can do from his cab?

10 A. Yes.

11 Q. And is it still the company's policy that
12 need only be done at the end of the day if there is a
13 defect or deficiency?

14 A. Yes.

15 Q. Getting back to the explanation that you
16 were offering about pulling roadside inspections and
17 having this conversation if there is no DVIR, how
18 often do you pull these inspections for that purpose?

19 A. We're pulling them as soon as they are
20 out on the site; so, I mean, our maintenance folks
21 are going out on a daily basis looking at the site
22 for roadside inspections.

23 Q. So every day you're pulling an
24 inspection, and if you are finding a defect, you are
25 looking for a DVIR.

1 A. Yes.

2 Q. And this was the case at the time of the
3 review in this case.

4 A. Yes.

5 MR. MARGARD: That's all the questions I
6 have. Thank you, your Honor.

7 ATTORNEY EXAMINER SANYAL: Any redirect,
8 Mr. Wiseman?

9 MR. WISEMAN: No. Thank you.

10 ATTORNEY EXAMINER SANYAL: You are
11 excused.

12 Mr. Wiseman, do you have any other
13 witnesses?

14 MR. WISEMAN: The only other witness I
15 would have would be the investigator unless --

16 MR. MARGARD: We intend to call the
17 investigator.

18 MR. WISEMAN: So, no, I do not have any
19 further witnesses.

20 ATTORNEY EXAMINER SANYAL: Mr. Margard,
21 you may proceed when you are ready.

22 MR. MARGARD: Thank you, your Honor. I
23 would like to call Mr. Neil Hedrick to the stand,
24 please.

25 (Witness sworn.)

1 ATTORNEY EXAMINER SANYAL: You may be
2 seated.

3 - - -

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

7 DIRECT EXAMINATION

8 By Mr. Margard:

9 Q. Sir, please state your name and business
10 address.

11 A. My name is Neil Hedrick. My general
12 headquarters business address is this building, 180
13 East Broad Street, Columbus. My office is actually
14 located at 4500 Atlantic Boulevard Northeast, Canton,
15 Ohio, at the ODOT facility. We rent office space
16 there.

17 Q. And when you say -- by whom are you
18 employed, sir?

19 A. The Public Utilities Commission
20 Transportation Department.

21 Q. And in what capacity? What's your job
22 title?

23 A. I'm a hazmat specialist 2.

24 Q. And what are your duties and
25 responsibilities as a hazmat specialist 2?

1 A. I conduct roadside inspections of
2 hazardous materials as well as nonhazardous materials
3 trucks. I conduct new entrant safety audits for both
4 hazmat companies and non-hazmat companies as well as
5 DOT compliance reviews for the two potential
6 companies that we deal with.

7 Q. And how long have you worked for the
8 PUCO?

9 A. I've worked for the PUCO going on 14
10 years now.

11 Q. Do you have any particular
12 certifications, training, any specializations for
13 your performing your job?

14 A. Well, prior to working for the Public
15 Utilities Commission, I was a commercial trooper with
16 the Ohio State Highway Patrol for 27 years. I've
17 received technical crash investigation training
18 concerning commercial vehicles, but as pertains to
19 the -- my current job, I'm certified to conduct all
20 levels of inspections including radioactive
21 materials. I'm certified to conduct new entrant
22 audits. I'm certified to conduct compliance review
23 training and that was all in 2005 for the safety
24 audit and compliance review training.

25 Q. Thank you, sir. In the course of your

1 duties and responsibilities, did you have occasion to
2 conduct a compliance review of, get my initials
3 right, FXCC in September of 2015?

4 A. Yes, I did.

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

7 A. I have very limited independent
8 recollection. It's been quite a while; but, yes, I
9 can recall being there.

10 Q. In the course of your inspection, you
11 took notes and created various documentation
12 presumably and also generated a report; is that
13 correct?

14 A. Yes, and I took scans of what supporting
15 documentation I might need.

16 Q. And have you reviewed that material prior
17 to testifying today?

18 A. Yes, I have.

19 Q. And has that review helped refresh your
20 recollection of that inspection?

21 A. Yes. That along with Mr. McCahan's
22 testimony I do recall some things.

23 Q. Very good. Thank you. You have before
24 you a notebook with a number of numbered tabs. If
25 you would turn, sir, first, please, to the tab marked

1 Staff Exhibit 1. Could you identify that document
2 for me, please.

3 A. Yes, sir. That's the USDOT Compliance
4 Review Form that I completed in September of 2015 in
5 relation to this compliance review.

6 Q. And this document was prepared by you.

7 A. Yes.

8 Q. And have you had an opportunity to review
9 this to determine whether it accurately reflects the
10 report that you prepared at that time?

11 A. Yes, sir, it does.

12 Q. Okay. I want to begin with how this
13 particular review was assigned to you. Do you recall
14 how this review was assigned?

15 A. This review was assigned essentially like
16 all other reviews. It's -- a list is generated by
17 the FMCSA and is accessed by our compliance
18 supervisor for pending compliance reviews, and
19 basically they're assigned geographically. This
20 being a hazardous material carrier specifically
21 pointed towards me in that they are close to my
22 location.

23 Q. Okay. I am going to ask you to turn in
24 Staff Exhibit No. 1, if you would, please, to part C.
25 On page 1 of 7, part C.

1 A. Yes, sir.

2 Q. I am going to direct your attention to
3 the bottom of that page where it says "Reason" -- let
4 me begin first at the very top of the page. It says
5 "Reason for Review." Do you see that reference?

6 A. Yes, I do.

7 Q. And what does that say, please?

8 A. "The reason for this investigation's
9 assignment was because the carrier has unresolved
10 serious violations in the Vehicle Maintenance BASIC
11 and the Drug and Alcohol BASIC."

12 Q. Can you explain what that means?

13 A. What that means is during a previous
14 review, this -- in this case in April of 2013,
15 critical or acute violations as defined by the FMCSA
16 in Part 385 was discovered in the vehicle maintenance
17 and the drug and alcohol. They call them basic, but
18 we can call them a category if it would be easier to
19 explain.

20 Q. Okay. At the top of the page it notes a
21 number of prior reviews including the one from April
22 2013. Did you conduct that review by the way?

23 A. No. I was there as assisting another
24 investigator on that review with the hours of service
25 basic, and I can't recall if I did anything other

1 than the logs at that time, but I was there. That
2 was not my investigation.

3 Q. Did you review that review prior to
4 conducting this review?

5 A. Yes, I did.

6 Q. Sir, let me ask you to turn to what's
7 been marked as Staff Exhibit 10. Let me ask you if
8 that is the April 25, 2013, review report that you
9 reviewed prior to conducting your review in September
10 of 2015.

11 A. Yes, it is.

12 Q. And on the first page of that the contact
13 name was once again Mr. McCahan; is that correct?

14 A. Yes, sir.

15 Q. Thank you. So this inspection was not
16 your first contact with this company, correct?

17 A. That's correct.

18 Q. Prior to conducting your review, did you
19 have contact with the company?

20 A. Yes, in as far as setting up an
21 appointment to conduct the review, yes, I did.

22 Q. Did you have discussions with anyone else
23 outside of the company with respect to this review,
24 what specifically to look for, or what -- what the
25 focus of this review would be?

1 A. No. The assignment list indicates what
2 the focus of the review should be; so, no, I did not
3 discuss that with anyone.

4 Q. And do you make a request of the company
5 that it provide certain information to you prior to
6 your going on site to conduct the review?

7 A. Yes. Generally as a courtesy, I'll leave
8 an appointment letter which indicates the materials
9 that I'll need for the review.

10 Q. And did the company provide those
11 materials? Were they generally cooperative?

12 A. Yes.

13 Q. Thank you. Now, is there a particular
14 period of time that you are reviewing when you
15 conduct this review?

16 A. Our compliance reviews with a few
17 exceptions go back a year, 365 days. Specifically
18 for this, in the case of Driver/Vehicle Inspection
19 Reports, as they are only required to be maintained
20 for 90 days, that would have only went back 90 days.

21 Q. Aside from the DVIRs, what other items do
22 you typically look at as part of your review?

23 A. Well, as part of this investigation, I
24 was assigned to look at hazardous material
25 compliance, drug and alcohol compliance, and vehicle

1 maintenance compliance. Drug and alcohol compliance
2 would consist of pre-employment drug testing, random
3 drug testing, post-accident drug testing, positive
4 tests, the policy and procedure and educational
5 materials provided by the carrier and reasonable
6 suspicion training by their supervisors.

