



1 APPEARANCES:

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6 On behalf of the Respondent.

7 Mike DeWine, Ohio Attorney General  
8 William L. Wright, Section Chief  
9 Public Utilities Section  
10 By Mr. Robert Eubanks  
11 30 East Broad Street, 16th Floor  
12 Columbus, Ohio 43215-3793

13 On behalf of the Transportation Staff of  
14 the Public Utilities Commission.

15 Also Present:

16 Mr. Peter Voelker, General Counsel,  
17 Midwest Logistics Systems, Ltd.

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1                               Wednesday Morning Session,  
2                               August 15, 2018.

3                               - - -

4                               THE ATTORNEY EXAMINER: The Public  
5                               Utilities Commission of Ohio has assigned for hearing  
6                               at this time and place Case No. 17-2556-TR-CVF, being  
7                               In the Matter of Midwest Logistics Systems, Notice of  
8                               Apparent Violation and Intent to Assess Forfeiture.

9                               My name is Stacie Cathcart, and I am the  
10                              Attorney Examiner assigned by the Commission to hear  
11                              this case.

12                             At this time I would like to take  
13                             appearances of the parties, beginning with staff.

14                             MR. EUBANKS: Robert Eubanks,  
15                             representing PUCO staff, AG's office, 30 East Broad  
16                             Street, 16th Floor, Public Utilities Commission  
17                             section.

18                             THE ATTORNEY EXAMINER: Thank you.

19                             MR. GRIFFITH: Your Honor, Bryan  
20                             Griffith, Sanborn, Brandon, Duvall & Bobbitt, Supreme  
21                             Court No. 0085911, representing Midwest Logistics  
22                             Systems, Inc.

23                             THE ATTORNEY EXAMINER: Thank you.

24                             MR. GRIFFITH: My client and cocounsel is  
25                             general counsel for Midwest. He will make his

1 appearance as well.

2 MR. VOELKER: Peter Voelker, general  
3 counsel for Midwest Logistics Systems.

4 THE ATTORNEY EXAMINER: Thank you.  
5 Staff, are you ready to proceed?

6 MR. EUBANKS: We are. I'd like to call  
7 to the stand Rod Moser.

8 THE ATTORNEY EXAMINER: You may be  
9 seated.

10 MR. EUBANKS: May I approach?

11 THE ATTORNEY EXAMINER: You may.

12 - - -

13 ROD MOSER

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

16 DIRECT EXAMINATION

17 By Mr. Eubanks:

18 Q. Good morning. Could you state your name  
19 for the record?

20 A. My name is Rod Moser, M-O-S-E-R.

21 Q. Your position with the PUCO?

22 A. My title is chief of compliance within  
23 the Transportation Department for the Public  
24 Utilities Commission of Ohio.

25 Q. As chief of compliance, what are your

1 duties?

2 A. Basically to manage the administrative  
3 hearing process. Anybody who requests a conference,  
4 as it moves forward to the hearing process, I get  
5 involved in that.

6 MR. EUBANKS: I would like to have marked  
7 as State's Exhibit 1 the Notice of Preliminary  
8 Determination.

9 THE ATTORNEY EXAMINER: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. I'd like you to review the documents  
12 before you to identify.

13 A. It would be a copy of what we informally  
14 refer to as the NPD, Notice of Preliminary  
15 Determination, for the compliance review, Midwest  
16 Logistics Systems.

17 Q. Okay. Are you trained in enforcement  
18 violations?

19 A. Yes. Somewhat, yes. I have a  
20 certification in North American Standards, Part A and  
21 B, motor codes, hazardous materials, cargo tank. I  
22 do not have certification as a compliance review  
23 investigator.

24 Q. Do you have training in how forfeiture  
25 amounts are assessed?

1           A.    Yes.

2           Q.    I would like you to -- first of all, is  
3 this an accurate copy of the Notice of Preliminary  
4 Determination?

5           A.    Yes, it is.

6           Q.    And is the \$1,000 forfeiture amount  
7 assessed for 391.11(b)(4) an appropriate forfeiture?

8           A.    Yes, it is.

9           MR. EUBANKS: I have no more questions of  
10 this witness.

11           THE ATTORNEY EXAMINER: Thank you.

12           Mr. Griffith, any cross-examination?

13           MR. GRIFFITH: Nothing from Midwest  
14 Logistics Systems.

15           THE ATTORNEY EXAMINER: Thank you.

16           MR. EUBANKS: At this time I would like  
17 to have State's Exhibit 1 moved into evidence.

18           THE ATTORNEY EXAMINER: Any objection?

19           MR. GRIFFITH: No objection.

20           THE ATTORNEY EXAMINER: So moved.

21           (EXHIBIT ADMITTED INTO EVIDENCE.)

22           MR. EUBANKS: At this time I would like  
23 to call the inspector to the stand.

24           May I approach?

25           THE ATTORNEY EXAMINER: You may.



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MICHAEL J. BLACKBURN

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

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Please state your name for the record.

A. Michael, M-I-C-H-A-E-L, middle initial J,  
Blackburn, B-L-A-C-K-B-U-R-N.

Q. And what is your position?

A. I am a hazardous materials specialist 2  
with the Public Utilities Commission of Ohio.

Q. And as part of that position, what are  
your duties?

A. My duties include compliance reviews,  
roadside inspections, new entrant audits, training  
for companies, training other inspectors, along with  
any other miscellaneous duties that the Commission  
may assign.

Q. Do you have training in those areas?

A. I do. I have multiple hazardous material  
certifications, compliance review, new entrant  
certification, motor code certification, cargo tank.  
I think that's all.

Q. Is all of your training current?

1           A.     It is.

2                   MR. EUBANKS:  At this time I would like  
3 to have marked as Staff Exhibit 2 the Case View  
4 Report.

5                   THE ATTORNEY EXAMINER:  So marked.

6                   (EXHIBIT MARKED FOR IDENTIFICATION.)

7           Q.     I'd like you to take a look at the  
8 documents handed to you, and if you could, please  
9 identify it.

10          A.     This is a copy of the compliance review  
11 that we conducted at the company's principal place of  
12 business.

13          Q.     Is it accurate?

14          A.     It appears so, yes.

15          Q.     How are you related to the current case  
16 at hand?

17          A.     I was the lead investigator on the  
18 assignment.

19          Q.     Okay.  Did you conduct a compliance  
20 review in this case?

21          A.     Yes.

22          Q.     And for Midwest Logistics Systems?

23          A.     Correct.

24          Q.     And the violations that were assessed,  
25 are they appropriately outlined on the front page of

1 the Case View Report?

2 A. Yes.

3 Q. And the forfeiture amount?

4 A. Yes.

5 Q. How did you come to perform a compliance  
6 review in this case?

7 A. The Federal Motor Carrier Safety  
8 Administration assigns motor carriers for us to  
9 review, and at this time last year when we did the  
10 compliance review, it was what was called Operation  
11 Safe Driver.

12 So the company had categories were that  
13 indicative of involvement in potential future  
14 crashes. The assignment was made, and right before  
15 the assignment began, there was a change in the scope  
16 because of some additional areas that needed reviewed  
17 to make it a full-on comprehensive investigation.

18 Q. Okay. Particularly when it comes to  
19 violation 391.11(b)(4), how did you come to notice  
20 that violation?

21 A. The driver in question was part of our  
22 sample for driver qualification review. We noticed  
23 that he did have a K2 restriction on his license,  
24 which means he is restricted to Ohio only, intrastate  
25 transportation. So as part of the driver

1 qualification investigation, we wanted to follow up  
2 and make sure, number one, why was the K2 present;  
3 and, number two, had he violated the restriction.

4 Q. Okay. So as a part of the review, did  
5 you look at paperwork available at the company?

6 A. Yes.

7 Q. And what did the paperwork tell you?

8 A. The paperwork told us that the driver in  
9 question was insulin dependent and, therefore, should  
10 not be operating commercial motor vehicles without a  
11 federal waiver for insulin-dependent diabetes.

12 MR. GRIFFITH: I am going to object, just  
13 that there is no foundation for that. You haven't  
14 identified the documents, the evidence, or why you  
15 are making that statement.

16 MR. EUBANKS: We will, but just giving a  
17 summary of what he did as part of the compliance  
18 review.

19 THE ATTORNEY EXAMINER: Overruled. I'll  
20 allow the question.

21 MR. EUBANKS: Would you read the last  
22 question.

23 (Record read.)

24 MR. GRIFFITH: At this time may I  
25 approach?

1 THE ATTORNEY EXAMINER: You may.

2 MR. EUBANKS: I would like to have the  
3 document which on the front page says "Part 319  
4 Documentation" to be marked as State's Exhibit 3.

5 THE ATTORNEY EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Eubanks) I would like you to take  
8 a look at the documentation in front of you, and if  
9 you could, identify what the documentation is.

10 A. This is the evidence we gathered related  
11 to the fact the driver had a history of insulin  
12 dependency and also the fact that he had been denied  
13 a medical card, and the very next day he went to  
14 another physician and was granted one.

15 Q. Okay. Now speaking specifically about  
16 the whole package, where did you get each page of  
17 this document?

18 A. The vast majority of the documents were  
19 from Mr. Goubeaux's driver qualification file.

20 Q. So would that be at Midwest Logistics  
21 Systems, Ltd?

22 A. Correct.

23 Q. You said the vast majority. Is there any  
24 paperwork that did not come --

25 A. The very last page, the log book, did not

1       come from his driver qualification file.

2               Q.     And where did you receive that  
3       documentation?

4               A.     We asked one of the folks at the company  
5       to provide us a copy of the log.

6               Q.     What company?

7               A.     Midwest Logistics Systems.

8               Q.     So even the final pages came from Midwest  
9       Logistics Systems?

10              A.     Yes, just not from Mr. Goubeaux's driver  
11       file.

12              Q.     Okay. Would it be fair to say all of the  
13       documentation before you came from Midwest Logistics  
14       Systems?

15              A.     All except the notes and the  
16       correspondence with the FMCSA to determine if he did,  
17       in fact, need a diabetes waiver.

18              Q.     All right. I know the pages are not  
19       numbered, but could you kind of help guide us to what  
20       page that is?

21              A.     Sure. So the first 11 pages are notes  
22       and items that I would have prepared. Page 12 is an  
23       e-mail correspondence from the FMCSA indicating that  
24       folks who use insulin pumps do need a waiver. And  
25       then the next three pages would be an MVR or moving

1 violation record that we would have obtained using  
2 our CDLIS account during the investigation, and the  
3 rest of the documents would have come from files at  
4 the company.

5 Q. So is it fair to say then that the page  
6 that is marked -- this is what's on the page. It  
7 doesn't really have a title. It says, "Medical  
8 Restriction Card. This card must be carried with  
9 your driver's license," is a copy of that card. Is  
10 that the first page of the documents that you  
11 obtained from Midwest Logistics Systems, Ltd.?

12 A. Correct.

13 Q. And all the pages after that would have  
14 been from Midwest Logistics Systems?

15 A. Correct.

16 Q. The three pages that precede that, which  
17 are search results, are those coming from PUCO  
18 records?

19 A. It comes from a federal system that we  
20 have access to as investigators to check license  
21 status.

22 Q. Okay. And then all the pages that  
23 precede that are notes or correspondence that you had  
24 with -- I should say -- I'm sorry. The page that  
25 immediately precedes that one, you said that was

1 correspondence you got with the federal government?

2 A. That is correct.

3 Q. In order to -- what was the purpose of  
4 that document?

5 A. In order to verify that someone who uses  
6 an insulin pump does, in fact, require a diabetes  
7 waiver.

8 Q. Okay. What were the purposes of the  
9 notes that precede that page?

10 A. We went through and made notes for all of  
11 the drivers that were reviewed for any additional  
12 violations that may have been discovered or anything  
13 that may have been anomalous that we would need to  
14 let the FMCSA know about.

15 Q. Okay. Those are your personal notes?

16 A. My personal notes or notes from other  
17 investigators that assisted on the investigation.

18 Q. Was it all compiled by you?

19 A. At the very end, yes.

20 Q. Are those notes accurate, to your  
21 knowledge?

22 A. Yes.

23 Q. The correspondence that you had with the  
24 federal government, take a look at that. Is that a  
25 true and accurate copy of the correspondence you had?



1           A.    Yes.

2           Q.    Taking a look at the notes you got from  
3 the federal website regarding the license, does that  
4 seem to be a true and accurate copy of what you  
5 reviewed online?

6           A.    Correct.

7           Q.    Is that a yes?

8           A.    Yes.

9           Q.    And taking a look at the documents that  
10 you pulled from Midwest Logistics Systems, Ltd., do  
11 they appear to be true and accurate copies of the  
12 documents you received?

13          A.    Yes.

14          Q.    Before I gave you the copy of these  
15 documents, you stated that there was a violation that  
16 you noticed for Midwest Logistics Systems, Ltd. where  
17 they had an unqualified driver driving, and,  
18 specifically, that they were using insulin; is that  
19 correct?

20          A.    That's correct.

21          Q.    Could you point us to the documentation  
22 that supports that that you received from Midwest  
23 Logistics Systems?

