

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Baker :
Equipment and Materials, :
Ltd. Notice of Apparent : Case No. 20-805-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

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PROCEEDINGS

Before Michael L. Williams, Attorney Examiner, for
the Public Utilities Commission of Ohio, via Webex,
called at 1:30 p.m. on Tuesday, June 29, 2021.

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- - -

APPEARANCES:

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On behalf of the Staff of the PUCO.

Rob Woods, Pro se
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On behalf of Baker Equipment &
Materials, Ltd.

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1 Friday Afternoon Session,
2 June 29, 2021.

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4 ATTORNEY EXAMINER: Let's go on the
5 record. The Public Utilities Commission of Ohio has
6 assigned for hearing at this time and place Case No.
7 20-805-TR-CVF, In the matter of Baker Equipment &
8 Materials, Ltd, Notice of Apparent Violation and
9 Intent to Assess Forfeiture.

10 My name is Mike Williams, and I am the
11 Attorney-Examiner assigned by the Commission to hear
12 this case. We'll begin today with appearances by the
13 parties. I'll begin with Staff.

14 MR. BEELER: Thank you, your Honor. On
15 behalf of the Staff of the Public Utilities
16 Commission of Ohio, Ohio Attorney General Dave Yost,
17 I'm Assistant Attorney General Steve Beeler, located
18 at 30 East Broad Street, Columbus, Ohio 43215.

19 ATTORNEY EXAMINER: Do you want to
20 introduce the rest of your appearing parties, or you
21 want them to do themselves?

22 MR. BEELER: Testifying on behalf of
23 Staff will be inspector Aaron Lockhart and Rod Moser
24 of the Compliance Department of the Commission.

25 ATTORNEY EXAMINER: Okay. Mr. Woods,

1 you are appearing on behalf of Baker Equipment,
2 correct, sir?

3 MR. WOODS: Yes, sir.

4 ATTORNEY EXAMINER: Anybody else
5 appearing on behalf of you or the company?

6 MR. WOODS: No, it is just me.

7 ATTORNEY EXAMINER: Thank you. As we
8 begin today's hearing I would like to take a moment
9 to note that consistent with COVID-19 response
10 measures as described in Amended Substitute House
11 Bill 197 as replaced by House Bill 404, this hearing
12 is being held via Webex, which enables parties to
13 participate via video conference, and for members of
14 the public to access the hearing by telephone or by
15 video over the internet.

16 In light of the virtual nature of
17 today's hearing, I will add some preliminary remarks
18 for the record.

19 First, if counsel or witnesses
20 experience any technical difficulties during the
21 hearing they should please immediately contact me.
22 My direct phone is 614-466-0106, or they can email
23 me, and we have emails as described in regard to
24 prehearing circulation, or they can use the Webex
25 chat function. Please note that the chats are

1 recorded. They are not private, but they are not
2 part of the official record in the case.

3 For those of you who may be watching or
4 listening as an attendee, including witnesses who are
5 waiting to testify, while you are observing your
6 microphone will be muted and your videos will be
7 turned off.

8 Now, in most respects, this virtual
9 hearing will proceed in much the same fashion as if
10 we were in person before the Commission.

11 I would ask that to the extent you have
12 camera capacity, that you keep your cameras on so
13 that we have a better idea of what's going on and
14 make sure that we're not losing any connection or any
15 pivotal moments in testimony.

16 I'll ask that everyone please be mindful
17 of our Court Reporter. Please speak clearly, at a
18 reasonable pace, so that she can accurately
19 transcribe the record.

20 Please do your best to avoid speaking
21 over each other, or taking corrective steps, that
22 would be taking an intentional pause at the end of
23 questions, slowing down, in order to account for
24 connectivity lags or any possible objections.

25 During testimony witnesses should only

1 have access to those documents that they would have
2 if they were physically sitting in the witness stand,
3 such as exhibits previously identified and exchanged
4 by counsel or by the parties.

5 There should be no attempts to
6 communicate through any other means with anyone
7 privately during their testimony, nor to access
8 technology while they are on the hearing stand.

9 Exhibits that are ultimately admitted
10 into the record that were not previously docketed,
11 which would be all the exhibits we talked about
12 earlier, will need to be sent to the Court Reporter.
13 And we'll discuss the mechanism for that at the close
14 of today's hearing.

15 Are there any questions before --
16 preliminary matters before we begin with our
17 presentation on behalf of Staff?

18 MR. BEELER: No questions, your Honor.

19 ATTORNEY EXAMINER: Mr. Woods?

20 MR. WOODS: No questions, your Honor.

21 ATTORNEY EXAMINER: All right. With
22 that, I will invite Staff to call their first
23 witness.

24 MR. BEELER: Thank you, your Honor. On
25 behalf of the Staff, the Staff would call Inspector

1 Aaron Lockhart to the stand.

2 ATTORNEY EXAMINER: Good afternoon,
3 Mr. Lockhart. I'm going to swear you in as you begin
4 your testimony. Would you raise your right-hand,
5 please? Do you swear or affirm that the testimony
6 you're about to give is the truth?

7 MR. LOCKHART: I do.

8 ATTORNEY EXAMINER: Thank you.
9 Mr. Beeler.

10 MR. BEELEER: Thank you, your Honor.

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

14 DIRECT EXAMINATION

15 By Mr. Beeler:

16 Q. Mr. Lockhart, go ahead and please state
17 your full name for the record, please.

18 A. It's Aaron Lockhart.

19 Q. Okay. And where are you employed?

20 A. I am employed by the Public Utilities
21 Commission of Ohio out of District 4.

22 ATTORNEY EXAMINER: Mr. Lockhart, could
23 we maybe increase the level of your microphone
24 volume or talk a little louder? I'm sorry.

25 THE WITNESS: Okay.

1 ATTORNEY EXAMINER: Thank you.

2 By Mr. Beeler:

3 Q. And you mentioned you work for the
4 Public Utilities Commission of Ohio. What is your
5 position within the Commission?

6 A. I am a Hazardous Materials Specialist 2.

7 Q. Okay. How long have you been with the
8 Commission?

9 A. I've been with the Public Utilities
10 Commission for approximately seven years.

11 Q. Okay. What are your duties in your
12 capacity as a hazardous material expert -- or
13 Hazardous Material Specialist 2?

14 A. My duties are to perform compliance
15 reviews, shipper reviews, hazardous material
16 inspections, regular roadside inspections. I'm
17 required to complete 25 roadside inspections a
18 month, 320 inspections a year.

19 Q. Okay. What sort of training do you have
20 for your job, continuing education and
21 certifications?

22 A. I have -- for the PUCO, I have specific
23 training within CVSA, Level 1 inspection, Level 2
24 inspection, 3, all the way up through radiation
25 Level 6 inspections. We have continued in-service

1 training, extensive certification training for
2 hazardous materials.

3 And before that, before I got on with
4 the Public Utilities Commission, I was an
5 over-the-road truck driver for ten years, so I have a
6 lot of experience within the trucking industry, and
7 the operation of semis as well.

8 Q. Just on average, how many inspections do
9 you do in a year?

10 A. In a year I do, at a minimum, 320.

11 Q. Okay. In most years do you do more than
12 that?

13 A. Most years it equals out to being a
14 little more when you factor in Level 5 inspections,
15 which is terminal inspections that are required for
16 compliance reviews, determining a carrier's out of
17 service rate.

18 Q. You used an acronym in your previous
19 answer, CVSA. Does that stand for the commercial --
20 the Commercial Vehicle Safety Alliance?

21 A. Yes.

22 Q. Okay. Would you say, just generally,
23 that your motor carrier inspections are conducted to
24 protect the safety of Ohio's traveling public?

25 A. Absolutely, 100 percent.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. BEELER: I'm going to turn to --
3 your Honor, to Staff Exhibit 1. I believe I have it
4 previously marked as Staff Exhibit 1. And Mr. Woods
5 should have a copy of that as well.

6 ATTORNEY EXAMINER: Mr. Woods, do you
7 have that?

8 MR. WOODS: I do.

9 ATTORNEY EXAMINER: Okay.

10 By Mr. Beeler:

11 Q. Do you have that document in front of
12 you, Mr. Lockhart?

13 A. I do not.

14 Q. Can you -- can you access that document
15 in any way?

16 A. Maybe if you tell me how or where.

17 MR. BEELER: Can you -- can we go off
18 the record, your Honor?

19 ATTORNEY EXAMINER: We're off the
20 record.

21 (Discussion off the record.)

22 ATTORNEY EXAMINER: Let's go ahead and
23 go back on the record.

24 We went off the record to allow
25 Mr. Lockhart to access, via email, the proposed

1 exhibits on behalf of both the Company as well as on
2 behalf of Staff, and he's advised off the record that
3 that's the only information that he has available to
4 him electronically as he proceeds on the stand.

5 Go ahead, Mr. Beeler.

6 By Mr. Beeler:

7 Q. So Staff Exhibit 1, do you recognize
8 that document?

9 A. Yes, that's the Driver/Vehicle
10 Examination Report.

11 Q. And can you tell me the dates that are
12 on that report?

13 A. Yeah, the inspection was completed on
14 January 27th of 2020, started at 12:10 p.m. and
15 finished at 1:32 p.m.

16 Q. Okay. Is that document -- is that a
17 Commission record?

18 A. That is a Commission record, yes.

19 Q. And it's kept in the ordinary course of
20 your business?

21 A. It is, yes.

22 Q. It's the practice with each inspection
23 for the Commission to make these reports, correct?

24 A. Correct.

25 Q. And it's your duty to make the report

1 for the violations you observed; is that correct?

2 A. That is correct, yes.

3 Q. Is this document in a similar condition
4 as you prepared it?

5 A. Yes, it is. I'm not for sure if that is
6 the one that was actually printed off and handed to
7 the driver, but that is the same report, yes.

8 Q. Yeah, in other words, the report that is
9 handed to the driver is very similar to this?

10 A. Correct.

11 Q. But this looks a little different?

12 A. Correct.

13 Q. But the information is the same,
14 correct?

15 A. That is correct, yes.

16 Q. Okay. Was the reason for you producing
17 this report, Staff Exhibit 1, an inspection of the
18 motor carrier vehicle owned by Baker Equipment &
19 Materials, Ltd.?