7 Maintenance basically boils down to
8 annual DOT inspections, periodic inspections, the
9 maintenance files, Driver/Vehicle Inspection Reports,
10 and then ensuring that none of the out-of-service
11 violations that are listed on roadside inspections
12 would have been what we call jumped or driven away
13 from the scene of -- once they got placed out of
14 service for vehicle maintenance. Hazardous materials
15 is training, shipping papers, DOT security plan if
16 applicable, and other hazardous material-type
17 requirements.

18 Q. And in addition to this document review,
19 presumably you also conduct interviews with company
20 employees?

21 A. On occasion. I'm dealing with in this
22 case I believe it was two main people. There are
23 occasions that we do written interviews but that was
24 not the case in this -- in this review.

25 Q. I want to kind of walk through this

1 report, if you will, please, the Staff Exhibit No. 1.
 2 And I want to start on the first page. And at the
 3 top it says "Review Type: Non-ratable Review-CSA."
 4 What does that mean?

5 A. That means that I'm not checking every
 6 aspect of their compliance which would be a
 7 comprehensive review. This is what is known as a
 8 focused review once again on the categories that I
 9 stated before. If we don't check all categories,
 10 it's considered a non-ratable review.

11 Q. Thank you. Let me ask you to turn to
 12 part B, please.

13 A. Yes, sir.

14 Q. These are the violations that you found
 15 as a result of your review, correct?

16 A. That is correct.

17 Q. And I want to kind of explain what some
 18 of these boxes mean just so we're clear. Each of
 19 these violations has a header. The header is the
 20 same for each of them with different contents.

21 A. Right.

22 Q. The first box in each of these says
 23 "Federal." What does that signify?

24 A. That signifies that it is an interstate
 25 violation or a violation of Federal Motor Carrier

1 Safety Regulations.

2 Q. And the second box "Primary" and then a
3 variety of different regulations, these are the
4 specific regulations that you found to be violated?

5 A. That is correct.

6 Q. And then there are two boxes next to
7 "Discovered" and "Checked." Can you briefly
8 explained what those mean.

9 A. Discovered would be the number of
10 violations of that particular section of the CFR that
11 I found. The numbers checked would be how many --
12 how many that I checked for a violation basically.

13 Q. And the last column that has essentially
14 the same information, "Drivers/Vehicles," is this
15 different somehow?

16 A. It could be different in that in the
17 maintenance issues we're talking about vehicles. In
18 the driver qualification we would be talking about
19 drivers or drug testing, of course, would be drivers,
20 not vehicles.

21 Q. Okay. Now, for each of these violations
22 there is a description and an example.

23 A. Right.

24 Q. Is the description something that you put
25 in manually, or is it automatically generated?

1 A. No. That's automatically generated.

2 Q. And then the example, is that also
3 automatically generated or is that your --

4 A. No. That would be my addition. I have
5 to type that in.

6 Q. And in each of these instances you have
7 one example, although in some instances you have
8 multiple violations.

9 A. Right. The -- the software calls for one
10 example, not all.

11 Q. Okay. But do you document all of the
12 violations that you find?

13 A. Yes, I do.

14 Q. And how do you do that generally?

15 A. Generally I scan supporting
16 documentation, and I also list it in my part C
17 narrative.

18 Q. Okay. Thank you. You can turn the page,
19 please. There is a big box there that says "This
20 Review is not Rated." Why not? What does that mean?

21 A. Once again, as we were discussing in part
22 A of the report, unless I checked all of the
23 categories or basics and do a comprehensive review,
24 the review is not rated. In fact, unless there is
25 enough -- it can -- it could actually be rated

1 conditional or unsatisfactory, but it cannot receive
2 a satisfactory rating without passing on all of the
3 categories. In other words, this particular review
4 the best rating, if you want to call it that, that
5 they can get is not rated.

6 Q. Okay. Thank you. Can you turn to the
7 following page "Security Contact Q & A." What is
8 this section?

9 A. This section has to do with examining
10 their hazardous materials security plan as required
11 by the DOT. This section reviewed no violations of
12 that security plan.

13 Q. Thank you. The next several pages are a
14 "Safety Management Process Breakdowns and Remedies."
15 What is this section for?

16 A. This used to be known as requirements and
17 recommendations and it is basically for each
18 violation that I found along a generic recommendation
19 we are to determine what part of the safety
20 management cycle -- or in our opinion what part of
21 the safety management cycle broke down to allow the
22 violations to happen and what possible remedies could
23 assist the carrier in correcting them.

24 Q. Thank you. Let me ask you to turn to --
25 well, actually let's focus a little bit more on this

1 one. You have three different sections here in this
2 one, and I am going to start with the last one which
3 is on page 2 of 4 of the "Safety Management Process"
4 section. It says "Understand Why Compliance Saves
5 Time and Money."

6 A. Right. Number -- the No. 3
7 recommendation listed with bullet points is a
8 mandatory recommendation that goes on all compliance
9 reviews and affects safety audits that we conduct
10 required by the FMCSA to be on there and there's
11 several bullet points with different requirements and
12 recommendations that they want all carriers put on
13 notice at all times about.

14 Q. Okay. Let's go back now to item No. 1 in
15 that section, "Vehicle Maintenance." How much of
16 this is boilerplate and how much of this is something
17 you specifically write?

18 A. The description of the process breakdowns
19 I write under each header. I select what part of the
20 safety management cycle I feel broke down. Then I
21 add the description of process breakdown, and then I
22 do delete the -- under the next section where it says
23 basic, specifically recommended remedies, anything
24 that does not apply, for instance, passenger carrier
25 recommendations that -- obviously FedEx does not

1 operate passenger carrier vehicles so. I customize
2 it to the carrier.

3 Q. Okay. Thank you. Now, that particular
4 section refers, does it not, to violations 3 and 4
5 from part B, the inspection, vehicle maintenance, and
6 the DVIRs?

7 A. Yes, No. 1 does, yes.

8 Q. And similarly section No. 2 refers to
9 violations 1 and 2.

10 A. That's correct.

11 Q. All right. Turning, if you would, now,
12 please, to part C. Now, when is part C completed?
13 Is it completed at the same time as the rest of your
14 report?

15 A. Some of it, for instance, the reason for
16 investigation, the recurring violations is done at --
17 prior to the investigation. Some of it is done
18 during the investigation, but ultimately it's
19 completed at the end of the investigation.

20 Q. Is part C provided to the carrier?

21 A. No, it is not.

22 Q. The rest of the report was.

23 A. Yes.

24 Q. Not part C.

25 A. Correct.

1 Q. But all of this information is sent to
2 the Commission at the conclusion of your review.

3 A. That's correct.

4 Q. Ask you to turn to page 2 of 7 of part C.
5 The first full sentence -- sorry. The second full
6 sentence, it says "The carrier has the following
7 unresolved violations." Do you see that sentence?

8 A. Yes, sir.

9 Q. And that refers to which review? This
10 review? The 2013 review?

11 A. That refers to the most recent review
12 which was 2013.

13 Q. And these violations are the same
14 violations that you found here; is that not correct?

15 A. All except the 390 -- pardon me. Let me
16 check. All except the 396.9(c)(2). That was not
17 discovered in this one.

18 Q. Okay. Very good. Thank you.

19 All right. Now, I want to turn to
20 specific violations. And we may flip back and forth
21 some between Exhibit 1 and the next couple of
22 exhibits. But in Exhibit 1, part B, page 1
23 violations, it says that you checked seven, and you
24 discovered three instances of violations for the
25 post-accident alcohol testing.

1 A. Correct.

2 Q. What did you check and how did you
3 determine what to check?

4 A. In the past 365 days from when I was
5 there, there was seven accidents that involved a
6 fatality, a tow away, or an injury requiring
7 treatment away from the scene in which either a
8 fatality requires testing all the time or the driver
9 was cited at the time of the accident for causing the
10 accident and there was seven crashes that required
11 that testing.

12 Q. And you looked at all seven of those.
13 What were -- what were you looking for? What
14 documents were you looking for to determine whether
15 or not there were violations?

16 A. The post-accident drug testing after
17 determining that it was an accident with one of the
18 tow away, injury, or fatality.

19 Q. Now, you cite one example there in part
20 B.

21 A. Right.

22 Q. In part C, if I direct your attention to
23 page 5 of 7 of part C.

24 A. Yes, sir.

25 Q. You specifically identify all three of

1 the violations that you found, correct?