24          A.    So this would be -- at the top it says  
25 page 5. It's a copy of his medical examiner's

1 certificate. If you notice --

2 Q. Could you hold that up again so everyone  
3 can look at that?

4 A. It has his name at the top, the date of  
5 exam, and his date of birth.

6 Q. I'm still trying to find it myself.

7 A. It's the third page from the last.

8 MR. EUBANKS: Counsel, were you able to  
9 find the document?

10 MR. GRIFFITH: Yes, thank you.

11 Q. (By Mr. Eubanks) How does the document  
12 identify a driver that is driving with diabetes and  
13 using insulin?

14 A. The item that's checked that says, "Meets  
15 standards, but periodic monitoring required:  
16 Diabetes mellitus." And if we go three pages prior  
17 to that --

18 Q. One second.

19 A. Okay.

20 Q. Okay. So that alerted you to the fact he  
21 had diabetes?

22 A. Yes.

23 Q. But it didn't necessarily alert you to  
24 the fact that he was using insulin?

25 A. The subsequent pages, three pages prior

1 to that.

2 Q. Okay. Could you take us to those pages?

3 A. The three pages we just looked at,  
4 question No. 13 says, "Diabetes or sugar problems,  
5 Insulin used," and the box is checked yes.

6 Q. Okay.

7 A. And beneath that, provide answers to any  
8 yes questions above, "diabetic" is written in the  
9 box.

10 Q. Okay. Is there any other documentation  
11 that supports the fact that the driver was using  
12 insulin?

13 A. The physician wrote down in the box at  
14 the very bottom of the page we were just referencing  
15 to question No. 13, "On insulin, denies hypoglycemic  
16 events."

17 Q. Thank you. Is there any other  
18 documentation that supports the fact that the driver  
19 was using insulin and was diabetic?

20 A. Yes. So seven pages prior to the one we  
21 were just on is a copy of an additional medical  
22 examiner's report.

23 Q. That would be -- could you read what is  
24 at the very top of the page?

25 A. "Medical Examination Report for

1 Commercial Driver Fitness Determination." The date  
2 of exam is 12/28/2010.

3 Q. Okay. One second. Okay.

4 A. If you note in the middle column, there  
5 are yes or no boxes to be checked. "Diabetes or  
6 elevated blood sugar controlled by," it is checked  
7 yes, and then subsequently, "diet" and "insulin" are  
8 also checked.

9 Q. Okay.

10 A. Further down where the physician  
11 describes any yes answers, the doctor wrote that he  
12 is a patient at the Diabetic Center and that he has  
13 been diabetic for 14 years requiring insulin.

14 Q. Is there any other information that  
15 supports the fact there was a driver that was using  
16 insulin for Midwest Logistics Systems, Ltd.?

17 A. This particular exam, if you go back to  
18 the page we were just on, two additional pages, you  
19 can see where the physician voided the exam.

20 Q. I'm sorry. Okay. Just read at the top  
21 of that page what it says.

22 A. It says "No. 7, Physical Examination,"  
23 and the driver's name on the right.

24 Q. Okay. Go ahead.

25 A. The physician voided the exam. Notice at

1 the bottom where he wrote diabetes mellitus, and note  
2 the date on that particular exam was 12/28.

3 Q. Actually, where is it written "diabetes  
4 mellitus"?

5 A. I may have misspoke. The physician did  
6 check the box, "Does not meet standards," and has a  
7 note next to it.

8 Q. Okay.

9 MR. GRIFFITH: I'm going to just object.  
10 That's not what the page says that I'm looking at.

11 MR. EUBANKS: Could you hold the page up?

12 THE WITNESS: (Witness complies.)

13 THE ATTORNEY EXAMINER: Maybe I have a  
14 different copy.

15 MR. EUBANKS: Do you have one at the very  
16 top that says "No. 7, Physical Examination"?

17 MR. GRIFFITH: I do.

18 MR. EUBANKS: Okay.

19 MR. GRIFFITH: Does yours reflect what it  
20 says?

21 MR. EUBANKS: It has a checked box, "Does  
22 not meet standards."

23 MR. GRIFFITH: What I heard him testify  
24 to he checked the box, "Does not meet standards" and  
25 wrote "Void" on it.

1 THE WITNESS: Okay. That's after this  
2 page, the one you're looking at.

3 MR. GRIFFITH: Did you write "Void" on  
4 the sheet?

5 MR. EUBANKS: No, the physician did.

6 MR. GRIFFITH: Did you produce a copy of  
7 that page for us?

8 THE ATTORNEY EXAMINER: Yes. It's later  
9 in the packet. There's two different copies of the  
10 medical report.

11 MR. GRIFFITH: Thank you, your Honor.

12 THE ATTORNEY EXAMINER: I just kept  
13 flipping.

14 MR. GRIFFITH: Just give me one second.

15 THE ATTORNEY EXAMINER: It's labeled  
16 page 3 of 4 in the bottom right-hand corner towards  
17 the back of the packet.

18 MR. GRIFFITH: Okay.

19 MR. EUBANKS: So you need to go in the  
20 other direction. We both made the same mistake. We  
21 went three pages in the wrong direction.

22 MR. GRIFFITH: Okay, thank you, your  
23 Honor. I've located it.

24 THE ATTORNEY EXAMINER: Okay. Now we are  
25 all on the same document.

1           Q.     (By Mr. Eubanks) Again, could you point  
2 out to -- so you're at the bottom of this document.

3           A.     Correct.

4           Q.     At the bottom of this page it says  
5 page 3 of 4, just to be clear.

6           A.     Yes.

7           Q.     There's a section of boxes in the middle  
8 that says "Body System," and then below that  
9 "Comments," and then below that, "Note certification  
10 status here"; is that correct?

11          A.     That's correct.

12          Q.     And below the "Note certification status  
13 here," there's a second box that says, "Does not meet  
14 standards." Is that what you're referring to?

15          A.     Yes.

16          Q.     Okay. So what is the point that you're  
17 making by the box checked that says "Does not meet  
18 standards"?

19          A.     The point that this physician made is  
20 that he could not be qualified because of insulin  
21 dependency. He did the correct procedure by voiding  
22 the exam without a valid federal waiver.

23          Q.     Where do you see the void?

24          A.     The box checked "Does not meet  
25 standards," it is written "Void" next to that in the

1 middle of the page.

2 Q. Okay.

3 A. Now, please note two pages prior to that  
4 the date of the exam was 12/28/2010. The documents  
5 that you were referring to go with the next physical.  
6 Note the date that is done on that particular exam,  
7 12/29/2010, the very next day. The driver went to a  
8 different physician, and if you look in the middle of  
9 that certification, it stated he does not have  
10 insulin dependency and was granted a card.

11 Q. Okay. Just for the point of clarity, so  
12 the physical examination that took place where the  
13 doctor voided out the physical examination, you're  
14 saying if you go back two pages prior to the page  
15 entitled Medical Examination Report?

16 A. Correct.

17 Q. For Commercial Driver Fitness  
18 Determination --

19 A. Correct.

20 Q. -- it gives the date which that physical  
21 examination and the voiding thereof would have  
22 occurred?

23 A. Yes.

24 Q. And that's 12/28/2010?

25 A. Correct.



1 Q. Okay. Now, you went on to make the point  
2 that subsequent to this examination, he had another  
3 examination.

4 A. Correct, the very next day.

5 Q. And where, again, is the documentation  
6 for that? In the packet where do we find it?

7 A. I believe it would be right after the one  
8 dated 12/28/10 where the void took place.

9 Q. Okay. So page 4/4?

10 A. 1 of 4 titled "Medical Examination Report  
11 for Commercial Driver Fitness Determination" dated  
12 12/29/2010.

13 Q. Okay. So the point that you're making  
14 there is that there was a physical examination that  
15 was conducted one day after the 28th?

16 A. Correct.

17 Q. Where there was a previous examination  
18 that was voided?

19 A. Correct.

20 Q. Okay. And this physical examination,  
21 you're saying that the driver stated that he was not  
22 a diabetic?

23 A. He stated he was not insulin dependent.

24 Q. Could you show us where that is?

25 A. Certainly. Section No. 2 says "Health

History." Note to the right, "Driver completes this section." I'll repeat, "Driver completes this section, but medical provider is encouraged to discuss with driver." There in the middle column, "Diabetes or elevated blood sugar controlled by," the driver checked yes, but subchecked "diet" and "pills" and did not indicate insulin.

Q. Is there a significance to the driver stating he is not on insulin?

A. Absolutely.

Q. And what is that significance?

A. As we saw in the previous medical that was voided, he could not be medically qualified with insulin dependence without a valid federal waiver.

Q. Is there a law that you're referencing in order to make that claim?

A. Yes. In 391.41(b)(3).

Q. Could you read the language that you're referring to?

A. "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control."

Q. Again, that's CFR 391.41 -- what

1 subsection?

2 A. B, as in boy, 3.

3 Q. Okay. So by marking that it's been  
4 controlled by food and diet, that would allow him to  
5 drive?

6 A. It would deceive the physician of the  
7 fact that he is insulin dependent and possibly allow  
8 the physician to qualify him.

9 MR. GRIFFITH: Objection. He doesn't  
10 have any idea what the physician is thinking or what  
11 the driver thought or is thinking.

12 THE ATTORNEY EXAMINER: Overruled.

13 Q. (By Mr. Eubanks) In this particular case,  
14 or I should say during this particular examination  
15 where the driver is marking diet and pills, was he  
16 subsequently allowed to drive by the physician?

17 A. He was issued a valid medical  
18 certification.

19 Q. Could you show us where that would be  
20 with the documentation?

21 A. It would be the certification itself,  
22 this page.

23 Q. Where would that be located?

24 A. I apologize. I have these out of order.

25 Q. Okay.

1           A.    It has punch holes on the side.  It's  
2   labeled 4 of 4.

3           MR. GRIFFITH:  Could you describe it one  
4   more time, please.

5           MR. EUBANKS:  It's immediately preceding  
6   the page where --

7           MR. GRIFFITH:  The certification card?

8           THE WITNESS:  Yes.

9           MR. GRIFFITH:  What's the date on the  
10   card.

11          THE WITNESS:  12/29/2010.

12          MR. GRIFFITH:  I have not located that  
13   one yet.

14          All right, okay, we have it.  Thank you.

15          Q.    (By Mr. Eubanks) So the point that you're  
16   making, on the same day he had the second physical  
17   examination, he was subsequently issued a card to  
18   drive?

19          A.    Yes, for one year.

20          Q.    For one year.

21          A.    Yes.

22          Q.    Okay.  That's why it says 12/29/11 and  
23   not 12/29/10?

24          A.    The date of the exam is on the top on the  
25   right and the expiration date is at the bottom,

1 12/29/11.

2 Q. Okay. And just for clarity, the date of  
3 the examination is kind of in the middle of the  
4 documentation on the card on the right, correct?

5 A. Yes, correct.

6 Q. And by the way, the medical examiner  
7 there is S. Huffman on the card; is that correct?

8 A. Yes.

9 Q. On the 12/29/10 examination record, would  
10 it list the physician? Maybe it does. Yes, on the  
11 third page of that examination report, the second  
12 one, could you take a look at the signature line for  
13 the medical examiner and state the name of the  
14 medical examiner?

15 A. S. Huffman, MD.

16 Q. Okay. So as a result of this  
17 investigation, you reached what conclusion?

18 A. The driver has had insulin-dependent  
19 diabetes for a number of years and should not have  
20 been issued a valid medical card without a valid  
21 federal diabetes waiver.

22 Q. Okay. How do you obtain the waiver?

23 A. It's an application process. I don't  
24 know exactly what happens, but there's an application  
25 process through the Federal Motor Carrier Safety

1 Administration that involves correspondence with the  
2 driver's physician. They would then be issued a  
3 waiver, which they must carry with them at all times  
4 in order to have a valid CDL.

5 Q. Is there any documentation of the waiver  
6 in the documentation at Midwest Logistics Systems,  
7 Ltd., on your date of compliance?

8 A. No, sir.

9 Q. Are those waivers grandfathered waivers,  
10 or do you have to --

11 A. There is a grandfathering clause in the  
12 regulations, but I believe it's well out of date in  
13 terms of the driver's age.

14 Q. Okay.

15 A. Yes, there is a grandfathering.

16 Q. Could you read the grandfather clause?

17 A. "The provisions of 391.41(b) (3) do not  
18 apply to driver who was a participant in good  
19 standing on March 31, 1996, in a waiver study program  
20 concerning the operation of commercial motor vehicles  
21 by insulin controlled diabetic drivers provided..."  
22 There's several items here. Do you want me to read  
23 all of them?

24 Q. No. No. Well, are there any that would  
25 be relevant in this case?

1 MR. GRIFFITH: We will stipulate it's not  
2 an issue in this case whether or not he was  
3 grandfathered in, if that is okay with you?

4 MR. EUBANKS: Okay.

5 THE ATTORNEY EXAMINER: Thank you.

6 Q. (By Mr. Eubanks) Could you look at the  
7 rest of the violations on the Case View Report, which  
8 would have been State's Exhibit 2.

9 MR. GRIFFITH: Object, because I don't  
10 believe those things are relevant to the issue today.

11 THE ATTORNEY EXAMINER: I'll allow the  
12 question and give a little bit of leeway to see where  
13 he's going.

14 Q. (By Mr. Eubanks) That was my question.  
15 Are any of the other violations at issue here today?

16 A. Not to my knowledge, no.

17 MR. EUBANKS: Can we go off the record  
18 one second?

19 THE ATTORNEY EXAMINER: Yes.

20 (Discussion off record.)

