

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of William :
4 Railing and Konrad :
5 Construction, Notice of :
6 Apparent Violation and : Case No. 11-4472-TR-CVF
7 Intent to Assess :
8 Forfeiture. :

9 - - -

10 PROCEEDINGS

11 before Ms. Katie L. Stenman, Attorney Examiner, at
12 the Public Utilities Commission of Ohio, 180 East
13 Broad Street, Room 11-C, Columbus, Ohio, called at
14 10 a.m. on Tuesday, October 18, 2011.

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On behalf of the Staff of the PUCO.

Mr. William Railing

On his own behalf.

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1 Tuesday Morning Session,
2 October 18, 2011.

3 - - -

4 EXAMINER STENMAN: Let's go on the
5 record. The Public Utilities Commission of Ohio has
6 assigned for hearing at this time and place Case
7 No. 11-4472-TR-CVF, being in the Matter of William
8 Railing and Konrad Construction, Notice of Apparent
9 Violation and Intent to Assess Forfeiture.

10 My name is Katie Stenman, and I am the
11 attorney examiner assigned by the Commission to hear
12 this case. At this time I would like to take
13 appearances of the parties.

14 On behalf of staff.

15 MR. REILLY: Thank you, your Honor. On
16 behalf of the staff of the transportation section of
17 the Ohio Public Utilities Commission, Mike DeWine,
18 Ohio Attorney General, Bill Wright, Section Chief,
19 Steve Reilly, Assistant Attorney General, 180 East
20 Broad Street, Columbus, Ohio 43215.

21 EXAMINER STENMAN: Thank you.

22 Mr. Railing, if you want to just give
23 your name and address for the record.

24 MR. RAILING: William Railing, 4200 Short
25 McGraws Road, Valley Grove, West Virginia.

1 EXAMINER STENMAN: Thank you. And,
2 Mr. Railing, just to be clear we previously talked
3 about this, but you are choosing to go forward
4 without an attorney today?

5 MR. RAILING: That is correct.

6 EXAMINER STENMAN: And you are proceeding
7 on behalf of yourself and also Konrad Construction,
8 you said.

9 MR. RAILING: That is correct.

10 EXAMINER STENMAN: It's a one-member LLC?

11 MR. RAILING: That is correct.

12 EXAMINER STENMAN: And do you have any
13 procedural questions before we get started?

14 MR. RAILING: I don't think so.

15 EXAMINER STENMAN: Okay. Mr. Reilly.

16 MR. REILLY: Thank you, your Honor. We
17 would call Mr. Dennis Bays.

18 (Witness sworn.)

19 MR. REILLY: Your Honor, before we get
20 started we have provided the Bench and the court
21 reporter with copies of the exhibits that we are
22 going to be using, along with Mr. Railing.

23 EXAMINER STENMAN: Thank you.

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DENNIS BAYS

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

DIRECT EXAMINATION

By Mr. Reilly:

Q. Good morning, Inspector Bays.

A. Good morning.

Q. Could you introduce yourself to the
Bench. If you can state your name and your business
address.

A. My name is Dennis Bays. I am a Motor
Carrier Enforcement Inspector for the Ohio State
Highway Patrol, 2855 West Dublin-Granville Road,
Columbus, Ohio.

Q. All right. And how long have you been an
inspector with the Ohio Highway Patrol?

A. I have worked as a motor carrier
inspector for going on two years now.

Q. Okay. And have you taken any classes
regarding the Federal Motor Carrier Safety Code and
the Ohio Motor Carrier Safety Regulations?

A. I have. I have completed the North
American Standards which are the required courses for
becoming a motor carrier inspector.

Q. Okay. Do you have any idea about how

1 many inspections you have conducted in the two years?

2 A. 1,500.

3 Q. Okay. And you are familiar with both the
4 Federal Motor Carrier Safety Code and the Ohio Motor
5 Carrier Safety Regulations?

6 A. I am.

7 Q. All right. Now, Inspector Bays, I would
8 like to draw your attention to March 16 of this year.
9 Did you have an occasion to observe a commercial
10 motor vehicle operated by Mr. Railing?

11 A. I did.

12 Q. And where did you encounter the motor
13 vehicle?

14 A. I was sitting at the 73 mile marker on
15 Interstate 70 in the median when I observed the truck
16 go by me. I proceeded to follow the truck into the
17 rest area after I had turned my lights on to do an
18 inspection.

19 Q. Okay. Why did you inspect Mr. Railing's
20 vehicle?

21 A. This particular inspection was a 10th
22 vehicle after I was prepared to go back to work. If
23 I am sitting in the median doing paperwork or
24 something like that, once I have completed my
25 paperwork, I use a 10th vehicle inspection.

1 Q. So you were inspecting every 10th
2 vehicle?

3 A. Yes, sir.

4 Q. Okay. And why were you doing that?

5 A. Just uniformity. If I don't have an
6 obvious violation, instead of just picking someone
7 out of a crowd I use uniformity.

8 Q. Okay. Am I correct that your -- what you
9 do is inspect commercial motor vehicles on the public
10 highways and that's what you were doing; is that
11 correct?

12 A. That's what I do.

13 Q. Okay. And you were doing that by
14 select -- by selecting every 10th vehicle for
15 inspection; is that correct?

16 A. Yes, sir.

17 Q. Okay. Now, I put up on the witness stand
18 what's been marked as Staff Exhibit No. 1. Can you
19 find that document for me.

20 A. I have it.

21 Q. Okay. Do you know what that document is?

22 A. It's a copy of the inspection report from
23 the Safer Web that I conducted on this particular
24 vehicle.

25 Q. Okay. And do you know how that Staff

1 Exhibit No. 1 came into existence?

2 A. After -- immediately after doing my
3 inspection, I enter my inspection report. That
4 inspection report is an Aspen program that is
5 downloaded into the Safer Web. It's a federal
6 database of regulations, violations, anything like
7 that conducted during an -- that are found during an
8 inspection. Once it's downloaded it goes into a
9 national database that inspectors throughout the
10 country have access to.

11 Q. Okay. That national database would be a
12 record of the federal government and the State of
13 Ohio?

14 A. Yes.

15 Q. Okay. When you say -- you said the Safer
16 Web. Did you mean the Safety Net Database?

17 A. Yes, yes.

18 Q. And you said after you did the -- after
19 you did the inspection, you -- you -- I think you
20 said downloaded or put the inspection into the
21 Aspen --

22 A. Right.

23 Q. -- Database?

24 A. Right.

25 Q. Now, when you said -- how soon after the

1 inspection did you -- did you enter your observations
2 into the database?

3 A. Immediately after the inspection.

4 Q. Okay. And is that policy of the Ohio
5 Highway Patrol?

6 A. It is.

7 Q. Okay. Now, you mentioned that this is
8 a -- that this Safety Net Database is a record of the
9 federal government and the State of Ohio. What is it
10 used for principally? Do you know?