2 A. That's correct.

3 Q. Okay. Let me ask you to turn now to
4 Staff Exhibit 2. And this has got a cover on it that
5 says "Post Accident Testing." This is a page that
6 you created yourself, isn't it --

7 A. Yes, I did.

8 Q. -- for organizing your documentation?

9 A. Yes, sir.

10 Q. Okay. And the first document we find is
11 an investigator's traffic crash report from the state
12 of Wyoming.

13 A. Yes.

14 Q. If I ask you to turn, sir, please, to the
15 fourth page of that document, can you tell me whether
16 a citation was issued?

17 A. Yes. Under the lower right-hand corner
18 box entitled "Citations issued," No. 5, which was
19 "Speed too fast," I assume for conditions, is
20 indicated.

21 Q. And was a vehicle towed as a result of
22 this accident?

23 A. Yes. Under "Vehicle Owner same as
24 driver" section in the middle, it was towed by
25 Wamsutter Conoco of Rock Springs, Wyoming.

1 Q. So we have a situation here where we had
2 a citation and a tow, correct?

3 A. Correct.

4 Q. Are you able to determine when this
5 citation was issued?

6 A. Not by looking at this report, no. And
7 I'm not sure if this is one that the carrier provided
8 a time on their reports or not so. According to the
9 report, it would have been sometime after 10:39 is
10 the time of arrival at the scene.

11 Q. Typically are citations issued at the
12 time that reports are prepared or otherwise noted in
13 some fashion?

14 A. Yes, typically on the crash report if
15 it's done at the time of the crash or the crash
16 investigation, I should say.

17 Q. So you have every reason to believe this
18 was, in fact -- the citation was issued at the time
19 this report was created.

20 A. Yes.

21 Q. Let me ask you to turn to the next
22 document so it's about the eight page in. It appears
23 to be an FXCC document "Entered in Safety Screen."
24 Do you see this document?

25 A. Yes.

1 Q. This was provided to you by the company?

2 A. Yes, it was.

3 Q. And this indicates that it was an
4 accident that there was a tow, correct?

5 A. Correct.

6 Q. There are also Ys here for the drug and
7 alcohol test. Does that to your mind indicate the
8 drug and alcohol tests were performed?

9 A. This crash did not have both. This crash
10 did not have alcohol as the eight hours elapsed. But
11 it did have a drug test, yes, but not an alcohol
12 test.

13 Q. Do you know what this -- this document is
14 supposed to reflect, what the purpose of this
15 document was?

16 A. I don't recall asking, and I can only
17 make an assumption that it -- that a drug and alcohol
18 test was required.

19 Q. Not necessarily performed?

20 A. Not necessarily performed since it
21 wasn't.

22 Q. Okay. The following page is the same as
23 the document that was provided to us by FXCC,
24 correct?

25 A. Yes.

1 Q. And did they provide this document to
2 you?

3 A. Yes, they did.

4 Q. Now, you're aware, are you not, that the
5 regulations require that some sort of record be made
6 if post-accident testing is not performed?

7 A. Yes, sir.

8 Q. Is this your understanding of what this
9 document is?

10 A. I guess this does make -- it does
11 indicate why it was not performed but it --

12 Q. Were you provided with any other record?

13 A. No, no.

14 Q. So this is all that you were given to
15 explain why.

16 A. I assume that's what they were using this
17 for.

18 Q. Okay. Okay. In your opinion does this
19 adequately explain why no testing was performed?

20 A. It adequately -- adequately explains but
21 not excuse why it was not performed.

22 Q. Why do you believe that, sir?

23 A. The driver not telling the carrier that
24 he was issued a citation is still the responsibility
25 of the carrier. The driver is part of the carrier.

1 It -- it explains it, but as far as my training and
 2 in this case specifically the FMCSA indicates to us
 3 that unless a driver is completely not accessible
 4 such as in intensive care, in a coma, you can't get
 5 to him or he is held up at the crash scene too long
 6 that he cannot be tested in time, that that is a
 7 total separate requirement that this reason be placed
 8 into -- into the file -- the accident file and have
 9 on file.

10 Q. You don't see any indication that any of
 11 those circumstances --

12 A. No, no, sir.

13 Q. It's your understanding that the driver
 14 has a duty to report this timely, correct?

15 A. Yes, that is correct.

16 Q. Do you know -- and similarly the employer
 17 has a duty to arrange the appropriate testing,
 18 correct?

19 A. That's correct.

20 Q. Now, we did hear some explanation that
 21 this may have occurred in some remote area of
 22 Wyoming.

23 A. Yes, sir.

24 Q. Are you aware of efforts that are or can
 25 be undertaken by carriers to ensure appropriate

1 testing can be done in remote areas?

2 A. Yes. With the current network that most
3 of the third-party administrators have, I can't
4 recall a time that if a carrier had been notified at
5 the time of the citation would have been able to send
6 the driver someplace for collections. A lot of
7 carriers also put kits in the vehicles even with all
8 the paperwork and collection sample cups, if you want
9 to say, that the driver can use in a case of being at
10 a rural facility such as a STAT care or something
11 such as that.

12 Q. Are these kits common place?

13 A. They used to be very common and I -- I
14 really can't say if they are now or not because I do
15 recall the kits also had disposable cameras with film
16 in them also, but the paperwork that goes with the
17 testing is still common to -- especially for
18 owner-operators.

19 Q. Are you aware whether any of FXCC drivers
20 are provided with such kits?

21 A. I'm not aware, sir.

22 Q. You've recommended that that's something
23 that they offer.

24 A. That is, yes.

25 Q. You have reviewed the company's training

1 policies with respect to post-accident testing?

2 A. I reviewed their drug and alcohol policy
3 which is required to have a section on describing
4 what post-accident testing is. I don't recall
5 reviewing their policy on -- on post-accident testing
6 to be honest with you.

7 Q. You've been in the hearing today. You
8 heard Mr. McCahan's testimony.

9 A. Right.

10 Q. Do you believe that the training provided
11 to the drivers is adequate?

12 A. Considering the -- the reasoning being
13 that the drivers are not notifying their employer
14 that they received a citation or the employers not
15 getting back to the driver in a timely manner to find
16 out if they were cited until someone comes in the
17 next morning, I would say that there's a
18 communication problem between the drivers and the
19 management at the time that I did this review and
20 which led to the violations of not getting the
21 testing done.

22 Q. Thank you. Let me ask you to turn the
23 page, if you would, please, on Staff Exhibit 2 and
24 there now is an MCMIS crash report, correct?

25 A. That's correct.

1 Q. Is this something that you requested at
2 the time of your review?

3 A. No. This would have been something that
4 I printed out ahead of time from the Federal Motor
5 Carrier Management Information System. It's -- it's
6 an accident report that the states enter into the
7 federal system giving me a heads up more or less.
8 The accidents are already listed that they've had
9 within the past year.

10 Q. Is this something you would have provided
11 for all seven of the accidents that you reviewed?

12 A. Yes, I would have.

13 Q. If I ask you to turn a couple of pages,
14 there is a CDLIS history search results for
15 Mr. Moreland.

16 A. Right.

17 Q. What is this document, please?

18 A. This is more or less a driver's license
19 MVR check. My purpose for including this shows that
20 the citation date was 12-21 of 2014 and that he was
21 convicted actually of -- cited speed for condition.

22 Q. And is this something that you routinely
23 request the printout prior to your review?

24 A. This I ran and printed out, yes.

25 Q. Okay. Let me ask you now to turn to

1 Staff Exhibit 3. And this is for the second
2 violation that you found; is that correct?

3 A. Correct.

4 Q. And, again, the cover page is your own.

5 A. Yes.

6 Q. And is followed by an Ohio Department of
7 Public Safety Traffic Crash report.

8 A. Yes, sir.

9 Q. And if I ask you to turn to the second
10 page of that report, there's an indication that there
11 was a tow here, correct?

12 A. Madison Motors was the towing company,
13 yes.

14 Q. If I ask you to turn to the third page,
15 there was a citation issued to Mr. Bridgett, correct?

16 A. Yes, for failing to drive in marked
17 lanes.

18 Q. And are you able to tell from reviewing
19 this document when this citation was issued?

20 A. The officer was on scene between
21 8:31 p.m. and -- I'm sorry, between 8:48 p.m. and
22 9:45 p.m. on February 4 of 2015.

23 Q. And it would be your understanding a
24 citation would have been issued at the time this
25 reporter was created?

1 A. That's correct.

2 Q. And that that report would have been
3 created at the conclusion of his investigation at the
4 scene.

5 A. Correct.

6 Q. The next page is again the document that
7 was provided to us earlier by FXCC.

8 A. Yes.

9 Q. And is your opinion with respect to this
10 particular record the same or similar to the previous
11 record that we reviewed?