20 A. Yes, it was.

21 Q. Do you remember the inspection?

22 A. I do.

23 Q. Okay. So in the report, I just want to
24 talk briefly for the record, in the violations
25 section there's information in the violation

1 description, and there's a colon there, so there's
2 some information before the colon, and there's some
3 information after the colon. Do you see that?

4 A. I do.

5 Q. So the information before the colon is
6 automatically generated by your computer system,
7 right?

8 A. That is correct, yes.

9 Q. And the information after the colon
10 is -- when there is a colon, is you input that
11 information?

12 A. That is correct also. That is my -- my
13 small notes on the -- the description of the
14 violation, correct.

15 Q. Okay. And then you don't -- those are
16 your notes, you don't have any notes down in the
17 inspection notes area, right?

18 A. I don't believe I did on this
19 inspection.

20 Q. I mean, you can see it down there in
21 Staff Exhibit 1 that it's a blank field?

22 A. Right, because the notes were entered
23 into the violation section.

24 Q. Okay. Who was the driver listed on the
25 report?

1 A. The driver is James Little, John James
2 Little.

3 Q. How about James A. Littlejohn, does that
4 sound --

5 A. That works, too.

6 Q. Okay. Are there any violations listed
7 on this report?

8 A. There are six violations listed on this
9 report.

10 Q. Okay.

11 A. And I'm going to start on the flat tire
12 violation, which is 49 CFR 393.75A3.

13 Q. Okay. Please describe how you observed
14 that the tire was flat.

15 A. When I do the inspection -- I do a walk
16 around inspection to start with. This was a Level 1
17 inspection where I eventually crawl under and check
18 brakes, but I'll check the front of the truck, I'll
19 check lights, all that, then I will go around and
20 kick tires.

21 And when I say kick tires, tires -- semi
22 tires give a distinct thump if -- if they are not
23 inflated to the proper level. So as I'm working my
24 way around the trailer I'm kicking tires to ensure
25 all the tires are inflated properly.

1 When I get to that tire, it thumps, it
2 does not -- it is flat -- it appears to be flat. So
3 at that point in time I continue my inspection. I
4 speak with the driver, and we get the tire pressure
5 gauge and check the actual pressure in the tire.

6 Q. Okay. So you -- you used the tire
7 pressure gauge to determine that axle 2 right inside
8 measured at 40 percent?

9 A. Yeah, the way I do it is I don't get
10 down with the tire and the valve stems of the tire
11 without the driver present.

12 Q. Okay.

13 A. I do not want a driver looking in the
14 mirror and interpreting something -- that I'm letting
15 air out of a tire or doing anything inappropriate to
16 a tire.

17 So generally what I do is have the
18 driver come around, check the tire pressure
19 themselves with the truck tire pressure gauge, so the
20 driver can't say that it wasn't flat, it's verified
21 by the driver.

22 The driver finishes checking it, and in
23 this case he checked it three times. We got the same
24 reading three times, and then I put the pressure
25 gauge on and got the same reading myself. At that

1 point in time we write the tire flat.

2 Q. Okay.

3 A. Below 50 percent is what that violation
4 was.

5 Q. And your notes -- I mean, you say axle 2
6 right inside measured at 40 percent, so that's below
7 the 50 percent?

8 A. Correct.

9 Q. Okay. There's another CFR section that
10 deals with under inflated tires. Why did you write
11 this violation versus the under inflated tire
12 section?

13 A. Because it was less than 50 percent,
14 which is the out of service criteria for a flat tire.

15 Q. So under 50 percent then it fits under
16 the violation that you wrote up?

17 A. Correct.

18 Q. Correct?

19 A. Correct.

20 Q. So again, it's your testimony here that
21 you observed the tire was flat and measured at 40
22 percent, in violation of the section, correct?

23 A. Correct.

24 Q. Okay. Turning now to the next -- I'm
25 going to lump them all together, so the next five

1 violations.

2 A. Okay.

3 Q. It looks like there's an -- you know,
4 it's brakes out of service and adjustment, there's 49
5 CFR 396.3A1, which is just breaks out of service,
6 there's two 393.47Es, and then there's two 393.53Bs,
7 correct?

8 A. Correct.

9 Q. So I'll ask you why you write that many
10 here first, but you observed the brakes in this
11 situation out of service and adjustment, correct?

12 A. Correct.

13 Q. So how did you observe that? Please
14 explain your process.

15 A. Okay. At that point in time in the
16 inspection we make sure the tires brakes are all
17 released. We have the wheels chalked.

18 We explain to the driver that we're
19 going to get underneath the truck. We're looking at
20 everything under the truck from brake pads to frame,
21 to brake chambers, everything, and we use a
22 soapstone, and I will mark the brake chambers for the
23 slack adjuster, I'll mark the location that they are
24 in, all the way through all of the brakes.

25 And then after I am done marking all the

1 brakes we'll have the driver apply their brakes and
2 then we come back through and measure them.

3 And then we have the measurements. We
4 have measurements within the out of service criteria
5 that we can look at and mark -- the program, Aspen
6 that we use, when you enter the size of the brake
7 chamber and you enter the brake measurements, it will
8 automatically tell you if those brakes are out of
9 adjustment.

10 So when I went through, I measured all
11 the brakes. I found axle 2 and axle 5 had brakes out
12 of adjustment, so the violations were written.

13 Q. Okay. And I believe this is going to be
14 the issue in this case, but you observed at the time
15 that -- what type of brakes did you observe?

16 A. Yes, we are extensively trained in
17 those, and I also have, like I said, ten years over
18 the road driving experience where I've adjusted
19 brakes, so yeah, we're very familiar with them.

20 If it's a questionable brake chamber we
21 have a device called a Chamber Mate that we can put
22 on the brake chambers to verify what we're seeing is
23 accurate.

24 With this inspection I do remember I did
25 not have to use the Chamber Mate because I was fully

1 confident that they were short stroke brake chambers.

2 Q. So you didn't -- you just mentioned that
3 they were, in your observation, short stroke brakes?

4 A. Absolutely, yes.

5 Q. And please describe how you know that
6 for sure.

7 A. You tell the -- you can tell the
8 difference by the -- a lot of times there's a tag on
9 it by the inlet air hoses, whether or not they are
10 square or round. A lot of times you can tell by the
11 distance between the clamps. You know, a long stroke
12 has a wider distance between those clamps.

13 But when I am -- when I am under there
14 checking brakes and I come to one that's out of
15 adjustment, if it measures out of adjustment for
16 either short stroke or long stroke, I'm double
17 checking, triple checking those brake chambers to
18 ensure that they are what I think they are.

19 It's not something that's done
20 haphazardly, we make sure those brake chambers are
21 what we are saying they are.

22 Q. So there is a tool or some sort of
23 device that you can check to see what type of brakes
24 there are?

25 A. There is, it's a Chamber Mate. And I am

1 not sure if that is -- someone within the PUCO that
2 invented that or if that's a nationwide tool, I
3 honestly don't know, but they have passed it out to
4 all the inspectors in Ohio.

5 Q. And why again did you not use it here?

6 A. Because I was confident in the fact that
7 they were short stroke.

8 Q. Okay. And you're aware just from the
9 exhibits and the information that was submitted by
10 Mr. Woods, that his claim is that the -- the brakes
11 were -- were long stroke, while you observed that
12 they were short stroke, correct?

13 A. Yeah, I understand that.

14 Q. Okay. Did you take any photos here?

15 A. I did not. That is not something we do
16 unless the brake pads have cracks or spaces within
17 those.

18 Q. Okay. Do you recall if the driver,
19 Mr. Littlejohn, stated that -- at the stop that he
20 could adjust the brakes, that he was certified or
21 capable of doing that?

22 A. He did not.

23 Q. He affirmatively said that he could not
24 do that?

25 A. No, he did not state either way.

1 Q. Okay. And again, I mentioned -- and I
2 want to just go through it one more time so the
3 record is clear.

4 So there's five total violations for the
5 brake -- the brake issue. Explain why you wrote it
6 up five -- you know, five violations rather than just
7 one?

8 A. Okay. So when you have a set of brakes
9 or brake chamber that's out of adjustment on Unit 1,
10 which this vehicle did, when you write that violation
11 it automatically gives you a second violation of the
12 automatic slack adjustor being inoperative or not
13 working correctly.

14 If the automatic slack adjustor was
15 working correctly, then the brakes would not be out
16 of adjustment. So it automatically populates that
17 for vehicles newer than 1994.

18 The second unit, Unit No. 2, the
19 trailer, is a separate unit, so when you write a
20 brake violation on that separate unit, then that
21 automatic slack adjustor automatically populates
22 again for that other unit.

23 So if there was multiple on one unit,
24 there would only be one violation, but since it was
25 the truck and the trailer, there were two slack

1 adjustor violations, two brakes out of adjustment
2 violations, and then that equaled up to being more
3 than 20 percent, which is an out of service violation
4 for brakes out of adjustment. So that is the -- the
5 fifth violation that is added.

6 Q. Okay. So overall, it's your testimony
7 here today that for all five of the violations, that
8 the brakes were out of service and adjustment,
9 correct?

10 A. That is correct.

11 Q. Anything else that -- important to note
12 for the Judge or for the Commission, anything else
13 you would think would be important for the record in
14 this case?

15 A. I can't think of anything other than the
16 fact that every inspector in the State of Ohio, I
17 know, is fully trained on brake adjustments, and it's
18 something that every inspector in the State of Ohio
19 doesn't take lightly, either.

20 Q. And it was clear to you that these were
21 short stroke and not long stroke, correct?

22 A. It was clear to me, yes.

23 MR. BEELER: Okay. No further
24 questions, your Honor. Again, I would reserve
25 Mr. Lockhart for rebuttal, and also at this time I

1 would move for the admission of Staff Exhibit 1 into
2 the record.

3 ATTORNEY EXAMINER: All right. We'll
4 deal with the admission of the exhibit at the close
5 of any cross-examination or clarified testimony. I
6 just have one or maybe a couple questions,
7 Mr. Lockhart.