11 A. Principally it's used to collect
12 information for the Federal Safety Administration,
13 the Motor Carrier Safety Administration, for safety
14 records on vehicles, any violations listed, things
15 like that.

16 Q. Okay. So it's used in the enforcement
17 and administration of the federal and state
18 federal -- federal and state motor carrier safety
19 systems; is that correct?

20 A. Yes.

21 Q. Okay. Now, when you -- could you just --
22 could you tell us what happened when you inspected
23 Mr. Railing's vehicles.

24 A. Yeah. When I approach the vehicle, I
25 always introduce myself and my intention, the reason

1 for the stop. Once I start conducting the vehicle --
 2 the vehicle inspection and driver interview, I start
 3 asking questions to find out if I have jurisdiction
 4 over the vehicle or not, to find out if it is a
 5 commercial motor vehicle, if it's crossing state
 6 lines, things like that.

7 I asked where the driver was going. He
 8 stated he was going to Indianapolis, Indiana, and I
 9 asked what was in the vehicle. And he said that he
 10 had furniture in his vehicle. I asked to look at the
 11 load to verify that it was furniture because the
 12 vehicle did have construction written on the side of
 13 the vehicle.

14 When I observed the load and the contents
 15 of the vehicle, it seemed to me that it was
 16 construction equipment, ladders, scaffolding, things
 17 like that, so I advised the driver that I was going
 18 to go ahead and conduct a vehicle because I felt that
 19 he was in commerce.

20 Q. And why did you feel he was in commerce?

21 A. Because the advertisement on the side of
 22 the vehicle was of a construction company and he had
 23 construction-type equipment in the vehicle and not
 24 furniture as he stated.

25 Q. Okay. Now, I have put up there on the

1 witness stand with -- with Staff Exhibit No. 1 there
2 are several pictures or exhibits marked Staff
3 Exhibits 1A through I believe it's 1K. Could you --
4 could you just go through and tell us what those --
5 first of all, do you know how those pictures came
6 into existence?

7 A. I took the pictures to show the things
8 that I found on the vehicle, in the vehicle to
9 coincide with my inspection.

10 Q. Okay. Could you tell us what is shown in
11 each of the pictures 1A through 1K?

12 A. Okay.

13 EXAMINER STENMAN: Just to interrupt real
14 quick do you have any color copies of these?

15 MR. REILLY: We do not, I'm afraid.

16 EXAMINER STENMAN: Okay.

17 A. Exhibit 1A is a license plate for the
18 trailer being pulled.

19 Q. So there were two vehicles?

20 A. Yes.

21 Q. And what were they? What were they?

22 A. One was a straight truck. The other was
23 a trailer being pulled by the straight truck.

24 Q. Okay.

25 EXAMINER STENMAN: What do you mean when

1 you say straight truck?

2 THE WITNESS: A straight truck is an
3 anywhere from 16- to 24- to 40-foot box truck,
4 tandem-axle truck or single drive-axle truck.

5 EXAMINER STENMAN: Thank you.

6 THE WITNESS: Uh-huh.

7 Q. Please continue.

8 A. No. 2 --

9 Q. That would be 1B?

10 A. Yes, I'm sorry, 1B is the contents inside
11 the trailer as I observed them. There is ladders,
12 looks like some dolly-type equipment, and other
13 construction-type equipment within the confines of
14 the trailer.

15 1C is the construction advertisement on
16 the side of the trailer. 1D is just another picture
17 of the trailer, same trailer other side there with
18 the same advertisement.

19 1E is more pictures of the equipment that
20 I found inside the trailer. Kind of the same thing
21 on 1F. If you look at the lower right-hand corner,
22 there is a cylinder with a large arm for some kind of
23 construction equipment there, clearly not furniture.

24 And then the next page is going to be a
25 license plate for the truck, the straight truck of

1 the vehicle. And then 1J is going to be the picture
2 of the straight truck itself. When you get to 1K,
3 this is a picture of a Reese hitch chain and the lack
4 thereof of a breakaway system that's required on a
5 commercial motor vehicle which is listed in the
6 violations.

7 Q. When you inspected the vehicle, what did
8 you find?

9 A. Listed on the inspection report I have
10 that the driver had no medical card in his
11 possession, no record of duty status which is
12 required by that particular vehicle.

13 Q. Is a medical card also required?

14 A. It is.

15 Q. Okay. When you -- in this discussion you
16 are discussing the violations you found?

17 A. With the driver, you mean?

18 Q. Yes. With the -- yes, as a result of the
19 inspection.

20 A. Yeah. Well, when I'm talking to the
21 driver and I am asking for this information, you
22 know, I tell them that they are required to have
23 these things --

24 Q. Okay.

25 A. -- as I am conducting the interview and

1 collecting information, yes.

2 Q. Okay. Continue, please.

3 A. Okay. We've covered the record of duty
4 status. Operating a motor vehicle without a periodic
5 inspection, a periodic inspection is an annual
6 inspection report done on a commercial motor vehicle
7 to make sure it's in compliance with the Federal
8 Motor Carrier Safety Standards. Those vehicles can
9 have stickers or paperwork inside the cab, either
10 one. I found neither. The driver did not have any.

11 The next one is unified carrier
12 registration fee. It's a tax -- fuel tax kind of
13 thing for crossing state lines. I found no
14 registration for that. The driver offered none. The
15 second periodic inspection is for the trailer itself.

16 Then the no or improper breakaway not
17 holding the trailer when tested, if we refer back to
18 1K, it looks like it's -- the reason I wrote it is
19 because it's not even attached to the vehicle.
20 That's what the picture there in 1K would be showing.
21 What's required of those is that the cable leaving
22 the trailer, it's attached to an activation device.
23 When a plunger is pulled out of the activation
24 device, it locks the brakes on the trailer down. So
25 that plunger has to be attached firmly to the truck

1 and not to the chain or cable or anything like that
 2 because if the chain and cable separate with the
 3 trailer, the cable separates with the trailer.
 4 Therefore, it has to be attached firmly to the truck
 5 so if they do separate, the plunger goes with the
 6 truck, okay.

7 Carrier name or DOT numbers not displayed
 8 on the truck as required, to cross state lines if you
 9 are a commercial motor vehicle, you have to have a
 10 USDOT number displayed on the side of your vehicle.
 11 The only information displayed on the side of the
 12 vehicle was the company name.