12 A. Correct. Once again, the -- the
13 follow-up call was not made until 9:40 a.m. the
14 following morning, at which point they learned that
15 the driver was issued a citation.

16 Q. And the driver should have notified the
17 carrier prior to that, correct?

18 A. Yes, sir, immediately.

19 Q. And, again, the following pages are the
20 crash reports in the CDLIS reports that you
21 generated?

22 A. Yes, that's correct.

23 Q. Thank you. Ask you to turn to staff
24 Exhibit 4. This is the third of the three
25 violations, correct, post-accident testing?

1 A. Yes, sir.

2 Q. And the first page here is from -- after
3 your cover is from the New York State Department of
4 Motor Vehicles Police Accident Report, correct?

5 A. Correct.

6 Q. And looking at the first page in the
7 middle, we see that a citation was issued, correct?

8 A. Yes, for their Section 1129A ticket
9 number indicated.

10 Q. And if I ask you to look down toward the
11 bottom in the officer's notes, there is a notation
12 that vehicle was towed, correct?

13 A. Correct, and also under vehicle 2 damage
14 codes in the middle of the form indicates it was
15 towed by DEC Towing.

16 Q. Very good. Thank you. There is
17 following that also a Driver/Vehicle Examination
18 Report issued by the Commercial Vehicle Enforcement
19 Unit of the New York State Police, correct?

20 A. Yes, sir.

21 Q. Also indicating that a citation was
22 issued.

23 A. That's correct.

24 Q. Again, are you able to ascertain from
25 reviewing this report when the citation was issued?

1 A. At the time of the -- that it was
2 completed sometime on 4-21-2015 and according to the
3 inspection report prior to 10:45 a.m.

4 Q. And the tow is also noted on that report,
5 correct, we've already established?

6 A. On the Police Accident Report the tow is
7 indicated, yes.

8 Q. Yes. Thank you.

9 A. The MCMIS inspection report also
10 indicates the citation was issued at the time of the
11 crash.

12 Q. And that's the MCMIS report; is that what
13 you are referring to?

14 A. No. The Driver/Vehicle Examination
15 Report by the New York State Police.

16 Q. Thank you. I just wanted to be clear.
17 Thank you. Okay. The next page we have is another
18 one of these screen -- safety screen pages that you
19 were provided by the company, correct?

20 A. Right.

21 Q. And this also indicates, although with
22 handwritten notes, that drug tests and alcohol tests
23 were either required or performed; we are not
24 precisely sure?

25 A. Correct.

1 Q. And then the page following again is the
2 document we were provided by FXCC.

3 A. That's correct.

4 Q. And I am going to ask you similar sort of
5 questions. Do you believe this adequately sets forth
6 the reasons why tests were not conducted?

7 A. Well, it does explain that they were not
8 aware that there was a tow away until seven days
9 later, but it doesn't excuse the driver for not
10 telling them.

11 Q. The driver had a duty to notify and
12 apparently failed to do so.

13 A. Right. And according to the information
14 that I got, the driver was not aware of the tow away
15 because he removed his vehicle from the scene of the
16 crash at the time of the crash.

17 Q. Do you know why he did that?

18 A. No, I don't.

19 Q. Did he remove his vehicle prior to the
20 police arrival?

21 A. The police report, it did indicate that
22 the vehicle had been removed from the scene prior to
23 his arrival.

24 Q. And as with the other reports, do you
25 believe this is an adequate justification for not

1 having performed the tests?

2 A. No, not according to my training and
3 experience, no.

4 Q. Once again, that's followed by the MCMIS
5 and the CDLIS reports generated similar to the
6 previous two incidents, correct?

7 A. Correct.

8 Q. Now, according to Staff Exhibit 1, you
9 found three violations of the post-accident alcohol
10 testing.

11 A. Correct.

12 Q. And one violation of the post-accident
13 controlled substance testing.

14 A. That's correct.

15 Q. And that's adequately reflected in the
16 document we've just reviewed.

17 A. Yes.

18 Q. Now, I am going to turn our attention to
19 the third violation that you found, the minimum
20 records inspection.

21 A. Yes, sir.

22 Q. I am going to direct your attention to
23 Staff Exhibit No. 5. Again, this has a cover sheet.
24 This cover sheet is one that you generated, correct?

25 A. That's correct.

1 Q. Now, the review indicates that you
2 checked 125 records.

3 A. Yes.

4 Q. How did you determine what to look at?

5 A. Primarily with maintenance files I would
6 be looking at the files of the vehicles that had been
7 stopped for roadside inspections and written a defect
8 or a violation on a roadside inspection. With 125
9 being the sample size, a lot of times it comes down
10 to random selection of vehicles after I exhaust my
11 number of vehicles that have been stopped along the
12 road.

13 Q. And out of the 125 you found 3
14 maintenance files that you believed were inadequate.

15 A. Yes, sir.

16 Q. One of these is the one at Staff Exhibit
17 5, E10674.

18 A. Yes.

19 Q. Now, does that refer to a piece of
20 equipment?

21 A. Yes. That would be a vehicle number.

22 Q. And, again, this cover page is one you
23 generated as part of your organization.

24 A. Yes, that's correct.

25 Q. And the next page that we have is a

1 vehicle inspection --

2 A. Right.

3 Q. -- report dated 7-21-14.

4 A. Yes, sir.

5 Q. And what does this demonstrate?

6 A. This would indicate what I found in the
7 file. This would be the annual or periodic vehicle
8 inspection report for this vehicle.

9 Q. In fact, there are a couple of different
10 inspection reports. There is a vehicle inspection
11 report for January 21, 2015.

12 A. Yes.

13 Q. And a vehicle maintenance record on
14 January 21 of 2015.

15 A. Right, which indicates nothing was --
16 nothing was done.

17 Q. Nothing was done?

18 A. Correct.

19 Q. That no maintenance had been performed
20 since when?

21 A. Well, none was listed in the -- on this
22 particular form and for this particular vehicle there
23 was no listing of any maintenance performed in the
24 past year.

25 Q. Okay. There is a Driver/Vehicle

1 Examination Report dated May 12 of 2015.

2 A. Yes.

3 Q. Shows a defect and then following we have
4 an invoice apparently indicating that this defect was
5 repaired.

6 A. Was corrected, yes.

7 Q. Then another Vehicle Inspection Report
8 dated July 21, 2015.

9 A. Right. It was being inspected. The
10 owner of the vehicle simply was not providing the
11 records of what he was -- that he was maintaining the
12 vehicles.

13 Q. There is another maintenance record also
14 dated July 21, 2015. That's the last document in
15 this section.

16 A. Right. It's blank also, yes.

17 Q. So what conclusions did you draw -- first
18 of all, is this the entirety of the maintenance file
19 for this vehicle?

20 A. For that unit, yes.

21 Q. For that unit. And what conclusions did
22 you draw from reviewing these records?

23 A. That the vehicle was -- traveled over
24 120,000 miles in the past 365 days. The only thing
25 that was in the maintenance file beyond the

1 verification of repairs for the one roadside
2 inspection were the periodic inspections. They were
3 not documenting oil changes, preventive maintenance
4 that might have been performed, or any other type of
5 repairs or maintenance at all.

6 Q. And is there any indication that this
7 vehicle was taken off the road?

8 A. No. It was still a current vehicle.

9 Q. Draw your attention to Staff Exhibit No.
10 6, again a similar cover page, a vehicle inspection
11 report dated March 21 of 2015, a vehicle maintenance
12 record dated March 23, 2015.

13 A. Right. And that indicated on sheet --

14 Q. Which follows.

15 A. Which follows, yes.

16 Q. Now, this has the kind of record you
17 would expect to find?

18 A. Yes.

19 Q. And then there's a Driver/Vehicle
20 Examination Report?

21 A. That's correct, with an out-of-service
22 violation for inoperative turn signal dated May 12 of
23 2015.

24 Q. Now, is this the entirety of the
25 maintenance file that you found for this unit?

1 A. Yes. There's nothing indicating that
2 that inoperative turn signal was repaired and it is
3 required that that be maintained with a maintenance
4 documentation that it, of course, had to be repaired
5 before removed from the scene, the stop, and had to
6 be documented that it was repaired.

7 Q. That's a document you would have expected
8 to find.

9 A. Yes. It was missing.

10 Q. Turn to Staff Exhibit No. 7, Unit DR8749.
11 Again, a vehicle inspection report dated March 19,
12 2015, the Driver/Vehicle Examination Report dated
13 June 2 of 2015. Then there's a letter from Vehicle
14 Compliance at FXCC dated June 1, 2015. Is this the
15 entirety of the maintenance record for this unit?