21 THE ATTORNEY EXAMINER: Back on the  
22 record.

23 Q. (By Mr. Eubanks) Just for the sake of  
24 making sure this Case View Report is accurate, were  
25 those the other violations you cited at that

1 particular time?

2 A. Yes.

3 Q. Is there anything else you would like to  
4 add in support of the fact there was a physically  
5 unqualified driver that you noticed as a part of  
6 compliance review?

7 A. Are you asking for an opinion?

8 Q. Well, I'm asking if you have any other  
9 testimony you would like to add in support of that.

10 A. We did interview the driver, and the  
11 driver seemed to be mistaken in terms of what he  
12 could and could not do with the insulin pump. And if  
13 you go back to the first document that was obtained  
14 from the principal place of business --

15 Q. The card?

16 A. It's titled "Medical Restriction Card."

17 Q. Yes.

18 A. The driver was under the assumption that  
19 this was his federal waiver when we interviewed him.

20 Q. Okay.

21 A. I don't have anything else to add.

22 MR. EUBANKS: I have no further  
23 questions.

24 I would like to move to have State's  
25 Exhibits 2 and 3 moved into evidence, subject to



1 cross.

2 THE ATTORNEY EXAMINER: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Griffith:

6 Q. Let's start with the document you were  
7 just holding up, the Medical Restriction Card. Do  
8 you know what a Medtronic 630G is?

9 A. It is an insulin pump.

10 Q. Okay. All right. So you have presented  
11 to us medical examinations from 2010 and 2017; is  
12 that correct?

13 A. Yes.

14 Q. Did you review any other medical  
15 examination documents related to this driver?

16 A. All the other subsequent documents that  
17 are here.

18 Q. So in your investigation you did not  
19 review any other documents related to Mr. Goubeaux?

20 A. His other driver qualification records.

21 Q. Could you tell us about those? What  
22 other documents are in there that you did not  
23 produce?

24 A. His application for employment, copies of  
25 his driving records, previous employment

1 verifications, if applicable, obviously, copies of  
2 his medical exams.

3 Q. What years did you have medical  
4 examination documents for?

5 A. In there?

6 Q. Of the documents you reviewed in your  
7 investigation, what years did he have valid medical  
8 cards that you reviewed or medical examination forms  
9 that you reviewed?

10 A. For the documentation we submitted here,  
11 2017, 2016, 2015, 2014, 2010, two for 2010.

12 Q. So 2016, 2015, 2014; is that correct?

13 A. Yes.

14 Q. Did 2016, 2015, or 2014 indicate insulin  
15 use? Are you saying those documents are in the  
16 packet you provided today?

17 A. Yes. I have copies of medical cards for  
18 all those dates.

19 Q. So in this packet you have medical cards  
20 for 2016, 2015, and 2014, correct?

21 A. That is correct.

22 Q. And those medical cards suggest that he  
23 is physically qualified to operate a commercial motor  
24 vehicle?

25 A. Yes.

1 Q. And did you review the other documents  
2 related to those medical examinations, what we refer  
3 to as the long-form medical examination that we  
4 looked at for 2010 and 2017?

5 A. For 2010 and 2017, yes.

6 Q. Did you review any other long-form  
7 medicals for Mr. Goubeaux?

8 A. Without having them here, I can't answer  
9 that positively yes or no.

10 MR. GRIFFITH: May I approach, your  
11 Honor?

12 THE ATTORNEY EXAMINER: You may.

13 MR. EUBANKS: Can we go off the record?

14 THE ATTORNEY EXAMINER: Yes, let's go off  
15 the record.

16 (Recess taken.)

17 THE ATTORNEY EXAMINER: Back on the  
18 record.

19 MR. GRIFFITH: Permission to approach,  
20 your Honor.

21 THE ATTORNEY EXAMINER: You may.

22 Q. (By Mr. Griffith) Do you prefer Inspector  
23 Blackburn, Officer Blackburn?

24 A. Just Mike.

25 Q. Mike, do you recognize the document?

1           A.     I do.

2           Q.     Would you tell us what the document is  
3           titled and what the date of the document is?

4           A.     This is the Medical Examination Report  
5           for Commercial Driver Fitness Determination dated  
6           12/29/12.

7           Q.     Did you review this during your  
8           investigation of Mr. Goubeaux?

9           A.     Again, since it is not in the  
10          documentation, I can't answer that yes or no.

11          Q.     Does the documentation you produced for  
12          us today contain every document that you reviewed in  
13          the personnel file of Mr. Goubeaux?

14          A.     No.

15          Q.     Do you have any reason to believe this  
16          was not in the personnel file at the time you  
17          reviewed it?

18          A.     I have no reason to believe that, no.

19          Q.     If you had seen a medical examination for  
20          2012, would you have flipped through those pages and  
21          read it?

22          A.     Possibly.

23          Q.     Could you tell us what this Medical  
24          Examination Report says about Mr. Goubeaux's diabetes  
25          and insulin use?

1           A.    It says he was controlling it with diet  
2   and pills.

3           Q.    In the comments below that, can you  
4   explain -- or just read the comments and tell us what  
5   that means to you.

6           A.    "Dr. Imler treating diabetes. Diabetic  
7   since 1997. Taking metformin. High blood pressure  
8   since 2010 and also being seen by Dr. Imler for that  
9   as well as Dr. John" -- looks like W-I-N-N-I-E-R.

10          Q.    John Winnier.

11          A.    Okay. "Taking Enalapril & metoprolol.  
12   Had a right great toe amputated in July 2012."

13          Q.    Do you know what metformin is?

14          A.    I do not.

15          Q.    All right. Are you familiar with the  
16   FMCSA diabetic control guidelines?

17          A.    I'm familiar with them, yes.

18               MR. GRIFFITH: Permission to approach,  
19   your Honor.

20               THE ATTORNEY EXAMINER: You may.

21          Q.    Mike, can you tell me what that document  
22   is titled?

23          A.    National Registry of Certified Medical  
24   Examiners. Federal Motor Carrier Safety  
25   Administration (FMCSA) Medical Examiner Handbook.

1 Q. Have you ever seen that document before?

2 A. I may have.

3 Q. Okay. Can you just take a minute to flip  
4 through those pages and get familiar, you know, with  
5 those, and then I will ask you what it says about  
6 metformin.

7 MR. EUBANKS: I am going to object, lack  
8 of foundation.

9 MR. GRIFFITH: Mike says that he thinks  
10 he's seen it before, so I think this is a regulation  
11 that he has read that informed his decision about  
12 whether or not to pursue this violation.

13 MR. EUBANKS: I guess what I'm looking  
14 for is a definitive statement from the witness that  
15 says he knows what this document is. Thinking and  
16 knowing would be two different things.

17 Q. (By Mr. Griffith) Mike, do you know if  
18 you reviewed the FMCSA Medical Examiner Handbook?

19 A. I can't say for certain whether I've  
20 reviewed it. I'm not a physician, so...

21 Q. How do you know what the FMCSA requires  
22 about diabetes?

23 A. It's in the federal regulations.

24 Q. Okay. So if this is a copy of the  
25 federal -- interpretation of those regulations, you

1 don't review that information?

2 A. This is to certify the individual from  
3 the doctor's perspective.

4 Q. Okay. So you only read your guidance on  
5 how to interpret the regulations only reading the  
6 regulations itself. That's the extent of your  
7 training?

8 A. Correct.

9 Q. You have never had any other training  
10 about diabetes with commercial motor vehicle drivers?

11 A. Correct.

12 Q. Okay. I'll withdraw the document.

13 THE ATTORNEY EXAMINER: Thank you. Just  
14 to go back, were you marking the Medical Examiner  
15 Report from 2012?

16 MR. GRIFFITH: I can either do that now  
17 or do that on direct in the next round. Do you have  
18 a preference? Do you want me to start marking them?

19 THE ATTORNEY EXAMINER: Yes, let's mark  
20 them now.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Griffith) Are you aware of any  
23 drivers with diabetes being able to operate vehicles  
24 if they don't take insulin? Is that an option?

25 A. It is.

1           Q.    Okay.  What do they do for their  
2 diabetes?

3           A.    They control it with diet and medication.

4           Q.    Okay.  Do you know what those medications  
5 are?

6           A.    No.

7           Q.    But if the medication is not insulin,  
8 they're okay.

9           A.    To my knowledge, yes.

10          Q.    Okay.  So this 2012 Defense Exhibit 1, it  
11 says treating diabetes with diet and pills; is that  
12 correct?

13          A.    For this particular exam, correct.

14          Q.    So he would be physically qualified to  
15 operate as determined by this physician in 2012?

16          A.    If all of these statements are true and  
17 accurate, yes.

18          Q.    Okay.  Then flip to the last page there  
19 and tell me what that last page is.

20          A.    The colored page?

21          Q.    Yes, please.

22          A.    That is a Medical Examiner's Certificate  
23 dated 12/29/2012.

24          Q.    Is that the same date that's on the first  
25 page?



1           A.    It is.

2           Q.    At the end of the examination he received  
3 the medical certification?

4           A.    He did.

5           Q.    And that indicates what?

6           A.    Indicates he is medically certified based  
7 upon the driver's answers to the questions and the  
8 physician's determination he's qualified for one  
9 year.

10                   MR. GRIFFITH:  Permission to approach,  
11 your Honor.

12                   THE ATTORNEY EXAMINER:  You may.

13           Q.    Do you recognize that document?

14           A.    I do.

15           Q.    Can you read the title and date for us?

16           A.    Medical Examination Report for Commercial  
17 Driver Fitness Determination.

18                   MR. GRIFFITH:  We will mark that Defense  
19 Exhibit 2.

20                   THE ATTORNEY EXAMINER:  So marked.

21                   (EXHIBIT MARKED FOR IDENTIFICATION.)

22           Q.    Can you tell us what it says about  
23 diabetes?

24           A.    It says that he is controlling it with  
25 diet and pills.

1           Q.    And the very first line, handwritten  
2 line, in the Comment box, what does that say about  
3 his treatment?

4           A.    It says, "Dr. Imler is treating diabetes  
5 with 1500 milligrams of metformin daily since 1997."

6           Q.    Does that indicate to you that metformin  
7 is an oral diabetes medication?

8           A.    It does.

9           Q.    Does that suggest -- do you think  
10 metformin is insulin?

11          A.    No.

12          Q.    And on the last page of this document,  
13 can you describe that page for us, page 4 of 4?

14          A.    That is a Medical Examiner's Certificate.

15          Q.    And what does that tell us about the  
16 result of this medical examination?

17          A.    Based upon the driver's answers to the  
18 questions and the physician's analysis of the exam,  
19 he was issued a one-year medical card expiring  
20 3/29/14.

21          Q.    So the physician that issued that is  
22 saying he is physically qualified to operate a motor  
23 vehicle?

24          A.    Based upon the answers provided, yes.

25          Q.    I heard you say a couple times "based

1 upon the answers provided," but does the medical  
2 examination involve anything other than that looking  
3 at the answers and writing out the form?

4 A. It does.

5 Q. What else is provided in the medical  
6 examination?

7 A. There are procedures, such as hearing  
8 check, vision check, blood pressure, things of that  
9 nature.

10 Q. And that's something that is in-person,  
11 the physician and driver in the same room?

12 A. That's correct.

13 Q. They interact and ask questions?

14 A. Yes.

15 Q. The doctor physically looks at the driver  
16 and does things a doctor does to examine the driver?

17 A. Correct.

18 Q. And does the doctor have the option to  
19 call other physicians, treating physicians, to get  
20 more information about the driver?

21 A. Yes, to my knowledge.

22 MR. GRIFFITH: Permission to approach,  
23 your Honor.

24 THE ATTORNEY EXAMINER: You may.

25 Q. Mike, can you read the title and date of

1 this document?

2 A. Medical Examination Report for Commercial  
3 Driver Fitness Determination.

4 Q. What is the date on the document?

5 A. 3/21/2014.

6 Q. Do you recognize the document?

7 A. I do.

8 MR. GRIFFITH: Mark this Defense Exhibit  
9 3.

10 THE ATTORNEY EXAMINER: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Can you tell us what this document says  
13 about Mr. Goubeaux's diabetes?

14 A. It says he is continuing to control it  
15 with diet and pills.

16 Q. Okay. In the Comment box at the second  
17 line there, what does the second handwritten line say  
18 about his diabetes?

19 A. It says, Blood pressure & diabetes,  
20 Dr. Imler. Diabetic since 1997. Metformin & diet.

21 Q. And does anything here indicate he's  
22 using insulin?

23 A. I can't read the handwriting on page 3  
24 in the Comment section, but I would say no.

25 Q. Okay. The last page, what does the last

1 page tell us?

2 A. That is a Medical Examiner's Certificate  
3 that was issued for one year expiring 3/21/2015.

4 Q. And who is the examiner?

5 A. Juan V. Torres, T-O-R-R-E-S.

6 Q. And what do the letters after his name  
7 mean?

8 A. MD.

9 Q. Do you know what that means?

10 A. Medical doctor.

11 Q. The next three letters?

12 A. MPH.

13 Q. Do you know what that means?

14 A. I do not.

15 Q. (By Mr. Griffith) Permission to approach,  
16 your Honor.

17 THE ATTORNEY EXAMINER: You may.

18 Q. Mike, this is a little bit different than  
19 the last document. Can you tell us what you see  
20 there?

21 A. The first page is a Medical Examiner's  
22 certificate good for one year, expiring on 3/20/2016.

23 Q. Do you recognize the document?

24 A. I do.

25 Q. Do you think that you reviewed this

1 during your investigation of the personnel file?