8 - - -

9 EXAMINATION

10 By the Attorney Examiner:

11 Q. And part of this is educating me, so I'm
12 looking at Staff Exhibit 1 under the brake
13 adjustments section there.

14 And you described the five different
15 brake components, and brakes 2 and 5 are the ones --
16 that are found to be on the right side, are the ones
17 that are found to be in violation, and they measure
18 two-and-a-quarter?

19 A. Yes, sir.

20 Q. Would that measurement have been within
21 normal tolerance if they were long stroke brakes?

22 A. They would be, yes.

23 Q. Okay. Was there discussion during the
24 course of your investigation about whether they were
25 or were not long stroke brakes?

1 A. There was not discussion, no. You mean
2 with the driver?

3 Q. Right.

4 A. No, there was not -- not discussion.
5 Pretty much the -- you know, other than me explaining
6 the brakes were out of adjustment, which he
7 understood, you know, what the out of adjustment
8 brakes were -- and then as you can see on that
9 report, you know, the axle 2, axle 5, is highlighted,
10 so I'm able to point out what ones are out of
11 adjustment to him, and there was no -- we discussed
12 the flat tire, which he was fully aware of because he
13 measured that himself.

14 Q. Okay. And you described this tool, this
15 Chamber Mate that you're not sure, you know, how it
16 came to be in existence?

17 A. Right.

18 Q. But it would be something that would
19 have conclusively determined whether the brakes were
20 or were not within tolerance, or would that have
21 confirmed that they were long or short stroke? What
22 would that have done for us?

23 A. It would have just reconfirmed for the
24 inspector what they were looking at as far as long or
25 short stroke. It's a tool in our tool kit that we

1 can use if needed.

2 Q. And how much time does that add to an
3 inspection? So if you decide you need to use the
4 Chamber Mate, is that 30 seconds per brake review, or
5 how does that work?

6 A. It would just be a matter of getting out
7 from under the truck and going and getting that piece
8 of equipment and getting back under there. I mean,
9 it's not going to -- in the whole scheme of the
10 inspection it's not going to take an extraordinary
11 amount of time.

12 Q. It's some sort of a handheld device?

13 A. It is.

14 Q. Okay. And how often do you use the
15 Chamber Mate?

16 A. Actually, it's pretty rare, because most
17 of the time it's very obvious as to what those brakes
18 are, what those chambers are, unless you're getting
19 into a situation where it's like a truck out of the
20 fracking fields or there's a lot of grease and oil
21 and issues within the -- within areas around that
22 brake chamber. But most of the time it's pretty
23 straightforward as to what those brake chambers are.

24 Q. Now, have you had a chance to review the
25 exhibits that Mr. Woods has provided or proffered on

1 behalf of Respondent?

2 A. I have, yes.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 By the Attorney Examiner:

5 Q. So I believe it's proposed Exhibit 6.

6 Do you have that -- can you access that for me?

7 A. I do. Yes.

8 Q. Okay. And that's the one that begins
9 across the left, code 393.53B2, two citations,
10 correct?

11 A. Correct. Yes.

12 Q. And then if you continue, there's some
13 pictures, talks about the paint marks on the slack
14 adjustor, and then the photo taken after six cranks.
15 Do you see those, sir?

16 A. I do.

17 Q. Does that give you any insight as to --
18 Let's back up a little bit there. Let's assume that
19 the pictures are taken without any repairs or changes
20 in the level of the brakes from what you -- from what
21 you inspected, okay?

22 A. Okay.

23 Q. Does that -- do those pictures add any
24 clarification or give you any pause as to your
25 testimony regarding the failures that you diagnosed

1 and recorded?

2 A. No, because it was written per CVSA
3 inspection policies. So if the brakes are out of
4 adjustment, then at that time that the brakes were
5 out of adjustment, that slack adjustor was not
6 working properly.

7 Q. So in the state that they are in, they
8 are obviously -- they have been opened up in some
9 capacity for purposes of evaluating presumably
10 whether they need to be repaired or not, and you're
11 not able to say whether they are, as depicted there,
12 the same as what you saw, you can just tell us what
13 you saw and what you recorded, correct?

14 A. Correct.

15 Q. Do those pictures give any indication as
16 to whether they are short or long stroke brakes?

17 A. On the ---that exhibit that you are
18 looking at right now?

19 Q. Correct.

20 A. No, it does not. There is two pictures
21 on that exhibit, correct?

22 Q. That is correct.

23 A. Yes, that gives me no indication of long
24 or short stroke.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 By the Attorney Examiner:

2 Q. And unfortunately -- there it is. So I
3 want to go back to the exhibit just prior to that,
4 which would be, I believe, Respondent's proposed
5 Exhibit 5, and there are some pictures there at
6 page 2. Do you have that in front of you?

7 A. I do.

8 Q. Does that give you any indication as to
9 whether these would be short or long stroke brakes?

10 A. In these pictures, yes, it would be long
11 stroke, and the top picture would be long stroke.

12 Q. And then the two pictures below that?

13 A. They are long stroke as well.

14 Q. Now, do you know if these pictures are
15 just pulled as an example, or -- these are not
16 pictures of the brakes you actually inspected,
17 correct?

18 A. As far as -- I'm not sure where the
19 pictures come from, but those are not the brake
20 chambers I looked at.

21 Q. Okay. And you would not normally take
22 pictures of the brake chambers in the course of your
23 investigation?

24 A. No, that is not something that is PUCO
25 policy as far as an out of adjustment brake. It

1 would be if there was a brake chamber that was caged
2 or had a crack in it. Something in that nature we
3 would take photos of, but a -- just to show proof of
4 the size of the brake chamber, no, that is not PUCO
5 policy.

6 ATTORNEY EXAMINER: Okay. Mr. Lockhart,
7 thank you so much.

8 Mr. Woods, again, we have some
9 limitations regarding your ability to cross-examine
10 witnesses, but I certainly want to give you an
11 opportunity to coordinate with me to make sure that
12 Mr. Lockhart has clarified and testified in a fashion
13 that gives the Bench as much information as it needs
14 to make a recommendation to the Commission.

15 Do you want to make any comments
16 regarding Mr. Lockhart's testimony and/or work
17 through me on any clarification you need in order to
18 make any comments, sir?

19 MR. WOODS: Yes, your Honor. The first
20 one is referring back to the tire. And back on the
21 tire, the report from our driver, who is very safety
22 conscious, he's a 20-year veteran driver of both the
23 industry as well as this company, very familiar with
24 what he's doing in regard to road safety.

25 The measurement taken at the inspection

1 station, my driver confirmed to me that the inspector
2 didn't take any measurement, he handed the gauge to
3 him to take the measurement.

4 My driver wasn't so familiar with that
5 gauge, we use a little different style gauge here
6 than what we use in the shop.

7 That axle 2 inside tire is very
8 difficult to get at, so my driver was not confident
9 with the measurement that he took on the tire.

10 But that being said, he is a very
11 respectful individual, so he is not going to push
12 back in any sort of response to law enforcement,
13 which is exactly what we ask him to do.

14 So that is the contention I would make,
15 or the differentiation I would make based on the
16 report I have from my driver, Mr. Littlejohn. He
17 said that he was the one who took the measurement and
18 not the inspector himself.

19 ATTORNEY EXAMINER: Mr. Littlejohn does
20 not appear to be here and testify today, correct?

21 MR. WOODS: That is correct.

22 ATTORNEY EXAMINER: Anything else
23 relative to the tire?

24 MR. WOODS: No, sir.

25 ATTORNEY EXAMINER: Okay. Do you want

1 to make any comments or clarifications regarding the
2 brakes?

3 MR. WOODS: Is this my time to kind of
4 go over the exhibits that I had and submitted, or is
5 that later?

6 ATTORNEY EXAMINER: It will be later.
7 Although I don't want to let procedure get in the way
8 of making sure that you get the utmost in a fair
9 hearing here, so I don't want you to feel as though
10 you're stifled in regard to comments you have
11 regarding your exhibits, and how they relate to
12 Mr. Lockhart's testimony.

13 Mr. Lockhart may or may not be called to
14 rebut your case when you've made that, so if he's not
15 called again I don't want you to lose your
16 opportunity to make comments. I would encourage you
17 not to keep things in reserve if you want to talk
18 about them now.

19 MR. WOODS: Back to the tire then. What
20 I would say is our driver was given a gauge that he
21 wasn't familiar with, that he didn't know the
22 calibration history, the accuracy of, and he took a
23 measure of the single hardest tire on the truck to
24 take a measurement of that he didn't feel good about.
25 So that is what I'll speak on on the tire.

1 ATTORNEY EXAMINER: Okay. Anything else
2 on the tire?

3 MR. WOODS: No, sir.

4 ATTORNEY EXAMINER: Okay. Turning now
5 to the brakes. We had Mr. Lockhart who testified
6 that based on his experience, that these were, I
7 believe, short stroke brakes, and with that as the
8 assumption, that they were out of compliance as noted
9 in his inspection report. Do you have points you
10 would like to clarify in that realm?

11 MR. WOODS: Yes, your Honor. The trucks
12 that we have -- so if I could go back to the truck
13 that the driver was driving this day. He was driving
14 a truck No. 0382, which is our internal equipment ID
15 number for the truck.

16 We have -- in our company, we have two
17 CDL truck drivers. We are a concrete construction
18 company. We deliver materials and equipment to job
19 sites all throughout the midwest for large concrete
20 construction projects that we do as our course of
21 business. So we have got two drivers, we have three
22 semi trucks.

23 We have three semi trucks so that when
24 one is down we can still keep both drivers moving.
25 And on the day of this event, the driver was actually

1 driving the backup truck, and he was driving the
2 backup truck because in his daily inspection of his
3 primary truck, he discovered a low tire.

4 So immediately he followed our protocol,
5 which is, you know, if your daily inspection doesn't
6 go to lead that the truck is safe for use, we don't
7 drive it, of course we don't run.

8 So he stopped, he went to get the backup
9 truck and proceeded with his daily inspections. So
10 our guys are doing their daily inspections, daily
11 kicks and tire checks to make sure trucks are safe.
12 And in the course of events, he chose that the backup
13 truck was indeed safe for carriage, so he proceeded.

