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In the Matter of:

Larry J. Bischoff

Trucking, LLC

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: Case No. 11-5484-TR-CVF
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Before Kerry K. Sheets, Hearing Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 10:00 a.m. on Thursday, January 26, 2012.

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APPEARANCES:

Mike DeWine, Ohio Attorney General
By Steven L. Beeler, Esq.
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Yemc Law Offices
Michael J. Yemc, Jr., Esq.
600 South High Street, Suite 200
Columbus, Ohio 43215

On behalf of the Respondent.

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Thursday Morning Session,
January 26, 2012.

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HEARING EXAMINER SHEETS: I'm going to go ahead and call the hearing. The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 11-5484-TR-CVF in the Matter of Larry J. Bischoff Trucking, LLC. My name is Kerry Sheets. I'm the Attorney Examiner for the Commission, and I've been assigned to hear this case.

May I now have the appearances of the parties, please, starting with the Staff.

MR. BEELER: On behalf of the Staff, Ohio Attorney General Michael DeWine, Steven Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215.

HEARING EXAMINER SHEETS: Thank you. Now for the Respondent.

MR. YEMC: Yes. Thank you. On behalf of the Respondent, Larry J. Bischoff Trucking, my name is Michael Yemc, Supreme Court No. 0065390, 600 South High Street, Columbus, Ohio 43215.

HEARING EXAMINER SHEETS: Are there any preliminary matters to take care of this morning?

MR. BEELER: Yes, we do, Your Honor. I've

1 spoken with Respondent's counsel, and he's willing to
2 stipulate to the fine amounts of \$90. He's willing to
3 stipulate that that fine is consistent with the
4 recommended fine or penalty schedule and recommended
5 civil penalty procedure adopted by the Commercial Motor
6 Vehicle Alliance.

7 HEARING EXAMINER SHEETS: Very good.

8 MR. YEMC: That's correct.

9 HEARING EXAMINER SHEETS: Okay. Is there
10 anything else to take care of?

11 MR. BEELER: No. That's my only preliminary
12 matter, Your Honor.

13 HEARING EXAMINER SHEETS: Any witnesses to
14 call?

15 MR. BEELER: Yes. Staff calls Officer Rob
16 Divjak.

17 OFFICER ROBERT D. DIVJAK,
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 HEARING EXAMINER SHEETS: Be seated.

21 DIRECT EXAMINATION

22 By Mr. Beeler:

23 Q. Good morning, Officer Divjak.

24 A. Morning.

25 Q. Please state your full name for the record

1 and spell it out, if you would.

2 A. Robert D. Divjak, D-i-v-j-a-k.

3 Q. Where are you employed?

4 A. Ohio State Highway Patrol, Findlay District
5 Headquarters.

6 Q. Okay. What is your position within the
7 Highway Patrol?

8 A. Motor Carrier Enforcement Inspector.

9 Q. How long have you been with the patrol?

10 A. Since 1986.

11 Q. What are your duties in that capacity at
12 patrol?

13 A. Do commercial vehicle inspections.

14 Q. What sort of training do you have in that
15 area?

16 A. Numerous training, how to do the inspections,
17 doing the inspection, economic and safety and --

18 Q. Is that a continuing education? Is that a
19 yearly --

20 A. Yes, sir.

21 Q. -- responsibility?

22 A. Yes.

23 Q. Without getting into any specifics about the
24 violations yet, can you please just describe the
25 inspection process, just generally?

1 A. We make the stop and radio in the stop, the
2 plate information and location, then get out and go up
3 to speak with the driver, explain to him the inspection
4 process, and then after the inspection is done, take
5 the paperwork back to the vehicle and do the inspection
6 on the computer.

7 Q. Okay. Just generally, what are the reasons
8 for motor carrier inspections?

9 A. Keep the highways safe.

10 Q. So the chief reasoning is to protect the
11 traveling public of Ohio; correct?

12 A. Yes, sir.

13 MR. BEELER: May I approach, Your Honor?

14 HEARING EXAMINER SHEETS: You may.

15 MR. BEELER: I've marked, previously marked
16 as Staff Exhibit 1, this is the Driver/Vehicle
17 Examination Report.

18 HEARING EXAMINER SHEETS: Thank you.

19 Q. Officer Divjak, do you recognize this
20 document?

21 A. Yes.

22 Q. Is this document a patrol record?

23 A. Yes.

24 Q. Is this document kept in your ordinary course
25 of business?

1 A. Yes.

2 Q. Is it the practice of the patrol to make this
3 report?

4 A. Yes.

5 Q. Do you report on matters observed pursuant to
6 a duty imposed by law as to which there was a duty to
7 report?

8 A. Yes.

9 Q. Is this document in the same condition as
10 when you prepared it?

11 A. Yes.

12 Q. Was the reason for you producing this report
13 an inspection of the motor carrier vehicle owned by
14 Larry Bischoff Trucking, LLC?

15 A. Yes.

16 Q. Do you remember this inspection?

17 A. Yes.

18 Q. Can you tell me, just briefly tell me the
19 date and time of this report?

20 A. I believe it was June 15th at 1400 hours.

21 Q. Okay. And you prepared this report at the
22 scene; correct?

23 A. Yes.

24 Q. Can you describe how you do that?

25 A. I gather the information from the driver,

1 bring it back and enter it into the computer.