2 A. Yes.

3 MR. GRIFFITH: Mark this Defense  
4 Exhibit 4.

5 THE ATTORNEY EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. In order to get this certificate, you  
8 would have had to have gone through the medical  
9 examination, correct?

10 A. That is correct.

11 Q. And at the end of this medical  
12 examination, they issued this card saying he was  
13 physically fit to operate a motor vehicle?

14 A. In intrastate-only commerce.

15 Q. Okay. Do you have any evidence that he  
16 operated interstate?

17 A. No.

18 Q. Does anything on Defense Exhibit 4  
19 indicate he was using insulin?

20 A. No.

21 MR. GRIFFITH: Permission to approach,  
22 your Honor.

23 THE ATTORNEY EXAMINER: You may.

24 Q. Move on to the next document. Can you  
25 tell me what that document is?

1           A.     That is a Medical Examiner's Certificate.

2           Q.     What is the date on that certificate, on  
3     the bottom right-hand corner?

4           A.     That's the expiration date, 3/11/17.

5           Q.     So if that's the expiration date, do you  
6     have any reason to know what date the examination  
7     occurred?

8           A.     I would assume, based on the priors, it  
9     would be 3/11/16.

10          Q.     Okay. And does the document look  
11     familiar?

12          A.     Yes.

13          Q.     Do you think you reviewed this during  
14     your inspection?

15          A.     Yes.

16                 MR. GRIFFITH: Mark this Defense  
17     Exhibit 5, your Honor.

18                 THE ATTORNEY EXAMINER: It's been marked  
19     as 5.

20                 MR. GRIFFITH: Thank you.

21                 (EXHIBIT MARKED FOR IDENTIFICATION.)

22          Q.     And so, once again, the document from  
23     2016, does it indicate any insulin use?

24          A.     I do not see any, no.

25          Q.     Okay. And can you determine from the

1 document who the examiner was?

2 A. Caleb O. Molokwu, M-O-L-O-K-W-U.

3 Q. Okay. And on the next page do you  
4 recognize that document?

5 A. Yes.

6 Q. And what is that document?

7 A. It's a copy of the driver's moving  
8 violation record.

9 Q. And what would the motor carrier do with  
10 this document?

11 A. Verify that he is valid to continue to  
12 operate commercial motor vehicles.

13 Q. And the date on this document is  
14 April 22, 2016, correct, at the top?

15 A. Yes.

16 Q. So if he had a medical examination in,  
17 you know, approximately mid-March, 2016, and then  
18 there's an MVR from April of 2016, why would a motor  
19 carrier get an MVR for that driver?

20 A. He probably was due for an annual driving  
21 record review at that time.

22 Q. Okay. So this is a business record that  
23 motor carriers keep in the personnel file on a  
24 regular basis?

25 A. Correct.



1 Q. Does anything on that MVR indicate that  
2 he was using insulin?

3 A. Something that is indicative is the  
4 intrastate-only medical designation.

5 Q. That means that he was using insulin?

6 A. It does not mean he was using insulin.  
7 It is indicative of insulin use.

8 Q. Well, what other things could that  
9 indicate?

10 A. Could be vision.

11 Q. So does this marking here, does that  
12 actually mean he was using insulin?

13 A. Without further investigation, it could  
14 be one of many things.

15 Q. Okay. In fact, if he was using insulin,  
16 he would not have received a valid medical card as of  
17 that date, correct? Isn't that why we're here today?  
18 If you are using insulin, you're not going to get a  
19 medical card?

20 A. No. He did get a valid medical card with  
21 insulin use.

22 Q. Okay. We'll get back to 2010, but right  
23 now we are talking about 2016. If in 2016 he had  
24 indicated to the examiner he was using insulin, he  
25 should not have received a medical card, correct?

1           A.    For the exhibit here?

2           Q.    We are talking about 2016, the exhibit in  
3 front of you, and the MVR. So the MVR there  
4 indicates intrastate. And so you have indicated that  
5 that means he's using insulin?

6           A.    No, no. I did not indicate that.

7           Q.    Please correct me, Mike.

8           A.    I said it is indicative.

9           Q.    What does that mean to you?

10          A.    That means potentially.

11          Q.    Okay. But it could also mean potentially  
12 he wears glasses.

13          A.    It means he could have vision problems,  
14 yes.

15          Q.    Do you know if Mr. Goubeaux wore glasses?

16          A.    He does.

17          Q.    Okay. Let's flip to the next page. What  
18 is at the top of that page saying?

19          A.    Midwest Logistics Systems Medical  
20 Examiners National Registry Verification.

21          Q.    And the National Medical Examiners  
22 National Registry, that is where doctors who are  
23 allowed to do medical exams on commercial drivers  
24 register with the FMCSA, correct?

25          A.    Correct.

1 Q. Okay. And this page here, what does it  
2 say about Caleb Molokwu?

3 A. It indicates that Rachel Schmitt verified  
4 that he was on the National Registry on 4/25/16.

5 Q. Okay. So this medical examiner has gone  
6 through some special training and been registered to  
7 specifically examine motor vehicle drivers, correct?

8 A. Correct.

9 Q. When you do these sorts of inspections on  
10 other motor carriers, do you frequently see -- do all  
11 the other motor carries have a page where they verify  
12 the examiner is registered?

13 A. I'd say it's about 50/50. They're  
14 supposed to.

15 Q. So Midwest Logistics Systems did the  
16 right thing in verifying that the doctor was  
17 registered and trained to examine motor vehicle  
18 drivers.

19 A. Absolutely.

20 MR. GRIFFITH: Permission to approach,  
21 your Honor.

22 THE ATTORNEY EXAMINER: You may.

23 Q. Mike, before we talk about that, I want  
24 to ask you one question about the last exhibit. In  
25 2012, '13, '14, we looked at what I would refer to as

1 the long-form medical exam, correct?

2 A. Correct.

3 Q. And in 2016 we did not see the long-form  
4 medical exam in that exhibit; is that correct,  
5 Defense Exhibit 5?

6 A. The last one?

7 Q. Yes.

8 A. Correct.

9 Q. And also if you look at Defense Exhibit 4  
10 there's also no long-form medical exam attached; is  
11 that right?

12 A. The one for 2015?

13 Q. The 2014 -- 2015 to 2016.

14 A. Correct.

15 Q. So it's true that motor carriers are not  
16 required to keep long-form medical exams in the  
17 driver qualification file, right?

18 A. Correct.

19 Q. So, once again, for the documents in  
20 front of you can you explain what this document is?

21 A. The first page is a Medical Examiner's  
22 Certificate dated 3/8/17, valid for one year.

23 Q. And does the document look familiar as  
24 something you reviewed in your investigation?

25 A. Yes.

1 MR. GRIFFITH: Admit as Defense Exhibit  
2 6, your Honor.

3 THE ATTORNEY EXAMINER: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Does anything on this document indicate  
6 insulin use?

7 A. No.

8 Q. And can you tell us who the examiner is  
9 from the first page?

10 A. Elizabeth J. I'm going to say Rammel.

11 Q. Okay. And so Nurse Rammel is indicating  
12 by signing the certificate that Mr. Goubeaux was  
13 physically qualified to operate a commercial motor  
14 vehicle on March 8, 2017; is that correct?

15 A. That is correct.

16 Q. If you flip to the next page, we are  
17 again looking at an MVR for Mr. Goubeaux. The date  
18 on there is April 5, 2017; is that correct?

19 A. Correct.

20 Q. That's within about a month of his  
21 medical examination, right?

22 A. Yes.

23 Q. And does anything on this page indicate  
24 insulin use?

25 A. No.

1           Q.    And then if you flip to the last page, we  
2   are looking at another National Registry verification  
3   form for Elizabeth Rammel; is that right?

4           A.    That's correct.

5           Q.    This indicates to you that Midwest  
6   Logistics Systems verified Elizabeth Rammel was  
7   trained and certified to examine commercial motor  
8   carrier drivers, right?

9           A.    After he was sent to the physician, yes.

10          Q.    So the date on the verification is May 1,  
11   2017, right?

12          A.    Yes.

13          Q.    And the examination appears to have been  
14   March 8, 2017, right?

15          A.    Correct.

16          Q.    Okay.  Let's go back to the documents you  
17   produced.  We just looked at the -- we looked at the  
18   years -- examinations that occurred in 2012, 2013,  
19   2014, 2015, 2016, and 2017, correct?

20          A.    Uh-huh.

21          Q.    And for all of those years, for those six  
22   years, there's no indication of insulin use during  
23   those years on any of the medical examinations,  
24   correct?

25          A.    Correct.

1           Q.    So let's go back to the last time there  
2   was some indication of the insulin use.  We want to  
3   look at those 2010 medical examinations.  Let's start  
4   with the December 2010 medical examination, page 1.  
5   It might take a moment to locate that.  Let me know  
6   when you've found it.

7           A.    I believe I have it.

8           Q.    And while we are at it, let's just pull  
9   out the same page for the very next day, the  
10  12/29/2010 medical exam.  Can we lay those side by  
11  side.  Mike, do you have those two documents?

12          A.    Yes.  I'm sorry.

13          Q.    Very good.  On 12/28/2010 it's true that  
14  he indicates by checking the box he was using insulin  
15  on 12/28/2010, correct?

16          A.    Yes.

17          Q.    And in comments he indicated that his  
18  treating physicians are Dr. Imler and Dr. Dozier,  
19  correct?

20          A.    Yes.

21          Q.    And then in the handwritten notes he also  
22  indicates he was using Humalog insulin, correct?

23          A.    Yes.

24          Q.    And then that medical examination  
25  resulted in not being found physically fit to operate

1 a commercial motor vehicle, correct?

2 A. Correct.

3 Q. Now, the next day he comes back, and his  
4 treatment has changed, indicating by taking metformin  
5 in the handwritten comments on 12/29/2010.

6 A. Would you ask the question again?

7 Q. Absolutely. On the 12/29/2010  
8 examination, let's start with he checks the box for  
9 pills instead of insulin, correct?

10 A. (Witness nods head.)

11 Q. And then in the handwritten comments, he  
12 indicated he takes metformin, one tablet, three times  
13 daily, correct?

14 A. Correct.

15 Q. And from all the other documents, we have  
16 established that metformin is a noninsulin diabetic  
17 medication, correct?

18 A. Correct.

19 Q. And we have again indicated he's being  
20 treated by Dr. Dryer and Dr. Imler, correct?

21 A. The handwritten comments on 12/29/2010,  
22 Dr. Dozier?

23 Q. We got a new doctor. So on 12/28 he was  
24 being treating by Dr. Imler and Dr. Dozier. And on  
25 12/29 he's being treated by -- oh, the same, Dozier



1 and Imler, right, same doctors?

2 A. Yes. I was just clarifying that.

3 Q. Same doctors, new treatment, and on  
4 12/29 he's using the oral metformin, which results in  
5 him being found physically fit to operate a  
6 commercial motor vehicle, correct?

7 A. Based on the driver's answers, yes.

8 Q. Okay. Did you interview Dr. Dozier or  
9 Dr. Imler?

10 A. No.

11 Q. Did you review his medical records with  
12 Dr. Dozier or Dr. Imler?

13 A. No.

14 Q. Do you have any information whatsoever to  
15 support your claim that he was, you know, lying on  
16 12/29?

17 A. I think most common-sense folks would  
18 realize that insulin injections one day and pills the  
19 next is virtually impossible.

20 Q. And that's based on your extensive  
21 reading of the Federal Motor Carrier regulations,  
22 which is the extent of your diabetic training.

23 A. No. That's based upon my interaction  
24 with cases like this in the past.

25 Q. So it's your assertion that once you take

1 insulin, you can never be qualified to operate a  
2 commercial motor vehicle.

3 A. No, I didn't say that.

4 Q. Okay. So from eight years ago till 2017,  
5 you think that there's no way that this driver,  
6 Mr. Goubeaux, became physically qualified to operate  
7 a commercial motor vehicle?

8 A. Never said that.

9 Q. Okay. So the only evidence that we have  
10 that he ever used insulin prior to that long form of  
11 2017 is 2010, right? The two pieces of evidence are  
12 the 2010 medical exam and the 2017 long-form medical  
13 exam, correct?

14 A. Correct.

15 Q. So let's take a look at that 2017 long  
16 form. Actually, before we get to the long form,  
17 let's look at your investigatory notes. It's  
18 about -- at the end of your investigatory notes you  
19 have some notes about Mr. Goubeaux. Can you find  
20 that page that has David Q. Goubeaux at the bottom of  
21 the page and the very next page? It's about four  
22 pages into the --

23 A. Yes.

24 MR. EUBANKS: Could you hold up the  
25 document?

1 THE WITNESS: (Witness complies.)

2 MR. EUBANKS: Okay.

3 MR. GRIFFITH: Robert, this is what I'm  
4 looking at.

5 MR. EUBANKS: Okay. I got it.

6 MR. GRIFFITH: Your Honor, did you locate  
7 those two pages?

8 THE ATTORNEY EXAMINER: I have it. Thank  
9 you.

10 MR. GRIFFITH: Right.

11 Q. (By Mr. Griffith) Look at the bottom  
12 there. You indicate that Elizabeth Rammel is on the  
13 National Registry, correct?