14 Subsequent to that -- can we talk brake
15 chambers, or is it the right time to talk brake
16 chambers.

17 ATTORNEY EXAMINER: Again, some of this
18 may come out again when it turns to you to present
19 your case, but I don't want to see you lose your
20 opportunity to add anything that would help me
21 understand or clarify your position relative to at
22 least the short versus long brake chambers.

23 So please tell me everything you want to
24 tell me relative to the brake chambers, even though
25 you may have to repeat some of this in your case in

1 chief if you choose to.

2 MR. WOODS: Yes, your Honor. So it took
3 Mr. Littlejohn about ten minutes being back at the
4 shop, so the Guernsey job site that we were going to
5 is about three-and-a-half hours from our shop here in
6 Monroe, so it took later in the day before he got
7 back, and we immediately brought his truck in the
8 shop.

9 Obviously he came and reported to me the
10 violations that he talked to me about on the phone
11 earlier in the day, and we brought the truck into the
12 shop.

13 We have 15 mechanics within our shop who
14 average about 16 years of service with our company of
15 working on this type of equipment. So --

16 ATTORNEY EXAMINER: Mr. Woods, I'm going
17 to interrupt you ever so briefly here. And it's
18 difficult. I mean, you're representing the company
19 in your capacity and you're also providing some
20 testimony, so to the extent you're providing
21 testimony, I'm going to go ahead and swear you in.

22 Would you raise your right hand, please?
23 Do you swear or affirm the testimony you're about to
24 give is the truth?

25 MR. WOODS: I do.

1 ATTORNEY EXAMINER: Please proceed.

2 Rob Woods,
3 being first duly sworn, as prescribed by law, was
4 examined and testified as follows:

5 DIRECT TESTIMONY

6 MR. WOODS: Okay. So within about five
7 minutes of him getting into the shop we had his truck
8 pulled in, looking at the report -- and our guys are
9 very familiar with the trucks here.

10 The trucks and the trailers that we have
11 are the heaviest duty of units. So we are a concrete
12 construction company, we're hauling laser screens,
13 we're hauling trawls, we're hauling batch plant
14 components, you know, very large, very heavy, very
15 awkward objects, so when we buy a truck we buy the
16 heaviest duty of trucks.

17 And in this case, this was a Peterbilt
18 that is made specifically for hauling heavy loads,
19 and it too was equipped with long stroke brake
20 chambers.

21 As our rule, we believe in the extra
22 durability, extra strength, extra durability of the
23 long stroke chambers, so that is what we outfit our
24 trucks with, as well as our trailers, so that is what
25 we used here.

1 The pictures that I took were taken that
2 very day. So I'm sorry, let me correct that. The
3 first picture on Exhibit 5 was taken that day on the
4 truck.

5 I really have no way of taking a photo
6 that shows the truck in question, as well as the long
7 stroke brake chamber to identify that paired
8 together, but that picture was taken the same day of
9 the violation.

10 ATTORNEY EXAMINER: Okay. Bear with me
11 one second. So I have proposed Exhibit 5, which is
12 three -- two pages, and that has at the beginning
13 Code 393.47E, (2 citations), and on page 2 there,
14 there's three pictures, and then I have proposed
15 Exhibit 6, which has two pictures. It's a one-page
16 document, two pictures, showing what appears to be a
17 slack adjustor. That's what you're describing,
18 correct, sir?

19 MR. WOODS: Yes, your Honor. The
20 picture that I'm talking about is the first picture
21 on Exhibit 5. So this is the one where the hoses are
22 still connected.

23 ATTORNEY EXAMINER: Okay. So you're
24 telling me that the first picture on Exhibit 5, it
25 says, "Photo of Chamber in Installed View," that's an

1 actual photo of the brake chamber on the truck in
2 question?

3 THE WITNESS: On that day, yes, sir.
4 The two pictures below it were taken the following
5 day.

6 So we're a one-shift operation. Our
7 guys leave the shop about 4:00. I had them stay
8 later that day to look at the truck, so that's where
9 we saw the violations, saw that the tolerance that
10 was allowed for the long stroke brake chamber.

11 Our resident DOT expert mechanic was the
12 one who stayed and went over that with me. So we got
13 pictures of that. And then the following day are
14 when the remaining two pictures of Exhibit 5, as well
15 as the two pictures on Exhibit 6 were taken.

16 We went ahead -- again, we are not going
17 to question any sort of safety violation. We removed
18 these parts. We believe they were functioning well,
19 but we replaced them the next day, and that's when we
20 were able to get a much better view of those parts to
21 show the three-inch stroke as well as the square
22 embossment that indicates the long stroke chambers.
23 So those second, third, fourth, fifth pictures there,
24 those were taken a day after the violation.

25 ATTORNEY EXAMINER: Okay. The second,

1 third, fourth, fifth, you're combining the pictures
2 from the two proposed exhibits, correct?

3 MR. WOODS: Yes, your Honor.

4 ATTORNEY EXAMINER: So just so I'm
5 clear, the testimony is that all five proposed
6 exhibits across both exhibits are actually from the
7 truck in question?

8 MR. WOODS: That is correct, your Honor.

9 ATTORNEY EXAMINER: And were you there
10 when the pictures were taken?

11 MR. WOODS: Yes, your Honor, I took the
12 pictures myself.

13 ATTORNEY EXAMINER: Okay. Thank you.
14 Anything else you want to clarify regarding
15 Mr. Lockhart's testimony?

16 MR. WOODS: No, your Honor, I didn't --
17 I think we're -- very simply, whether we're talking
18 about whether these are identified as long stroke or
19 short stroke as it relates to violations 2 through 7.

20 ATTORNEY EXAMINER: Okay. Thank you.
21 Actually, Mr. Lockhart, I just want to make sure I
22 understand your testimony, sir.

23 - - -

24 Aaron Lockhart,
25 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 EXAMINATION

3 By the Attorney Examiner:

4 Q. So the testimony, I believe, is that the
5 pictures in proposed Exhibit 5 are not representative
6 of the brake chambers that you saw the date of your
7 inspection, is that your testimony, sir?

8 A. I would have to say yes, because I mean,
9 we look at so many brake chambers, I can't -- you
10 know, I can't picture exactly in my mind, all I can
11 do is look back, I wrote short stroke violations, so
12 short stroke brake chambers is what I saw on the
13 vehicle.

14 Q. Okay. And I understand that you do a
15 lot of inspections per year. I know this was some
16 time ago, so I'm not trying to have a gotcha moment.
17 You're not sure if these pictures are what was on the
18 truck because you don't remember, you didn't take
19 pictures, is that your testimony?

20 A. No, I'm sure what I looked at was short
21 stroke, so those cannot be the brake chambers that
22 was on the truck I inspected.

23 Q. So in looking at these pictures here
24 today, you're confident that you would always
25 recognize those as long stroke brake chambers?

1 A. I am confident, yes.

2 ATTORNEY EXAMINER: Mr. Beeler, anything
3 else from your witness, sir?

4 MR. BEELER: No, but again, just
5 reserving him for rebuttal.

6 ATTORNEY EXAMINER: Okay. And I believe
7 we did mark -- or we implicitly marked Staff
8 Exhibit 1, which is the inspection report, and you've
9 moved to admit that.

10 Mr. Woods, I'll offer you the
11 opportunity to say anything regarding the possible
12 admissibility of that proposed exhibit before I bring
13 it into the record. Sir, anything you want to say
14 regarding whether that should or should not be made
15 part of the record?

16 MR. WOODS: No, your Honor.

17 ATTORNEY EXAMINER: All right. That
18 exhibit will be deemed admitted as Staff Exhibit 1.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 ATTORNEY EXAMINER: Mr. Beeler, I assume
21 you want to call your next witness?

22 MR. BEELER: I do. The Staff would call
23 Rod Moser to the stand.

24 ATTORNEY EXAMINER: Mr. Moser, would you
25 raise your right hand? Do you swear or affirm the

1 testimony you're about to give is the truth?

2 MR. MOSER: Yes, sir, do.

3 ATTORNEY EXAMINER: Thank you,
4 Mr. Beeler, please proceed.

5 Rod Moser,
6 being first duly sworn, as prescribed by law, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Beeler:

10 Q. Please state your full name for the
11 Commission.

12 A. My name is Rod Allen Moser.

13 Q. Where are you employed?

14 A. I am the Chief of Compliance within the
15 Transportation Department for the Public Utilities
16 Commission of Ohio.

17 Q. Okay. How long have you been in that
18 position?

19 A. A little over four years.

20 Q. Okay. What are your job duties?

21 A. Relating to this particular case, my job
22 duties are the administration of the Transportation
23 Department civil forfeiture process.

24 Q. Okay. What are your expert
25 qualifications for violations, certifications,

1 continuing education?

2 A. I was -- prior to this job, I was a
3 State Trooper for nearly three years. I've had heavy
4 focus on commercial enforcement in that capacity, and
5 ended my career there as the District 6 Commercial
6 Enforcement Coordinator Sergeant.

7 That afforded me the opportunity to look
8 at inspections, and I'm very familiar with commercial
9 vehicles. Since joining the Commission I am
10 certified in North American Standards Parts A and B,
11 motor coach, general haz-mat, cargo tanks, and bulk
12 and nonbulk hazardous materials.

13 Q. And you're here today to testify on the
14 amount of the forfeiture, correct?

15 A. That is correct.

16 Q. Just before we get into the specific
17 violations here, explain just in your -- in your
18 department how you determine forfeitures in general?

19 A. Well, any time there's a violation on an
20 inspection, a letter would go out to the company or
21 to the driver. That letter would state whether or
22 not there is a fine.

23 In order -- the way we determine whether
24 there's a fine is we look at the violation. The
25 violations are divided into six distinct categories.

1 Five of the categories are nonhazardous materials and
2 the sixth is hazardous materials.

3 The nonhazardous materials are divided
4 into groups known as Group 0, 1, 2, 3, and 4.
5 Group 0 never has a fine. They are never things that
6 are marked as out of service, they are generally
7 things like having a marker light out or something
8 like that.

9 Group 1, Group 2, and Group 3 are
10 things -- equipment related violations that the CVSA
11 has determined are likely to cause a crash or can
12 play a role in causing a crash. Group 1 is the most
13 likely of those three, Group 2 next, and then
14 Group 3.