16 A. Yes, it was.

17 Q. And what conclusions did you draw from
18 reviewing this?

19 A. The vehicle traveled over 50,000 miles.
20 There were no records of any repairs for that
21 roadside inspection. The only thing in the
22 maintenance file was a periodic inspection.

23 Q. So it's your opinion that in these three
24 instances these files were inadequately maintained.

25 A. Yes.

1 Q. And, again, with respect to all of them,
2 there is no indication that the vehicles were pulled
3 off the road.

4 A. That's correct.

5 Q. I am going to turn your attention now to
6 the fourth violation which is a DVIR violation.

7 A. Yes, sir.

8 Q. Part B of Staff Exhibit 1 indicates that
9 you checked 26 records, discovered 24 violations.

10 A. Yes, sir.

11 Q. So let me ask you how you determined what
12 records to check here.

13 A. Based upon maintenance files and roadside
14 inspections, I had to find instances where a
15 Driver/Vehicle Inspection Report would have been
16 required within the past 90 days. My sample I
17 believe was 27 vehicles and even vehicle -- for each
18 vehicle I had to look at a 30-day period within the
19 past 90 days for Driver/Vehicle Inspection Reports
20 that were completed listing violations.

21 I picked the vehicles that had been
22 involved in Driver/Vehicle Inspection Reports
23 alongside the road with violations noted within the
24 past 90 days for that 30-day period and requested the
25 Driver/Vehicle Inspection Reports indicating

1 violations, defects. I found 24 required were
 2 missing. And one driver had -- had done two that was
 3 not as a result of a roadside inspection, but he was
 4 given credit to it as any of them would have been.
 5 Basically they were listing no violations discovered.
 6 According to FMCSA's training and policies and
 7 procedures, those are not to be indicated as a
 8 Driver/Vehicle Inspection Report as they're not
 9 required to be conducted -- or repaired, I'm sorry.
 10 Repaired.

11 Q. Let me ask you to turn to Staff Exhibit
 12 No. 8.

13 A. Yes, sir.

14 Q. And this is a sizable document containing
 15 a number of different separate documents. The first
 16 10 pages of this are handwritten notes.

17 A. Yes, sir.

18 Q. Are these your notes?

19 A. Yes, they are.

20 Q. And just briefly I want to make sure I
 21 know what I am looking at. The first six pages or so
 22 have TKs at the top of the page.

23 A. Trucks, straight trucks.

24 Q. And the next couple of pages have TT.

25 A. Truck tractors.

1 Q. And then we have TRLs.

2 A. Trailers.

3 Q. Very good. Now, what I would like to do
4 is I would like to understand what your notes show
5 here. And let's just start with the very first
6 entry, if we will, please. It's D8819 apparently; is
7 that correct?

8 A. That would be the truck number.

9 Q. Okay. And then it's followed by
10 presumably a driver's name.

11 A. Yes.

12 Q. And is this a license?

13 A. A license plate number, yes.

14 Q. A VIN number of the unit.

15 A. Right, the last several digits of the VIN
16 number.

17 Q. And if I go across to the right side, I
18 see presumably August; is that what that refers to?
19 I thought it might be AVG at first, but I'm guessing
20 this is the month.

21 A. Yes.

22 Q. Okay. The next line has a date
23 8-29-2015.

24 A. Right.

25 Q. What is that?

1 A. That would have been a date of a roadside
2 inspection for that vehicle.

3 Q. And are the notes immediately following
4 the findings, the violations as part of that
5 inspection?

6 A. Yes. The circled -- the circled
7 violations would be out-of-service violations. The
8 others are non-out-of-service violations.

9 Q. So what do you do with out-of-service
10 violations as part of this review?

11 A. My handwritten notes are used to check
12 maintenance files and for Driver/Vehicle Inspection
13 Reports. The out-of-service violations have to be
14 documented that they've been repaired on scene prior
15 to the vehicle moving again. So that's why I circle
16 them as I am preparing for an audit or compliance
17 review.

18 Q. If an inspection report found only
19 out-of-service violations that were repaired at the
20 scene, would you expect there to be a DVIR?

21 A. No, there should not be.

22 Q. But this indicated apparently at least a
23 violation that was not out of service; is that
24 correct?

25 A. Right.

1 Q. For that date?

2 A. Right.

3 Q. Okay. I move over to the right. Do you
4 know what that notation means?

5 A. Up at the very top I put DVIR. I put
6 okay for that August violation so indicating that
7 there wasn't a DVIR prepared on that day.

8 Q. Okay. If I look at the next line for
9 that unit, 6-30-2015 case, no violations and none
10 required.

11 A. Yes, sir.

12 Q. So this would be an example of a vehicle
13 that you inspected that you either expected to find
14 DVIRs and did or did not expect to find DVIRs and did
15 not, correct?

16 A. That's correct.

17 Q. Let me ask you similarly -- let's look at
18 the one at the bottom, the D8746.

19 A. Yes.

20 Q. And as before, we have a driver's name
21 and a license plate and the VIN number and a month;
22 and then, once again, we have a couple of lines
23 indicating inspection, correct?

24 A. Correct.

25 Q. All right. And what did you find as a

1 result of reviewing the records relating to this
2 vehicle, this unit?

3 A. Well, on August 5 it had a roadside
4 inspection indicating three rear ID lights, rear
5 clearance lights were out. The maintenance file
6 listed below, it shows repaired 8-07 of 2015 which
7 clearly indicates that those lights were still out at
8 the end of the 5th. And I marked one of one which
9 means that's one of one missing DVIR.

10 Q. Okay. And that's generally how we would
11 understand your notes here; is that correct?

12 A. Yes, sir.

13 Q. If I ask you to go to the end of the
14 handwritten notes, there is a typeset table. Do you
15 see that document?

16 A. Yes, sir.

17 Q. And is this essentially a summary of your
18 notes from the proceeding 10 pages?

19 A. Yes, it is.

20 Q. And this indicates the instances in which
21 you found DVIRs missing when you expected to find
22 one.

23 A. Right. That's correct.

24 Q. And you found that to be true in 24
25 instances.

1 A. Yes, sir.

2 Q. Okay. Following are a number of
3 Driver/Vehicle Examination Reports. I'll represent
4 to you that there are 24 separate Driver/Vehicle
5 Examination Reports. These, I presume, correspond to
6 the date of inspections and the unit numbers on the
7 table --

8 A. Yes.

9 Q. -- we were just discussing. So these
10 indicate the defects or deficiencies that you
11 expected to find some kind of a repair record or a
12 DVIR and found none.

13 A. That's correct.

14 Q. Now, just so I'm -- I'm clear, if -- in
15 reviewing these you said you review these together
16 with your review of the maintenance records, correct?

17 A. Yes, sir.

18 Q. So you would have asked for the repair
19 records for each of these?

20 A. Yes.

21 Q. And if you had found repair records, you
22 would not have found a violation.

23 A. If they were repaired before the end of
24 the day at which time the driver does his
25 post-accident inspection, he wouldn't have found

1 those violations any more if they would have been
2 repaired that day.

3 Q. Very good. And just because I want to
4 clarify something, we heard Mr. McCahan say something
5 about falsifying records and creating DVIRs after the
6 fact. Do you recall ever having a conversation to
7 that effect?

8 A. I do recall explaining that recreating an
9 accurate record is not a falsification. In fact,
10 there is an interpretation under 396.11 indicating
11 that a driver can correct or create lost
12 Driver/Vehicle Inspection Reports.

13 Q. And was that a recommendation that you
14 made to the company?

15 A. I don't specifically recall it, but if I
16 was asked about it, yes, I would have said to do that
17 to have the driver recreate it as long as it was
18 accurate.

19 Q. Now, after you've completed your review
20 and all of your documents and records and after
21 you've completed your report, do you have an exit
22 interview of some sort with the company
23 representative?

24 A. Yes.

25 Q. And what occurs as part of that

1 interview?

2 A. Basically the report that is created in
3 Exhibit I believe 1.

4 Q. With the exception of part C?

5 A. With the exception of part C was gone
6 over and explained to the carrier's representatives
7 that are there.

8 Q. And they would be provided with a copy of
9 that report.

10 A. They would be provided with a copy of the
11 report, yes, sir.

12 MR. MARGARD: I have no further questions
13 for the witness. Thank you.

14 ATTORNEY EXAMINER SANYAL: Mr. Wiseman.

15 MR. WISEMAN: Thank you.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Wiseman:

19 Q. I apologize if I go out of order. I'm
20 trying to go to the most recent issue that you
21 discussed.

22 A. That's fine.

23 Q. On the DVIR issues where you found 24 out
24 of -- 24 missing DVIRs out of 26 that you checked, I
25 believe you testified we were just talking about this

1 before the hearing, that if there was a defect noted
2 at a roadside inspection and it was corrected before
3 the end of the day, the driver would not need to list
4 that on his DVIR.