14 A. Correct.

15 Q. Then on the next page, as your notes  
16 continue, you indicate that you interviewed Elizabeth  
17 Rammel in Wapakoneta, Ohio, on November 16, 2017,  
18 correct?

19 A. Uh-huh.

20 Q. When you met with Ms. Rammel, did you  
21 review the documents with her in her office?

22 A. I do remember she pulled his file, yes,  
23 but what specific documents we would have looked  
24 at...

25 Q. You take any copies of any documents with

1 you from her file?

2 A. I don't know. I don't remember. I don't  
3 think so, but I don't remember.

4 Q. Did you ask her to fax you any documents?

5 A. I may have.

6 Q. Okay. Now, let's take a look at that  
7 2017 long form. It's right at the end of your packet  
8 of documents there. It's about five, six pages from  
9 the end. It's got a very gray Medical Examination  
10 Report at the top at the start of it. Unless I have  
11 the pages in the wrong order, is that the first page?

12 A. I think I'm there.

13 MR. EUBANKS: Point of clarity, that says  
14 at the very top, says page 1 of 6, and it has a date  
15 of 10/18/2017, 10:31:27.

16 MR. GRIFFITH: Obviously, my copy has  
17 that cut off. Can you get a copy that does not have  
18 it cut off?

19 MR. EUBANKS: Sure, I think I have  
20 another copy.

21 MR. GRIFFITH: Or we can all just look at  
22 it.

23 MR. EUBANKS: I don't have another copy.

24 MR. GRIFFITH: May I look at your copy  
25 there?

1 MR. EUBANKS: Yes.

2 MR. GRIFFITH: Does your copy, Mike, have  
3 the fax header at the top, page 1 of 6?

4 THE WITNESS: It does.

5 MR. GRIFFITH: Your Honor, does your copy  
6 have it?

7 THE ATTORNEY EXAMINER: Yes.

8 MR. GRIFFITH: Can I look over your  
9 shoulder for a second?

10 MR. EUBANKS: Sure.

11 Q. (By Mr. Griffith) So the top of that  
12 document has a date of 10/18/17. Is that date before  
13 you went to do your investigation at Midwest  
14 Logistics Systems or after?

15 A. That was after.

16 Q. So you testified earlier this document  
17 was received from Midwest Logistics Systems, but it  
18 looks to me like you received it after the  
19 investigation for Midwest Logistics Systems, right?

20 A. It would have been during.

21 Q. Were you at Midwest Logistics Systems on  
22 10/10/2017?

23 A. 10?

24 Q. 10/18/2017. Were you at Midwest  
25 Logistics Systems on 10/18/2017?

1 A. Yes.

2 Q. Okay. Now, the telephone number at the  
3 top of that long-form medical is (567)356-4056,  
4 correct?

5 A. Yes.

6 Q. Do you believe that to be the number that  
7 this document was faxed from?

8 A. I would assume.

9 Q. And do you think that is from Midwest  
10 Logistics Systems?

11 A. I do not know.

12 Q. Can you look at Defense Exhibit 6 for me?  
13 And flip to the second or third page from the end.  
14 Let's go with the next-to-last page there, Exhibit 6.

15 A. What page is it, sir?

16 Q. It's the map. It's attached to the  
17 medical registry certification form for Elizabeth  
18 Rammel. Oh, your exhibits are not marked. I  
19 apologize for not indicating that document correctly  
20 for you. Look at the map. It says Elizabeth J.  
21 Rammel on that.

22 A. Uh-huh.

23 Q. The phone number for Elizabeth J. Rammel  
24 is (567)356-4054.

25 A. Yes.

1 Q. And the fax this long form came from is  
2 (567)356-4056, correct?

3 A. Yes.

4 Q. It seems reasonable that this long form  
5 was faxed to you by Elizabeth Rammel, don't you  
6 think?

7 MR. EUBANKS: Objection.

8 A. I don't know.

9 Q. Do you have any reason -- is it  
10 reasonable to think this document did come from  
11 Midwest Logistics Systems?

12 MR. EUBANKS: Objection.

13 Q. Did you ask Midwest Logistics Systems to  
14 fax you any documents at all?

15 A. I could have, yes.

16 Q. Okay.

17 A. E-mail, fax, we do that all the time.

18 Q. Do you happen to know what Midwest  
19 Logistics Systems' area code is?

20 A. Not off the top of my head, no. I would  
21 guess 419.

22 Q. Do you know what area code 567 comes  
23 from?

24 A. I believe it's in the same area as 411.

25 Q. Okay. But Midwest Logistics Systems uses

1 a 411 area code and phone numbers?

2 A. It could use a multitude of phone  
3 numbers.

4 Q. Okay. All right. Now, the regulation  
5 about diabetes requires that Midwest Logistics  
6 Systems' driver is currently using insulin, correct?

7 A. Yes.

8 Q. So from 2012 to at least 2016, through  
9 the certification valid through March of 2017,  
10 Midwest Logistics Systems had certifications  
11 indicating he was not using insulin, correct?

12 A. Yes.

13 Q. While we are looking at your documents,  
14 just after your interview notes there's a CDLIS  
15 report for Mr. Goubeaux. Can you flip to that? It  
16 says page 1 of 3, CDLIS.DOT.GOV at the top.

17 A. Page 1 of 3.

18 Q. Uh-huh.

19 A. Yes, sir.

20 Q. Does anything on this CDLIS report  
21 indicate that -- in any of those three pages indicate  
22 that Mr. Goubeaux was using insulin?

23 A. No.

24 Q. This report indicates Mr. Goubeaux's  
25 driving violations, correct?



1 A. It does, in addition to other things.

2 Q. Has he ever received a citation for  
3 anything related to using insulin?

4 A. That would not appear on here.

5 Q. On page 1 does it indicate that he has a  
6 valid medical certificate?

7 A. It does.

8 Q. On page 1 isn't it true it indicates he  
9 wears corrective lenses?

10 A. It does.

11 Q. It also indicates on page 1 Elizabeth  
12 Rammel is the medical examiner, correct?

13 A. Correct.

14 Q. It indicates on page 1 that the phone is  
15 (567)356-4054, correct?

16 A. Yes.

17 Q. You met with Ms. Rammel in Wapakoneta,  
18 correct?

19 A. Yes.

20 Q. Does she share office space with Midwest  
21 Logistics Systems?

22 A. No.

23 Q. Her phone number is two digits off from  
24 the fax number you received the medical form from,  
25 correct?

1           A.     Correct.

2           Q.     Okay. All right. Let's go back to the  
3     2010 medical exam. The 12/28/2010 medical exam,  
4     page 1, let me know when you have that in front of  
5     you.

6           A.     Yes, sir.

7           Q.     You had testified that this document  
8     correctly says that he has been a diabetic for 14  
9     years, right?

10          A.     Yes.

11          Q.     I just wanted to clarify your testimony  
12     that it does not indicate that he had been using  
13     insulin for 14 years, correct?

14          A.     Correct.

15          Q.     When you are writing a violation, do you  
16     consider whether or not the motor carrier had any  
17     knowledge of the violation at the time?

18          A.     Yes.

19          Q.     When you left Midwest Logistics Systems,  
20     did you have enough information that they were aware  
21     of his diabetic use, insulin use?

22          A.     Yes.

23          Q.     And that information was exclusively --  
24     the only document you actually reviewed at Midwest  
25     Logistics Systems that indicated insulin was from

1 2010, correct?

2 A. No.

3 Q. So it remains your testimony that the  
4 long form with the fax date of October 2017, that  
5 that was received by you at Midwest Logistics  
6 Systems?

7 A. To the best of my knowledge, yes.

8 Q. If that -- well, I don't need that. And  
9 this was the only violation that received a fine for  
10 Midwest Logistics Systems --

11 A. Yes.

12 Q. -- as a result of your inspection, right?

13 A. Yes.

14 MR. GRIFFITH: Nothing further, your  
15 Honor.

16 THE ATTORNEY EXAMINER: Thank you.  
17 Any redirect?

18 MR. EUBANKS: Yes, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Eubanks:

22 Q. If we could first go to your exhibit  
23 package, State's Exhibit 3, turning to the 2017  
24 examination report, I believe it was your testimony  
25 the report showed insulin use?

1           A.    Yes.

2           Q.    And, again, could you show us where?

3           A.    On page 1, the paragraph at the bottom  
4 says, "Are you currently taking medications," so on  
5 and so forth.  Insulin is listed.

6           Q.    Do you see any pills listed there?

7           A.    I do not.

8           Q.    Did he receive a medical card for 2017?

9           A.    He did.

10          Q.    Is that provided in the packet?

11          A.    Yes.

12          Q.    How did he receive a medical card for  
13 2017 if he had insulin use?

14          A.    The physician incorrectly certified him  
15 without a federal waiver.

16          Q.    Now, this examination, this 2017  
17 examination report, would have been given to the  
18 physician?  In 2017 examination -- I'm sorry -- he  
19 filled out this paperwork for the physician to  
20 review?

21          A.    Correct.

22          Q.    Okay.  And also in your notes you have  
23 notes about this particular examination; is that  
24 correct?

25          A.    Yes.

1           Q.    If we could turn to that, to your notes.  
2    I think it's the fourth page of your notes at the  
3    very beginning of the document.

4           A.    Uh-huh.

5           Q.    Could you explain the conversation you  
6    had with the doctor?

7           A.    Yes.  She was under the guise that she  
8    could qualify an insulin-dependent driver for  
9    intrastate operations only, and provided that he met  
10   the PUCO's intrastate waiver for that, that is a true  
11   statement, but that did not apply in this particular  
12   individual's case.  So we educated her with who to  
13   contact at our office if future need was needed and  
14   also how to help individuals apply for a federal  
15   waiver if need be in the future.

16          Q.    At the time you spoke to the doctor, did  
17   she at any time tell you the reason why she was  
18   writing the intrastate -- only allowing him to drive  
19   intrastate was because of his vision?

20          A.    Because of his vision?

21          Q.    Yeah.

22          A.    No.

23          Q.    Did she give you any other reasons why  
24   she would have limited his driving to intrastate?

25          A.    His --

1 MR. GRIFFITH: Objection. We need to  
2 talk about things that she actually said, not things  
3 that she might have said.

4 MR. EUBANKS: No, I'm asking if she did.

5 MR. GRIFFITH: Maybe restate the question  
6 for him.

7 Q. (By Mr. Eubanks) The question is, again,  
8 did she ever tell -- as a part of that conversation,  
9 did she ever list any other reasons why she limited  
10 his certificate?

11 A. Yes.

12 Q. His certificate to intrastate only.

13 A. Because of the insulin use.

14 Q. Was that the sole reason that she gave  
15 during your interview?

16 A. Correct.

17 Q. And she believed he was using insulin  
18 because of the information that the driver provided,  
19 correct?

20 A. Correct.

21 Q. I'd like you to take a look at -- you  
22 were handed a series of exhibits from the defense.  
23 If you could look at Defense Exhibit 3 under the  
24 section entitled Health History, the section that's  
25 completed by the driver, do you see that?

1           A.    What's the date?

2           Q.    It is March 21, 2014, would be the date  
3 of the examination. Do you see that?

4           A.    I do.

5           Q.    In the notes do you see where it says  
6 "Dr. Imler, diabetic since 1997," and then it says  
7 "Metformin & diet."

8           A.    Yes.

9           Q.    And this would have been in 2014,  
10 correct? I believe we established it's 2014.

11          A.    Correct.

12          Q.    But based off of the 2010 examination  
13 report, indeed he was using insulin to medicate the  
14 diabetic situation, right?

15               MR. GRIFFITH: Objection. Are we talking  
16 about 2014 or 2010?

17               MR. EUBANKS: 2010. That's what I said,  
18 I believe.

19               Could you read back the question?

20               (Record read.)

21               THE WITNESS: Can I answer?

22               MR. GRIFFITH: Withdraw the objection.

23          A.    That is correct.

24               THE ATTORNEY EXAMINER: You may answer.

25          A.    That is correct.

1           Q.    So if someone was reading this  
2   examination report to conclude that since 1997 he was  
3   using metformin and diet in order to control his  
4   diabetic situation, that would be a false conclusion,  
5   correct?

6           A.    Based upon what's here, yes.

7           Q.    I'd like you to also look at Defense  
8   Exhibit 2.  Once again -- I realize yours isn't  
9   marked.  This would be the exam that's on March 29,  
10  2013.  Do you see that?  Do you have that before you?

11          A.    2013?

12          Q.    Yes.

13          A.    Yes.

14          Q.    If you once again go under the Health  
15   History, and in the comment section, once again,  
16   filled out by the driver, it says, "Dr. Imler is  
17   treating diabetes 150 mg of metformin daily since  
18   1997."  Do you see that?

19          A.    I do.

20          Q.    If someone was reading this document and  
21   reached the conclusion that since 1997 he was using  
22   pills in order to treat his diabetes, would they be  
23   reaching a false conclusion based off of the 2010  
24   examination report?

25          A.    Yes.



1           Q.    I'd like you to look at Defense  
2 Exhibit 1. That would be the 12/29/2012 exam. Do  
3 you have that before you?

4           A.    I do, sir.

5           Q.    If you could look under the section  
6 marked Health History, once again the comment section  
7 filled out by the driver, part of it says, "Dr. Imler  
8 treating diabetes. Diabetic since 1997. Taking  
9 metformin." Do you see that?