15 Group 4 violations always generate a
16 fine, and those are things like driver behaviors,
17 authority and insurance, those kind of violations.

18 Groups 1, 2, and 3, if a violation is
19 marked as out of service, and the inspection is
20 marked in such a way that there's no indication that
21 the violation was caused by a crash, and the
22 inspector did not write a written warning or a ticket
23 for that violation, then we would issue a fine in
24 that -- on that violation.

25 Q. So does the Commission apply this

1 process to everyone that you regulate?

2 A. We do. All inspections conducted within
3 the State of Ohio by certified inspectors come
4 through our office, and they are all treated in the
5 same manner.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. BEELER: Okay. Your Honor, I have
8 marked as Staff Exhibit 2 the Notice of Preliminary
9 Determination.

10 By Mr. Beeler:

11 Q. Mr. Moser, do you have that document in
12 front of you?

13 A. I do.

14 Q. What is it?

15 A. Notice of Preliminary Determination. We
16 generally just call it an NPD, with a statement from
17 the Commission that we had had a conference with the
18 respondent and were unable to come to a resolution as
19 part of that conference, so we send a letter that
20 says these are the violations and the civil
21 forfeiture amounts prior to the conference, and since
22 we couldn't agree, here is the violation and civil
23 forfeiture amount after the conference.

24 Then the respondent has the opportunity
25 to either pay the forfeiture or request a formal

1 administrative hearing.

2 Q. And I think you said that this is sent
3 to the respondent, correct?

4 A. Respondent or the respondent's
5 representative.

6 Q. Okay. Did you review this document in
7 preparation for this hearing?

8 A. Yes, I did.

9 Q. Is it a Commission record?

10 A. It is.

11 Q. And it's kept in the ordinary course of
12 business?

13 A. Yes, sir.

14 Q. Explain how you derived the civil
15 forfeiture in this case.

16 A. All right. In this case there are, like
17 I said, Group 0 violations, there are four of those.
18 Group 0 never engenders a violation, so for those
19 four violations there was no fine.

20 There's one Group 1 violation, which is
21 the brakes out of service. So in any -- any time at
22 least 20 percent of the brakes are deemed out of
23 service, or they are defective, that triggers this
24 violation, and if it's marked yes, out of service on
25 the inspection, then it generates a fine.

1 In this case there was only one Group 1
2 violation, and that is \$100. And then there's also
3 one Group 2 violation, flat tire was also marked as
4 yes for out of service. There was only one Group 2,
5 and that is \$50. So the total was \$150.

6 Q. So the Group 1 violation is the brakes
7 out of service, correct?

8 A. Yes, sir.

9 Q. And then the Group 2 violation is the
10 flat tire, correct?

11 A. Yes, that is correct.

12 Q. Okay. Is the penalty here, is it
13 consistent with the recommended fine schedule and
14 recommended civil penalty procedure adopted by the
15 Commercial Motor Vehicle Alliance?

16 A. Yes, it is.

17 Q. And the fine that's derived here is also
18 in compliance with the Commission rules?

19 A. Yes, sir.

20 Q. I think you already said it, but the
21 correct -- the amount here is \$150 total, correct?

22 A. \$150 total, correct.

23 Q. Okay. Would you recommend that amount
24 to the Commission then?

25 A. Yes, I would.

1 Q. Okay. Anything else important to note
2 for the Examiner or the Commission in this case for
3 the record?

4 A. No, sir.

5 MR. BEELER: Thank you. No further
6 questions, your Honor. I would move for the
7 admission of Staff Exhibit 2, subject to any other
8 comments.

9 ATTORNEY EXAMINER: Thank you,
10 Mr. Beeler. Mr. Woods, I don't have any comments or
11 questions myself of Mr. Moser, and if you have
12 anything you would like to state at this juncture
13 that might lead to my asking a question or two, or if
14 you see Staff Exhibit 2 as being relatively
15 straightforward, what are your thoughts, sir?

16 MR. WOODS: No questions, your Honor.

17 ATTORNEY EXAMINER: Okay. We will admit
18 Staff Exhibit 2 at this juncture.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 ATTORNEY EXAMINER: Mr. Beeler, anything
21 else on behalf of Staff at this stage?

22 MR. BEELER: No, your Honor.

23 ATTORNEY EXAMINER: Mr. Woods, I'd say
24 now is your turn to present your case, and certainly
25 we have the information already on the record that's

1 not going away.

2 And as I said before, I have the utmost
3 of patience relative to the potential for, you know,
4 information coming in twice. I'd rather have it come
5 in twice or multiple times as opposed to not at all,
6 so now is the time to make your case.

7 And I don't know if you want to begin by
8 going through your exhibits or clarifying information
9 you presented already, but the floor is yours now,
10 sir.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 MR. WOODS: Thank you, your Honor. I'd
13 just like to look at Exhibit 2 and 3, and quite
14 honestly, these exhibits are really just to show, you
15 know, background or character background about what
16 we do here.

17 If you think about how this flat tire
18 violation occurred, I am one hundred percent
19 confident in our driver's daily inspection again.
20 The first truck he inspected he found a low tire, so
21 he didn't drive that truck. Wasn't able to solve
22 that issue, so he moved to another truck, did an
23 inspection and that passed.

24 At that point I am assuming that that
25 tire is in good condition pressure wise, as well as

1 the structural integrity of that tire, and he went on
2 his way.

3 So let's say that the tire pressure
4 reading at the inspection station was accurate, which
5 I believe we are doubting, but let's say it's
6 accurate.

7 At that point I'm going to say something
8 happened on the road, whether he got something in the
9 tire on the way -- and nothing in his training steers
10 him to do a check or anything that would find that,
11 so what we have done to prevent this from ever
12 happening again -- so again, safety is our number one
13 priority here.

14 We have spent over \$15,000 after this
15 violation to outfit each of our trucks, each of our
16 trailers, with onboard tire pressure monitoring
17 systems so that in that same scenario, he leaves here
18 with a tire with good pressure and something happens
19 along the way, it's going to trigger him and give him
20 a notice that he needs to stop and figure that out.

21 So this is really just background to
22 show we are very safety conscious. We have invested
23 a lot of money to be sure that we keep our drivers
24 and the other passengers on the road safe.

25 That's Exhibit 2 and 3.

1 ATTORNEY EXAMINER: Okay. So I'm going
2 to go ahead and let you go through your exhibits and
3 then we'll invite Attorney Beeler to ask questions
4 that he has on behalf of the Staff. So that's all
5 you have to add on Exhibits 2 and 3 at this juncture?

6 MR. WOODS: Yes, your Honor.

7 ATTORNEY EXAMINER: Okay. Please
8 proceed.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. WOODS: Exhibit 4 is the CVSA
11 Inspection Bulletin for the identification of long
12 stroke brake chambers.

13 So you can see within here, this is the
14 instruction as prepared by the CVSA for how to
15 identify a long stroke brake chamber, and it goes
16 through a series of methods.

17 So as the inspector mentioned, you know,
18 tagging is an option on some of them, but the most
19 common or most readily available that we have seen,
20 because again, all of our trucks we outfit with long
21 stroke brake chambers, are the square bossed ports.

22 So on page 3 of the CVSA bulletin, you
23 can see where it shows the square shaped air fitting
24 ports, the same that were on the units -- on our
25 truck that are shown in photos on Exhibit 5.

1 So that is their document that indicates
2 the identification of a long stroke brake chamber,
3 and we are one hundred percent confident that that is
4 what our trucks are outfitted with.

5 ATTORNEY EXAMINER: So again, I don't
6 want to take away Mr. Beeler's cross-examination, but
7 let me go ahead and understand in realtime here.

8 So the first picture on page 3 of
9 Exhibit 4 shows square shaped air fitting ports,
10 that's what that is labeled. Do you see that, sir?
11 Mr. Woods?

12 MR. WOODS: Yes, your Honor.

13 ATTORNEY EXAMINER: And then if I go to
14 Exhibit 5, you're telling me that the top left
15 picture there, that would be the square shaped air
16 fitting ports, is that what you're telling me?

17 MR. WOODS: Yes, your Honor.

18 ATTORNEY EXAMINER: Okay. Please
19 proceed.

20 MR. WOODS: So -- and then with the long
21 stroke brake chamber, if you proceed to page 6 of
22 Exhibit 4, in Section F.

23 So our brake chambers, as you saw in the
24 casting, are three inches. The brake adjustment
25 limit for those is two-and-a-half inches.

1 So again, we're not contesting the brake
2 adjustment measurement at the inspection station,
3 what we are contesting is that the brake -- that the
4 incorrect brake adjustment limit was used, because
5 with the three-inch brake chambers we would have a
6 two-and-a-half inch allowance. I believe the
7 measurements were two-and-a-quarter on axles 2 and 5,
8 so it would be within the limit.

9 ATTORNEY EXAMINER: Okay.

10 MR. WOODS: So that's what I'd like to
11 cover on document 4.

12 ATTORNEY EXAMINER: Okay. You want to
13 proceed?

14 MR. WOODS: In record No. 5, that is
15 simply describing what we just talked about.

16 So in the Federal Motor Carrier Safety
17 Regulations Handbook, you'll see on page 1 of
18 document 5, the two-inch adjustment limit is circled
19 for standard stroke chambers, and the two-and-a-half
20 inch allowance is for long stroke.

21 So again, we are just coming down to are
22 these long stroke, or are these short stroke, and we
23 believe that they were identified incorrectly as
24 short stroke, where we had long stroke brake
25 chambers.

1 ATTORNEY EXAMINER: Okay. Anything else
2 on Exhibit 5?

3 MR. WOODS: The photos on page 2, as I
4 mentioned again, I'm going to be redundant in what I
5 said before, the first picture was taken the day of
6 the violation once that truck was back here in our
7 shop.

8 Picture -- the bottom half pictures were
9 taken after we replaced the parts. So we replaced
10 the slack adjustors, we replaced the brake chambers.

11 So those bottom two pictures were taken
12 after we cleaned up to where you could see the
13 casting identification markers that note type 30LP3
14 spring brakes, so we just took a wire brush to clean
15 that up a little bit so you could clearly see what
16 that chamber was displaying.