13 Q. After you completed your inspection, what
 14 happened?

15 A. I went back to my car, typed this report.

16 Q. You mean entered it into the database as
 17 you described earlier?

18 A. I did.

19 Q. Okay. Please continue. Then what
 20 happened?

21 A. Once I -- once I finished filling out the
 22 report information and everything like that, I print
 23 out a copy, give it to the driver, get his signature
 24 on the inspection report, advise him that in this
 25 case he was placed out of service for not having any

1 record of duty status, and he would have been placed
2 out of service for 10 consecutive hours, and then he
3 would have been required to have a logbook. I
4 advised him of that, and then the inspection would
5 have been over.

6 Q. Okay. Was there any discussion between
7 the two of you about the -- about the violations
8 noted in the inspection report?

9 A. When I have the driver sign the
10 paperwork, I explain the violations at that time,
11 yes.

12 Q. Did he have any objections to them?

13 A. The driver pretty much objected to the
14 inspection the entire time because he stated that he
15 was not a commercial motor vehicle, and I advised him
16 that I felt that he was a commercial motor vehicle
17 with the things that I had found, the company
18 markings, the items that were within the confines of
19 the trailer, and the weights and regulations that
20 those trucks had to follow. So I felt that I was
21 in -- within my jurisdiction.

22 Q. During this discussion did he explain why
23 he didn't think he was a commercial motor vehicle?

24 A. Well, he explained to me -- or he had
25 said to me that he was just going to a friend's

1 house, but at the same time he said he had furniture.
2 That was pretty much at the beginning of the
3 inspection.

4 Once that I found that it was not
5 furniture in the vehicle, that it was, in fact,
6 construction equipment, that's kind of.

7 Q. Where was the friend's house located?
8 Did he say?

9 A. He stated Indianapolis, Indiana, is where
10 he was headed to at a friend's house. If you look in
11 the inspection notes on Exhibit 1 about
12 three-quarters of the way down, it says "Inspection
13 Notes." In the "Inspection Notes" it reads when
14 asked what the driver -- what he was carrying he
15 stated furniture. When asked the driver where he was
16 going, he stated to a friend's house in Indianapolis,
17 Indiana.

18 Then it goes on to explain that I asked
19 him to open the doors so I could confirm the load,
20 check the load, make sure for security and that it
21 was furniture. I did find it wasn't furniture, found
22 that it was construction-type equipment, and
23 proceeded with the inspection.

24 Q. I would like to talk for just a little
25 bit here about how to read Staff Exhibit No. 1, if we

1 could.

2 A. Okay.

3 Q. Okay. If you could start at the top,
4 it's -- it's divided into several blocks that run
5 across the page.

6 A. Right.

7 Q. Do you see that?

8 A. I do.

9 Q. Could you start at the top and tell us
10 what's in that first block?

11 A. Okay. First block obviously is going to
12 be your report and inspection number.

13 Q. And what's that?

14 A. OH3257001020.

15 Q. And what's an inspection report number?
16 Why do they have it?

17 A. It identifies the inspector and what
18 number of inspection you are on at this particular
19 time. This particular inspection is relative to me,
20 3257. This is the 1,020 inspection listed in the
21 database under my unit number.

22 Q. Does this -- does this report number
23 identify this particular inspection?

24 A. It does.

25 Q. Okay. And it differentiates it from all

1 other inspections, right?

2 A. It does.

3 Q. Okay. And then the "Inspection Date," is
4 that the date of the inspection?

5 A. It is.

6 Q. And next we come to "Times." Could you
7 tell me what that is?

8 A. The time started the inspection and time
9 ended the inspection.

10 Q. Okay. And it says "Level I full
11 inspection." What is that?

12 A. We have different levels of inspections.
13 A level III inspection is a driver and paperwork only
14 inspection. A level II inspection is driver,
15 paperwork, lights, tires, nuts and bolts on the outer
16 portion of the vehicle. A level I inspection is
17 doing all those same things plus checking the brakes
18 and additional equipment, things like that, load
19 securement, other things.

20 Q. I see this was not a hazardous material
21 inspection.

22 A. It was not.

23 Q. Okay. Going back to the next block let's
24 start on the left where it says "Konrad Construction"
25 with an address underneath it. What is that?

1 A. This is information that I gathered from
2 the driver and/or registration for the vehicle.

3 Q. Okay. And moving to the right of that,
4 there is some information, driver name, driver
5 license number, and date of birth. Could you tell us
6 what those are?

7 A. Uh-huh. Those I've entered from the
8 driver's license while I'm typing my inspection
9 report.

10 Q. Uh-huh. And where it says "State," do
11 you see "State" on the right -- far right side?

12 A. I do.

13 Q. And "WV" means what?

14 A. West Virginia.

15 Q. And what does that designate?

16 A. That's the state that the driver's
17 license is from that I have just entered on the
18 right-hand side.

19 Q. Okay. Dropping down to the next block,
20 begins "Location." Can you tell us what that means?

21 A. The "location" is telling us whether I am
22 doing a scale house inspection or a roadside
23 inspection. This particular inspection was a road --
24 roadside inspection. Below that we have the "IS 70"
25 which is identifying Interstate 70. On down below

1 that --

2 Q. What does the "Highway" mean? What -- it
3 identifies Interstate 70 but what does it identify
4 there?

5 A. It's identifying that I am doing a
6 roadside inspection, what general location that I am
7 in.

8 Q. Okay. That's on Interstate 70.

9 A. Yes.

10 Q. Okay.

11 A. Obviously "Madison County" is telling us
12 what county we are doing the inspection. The
13 "Shipper" listed below is listed as "Carrier."

14 Q. Uh-huh.

15 A. This is a not-for-hire carrier which
16 means he is not going to a dock and picking up
17 freight and carrying it to some other location. The
18 things within the confines of his vehicle are his
19 equipment, things like that. It's not things that he
20 will be delivering.

21 Q. Okay. In the middle column it starts
22 "Mile Post." Could you tell us what are those three
23 items?

24 A. The "Mile Post" identifying the location
25 on Interstate 70 that I have done the inspection.

1 Q. What does the "Origin" mean?

2 A. When doing my driver interview with --
3 during the inspection, I asked the driver where he
4 was coming from and going to. They tell me where
5 they've left and where they are heading to. That's
6 what I use as an "Origin" and "Destination" in my
7 inspection report. The "Origin" here is Valley
8 Grove, West Virginia. That's where the driver stated
9 that he was coming from. And his destination, he was
10 heading to Indianapolis, Indiana.

11 Q. And on the far right there is a
12 designation of "Cargo." What's in there?

13 A. Uh-huh. Generally on a for-hire carrier
14 we have bills of lading. The reason that's left
15 empty is because this is not a for-hire carrier so he
16 is not going to have a bill of lading. It's a
17 delivery confirmation number and things like that.
18 So we go down to the "Cargo." It is -- was
19 construction tools that I had found within the
20 confines of the trailer.