10          A.    I do.

11          Q.    If someone was to read this document and  
12 conclude from the document that the driver was using  
13 metformin since 1997 in order to treat his insulin,  
14 would that be a false conclusion based off of the  
15 2010 examination report?

16          A.    Yes, sir.

17          Q.    So just correct me, if I understand what  
18 your testimony is stating today -- first of all, you  
19 remember being asked on cross what brought you to --  
20 what conclusions -- well, what you reviewed that  
21 brought you to the conclusion that the driver was,  
22 indeed, insulin dependent. And is it a correct  
23 summary to state that you believed that the driver  
24 since 2010 has been lying about the fact that he uses  
25 insulin in order to treat his diabetes, and that

1 that's confirmed for you from the 2010 examination  
2 report and also reconfirmed to you by the 2017  
3 examination report in which he indicates that he uses  
4 insulin in order to treat his diabetes; is that  
5 correct? Is that a correct summary?

6 A. I would say that the 2017 exam no doubt  
7 indicates he needs insulin for his treatment. I  
8 wouldn't say that he necessarily lied, but the  
9 evidence points to that.

10 Q. Do you believe that on the 29th, on  
11 1/29 -- sorry. Let me ask the question again.

12 Do you believe that on 12/28/2010 --  
13 first of all, 12/28/2010, wasn't that the date of the  
14 first 2010 examination report? Let me look at that  
15 again.

16 A. Yes.

17 Q. Okay. And then the subsequent one was  
18 12/29/2010, correct?

19 A. Correct.

20 Q. So do you believe that he was using  
21 insulin on the 28th and no longer using it on the 29?

22 MR. GRIFFITH: Objection. I don't know  
23 what the basis for that opinion is.

24 THE ATTORNEY EXAMINER: Overruled. The  
25 witness can answer if he knows.

1           A.    I believe he was, yes.

2           Q.    You believe he was doing what?   I'm  
3   sorry.

4           A.    Using insulin on the 29th.

5           Q.    So you do believe that on the 12/29/2010  
6   Medical Examination Report, the portion that was  
7   filled out by the driver was incorrect?

8           A.    Correct.  If you look at the fact that  
9   the original exam on 12/28 was done by a different  
10   physician, if, in fact, he were controlling it with  
11   pills and diet, why do you need to go to a different  
12   physician on the 29th in order to get certified?  The  
13   original physician should have said, Okay, good to  
14   go.

15          Q.    So on the 29th where he says it's diet  
16   and pills only, you do believe that's a lie, correct?

17          A.    I do.

18               MR. EUBANKS:  One second.

19               (Discussion off record.)

20          Q.    (By Mr. Eubanks) As a result of the  
21   documentation that was provided to you by opposing  
22   counsel, the various defense exhibits, has it changed  
23   your position in any way on whether or not the driver  
24   was using insulin?

25          A.    No.

1                   MR. EUBANKS: I have no further questions  
2 for the witness.

3                   MR. GRIFFITH: One quick follow-up, your  
4 Honor.

5                   - - -

6                   RE CROSS-EXAMINATION

7 By Mr. Griffith:

8                   Q. Mike, in the beginning of your documents  
9 here there is a medical card dated 3/8/17 for  
10 Mr. Goubeaux. It's near the beginning of  
11 Mr. Goubeaux's documents, two pages after the CDLIS  
12 report. Do you see that?

13                  A. Yes, sir.

14                  Q. And then at the end of your documents,  
15 the next-to-last page or the third-from-last page  
16 after the long form 2017, there's another medical  
17 examiner certificate. Do you see that? It's a big  
18 medical examiner certificate also dated 3/8/17, the  
19 third page from the end of the packet.

20                  A. Yes.

21                  Q. Okay. And then Defense Exhibit 6, the  
22 front of Defense Exhibit 6, has a medical examiner  
23 certificate. Do you see that?

24                  A. Uh-huh.

25                  Q. Okay. The earlier, the smaller medical

1 exam certificate in your papers, has a couple of  
2 circles on the right side of the page, correct, black  
3 dark circles?

4 A. Yes.

5 Q. And then Defense Exhibit 6 has the  
6 outlines of a couple of circles on the right side of  
7 the page, correct?

8 A. Yes, sir.

9 Q. And then the large medical examiner  
10 certificate with the same date, 3/8/17, has fax  
11 information from this 567 area code number, correct?

12 A. Yes.

13 Q. And it does not have any circles on the  
14 right side of the page, correct?

15 A. I do not see any, no.

16 Q. And the small certificate from earlier in  
17 your packet has some information blacked out; is that  
18 correct?

19 A. It's a highlight. It didn't scan very  
20 well.

21 Q. Okay. But the one later in your packet  
22 does not have that information, any redaction or  
23 highlighting shown, correct?

24 A. No, sir.

25 MR. GRIFFITH: Nothing further, your

1 Honor.

2 THE ATTORNEY EXAMINER: Let's take a  
3 ten-minute recess.

4 (Recess taken.)

5 THE ATTORNEY EXAMINER: Back on the  
6 record.

7 Mr. Eubanks, would you like to move your  
8 exhibits into the record?

9 MR. EUBANKS: I would. At this time I  
10 would like to move State's Exhibits 1, 2, and 3 into  
11 evidence.

12 THE ATTORNEY EXAMINER: Any objections?

13 MR. GRIFFITH: No objections, subject to  
14 marking them confidential for filing purposes.

15 MR. EUBANKS: And I'm in total  
16 agreement -- well, for State's Exhibit 3. I don't  
17 think it's necessary for 1 and 2.

18 MR. GRIFFITH: Just remind me, 1 and 2 is  
19 just a list of drivers?

20 MR. EUBANKS: Exhibit 2 is the Case View  
21 Report.

22 MR. GRIFFITH: Do we need to mark them  
23 confidential now?

24 THE ATTORNEY EXAMINER: I would like to,  
25 if possible.

1 MR. GRIFFITH: I think that's fine, just  
2 3.

3 THE ATTORNEY EXAMINER: Okay. We will  
4 move 1, 2, and 3 into the record, and Staff  
5 Exhibit 3 will be confidential.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 THE ATTORNEY EXAMINER: Mr. Griffith,  
8 would you like to call your witness?

9 MR. GRIFFITH: Yes, your Honor. I call  
10 Pete Voelker.

11 - - -

12 PETER VOELKER  
13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Griffith:

17 Q. Mr. Voelker, what is your job with  
18 Midwest Logistics Systems?

19 A. General counsel.

20 Q. How long have you been in that role?

21 A. Just over three years.

22 Q. And in that role, what are your  
23 responsibilities, generally?

24 A. Several responsibilities regarding legal  
25 issues that the company faces. In particular here I

1 work in conjunction with our HR department, you know,  
2 maintaining employment files and making sure our  
3 driver files are accurate and our drivers are  
4 qualified.

5 Q. And in preparation for responding to this  
6 hearing, did you review Mr. Goubeaux's personnel  
7 file?

8 A. I did.

9 Q. And in that personnel file did you see a  
10 copy of the 2017 long-form medical examination that  
11 we have been reviewing?

12 A. I did not. The first time I've actually  
13 seen that document was today.

14 Q. And have you ever seen a document with  
15 that GFI FAXmaker at the bottom?

16 A. Not that I know of.

17 Q. And is the phone number at the top, the  
18 565 area code number, a Midwest Logistics number to  
19 your knowledge?

20 A. I don't think so.

21 Q. So when Mr. Goubeaux was issued a medical  
22 card in 2017, all you saw was the medical card,  
23 right?

24 A. Correct.

25 Q. And what do you think when you receive a



1 medical card with a driver's qualifications?

2 A. Well, the medical card is the only  
3 document in the FMCSA process that we're required to  
4 obtain. Often it is is only document that we get.  
5 At that point that document is then verified to be on  
6 the motor vehicle record, which is why many of the  
7 motor vehicle records is with the medical documents.  
8 So we rely upon those medical certification as  
9 they're the only document in the process that we are  
10 required to maintain.

11 Q. And is that FMCSA document in front of  
12 you?

13 A. It's not, no.

14 MR. GRIFFITH: I should make more copies.  
15 Mike, do you still have a copy of that.  
16 Permission to approach, your Honor.

17 THE ATTORNEY EXAMINER: You may.

18 Q. (By Mr. Griffith) Mr. Voelker, in  
19 preparing for this hearing and in reviewing Midwest  
20 Logistics' obligations under the FSCMA regulations,  
21 did you review this document?

22 A. Yes.

23 Q. What did this document tell you about  
24 Mr. Goubeaux's medical history and qualifications to  
25 drive?

1           A.    Well, obviously, in general, there are  
2   some specific rules with regard to diabetes.  It did  
3   speak to the metformin medication.

4           Q.    Does taking metformin disqualify Mr.  
5   Goubeaux from operating a commercial motor vehicle?

6           A.    No.  Nor do I believe there was any  
7   exception required for the diabetes.

8           Q.    And by exception do you mean the special  
9   waiver to be able to continue to operate a commercial  
10  motor vehicle?

11          A.    Correct.

12          Q.    That is not required for Mr. Goubeaux to  
13  operate a commercial motor vehicle?

14          A.    Correct.

15          Q.    You also reviewed Defense Exhibits 1  
16  through 6, and you found those documents at Midwest  
17  Logistics Systems?

18          A.    I did, yes.

19          Q.    Those are all true and accurate copies of  
20  documents in the Midwest Logistics Systems' personnel  
21  files?

22          A.    They are.

23               MR. GRIFFITH:  Move to mark Defense  
24  Exhibit 7, the FMCSA document in front of the witness  
25  at the moment.

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THE ATTORNEY EXAMINER: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. GRIFFITH: I have nothing further.

THE ATTORNEY EXAMINER: Any  
cross-examination?

MR. EUBANKS: Yes, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Eubanks:

Q. Do you have reason to deny the fact that  
the 2010 examination report was in Midwest's files at  
the time of the compliance review?

A. No. There were two 2010 reports, yes.  
No, I do not have any reason to deny it.

Q. In fact, as head of compliance, at  
Midwest did you review those documents for the  
driver?

A. I have since reviewed his entire file  
after we became aware of the alleged violation.

Q. Before becoming aware of the violation,  
you had not reviewed his file?

A. I do not recall if I reviewed his file,  
but I would think based on our normal course that  
someone in our HR department would have reviewed his  
file.

1 Q. How long have you been with Midwest?

2 A. Three years.

3 Q. So you would not have been there in 2010.

4 A. Correct.

5 Q. And when you were hired on, would you  
6 have brought yourself up to date about the medical  
7 files of the different drivers for the company?

8 A. Like I said, I don't recall if I  
9 specifically reviewed this file, but I have reviewed  
10 several employees' files over the years.

11 Q. Was this particular file ever -- well,  
12 was there a person in your position before you took  
13 your current job with Midwest?

14 A. There was a general counsel prior to me,  
15 yes.

16 Q. That had the same duties you had?

17 A. I'd say similar, yes.

18 Q. Had he been employed there since 2010?

19 A. No.

20 Q. Okay. Has your position existed since  
21 2010?

22 A. No.

23 Q. When did your position come into  
24 existence for Midwest?

25 A. I'd be speculating exactly, but I want to

1 say early 2014, maybe.

2 Q. Early 2014. Would there have been a  
3 nonattorney that would have performed similar types  
4 of duties in 2010?

5 A. Yes, I believe so.

6 Q. And was this ever flagged to you by  
7 anyone who had your position or a similar position  
8 with Midwest? Was the 2010 medical report for  
9 David -- I'm having a hard time pronouncing his last  
10 name. G-O-U-B-E-A-U-X, was his medical report ever  
11 flagged for you?

12 A. I don't know.

13 Q. Okay. Now being aware of the 2010  
14 examination report that was performed on 12/28/2010  
15 and then the -- I'm sorry. Yes, on 12/28/2010 and  
16 then the subsequent one that was performed on  
17 12/29/2010, does that cause you any concern with  
18 regard to the driver's insulin use?

19 A. Well, I'm not a doctor, so I would say  
20 no, particularly in light of 2012 through 2017. All  
21 the records we had on file, including three long  
22 forms, all indicated no insulin use.

23 Q. Is it possible that the driver could have  
24 been lying since 2010?

25 A. It's possible.

1           Q.    And is there any records at Midwest that  
2   you know of where a person in your position or in a  
3   similar position requested from a doctor information  
4   that would square up why the examination report on  
5   12/28/2010 does not match up with the examination  
6   report on 12/29/2010?

7           A.    I lost you there.  Can you ask that  
8   again, please?

9           Q.    Would you agree that the examination --  
10   have you been looking at the exhibits as they were  
11   passed out earlier?

12          A.    I did.

13          Q.    You would agree that the 12/28/2010  
14   report the driver wrote down that he used insulin; is  
15   that correct?

16          A.    Correct.

17          Q.    And then after that report was voided or  
18   his certificate was voided, he then went to another  
19   doctor on 12/29/2010.  Did you see that?

20          A.    Yeah.  I was confused by the voided.  I  
21   don't know if the certificate was being voided, if it  
22   was the prior indications that were being voided, but  
23   what I saw could very well be his change of  
24   medication.  People change medication.  Doctors  
25   change people's medications all the time.  That's how

1 I viewed from one to the next.

2 Q. My question is, was that ever verified  
3 from someone in your position or a similar position  
4 in the past? Is there any documentation at Midwest  
5 where they verified the best-case scenario, that all  
6 he did was the very next day change his medication?