5 A. He would not have to create a DVIR at
6 all, right.

7 Q. Because it wasn't a defect that existed
8 when he completed at the end of the day?

9 A. When he did his inspection at the end of
10 the day, yes, sir.

11 Q. Gotcha. And you also indicated in your
12 Exhibit No. 8, I think it's behind the handwritten
13 notes on the typed summary that you've prepared, that
14 in looking at the maintenance records provided by
15 FedEx Custom Critical, that you were able to verify
16 that the specific defect noted in a roadside was not
17 corrected before the end of the day; is that correct?

18 A. Yes.

19 Q. Why didn't you make copies of those
20 records to evidence the fact that the repair wasn't
21 done by the end of the day?

22 A. I made a notation of the date, and I
23 didn't copy the files.

24 Q. Wouldn't that documentation be needed to
25 confirm that that defect on the roadside had not been

1 corrected prior to the end of the day?

2 A. I guess that's up for the Hearing Officer
3 to decide. I wrote down the date it was corrected.
4 I didn't make a copy of all of them.

5 Q. And these 10 pages of notes there
6 couldn't have been a miswritten of a date or maybe
7 the repair invoice had a particular date but
8 referenced a repair that was made on another date?
9 That -- is that a possibility?

10 A. I don't believe so, no.

11 Q. Okay. Have you -- have you undergone or
12 been a part of any training on compliance reviews and
13 focused audits by the FMCSA, the feds?

14 A. Yes, sir.

15 Q. Did that -- are you familiar with the
16 electronic field operator's training manual?

17 A. Yes.

18 Q. Okay. Are you familiar that that
19 document requires when you're going to take
20 enforcement actions civil penalties from a federal
21 level that certain documentation has to be retrieved
22 from the audit to support those violations?

23 A. I'm not real familiar with that as that's
24 a federal requirement.

25 Q. So you don't know if it says, you know,

1 that if you are going to assess fines in connection
2 with particular paperwork violations, that you have
3 to make copies of the --

4 A. I know in generalities, yes, sir, I do
5 know that.

6 Q. Okay. Does the Public Utilities
7 Commission of Ohio have any internal rules or audit
8 procedures that would require you to make copies of
9 the maintenance records to support when a repair was
10 made to a vehicle?

11 A. No.

12 Q. While we are on the maintenance issue,
13 I'm curious as to why the agency was focused on
14 vehicle maintenance for this particular company
15 because it looked like -- and you made a note of this
16 in part C of your report which is Exhibit No. 1, I
17 think it's on page -- let me see if I can find it
18 here, page 5 of part C, that FedEx Custom Critical
19 was in the 30 percentile for the maintenance basic
20 and have a 9 percent vehicle out-of-service rate for
21 the past two years. My first question on that would
22 you agree those numbers are pretty good?

23 A. Very good, yes, sir.

24 Q. And just for the benefit of the Hearing
25 Officer, could you indicate what 30 percentile of the

1 maintenance basic means?

2 A. Basically in their peer group companies
3 with a similar number of roadside inspections, their
4 company maintenance scores are better than -- better
5 than 70 percent, so they are in the top 30
6 percentile, the top being good, they are in the 30 --
7 30 percentile of good maintenance.

8 Q. And then the 9 percent vehicle
9 out-of-service rate, how does that compare to the
10 industry average?

11 A. The last I checked the average was
12 running 22 percent or something like that so under
13 half.

14 Q. So they are less than half. So I guess
15 my question is because they have such a good
16 performance record from roadside inspections over the
17 last couple of years, why did the agency feel a need
18 to focus on that particular area?

19 A. Because of the critical violations found
20 during the 2013 review.

21 Q. Okay. And I think those critical
22 violations were basically the same ones you found
23 here, the DVIR issue, if I am not mistaken?

24 A. Yes, I believe that was it.

25 Q. How many audits and investigations do you

1 do in a year, approximately?

2 A. 30 on average.

3 Q. Would you agree that the DVIR is one of
4 the more common violations found in audits of
5 trucking companies?

6 A. Yes, for -- in the maintenance category.

7 Q. Right. It's one of the more difficult
8 requirements for trucking companies to comply with
9 because you are --

10 A. I would say more one of the difficult
11 ones for drivers to comply with.

12 Q. Right. Okay. All righty. All right. I
13 want to talk a little bit about the post-accident
14 testing violation that's referenced in Staff Exhibit
15 No. 4. This was the one where there was both a
16 missed alcohol test and a missed drug test. I want
17 to make sure I understand what PUCO's kind of
18 enforcement guideline is on this. Are you instructed
19 to always write a violation for a missed
20 post-accident drug or alcohol test regardless of the
21 circumstances if that test isn't done within the
22 required time period?

23 A. There is no written policies and
24 procedures pertaining to that. What we've been
25 trained if the driver -- unless the driver was

1 inaccessible in that he's in a hospital or he's held
2 up at the scene past the 8-hour timeline for drugs or
3 32 -- I'm sorry, 8 hours for alcohol, 32 for drugs,
4 then we do write it.

5 Q. So those are the only two circumstances
6 under your training where you could not write a
7 violation for a missed test.

8 A. When it's required, yes, sir.

9 Q. Okay. So looking at this particular
10 accident on April 21, 2015, you relied on assessing
11 the violation based on all the documentation that was
12 included in this exhibit, right?

13 A. Yes.

14 Q. You didn't interview the driver,
15 Mr. Duffy, by chance, did you?

16 A. No, I did not.

17 Q. Okay. The reason I ask is because FedEx
18 Custom Critical's internal document that you were
19 provided, it's post-drug and alcohol test
20 documentation, indicates that the driver was unaware
21 of a tow situation, that this vehicle had been towed.
22 Would you agree that if there is no fatality, if
23 there is no injury requiring treatment from the
24 scene, and no vehicles are towed, that no drug test
25 is required?

1 A. That's correct.

2 Q. In fact, it would be a violation to do a
3 DOT drug test in that instance.

4 A. Yes, I do agree.

5 Q. In this case if both the driver and the
6 carrier were not aware that the accident, you know,
7 met the criteria of a DOT reportable accident, how
8 can they be assessed a violation for missing a drug
9 and alcohol test?

10 A. Well, if you are asking my opinion, the
11 driver should not have left the scene in the first
12 place and should have been aware there was a tow
13 away. An accident is an accident. He rear ended
14 another vehicle.

15 Q. Is there a regulatory obligation in Part
16 382.303 for the driver to, you know, verify whether
17 there was a tow away or a fatality or?

18 A. No.

19 Q. No obligation on the driver to do that.
20 Any obligation on the part of the carrier to make
21 those inquiries?

22 A. Yes, yes.

23 Q. In what section of 382.303?

24 A. They must provide drug and alcohol
25 testing if it is a reportable accident with a

1 citation issued.

2 Q. But if the driver tells them there was no
3 tow away, they don't find out that there was a tow
4 until the police report is issued, and, in fact, if
5 you look at Staff Exhibit No. 4, the accident
6 occurred on April 21, but the police report wasn't
7 completed until five days later, how is the motor
8 carrier supposed -- you know, by that time it's too
9 late to do a test.

10 A. They have to determine -- count on the
11 driver as all carriers do in the case of an accident
12 unless they are there, unless they can send someone
13 to the scene which is not practical for a large
14 company.

15 Q. Especially to get the alcohol test done
16 within an eight-hour window.

17 A. That's correct.

18 Q. You know, in the 30 audits you do a year,
19 would you also agree that the post-accident alcohol
20 test requirement is one of the more frequent
21 violations for national carriers like this?

22 A. I would agree that it's the hardest to
23 comply with, yes.

24 Q. Right. So in this case the carrier's
25 documentation was that the driver was unaware that

1 his vehicle had been towed. Thus, they were unaware
2 and didn't do the test -- either test in a timely
3 manner. Once you've learned that that was their
4 explanation, wouldn't it have been important to talk
5 to the driver to confirm whether he truly was unaware
6 that one of -- the other vehicle had been towed?