21 Q. Now, down in the "Vehicle Identification"
22 is the next block. Could you tell us what's shown
23 there?

24 A. Uh-huh. If you look at unit No. 1, you
25 will have a TR which stands for truck or straight

1 truck --

2 Q. Okay.

3 A. -- in the Aspen program. It looks like
4 it was a 2001 Mitsubishi with a West Virginia license
5 plate, license plate was 6 Mary boy 205. He had no
6 equipment ID number on the vehicle which is just like
7 your school buses are numbered 1 through 50 or what
8 have you. The next segment of letters and numbers is
9 the VIN number, full VIN number, of the vehicle the
10 driver was operating at the time of the stop.

11 Q. The VIN number would be the vehicle
12 identification number?

13 A. It is.

14 Q. Okay. Next "GVWR," what does that mean?

15 A. That is the gross vehicle weight rating
16 of a single vehicle or combination of vehicles. In
17 this particular case the 16,001 pounds is of a single
18 vehicle.

19 Q. That's on the truck.

20 A. Yes, it is.

21 Q. Okay. Is there another vehicle involved
22 here?

23 A. There is.

24 Q. And what's that?

25 A. The second one we will see a --

1 Q. Unit 2?

2 A. -- type -- yes, unit 2, it is an "FT"
3 which stands for full trailer. It's not your
4 conventional fifth wheel hook-type trailer. It's a
5 ball and hitch-type trailer, so it's designated as a
6 full trailer.

7 The "TRLR" indicates that there was no
8 listing for that particular manufacturer in the Aspen
9 program so it's a default trailer setting for us. It
10 was a 2005 model licensed in the state of West
11 Virginia. License plate number was Charles 128889.
12 No equipment ID number. Again, we have a full VIN
13 number, vehicle identification number, and the gross
14 vehicle weight rating of that trailer itself was
15 7,000 pounds.

16 Q. All right. Now, in the next block it
17 says "Brake Adjustments"?

18 A. Uh-huh.

19 Q. I would just like to go to "Chamber." I
20 know there is a "Right" and "Left" and "N/A" means
21 not applicable?

22 A. Right. The reason it's listed as N/A, if
23 you look on the bottom line just to the right of
24 Chamber, you will see "HYDR" twice and then "ELEC"
25 twice.

1 Q. Yes.

2 A. The reason the N/As are there is because
3 I cannot measure hydraulic or electric brakes.

4 Q. Okay.

5 A. That's for an air brake system, okay.

6 Q. And then down there is -- dropping down a
7 box to the "Violations Box," can you tell us what's
8 shown there?

9 A. Uh-huh. In the violation box is what I
10 entered as far as my findings are concerned into the
11 inspection report. Again, if you look under Section
12 391.41(a) of the Federal Motor Carrier Safety
13 Standards, it says that a driver has to have a
14 medical card in his possession while operating a
15 commercial motor vehicle.

16 Q. And just to go across on the categories,
17 it's "Section Code" which is the code of the Federal
18 Motor Carrier Vehicle Regulations --

19 A. It is.

20 Q. -- and the regulations of the State of
21 Ohio that's violated?

22 A. It is.

23 Q. "Unit," what is that there?

24 A. It is going to be either the driver,
25 truck, or trailer that I am citing.

1 Q. I notice -- and when you have numerals, 1
2 is the truck and numeral 2 under that is the trailer?

3 A. Correct.

4 Q. Okay. "OOS," what does that mean?

5 A. That stands for out of service.

6 Q. Okay. And "N" means no and "Y" means
7 yes?

8 A. Correct.

9 Q. And that goes to the violation, it's an
10 out of service violation?

11 A. Yes, yes.

12 Q. And "Lvl 6," what is that?

13 A. That's for -- it's a designation to let
14 us know if things are repaired on site or if they
15 have not been repaired when I leave. If a driver
16 fixes an out of service order or something like that,
17 I can go into the system and show that it's been
18 repaired before the inspection is over.

19 Q. Now, "N" throughout this block means no;
20 is that correct, in all the columns?

21 A. Yes.

22 Q. And "Y" would mean yes in all the
23 columns?

24 A. Correct.

25 Q. In the next block in which there is

1 information is "Verify." What does that mean?

2 A. That's going to the same thing. It's
3 whether or not things have been corrected. You will
4 have a no for no, U for unknown as to whether or not
5 things have been corrected. If you look in the no or
6 emergency breakaway, not holding, it is unknown
7 whether or not it was repaired --

8 Q. Okay.

9 A. -- before the driver left the scene.

10 Q. And in the crash column, what type of
11 information is included there?

12 A. It is asking if it was an incident of a
13 crash for the violation. And obviously there's no
14 crash so there would not be an incident to the crash.

15 Q. The violations listed deal with the
16 failure to perform various duties and the -- or the
17 failure to have various -- various information?

18 A. Failing to be compliant with the rules,
19 yes.

20 Q. And the "Inspection Note" section, if we
21 drop down to that, those are your inspection notes,
22 correct?

23 A. They are.

24 Q. Now, you -- now, I believe you testified,
25 and I just want to be sure, that you made -- you --

1 this is a printout from the Safety Net System; is
2 that correct?

3 A. It is.

4 Q. Okay. And you entered the information
5 into this system contemporaneously with your
6 inspection; is that correct?

7 A. Yes.

8 MR. REILLY: Okay. Thank you. We have
9 nothing further, your Honor.

10 EXAMINER STENMAN: Thank you.

11 MR. REILLY: Oh, I would -- just to be
12 formal I would ask that the inspection report that's
13 marked for identification as Staff Exhibit 1 be so
14 identified.

15 EXAMINER STENMAN: It will be so marked
16 as well as the pictures 1A through K.

17 MR. REILLY: Thank you.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 EXAMINER STENMAN: Mr. Railing, do you
20 have any questions?

21 MR. RAILING: Just one.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Railing:

25 Q. Officer, isn't it true that a

1 recreational vehicle traveling from and pulling a
2 trailer independent of what they may be hauling from
3 their home to another home of theirs is not subject
4 to PUC inspection?

5 A. If it is deemed it is a recreational
6 vehicle, yes.

7 Q. Thank you.

8 A. Let me finish. The vehicle was marked
9 with construction equipment.

10 Q. That's not what I asked. I asked if --

11 A. I am explaining my side now, thank you.
12 It was marked with construction equipment or
13 construction advertisement, and when I made the stop,
14 I observed when looking inside the confines of the
15 vehicle that's what I found is construction-type
16 equipment. That's why I proceeded with the
17 inspection.

18 Q. Let me ask you again, if a recreational
19 vehicle is traveling from their home to another home
20 independent of going through -- crossing state lines,
21 that they are not subject to your DOT regulations?