17 ATTORNEY EXAMINER: All three of those
18 pictures are the same brake chamber?

19 MR. WOODS: Yes, your Honor.

20 ATTORNEY EXAMINER: Okay. Go ahead.

21 MR. WOODS: And then on document 6, we
22 talked about this, this is the slack adjustor. So
23 really the whole reason to this picture is just to
24 show that the slack adjustors were functioning.

25 So as the inspector described, if you

1 have an out of spec condition, you're automatically
2 going to get -- the CMV manufactured after 1994 has
3 an automatic air brake adjustment system that fails
4 to compensation for wear.

5 So that is an automatic violation based
6 on an out of spec condition. This picture was simply
7 to show that the adjustors were functioning. We went
8 ahead and replaced those, but they were functioning
9 at the time and were within limits.

10 ATTORNEY EXAMINER: And those were taken
11 the day -- as I recall -- go ahead.

12 MR. WOODS: These were taken the day
13 after. So the first picture in the installed state,
14 which is in document 5, was taken the day of. All
15 the four other pictures were taken the next day once
16 we took that truck apart in the morning in our shop.

17 ATTORNEY EXAMINER: And you took all
18 those pictures.

19 MR. WOODS: Yes, your Honor.

20 ATTORNEY EXAMINER: Okay. Go ahead.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. WOODS: And then document 7 -- and I
23 think that's pretty straightforward. If the brakes
24 weren't out of service -- or weren't out of
25 tolerance, they weren't out of service and then we

1 wouldn't have more than 20 percent of the service
2 brakes out of service, if we were measured with a
3 long stroke brake chamber.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 ATTORNEY EXAMINER: Okay. And then your
6 Exhibit 1 is the same Driver/Vehicle exam report that
7 we have already talked about as Staff Exhibit 1; is
8 that correct?

9 MR. WOODS: Yes, your Honor.

10 ATTORNEY EXAMINER: Okay. So I have an
11 understanding of all your proposed exhibits. What
12 else do you want to tell me about the circumstances.

13 MR. WOODS: I have nothing more to
14 share.

15 ATTORNEY EXAMINER: Okay, sir, I
16 appreciate that. I'm going to go ahead and assume
17 that you want to admit the exhibits that you
18 discussed.

19 We did discuss all the exhibits although
20 1 would be duplicative of Staff 1, so I assume you
21 want to admit Exhibits 2 through 7, Respondent's
22 Exhibit 2 through 7 which we'll mark accordingly; is
23 that correct?

24 MR. WOODS: Yes, your Honor.

25 MR. BEELER: Your Honor, I would like

1 the -- the Exhibit 1 of the driver examination, it
2 has a little different information. It's very
3 similar, but it has some other information on there
4 that I'm going to ask Mr. Woods about.

5 ATTORNEY EXAMINER: Okay. Well, we will
6 take under advisement admissibility of all the
7 exhibits as proposed by Respondent. That will be 1
8 through 7. And with that I'll turn to you for any
9 cross-examination.

10 MR. BEELER: Great.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Beeler:

14 Q. Hello, Mr. Woods. I think you mentioned
15 this before, but Mr. Littlejohn was the driver for
16 your company at this inspection, correct?

17 A. Yes, sir, is that correct.

18 Q. And Mr. Littlejohn is not here today,
19 correct?

20 A. That is correct.

21 Q. On the tire violation, I mean, you
22 mentioned that you just -- that the driver told you
23 that he was the only one to check the pressure,
24 correct?

25 A. That is correct.

1 Q. I mean -- but did you have any reason to
2 believe that Inspector Lockhart didn't check the tire
3 as well?

4 A. The only firsthand information I have is
5 from my driver who said that the inspector asked him
6 to check the tire, handed him the gauge, he took the
7 measurement, and then handed that back to the
8 inspector.

9 Q. Okay. On both Baker Exhibit 1 -- or
10 Company Exhibit 1 and on Staff Exhibit 1, they
11 both -- and I think you mentioned this -- they both
12 say verified by driver. That's what you're talking
13 about, correct?

14 A. Is that a question for me, sir?

15 Q. Yes.

16 A. Yes, the driver -- where it says driver
17 verified the measurement, I would say based on my
18 understanding from discussion with the driver and his
19 recollection of the event, that it wasn't necessarily
20 just verified by the driver, it was actually measured
21 by the driver.

22 Q. Okay. Maybe I'll just ask it generally.
23 When the truck was put out of service, how did you
24 get it back to your shop? How did you do it?

25 A. There were two elements to that.

1 Because we didn't have air available, we called a
2 tire shop to come and put air in the tire. They
3 pressure tested it to see if there was any leak.
4 They didn't find evidence of a leak. He said he put
5 about ten pounds of air pressure in it. He was
6 surprised that we had to stop and put air in it, but
7 he did that.

8 The second part of it was we had to get
9 at least one more brake in adjustment, and our driver
10 is capable of doing a manual adjustment on the
11 brakes, so he adjusted the brake to get closer to two
12 inches of play with some FaceTime with some
13 technology with our mechanics here to get those
14 adjusted back -- to get under the two-inch limit.

15 Q. So --

16 A. And he drove the truck.

17 Q. Okay. So on your Company Exhibit 1, on
18 page 2 of that, there's some information on -- this
19 is a signature of the repairer. Can you just explain
20 what -- who that is, and what that's about?

21 A. Yes. That signature is confirming that
22 the truck is now -- it was the tire pressure that we
23 were working on here for one of the signatures.

24 So that first signature is the gentleman
25 from Buckeye Tire, who was the company who put air

1 back into the tire that was reported as low, and then
2 the second signature is our driver. It's hard to
3 read, but that is James Littlejohn. He is our
4 driver. He did the brake adjustment to get the brake
5 adjustment closer it two inches.

6 Q. And again, Mr. Littlejohn is not here
7 today, and then the mechanic from Buckeye Tire is not
8 here today to testify as well, correct?

9 A. That's correct.

10 Q. Do you remember if Buckeye Tire gave you
11 any sort of invoice or bill at the time of the
12 inspection?

13 A. I don't remember if he handed us a paper
14 copy or if we got an emailed copy from his office,
15 but certainly there was a -- there was a billing
16 received. I don't know that it was received when he
17 did the service or if it was received afterward.

18 Q. So he billed you for putting air back in
19 the tire, correct?

20 A. Yes, sir.

21 Q. Okay. And you did not present that,
22 whether it was electronic or a paper, copy of any
23 bills or invoices, correct?

24 A. That is correct.

25 Q. So the -- Let's turn to Baker Exhibits 2

1 and 3. So -- and I think you already stated this,
2 but all of the invoices and the work orders are dated
3 well after the inspection, correct?

4 A. That is correct.

5 Q. Okay. And Baker Exhibit 5, I think you
6 mentioned this, but did you take those pictures?

7 A. Yes, sir.

8 Q. And you took the same pictures -- you
9 also took the pictures in Exhibit 6?

10 A. Yes, sir.

11 Q. Did you use a digital camera or a phone,
12 or something else?

13 A. It would have been a digital camera.

14 Q. Okay. I think you mentioned this, but
15 how many trucks does Baker Equipment own?

16 A. Company-wide, we own probably 50, but
17 I'm going to speak to the Monroe office, which is
18 where I am based out of, we own two -- I'm sorry, we
19 own three for two CDL drivers.

20 Q. Do all those trucks have the same brake,
21 or is there a variety of the type of brakes, or does
22 that change, vary?

23 A. The trucks that we use all have long
24 stroke brake chambers, the three. We have some small
25 straight trucks and things that are not fifth wheel

1 or trucks that are designed to pull heavy trailers.
2 So I'm speaking exclusively to the semi road tractors
3 that we're familiar with on the highway.

4 Q. And you have your own shop there in
5 Monroe, correct?

6 A. Yes, sir.

7 Q. And you can replace brakes at the shop?

8 A. Yes, sir.

9 Q. Do you have on hand replacement brakes
10 and replacement brake chambers at the shop?

11 A. No, sir. We order those kind of on a
12 work order basis when we have a truck that needs
13 repair. We will call the truck parts source and have
14 those parts shipped in.

15 Q. I think you mentioned this, but I want
16 to ask it again. Did you provide any photos that
17 show that the photos from your Exhibit 5 and your
18 Exhibit 6 come from the truck subject to the
19 inspection?

20 A. I did not. I have about 50 photos taken
21 that day of the units, but I did not submit those. I
22 submitted only the ones that were in the document.

23 Q. Is there any way to tell from looking at
24 those pictures in your Exhibit 5 and Exhibit 6 that
25 they come from the truck at the inspection?

1 A. No, there's not.

2 Q. You mentioned a serial number or some
3 sort of identification number for the truck. Can
4 you -- is that anywhere in Exhibit 5 or Exhibit 6?

5 A. The serial number for the truck is not
6 because there's no view -- because of the location of
7 the brake chamber and where it's positioned on the
8 truck, there is no way to get a picture of the VIN
9 number from the truck in the same picture that you do
10 of the brake chamber.

11 Q. Okay. And I think we talked about this,
12 but you agree that if -- if these were indeed short
13 stroke brakes, that the inspector wrote a good
14 violation, you just disagree that they were long
15 stroke brakes and therefore you were still within the
16 acceptable measurements, correct?

17 A. Yes, sir. The measurements that the
18 inspector took, we are not contesting.
19 Two-and-a-quarter inches -- we measured them when
20 they were here.

21 The one that the driver didn't readjust,
22 we got the same measurement that the inspector had,
23 so we are not contesting the measurement taken, we
24 got the same measurement back here at our shop.

25 MR. BEELER: Okay. Your Honor, can I

1 ask for just a brief recess to talk with -- to see if
2 I have any more questions, and I can chat with my
3 folks?

4 ATTORNEY EXAMINER: Yeah, you want five
5 minutes, or --

6 MR. BEELER: Yeah.

7 ATTORNEY EXAMINER: Okay. We'll go
8 ahead and go off the record for a five minutes.
9 We'll come back at 2:55.

10 (Recess taken.)