7 A. I didn't have any reason to doubt the
8 carrier. I believed their explanation.

9 Q. Okay. But you still wrote him up for a
10 violation in this instance.

11 A. I don't have a choice. They didn't do
12 the test. It is requirements in the regulation.

13 Q. And the only excuse would be if the
14 driver was detained at the scene for more than 8
15 hours or 32 hours for drugs or if he's in the
16 hospital.

17 A. Correct.

18 Q. Okay.

19 A. Inaccessible.

20 Q. No other excuse forgives the violation in
21 the first instance in your opinion.

22 A. I guess if he was the fatality but none
23 that we've been trained on, no.

24 Q. So the fact that in this case take -- you
25 know, the driver wasn't aware that there was a tow,

1 and the motor carrier wasn't aware of the tow, that's
2 not sufficient explanation to excuse the violation.

3 A. No.

4 Q. And just to make clear, if we go to the
5 Staff Exhibit No. 2, so this is driver Steven
6 Moreland, this was the accident that occurred in
7 Wyoming -- by the way make a point here, you
8 testified that you're aware of a number of carriers
9 have like a testing kit that's kept in the truck.

10 A. Yes.

11 Q. But isn't the alcohol test, it's not a
12 urine; it's a breath test.

13 A. Primarily it's a breath test, yes. I
14 heard testified earlier it was urine, but it's a
15 breath test.

16 Q. To clarify the drug test is a urine test.

17 A. That's correct.

18 Q. But the breath test has to be done by,
19 what, is it a breath alcohol technician?

20 A. Right.

21 Q. Yeah, okay. So having a collection kit
22 for urine would not have sped up the process for the
23 alcohol test.

24 A. That's correct, other than the paperwork.

25 Q. Right, right. So on the Steve Moreland

1 accident, their notes, internal notes, indicate that
2 a citation wasn't issued until approximately two and
3 a half, three hours after the accident occurred.
4 Just to clarify does the regulation start the
5 eight-hour clock from the time of the accident or
6 when the citation is issued?

7 A. The time of the accident.

8 Q. Okay. So if a citation isn't issued
9 let's say for 10 hours after the accident, would that
10 be a sufficient excuse that the test wasn't done?

11 A. Well, there's a provision that he has to
12 be cited at the time of the crash so, yes, I wouldn't
13 call it an excuse. They are exempted from it.

14 Q. So what does that mean at the time of the
15 crash because in FedEx's notes they indicated the
16 citation wasn't issued at the time of the crash?

17 A. At the time of the crash investigation.

18 Q. It was two and a half hours later.

19 A. Within the eight hours.

20 Q. Okay. But you would agree that delay
21 from the time the accident occurred until the
22 citation is issued compresses the time that the
23 company has to get that alcohol test done.

24 A. Yes, that's true.

25 Q. Gotcha. And, again, under your training

1 and what you've been instructed to, unless this
 2 particular driver, Mr. Moreland, was detained at the
 3 scene for more than eight hours -- and by the way how
 4 do you -- how do you know that? Because, again, in
 5 this case the report wasn't issued until 12-24 which
 6 is two days after the accident occurred. How do you
 7 verify that the driver --

8 A. I try to verify that by the crash report,
 9 and I don't believe in this one it showed the time
 10 that the investigating officer cleared the scene.
 11 Most reports do. I don't believe it showed on this
 12 one.

13 Q. Did you happen to call the officer to
 14 confirm how long the driver was detained?

15 A. No.

16 Q. Okay.

17 A. Once again, I took the carrier's
 18 information sheet to be truthful. At 3:00 a.m. when
 19 it said "Citation is issued to #1. FCC agent did not
 20 follow up with driver to note issuance of citation."
 21 I took that too at face value.

22 Q. I know under the federal regulations that
 23 the FMCSA can issue civil penalties against drivers
 24 as well as carriers. Is that also true for PUCO
 25 civil penalties?

1 A. Not as a result of a compliance review --

2 Q. Okay.

3 A. -- that I know of. I don't believe so.

4 Q. But it's your position that any violation
5 by a driver is attributable to the carrier in most
6 instances.

7 A. During a compliance review, yes.

8 Q. Okay. They get credit for any violation
9 that their drivers commit that goes on their record;
10 is that what you're saying?

11 A. Yes.

12 MR. WISEMAN: Gotcha. Can I just take 30
13 seconds?

14 ATTORNEY EXAMINER SANYAL: Sure.

15 MR. WISEMAN: No further questions.

16 Thank you.

17 ATTORNEY EXAMINER SANYAL: Any redirect,
18 Mr. Margard?

19 MR. MARGARD: No redirect. Thank you.

20 ATTORNEY EXAMINER SANYAL: You're
21 excused.

22 MR. MARGARD: Your Honor, I call Mr. Rob
23 Moser.

24 (Witness sworn.)

25 ATTORNEY EXAMINER SANYAL: Please be

1 seated.

2 - - -

3 ROD MOSER

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

6 DIRECT EXAMINATION

7 By Mr. Margard:

8 Q. Sir, please state your name and business
9 address.

10 A. My name is Rod Moser. My business
11 address is 180 East Broad Street, Columbus, Ohio
12 43215.

13 Q. And by whom are you employed and in what
14 capacity, please?

15 A. I'm the Chief of Compliance within the
16 Transportation Department of the Public Utilities
17 Commission of Ohio.

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

20 A. My duties are to oversee the forfeiture
21 assessment process and any subsequent hearings that
22 might arise from that.

23 Q. You previously outlined for us your
24 experience and training.

25 A. Prior to joining the Public Utilities

1 Commission, I spent approximately 30 years with the
2 Ohio State Highway Patrol primarily focused on
3 commercial enforcement. My last formal job
4 assignment there was District 6 Commercial
5 Enforcement Coordinator. I then joined the Public
6 Utilities Commission. I have been in this position
7 for just over a year. I have certification as an
8 inspector in all levels except for level 6. And I do
9 not -- I also do not have certification as a
10 compliance review investigator.

11 Q. Now, prior to your testifying today, have
12 you had an opportunity to review the Commission's
13 file with respect to this review?

14 A. Yes, sir, I have.

15 Q. Excuse me. Now, you were responsible
16 today for testifying with respect to the forfeiture
17 amounts that are proposed in this case, correct?

18 A. Yes, sir.

19 Q. Briefly describe for us, please, how
20 forfeitures are calculated for violations in
21 compliance review cases.

22 A. For compliance reviews, there are
23 basically five different types of violations. There
24 are violations that are not listed on our chart which
25 carries zero fines. There are violations for

1 registration or authority. Then there are violations
2 for out -- violating an out-of-service order and then
3 there are acute and critical violations.

4 Q. Can you define what you mean by "acute
5 and critical"?

6 A. Acute is something that the FMCSA says is
7 so severe that it requires immediate action. And
8 critical is just -- it's not so severe, but it is a
9 sign of poor management safety control.

10 Q. Have you had an opportunity to review
11 Staff Exhibit No. 1, the review report in this case?

12 A. The compliance review?

13 Q. Yes, sir.

14 A. Yes, I have.

15 Q. If I ask you to turn to part B, page 1.

16 A. Okay.

17 Q. These are the violations that we've been
18 testifying about so far today, correct?

19 A. Well, part B says it's not a rated
20 review.

21 Q. With respect to page 1 of 2 of part B.

22 A. Okay. I'm sorry.

23 Q. Okay. These are the violations for which
24 forfeitures are being composed, correct?

25 A. That's correct.

1 Q. Now, of the five categories that you
2 listed for us, where did these violations fall?

3 A. All four of these would be considered
4 critical violations.

5 Q. Okay. Thank you. Now, are assessments
6 made for all violations that are found as part of a
7 compliance review?

8 A. No, they are not. Again, there are some
9 violations for which there is no fine ever. They are
10 just not part of the compliance review finding
11 forfeiture assessment list. And then for those that
12 are on the list the number of violations discovered
13 per the number of items checked has to be greater
14 than 10 percent. So, for instance, on No. 3, the
15 396.3(b) violation, there is 3 discovered out of 125
16 so there was no fine assessed for that violation.

17 Q. But there are forfeitures being proposed
18 for the other violations, correct?

19 A. Yes, sir.

20 Q. Let me ask you, if you would, please,
21 turn to -- turn to Staff Exhibit No. 9 in the
22 notebook before you.

23 A. Okay.

24 Q. And have you seen this document before?

25 A. Yes, sir, I have.

1 Q. And can you identify it for us, please?

2 A. It is what's called a Notice of
3 Preliminary Determination. It is basically a letter
4 that goes out to a respondent following an
5 unsuccessful attempt to resolve the matter in a
6 telephone conference.