7 A. Yeah. I would say all the records from  
8 2012 through 2017 that we had in our files verified  
9 that he was using metformin and not insulin because  
10 we did not have a long form in 2017 in our file.

11 Q. Okay.

12 A. We had no way of knowing that.

13 Q. Okay. While I understand what you're  
14 saying right now, I still don't believe you're  
15 answering my question. My question is in 2010 when  
16 you had the driver on one day state that he was using  
17 insulin and then on the next day state he's switching  
18 to pills in order to treat his diabetes, in 2010 was  
19 there a person in your position or a similar position  
20 that requested information from a doctor in order to  
21 square up the two different examination reports that  
22 Midwest had on file in its records at that time?

23 A. In 2010?

24 Q. Yes.

25 A. I don't know if anyone specifically

1 verified the change in prescription other than the  
2 medical record, the long form and certificate we have  
3 on file that showed that.

4 Q. But you did say that after the violation  
5 you went back and you reviewed his records, right?

6 A. Correct.

7 Q. Okay. When you reviewed his records, did  
8 you see any follow-up in 2010, any documentation of  
9 follow-up in 2010?

10 A. I did not.

11 Q. Okay. Why do you keep records dating all  
12 the way back to 2010?

13 A. I think it's a good practice to keep  
14 medical certification records that we receive.

15 Q. It would allow the person in your  
16 position to actually review them, correct?

17 A. Correct.

18 Q. You would agree it would also allow for  
19 the company to see whether or not a driver is being  
20 consistent in the reports that it -- in the health  
21 history that they document on their driver's fitness  
22 determination?

23 A. To the extent we have the long form of  
24 the examination documents, but we're not required nor  
25 often we don't receive the long form.



1           Q.    Okay.  But currently you don't.  In the  
2 past, obviously, you did receive them?

3           A.    From time to time.  The last one we  
4 received was on the 2014 examination date.

5           Q.    And, obviously, you also received it in  
6 2010.

7           A.    Yes, and '13 and '12.

8           Q.    Okay.  The medical exam certificates that  
9 the driver has received over the years, have they all  
10 been K2 restrictions?

11          A.    The medical certificates?

12          Q.    Yes.

13          A.    I'm not sure.  I'd have to look at them,  
14 if you would allow me.

15          Q.    Sure.  I believe Defense Exhibits 1  
16 through 6 have various driver examination reports, if  
17 you could.

18               MR. GRIFFITH:  Permission to approach.

19               MR. EUBANKS:  They're not up there?

20               MR. GRIFFITH:  No.  Mike took them.

21               THE WITNESS:  Thank you.

22          Q.    (By Mr. Eubanks) If you could review  
23 those certificates and tell me if any of them have a  
24 K2 restriction.

25          A.    I don't see the letters and numbers K2 in

1 particular on any of these.

2 Q. You don't have the marked exhibits, but  
3 this would be Defense Exhibit 6. It would be the  
4 very front page. It says 3/8/18 is the expiration of  
5 the certificate, so the certificate was started on  
6 3/8/17, so I'm talking about the second page. Second  
7 page, driver's record, service report for Ohio, do  
8 you see what I'm talking about? That's at the very  
9 top.

10 A. Oh, yes, I'm sorry. Sure.

11 Q. In the middle where it says  
12 "Miscellaneous and State Specific Information" --

13 A. Yes.

14 Q. -- one, two, three, four, five, six,  
15 seven lines down it says "CDL, RESTR: Intrastate  
16 Only - Medical."

17 A. Yes.

18 Q. What do you understand that to say?

19 A. That indicates that his CDL was an  
20 intrastate-only CDL, meaning he could only drive  
21 commercially in the state of Ohio. That would be  
22 consistent with the FMCSA examiner handbook for  
23 drivers who take metformin to treat diabetes.

24 Q. So by reading the report, it would be  
25 clear that the driver is a diabetic? At least you

1 know that, correct?

2 A. No, that wouldn't be clear.

3 Q. Okay. What wouldn't be clear then? I'm  
4 sorry. What are you deriving from that again?

5 A. I'm saying that that CDL --

6 MR. GRIFFITH: I will object. This is an  
7 asked-and-answered question. I don't know that we  
8 need to rehash the same issue.

9 MR. EUBANKS: Well, I can ask her to read  
10 the question and answer again.

11 MR. GRIFFITH: Sure.

12 MR. EUBANKS: I'm not sure I understood  
13 his answer.

14 THE ATTORNEY EXAMINER: The witness can  
15 clarify.

16 A. Clarify as to what I said before?

17 Q. Yes.

18 A. What that means is he has a CDL  
19 restriction of intrastate only for a medical reason.  
20 There could be several medical reasons for that. I  
21 say several. There's a handful, I think.

22 Q. Okay. So I guess that's my point. So  
23 based off of reading that, did you ever inquire from  
24 a doctor or his physician what his restriction was or  
25 what it's based on?

1           A.    I think that it's self-evident from all  
2   of his medical records from 2012 to 2017 that MLS had  
3   on file that he had diabetes.  He was treating  
4   diabetes with metformin; otherwise, he wouldn't be  
5   able to receive his CDL.

6           Q.    Okay.  And what law are you referring to  
7   that says you can drive intrastate only if you have  
8   diabetes and you're treating it with pills?

9           A.    I don't -- that was the law I was  
10  referring to.

11          Q.    Okay.

12          A.    To drive intrastate only.

13          Q.    Well, correct me --

14          A.    I'm not aware of the law that says what  
15  you just said.

16          Q.    Okay.  Correct my paraphrasing of your  
17  testimony where I'm wrong.  I believe what you just  
18  now told me, that the sixth line down that says "CDL,  
19  RESTR:  Intrastate Only - Medical," that when you  
20  read that -- first of all, did you ever read that  
21  line before?  I imagine you read your own.

22          A.    Yes.

23          Q.    Okay.  And this would also be a part of  
24  Midwest Logistic's files?

25          A.    Yes.

1           Q.    Okay.  By reading this you know that he  
2   can only drive intrastate?

3           A.    (Witness nods head.)

4           Q.    But you don't know why, correct?

5           A.    Well, in light of all the other records,  
6   yes, I would know why, based off of reviewing these  
7   records as a whole.  From the document alone, had I  
8   not looked at anything else, I would not know.

9           Q.    But by looking at the rest of his records  
10   you believe it was intrastate only because he has  
11   diabetes and he's treating it with -- I believe it's  
12   a pill.

13          A.    I believe it is, too, metformin.

14          Q.    Okay.  So my question is, what law is it  
15   that says if you have diabetes and you're treating it  
16   with pills you can drive only intrastate, can only  
17   receive a certificate for intrastate only?

18          A.    I do not believe there's a law that says  
19   that.

20          Q.    So if you don't believe there's a law  
21   that says that, why would you conclude by reading  
22   this information that the reason why he has  
23   intrastate only is because he has diabetes and is  
24   treating it with a pill?

25          A.    Because that is the only medical

1 condition I'm aware of that would raise an issue as  
2 to a CDL restriction.

3 Q. Okay. But you performed no follow-up  
4 with any physician in order to determine why he had  
5 that restriction?

6 MR. GRIFFITH: Objection. That's the  
7 third time we've rehashed this question.

8 MR. EUBANKS: I don't believe he's ever  
9 said, No, I did not follow up with. We are talking  
10 about 12 years of records.

11 MR. GRIFFITH: My objection stands, your  
12 Honor. He's not required to answer the same question  
13 three times.

14 MR. EUBANKS: But he's required to answer  
15 it once.

16 MR. GRIFFITH: And he has answered it.  
17 Reread the record, Robert. He has answered the  
18 question. He is not required to say yes or no. He  
19 can answer it however he wants to.

20 MR. EUBANKS: It's a very specific  
21 question. Have you followed up with a doctor in  
22 order to determine how --

23 MR. GRIFFITH: And he has given an  
24 answer.

25 MR. EUBANKS: He has not.

1 MR. GRIFFITH: My objection stands, your  
2 Honor.

3 THE ATTORNEY EXAMINER: The witness can  
4 answer.

5 THE WITNESS: Can you ask me the question  
6 again?

7 Q. (By Mr. Eubanks) It's a very specific,  
8 narrow question. It's just simple. Once you read  
9 this document, whenever you read it, whether it  
10 was reviewing for this hearing or before, and you  
11 read the part that says "CDL, RESTR: Intrastate only  
12 - Medical," did you ever call David Q.  
13 G-O-U-B-E-A-U-X's doctor and inquire about why he can  
14 only drive intrastate?

15 A. The first time I remember reading this  
16 was after the violation was assessed, the day that we  
17 took Mr. Goubeaux off the highway and moved him into  
18 a role where he wouldn't drive anymore because we  
19 wanted to make sure that we were complying with the  
20 law.

21 Q. That would be a great answer if my  
22 question was, Did you take him off the highway?

23 MR. GRIFFITH: Objection, your Honor.

24 THE WITNESS: I'm getting to the point.  
25 I did not ask a doctor because it was a moot point at

1 that time.

2 Q. Thank you.

3 A. Because we took him out of that role.

4 Q. That's all. A simple no would have  
5 sufficed.

6 A. Okay.

7 Q. As a part of your position, do you have  
8 any guidelines, any company guidelines, that you have  
9 to follow in order to make sure that drivers are in  
10 compliance?

11 A. I would say our primary guidelines are  
12 the Federal Motor Carrier Safety regulations.

13 Q. Okay. Do you have any type of guidelines  
14 that would require you to follow up on medical  
15 examination records filled out by your drivers?

16 A. Not that I'm aware.

17 Q. Do you have any type of guidelines that  
18 would -- that are in place that would require you to  
19 verify that the information filled out by your  
20 drivers in their medical examination reports were  
21 accurate?

22 A. I would refer back to the FMCSA. We  
23 refer back to this. We study those. We follow those  
24 to the best of our ability. Those laws and  
25 regulations exist for this whole process, and that's



1 what we follow.

2 Q. In 2010 we already established that at  
3 least there's nothing on the record, in the  
4 reports -- I mean, there's nothing in the company's  
5 files to suggest there was a follow-up by the person  
6 in your position or in a similar position that  
7 followed up on the difference in the examination  
8 reports done on 12/28/2010 and 12/29/2010.

9 As a follow-up question to that, would  
10 there have been any company policy in place to  
11 require a person in your position or a similar  
12 position to inquire about the difference in those  
13 examination reports?

14 A. I don't think so.

15 Q. If the same thing were to happen today,  
16 let's say a driver came in and for some reason --  
17 let's just assume you got the long-form examination.  
18 I know you're not required to now, but for some  
19 strange reason you got it, and you had information  
20 that he went to a physician. He said he had  
21 insulin-dependent diabetes one day and he didn't  
22 receive a certificate, and then the next day he said  
23 he was treating it with pills. Is there any current  
24 company policy that would require you to follow up?

25 A. There is no written policy that

1 specifically addresses that situation, no.

2 Q. Is there any policy in general that would  
3 cover that situation?

4 A. I don't know.

5 MR. EUBANKS: I have no further  
6 questions.

7 THE ATTORNEY EXAMINER: Thank you.

8 Any redirect?

9 MR. GRIFFITH: Yes, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Griffith:

13 Q. Mr. Voelker, approximately how many  
14 drivers does Midwest employ?

15 A. I would say between 900 and 1,000.

16 Q. Would you have time to review all of  
17 their many years of driver qualification files if you  
18 made that your full-time job?

19 A. Well, I couldn't make it my full-time  
20 job, unfortunately, but even if I could, probably  
21 not.

22 Q. In the three years you have been at  
23 Midwest Logistics, I assume some driver issues, maybe  
24 qualification related, have come up, right?

25 A. Yes.

1           Q.    When something happens, what is the  
2   general procedure?  What does human resources do if  
3   they have a question or something interesting comes  
4   up in a driver's file?

5           MR. EUBANKS:  Objection.  He stated there  
6   is no general procedure.

7           MR. GRIFFITH:  I'll rephrase the  
8   question, your Honor.

9           THE ATTORNEY EXAMINER:  Thank you.

10          Q.    (By Mr. Griffith) Mr. Voelker, there may  
11   not be a written procedure, but what happens when  
12   something comes up in a driver's file?

13          A.    Well, if HR is confident they know what  
14   to do with it, they handle the situation.  It's hard  
15   to answer that without regard -- without any specific  
16   set of facts.  But oftentimes they'll bring it to my  
17   attention.  I'll look into it, research the law,  
18   research the regulations, would pull the driver  
19   immediately, and make sure that all the driver  
20   qualifications, which includes, you know, obviously,  
21   medical certification is in the record and in  
22   compliance before moving forward with that driver.

23          Q.    And the human resources people who most  
24   often review those documents, are they experienced  
25   employees?

1           A.     Yes.

2           Q.     Do you have any that have been with the  
3 company longer than you?

4           A.     At least three of them have been that I  
5 believe have reviewed files over the years. I mean,  
6 some duties have changed over the years, but they  
7 have been with the company longer than me, yes.

8           Q.     When you have a question and you're still  
9 stumped, what do you do?

10          A.     I'll research it or I might call you or  
11 call another attorney to get a second opinion so we  
12 can ensure we are in compliance.your Honor

13                 MR. GRIFFITH: Thank you.

14                 THE ATTORNEY EXAMINER: Any additional  
15 cross?

16                 MR. EUBANKS: Just a couple.

17                         - - -

18                         RECROSS-EXAMINATION

19 By Mr. Eubanks:

20          Q.     How many people are in your human  
21 resources section?

22          A.     We're not a company real big on titles,  
23 so I would say people who handle human resources  
24 issues and matters probably -- including myself?