22 A. If it is a recreational vehicle, yes.
23 But when it is marked as a commercial motor vehicle,
24 it is not a recreational vehicle at that time.

25 MR. RAILING: That's all, your Honor.

1 MR. REILLY: Your Honor, if I might ask
2 one clarifying question?

3 EXAMINER STENMAN: You may.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Reilly:

7 Q. Inspector Bays, if you know, a vehicle
8 traveling across state lines that is going between
9 two homes but in between the vehicle performs a
10 mercantile function, it drops off a load, for this
11 case somebody stops and does some construction work
12 along the way, does that make the vehicle a
13 commercial motor vehicle?

14 A. It does.

15 MR. REILLY: Thank you.

16 EXAMINER STENMAN: Do you have any
17 follow-up?

18 MR. RAILING: Not at this time.

19 - - -

20 EXAMINATION

21 By Examiner Stenman:

22 Q. Officer, you said you placed Mr. Railing
23 out of service?

24 A. Uh-huh.

25 Q. Did he remain out of service for the full

1 10 hours, or did you let him go? Do you remember?

2 A. He should have remained out of service.
3 I left the rest area to go on to complete my day, so
4 I couldn't tell you if he stayed or not to be honest
5 with you.

6 Q. Okay. We briefly talked about a
7 recreational vehicle. What would that -- what
8 would -- what would constitute a recreational
9 vehicle?

10 A. Recreational vehicles are campers, vans,
11 things that -- pretty wide description. From
12 motorcycles to airplanes, just about anything can
13 fall under a recreational vehicle but there are
14 things that distinguish whether it's a commercial
15 motor vehicle.

16 If it was -- if it has company markings,
17 if it is being used in commerce, you can take your
18 personal car and be a commercial motor vehicle this
19 afternoon if you were doing things in commerce. You
20 wouldn't necessarily have to have markings and things
21 on your personal vehicle unless you start crossing
22 state lines, hauling hazardous materials, things like
23 that so any vehicle can be either recreational or
24 commercial. It just depends on the situation.

25 Q. And are you saying the markings alone can

1 make it a CMV?

2 A. Not alone but it indicates that it's a
3 probability and then when you do your driver
4 interview, things like that, and then you look at a
5 load, if you are seeing construction advertisement on
6 the sides of the vehicle and construction equipment
7 inside the vehicle, I would say they are probably
8 doing construction.

9 Q. Was there any furniture in the vehicle?

10 A. The only thing I recall from the
11 inspection there was a bunk in the front of the
12 leading vehicle that someone might stay in while on a
13 construction site or something like that. But I did
14 see some cases of pop, if I recall correctly, some
15 tools, carts kind of things, but I don't recall
16 seeing any furniture per se.

17 EXAMINER STENMAN: Okay. All right.

18 MR. RAILING: Your Honor.

19 EXAMINER STENMAN: Thank you.

20 MR. REILLY: Your Honor, we would move
21 the introduction of Staff Exhibit 1 and Staff
22 Exhibits 1A through 1K, I think it is, whatever all
23 the pictures are.

24 EXAMINER STENMAN: Do you have any
25 objection?

1 MR. RAILING: No, ma'am.

2 EXAMINER STENMAN: Staff Exhibit 1 and
3 Staff Exhibits 1A through 1K will be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 MR. REILLY: Thank you, your Honor. And
6 we would call John Canty.

7 - - -

8 JOHN J. CANTY

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

11 DIRECT EXAMINATION

12 By Mr. Reilly:

13 Q. Good morning, Mr. Canty. Would you
14 introduce yourself to the Bench with your name and
15 business address and your position.

16 A. Yes. John J. Canty, C-A-N-T-Y, I'm the
17 Assistant Chief of the Compliance Division of the
18 Transportation Division of the Public Utilities
19 Commission of Ohio. The address is 180 East Broad
20 Street, Columbus, Ohio 43215.

21 Q. Mr. Canty, could you just generally
22 describe your duties of your position.

23 A. Yes. Generally I supervise the employees
24 who are responsible for reviewing the inspection
25 reports and the violations that are noted on them and

1 sending out the violation notices to the responsible
2 parties, conducting conferences, and the follow-up
3 that goes along with that, sending out settlement
4 agreements, and things to close up the case.

5 Q. And how long have you been doing this?

6 A. Approximately 17 years.

7 Q. So essentially the staff -- the PUCO's
8 staff compliance activities, in fact, that bring us
9 here today are under your general supervision?

10 A. Yes.

11 Q. And did you have a -- does the staff's
12 activities that's under your general supervision
13 involve identifying appropriate civil forfeitures for
14 violations?

15 A. Yes.

16 Q. Okay. Would you describe for -- no, back
17 up.

18 The Commission has rules that identify a
19 procedure for assessing a civil forfeiture, does it
20 not?

21 A. That's correct.

22 Q. Okay. Are you familiar with those rules?

23 A. Yes.

24 Q. Would you describe what the procedure is
25 for us generally?

1 A. Generally an inspection report is written
2 up in the field, comes into our office
3 electronically, is uploaded from the investigator's
4 laptop, goes through a couple of different interfaces
5 and ends up in our division. There's a computer
6 program which reviews those violations.

7 We have a fine schedule that has been
8 established and been in use for many years. The
9 computer automatically assesses those fines according
10 to the fine schedule. We review that, those letters,
11 before they are printed and mailed out.

12 Q. Excuse me. What letters are printed and
13 mailed out?

14 A. The -- our rules require that we send a
15 notice of intent to assess civil forfeiture to the
16 party identified in the inspection report.

17 Q. And is someone offered an opportunity for
18 a discussion to present their views at that point in
19 time?

20 A. Yes. Under the rules they have the
21 ability to either pay the fine or to request a
22 conference and contest the violations.

23 Q. Does that -- do the -- does the letter
24 that's sent out to a respondent inform them of that
25 option?

1 A. Yes.

2 Q. Okay. Then what happens?

3 A. At that point the party can either pay
4 the fine or request a conference. And in this case I
5 believe that a conference was requested, was
6 conducted, and another letter is sent out following
7 that conference to summarize our decision from that
8 conference, whether we will continue to hold that
9 person responsible for the fine or if there have been
10 any mitigating circumstances presented in conference.

11 Q. And what is the letter that's sent out
12 after the conference call?

13 A. It's referred to as a Notice of
14 Preliminary Determination.

15 Q. And what does the -- does the respondent
16 have any options after receiving a Notice of
17 Preliminary Determination?

18 A. Yes. Once again, they have the option to
19 either pay the fine or they can request an
20 administrative hearing.

21 Q. And they are notified of that in the
22 Notice of Preliminary Determination?

23 A. Yes.

24 Q. Okay. If you know, was that process
25 followed in this case?

1 A. Yes, it was.

2 Q. Okay. Is that process -- is that
3 procedure that you've just described though that was
4 followed in this case, that is consistent with the
5 recommended procedure adopted by the Motor Vehicle
6 Safety Alliance?