2 Q. And you actually print it off at the site?

3 A. Correct.

4 Q. Does the driver get a copy of the report?

5 A. Yes.

6 Q. Okay. Turning to the actual reports, are
7 there any violations listed on this report?

8 A. Yes.

9 Q. What are they?

10 A. The flat tire, exposed fabric, and the rim
11 was on the roadway, and another one, a tire less than
12 2/32nds, 0/32nds tread, and gross vehicle weight
13 overload.

14 Q. Okay. I notice in that same field that
15 you're in right now listing as a violation that there's
16 the acronym OOS. Can you tell me what OOS means?

17 A. Out-of-service vehicle.

18 Q. OOS, that would be just out of service?

19 A. Yes.

20 Q. Which violations on the report are
21 out-of-service violations?

22 A. The 393.75(a) and the 393.75(c).

23 Q. Turning to the specific violations now and
24 beginning with 49 CFR 393.75(a), that's the flat tire
25 or fabric exposed, could you please describe that

1 violation and the scene that day, as you remember it?

2 A. In reference to me making the stop?

3 MR. BEELER: At this time, Your Honor, the --
4 we drew a diagram, prepared a diagram up on the easel
5 there.

6 HEARING EXAMINER SHEETS: All right.

7 Q. You can go ahead and turn the page and
8 explain the situation. It might be a little small for
9 you. We just drew it out.

10 A. There it is.

11 Where would you like me to stand, sir?

12 HEARING EXAMINER SHEETS: Stand over here,
13 would be fine.

14 A. Okay. This is west, east. I was in route
15 back to my home after work. I worked the Toledo area
16 that day. As I come around this curve, heading west, I
17 observed the first truck, who was driving slow, so I
18 slowed down to see what was going on. The second
19 truck, I seen that it was driving slow and he was
20 leaning to the left. As I got to the front of that
21 truck, I could see that he had a blown tire. The left
22 rear tire was blown, and it was shredded, and it was
23 running on the road. The rim was on the road, and the
24 tire was just in shreds, so I turned around, and as
25 soon as I was in the process of turning, I turned my

1 overhead lights on, and apparently this first truck
2 seen me with my lights on. He pulled over, and I
3 pulled up behind the second truck. He pulled over
4 (indicating).

5 HEARING EXAMINER SHEETS: To try to make the
6 record clear, the witness is pointing to a diagram of
7 the inspection site.

8 THE WITNESS: Yes, sir.

9 Q. Officer Divjak, this diagram that you're
10 pointing at, although it's not drawn to scale in any
11 way, shape -- in any way, it is a representation of how
12 you observed the scene that day; is that correct?

13 A. Yes, correct.

14 Q. Okay. Just one second here. I think you
15 mentioned it, but where exactly did you first observe
16 the trucks driving in the opposite direction?

17 A. As I was coming westbound, after I had come
18 through this curve, there's a straight stretch, and as
19 soon as I come out of the curve, I could observe the
20 trucks were driving slow. From that, it was the first
21 one I seen.

22 Q. Approximately how far did you observe the
23 truck traveling on the blown tire?

24 A. Approximately a quarter mile.

25 Q. Do you know how long in duration would you

1 have witnessed the truck traveling on the blown tire?

2 A. As soon as I seen it, I made the stop.

3 Q. Okay. I suppose you can have a seat at this
4 point. If you need to use the diagram again, you can
5 use it, but -- so you did observe the vehicle being
6 operated on a blown tire; correct?

7 A. Yes.

8 Q. What were the weather conditions like that
9 day?

10 A. Clear.

11 Q. Do you know what month this was? I think I
12 already asked you that, but --

13 A. June. Yes, you did.

14 Q. How is your eyesight?

15 A. Just need glasses to read.

16 Q. So you wouldn't have had your glasses on that
17 day?

18 A. No.

19 Q. Your vision is fine without glasses; correct?

20 A. Correct.

21 Q. So nothing that day would have obscured your
22 vision; correct?

23 A. Correct.

24 Q. What is your understanding of how the
25 Regulation 49 CFR 393.75(a) works?

1 A. A flat tire or a blown tire, with it
2 shredding like that, it's a safety issue. With that
3 coming off, it could cause an accident, plus it can do
4 damage to the vehicle.

5 Q. So if a truck is operating on a blown tire,
6 is that a violation?

7 A. Yes.

8 Q. You may have already mentioned it when you
9 were explaining the diagram, but did any part -- did
10 any material come off the truck?

11 A. Yes. May I show -- actually, the tire, part
12 of the tire was back west of the stop. There's a
13 curve. It was at the beginning of the curve.

14 Q. Did you actually see the material there?

15 A. Yes, I did. After the inspection, when I
16 moved my own, I seen it on the south side of the road.

17 Q. Was the truck, the vehicle that's subject to
18 this report, was it overloaded?

19 A. Yes.

20 Q. How do you know that it was overloaded?

21 A. When I obtained the shipping papers, I seen
22 the weight on the shipping paper, so at that time I
23 called for the portable scales. The scales came out
24 and weighed both vehicles.

25 Q. Could a truck that's overloaded contribute to

1 a blown tire?