25          Q.     Sure.

1           A.     Five, maybe four; four or five.

2           MR. EUBANKS:  No further questions.

3           THE ATTORNEY EXAMINER:  Thank you.

4           MR. GRIFFITH:  Nothing further.  We move  
5 to admit Defense Exhibits 1 through 7, all subject --  
6 1 through 6 marked confidential, please.

7           THE ATTORNEY EXAMINER:  Any objections?

8           MR. EUBANKS:  No objection.

9           THE ATTORNEY EXAMINER:  We will move  
10 Exhibits 1 through 7 into the record and 1 through 6  
11 will be marked confidential.

12                   (EXHIBITS ADMITTED INTO EVIDENCE.)

13           THE ATTORNEY EXAMINER:  Is there any  
14 other matters that need to be handled?

15           MR. EUBANKS:  No.

16           MR. GRIFFITH:  May we submit a written  
17 statement to summarize our closing, or do you want to  
18 do oral closings?

19           THE ATTORNEY EXAMINER:  Do you have a  
20 preference, Mr. Eubanks?

21           MR. EUBANKS:  I'd rather just do it  
22 orally, but, I mean, if you are leaving it up to me.

23           MR. GRIFFITH:  That's fine with me.  I'm  
24 prepared to do it now if you want to proceed.

25           THE ATTORNEY EXAMINER:  Yes.  Let's go

1 with closing statements.

2 MR. GRIFFITH: Your Honor, may  
3 Mr. Voelker retire?

4 THE ATTORNEY EXAMINER: I'm sorry. You  
5 may be excused.

6 THE WITNESS: Thank you, your Honor.

7 MR. EUBANKS: Do you want me to start?

8 THE ATTORNEY EXAMINER: Sure, if you have  
9 any closing remarks.

10 MR. EUBANKS: I do.

11 Your Honor, today the evidence that was  
12 presented was that an inspector conducting a  
13 compliance review was able to review several drivers  
14 at Midwest Logistics Systems and came across one  
15 specific driver who had a restriction on his driving  
16 certificate. He followed up on that by looking into  
17 the company files that were readily available; saw  
18 that in those company files the driver was diabetic,  
19 and that in 2010 he put on the driver's examination  
20 report that he used insulin in order to treat his  
21 diabetes.

22 Then subsequently, the very next day,  
23 because he wasn't able to get a driver's certificate,  
24 he went to another physician and said, No, I don't  
25 use insulin. I use pills, and he got a driver's

1 certificate.

2 And from that day forward, having learned  
3 the lesson that if he goes in and puts down he's  
4 using insulin, he's not going to get a driver's  
5 certificate, he became wise, and on all of these  
6 subsequent driver examination reports, at least the  
7 part that he fills out, he never mentions insulin  
8 again.

9 In fact, he says that on Defense Exhibit  
10 1, the 12/29/2012 examination, and on Defense  
11 Exhibit 3, which would have been the March 21, 2014,  
12 examination, and Defense Exhibit 2, which would have  
13 been the March 29, 2013, examination, what he  
14 basically says is, I've been a diabetic since 1997,  
15 and the only thing I've ever used to treat it was  
16 metformin daily.

17 Now, he kind of says that in a roundabout  
18 way on the 12/29/2012 report and on the 3/21/2014  
19 report. But on the Defense Exhibit 2 it's clear that  
20 he lies. He says, "Dr. Imler is treating diabetes,  
21 1,500 mg metformin daily since 1997."

22 So here we have an inspector doing what  
23 apparently the compliance review person for Midwest  
24 could not do, what apparently the human resources  
25 department of Midwest could not do. Somehow they're

1 just overwhelmed, and they can't look at the past  
2 reports and determine that they have a driver that's  
3 clearly lying in order to get his examination  
4 reports.

5           Instead, they just plead ignorance.  
6 There's too many drivers for us to review. We  
7 wouldn't go back and review things all the way back  
8 to 2010, even though the witness for the defense on  
9 the stands says the reason why they keep this stuff  
10 in the records is so they can review it, so that they  
11 can educate themselves. But, apparently they don't  
12 educate themselves, and they don't follow up. They  
13 don't call doctors in order to figure out why one day  
14 a driver is using insulin and the next day he's not.

15           Had they followed up, particularly in  
16 2017, just looking at the documentation in 2017, they  
17 would have known that he went to a doctor who once  
18 again stated that he uses insulin. So if there's any  
19 doubt that somehow in 2010 he just about-faced and  
20 went from insulin to pills, that should be completely  
21 corrected by the fact that in 2017 he once again  
22 states for the record that he uses insulin.

23           And, therefore, the inspector quite  
24 correctly reached the conclusion that Midwest, even  
25 if they didn't know, they should have known that they



1 had a driver who was obtaining driving certificates  
2 by falsely filling out the medical examination  
3 records.

4 The violation that was cited is proper.  
5 The forfeiture as well is proper, and that's all.

6 THE ATTORNEY EXAMINER: Thank you.

7 Mr. Griffith.

8 MR. GRIFFITH: Your Honor, I object  
9 sternly to impugning Mr. Goubeaux's reputation here.  
10 There's nothing in the record that suggests he was  
11 lying and nothing that suggests his lies were  
12 overlooked by my client.

13 The only thing stated correctly here in  
14 closing is that the issue is whether or not Midwest  
15 Logistics Systems knew or should have known about the  
16 current use of insulin by Mr. Goubeaux while he was  
17 operating a commercial motor vehicle.

18 Now, I think the evidence is crystal  
19 clear that they had nothing in their file that  
20 indicated use since 2010. In fact, he had gone and  
21 changed his medical treatment record, and for the  
22 next seven years he was using a noninsulin treatment  
23 for diabetes, which clearly qualified him to operate  
24 a commercial motor vehicle.

25 If he lied for six years, why did he go

1 and all of the sudden, now I'm going to be truthful  
2 in 2017. Now I want to reveal I've been using  
3 insulin for all these years.

4 But the truth is that all of those  
5 medical long forms in evidence say that he is honest,  
6 that he has been diabetic since 1997. Being diabetic  
7 does not disqualify you from operating a commercial  
8 motor vehicle and is not the issue today. The issue  
9 is whether or not he used insulin.

10 Those long forms do not indicate that he  
11 used insulin. The two that indicated he used insulin  
12 were in 2010, which he subsequently corrected, you  
13 know, apparently changed his medical treatment plan  
14 so that he could retain his job, and he went back and  
15 became qualified to operate a commercial motor  
16 vehicle. And he remained qualified and controlled  
17 his diabetes for at least six years without using  
18 insulin before he honestly went to the doctor and  
19 apparently revealed insulin.

20 We don't know anything about when he  
21 started using insulin or whether he actually is using  
22 insulin. All we have is that long form that I think  
23 clearly has been produced after this investigation  
24 began by the doctor directly to the PUCO and was  
25 never in the personnel files of Midwest Logistics

1 Systems.

2 If they did not know, and they did not  
3 have any reason to know that he was using insulin  
4 while operating a commercial motor vehicle, there is  
5 no violation. And the fact that the investigator  
6 can't remember where he got that record I think is  
7 not a barrier to the Court clearly evaluating the  
8 evidence on its own and deciding that the October 18,  
9 2017, facts didn't come from Midwest Logistics and  
10 was not in Midwest Logistics' personnel files.

11 The case that I think, the decision that  
12 I think is most determinative here is an FMCSA  
13 decision, and the PUCO should defer to FMs  
14 interpretation on these matters. In re: RoadRunner  
15 Expeditors, Inc., FMCSA Docket 2004-19519, petitioner  
16 knew or should have known see that his driver had an  
17 established medical history or clinical diagnosis of  
18 diabetes mellitus currently requiring insulin to  
19 control it.

20 And that is the standard. I think  
21 everybody agrees that the question is whether or not  
22 Midwest Logistics knew or should have known. But you  
23 heard my client, general counsel for Midwest  
24 Logistics, a large, well-organized motor carrier,  
25 state this was not in the personnel file. They had

1 no knowledge of this use of insulin. They had no  
2 reason to know that he had insulin, and the staff  
3 apparently wants to hold them to a standard that  
4 requires their head attorney to review 900 medical  
5 records on a regular basis. That's just  
6 unreasonable, and that's not what the standard is.  
7 That's not what the regulations require.

8 Once a physician, a medically trained,  
9 specially certified doctor or nurse who is registered  
10 with the FMCSA has evaluated that individual, a  
11 driver, knowing what the regulations are and the  
12 obligations of driving a large vehicle, commercial  
13 motor vehicle, once they have signed off that that  
14 driver is physically qualified, Midwest Logistics is  
15 not in a position to double-check, double-guess that  
16 opinion.

17 If something were to appear that would  
18 cause them to do that, you heard him testify that  
19 they would do that, that they have experienced staff  
20 that know what the regulations are and that they run  
21 those things up the chain of command all the way to  
22 their outside counsel's office when necessary.

23 There's a whole chain of FMCSA opinions  
24 that hold the same standard, that the question is  
25 whether or not there is currently any use of insulin

1 for control. The RoadRunner case holds that in 2004,  
2 the FMCSA in that case had a recent roadside  
3 inspection where a driver had been cited for using  
4 insulin, for injecting insulin, and then the motor  
5 carrier put him right back on the road without doing  
6 any investigation.

7 That is not the case here. Here eight  
8 years ago the driver had some indication that he  
9 possibly used insulin and then changed his medical  
10 treatment and was no longer using insulin. And eight  
11 years ago that happened. And when the investigation  
12 occurred in 2017, he had more than six years of clean  
13 medical examinations with no indication of using  
14 insulin, and, in fact, three long-form medicals that  
15 explicitly indicated he had not been using insulin  
16 for that control.

17 Other FMCSA cases that hold the same  
18 standard include In Re: Cogan's Wrecker Service,  
19 FMCSA 2012-0251. That was an uncorrected vision  
20 case, and in that case the motor carrier had a recent  
21 long form where the driver had disclosed uncorrected  
22 vision and received a medical card anyway.

23 That is not the case here. Here we did  
24 not have a long-form medical disclosing anything in  
25 more than eight years, more than seven years, at

1     least, and there was just no duty to go back and  
2     reinvestigate that case.

3             There's another series of cases that look  
4     at hours-of-service violations, including Goya Foods,  
5     Inc., FMCSA 2011-0156. The same standard applies,  
6     did they know or should they have known of the  
7     violation.

8             Those cases the motor carrier is expected  
9     to have some process in place in order to track those  
10    violations. Hours of service is a different kind of  
11    violation because they keep logs. In fact, today it  
12    is all kept by computers so those are basically  
13    automated.

14            This is not that case. This is case  
15    where we have medical records. We have a doctor who  
16    is reviewing those medical records and signing off on  
17    them. The system in place to monitor that is an  
18    experienced human resources department, doctors who  
19    are registered with the FMCSA, and all of those  
20    people who review those documents and whether or not  
21    that person is qualified to drive, and then running  
22    up the chain of command if there is any question at  
23    all.

24            The staff has not met their burden in  
25    this case. Their burden is to show that Midwest

1 Logistics knew or should have known that Mr. Goubeaux  
2 was operating a commercial motor vehicle while  
3 currently using injectable insulin or, I guess, any  
4 insulin to manage it, but he was not. The records  
5 indicate he was not, and the only indication that he  
6 had been using insulin in 2017 was a document that  
7 the inspector found by apparently driving to  
8 Wapakoneta.

9 And if that is the expectation, that  
10 Midwest Logistics send inspectors out all across the  
11 state of Ohio into doctors' offices to obtain medical  
12 records, that is a new standard, and Midwest  
13 Logistics, obviously, has no knowledge of that  
14 requirement. I think that is a ridiculous assertion.

15 They did not meet their burden. Midwest  
16 Logistics is a responsible company that operates very  
17 safely, and if they had known about this, they would  
18 have operated differently, would have treated  
19 Mr. Goubeaux differently, and would have made a safe  
20 choice to keep him off the road, as they did as soon  
21 as they learned about his insulin use.

22 We respectfully ask you dismiss the  
23 violation.

24 Thank you.

25 THE ATTORNEY EXAMINER: Thank you.

1 Anything further?

2 MR. EUBANKS: No, your Honor.

3 THE ATTORNEY EXAMINER: The case is  
4 submitted on the record and the hearing is adjourned.

5 MR. GRIFFITH: Thank you, your Honor.

6 THE ATTORNEY EXAMINER: Thank you.

7 (The hearing adjourned at 1:10 p.m.)

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CERTIFICATE

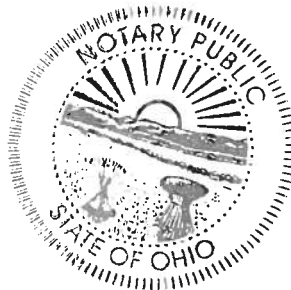
I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, August 15, 2018, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson  
Rosemary Foster Anderson,  
Professional Reporter and Notary  
Public in and for the State of  
Ohio.

My commission expires April 5, 2019.

(rfa-87591)

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**Case No(s). 17-2556-TR-CVF**

Summary: Transcript In the Matter of: Midwest Logistics Systems, LTD., Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on August 15th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.