7 A. Yes, it is.

8 Q. Could you tell us what the Motor Vehicle
9 Safety Alliance is?

10 A. It is a group of states, regulatory
11 agencies, that has the authority to make
12 recommendations to what fines should be on a uniform
13 basis across the states.

14 Q. Okay. Mr. Canty, there is a document on
15 the witness stand marked as Staff Exhibit No. 2 for
16 identification purposes. Could you find that for me,
17 please. At least I hope it's up there.

18 A. Yes.

19 Q. Okay. Would you tell me what that is?

20 A. Yes. That is a Notice of Preliminary
21 Determination dated June 20, 2011, regarding Case
22 No. OH3257001020C. It is addressed to Mr. William
23 Railing at Konrad Construction.

24 Q. Okay. Is that the Notice of Preliminary
25 Determination to Konrad Construction involving this

1 case?

2 A. Yes, it is.

3 Q. Okay. Konrad Construction is the LLC
4 involved, correct?

5 A. Correct.

6 Q. Okay. Now, just a couple -- just so we
7 understand some of the information in the letter,
8 under the title Notice of Preliminary Determination
9 there is a case number that you just read. Does that
10 line up with anything?

11 A. Yes. That corresponds with Staff Exhibit
12 1, is the report number or the inspection number on
13 that Exhibit 1 which identifies the inspection
14 conducted on March 16 of 2011.

15 Q. Okay. Now, dropping down in the letter
16 there is a column marked "Code" and a column marked
17 "Violation." Could you tell us what's shown in
18 there?

19 A. Yes. There are three violations noted
20 there. It gives the code section and then a short
21 violation description. Those are the violations that
22 we are notifying Konrad Construction that we intend
23 to assess against the company in the amount of \$650.

24 Q. Okay. Now, there is another document up
25 there marked Staff Exhibit No. 3. If you would find

1 that for me, please.

2 A. Yes.

3 Q. Could you tell me what that is?

4 A. That is a very similar document. It is
5 also a Notice of Preliminary Determination with the
6 same date, same case number with the exception that
7 the number ends in D for driver and this is directed
8 to Mr. William Railing himself as the driver, not as
9 the company. And as in the first letter we talked
10 about, Staff Exhibit 2, this notifies the driver the
11 conference was held, it lists two violations that we
12 intend to assess the driver with, a total amount of
13 \$200.

14 Q. Okay. So we have two violations involved
15 in this case, one of them involving the LLC and one
16 of them involving the driver?

17 A. Yes.

18 Q. Two groups of violations, excuse me.
19 Okay. On the -- also on the witness stand there is a
20 document marked Staff Exhibit No. 4. Could you find
21 that for me, please.

22 A. Yes.

23 Q. And could you tell me what that is.

24 A. Yes. That is the fine schedule that I
25 was referring to earlier which lists the various

1 violations, groups of violations, that can be found
2 during the roadside inspection, groups them -- it
3 groups them into group 1, 2, 3, or 4. It has a fine
4 amount listed depending on how many of each violation
5 and each group are found. And then the -- that's the
6 first two pages.

7 Then the subsequent seven or so pages
8 list the violations separately with the dollar amount
9 indicated for each violation, for each violation that
10 is not a group 1, 2, or 3 violation, the dollar
11 amounts listed only for group 4 violations that have
12 a varying amount as opposed to the group 1, 2, or 3
13 violations.

14 Q. Okay. If we can back up so we are --
15 just so we are clear on the information provided in
16 Staff Exhibit No. 4, if we could drop back to the
17 first page.

18 A. Yes.

19 Q. And just using -- we have a group
20 identification and that's 1 through 4 that you have
21 just been talking about, correct?

22 A. Correct.

23 Q. And then we have a "Violations" box,
24 correct?

25 A. Correct.

1 Q. And what's shown in there?

2 A. In group 1 it lists categories of
3 violations we discovered such as brakes, tires,
4 steering, record of duty status, things of that
5 nature.

6 Q. And in the final group, the final box,
7 there's -- it says "Fine." What's shown in there?

8 A. The fine amount, if there is one group 1
9 violation on the inspection, the fine would be \$100.
10 If there are two violations that fall in a group 1,
11 the fine would be 250 and on and on.

12 Q. Okay. Now, the violations involved in
13 this case, if you could direct us -- if you could
14 identify where in Staff Exhibit No. 4 we might find
15 them. If I could direct your attention to page 3.

16 A. Yes.

17 Q. I notice 390.21(B) is one of the
18 violations against the carrier. Is that shown
19 anywhere on the page?

20 A. 390.21.

21 Q. (B).

22 A. (B), yes, it's on here, if I can focus
23 right. There we go. That is identified on page 3,
24 390.21(B). Following that it says 4C. So that is
25 category 4, violation C is against the carrier, gives

1 a brief description, carrier/USDOT not displayed and
2 that is a \$100 fine.

3 Q. And then two -- let's see, also against
4 the carrier, this is 392.2UCR, if I can direct your
5 attention to the third listing from the bottom on
6 page 3. Is that shown there?

7 A. Yes. It's also, as you said, the third
8 violation at the bottom of page 3. It is identified
9 as a 4C, so it's category 4, and C means that it's
10 held against the carrier, unified carrier
11 registration violation, that is a \$500 fine.

12 Q. And then the last violation against the
13 carrier is 393.43. If I could direct your attention
14 to page 7 of Staff Exhibit No. 4, is that shown
15 anywhere there?

16 A. Yes. That is about halfway down the
17 list. 393.43, that is a 2C so that is a violation of
18 group 2, C stands for carrier. That gives a brief
19 description of the tractor protection valve missing
20 or inoperative.

21 Q. Okay. And the amount involved with that
22 violation would be set -- would be established by the
23 computer pursuant to the -- to the fine column that
24 we discussed on -- regarding the first page?

25 A. Correct.

1 Q. Okay. Now, regarding the driver, 395.8A,
2 if I might direct your attention to page 9, just a
3 little over halfway down.

4 A. Yes. That's identified as a 1D so group
5 1, D stands for driver, brief description, logbook
6 not in driver's possession.

7 Q. And since this is a group 1 violation,
8 it -- the computer assigns a civil -- a proposed
9 civil forfeiture according to the fine column that
10 you previously discussed --

11 A. Correct.

12 Q. -- in the first page.

13 A. Correct.

14 Q. Okay. And then 391.41A would be -- if I
15 could direct your attention to page 3.

16 A. Yes. That is about three-fourths of the
17 way down the page. That's identified as a 4D so it
18 is a group 4, D for driver, no medical certificate on
19 driver's possession. That's a \$100 fine.