11 ATTORNEY EXAMINER: We were off the
12 record for about ten minutes, and before we came back
13 on the record Attorney Beeler, on behalf of Staff,
14 has circulated another proposed exhibit.

15 We have had the opportunity to look at
16 it, Mr. Woods has looked at it also. With that,
17 Mr. Beeler, I'll invite you to continue with your
18 cross-examination.

19 MR. BEELER: Sure.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 By Mr. Beeler:

22 Q. Mr. Woods, do you recognize this
23 document?

24 A. This is the first time I've seen the
25 document, so...

1 Q. Do you know what it is?

2 A. It looks like a similar vehicle
3 examination report.

4 Q. All right. Is that an examination
5 report of Baker Equipment & Materials Ltd.?

6 A. It is.

7 Q. With the driver Jesus Garraro?

8 A. That's what it says.

9 Q. Do you know Mr. Garraro?

10 A. I do not.

11 Q. Do you see that the -- you see that the
12 address on there is P.O. Box 526, Monroe, Ohio,
13 correct?

14 A. Yes, sir.

15 Q. And is that the address, or the mailing
16 address of your shop?

17 A. That is the mailing address for all of
18 the Baker Equipment & Materials locations throughout
19 the U.S. There are about 12 locations where we are
20 based out of. It appears that this is one of our
21 Florida locations.

22 Q. Okay. Do you know if this truck with
23 the VIN number there and the plate number, do you
24 know if you've ever used that truck at the Monroe,
25 Ohio shop?

1 A. We have never used that truck at the
2 Monroe, Ohio shop. That truck has never been to the
3 Monroe, Ohio shop.

4 Q. Okay.

5 A. It is licensed out of Ohio because that
6 is where our headquarters are.

7 Q. Okay. But you do agree on that report
8 that the -- the chamber under the brake adjustments
9 is at least partially short stroke?

10 A. I believe that's what it says for
11 axles 1 and 2.

12 Q. Okay. Getting away from this exhibit,
13 you -- you stated that the driver did the -- did his
14 own brake adjustments so he could move the truck on
15 the road, correct?

16 A. That is correct.

17 Q. And -- and how much -- you said the
18 driver had some significant experience in doing that,
19 correct?

20 A. Significant experience driving,
21 significant experience doing truck inspections.
22 Mechanic work, not significant experience.

23 We had him on FaceTime and had the
24 consultants of our Monroe shop helping lead him to
25 how to adjust the brakes to get it legal so that he

1 could drive back to our home location.

2 Q. Okay. So did you submit any of that --
3 any of those videos or photos on the side of the road
4 from Mr. Littlejohn?

5 A. Did not.

6 Q. Okay. And he was sophisticated to know
7 enough about brakes to make the adjustments with the
8 assistance of your mechanics on the side of the road,
9 correct?

10 A. That is correct.

11 Q. But you also -- so -- never mind.

12 MR. BEELER: That's all the questions I
13 have, your Honor.

14 ATTORNEY EXAMINER: Thank you,
15 Mr. Beeler.

16 - - -

17 EXAMINATION

18 By the Attorney Examiner:

19 Q. Mr. Woods, to clarify, this Staff
20 Exhibit that's labeled Staff Exhibit 3 doesn't impact
21 any of your prior statements regarding the fact that
22 you have -- is it two trucks for three drivers as you
23 testified earlier, correct, out of your Monroe
24 location?

25 A. With a slight adjustment to what you

1 just said. We have three trucks for two drivers.

2 Q. I knew I was getting it wrong.

3 A. That's okay. By I don't know how this
4 is relevant. Baker is the largest concrete
5 construction company in the United States, so we
6 operate in a variety of areas. We don't necessarily
7 talk to one another.

8 Our home addresses happen to be the
9 same. We're a big company within corporate America.
10 So I've never met Mr. Garraro, or that truck has
11 never been in our shop. So I can't speak to much of
12 what was submitted.

13 Q. I appreciate that. And candidly, I
14 think the line of questioning by the State was
15 certainly within reason to get clarification on the
16 heels of your testimony as to the number of trucks
17 you have, and how the are equipped, and so your
18 testimony I think adds some clarity regarding the
19 fact that P.O. Box 526 Monroe, Ohio receives mail
20 corporate wide in regard to essentially all of your
21 trucks, correct?

22 A. Yes, your Honor.

23 ATTORNEY EXAMINER: Okay. Mr. Beeler,
24 anything else on cross-examination?

25 MR. BEELER: No more cross-examination,

1 your Honor.

2 ATTORNEY EXAMINER: Mr. Woods, anything
3 you want to clarify? And again, we're kind of in
4 that awkward place at this point in a proceeding.

5 You would be open for redirect regarding
6 any clarification that would flow from the
7 cross-examination. I think we have been very
8 attentive and detail focused on making sure that
9 you're able to tell the story freely. So I don't
10 know that you have anything you want to clarify, but
11 I'll invite you to do that now.

12 MR. WOODS: I appreciate your patience
13 throughout this. I have nothing further.

14 ATTORNEY EXAMINER: Okay. Thank you.
15 Anything further in regard to your case before we
16 would then turn to the State and the potential either
17 for calling -- recalling a witness and/or closing the
18 case? Anything else you want to add for the record
19 for my understanding?

20 MR. WOODS: No, your Honor.

21 MR. BEELER: I do have one thing, your
22 Honor. And sorry, I just wasn't familiar with the
23 process that you wanted to follow, but I do have, you
24 know -- usually we work to move exhibits in and --
25 mark them and move them in, so I was waiting for that

1 to happen because I do have some objections.

2 ATTORNEY EXAMINER: We were headed there
3 next, Mr. Beeler. Thank you so much. Mr. Woods, I
4 assume you want to -- and I think we have marked them
5 both ways.

6 We'll go ahead and mark them Baker
7 Exhibits 1 through 7, and that would substitute and
8 essentially be deemed the same as Respondent's 1
9 through 7. So they will be Baker 1 through 7. I
10 assume you want to move to admit all seven of those,
11 sir?

12 MR. WOODS: Yes, your Honor.

13 ATTORNEY EXAMINER: Mr. Beeler, do you
14 want to take them one at a time?

15 MR. BEELER: Yes. Well, I can say I
16 don't have any objection to Baker Exhibits 1 and 4.
17 And just to clarify, 4 is kind of the summary just
18 from the FMCSA or from somebody on how you look at
19 brakes.

20 ATTORNEY EXAMINER: Okay. So Exhibit 1
21 is the driver's examination report, which is
22 different than the one you admitted in that it has
23 clarification regarding some of the put in service
24 and some of the remediative measures, there's no
25 objection there, that will be admitted. Exhibit 4 is

1 the CVSA inspection bulletin. There is no objection,
2 that will be admitted.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 ATTORNEY EXAMINER: Now, as to
5 Exhibit 2, sir.

6 MR. BEELER: So Exhibit 2 and 3, Staff
7 would object just on the basis of relevance. These
8 are all invoices and bills that are dated well after
9 this inspection.

10 The tire violation happened on a certain
11 date. The fact that, you know, these -- the tire
12 pressure system that was billed -- that was in the
13 bills and invoices there, it happened at a later date
14 and is not relevant to this case.

15 ATTORNEY EXAMINER: Okay. I'm going to
16 admit Exhibits 2 and 3. While they are remote in
17 time from the inspection that occurred here, they do
18 go to credibility of Mr. Woods regarding the manner
19 in which the trucks are maintained, as well as the --
20 frankly, the expense that the company has gone
21 through in order to add credibility or to frankly
22 feel better insulated relative to the manner in which
23 those are maintained.

24 So I believe Exhibits 2 and 3 are
25 ordinary business records that are normally kept, and

1 I think they are relevant to this proceeding in
2 regard to how trucks are operated and maintained, so
3 those are deemed admitted over the State's objection.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 MR. BEELER: Okay. And then for
6 Exhibits 5, 6, and 7, I would object based on failure
7 to authenticate and lack of a foundation.

8 There's nothing in these pictures that
9 show that the photos of the brakes and of the slack
10 adjustors came from the truck on the day of the
11 inspection.

12 There's nothing to say that Mr. Woods
13 couldn't have taken pictures of different brakes from
14 a different truck, or taken pictures of other brakes,
15 you know, that he potentially had around the shop.
16 So the objection is failure to authenticate and lack
17 of a foundation.

18 ATTORNEY EXAMINER: Thank you. And I
19 will admit Exhibits -- Let's go through them
20 individually.

21 So Exhibits 5 and 6 are admitted.
22 Mr. Woods has testified regarding the fact that he
23 did take the pictures, so they are authenticated. If
24 there's some issue relative to his credibility, that
25 can be determined in regard to the admitted exhibits,

1 but I believe there has been sufficient
2 authentication provided, and so those exhibits are
3 admitted over the State's and Staff's objection.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 ATTORNEY EXAMINER: In regard to
6 Exhibit 7, I don't see any authentication issues
7 there. It's basically a recap regarding Code 396.3.
8 Do you still object to the admission of that?

9 MR. BEELER: I just objected to it
10 because it followed from the authentication. You
11 know, it's basically just kind of a followup to
12 Exhibit 5 and 6.

13 ATTORNEY EXAMINER: Okay. I'll admit
14 that under the same reasoning then.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 ATTORNEY EXAMINER: Anything else in
17 terms of the exhibits?

18 MR. BEELER: No, your Honor.

19 ATTORNEY EXAMINER: Okay. Mr. Woods,
20 it's a little unorthodox here, but I will give you a
21 chance to tell me anything else you want to tell me
22 relative to the case.

23 I'll give the State the opportunity to
24 add anything clarifying as well. And certainly don't
25 feel compelled to. If you feel as though you've

1 presented and I've understood, then you're welcome to
2 pass on this, sir.

3 MR. WOODS: Your Honor, I would just
4 like to say that I have nothing further and I
5 appreciate your patience and time.

6 ATTORNEY EXAMINER: Thank you.
7 Mr. Beeler, anything else on behalf of Staff?

8 MR. BEELER: Yes, your Honor. First,
9 did we admit Staff Exhibit 3?

10 ATTORNEY EXAMINER: We did not. And I
11 know we bounced back and forth a little bit here,
12 Mr. Beeler, so we have marked and you want to move to
13 admit that, sir?