7 Q. And this sets forth the proposed
8 forfeiture amounts for the violations found as part
9 of the compliance review in this case, correct?

10 A. That's correct.

11 Q. Okay. Now, can you walk us through,
12 please, how these specific forfeiture amounts were
13 determined?

14 A. Sure. For the 382.303(b) that is one
15 violation and so a critical violation is \$400 per
16 violation. In this case there was one. It actually
17 shows an \$800 amount there because the fine in this
18 case is doubled because it's a -- the most recent
19 compliance review prior to this one this same
20 violation occurred. So when we have the continuing
21 violation of the exact same violation, then the fines
22 are doubled.

23 For the 396.11(a) there is 24 violations.
24 Again, the first violation is \$400. But for this
25 particular section, 396, subsequent violations are

1 \$250 each so 400 plus 23 times 25 is \$575,975 and
 2 then again doubled because this was a violation noted
 3 on the prior inspection so \$1,950. And then the
 4 382.303(a), three violations, \$400 for the first, 100
 5 for each subsequent, so \$600, and then because it was
 6 on the prior CR it also is doubled.

7 Q. Now, we've talked about the prior CR. If
 8 you turn to Staff Exhibit 10, is this the prior
 9 compliance review that you were referring to?

10 A. Yes, dated April of 2013, yes.

11 Q. And this is a document that's maintained
 12 as part of the Commission's records, correct?

13 A. That's correct.

14 Q. And you had an opportunity to review this
 15 prior to testifying today.

16 A. I did.

17 Q. And did you find, in fact, that the three
 18 violations that were doubled in this instance also
 19 were found as part of that compliance review?

20 A. They are also listed in part B of this
 21 document, yes.

22 Q. Now, is it merely sufficient that it be
 23 found in a prior compliance review? Was that review
 24 contested at all?

25 A. It was not contested.

1 Q. And what happened following that review?

2 A. We sent the respondent a letter advising
3 them of the findings and the proposed fine forfeiture
4 assessment. Initially they did not respond. We sent
5 a second letter of the same information, and then
6 they paid the fine without contacting us or without a
7 conference or anything.

8 Q. Let me ask you to turn to Staff Exhibit
9 No. 11. Is this the second notice to which you were
10 just referring?

11 A. It is, yes.

12 Q. And, in fact, contains the three
13 violations that are found for which forfeitures are
14 satisfied in this case, correct?

15 A. That's correct.

16 Q. And this is a record that's maintained as
17 part of the Commission's business records?

18 A. Yes, it is.

19 Q. If I ask you to turn to Staff Exhibit No.
20 12, can you tell me what this document is, please.

21 A. This is our -- this is a printout of the
22 case record maintained in our database. This is the
23 case view page and it shows the case was paid in full
24 as of June 6, 2014.

25 Q. Now, sir, there is some handwritten notes

1 on Staff Exhibit No. 12. Are those your notes?

2 A. They are my notes, yes.

3 Q. But this document otherwise reflects the
4 Commission's records with respect to that 2013
5 compliance review, correct?

6 A. Yes, it does.

7 Q. Now, is the procedure for determining
8 forfeiture assessments that you've described one that
9 is consistently applied to compliance reviews
10 performed here by the Commission?

11 A. Yes, sir, it is.

12 Q. And is it consistent with the penalties
13 recommended by the Commercial Vehicle Safety
14 Alliance?

15 A. Yes, sir.

16 Q. And in your opinion are the proposed
17 forfeitures in this case accurately determined?

18 A. They are, yes, sir.

19 Q. And are they reasonable?

20 A. I believe they are, yes.

21 Q. Finally, sir, based on your review of the
22 file, did the company receive all of the notices that
23 they were required to receive according to the Ohio
24 Administrative Code?

25 A. Yes, sir, based on what I have here, yes.

1 MR. MARGARD: I have no further
2 questions. Thank you.

3 ATTORNEY EXAMINER SANYAL: Mr. Wiseman,
4 any cross?

5 MR. WISEMAN: Just a couple.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Wiseman:

9 Q. When you were talking about critical
10 level violations, I think you testified that the four
11 violations cited in this particular investigation
12 were all critical level, correct?

13 A. That's correct.

14 Q. But no fine was assessed on No. 3 on the
15 vehicle records because the percentage of violations
16 was less than 10 percent?

17 A. Yes.

18 Q. I know this is the way with the feds,
19 FMCSA. I am not sure on PUCO but on No. 2 there was
20 one violation out of seven checked so over 10
21 percent, right?

22 A. Right.

23 Q. But the FMCSA says in order to be a
24 critical level violation, there has to be a pattern
25 which is defined as more than one violation; is that

1 not PUCO's position?

2 A. Are you -- so on the one you are
3 referring to is the 382 violation.

4 Q. The 382.303(b), the No. 2 on part B.

5 A. So in the instances other than 382
6 violations, yes, more than one but for anything 382
7 related is one violation. They estimate 10 percent
8 criteria.

9 Q. Okay. But you can assess a fine based on
10 a single violation. Why is there a difference
11 between drug and alcohol on that regards versus all
12 other violations?

13 A. I think just because of the seriousness
14 of the violation.

15 Q. So if this had been, let's say, hours of
16 service violation, you would not assess a fine for a
17 single violation of a critical level violation?

18 A. Not if it was a single violation.

19 MR. WISEMAN: Okay. Just curious.
20 That's all the questions I have.

21 ATTORNEY EXAMINER SANYAL: Any redirect?

22 MR. MARGARD: No redirect. Thank you,
23 your Honor.

24 ATTORNEY EXAMINER SANYAL: You may step
25 down.

1 MR. MARGARD: Your Honor, that concludes
2 our case and I would respectfully move for the
3 admission of Staff Exhibits 1 through 12.

4 ATTORNEY EXAMINER SANYAL: Any objection?

5 MR. WISEMAN: No objections.

6 ATTORNEY EXAMINER SANYAL: Okay. They
7 are so admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 ATTORNEY EXAMINER SANYAL: Mr. Wiseman, I
10 don't believe you admitted your exhibits previously.
11 Would you like to do so at this time?

12 MR. WISEMAN: Yes. I only had one
13 exhibit which was FXCC Exhibit 1, so I would move for
14 its admission at the close of the hearing.

15 ATTORNEY EXAMINER SANYAL: Are there any
16 objections, Mr. Margard?

17 MR. MARGARD: No, your Honor.

18 MR. WISEMAN: I actually think they're
19 duplicative of what's in their exhibits.

20 ATTORNEY EXAMINER SANYAL: FXCC Exhibit 1
21 is so admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 ATTORNEY EXAMINER SANYAL: Let's go off
24 the record for a moment.

25 (Discussion off the record.)

1 ATTORNEY EXAMINER SANYAL: We had some
2 brief discussion about post-hearing briefing.
3 Parties will file simultaneous briefs within 45 days
4 of the transcript being filed.

5 MR. MARGARD: Can we have a date certain,
6 your Honor?

7 ATTORNEY EXAMINER SANYAL: Sure.

8 MR. MARGARD: That would be helpful.

9 ATTORNEY EXAMINER SANYAL: Okay. So,
10 let's see, today is the 8th. Let's estimate that the
11 transcript is filed by the 22nd so that brings me to
12 June 26. Does that work for everyone?

13 MR. MARGARD: Just fine.

14 MR. WISEMAN: Yeah.

15 ATTORNEY EXAMINER SANYAL: Okay. So
16 briefs are due June 26. And no replies are
17 necessary.

18 And I believe, Mr. Wiseman, you have a
19 document you would like me to take judicial notice
20 of.

21 MR. WISEMAN: I'll just address it in my
22 brief.

23 ATTORNEY EXAMINER SANYAL: All right.
24 Are there any other matters we need to discuss on the
25 record?

1 MR. MARGARD: No, none. Thank you.


2 ATTORNEY EXAMINER SANYAL: Well, hearing
3 none, this case is submitted to the record. The
4 hearing is adjourned. Thank you.

5 (Thereupon, at 12:34 p.m., the hearing
6 was concluded.)

7 - - -

8 CERTIFICATE

9 I do hereby certify that the foregoing is
10 a true and correct transcript of the proceedings
11 taken by me in this matter on Tuesday, May 8, 2018,
12 and carefully compared with my original stenographic
13 notes.

14
15 
16 Karen Sue Gibson, Registered
17 Merit Reporter.

18 (KSG-6546)

19 - - -



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Summary: Transcript In the Matter of FedEx Custom Critical, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on May 8th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.