20 Q. Okay. Tell me, Mr. Canty, is Staff
21 Exhibit No. 4 and the violations that were assessed
22 pursuant to it consistent with the recommended fine
23 or penalty schedule adopted by the Commercial Motor
24 Vehicle Safety Alliance?

25 A. Yes, it is.

1 MR. REILLY: We have nothing further,
2 your Honor.

3 EXAMINER STENMAN: Do you have any
4 questions?

5 MR. RAILING: No, ma'am.

6 MR. REILLY: Your Honor, we move the
7 introduction of Staff Exhibits 2, 3, and 4.

8 EXAMINER STENMAN: Any objections?

9 MR. RAILING: No, ma'am.

10 EXAMINER STENMAN: Staff Exhibits 2, 3,
11 and 4 will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 MR. REILLY: And with that staff would
14 rest.

15 EXAMINER STENMAN: Thank you.

16 MR. REILLY: Thank you, Mr. Canty.

17 EXAMINER STENMAN: Thank you.

18 All right. Mr. Railing, this is your
19 opportunity to present your case. Do you want to
20 come on up to the witness stand? If you have any
21 exhibits, you want to bring those with you. And if
22 you have copies for counsel, you may want to provide
23 them now.

24 MR. REILLY: Just for the record, your
25 Honor, staff has no objection to the -- if it's

1 needed for the record, to the request for
2 administrative hearing that Mr. Railing filed on
3 April 4 as it appears in the docket.

4 EXAMINER STENMAN: Okay.

5 MR. RAILING: Do you need a copy also,
6 your Honor?

7 EXAMINER STENMAN: I do.

8 MR. RAILING: Steve, did I give you more
9 than one copy?

10 MR. REILLY: I don't know.

11 EXAMINER STENMAN: I'll need one and then
12 the court reporter will need one also.

13 MR. RAILING: Okay. Not a problem. Was
14 there more than one?

15 EXAMINER STENMAN: Let's go off the
16 record for a moment.

17 (Discussion off the record.)

18 EXAMINER STENMAN: All right. Let's go
19 back on the record.

20 - - -

21 WILLIAM RAILING

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

24 DIRECT EXAMINATION

25 EXAMINER STENMAN: Go ahead and have a

1 seat and if you just want to start giving your
2 statement, and as you reference these items, we'll
3 mark them as exhibits.

4 THE WITNESS: Thank you. Your Honor, I
5 was, in fact, on March 17, I believe it was -- or
6 16th traveling through the state of Ohio. I was in
7 my recreational vehicle which is a 22-foot box truck
8 that I converted into a recreational vehicle. It has
9 windows, doors, plumbing and electric, sleeping
10 bunks, et cetera.

11 I had stopped previously in Millers --
12 Millersport, Ohio, to fuel up and on the map that is
13 the first designation in Columbus for \$118.54. That
14 will become significant because it's going to show a
15 timeline of where I was traveling and when I was
16 traveling.

17 EXAMINER STENMAN: Okay. And this map,
18 can we mark that as Respondent Exhibit 1? Thank you.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 A. That would be wonderful. Following my
21 fuel stop I traveled through Columbus and was pulled
22 over to the west of Columbus by the officer who
23 initiated the -- shockingly to me initiated the exam
24 and inspection. I told him I was on my way to
25 Indianapolis which was accurate. And give me one

1 second, I'm sorry.

2 EXAMINER STENMAN: Take your time.

3 THE WITNESS: The picture in Exhibit 1F
4 shows what he described as a cylindrical item. That
5 is, in fact, a log splitter that was delivered to my
6 buddy in Indianapolis following my stop of the
7 inspection. The -- which we ought -- the -- my
8 credit card statement shows a series of purchases and
9 shows the dates of fuel purchases and we need to --
10 that needs to be an exhibit number. Would that be an
11 R-2, ma'am?

12 EXAMINER STENMAN: Where is that?

13 THE WITNESS: It's in your packet in
14 your -- under the -- that's it.

15 EXAMINER STENMAN: Okay. This is a
16 Capital One statement?

17 THE WITNESS: That is correct.

18 EXAMINER STENMAN: And it's three pages?

19 THE WITNESS: It should be two pages,
20 that's correct.

21 EXAMINER STENMAN: That's going to be
22 marked as Respondent Exhibit 2.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 THE WITNESS: And that would show my
25 first purchase from Millersport, Ohio, on March 16

1 followed by a second purchase on March 16 in
2 Champaign, Illinois, which is also on the map of R-1
3 which would have been following my brief stop in
4 Indianapolis to drop off the log splitter, and then
5 it continues on to Kellogg, Iowa, which is just east
6 of Des Moines, \$69, and then on to Gretna which is
7 near Omaha and that might have dropped to a different
8 day.

9 Let me see what it says. Gretna was on
10 the 17th so that was early in the wee hours
11 apparently, after midnight on the 17th.

12 Then on the last page of that package,
13 ma'am, is a letter from a Phillip Murray, a
14 physician. I would like that marked as R-3, if you
15 would, please.

16 EXAMINER STENMAN: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 THE WITNESS: Dr. Philip Murray happens
19 to be a buddy of mine and works with my brother in
20 Wheeling. He is a hospice physician, an avid
21 birdwatcher, and happenstance happened to be in
22 Nebraska when I was going through watching the cranes
23 migrate apparently.

24 Anyhow he states I, in fact, did see him
25 on the morning of March 17, and I was in Nebraska on

1 my way from my home in West Virginia to my home in
2 Victor, Idaho.

3 The timeline then continues from Kearney,
4 Nebraska, to North Platte to Cheyenne all on the 17th
5 to Rock Springs, Wyoming, and finally to Swan Valley,
6 Idaho, all documented on the credit card pages and
7 date stamped on the credit card pages.

8 And, lastly, R -- that would be now R-4
9 apparently would be an electric company statement
10 showing my name and address in Victor, Idaho, which
11 is where I was going, from Valley Grove, West
12 Virginia, to my home in Victor, Idaho, to perform
13 construction work on my own house in Victor, Idaho,
14 and that was what the construction materials in my
15 vehicle and in my trailer were for plus there was
16 lots of furniture under blankets and in the back of
17 the RV which was never looked at.

18 So I was, in fact, going through Ohio in
19 that truck and that trailer in my personal RV from my
20 home to my home.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 EXAMINER STENMAN: Okay. And, finally,
23 we have this letter here that you wrote to the Public
24 Utilities Commission.

25 THE WITNESS: That was early on.

1 EXAMINER STENMAN: And that can be marked
2 as Respondent Exhibit 5 just for charity.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 THE WITNESS: Thank you, yes, ma'am.

5 EXAMINER STENMAN: That letter is dated
6 April 3, 2011.

7 THE WITNESS: That was after the first
8 phone interview, I believe, or before, one of the
9 two. I don't recall.

10 EXAMINER STENMAN: Okay. Do you have
11 anything else you want to add?

12 THE WITNESS: Yes, the fact that I was
13 traveling from my home in Valley Grove, West
14 Virginia, to my home in Idaho and the timeline
15 showing that it was, in fact, tight at best. I was
16 just driving my recreational vehicle from my home to
17 my home. I happened to have my tools in it. I had
18 furniture in it, and I did drop off the log splitter
19 to my buddy in Indiana.

20 EXAMINER STENMAN: Okay. Mr. Reilly, do
21 you have any questions?

22 MR. REILLY: Just a few. Thank you, your
23 Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Reilly:

Q. Just so I understand Konrad Construction, that's a -- that's your LLC, right?

A. It is my LLC licensed in the State of West Virginia.

Q. You are in the construction business.

A. I am.

Q. Okay. What kind of?

A. Residential.

Q. Okay. Is it -- okay. And you use the truck and the trailer with your LLC's name on it in your construction business, correct?

A. Just the trailer, not the truck. And that's locally. I only do business in West Virginia. Typically pulled by my pickup truck, never by my RV.

Q. Okay. Now, after -- after the inspection and Inspector Bays left, did you wait the 10 hours at the truck stop?

A. That's a good question and an interesting one. The inspector when he and I were chatting in his vehicle during and after stated that according to law, I was supposed to stay there. And then he said I have an eye appointment east of here. I'm not going to tell you what to do, but I won't be around.

1 So, no, I did not. I traveled on.

2 Q. Okay. But you're not saying Inspector
3 Bay said it was okay for you to leave?

4 A. I would say with a wink and a nod
5 absolutely did.

6 MR. REILLY: May I have a moment, your
7 Honor?

8 EXAMINER STENMAN: You may.

9 MR. REILLY: We have nothing further.

10 - - -

11 EXAMINATION

12 By Examiner Stenman:

13 Q. You said you dropped off the log splitter
14 to your friend in Indiana?

15 A. Yes, to the northwest side.

16 Q. What's the origin of the log splitter?
17 Was that your personal?

18 A. Oh, yeah.

19 Q. Okay.

20 A. It's now out in Idaho.

21 Q. So you dropped it off in Indiana for him
22 to use.

23 A. Right, split some logs.

24 Q. You were picking it back up?

25 A. I have been out several times.

1 Q. And moved on to Idaho.

2 A. Yes, ma'am.

3 Q. Okay. There was furniture in the
4 trailer?

5 A. Absolutely, up at the nose. Now, was it
6 full of furniture? Absolutely not. There were
7 mission-style coffee tables, end tables in the back
8 of the truck. They were in the bunks because I only
9 slept in the front bunk. There were more end tables.
10 My wife was trying to get ahead of the curve so
11 moving furniture out. They were under furniture
12 blankets, and I think some of the pictures show
13 furniture blankets, but they were not moved nor
14 was -- the RV was not entered.

15 Q. Okay.

16 A. I don't think he entered the truck
17 either. He just looked inside the trailer.

18 Q. Okay. When you were referring to the RV,
19 you were referring to the truck portion?

20 A. The truck, that is correct.

21 EXAMINER STENMAN: Okay, okay. With
22 respect to your exhibits would you like to move for
23 the admission of Exhibits 1 through 5?

24 MR. RAILING: I do.

25 EXAMINER STENMAN: Any objections? No

1 objections?

2 Respondent's Exhibits 1 through 5 will
3 been admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER STENMAN: Quickly talking about
6 Exhibit 2, it's a credit card bill and Respondent
7 Exhibit 4 which is the electric bill, is there any
8 confidential information because these are publicly
9 documented?

10 MR. RAILING: That's a great question. I
11 don't see the electric bill. I think the credit card
12 has just the last four digits. No, ma'am.

13 EXAMINER STENMAN: So these will be
14 publicly docketed then.

15 MR. RAILING: Yes, ma'am.

16 EXAMINER STENMAN: All right. Thank you.

17 MR. REILLY: Your Honor, we would re-call
18 Inspector Bays for just a brief few questions.

19 EXAMINER STENMAN: Okay. I won't reswear
20 you, but I will remind you you are still under oath.

21 THE WITNESS: Uh-huh.

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DENNIS BAYS

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

FURTHER DIRECT EXAMINATION

By Mr. Reilly:

Q. Inspector Bays, you were here for
Mr. Railing's statements?

A. I was.

Q. Okay. Now, he said at the conclusion of
the inspection -- well, first of all, did you ever
tell him he did not have to wait at the truck stop
for 10 hours, a minimum of 10 hours?

A. I did not. I advised him he had to stay
for 10 hours.

Q. Did you ever say anything from which a
reasonable person could have inferred that he did not
have to stay the full time?

A. Not that I recall.

Q. Okay. Did you tell him that you had an
eye appointment with a wink?

A. No.

MR. REILLY: Nothing further.

EXAMINER STENMAN: Questions?

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FURTHER CROSS-EXAMINATION

By Mr. Railing:

Q. Do you recall having an eye appointment that day?

A. No. As a matter of fact, I always have my eye appointments in November because it's the week before deer season so I always get new contacts so I can go deer hunting. Good reason to have an eye appointment in November.

Q. It would be except you said -- are you saying you didn't have one that day?

A. I did not, no.

MR. RAILING: Nothing further, your Honor.

MR. REILLY: Nothing further, your Honor.

EXAMINER STENMAN: Thank you.

MR. REILLY: I do have one more thing further, if you don't mind.

EXAMINER STENMAN: Okay.

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FURTHER REDIRECT EXAMINATION

By Mr. Reilly:

Q. Inspector Bays, have you prior to the inspection on March -- in March of 2011, had you ever met Mr. Railing before?

1 A. No.

2 Q. Have you talked to him since?

3 A. No.

4 Q. Okay. You haven't ever had any
5 interaction with him?

6 A. No.

7 MR. REILLY: Okay. Thank you.

8 EXAMINER STENMAN: Any follow-up
9 questions?

10 MR. RAILING: No, ma'am.

11 EXAMINER STENMAN: Thank you. Is there
12 anything else to come before us?

13 MR. REILLY: Staff has nothing further,
14 your Honor.

15 MR. RAILING: No, ma'am.

16 EXAMINER STENMAN: All right. Then we
17 are adjourned, and the decision of the Commission
18 will be forthcoming.

19 (Thereupon, the hearing was concluded at
20 11:11 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, October 18,
2011, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5430)

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Case No(s). 11-4472-TR-CVF

Summary: Transcript Transcript of William Railing and Konrad Construction hearing held on 10/18/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.