2 A. Yes.

3 Q. And I know -- you said that you actually
4 moved this truck to weigh it?

5 A. Yes.

6 Q. Why did you move the vehicle?

7 A. For a safer location.

8 Q. Show us what --

9 A. Once the trooper got there with the portable
10 scales, the portable scales van -- this is a county
11 road. It's within a quarter mile. It would be the
12 first county road to the north. The van sat up there,
13 and the trooper escorted them, both vehicles, and I
14 followed. We escorted them here to be weighed, and
15 that's the location where the trucks were placed out of
16 service for their out-of-service violations
17 (indicating).

18 Q. Was it safe to move the vehicle?

19 A. Yes, because we had them in tow. We were
20 responsible for getting them off the roadway, because
21 where the trucks were setting, they weren't off the
22 road. They were still partially on the road, and with
23 that curve being there and the scale team being out
24 setting up the scales underneath the axles, it wouldn't
25 be safe to do that at that location.

1 Q. Where you're indicating now that the truck
2 vehicle was weighed, that's off the State Highway 20A
3 or State Road 20A?

4 A. Yes, yes.

5 Q. I think you testified to this already, but
6 how far up the road was the county highway from where
7 you pulled them over?

8 A. I would say within a quarter of a mile. It
9 would be the first county road to the north, and then
10 directly across from it there was an LP gas company
11 there (indicating).

12 Q. You can have a seat there. In respect to
13 this, the flat tire or fabric exposed violation, what
14 sort of safety risks does this create for other Ohio
15 drivers?

16 A. Well, it makes it unsafe. If that tire come
17 off the rim, which part of it was already off, and if
18 that comes off and hits a car or somebody swerves to
19 miss it, and also it can damage the rest of the truck.
20 With that rubber flying off there, it does do a lot of
21 damage to the suspension and whatever that rubber hit.

22 Q. Okay. So it is your testimony, according to
23 your report, that the vehicle was operating on a blown
24 tire, flat tire with fabric exposed in violation of the
25 reg.; correct?

1 A. Yes.

2 MR. BEELER: May I approach, Your Honor?

3 HEARING EXAMINER SHEETS: You may.

4 MR. BEELER: These are a series of pictures
5 marked Staff Exhibit 2 through 7.

6 HEARING EXAMINER SHEETS: Is the diagram
7 going to be an exhibit?

8 MR. BEELER: Yes. I will mark it as Staff
9 Exhibit 8.

10 HEARING EXAMINER SHEETS: Eight.

11 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION
12 PURPOSES.)

13 Q. Officer Divjak, just take a second to flip
14 through these pictures, take a look at them. Do you
15 recognize these pictures?

16 A. Yes.

17 Q. Did you take these pictures?

18 A. Yes.

19 Q. Do these pictures accurately represent the
20 scene at the day of the inspection?

21 A. Yes.

22 Q. Starting with the Staff Exhibit 2, what does
23 this picture show?

24 A. It shows the license plate, three ID lights,
25 tail lamp, and the left brake drum, the rim, part of

1 the right brake and tire.

2 Q. It's your testimony that you pulled this
3 vehicle over; correct?

4 A. Yes.

5 Q. The vehicles were not already stopped prior
6 to?

7 A. Correct.

8 Q. Did the trucks have any safety triangles out?

9 A. No.

10 Q. Looking at the picture and where the white
11 line is in relation to the truck, does that indicate
12 that the truck was already pulled over?

13 A. No.

14 Q. Why not?

15 A. If he was pulled over, he would be off the
16 roadway, and the left side of the truck is still out on
17 the roadway. When you pull over, you pull all the way
18 off the road where it's safe.

19 Q. One second here. Is it your practice to do
20 an inspection on vehicles that are already pulled over?

21 A. No. I have never done so in my career.

22 Q. So you've never --

23 A. No.

24 Q. -- done an inspection when they're already
25 pulled over?

1 A. No, sir.

2 Q. So is it your testimony that this picture
3 shows a likelihood that you --

4 MR. YEMC: Objection, Your Honor. He keeps
5 leading the witness, telling him what he's testifying
6 to.

7 MR. BEELER: I'll try to rephrase, Your
8 Honor.

9 HEARING EXAMINER SHEETS: Okay. Let's not
10 ask leading questions.

11 MR. BEELER: Okay.

12 Q. Turn to Staff Exhibit 3. What does that
13 picture show?

14 A. The shredded tire and the rim.

15 Q. Okay. Is this the tire that you witnessed
16 the vehicle traveling on?

17 A. Yes.

18 Q. Was that tire in violation?

19 A. Yes.

20 Q. Turn to Staff Exhibit 4. What does this
21 picture show?

22 A. It's the same tire, different view, the
23 condition of the tire, shredded, coming off the rim, a
24 part missing.

25 Q. So that's the same tire as in Staff Exhibit

1 3?

2 A. Correct.

3 Q. And you witnessed the truck traveling on that
4 tire; correct?

5 A. Correct.

6 Q. Before we go back to the pictures, we're
7 going to go back to your report and talk about the
8 violation under 393.75(c). Please describe this
9 violation generally.

10 A. Any tire with less than 2/32nds, other than
11 the steer tire, is in violation, and the tire in
12 question was 0/32nds tread.

13 Q. How did you make that observation that it was
14 0/32?

15 A. Visibly looking at the tire, and I have a
16 tread depth gauge, also, that I use.

17 Q. You used a tread depth gauge?

18 A. Yes.

19 Q. Have you inspected this type of violation
20 before?

21 A. Yes.

22 Q. So what is your understanding of how that
23 regulation works?

24 A. It's a safety violation, that a tire in that
25 condition, it could blow at any time. If there's no

1 tread on it, the road conditions, it's an unsafe tire.

2 Q. Are worn tires something that occurs over
3 time?

4 A. Yes.

5 Q. Are worn tires a maintenance issue?

6 A. Yes.

7 Q. What sort of safety risk does a worn tire
8 that's in violation of this reg. create for Ohio
9 drivers?

10 A. It's a safety issue, the same thing, that if
11 it blows out or with no tread on it, if the conditions
12 are right, slick roads, it could cause an accident.

13 Q. So is it your testimony, according to your
14 report, that the tire depth was less than 2/32nds of an
15 inch?

16 A. Yes.

17 Q. Turning to the pictures again, on Staff
18 Exhibit 5, what does this picture show?

19 A. It shows the tire in question.

20 Q. Does it show the tire that's the subject of
21 the tire tread violation?

22 A. Yes.

23 Q. According to the picture, the -- strike
24 that. So is it your testimony that according to the --

25 MR. YEMC: Objection Your Honor. Can the

1 witness please testify and not the Staff?

2 HEARING EXAMINER SHEETS: Yes. You have to
3 ask him a general question.

4 Q. Just turn to Exhibit 6, please. What does
5 this picture show?

6 A. It's the same tire, the 0/32nds tread.

7 Q. How does this picture show that it's -- it's
8 worn?

9 A. You can physically see that it's smooth, and
10 also on a tread depth gauge it would read zero.

11 Q. And I think you already said this, but Staff
12 Exhibit 5 and Staff Exhibit 6, that's the same tire?

13 A. Correct.

14 Q. Turn to Staff Exhibit 7. What does this
15 picture show?

16 A. That shows the company name on the door.

17 Q. Okay.

18 One second, Your Honor.

19 (Discussion off the record.)

20 Q. Back to the first violation, the tire tread
21 and when you were explaining your picture or your
22 drawing, you might have already said this, but did the
23 rim make any markings on the road that you observed?

24 A. Yes, it did.

25 Q. Okay. To sum up, is there anything else that

1 you think is important to note that you have not
2 discussed that you would like the Commission to know
3 for the record?

4 A. Yes. One thing, where the trucks were
5 sitting here, there was not much room at all here. It
6 was a drop-off because it's a hill.

7 HEARING EXAMINER SHEETS: Let the record show
8 that the witness is pointing to the diagram again.

9 A. Yes. There wasn't much of a berm to where
10 you could pull off safely in this area right there
11 (indicating).

12 Q. Who was the driver of the truck?

13 A. Jason Schaffner.

14 MR. BEELER: No further questions, Your
15 Honor.

16 HEARING EXAMINER SHEETS: Excuse me?

17 MR. BEELER: No further questions.

18 HEARING EXAMINER SHEETS: Counsel.

19 MR. YEMC: Yes. Thank you, Your Honor.

20 CROSS-EXAMINATION

21 By Mr. Yemc:

22 Q. Now, Officer Divjak, briefly, you very
23 briefly touched on your training at the State Highway
24 Patrol for vehicle inspections. Did you bring any
25 certifications or anything with you today?

1 A. Yes. Here is two sheets. It got wet on the
2 way here.

3 Q. These aren't really certifications. These
4 are just -- it's just a printout of different -- FMC, I
5 see a food safety -- I don't know what that is, and it
6 gives a date. These aren't actual --

7 A. Those are courses.

8 Q. These are courses, but it's not the
9 certification, is it?

10 A. No.

11 Q. Okay. Now, you drew a diagram up there today
12 which is Staff Exhibit 8. What road is that, the main
13 road?

14 A. 20A.

15 Q. 28?

16 A. 20A.

17 Q. 20A?

18 A. Right.

19 Q. Okay. Where is that at, 20A?

20 A. I don't know how to answer your question.

21 Q. Is it in Franklin County, Fulton County?

22 A. Northern Ohio. It runs two different
23 counties.

24 HEARING EXAMINER SHEETS: The inspection
25 report says Fulton.

1 Q. Okay. This obviously isn't to scale, so we
2 have no idea how -- there are two curves there. What's
3 the distance between those two curves, approximately?

4 A. I would say approximately three-quarters of a
5 mile, in that range.

6 Q. In that range, three-quarters of a mile?

7 A. Approximately, yes.

8 HEARING EXAMINER SHEETS: You're pointing to
9 the diagram, and why don't you point to --

10 THE WITNESS: He was saying from this point
11 to this point (indicating).

12 Is that your question?

13 Q. Yes.

14 HEARING EXAMINER SHEETS: From the gas
15 station to the --

16 THE WITNESS: From this point here to here
17 (indicating).

18 HEARING EXAMINER SHEETS: To the curve of
19 the -- headed westbound. Okay.

20 Q. Now, West Unity is over here; is that correct
21 (indicating)?

22 A. Yes.

23 Q. Now, you testified that you observed the
24 Respondent's trucks traveling for a quarter of a mile?

25 A. It was approximately where the tire blew to

1 this point --

2 Q. So it was --

3 A. -- a quarter of a mile.

4 Q. It was a quarter of a mile from where the
5 tire -- where you saw remnants of the tire, after you
6 did the inspection, to where the trucks were pulled
7 over?

8 A. This distance here I would say was within a
9 quarter of a mile, right here (indicating), where I
10 observed the trucks.

11 Q. So you saw the trucks --

12 HEARING EXAMINER SHEETS: You're pointing to
13 the truck from the beginning of the curve?

14 THE WITNESS: I seen this truck as soon as I
15 come out of the curve here (indicating). It was
16 traveling slow.

17 HEARING EXAMINER SHEETS: The trucks were
18 headed eastbound?

19 THE WITNESS: Yes, sir.

20 Q. Now, you say the second truck was the truck
21 with the blown tire?

22 A. Correct.

23 Q. And you observed them both for a quarter of a
24 mile?

25 A. I seen the first truck first, and then as I

1 passed that truck, I seen the second truck. It was
2 traveling slow, also, and when I got into the --
3 where -- before I come up beside the truck, I could see
4 that the truck was leaning after he come into view from
5 this truck. I could see that that truck was leaning to
6 the left, and I looked down and I seen the tire
7 flopping.

8 Q. Now, you testified that the tire rim made a
9 groove marking on the roadway; is that correct?

10 A. Yes, it did.

11 Q. I'm going to show you Staff Exhibits -- the
12 first four. Is that a picture you took?

13 A. Yes, it is.

14 Q. Okay. And on that picture is there a groove
15 marking from the rim of the wheel?

16 A. Yes.

17 Q. How long is that groove?

18 A. From the end of the tire to the end of the
19 photo.

20 Q. What is that? It's about 16, 18 inches
21 maybe?

22 A. What the camera had in view there.

23 Q. Now I'm going to hand you Staff Exhibit 3.
24 It gives you a little bit better view of what the
25 camera had the ability to capture. Now, Staff Exhibit

1 3 is in front of the tire taking a picture back, which
2 would be where the truck had come from. There's no
3 groove in that picture, is there?

4 A. The tire, as it was flopping over, was making
5 marks. It wasn't a steady groove. It was
6 intermittent. When the tire would flip, it would --

7 Q. The --

8 A. -- make grooves.

9 Q. The only groove that --

10 A. This one --

11 Q. Officer, if you can just answer my
12 questions.

13 A. I'm trying to.

14 Q. If you can just answer my question. I asked
15 you is there a picture of a groove there?

16 A. No. This obstructs the view of the groove.

17 Q. Okay. That 18 -- about 18-inch groove?

18 A. Correct.

19 Q. Now, do you have any other photos of any
20 other grooves in the roadway other than that 18-inch
21 groove?

22 A. No.

23 Q. Okay. I'll grab those back from you. Now,
24 Staff Exhibits 5 and 6 are a little redundant, so I'm
25 just going to hand you five since they're the same --

1 showing you the same tire. Is that the picture of the
2 tire that was actually blown?

3 A. No.

4 Q. That's a different tire on that truck?

5 A. Correct.

6 Q. Which tire was that?

7 A. 4R. It would be on the right side, Axle 4.

8 Q. Axle 4?

9 A. Yes.

10 Q. Okay. Now, are you sure that's not just the
11 casing of that blown tire?

12 A. I'm sure.

13 Q. Did you see any tread come off from this tire
14 back down the roadway at all?

15 A. No.

16 Q. Now, you said there was casing down the --
17 that there was tread down the road. You saw some tread
18 that was --

19 A. Tread of the tire, yes.

20 Q. -- shredded off?

21 A. Yes.

22 Q. Could that be that tire?

23 A. The smooth tire?

24 Q. Yes, the smooth tire. Could it have come
25 from that tire?

1 A. No. No, no. That was worn off -- if it's --
2 comes off in a chunk, you'll see on a tire that --
3 you'll have, where the tire is separated, it come
4 apart. You can tell the difference. A smooth tire is
5 from wear. That is smooth. That's not a tread came
6 off that tire. That's a smooth tire.

7 Q. So you're saying that this smooth tire
8 then -- it couldn't be that the tread actually fell off
9 of it?

10 A. No.

11 Q. It just wore the whole way down to that?

12 A. Correct.

13 Q. Now, after the stop you moved this truck?
14 You had this truck moved?

15 A. The trooper had the truck moved.

16 Q. So one of your coworkers at the State Highway
17 Patrol had the truck moved?

18 A. Correct, for the safety of the scale team and
19 the public.

20 Q. Did that rim get damaged as a result of that
21 move?

22 A. That rim was already damaged.

23 Q. Well, it had -- based on the pictures, Staff
24 Exhibits 3 and 4, how do you say this rim is already
25 damaged (indicating)?

1 A. The rim isn't damaged. It wasn't down as a
2 violation. I misunderstood your question.

3 Q. So the rim in those pictures is not damaged?

4 A. No.

5 Q. Okay. Thank you.

6 A. I'm sorry. I misunderstood your question.

7 Q. That's all right. No problem. Thank you,
8 Officer.

9 Was there any damage to the truck other than
10 the blown tire?

11 A. Damage?

12 Q. Yes. Did the blown tire cause -- you had
13 testified that a blown tire can cause additional damage
14 to the truck. I was just wondering if the Respondent's
15 driver had driven on that tire for a while, if there
16 was any damage to the truck?

17 A. No, there was no damage. And it all depends
18 what the situation is, which way that tire decides to
19 go. They can rip crossmembers out. They can rip
20 taillights off.

21 Q. Now, the drivers of the two trucks, were they
22 still in their vehicles when you stopped them?

23 A. Yes.

24 Q. I have no further questions. Thank you.

25 HEARING EXAMINER SHEETS: Any on redirect?

1 MR. BEELER: Just a couple.

2 REDIRECT EXAMINATION

3 By Mr. Beeler:

4 Q. Mr. Yemc asked you some questions about the
5 tire grooves in the road. Were there any tire grooves
6 that you observed back further on the -- State Highway
7 20A?

8 A. You mean before I got to them?

9 Q. Yes.

10 A. No.

11 Q. No further questions.

12 HEARING EXAMINER SHEETS: Any recross?

13 MR. YEMC: No. Thank you, Your Honor.

14 HEARING EXAMINER SHEETS: You're excused.

15 (Witness excused.)

16 MR. BEELER: At this time I would like to
17 reserve my witness for rebuttal, if needed.

18 HEARING EXAMINER SHEETS: You want to recall
19 him later maybe?

20 MR. BEELER: Yes, if necessary.

21 HEARING EXAMINER SHEETS: Okay. Fine. Do
22 you have any other witnesses today?

23 MR. BEELER: No, Your Honor.

24 HEARING EXAMINER SHEETS: Do you have any
25 witnesses?

1 MR. YEMC: Yes, I do, Your Honor. I'm going
2 to have two witnesses today. The first witness I'm
3 going to call is Keneth Nye.

4 KENNETH B. NYE, JR.,
5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 HEARING EXAMINER SHEETS: Be seated.

8 DIRECT EXAMINATION

9 By Mr. Yemc:

10 Q. Kenneth, could you please state your name and
11 address for the record.

12 A. Kenneth B. Nye, Jr.

13 Q. And what is your address, please?

14 A. 127 -- no. Excuse me. 721 -- yeah, 127 --
15 just a minute.

16 Q. That's all right.

17 A. I don't write myself too many letters.

18 Q. That's all right. Take your time, sir.

19 A. 12721 County Road B, Wauseon, Ohio.

20 Q. Mr. Nye, what do you do for a living?

21 A. I work for Mr. Bischoff there driving truck
22 and mechanic.

23 Q. How long have you been working for Larry
24 Bischoff?

25 A. Since September 1st of 2007.

1 Q. And on June 15th of last year, 2011, at
2 approximately two p.m. in the afternoon, were you
3 working for Larry Bischoff Trucking at that time?

4 A. Yes, sir.

5 Q. Could you tell me what occurred on that date
6 around that time?

7 A. Me and Jason, the other driver, we was headed
8 eastbound on 20A.

9 Q. Now, who is Jason?

10 A. He was the driver of the truck that's in
11 question here.

12 Q. The driver of the truck with the blown tire?

13 A. Yes, sir.

14 Q. Okay. So you were driving -- go ahead. I'm
15 sorry.

16 A. We were driving eastbound, headed back to the
17 shop, and -- may I?

18 Q. Yes, please, if you need to use that chart.

19 HEARING EXAMINER SHEETS: Let the record show
20 the witness is pointing to the diagram.

21 A. We were headed eastbound here, and this
22 intersection here is, like they stated, in fact, was
23 actually up on this curve right here, and as Jason
24 rounded the corner there --

25 Q. There's an intersection at that curve? I

1 just want to make some --

2 A. Yes.

3 HEARING EXAMINER SHEETS: And that's the
4 first curve in the diagram?

5 THE WITNESS: Actually, it's the first curve
6 in the diagram. As he rounded that, the tread came off
7 of the left rear drive tire on his truck.

8 Q. And then what occurred?

9 A. And then he immediately pulled over, and I
10 pulled up right behind him. I radioed to him, told him
11 to call Mr. Bischoff about getting another tire out
12 there, and I told him I'd walk back and get the tread
13 that was actually laying on its side right in the
14 middle of the highway off the road.

15 Q. Okay. Did you go back and get that tire,
16 then, or that tread?

17 A. Yes.

18 Q. Now, you sat here and heard testimony from
19 Officer Divjak that he actually activated his lights
20 and then you guys pulled over?

21 A. No.

22 Q. What happened? When did you see Officer
23 Divjak?

24 A. As I was walking back, I met Jason halfway
25 back to the truck, and we turned around and we walked

1 back to the truck, and as I got to the back end of my
2 truck, the officer pulled up right behind us.

3 Q. So he didn't initiate the stop?

4 A. No.

5 Q. Now, did you call Larry about the blown tire?

6 A. No, I did not.

7 Q. Did the other driver?

8 A. Yes, he did.

9 Q. Now, which vehicle were you?

10 A. I was in Truck 3974, which was the second
11 truck.

12 Q. So you're the second truck in this line?
13 You're not the first truck?

14 A. No.

15 Q. So who had the blown tire?

16 A. Jason, the one in the first truck.

17 Q. So the first truck is the one with the blown
18 tire, not you?

19 A. Yes.

20 Q. Okay. Now, you heard testimony about the
21 tread depth of Jason's tires. Do you guys do vehicle
22 inspections before you get into your trucks?

23 A. Yes.

24 Q. Did you do one on your truck that day before
25 you left?

1 A. Yes, sir.

2 Q. Do you know if Jason did one on his?

3 A. I believe so. I'd seen him out walking
4 around it.

5 Q. Were you driving together, I mean going to
6 the same place or coming back from the same place?

7 A. Yes, sir.

8 Q. Now, did you radio ahead to Jason about this
9 blown tire or did he already realize it?

10 A. He already realized it, and I just told him
11 to get ahold of Larry first, and then I'd go get the
12 tread off.

13 Q. How far from whenever the tire actually blew
14 to where Jason actually -- you and Jason actually
15 pulled over, how far was that? You can use this
16 diagram if you need to.

17 A. I would say Jason's -- the back of Jason's
18 truck was probably right about here (indicating),
19 according to the diagram would be the beginning of the
20 officer's car.

21 Q. So based on where the officer's car is,
22 that's where the back of his vehicle would be. You
23 were behind him?

24 A. Yes, I was right behind him.

25 Q. Was the officer then parked behind you?

1 A. Yes.

2 Q. Based on the timing, did Officer Divjak ever
3 see Jason operating his truck on that tire?

4 A. No. We never even seen him till we got back
5 to the trucks.

6 Q. How much time had elapsed from wherever you
7 stopped and went back and got that -- the tire?

8 A. Max would have been four to five minutes, if
9 that.

10 Q. I have no further questions.

11 HEARING EXAMINER SHEETS: Any on cross?

12 MR. BEELER: Yes, just a few questions, Your
13 Honor.

14 CROSS-EXAMINATION

15 By Mr. Beeler:

16 Q. Good morning, Mr. Nye. Correct, it's Mr.
17 Nye?

18 A. Yes.

19 Q. You were not the driver of the truck that's
20 the subject to this inspection report; correct?

21 A. No.

22 Q. You were in the other truck?

23 A. Yes.

24 Q. And you were traveling with Mr. Schaffner on
25 this trip?

1 A. Yes.

2 Q. Can you tell me why you were traveling in
3 tandem?

4 A. We were both coming back from the same place,
5 and I just caught up with him on the highway.

6 Q. You're employed by Larry Bischoff Trucking;
7 correct?

8 A. Yes.

9 Q. And you were employed by Larry Bischoff
10 Trucking at the time of the inspection; correct?

11 A. Yes.

12 Q. Can you say the same for Mr. Schaffner, that
13 he was employed by Larry Bischoff Trucking at the time?

14 A. Yes.

15 Q. Do you know how large Larry Bischoff Trucking
16 is as an organization, how many employees?

17 A. Employees? Mr. Bischoff and three others,
18 including myself.

19 Q. How many drivers?

20 A. Four.

21 Q. So it's a small organization?

22 A. Yes.

23 Q. And you all know each other?

24 A. Yes.

25 Q. You mentioned a pretrip inspection of the

1 trucks. Do you do a pretrip inspection of your truck?

2 A. Yes, sir, to Mr. --

3 MR. YEMC: Yemc.

4 A. -- Yemc.

5 Q. And you testified that you witnessed Mr.
6 Schaffner doing a pretrip inspection as well?

7 A. I testified that I seen him out walking
8 around his truck.

9 Q. Did you bring any sort of documentation today
10 showing pretrip inspections on the trucks?

11 A. No, I did not.

12 (Discussion off the record.)

13 MR. BEELER: No further questions, Your
14 Honor.

15 HEARING EXAMINER SHEETS: Do you have
16 redirect?

17 MR. YEMC: No redirect, Your Honor. At this
18 point I'd like to --

19 You can come on over, Ken.

20 I'd like to call the owner of the company,
21 Larry Bischoff, to the stand as a witness.

22 (Witness excused.)

23 LARRY J. BISCHOFF,

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

1 HEARING EXAMINER SHEETS: Be seated.

2 DIRECT EXAMINATION

3 By Mr. Yemc:

4 Q. Good morning, Mr. Bischoff. Could you please
5 state your full name and address for the record.

6 A. Larry J. Bischoff, 15-404 Road U, Napoleon,
7 Ohio.

8 Q. Mr. Bischoff, what is your occupation?

9 A. Small fleet owner, trucking business.

10 Q. Are you the owner of Larry Bischoff Trucking?

11 A. Correct.

12 Q. How many trucks do you have in your fleet?

13 A. Six.

14 Q. I'm going to turn your attention, Mr.
15 Bischoff, to last summer, June 15th, in the afternoon.
16 Did you get a call from one of your drivers that day?

17 A. Yes, sir.

18 Q. Could you tell me what occurred?

19 A. Jason had called me, and he said I just blew
20 a tire and we need to have a new tire for the truck.
21 Because they're single tires, they're not dual tires,
22 and when one blows, you need to stop. You can't go on
23 the highway.

24 Q. Did he mention anything about an officer
25 being on the side of the road?

1 A. He did not. He said that they were stopped
2 and they were picking the -- or that Ken was back
3 picking up the tread off the road. I said okay, I'll
4 make a call to the tire repair shop, and we hung up. I
5 called them, and shortly after that he called me right
6 back, and he said an officer just showed up.

7 Q. So that was after they had been stopped and
8 on the side of the roadway?

9 A. Yes, sir.

10 Q. I'm going to show you a couple of the Staff
11 exhibits that you've been privy to. Here is Staff
12 Exhibits 3 and 4. Those are pictures of the rim of one
13 of your truck tires, wheels, that apparently the tire
14 is blown. What happened to that rim?

15 A. Well, when Jason called me, he said there
16 appeared to be no damage to the rim, all that they
17 needed was a tire and that -- so that's what I had
18 called the tire dealer for, and they were in route to
19 get a tire, and then shortly after that he called me
20 and he said they made us drive down the road and now
21 the rim is ruined, too, so we had to order --

22 MR. BEELER: Your Honor, I'm going to
23 object. It's hearsay. He's testifying to what the
24 driver said, and the driver is not testifying.

25 Q. Now in that --

1 HEARING EXAMINER SHEETS: Hold on here. You
2 heard that as part of the conversation, what he told
3 you?

4 THE WITNESS: That is what he told me.

5 HEARING EXAMINER SHEETS: I'm going to let
6 that stand. Go ahead.

7 MR. YEMC: Thank you, Your Honor.

8 Q. Mr. Bischoff, in those pictures, is that rim
9 ruined?

10 A. Not -- I can't see any damage to the rim
11 right now in any -- in this picture.

12 Q. Whenever you saw the truck, the truck rim
13 later on that day, was the rim then ruined?

14 A. Yes, sir.

15 Q. Mr. Bischoff, I'm going to show you what is
16 marked as State's Exhibit 5 and 6. These are allegedly
17 pictures of a tire on your truck. Do you inspect your
18 own trucks?

19 A. Yes, sir.

20 Q. This happened on June 15th of last year.
21 When would you have inspected that truck?

22 A. I do not see the trucks every day, but
23 normally on the weekends I'll walk around every truck,
24 make sure that the tires are in good condition, and
25 typically I don't check the lights myself, but the

1 mechanic, he goes through the lights and makes sure all
2 that stuff is okay, but I'll do a walk-around
3 inspection typically every weekend.

4 Q. Now, these pictures, we're seeing no tread at
5 all. We're seeing exposed thread. What does that
6 indicate to you?

7 A. A blown tire.

8 Q. So you're saying this wouldn't have been --
9 this is a casing of the tire?

10 A. That's what it looks like, appears to me.
11 There was -- I would never allow one of my trucks to go
12 down the road like this, and after the blown tire, the
13 left rear tire was the only tire we replaced on that
14 truck.

15 Q. So you wouldn't have replaced the right tire
16 that looked like that?

17 A. No, sir. I would have if it was like that,
18 but it was not like that.

19 Q. Because we have no pictures from the State
20 that shows that actual -- a picture of the side of the
21 truck showing that tire. We just have a picture of
22 what looks just to be the casing of the tire?

23 A. Right.

24 Q. Now, where would the tread have been?

25 A. If it was on the right side of the truck, the

1 tread would have been laying right along the side of
2 the road, on the right side.

3 Q. But you only replaced one tire that day?

4 A. Correct.

5 Q. Did you inspect the truck after it came back?

6 A. Yes, sir.

7 Q. Were there any other tires that were bad?

8 A. No.

9 Q. Did you replace the rim that day as well?

10 A. Yes, sir.

11 Q. Okay. I have no further questions.

12 HEARING EXAMINER SHEETS: Any questions on
13 cross?

14 MR. BEELER: Yes, a few, Your Honor.

15 CROSS-EXAMINATION

16 By Mr. Beeler:

17 Q. Good morning, Mr. Bischoff. You said you
18 received a call from one of your drivers; correct?

19 A. Yes.

20 Q. Did you bring any documentation today to show
21 that that call was made?

22 A. No, I did not.

23 Q. And on that call did -- one second.

24 (Discussion off the record.)

25 Q. When you got that call, you were requested

1 to -- Mr. Schaffner, is he the one that made the call
2 to you?

3 A. Yes.

4 Q. Mr. Schaffner. He said that he blew a tire;
5 correct?

6 A. Correct.

7 Q. Did he mention anything about a second tire?

8 A. No.

9 Q. Okay. You said that you did -- you do
10 pretrip inspections of the trucks; correct?

11 A. I do weekly inspections, yes. I don't do the
12 pretrip inspection.

13 Q. Did you do inspections on these trucks?

14 A. Yes, sir.

15 Q. Did you bring any documentation today to show
16 that you did an inspection?

17 A. No, sir.

18 MR. BEELER: Nothing further, Your Honor.

19 HEARING EXAMINER SHEETS: Redirect?

20 MR. YEMC: No, Your Honor.

21 HEARING EXAMINER SHEETS: You're excused.

22 (Witness excused.)

23 MR. YEMC: I have no further witnesses, Your
24 Honor. The Respondent will rest.

25 HEARING EXAMINER SHEETS: We'll take a recess

1 at this point for about five minutes.

2 (Recess taken.)

3 HEARING EXAMINER SHEETS: We'll go back on
4 the record and say that we've agreed to a briefing
5 schedule of March 2nd, simultaneous briefs, and I thank
6 you all for coming.

7 MR. BEELER: Thank you.

8 MR. YEMC: Thank you.

9 HEARING EXAMINER SHEETS: Go ahead and mark
10 that all exhibits are submitted in the record.

11 MR. BEELER: Any objection?

12 MR. YEMC: No objections.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 (Thereupon, the hearing was concluded at
15 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 Thursday, January 26, 2012, and
carefully compared with my original stenographic notes.

Valerie J. Sloas, Registered
Professional Reporter and Notary
Public in and for the State of
Ohio.

My commission expires June 8, 2016.
(VJS-1082)

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Case No(s). 11-5484-TR-CVF

Summary: Transcript Transcript of Larry J. Bischoff Trucking, LLC. hearing held on 01/26/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Sloas, Valerie J. Mrs.