14 MR. BEELER: I do.

15 ATTORNEY EXAMINER: Mr. Woods, any
16 objection?

17 MR. WOODS: No, your Honor.

18 ATTORNEY EXAMINER: Staff Exhibit 3 is
19 admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. BEELER: At this time, your Honor,
22 Staff would like to recall as a rebuttal witness
23 Aaron Lockhart.

24 ATTORNEY EXAMINER: Okay. Mr. Lockhart,
25 would you -- you're still under oath, sir. Go ahead,

1 Mr. Beeler.

2 Aaron Lockhart,
3 being first duly sworn, as prescribed by law, was
4 examined and testified as follows:

5 FURTHER DIRECT EXAMINATION

6 By Mr. Beeler:

7 Q. Mr. Lockhart, do you have Baker -- or
8 Company Exhibits 1 through 7 --

9 A. I do.

10 Q. -- in front of you. Can you go through,
11 you know, I guess each one -- I mean, you don't have
12 to go through Staff Exhibit -- but yeah, just go
13 through each exhibit and explain -- and explain your
14 thoughts basically on the -- on those cases.

15 A. Okay.

16 Q. Or on those exhibits, sorry.

17 A. Sorry, I'm bringing them back up.

18 Sorry, everything went down, Mr. Beeler. Okay.
19 Exhibit 1 is the inspection report. I mean, that is
20 pretty self-explanatory.

21 The inspection report is what I
22 completed on the roadside as to what I seen on those
23 trucks -- or on the truck that I inspected that day.
24 So it was pretty self-explanatory.

25 Exhibits 2 and 3, the work orders for

1 the tire pressure, that's good, because the type of
2 industry that he has described that they do, there's
3 going to be a lot of tire issues. There's going to
4 be actually a lot of brake issues.

5 And if you look at CVSA, there's tire
6 and brake issues. So Exhibit 4, the inspection
7 bulletin, that -- the inspection bulletin is what we
8 are trained on. So he's 100 percent accurate and
9 correct with that inspection bulletin.

10 It comes from CVSA. It's what every
11 inspector is trained on to be able to do Part A, Part
12 B, to be able to do Level 1 inspections, Level 2
13 inspections, so yes, Exhibit 4 is accurate.

14 Exhibit 5, as he stated, there's no way
15 to determine that these pictures came from the brake
16 chambers on the vehicle.

17 Q. What is your concern with that?

18 A. My concern is -- I mean, there's
19 probably a maintenance record, you know, with serial
20 numbers on something that was installed, but my
21 concern is you can take a picture of any brake
22 chamber and present it as evidence and argue any case
23 on brakes that's out of adjustment.

24 It's just -- my concern on those brake
25 chambers is that's not the chambers I looked at

1 during the inspection.

2 Exhibit 6, the slack adjustors, that's
3 the inner working of the slack adjustor, that's not
4 something that we're viewed -- we view or look at
5 roadside, unless the slack adjustor is busted open.
6 All I can testify to is if they were out of
7 adjustment at the time, then the slack adjustor was
8 not working at that time.

9 As far as the Exhibit 7, brakes out of
10 service, it's above 20 percent when you add the two,
11 so the brakes were out of service.

12 I would like to touch base, just if I
13 can real quick, on what you presented and was entered
14 as Exhibit. Was it State Exhibit 3?

15 Q. Yes.

16 A. Okay. That shows to the fact that Baker
17 uses multiple different types of brake chambers on
18 their vehicles. There's multiple inspections on
19 that, that you entered.

20 Some have short stroke, some have long
21 stroke. They have them on these same vehicles on
22 that -- on the one that you were pointing out had
23 short stroke on axle 1, 2, long stroke on axle 3.

24 The next one down is a tractor-trailer
25 combination. They are short stroke. So that kind of

1 goes to the fact that the company does use both types
2 of brake chambers. They are hauling heavy equipment,
3 so any heavy -- heavy, heavy loads is going to wear
4 those brakes out sooner.

5 I would like to touch base if I could as
6 far as the tire pressure gauge. Accurate to a point.
7 I did hand the tire pressure gauge to the driver. He
8 did check it, but I did verify it after he checked
9 it. So --

10 Q. Did you check it first before the
11 driver?

12 A. I did not. I kicked the tire
13 determining it was flat, handed him the inspection
14 tool, he checked it, but I verified it after he
15 checked it. So it was at 40 pounds.

16 And if the driver is able to adjust
17 brakes -- air brakes and get them back into
18 adjustment, I think a simple tire pressure gauge is
19 not out of the question for that driver.

20 But also, it was stated that they used
21 FaceTime and different technology like that to get
22 the brakes back in adjustment. Nobody stated when
23 that driver was adjusting those brakes that those
24 were long stroke and did not need adjustment.

25 We're looking at those brakes at the

1 time the driver was adjusting those brakes. They
2 should have said they were long stroke brakes.

3 Q. Okay. On the flat tire violations, you
4 heard Mr. Woods say that the driver completed a
5 pretrip inspection.

6 A. I did.

7 Q. Would that matter with a flat tire? A
8 flat tire can happen --

9 A. It would not.

10 Q. -- on the trip, right?

11 A. Yes, things break on the highway.
12 That's part of trucking and that's part of our
13 inspections. You know, a good pretrip is great, but
14 tires go flat all the time.

15 Q. And then finally on the brakes, it is
16 your testimony that the brakes pictured in Company
17 Exhibits 5 and 6 are not the brakes you inspected on
18 the day of the report, correct?

19 A. Correct, that is my testimony.

20 MR. BEELER: No further questions, your
21 Honor.

22 ATTORNEY EXAMINER: Thank you,
23 Mr. Beeler. Just a couple clarifications,
24 Mr. Lockhart.

25 - - -

EXAMINATION

By the Attorney Examiner:

Q. You indicate that you do at least 320 inspections a year -- I'm not trying to trick you here, so feel free to clarify -- 320 or more inspections a year. Of those, approximately how many end up in out of service findings relative to brake failure?

A. I would say probably five percent or less. That would probably be a -- a better question for Mr. Moser statewide, but as far as mine, it's probably less than five percent.

Q. Okay. And so that would be what, roughly 15 a year?

A. Roughly, yes.

Q. But you don't have a protocol where if you write out of service for brakes where you would necessarily take pictures and/or employ the Chamber Mate before you would make that finding, correct?

A. We do not.

Q. And you don't personally?

A. I do not, no.

Q. Okay. If we had pictures of the brake chambers and/or the Chamber Mate had been employed, that would certainly help clarify this issue,

1 correct?

2 A. I believe it would, yes.

3 ATTORNEY EXAMINER: Okay. That's all I
4 needed in terms of clarification.

5 Mr. Woods, again, I'm not going to let
6 you cross-examine witnesses, but if there's anything
7 you'd like to state for the Bench in response to the
8 additional testimony that's been provided here today,
9 I'll invite you to talk to me about that, sir.
10 Anything else you want to add?

11 MR. WOODS: Yes, very quickly, your
12 Honor. As for the reference that the driver -- or
13 that the mechanic should have identified the long
14 stroke via the FaceTime video, at that point the
15 violation had been written.

16 The driver was directed to go off to the
17 side, fix the truck before he left. There was no
18 chance for him to counter that argument, there was no
19 reinspection requirement from the officer. Our
20 driver simply made the adjustments and moved out.

21 So the fact that that wasn't brought up
22 then, the violation had been written, we didn't have
23 the experts as part of the violation verification
24 process, so I'm not sure the logic of that argument.

25 Secondly, it seems really in question

1 that we are all making the judgment of are these long
2 stroke or short stroke, and then it's ultimately
3 coming back to my credibility on that in taking the
4 pictures.

5 I've got over 50 pictures that I took of
6 this. Did I do a poor job? Am I a lawyer to be able
7 to put a good argument together and know that I
8 should have submitted, you know, 20 pictures instead
9 of the condensed summary that I did? That may be
10 true.

11 But I've got over 50 pictures of
12 different views of the truck, none of which you can
13 see the truck VIN number and the truck brake chamber
14 installed at the same time, but I assure that those
15 pictures were taken by me with the truck before any
16 work had been done to the truck here.

17 ATTORNEY EXAMINER: Okay.

18 MR. WOODS: And then on the tire
19 pressure gauge, let me say the gentleman who drives
20 this truck is five-foot-three and about 340 pounds,
21 so he struggles to get in some tight areas, and to
22 measure the inside tire of a tractor on that axle
23 with the pressure of -- he's a nervous guy as well,
24 so to get a good measurement on that would have been
25 very tough for him. So that is all I have.

1 ATTORNEY EXAMINER: Okay. Thank you.

2 Mr. Beeler, as I indicated, I'm going to let you
3 close with anything else you have. Anything else you
4 have of this witness?

5 MR. BEELER: No.

6 ATTORNEY EXAMINER: Anything else you
7 want the Bench to know, sir?

8 MR. BEELER: No, your Honor.

9 ATTORNEY EXAMINER: Okay. Well, I think
10 we have developed a very thorough record. I
11 appreciate the attention of all the parties, and the
12 patience.

13 I think these virtual hearings -- I
14 guess it doesn't really matter what I think, they are
15 coming to an end, but when the parties cooperate and
16 take their time and are patient, they certainly work
17 well, and I appreciate everyone's time and attention
18 and approach here today.

19 I do want to ask the parties to email
20 your exhibits to our Court Reporter so they can be
21 affixed, made a part of the transcript.

22 Valerie, can you provide your email
23 address for them to document.

24 (Discussion off the record.)

25 ATTORNEY EXAMINER: And then if we get

1 near the time of issuing the transcript, if the Court
2 Reporter doesn't have them it will be easy to follow
3 the trail as to where they might have broken down.

4 With that then, I think there's nothing
5 else for us to attend to here today. Again, I thank
6 all the parties, and we are closed.

7 (Thereupon, the hearing was
8 adjourned at 3:27 p.m.)

9 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, June 29, 2021,
and carefully compared with my original stenographic
notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

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in

Case No(s). 20-0805-TR-CVF

Summary: Transcript in the matter of the Baker Equipment and Materials, Ltd hearing held on 06/29/21 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie