

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481

APPEARANCES:

The McQuades Co., LPA
By Mr. Alan J. Lehenbauer
105 Lincoln
P.O. Box 237
Swanton, Ohio 43558

On behalf of the Respondent.

Mike DeWine, Ohio Attorney General
William L. Wright, Section Chief
Public Utilities Section
By Mr. Stephen A. Reilly
180 East Broad Street
Columbus, Ohio 43215-3793

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

- - -

INDEX

- - - - -

WITNESS	PAGE
Brett A. Mealer	
Direct Examination by Mr. Reilly	6
Cross-Examination by Mr. Lehenbauer	31
Examination by the Attorney Examiner	43
Redirect Examination by Mr. Reilly	44
Recross-Examination by Mr. Lehenbauer	51
Jonathan Frye	
Direct Examination by Mr. Reilly	58
Cross-Examination by Mr. Lehenbauer	65
Mark Zcupta	
Direct Examination by Mr. Lehenbauer	74
Cross-Examination by Mr. Reilly	97
Redirect Examination by Mr. Lehenbauer	102
Tadeusz Gawron	
Direct Examination by Mr. Lehenbauer	104
Cross-Examination by Mr. Reilly	110
Redirect Examination by Mr. Lehenbauer	111

- - -

EXHIBITS

STAFF EXHIBITS	IDFD	ADMTD
1 - Driver/Vehicle Examination Report	22	58
2A- Photograph	10	58
2B- Photograph	11	58
2C- Photograph	11	58
2D- Photograph	13	58
2E- Photograph	13	58
2F- Photograph	14	58
2G- Photograph	15	58

1	STAFF EXHIBITS	IDFD	ADMTD
2	2H- Photograph	16	58
3	2I- Photograph	17	58
4	2J- Photograph	17	58
5	2K- Photograph	17	58
6	3 - Notice of Apparent Violation and Intent to Assess Forfeiture	61	67
7	RESPONDENT'S EXHIBITS	IDFD	ADMTD
8	1 - Court Disposition of Ticket	31	69
9	- - -		
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 Monday Afternoon Session,
2 May 6, 2013.

3 - - -

4 THE ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has called for hearing
6 at this time and place Case No. 12-3198-TR-CVF, being
7 In the Matter of Refix Truck & Trailer Repair for an
8 administrative hearing. I am Mandy Chiles, an
9 attorney-examiner assigned by the Commission to hear
10 this case.

11 At this time we will take appearances of
12 the parties. We will begin with staff.

13 MR. REILLY: Thank you, Your Honor. On
14 behalf of the staff of the Public Utilities
15 Commission of Ohio, Mike DeWine, Ohio Attorney
16 General, Bill Wright, section chief, Public Utilities
17 Section, Steve Reilly, assistant attorney general 180
18 East Broad Street, Columbus, Ohio.

19 THE ATTORNEY EXAMINER: On behalf of
20 Refix.

21 MR. LEHENBAUER: Yes. Alan Lehenbauer
22 attorney for Refix.

23 THE ATTORNEY EXAMINER: Could you also
24 give your address, please.

25 MR. LEHENBAUER: Yes, 105 Lincoln Street,

1 P.O. Box 237, Swanton, Ohio 43558.

2 THE ATTORNEY EXAMINER: Thank you.

3 Mr. Reilly.

4 MR. REILLY: Thank you, your Honor. We
5 call Trooper Mealer.

6 - - -

7 BRETT A. MEALER

8 being first duly sworn, as hereinafter certified,
9 deposes and says as follows:

10 DIRECT EXAMINATION

11 By Mr. Reilly:

12 Q. Trooper, would you introduce yourself to
13 the Bench and the court reporter by spelling your
14 last name and tell us where you work.

15 A. My name is Brett Allen Mealer,
16 M-E-A-L-E-R. I work for the Ohio State Highway
17 Patrol, Swanton Post, Fulton County.

18 Q. Swanton Post is it?

19 A. Yes, sir.

20 Q. In Fulton County, do you know the
21 address?

22 A. 8891 County Road 1, Swanton, Ohio 43568,
23 I think.

24 Q. That's close enough. Now, when you said
25 the post, it's the post of what organization?

1 A. The Ohio State Highway Patrol.

2 Q. And you're employed by the Ohio State
3 Highway Patrol?

4 A. Correct.

5 Q. In what capacity?

6 A. I am a state trooper, commercial motor
7 vehicle inspector.

8 Q. Okay. And is there any kind of
9 significance to the designation of state motor
10 vehicle inspector?

11 A. Correct. I received additional training
12 in the year 2000 to enforce the laws of the Public
13 Utilities Commission of Ohio and the Federal Motor
14 Carrier Safety Regulations.

15 Q. And what did that training consist of?

16 A. The first week of class, I don't know how
17 many hours it was, it was over logbooks; the second
18 week was over vehicles.

19 Q. When you says "over vehicles," what do
20 you mean?

21 A. Enforcing the federal guidelines on
22 commercial trucks.

23 Q. Did your training include the federal
24 guidelines?

25 A. Yes.

1 Q. All right. And those guidelines have
2 been adopted in the state of Ohio; is that not
3 correct?

4 A. Correct.

5 Q. And you said you have been inspecting
6 motor vehicles since when?

7 A. 2000.

8 Q. 2000, so that's 13 years.

9 A. Correct.

10 Q. Okay. Have you had any additional
11 training in commercial motor vehicle regulation?

12 A. Hazardous material regulations, hazardous
13 material tanker regulations, bulk cargo regulations,
14 and throughout the process, we have to -- since you
15 get certified, you have to maintain your
16 certification. Over the course of a fiscal year, you
17 have to do so many level 1 inspections to maintain
18 your certification, and I have done that since 2000.

19 Q. What are the duties of your current
20 position?

21 A. As a trooper and as a motor vehicle
22 inspection trooper, go out and patrol the roadway,
23 look for violations against the Ohio Revised Code,
24 the Ohio Public Utilities Commission, the Ohio
25 Turnpike Commission, because I work on the Ohio

1 Turnpike, and violations of the Federal Motor Carrier
2 Safety Regulations.

3 Q. Okay. Have you had occasion to inspect
4 vehicles involving Refix, the respondent here today?

5 A. Yes.

6 Q. Most recently did you have occasion to
7 inspect one on August 28, 2012?

8 A. Correct.

9 Q. Okay. Could you tell us what occasioned
10 that inspection? What happened?

11 A. I was sitting at the 47 mile post on the
12 Ohio Turnpike when I saw a commercial vehicle pass
13 me, white conventional white box, and it had
14 synthetic webbing wrapped around the sides of it, and
15 the sides were caved in up on the top. I pulled out,
16 followed the vehicle westbound, and initiated a
17 traffic stop.

18 Q. Now, when you say "white box," can you
19 describe that a little more for us lay folks?

20 A. A van-type box trailer, commercial
21 trailer.

22 Q. How many wheels does it have?

23 A. On the trailer?

24 Q. Yes.

25 A. Two.

1 Q. The trailer has --

2 A. Two axles. It's got four wheels, four
3 tires, two on each axle.

4 Q. Did you take pictures of the trailer?

5 A. Yes.

6 Q. Just so we all get a feel for what the
7 trailer looked like, let me --

8 MR. REILLY: May I approach the witness,
9 your Honor?

10 THE ATTORNEY EXAMINER: You may.

11 Q. Trooper, I'm going to hand you what I'm
12 going to mark as Staff Exhibits 2A, 2B, and 2C.

13 A. Okay.

14 Q. And can you tell me what each of those
15 is?

16 A. The first picture is a picture of the
17 combination tractor and trailer.

18 Q. Excuse me. When you say "the first
19 picture," if you flip on the back, there's a
20 designation.

21 A. I'm sorry, 2A.

22 THE ATTORNEY EXAMINER: Mind showing me
23 the picture, Mr. Reilly.

24 MR. REILLY: I'm sorry. They're at the
25 back of the packet. I'm way out of order on this.

1 THE ATTORNEY EXAMINER: Thank you.

2 Q. And then B would be what?

3 A. 2B is a picture of the right side of the
4 trailer.

5 Q. Okay.

6 MR. REILLY: I would like to show it to
7 counsel and the Bench.

8 THE ATTORNEY EXAMINER: Thank you.

9 Q. And 2C would be?

10 A. The left side of the trailer.

11 Q. This picture?

12 A. Yes, a photograph of it.

13 Q. I believe you said you saw it going up
14 the road; is that correct?

15 A. That's correct.

16 Q. And then what happened?

17 A. I initiated a traffic stop.

18 Q. And why did you initiate the traffic
19 stop?

20 A. I initiated the traffic stop because I
21 noticed the vehicle that had caved-in sides, you
22 know, and in an attempt to secure them, used
23 synthetic webbing wrapped around the top of it.

24 Q. Did that insight some suspicion in your
25 mind?

1 A. Correct.

2 Q. And what was that suspicion?

3 A. That it was unsafe and against the
4 federal regulations.

5 Q. All right. When you say "the federal
6 regulations," you mean the regulations of the state
7 of Ohio and the Federal Motor Vehicle Safety
8 Administration?

9 A. Yes, sir.

10 Q. You initiated the traffic stop and then
11 what happened?

12 A. I went up and made contact with the
13 driver and had him pull up to exit 39, which would be
14 in Delta, Ohio. It's a turnpike exit in Delta to
15 where I could conduct an inspection on the side of
16 the roadway.

17 Q. Okay. And what did you find in the
18 inspection?

19 A. During the course of the inspection, I
20 found that it had a cracked lower rail specifically
21 on the trailer; that it had roof bows that were
22 missing; the top upper rail was buckled; the means of
23 securement that were used, they had a chain that was
24 wrapped to the landing gear of the trailer and going
25 all the way back to the rear end protection to help

1 give it rigidity. And inside the trailer, after I
2 had the driver open the doors for me, it had three
3 synthetic webbings affixed to the side of the trailer
4 to help keeping it from caving in.

5 Q. Trooper, I'm going to hand you what is
6 marked for identification as Staff Exhibit 2D. Could
7 you tell me what that is?

8 A. It's a photograph of a cracked lower
9 rail.

10 Q. And did you take that picture?

11 A. Yes, sir.

12 Q. And when did you take it?

13 A. On the side of the road at exit 39 in
14 Delta.

15 Q. Is that a picture of the trailer that
16 we've been discussing here?

17 A. Yes.

18 Q. Okay. Let me hand you for identification
19 purposes a picture marked Staff Exhibit 2E. Could
20 you tell me what this is?

21 A. That's the inside of the trailer with
22 synthetic webbing up towards the bulkhead, so the top
23 upper rail is buckled on the left-hand side and on
24 the right-hand side. There's damage to the roof
25 bows, and there's also missing roof bows in which

1 they have synthetic webbing going over the top of.

2 Q. Now, would you point out to the Bench
3 where the roof bows are?

4 A. Right up here. They go across the top.

5 THE ATTORNEY EXAMINER: Okay. Thank you.

6 Q. Is there anything across the top of the
7 trailer besides the roof bows?

8 A. Yes. They had synthetic webbing that
9 started from the bottom and went all the way around
10 the top and was on the other side hooked to the
11 frame. Also in the top of the picture there's half
12 of a roof that was on there. It's just sheet steel
13 that's over the top part of it.

14 Q. So the roof was gone?

15 A. Partially.

16 Q. Trooper, let me hand you what has been
17 marked for identification purposes as Staff
18 Exhibit 2F. Can you tell me what that is please?

19 A. This is a photograph of the means of
20 securement they attempted to use to give the trailer
21 rigidity. In the front is where they had it attached
22 to the landing gear. It's what you use to drop the
23 trailer to the ground, and you can see the chain
24 going all the way to the rear axles, and it is
25 affixed to the ICC bumper, or rear end protection.

1 Q. And ICC stands for something, those
2 letters? The ICC bumper is what?

3 A. I don't know.

4 Q. Is it the back bumper?

5 A. Yes. That's the rear bumper for rear end
6 protection.

7 THE ATTORNEY EXAMINER: I have a question
8 for the photograph marked 2F. It appears in this
9 photo that there is something red on the chain.

10 THE WITNESS: It's a binder.

11 THE ATTORNEY EXAMINER: It's the binder.

12 THE WITNESS: They use it to tighten up.
13 It draws it tighter.

14 THE ATTORNEY EXAMINER: To draw the chain
15 together?

16 THE WITNESS: Yes, it takes the slack out
17 of the chain.

18 THE ATTORNEY EXAMINER: Thank you for
19 clearing that up.

20 Q. And the chains and the binder shown in
21 Exhibit 2F is what was present underneath the
22 trailer?

23 A. Correct.

24 Q. All right. Trooper, I'm handing what has
25 been marked for identification as Staff Exhibit 2G.

1 Can you tell me what that is?

2 A. It is a photograph of a cracked lower
3 rail with synthetic webbing over the top of it.

4 Q. And that's the picture of the rail on the
5 trailer in question here?

6 A. Correct.

7 Q. Trooper, let me hand you what has been
8 marked for identification as Staff Exhibit 2H.
9 Please tell me what that is.

10 A. That is the inside of the trailer with
11 broken fasteners next to the side rail post.

12 Q. Could you point out to the Bench where
13 the broken fasteners are?

14 A. Right down here.

15 THE ATTORNEY EXAMINER: Can you describe
16 it in words so the transcribed record is clear?

17 THE WITNESS: Just write it on the
18 picture.

19 THE ATTORNEY EXAMINER: If you try to
20 explain it the best you can verbally in the photo.

21 THE WITNESS: In the middle of the photo
22 down towards the bottom, what it is, you see a
23 picture of the wooden floor off to the left, and then
24 it is the wall of the trailer, which is white, and
25 then the fasteners look like rivets that are popped.

1 Q. (By Mr. Reilly) Now, trooper, I noticed
2 that if you look at the exhibit here, there is what
3 appears to be a bow right beneath the white wall at
4 the bottom of the trailer.

5 A. Correct.

6 Q. Do you see that?

7 A. Yes.

8 Q. And what is that, the bow, what appears
9 to be a bow?

10 A. That's the bottom rail that's bowing
11 inward.

12 Q. So that's the broken part of the trailer?

13 A. Correct.

14 Q. Trooper, let me hand you what has been
15 marked for identification as Staff Exhibits 2I, 2J,
16 and 2K. Can you tell me what those are?

17 A. 2I is a photograph of the driver's door
18 with the company markings on it.

19 Q. Okay. 2J?

20 A. 2J is a photograph of the Wisconsin
21 registration that was on the rear of the trailer, and
22 2K is a photograph of the public VIN that was on the
23 front of the trailer.

24 Q. And VIN means what?

25 A. Vehicle identification number.

1 Q. Now, is anything indicated on Staff
2 Exhibit 2K besides the VIN number?

3 A. Yes. It tells you what the gross vehicle
4 weight rating of the vehicle is. It tells you what
5 the gross axle weight rating of it is.

6 Q. And where are those items identified
7 looking at the exhibit?

8 A. In the middle of it.

9 Q. Let me -- first of all, let's just talk
10 about this exhibit a little bit. The top line of the
11 exhibit, right under the bar code, has a series of
12 letters and numbers, and what is that?

13 A. That is the public VIN that's given to
14 each vehicle. In this case it's given to the trailer
15 to identify this specific trailer.

16 Q. So that's the vehicle identification
17 number for the trailer.

18 A. Correct.

19 Q. Okay. Right underneath that there's a
20 heavy black line, and then there's a box encased in
21 black lines, and we start off with some lettering and
22 then a number that looks like 68,000? Do you see
23 that?

24 A. Correct.

25 Q. Can you tell me what that is?

1 A. That is the gross vehicle weight rating
2 that the manufacturer gives for this unit and it's
3 telling you it's 68,000 pounds.

4 Q. And underneath that there's some
5 lettering. Can you tell us what that is, if you
6 know?

7 A. No.

8 Q. Now, underneath that there's another box
9 that contains numbers going from left to right. Can
10 you tell us what is on the left side?

11 A. It's the gross axle weight rating.

12 Q. And then there's a little line, small
13 box, and then there's another number on the left-hand
14 side.

15 A. Can you rephrase that?

16 Q. Okay. Moving from the left to right in
17 the bottom box, there is a number that looks to be
18 2 and an "at" sign, @20,000. Do you see that?

19 A. Yes.

20 Q. And what is that?

21 A. That's the gross axle weight rating.

22 Q. Okay. Then moving directly to the right
23 of that there is another number. Can you tell me --
24 do you know what that is?

25 A. That's the tire size.

1 Q. And then moving to the center, directly
2 to the right, there is another number. Do you see
3 that number?

4 A. Directly to the right?

5 Q. Go to the numbers in the -- it's directly
6 in the center. What is that?

7 A. That's the tire size.

8 Q. Okay. And then moving to the far right
9 of the box, there's a number that says 8.25 and then
10 an X and then 22.5. What is that?

11 A. The rim size.

12 Q. Okay. Now, just for clarity purposes, on
13 the left side there's a number, the second number
14 from the left. It is 9.072. Do you know what that
15 is. Then it's KG.

16 A. That's in kilograms.

17 Q. That's what in kilograms?

18 A. The gross axle weight rating.

19 Q. Okay. After you inspected the vehicle,
20 what happened?

21 A. After I inspected the vehicle?

22 Q. Yes.

23 A. I issued a traffic citation to the driver
24 for operation of an unsafe vehicle, placed the
25 vehicle out of service -- correction. I had the

1 driver drive to the truck stop in Delta and then
2 placed the vehicle out of service.

3 Q. Okay. Did you record your findings
4 anywhere?

5 A. Yes; on an inspection report.

6 Q. And how did that occur?

7 A. I manually entered the information into
8 the ASPEN program that's provided for me on my laptop
9 that I had in my patrol car.

10 Q. And what is the ASPEN program?

11 A. It is a program set up to capture data.
12 It's a Driver/Vehicle Inspection Report.

13 Q. Okay. And what happens to the
14 information that you enter into the ASPEN program?

15 A. After I enter it into the ASPEN program,
16 I upload it through the SAFER server.

17 Q. The SAFER server?

18 A. Correct.

19 Q. What is that?

20 A. It's a secure site that the Federal Motor
21 Vehicle Safety Administration captures the data.

22 Q. Okay. Is that a record of the federal
23 government and the state of Ohio?

24 A. Correct.

25 Q. Now, when did you upload this to this

1 server?

2 A. I don't have an exact time. After the
3 inspection.

4 Q. Okay. Immediately after the inspection?

5 A. I don't know if it was immediately but
6 within 24 hours.

7 Q. Okay. Okay. Now, were there any other
8 violations noted by you besides the citation for the
9 unsafe vehicle?

10 A. Two frame violations that were listed on
11 there, and one is for having the upper rail buckled
12 with missing roof bows and the other one is for lower
13 rail being cracked.

14 Q. Okay. Now, you mentioned that you
15 uploaded this information into -- the inspection
16 report into a computer. Did you subsequently get any
17 kind of printout from that computer?

18 A. Yes. I printed out a copy of the
19 inspection report.

20 Q. Okay. I would like to direct your
21 attention to what is marked as Staff Exhibit 1.
22 Could you tell me what that is?

23 A. That is a copy of my inspection report.

24 Q. Now, let's just talk about how a person
25 reads this. I'd like to direct your attention to

1 the -- let me describe this for a second. There's a
2 series of very long columns -- rows here, the first
3 of which starts from the left with the word "Ohio."
4 Do you see the rows that run across?

5 A. Yes, sir.

6 Q. Okay. Now, in the first row, you have
7 immediately to the right of the word "Ohio," you have
8 something called a report number. Do you see that?

9 A. Yes.

10 Q. Can you tell us what that is?

11 A. That is the sequential number of my
12 reports. OH is Ohio. 573 is the number assigned to
13 me by the Ohio State Highway Patrol, and 06465 is
14 their report number.

15 Q. And underneath that it says "Inspection
16 Date." Can you tell me what that is?

17 A. That is the date of inspection.

18 Q. And then it says "Time Started."

19 A. It's the time I initiated the inspection,
20 and to the right of that is the time I ended the
21 inspection.

22 Q. And both of those are in --

23 A. Military time.

24 Q. And the "Inspection Level" is?

25 A. Level II, a walk-around inspection.

1 Q. What would a Level I inspection be?

2 A. Crawling underneath it and checking the
3 brakes in addition to what we do for a Level II.

4 Q. Now, if we could drop down to the second
5 row, begins on the far left with the word "Refix."
6 Do you see that?

7 A. Yes, sir.

8 Q. Can you tell me what information is shown
9 with Refix Truck & Trailer Repair, Inc.? What is
10 that?

11 A. That is the name of a trucking company,
12 and the information that's on there is their address,
13 this, USDOT number that is given to them, and the
14 phone number. That's all listed in -- on their
15 MCS-150 report.

16 Q. What is an MCS-150 report?

17 A. What they file to obtain authority to
18 operate.

19 Q. Now, when you were telling us about the
20 address and USDOT number and the phone number, you
21 were just going down in a row beneath the name of the
22 company, correct?

23 A. Yes, sir.

24 Q. Now, moving to the right, there is
25 information that begins "Driver" followed by the

1 license number and date of birth. Do you see that?

2 A. Yes, sir.

3 Q. Can you tell us what is shown there?

4 A. That is the name, last name first, first
5 name, of the driver that was operating the vehicle at
6 the time I initiated my traffic stop. The license
7 number listed on there is the Illinois driver's
8 license, which is indicated after the state, and the
9 driver's date of birth is underneath that.

10 Q. Dropping down to the next row, starts on
11 the far left with the word "Location," do you see
12 that?

13 A. Correct.

14 Q. Can you describe for us what is shown
15 with the Location, Highway, County, and Shipper on
16 the far left of that column, on the far left of that
17 row?

18 A. "Roadside" indicates this was not at a
19 terminal inspection. It was conducted on the
20 roadside. The "Milepost" is 39, which that was the
21 milepost on the Ohio Turnpike on which I conducted
22 the inspection. The turnpike is also IR-80, and
23 underneath it is the "County," Fulton, and the
24 "Shipper," which is Roehl Transport, Incorporated.

25 Q. IR stands for what?

1 A. Interstate route.

2 Q. And moving to the middle group of
3 information that starts with Milepost, Origin, and
4 Destination, tell us what is located there?

5 A. 39 is the milepost location on Interstate
6 Route 80 that the inspection was conducted. Origin
7 is the origin of the load, and it originated in
8 Canton, Ohio, and its destination is East Hazel
9 Crest, Illinois.

10 Q. And then "Bill of Lading" and "Cargo" on
11 the far right, what is that?

12 A. The bill of lading is blank. They did
13 not have a bill of lading. That's what goes in
14 there. And the cargo was a commercial trailer.

15 Q. Dropping down into the next row of
16 information, starts out "Vehicle Identification." Do
17 you see that?

18 A. Yes, sir.

19 Q. Would you describe what is shown in that
20 row for us, please?

21 A. Okay. Moving left to right, the No. 1
22 indicates unit No. 1, which would be the power unit,
23 which is the truck tractor. That's what the TT
24 stands for. FRHT is an abbreviation for
25 Freightliner. The year is 2006. The Illinois

1 registration is W52548. The ID number on the truck
2 was Refix-1. The vehicle identification number was
3 listed under Unit VIN. The gross vehicle weight
4 rating of that was 52,000 pounds. Underneath that,
5 moving left to right from the 2, which indicated the
6 semi trailer, which ST is the abbreviation for,
7 Wabash National Corporation, that's the WANC, 2010.
8 The registration is Wisconsin, and the license plate
9 number on it is 616057. The ID that was on the
10 trailer was 63630 and underneath the unit VIN is the
11 vehicle identification number listed for that
12 trailer.

13 Q. Over on the far right there is an "OOS
14 Stkr" number. Do you see that?

15 A. That is the out of service sticker number
16 that I affixed to the trailer, and the number is
17 573006465. It is a self-generated inspection or out
18 of service number.

19 Q. What is out of service?

20 A. It means they have to repair the vehicle
21 before it leaves the scene.

22 Q. Dropping down to the row that starts out
23 "Violations," do you see that?

24 A. Correct.

25 Q. Could you tell us what's shown there?

1 A. Under the Violations there's Ohio Revised
2 Code violation 4513.02. It's also cross-referenced
3 to the federal regulations under the section 392.2,
4 which is the traffic section of the Federal Motor
5 Vehicle Carrier Rules and Regulations, and that was
6 given to the driver, which D is indicated under unit
7 and the citation number that I issued him.

8 Underneath that in the second row is
9 393.201A, which is the federal regulations for a
10 frame violation, and it was to unit No. 2, which is
11 the trailer. The U indicates if it was verified, if
12 the repair of it was verified; a result of the crash,
13 no; and the description of it, frame cracked loose
14 and sagging and broken is all self-populated within
15 the ASPEN report, and the indication of that is the
16 upper rail was buckled with missing and loose roof
17 bows.

18 Underneath that is the same violation,
19 393.201A, indicating that it is on unit No. 2 also
20 and it is out of service. Was it verified? U is
21 indicating it would be unknown. Result of current
22 traffic crash, no; and then no lower rail -- "lower
23 rail, right and left side, with missing fasteners at
24 side posts. Chain in use to keep trailer from
25 buckling."

1 Q. Now, trooper, I'd like you to take a
2 moment, if you would, and identify any of the
3 pictures contained in what is marked for
4 identification as Staff Exhibit No. 2 that show the
5 violation of frame cracked loose, sagging, broken;
6 upper rail buckled with missing and loose roof bows.
7 That would be the first of the two violations under
8 393.201A.

9 A. 2A?

10 Q. They are both 201(a).

11 A. I am reading off the photograph.

12 Q. Okay, Exhibit 2A.

13 A. 2A, photograph 2B, and 2E.

14 Q. Now, would you also, looking through
15 those photos marked for identification as Staff
16 Exhibit 2, identify for us the pictures which show
17 the bottom, the second set of frame cracked, loose,
18 sagging, broken lower rail. I think it's on the
19 right and left side.

20 A. 2G; and also indicates the chain in that
21 section, so I'll list 2F shows is chain that they
22 used to secure it, and 2E -- strike that. 2D.

23 THE ATTORNEY EXAMINER: Is that 2E and
24 2D, or just 2D?

25 THE WITNESS: Let me go through this

1 again.

2 THE ATTORNEY EXAMINER: Take your time.

3 THE WITNESS: It would be 2G and their
4 means of securement was 2F and then 2D.

5 MR. REILLY: Thank you, trooper.

6 Thank you, your Honor.

7 THE ATTORNEY EXAMINER: I have one
8 question before we go to cross-examination. If you
9 look at Staff Exhibit 2 D.

10 THE WITNESS: D as in dog?

11 THE ATTORNEY EXAMINER: D as in dog, yes.
12 Would you clarify this photo? This is the lower
13 rail; is that correct.

14 THE WITNESS: Yes, ma'am.

15 THE ATTORNEY EXAMINER: Okay. And I just
16 wanted to clarify something about this photo. It
17 looks like, I'm going to say, the two bolts in the
18 center of the photograph, is that a crack or is that
19 a seam?

20 THE WITNESS: That is a crack.

21 THE ATTORNEY EXAMINER: That is a crack.
22 Okay. Thank you.

23 Mr. Lehenbauer?

24 MR. LEHENBAUER: Thank you, Your Honor.

25 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

By Mr. Lehenbauer:

Q. Trooper, were you aware that the citation that you issued in this case for unsafe vehicle was dismissed in the court?

A. No, I was never aware.

THE ATTORNEY EXAMINER: Off the record for a moment.

(Discussion off record.)

Q. Trooper Miller, I'll hand you what is marked as Respondent Exhibit 1. Can you identify that for the record?

A. It's a certified copy from the Eastern District Court.

Q. And that is a true and accurate copy of the disposition of the ticket that you issued to Mr. Gawron in this case?

MR. REILLY: Objection. I think he said he didn't know what the disposition was.

MR. LEHENBAUER: Well, it's a certified copy. I can strike that.

THE ATTORNEY EXAMINER: If you want to rephrase your question.

MR. LEHENBAUER: Sure.

Q. What was the name of the driver you

1 issued the citation to in this case; do you recall?

2 A. Yes; but it would be difficult for me to
3 pronounce, but this is the driver that I issued it
4 to.

5 Q. Okay.

6 A. His name is written here.

7 Q. Do you know what the disposition was of
8 his ticket?

9 A. Not until you handed it to me.

10 Q. Okay. You're now aware that the citation
11 was dismissed?

12 A. According to the court, yes. On what
13 grounds, I don't know.

14 Q. But you're familiar with the Code of
15 Federal Regulations as to the transportation of motor
16 vehicles, correct?

17 A. Correct.

18 Q. And are you familiar with Section 390.5,
19 the definitional section?

20 A. Correct.

21 Q. And you're familiar with the definitional
22 section as it relates to driveaway-towaway
23 operations?

24 A. Correct.

25 Q. And the citation that you issued in this

1 case involves a driveaway-towaway operation as
2 defined in the Code of Federal Regulations, does it
3 not?

4 A. No.

5 Q. In what way does it not meet that
6 definition?

7 A. Under 395 of the driveaway-towaway
8 operations, the definition of a driveaway-towaway
9 states that a driveaway-towaway has to be -- give me
10 a minute. The driveaway-towaway for having disabling
11 damage, and is also defined in the 395 has to be from
12 the crash scene of a traffic crash.

13 Q. So you're not aware of the definition, at
14 least that I have, that says "between vehicle
15 manufacturer's facilities"?

16 A. Correct.

17 Q. Which isn't inclusive of a crash scene,
18 correct?

19 A. It's not inclusive of it, no.

20 Q. And then part (2) of that same
21 definition, "between a vehicle manufacturer and a
22 dealership or a purchaser"; is that also part of the
23 definition?

24 A. Correct.

25 Q. And part (3) is "Between a dealership, or

1 other entity selling or leasing the vehicle, and a
2 purchaser or lessee."

3 A. Correct.

4 Q. And then (4), "To a motor carrier's
5 terminal or repair facility for the repair of
6 disabling damage." Is that also part of the
7 definition?

8 A. As defined in 390.5.

9 Q. And then also, "To a motor carrier's
10 terminal or repair facility for repairs associated
11 with the failure of a vehicle component or system."

12 A. Correct.

13 Q. So you're claiming that this particular
14 trailer had disabling damage, correct?

15 A. No.

16 Q. It didn't have disabling damage?

17 A. No. Because you would have to go to the
18 definition of disabling damage on 390.5.

19 Q. Right. And what part -- so this isn't
20 disabling damage on this vehicle?

21 A. No.

22 Q. What would you consider the damage?

23 A. Well, you are going to have to read
24 390.5. It states in there "from a crash scene" in
25 the definition of disabling damage, so it does not

1 meet the definition of disabling damage under
2 3090.5 under driveaway-towaway or under 390.5 and the
3 definition of disabling damage.

4 Q. Well, there's a different provision as to
5 emergency situations, and this isn't an emergency
6 driveaway-towaway operation, correct?

7 A. Can you say that again?

8 Q. There's a different definitional section
9 for emergency conditions and accidents.

10 A. Correct. This was not an emergency move.

11 Q. Right. But the driveaway-towaway
12 operation allows for transportation of this type of
13 trailer, correct?

14 A. No.

15 Q. So you're saying that per the Code of
16 Federal Regulations that no person can ever transport
17 a vehicle that's been damaged? That's what you're
18 basing this citation on?

19 MR. REILLY: Objection, argumentative.

20 THE ATTORNEY EXAMINER: Could you
21 rephrase your question?

22 MR. LEHENBAUER: Yes.

23 Q. Are you claiming that a vehicle that's --
24 a trailer that's been damaged, whether in an accident
25 or other failure, can never be driven or never be

1 towed to a repair facility?

2 A. No. It can be towed from a crash scene
3 to a repair facility, in which at that point in time
4 it has to be repaired.

5 Q. Well, that's not what the definition says
6 for crash scenes. I think you're thinking of a
7 different definitional section. Have you read the
8 driveaway-towaway operations lately?

9 A. Yes, I have.

10 Q. It doesn't say anything about
11 transportation from a crash scene, does it?

12 A. It lists disabling damage, and also in
13 390.5 it gives the definition of disabling damage.

14 Q. And what is disabling damage?

15 A. And it says "from a crash scene" under
16 disabling damage.

17 Q. Now, you had -- you saw nothing about
18 this trailer while it was on the road that would lead
19 you to believe it was unsafe there. There was no
20 swaying of the vehicle. There was no movement of any
21 of the parts of the trailer when you observed it?

22 A. Other than it does have half of a roof
23 and the sides are caving in.

24 Q. It wasn't being used to transport any
25 goods or materials, correct?

1 A. The goods or material was the trailer.

2 Q. Right. And then you had a long
3 conversation with the driver and the representative
4 of the owner about this particular incident, did you
5 not?

6 A. When?

7 Q. After you issued this citation or during
8 the course of time you were dealing with this
9 situation.

10 A. Did I talk to the driver?

11 Q. Yes.

12 A. I talked to the driver, yes.

13 Q. And did you talk to a representative of
14 Refix Trailers?

15 A. Yes.

16 Q. And you admitted to them that at some
17 point in time during that conversation that this was
18 not a violation but you had already written the
19 citation so you couldn't remove it?

20 A. No.

21 Q. Did you tell them to contact your
22 supervisor and if she agreed to remove it, that you
23 would remove it?

24 A. Yes, I know I told them that. Yes,
25 that's correct.

1 Q. And now this particular trailer again
2 wasn't being used to transport anything, correct?

3 A. It was unladen.

4 Q. Then are you familiar with the Code of
5 Federal Regulations Title 49 Section 396.15?

6 A. No, not off the top of my head.

7 Q. Okay. Again, it talks about
8 driveaway-towaway operations. Are you familiar at
9 all? Does that refresh your recollection?

10 A. Not off the top of my head, no.

11 Q. Now, after you conducted your inspection,
12 all these things that you made your complaint about,
13 through the course of your inspection, everything was
14 properly secured, right? The side panels, the roof
15 was all properly secured the way they had prepared
16 it?

17 A. No.

18 Q. And did you reinspect it at some point in
19 time?

20 A. No.

21 Q. Did you ever or any other trooper ever
22 authorize them to take it down the road?

23 A. Not that I know of.

24 Q. Did you advise the driver, the owner, or
25 the representative of the company of what repairs you

1 would require before you would allow them to
2 transport this trailer?

3 A. Yes. It's in the copy of the inspection.

4 Q. Okay. And what was that?

5 A. The out-of-service conditions were the
6 upper and lower rail.

7 Q. And what did you tell them needed to be
8 done to the upper and lower rail before this --

9 A. It either needed to be fixed, or needed
10 to get the trailer above the ground, put it on a
11 lowboy trailer and haul it that way.

12 Q. So you told them they could put it on a
13 lowboy, correct?

14 A. Correct.

15 Q. And a trailer of this type on a lowboy,
16 they wouldn't be able to make clearance of probably
17 90 percent of the bridges on the turnpike or any
18 other road they traveled on, correct?

19 A. I don't know what road they were
20 traveling.

21 THE ATTORNEY EXAMINER: I am going to
22 interrupt you. I apologize. Can you describe to me
23 in lay terms what a lowboy is?

24 THE WITNESS: It is a drop-deck trailer
25 that sits lower to the ground. It is typically used

1 to haul heavier machinery on the drop deck so it
2 doesn't hit so high up off the ground.

3 Q. And have you ever seen a trailer of this
4 type being transported on a lowboy on the interstate
5 highway system?

6 A. No.

7 Q. And how high off the ground would a
8 lowboy be, the deck of a lowboy?

9 A. A foot.

10 Q. So 12 inches off the ground?

11 A. Yeah, approximately.

12 Q. To the deck?

13 A. Correct.

14 Q. And do you know the height of this
15 trailer?

16 A. It's probably 13-2, 13-3.

17 Q. And what is the height of most of the
18 bridges on the turnpike?

19 A. 13-6 or greater. But that's Ohio's,
20 13-6, height law.

21 Q. Putting this trailer on a lowboy, again,
22 the first bridge that they came to they wouldn't be
23 able to make clearance with the trailer?

24 A. As they were driving down the road,
25 correct.

1 Q. And are you aware of the requirements
2 under the Code of Federal Regulations for repair of
3 frames on a trailer?

4 A. No.

5 Q. For the frame rails that you say were
6 damaged or cracked, do you know what the Code of
7 Federal Regulations requires as to the repair of
8 those items?

9 A. No.

10 Q. Do you know what the manufacturer's
11 specifications were for this particular trailer as
12 opposed to what is required for frame rails, as to
13 repair of frame rails?

14 A. No, sir.

15 Q. Do you know how many different frame
16 rails were at the level where you show there was a
17 crack in Exhibit 2D?

18 A. How many levels?

19 Q. How many different rails are through that
20 area; do you know?

21 A. No.

22 Q. And did you bring all the pictures that
23 you took with you today?

24 A. Yes.

25 Q. And are there pictures you took that

1 aren't marked as exhibits of additional chains that
2 were underneath this vehicle?

3 A. No.

4 Q. Did you observe additional chaining under
5 this vehicle?

6 A. The chains that were under this vehicle
7 are the ones that I have photographs of.

8 Q. So you're not aware of other chains that
9 might have been placed on this particular unit?

10 A. Well, I have a picture of the inside of
11 the trailer and the underneath and both sides. It
12 shows at the top where it's open, so if they had
13 chains -- those are the chains that were on there,
14 and those are the methods of securement that they've
15 used. I have photographs of underneath, inside the
16 box, outside the box. Those were the load securement
17 devices that they had.

18 Q. Okay. And do you have any record of when
19 the damage to this trailer took place?

20 A. No.

21 Q. So you don't know if it was that day,
22 prior day?

23 A. No.

24 Q. So you don't know if it left the scene of
25 an accident at some point in time?

1 A. Yes. I know it left Mark's Towing in
2 Canton. I know that's where it came from, where it
3 originated from.

4 Q. But you don't know when the accident was?

5 A. No, sir, I don't.

6 Q. So other than the citation that you
7 issued for unsafe vehicle and the two other
8 violations that are set forth on your examination
9 report, the driver and the company was otherwise
10 operating in compliance with Ohio law and in
11 compliance with the Code of Federal Regulations?

12 A. There were no other violations listed on
13 this report.

14 Q. So nothing else about their operation was
15 in violation of state law?

16 A. No.

17 MR. LEHENBAUER: I have nothing further
18 for this witness.

19 THE ATTORNEY EXAMINER: Before we go back
20 to redirect with Mr. Reilly, I have a follow-up
21 question for you.

22 - - -

23 EXAMINATION

24 By The Attorney Examiner:

25 Q. You say you know the vehicle came from

1 Mark's Towing. How did you get that information, it
2 came from Mark's Towing.

3 A. From the driver.

4 Q. Is that noted on your inspection report?

5 A. Inspection notes, "The driver picked the
6 trailer up at Mark's Towing in Canton, Ohio. He was
7 taking back to Hazel Crest, IL for repair." That is
8 about three-quarters of the way down in the middle
9 under Inspection Notes.

10 THE ATTORNEY EXAMINER: Thank you.

11 Mr. Reilly, redirect.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Reilly:

15 Q. Did you draw any conclusions from the
16 fact that trailer was taken from Mark's Towing in
17 Canton?

18 A. Yes. Underneath the driveaway-towaway
19 definition, it defines disabling damage, and under
20 390.5, under the driveaway-towaway, it specifically
21 tells you to reference disabling damage as in 309.5.
22 If you read the definition in 390.5 of disabling
23 damage, this does not apply.

24 Q. Do you have any reason to believe there
25 was any type of vehicle crash at Mark's -- what was

1 it called?

2 A. Mark's Towing.

3 Q. -- Mark's Towing?

4 A. Other than the information and the
5 trailer.

6 Q. Did the driver mention -- out there on
7 the road, did the driver mention a crash at Mark's
8 Towing to you?

9 A. No.

10 Q. Okay. Did you believe in putting this
11 report together that the violations -- scratch that
12 -- that any accident that might have occurred,
13 occurred somewhere other than Mark's Towing?

14 A. Correct.

15 Q. And did you believe, given the name of
16 the company, that the trailer was taken to Mark's
17 Towing from wherever it entered into its disabling
18 condition?

19 A. Entered into the damage that was caused
20 by the crash.

21 Q. The damage was caused someplace other
22 than Mark's Towing?

23 A. Correct.

24 Q. Just so I'm clear, the driver on the road
25 didn't tell you that he was hauling a trailer from an

1 emergency accident site?

2 A. Correct.

3 Q. Okay. You have been doing this a long
4 time, trooper. Did you consider the vehicle safe?

5 A. No.

6 Q. Why was that?

7 A. Because of the bent upper rails, half of
8 the roof was missing, and the rear portion of it. In
9 the photographs you can see where parts of it are
10 starting to turn up, and once those rivets start to
11 break, the wind catches underneath there, and it can
12 cause it to flip. I've personally seen it; and the
13 lower rails being cracked.

14 Q. Now, when you said you've "personally
15 seen it," what are you referring to?

16 A. I'm personally seen where the top of a
17 trailer has been torn and where the wind has
18 caused -- causes it to tear off.

19 Q. And is that a dangerous situation?

20 A. Yes.

21 Q. Okay. Now, you mentioned these -- I
22 think you called them fabric. Is it some sort of
23 fabric that was holding the sides together?

24 A. Synthetic webbing.

25 Q. Synthetic webbing that was holding the

1 sides together. What happens if those give way, if
2 they break?

3 A. It was cause further buckling of the
4 trailer.

5 Q. If the trailer is moving down the road
6 and it buckles further, what happens?

7 A. Possibly collapse.

8 Q. The trailer collapses?

9 A. Correct.

10 Q. Now, do you happen to know what the speed
11 limit is out there on Interstate 80?

12 A. Yes.

13 Q. What is it?

14 A. 70 miles an hour.

15 Q. If there are cars going 70 miles an hour
16 or 65 in the vicinity of the trailer when it
17 collapses, is that a dangerous situation?

18 A. Yes.

19 Q. Might that lead to the loss of life?

20 MR. LEHENBAUER: Objection, your Honor;
21 speculation on his part, and it is beyond the scope
22 of anything in this citation.

23 THE ATTORNEY EXAMINER: Mr. Reilly.

24 MR. LEHENBAUER: I disagree, and I sat
25 quietly when he talked about this citation. I am

1 testing the witness' knowledge of the federal rules.
 2 I think the potential damage and risks associated
 3 with the trailer going down the road is very much a
 4 part of this case.

5 THE ATTORNEY EXAMINER: Thank you.

6 Your objection is noted, but it's
 7 overruled.

8 Q. What would happen if traffic traveling at
 9 65, 70 miles an hour in the vicinity of the trailer
 10 collapses, such as this one, collapses on Interstate
 11 80 at roughly 2:00 o'clock in the afternoon, what
 12 happens?

13 A. If that trailer collapses, many things
 14 can happen. Other vehicles could hit it. It could
 15 lose control, injure the driver that's operating it,
 16 injure the motoring public that's around it.

17 Q. Now, trooper, I would like to go back to
 18 the inspection for a second here. What's been marked
 19 as Staff Exhibit No. 1, I'd like to go back to the
 20 time when the inspection started. Do you see that?

21 A. Correct.

22 Q. And you said that was military time.
 23 That's 14:59?

24 A. Correct.

25 Q. Can you translate that for the rest of

1 us? That's roughly?

2 A. One minute before 3:00 p.m.

3 Q. One minute before 3:00 p.m. Now, you've
4 been -- how long have you been assigned to the post
5 that you work out of?

6 A. 20 years, my whole career.

7 Q. And have you during that 20-year period
8 had occasion to work Interstate 80 before?

9 A. Yes. I've always been assigned to the
10 interstate.

11 Q. For 20 years you've been assigned to
12 Interstate 80?

13 A. Yes, sir.

14 Q. And have you had occasion to watch the
15 traffic in the afternoon hours?

16 A. Correct.

17 Q. Okay. Many times?

18 A. Yes.

19 Q. Does your shift run over the afternoon
20 hours typically?

21 A. No. I work day shift. I was getting
22 ready to go home. I get off at 3:00 o'clock.

23 Q. Okay. But you work around 12:00 to
24 3:00 regular?

25 A. 7:00 to 3:00, 8:00 to 4:00.

1 Q. For 20 years?

2 A. I've worked midnights, but in the last 13
3 years, it's primarily been day shift.

4 Q. You say you have a pretty good idea of
5 the traffic levels in the afternoon on Interstate 80?

6 A. Yes.

7 Q. How would you describe that?

8 A. Moderate traffic, sometimes busy.

9 Q. But not light?

10 A. No, I wouldn't say it was light traffic.

11 Q. In your time in the 20 years you have
12 been working for the patrol on Interstate 80, have
13 you ever seen any truck jack-knife?

14 A. Yes.

15 Q. Have you seen trucks roll?

16 A. Yes.

17 Q. Is it a pretty dangerous situation?

18 A. Yes.

19 Q. So if the trailer on this truck
20 collapsed, does that create a dangerous situation, in
21 your opinion?

22 A. Yes.

23 MR. REILLY: We have nothing further,
24 your Honor.

25 THE ATTORNEY EXAMINER: Thank you.

1 Mr. Lehenbauer, recross?

2 MR. LEHENBAUER: Yes, thank you.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Lehenbauer:

6 Q. Trooper Mealer, are you aware of the
7 condition of this trailer when it left Canton, Ohio?

8 A. No.

9 Q. Are you aware if anything at all changed
10 in its condition from the time it left Canton, some
11 two hours away, till the time of your stop?

12 A. The first time that I saw that trailer is
13 when he passed me by the crossover.

14 Q. So you didn't get any reports from any of
15 the motoring public there were pieces flying off this
16 trailer, I take it?

17 A. No, sir.

18 Q. And there were no reports that somebody
19 saw the roof flapping around or that metal was
20 peeling away, correct?

21 A. No, sir.

22 Q. So it is pure speculation on your part
23 that this might have been tearing away, correct?

24 A. No, I wouldn't say speculation.

25 Q. Well, did you see it tearing away?

1 A. No.

2 Q. Did anyone see it tearing away?

3 A. I don't know if anyone did, but no one
4 reported it.

5 Q. Do you know if that issue with that
6 damage that you're saying was tearing away, do you
7 know if that occurred as part of the accident that
8 that trailer was originally in or if it occurred
9 during the transportation from Canton, Ohio?

10 A. Can you rephrase that?

11 Q. You don't know when that tearing away
12 occurred, do you?

13 A. No.

14 Q. And it would be speculation again on your
15 part to claim that it occurred during the time it was
16 being transported from Canton until the time you
17 stopped him?

18 A. I don't know when the front half came
19 off.

20 Q. But you don't have any evidence that
21 occurred from the time it left Canton to the time you
22 stopped that vehicle if there was any further damage
23 to the trailer?

24 A. When it left Canton, Ohio?

25 Q. Correct.

1 A. No; because I never seen it before it
2 passed me in the crossover.

3 Q. You never made any calls to see what
4 condition it was in before it left Canton, Ohio?

5 A. No.

6 Q. And lots of things can cause accidents on
7 the highway, correct?

8 A. Yes, sir.

9 Q. Another driver cutting off this truck
10 could have caused an accident?

11 A. Yes, sir.

12 Q. Correct? A blown tire could have caused
13 an accident?

14 A. Yes, sir.

15 Q. And, again, you've indicated there's no
16 other violations in this trailer. It had proper
17 tires. You have checked those, correct?

18 A. Yes.

19 Q. You checked the brakes on the trailer.
20 They were all properly adjusted?

21 A. No, I did not.

22 Q. You weren't concerned about the condition
23 of the brakes?

24 A. No. That's called a Level I inspection.
25 I conducted a Level II inspection.

1 Q. You didn't have concerns then with the
2 brakes so you conducted a Level II inspection?

3 A. Correct.

4 Q. When is the last time you investigated an
5 accident in the 20 years as a trooper where a vehicle
6 being towed down the turnpike down, State Route 2,
7 which goes through's that area, down State Route 24,
8 which goes through's that area, broke apart on the
9 highway while it was being towed?

10 A. About three weeks ago.

11 Q. Okay. But before this, before this
12 incident?

13 A. How many have I done prior?

14 Q. Prior to this incident, prior to your
15 citation in this case.

16 A. I don't remember.

17 Q. Well, do you have a particular date or
18 time prior to the date of this citation that
19 occurred?

20 A. That's what you're asking me, if I
21 investigated one. I don't remember.

22 Q. You don't remember investigating one, or
23 you did not investigate one?

24 A. I don't remember investigating. May I?
25 I may have. Prior to this I had 19 years of

1 experience. A lot of things happen in 19 years. Do
2 I freshly recall one? No.

3 Q. And the strapping you talked about in the
4 vehicle, are you familiar with that type of
5 strapping?

6 A. It's synthetic webbing going over the top
7 of it.

8 Q. Correct.

9 A. Yes.

10 Q. And do you know what the manufacturer's
11 specifications are for that webbing?

12 A. For each individual one?

13 Q. Correct.

14 A. No; because I didn't measure them.

15 Q. Okay. And are there specifications as to
16 the use of that webbing?

17 A. Yes.

18 Q. And the use of that synthetic webbing, as
19 you call it, was proper in this particular case,
20 correct?

21 A. The use of it?

22 Q. Yes.

23 A. Yes.

24 Q. And it has the strength -- some of this
25 webbing has the same strength as a chain?

1 MR. REILLY: Objection, lack of
2 foundation, irrelevant.

3 THE ATTORNEY EXAMINER: Mr. Lehenbauer,
4 your response to the objection?

5 MR. LEHENBAUER: Again, he's trying to
6 claim or make reference that somehow this synthetic
7 material was improper, and I'm just following up on
8 that.

9 THE ATTORNEY EXAMINER: You need to ask a
10 few more questions to establish a foundation with
11 those questions. I'll overrule at this point.

12 MR. LEHENBAUER: Okay.

13 Q. Well, you did not make any notation on
14 your report that this synthetic webbing was
15 improperly installed on this particular trailer, did
16 you?

17 A. No, I did not.

18 Q. Okay. And did you perform or conduct any
19 tests to determine if that synthetic webbing properly
20 secured this trailer?

21 A. No.

22 Q. Did you do any checks at all of the
23 synthetic webbing?

24 A. Visual.

25 Q. Did you make any measurements of the

1 synthetic webbing, of any of it?

2 A. No.

3 Q. Do you know how many different pieces of
4 synthetic webbing were in place on this particular
5 trailer?

6 A. Three. Three on the outside and I
7 believe three on the inside. I have photographs of
8 them. There's three wrapped around the outside --

9 THE ATTORNEY EXAMINER: Could you
10 reference the specific photographs that you're
11 looking at?

12 MR. LEHENBAUER: 2B I think is one, 2A or
13 2B.

14 THE WITNESS: There's 2C, 2B. 2A also
15 shows the synthetic webbing on the outside, and 2E
16 shows it on the inside.

17 Q. And you have no evidence that the webbing
18 that was used didn't stabilize this trailer, correct?

19 A. There were no defects listed for this
20 synthetic webbing.

21 MR. LEHENBAUER: I have nothing further.

22 THE ATTORNEY EXAMINER: All right. I
23 have no questions so thank you. You are excused.

24 Mr. Reilly, your exhibits?

25 MR. REILLY: We will move the

1 introduction of Staff Exhibits 1, 2, 2A through all
2 the letters. I have them in front of me.

3 THE ATTORNEY EXAMINER: Let the record
4 reflect that A, B, C, D, E, F, G, H, I, J, and K.

5 MR. REILLY: Okay, 1 and 2.

6 THE ATTORNEY EXAMINER: Any objection to
7 the admission -- are those all the exhibits you want
8 to have admitted?

9 MR. REILLY: We will come with Mr. Frye.

10 THE ATTORNEY EXAMINER: Any objection to
11 the admission of Exhibits 1 and 2A through 2K?

12 MR. LEHENBAUER: No issues.

13 THE ATTORNEY EXAMINER: Hearing none,
14 Staff Exhibits 1 and 2A through K will be admitted.

15 MR. REILLY: Thank you, your Honor.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 MR. REILLY: We call Jonathan Frye.

18 - - -

19 JONATHAN FRYE

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

22 DIRECT EXAMINATION

23 By Mr. Reilly:

24 Q. Good afternoon, Mr. Frye. Would you
25 introduce yourself to the Bench and court reporter,

1 spelling your last name telling us your employer?

2 A. Yes, Jonathan Frye, F-R-Y-E, the Public
3 Utilities Commission of Ohio, Transportation
4 Department, 180 East Broad Street Columbus, Ohio,
5 43215.

6 Q. What is your position with the Public
7 Utilities Commission of Ohio, Mr. Frye?

8 A. I'm the chief of the Compliance Division.

9 Q. Is that the Transportation Section?

10 A. Yes.

11 Q. And what are some of your duties as chief
12 of the Compliance Division?

13 A. To review the fine assessments against
14 drivers and carriers and shippers to determine
15 whether or not the fines are accurate.

16 Q. Mr. Frye, when there is a -- let me pick
17 up, we were talking with Trooper Mealer about putting
18 information into the federal and state database, the
19 ASPEN database. Could you testify about -- he
20 testified about putting it in. Can you take it from
21 there or tell us what happens after the possible
22 violation is -- could you tell us what happens after
23 a trooper or an inspector notes a violation into the
24 ASPEN database?

25 A. Yes. The information gets uploaded and

1 eventually comes to the Transportation Department of
2 the PUCO. For each violation that's discovered on
3 the roadway, we have a fine assessment chart with a
4 dollar amount that's assigned to each of the
5 violations. The computer will automatically issue a
6 fine letter based upon the violations that are
7 discovered out on the roadway.

8 Q. Does the fine letter have a name?

9 A. Yes. It's Notice of Apparent Violation
10 with an Intent to Assess Forfeiture.

11 Q. Okay. And what happens as a result of
12 that fine letter? What are some of the options
13 available?

14 A. Right. The fine letter is issued to the
15 respondent. There's an instruction sheet that goes
16 out advising the respondent that they can either pay
17 the fine or they can make a request for a telephone
18 conference if they believe the violation didn't occur
19 or if they want to present any other mitigating
20 information relative to the fine.

21 Q. Now, are you aware, Mr. Frye, whether
22 that happened in this case?

23 A. Yes, it did happen.

24 Q. And what happened as a result -- what
25 happened next?

1 A. Right. The respondent in this particular
2 case made a request for a conference. A conference
3 was conducted with a compliance officer within the
4 division. The compliance officer made a decision
5 since the driver was cited in local court, that she
6 or he would waive the monetary fine, which was \$100.
7 They would waive that fine against the company
8 because the driver himself was cited at the local
9 court.

10 Q. And is that an unusual event when
11 somebody is cited in a local court?

12 A. No, that is not an unusual event. It
13 occurs, and as a policy decision we will waive the
14 fine against the company because the violation is
15 against the company.

16 Q. Now, what then happens typically?

17 A. If we're able to reach a resolution, we
18 will issue what is called a settlement agreement. In
19 any event, if we were unable to reach a resolution,
20 we will issue a second letter to the respondent,
21 which is called a Notice of Preliminary Determination
22 letter, and that letter will advise the respondent
23 they can either pay the fine or they can make a
24 request for an administrative hearing to dispute the
25 case further.

1 Q. And are you aware -- we are here because
2 the respondent requested a hearing; is that correct?

3 A. That's correct.

4 Q. I'd like you to take a look on the
5 witness stand and see a document marked Staff Exhibit
6 No. 3. I will hand you what has been marked as Staff
7 Exhibit No. 3. Can you tell us what that is?

8 A. Yes; the Notice of Preliminary
9 Determination letter that was issued to the
10 respondent. It was a result of the respondent making
11 a request for a telephone conference, and we were
12 unable to reach a resolution with regards to the
13 case, and as a result, we issued this Notice of
14 Preliminary Determination advising them that they can
15 either pay the fine or make a request for a hearing
16 to contest it further.

17 Q. And is the fine the staff is seeking
18 noted anywhere on that letter?

19 A. Yes. On page 1, it has the initial fine
20 of \$100. On page 2 of the letter, it has the amount
21 that the staff is seeking as a result of the
22 conference, which is zero dollars.

23 Q. Now, then what happened?

24 A. Then the letter is sent.

25 Q. And the letter in this case was sent --

1 Staff Exhibit 3 was sent to whom or to what?

2 A. It was sent to Refix Truck & Trailer
3 Repair to the attention of Rachel Burnes,
4 B-U-R-N-E-S. She was the one who had made a request
5 for a telephone conference on behalf of the company.

6 Q. And that is shown where?

7 A. It's shown on page 1 of the letter, in
8 the top left of the letter.

9 Q. So the violations the staff was asserting
10 in this case were against the company; is that
11 correct?

12 A. Yes.

13 Q. They're not against the driver?

14 A. Not at all.

15 Q. Okay. Now, the violations -- I'd like
16 you to -- are the violations that the staff is
17 seeking to enforce against the company noted anywhere
18 on Staff Exhibit No. 3?

19 A. Yes.

20 Q. And where is that?

21 A. In the body of the letter right in the
22 middle it has the code cite of 393.201A and it lists
23 the violation as a "Frame cracked/loose/sagging/
24 broken - upper rail." So that's the violation that
25 staff is alleging against the carrier.

1 Q. Is staff alleging or seeking remedy for a
2 violation of Ohio Revised Code 4513.02?

3 A. Not at all.

4 Q. Who enforces that provision, if you know?

5 A. The State Patrol.

6 Q. And who would prosecute that provision,
7 if you know?

8 A. That I don't. It's something that is
9 cited into local court. It's not something we
10 prosecute.

11 Q. Okay. Now, Mr. Frye, if you would take a
12 look at Staff Exhibit No. 1, and I want to talk to
13 you for just a second about the violation that's
14 mentioned there of 4513.02. Can you find Staff
15 Exhibit 1? 4513.02, do you know if that was cited
16 into local courts?

17 A. Yes, it was cited into local court.

18 Q. Do you know if anyone paid any money to
19 that court as a result of this violation?

20 A. Yes, monies were paid for this particular
21 violation.

22 Q. Do you know how much?

23 A. Eighty dollars.

24 Q. And how do you know all this?

25 A. Through my research in terms of the

1 particular case.

2 Q. Okay. Is there an opportunity for the
3 staff of the Public Utilities Commission or others to
4 access the results of cases around -- in various
5 courts in the state of Ohio?

6 A. Yes.

7 Q. Okay. And in using that in researching
8 through those names, you were able to check the
9 results of this case?

10 A. That's correct.

11 Q. And the monies that were paid, the \$80
12 that you just referenced paid by the driver, what was
13 the reason for that?

14 A. That I don't know. My recollection it
15 was a plea agreement. I'm not sure, absolutely sure.

16 MR. REILLY: We have nothing further.
17 Thank you.

18 Thank you, Mr. Frye.

19 THE ATTORNEY EXAMINER: Mr. Lehenbauer,
20 cross?

21 MR. LEHENBAUER: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Lehenbauer:

25 Q. Mr. Frye, my name is Alan Lehenbauer.

1 I'm here on behalf of the company. Are you familiar
2 with the violation issued in this case, frame
3 cracked? Did you review that?

4 A. Yes.

5 Q. And how long have you been involved with
6 the Public Utilities Commission?

7 A. Since 1990.

8 Q. Okay. Has it always been in the area of
9 damage to vehicles and this type of issue?

10 A. With regards to the violation itself, I'm
11 not familiar with the violation itself. I'm familiar
12 with the monetary aspect of the violation and the
13 monies that are associated with the violation, not
14 the aspect of the violation as written.

15 Q. Okay. So would you be familiar with a
16 violation where a frame is cracked as to the nature
17 of the repairs necessary to repair a cracked frame?
18 Are you familiar with any of those type of
19 operations?

20 A. No.

21 MR. LEHENBAUER: I have nothing further
22 then.

23 THE ATTORNEY EXAMINER: Mr. Reilly,
24 redirect.

25 MR. REILLY: No redirect, your Honor.

1 THE ATTORNEY EXAMINER: I have no
2 questions. Thank you. You're excused.

3 MR. REILLY: Your Honor we would move in
4 introduction of Staff Exhibit 3.

5 THE ATTORNEY EXAMINER: Any objections to
6 the admission of Staff Exhibit 3?

7 MR. LEHENBAUER: No, your Honor.

8 THE ATTORNEY EXAMINER: Hearing none
9 Staff Exhibit 3 will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. REILLY: With that, staff would rest.

12 THE ATTORNEY EXAMINER: Thank you.

13 Before we move on, I did mark Respondent
14 Exhibit 1 for you. I neglected to ask you if you
15 wanted to move that into evidence earlier.

16 MR. LEHENBAUER: Yes, your Honor.

17 THE ATTORNEY EXAMINER: Any objections to
18 the admission of Respondent Exhibit 1?

19 MR. REILLY: Yes, your Honor. We don't
20 see the relevance of this. Respondent
21 Exhibit 1 talks about the disposition of a case
22 against none of the parties to this case. Staff was
23 not part of this case. The Commission -- staff was
24 not part of the case referenced in Respondent's
25 Exhibit 1. The Commission was not part of the case

1 referenced in Respondent's Exhibit 1, and the
2 respondent in this case was not the defendant in the
3 case referenced in Staff Exhibit No. 1.

4 There is some question as to what's going
5 on with Respondent Exhibit -- the result of the case
6 against the driver that is referenced in Respondent's
7 Exhibit No. 1 in that you have some sort of money
8 being paid, according to the testimony, and you have
9 a dismissal, which we won't contest.

10 I don't see what another case involving
11 other parties has to do with this case. The
12 violations are not the same. So you have everything
13 that's different. You have different parties, a
14 different tribunal, and a different violation. I
15 don't see what the relevance of that is to this case.

16 THE ATTORNEY EXAMINER: Mr. Lehenbauer,
17 would you care to respond?

18 MR. LEHENBAUER: Thank you, Your Honor.
19 One, I believe the document speaks for itself. It
20 talks about the dismissal, the payment of court
21 costs, which is \$80, contained in that document; and,
22 secondarily, it does involve the same parties to some
23 extent. It involves the trooper that issued the
24 citation that rose to this particular violation for
25 unsafe vehicle on the face of Staff Exhibit 1 that

1 was admitted into evidence here. Again, it involves
2 is same incident, the same conduct, so it is
3 relevant.

4 THE ATTORNEY EXAMINER: Mr. Reilly, your
5 objection is overruled. I think the Commission is
6 capable of examining the documents for appropriate
7 weight and relevance, so Respondent's Exhibit 1 will
8 be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 THE ATTORNEY EXAMINER: Mr. Lehenbauer,
11 are you ready to present your witness?

12 MR. LEHENBAUER: First, we would make a
13 motion to dismiss the alleged violation in this case,
14 again, based on the Code of Federal Regulations as
15 set forth in the definitional section under 390.5.
16 Again, the disabling damages set forth in the
17 definition talks about inclusions, meaning damage to
18 vehicles that could have been driven but would have
19 been further damaged if so driven.

20 The trooper himself indicates his belief
21 was if this vehicle continued down the road, that the
22 trailer could collapse, that other things could fly
23 off. It wasn't a simple repair that could be
24 repaired without special tools or parts. If it could
25 have -- if damage from an accident could be repaired

1 without special tools or parts, such as a flat tire,
2 headlight or taillight damage, damage to turn
3 signals, nonoperational defects are things that are
4 excluded, but other damage are included.

5 And, again, if you read a narrow
6 definition of driveaway-towaway operations as
7 presented by the PUCO in this case, it means that no
8 vehicle could ever be transported for purposes of
9 repair. The trooper admitted that the company was in
10 no violation of any other laws, and if you read
11 again, the driveaway-towaway operation does allow a
12 taking of a vehicle with disabling damage following
13 the crash. It doesn't say it has to be the same day
14 of the crash, but it's crash damage.

15 It also allows transportation for repair
16 of failure of a vehicle component or system. If this
17 was damage that was not related to a crash but the
18 frame cracked because of stress, use, or otherwise,
19 the code also allows in the driveaway-towaway
20 operation for a vehicle to be transported to a repair
21 facility. And, again, we would submit that there's
22 nothing that excludes the transportation of this
23 trailer under the Code of Federal Regulations as
24 adopted by the State of Ohio.

25 THE ATTORNEY EXAMINER: Thank you.

1 Mr. Reilly.

2 MR. REILLY: Thank you, Your Honor. The
3 definitions in 390.5 speak for themselves, but just
4 in response, I would like to talk about the
5 definition of disabling damage here for a second.
6 The significance of that is -- first of all, let me
7 talk about the definition of disabling damage. The
8 disabling damage, the definition begins with a
9 sentence that covers the rest of the conditions. The
10 disabling damage means -- this is, I'm quoting here,
11 "Damage which precludes the departure of the motor
12 vehicle from the scene of the accident in its usual
13 manner from the scene of the accident."

14 It applies only to vehicles being hauled
15 from the scene of the accident. And now counsel has
16 noted, what happens if nothing can be hauled for
17 repair if they were in bad condition? And that is
18 probably correct. I don't want to speak for policies
19 that have not been adopted, but you may have to bring
20 lowboys out to keep unsafe vehicles off the road.

21 The other point is that if they are
22 correct, that some vehicle can be taken -- driven
23 away from the scene of an accident, even though it is
24 in disrepair, then there is no out-of-service
25 violation. That same rationale would apply to out of

1 service. If it can be moved, move it so you could
2 have no out-of-service violation.

3 This is very specific. This is for a
4 very limited purpose. Disabling damage is damage
5 that precludes the departure of a motor vehicle from
6 a scene of the accident. That was not true here.
7 The evidence in this case is that it was hauled from
8 a tow yard, suggesting so far that this vehicle was
9 taken from the scene of the accident to the tow yard.
10 And at that point it can't be put back on the road
11 until it's fixed.

12 THE ATTORNEY EXAMINER: Thank you.

13 Mr. Lehenbauer -- I'm sorry, did you have
14 something to add?

15 MR. REILLY: I would note on
16 driveaway-towaway, 390.5, it says that the
17 driveaway-towaway means an operation which is an
18 empty or unloaded motor vehicle with one or more
19 service wheels on the surface of the roadway is being
20 transported to a motor carrier's terminal or facility
21 for the repair of the disabling damage.

22 We don't have disabling damage in this
23 case because it's not from the scene of the accident.

24 Thank you, your Honor.

25 THE ATTORNEY EXAMINER: Thank you.

1 Mr. Lehenbauer, do you want to respond?

2 MR. LEHENBAUER: Yes. Again, the
3 disabling at the time of the accident, this vehicle,
4 this trailer was disabled. I think it's clear. The
5 trooper himself indicates that the damage was such
6 that, you know, unless steps were taken, it shouldn't
7 be transported down the road. So that's the
8 definition of where you come up with disabling
9 damage. It doesn't mean that because it was in an
10 accident, it becomes disabling damage.

11 The second part of that, you have to read
12 them together. You just can't just say directly from
13 the scene of the accident to a repair facility is the
14 only time you can repair disabling damage. So, in
15 effect, the state here is admitting that if Refix
16 went to the scene of the accident, they could tow
17 this without any problems. If they waited more than
18 five hours and somebody else took it off the road,
19 they can't tow it. Again, it makes no sense for that
20 definition to be tried to be applied in this
21 particular case.

22 THE ATTORNEY EXAMINER: Thank you. Your
23 motion to dismiss is noted for the record but it is
24 denied at this time so we will continue with
25 testimony.

1 Do you want to call your first witness?

2 MR. LEHENBAUER: Yes. We call Mark
3 Zcupta to the stand.

4 - - -

5 MARK ZCUPTA

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

8 DIRECT EXAMINATION

9 By Mr. Lehenbauer:

10 Q. Please state your name and address.

11 A. Mark Zcupta, 14139 Millard Drive,
12 Overland Park, Illinois 60467.

13 Q. Can you spell the last name?

14 A. Z-C-U-P-T-A.

15 Q. All right. What is your position with
16 Refix?

17 A. I'm the owner of the company.

18 Q. Okay. And how long have you owned this
19 particular company?

20 A. Since 1998.

21 Q. And what is the nature of the business
22 that you conduct?

23 A. We repair semi trailers, low beds, reefer
24 units.

25 Q. And are you certified to repair tractor

1 trailer units that you described?

2 A. Yes, we do. We also do warranty work for
3 Wabash Company that builds trailers, Honda Motor
4 Company, and other companies.

5 Q. And are there certain specifications that
6 you have to follow to properly repair a vehicle
7 that's been damaged?

8 A. Yes, we do.

9 Q. And the damage that you repair to
10 vehicles, is it to tractor-trailer units also or is
11 it just to the trailers?

12 A. It's 98 percent trailers. We hardly do
13 any trucks.

14 Q. And how many different types of trailers
15 are there that you're involved with repairs?

16 A. About over 100.

17 Q. Okay. And, now, you indicated there's
18 flatbed trailers. Can you describe what that is?

19 A. Yes. A flatbed trailer is basically a
20 trailer that it does not have any walls. It is just
21 basically flat and has a frame that goes all the way
22 from the back of the trailer to the front of the
23 trailer.

24 Q. And then the type of trailer in this
25 case, would you describe it as box trailer?

1 A. Right; this is a regular driving trailer.

2 Q. And what are the dimensions of the
3 trailer involved in this particular citation?

4 A. It is 53, 102, 13-6 height.

5 Q. You heard the trooper reference you could
6 transport this on a lowboy trailer. Can you describe
7 what a lowboy trailer is for the Court?

8 A. Lowboy trailer is basically a trailer
9 that moves heavy equipment, meaning heavy trucks
10 heavy machinery, but you cannot transport driving
11 trailer. It just can't be done. I've never seen
12 one.

13 Q. Why is that?

14 A. It's basically too tall. It's too long.
15 Basically if you were to put one on, you would hit
16 every bridge on the way. It can't be done.

17 Q. And on a lowboy trailer, what is the
18 length of that trailer?

19 A. The usual lowboy trailer is 48 feet.
20 They do make 53-foot, but the wheels are basically
21 actually higher off the ground, so if you were to put
22 semi trailer wheels on that, it would actually be
23 higher than actually the lowboy is because a lowboy
24 frame, it drops in the middle and raises right above
25 the wheels in the back.

1 Q. Okay. And what would be the lowest
2 height on a lowboy trailer that you've ever --

3 A. About 12 inches in the middle. The
4 wheels on a lowboy is about 26 inches.

5 Q. And would there have been a way to
6 transport this particular trailer on a lowboy
7 trailer --

8 A. No.

9 Q. -- and keep it one foot off the ground
10 the whole way?

11 A. No.

12 Q. I mean, would part of it be even higher
13 in the air?

14 A. You could put it on, let me put it that
15 way, but you wouldn't be able to drive it.

16 Q. And why is that?

17 A. It's just too big for it.

18 Q. And in the industry that you're in, how
19 many different repair facilities are there that are
20 certified to repair this type of trailer?

21 A. In our area probably around, I would say,
22 over 100 at least.

23 Q. Is it a fairly specialized industry?

24 A. No. It's --

25 Q. Are you under contract then with this

1 company to repair their trailers?

2 A. Yes, we are.

3 Q. And when were you first contacted about
4 this particular vehicle; do you remember?

5 A. Usually we receive an e-mail from a
6 customer that sends us a detailed picture of the
7 damage of the trailer, the condition of the trailer,
8 location, and the like.

9 Q. Okay. So did you receive that
10 information relative to this particular trailer?

11 A. Yes, we did. We received an e-mail with
12 detailed pictures and location of the trailer.

13 Q. And you're familiar also with the Code of
14 Federal Regulations, correct?

15 A. Yes, I am.

16 Q. And the damage that you observed to this
17 vehicle, would you consider it disabling damage?

18 MR. REILLY: Objection, relevance.

19 A. Yes.

20 MR. REILLY: Lacks foundation.

21 THE ATTORNEY EXAMINER: When an objection
22 is made, refrain from answering until I make a
23 ruling.

24 MR. REILLY: Objection, lack of
25 foundation. There's no indication of expertise. He

1 said, Are you familiar with it? I mean, it could be
2 a passing familiarity, and it's much different than
3 being a trooper. There has been no indication of
4 study on it; no indication of classes on it. There
5 has been no indication of real -- of any kind of
6 application of it.

7 I grant you, the witness is a manager,
8 but a manager is certainly not a lawyer. That's not
9 been established, and it's not been established he's
10 anyone associated with law enforcement for
11 enforcement in this specific field

12 THE ATTORNEY EXAMINER: Thank you.
13 Mr. Lehenbauer.

14 MR. LEHENBAUER: Yes. My response would
15 be again, the definition says, and he can testify to
16 what the definition means of disabling damage in that
17 it can't be driven without being further damaged.
18 He's allowed to testify to that. So he's allowed to
19 testify to that. I don't think that's any particular
20 expertise that means you have to be a lawyer to
21 understand what those simple words mean.

22 THE ATTORNEY EXAMINER: With the notation
23 that you are not a lawyer -- you are not a lawyer; is
24 that correct?

25 THE WITNESS: No.

1 THE ATTORNEY EXAMINER: He may answer the
2 question to the extent he holds knowledge on that,
3 with the notation he is not an attorney.

4 Do you need the question read back to
5 you?

6 THE WITNESS: Yes.

7 THE ATTORNEY EXAMINER: Would you read
8 the question back, please.

9 (Record read.)

10 A. Yes.

11 Q. Without doing anything to this trailer,
12 would you have allowed anyone to take it down the
13 road?

14 A. Exactly. It was not safe to drive as a
15 regular truck. It had to be properly secured before
16 it was pulled safely down the road.

17 Q. And are you trained in the methods to
18 properly secure a damaged trailer?

19 A. Yes, we are.

20 Q. And where did you receive that training
21 from?

22 A. Well, we do this on a daily basis,
23 meaning we pull trailers like this. Actually, this
24 one was a really easy one, meaning compared to some
25 other ones, but to safely fix the vehicle or actually

1 fix it properly, you would have to have proper parts,
2 which means this particular vehicle, there was parts
3 we would have to replace, which was top rails, they
4 are 52 feet long; bottom rails, they're also 52 feet
5 long, which you would not be able to replace them on
6 site. This vehicle has to be towed to a proper
7 facility to use proper parts to fix it.

8 Q. So your typical towing operation from the
9 scene of an accident, do they have an ability to make
10 that kind of repair to a trailer?

11 A. Well, we do have service trucks that we
12 also go on site, but the repairs that we do off of
13 service trucks are small, replace tire, repair
14 proper, you know, lights that are broken, but this
15 one basically was too big of job. I mean, there was
16 half of the roof missing. There was nothing that we
17 could do on site.

18 Q. And was this trailer used to transport
19 any goods or materials down the highway?

20 A. No. We do not pull vehicles that have
21 any loads on them because actually loads could
22 collapse the trailer. Empty trailer, you're hauling
23 air. There was no load pressing on trailer.

24 Q. Now, you saw the exhibits as they were
25 presented by the PUCO in this case?

1 A. Yes, I did.

2 Q. And did you view this trailer when it was
3 returned to your facility?

4 A. Yes. As soon as the driver came back, I
5 inspected the trailer; went to look exactly how it
6 was properly secured, and I didn't see any issue with
7 it.

8 Q. And what steps had been taken to secure
9 the trailer that you observed when you saw it?

10 A. Well, basically, first when we receive
11 pictures from a customer and see the condition of the
12 trailer, we determine what do we need to bring with
13 us to properly secure the trailer to bring it to be
14 repaired. So basically we either -- if it's a lot
15 more damaged, we will send a service truck with the
16 driver to repair or do the necessary repairs to pull
17 it safely on the road.

18 Q. And do your drivers have training in the
19 steps necessary to --

20 A. Yes. Our driver is actually a mechanic
21 that performs federal highway inspections on a daily
22 basis, and he pulls -- also he drives a towing truck
23 for us, so I would say 20 percent of driving,
24 80 percent of actually repairing semi trailers so he
25 has knowledge.

1 Q. And how long has Mr. Gawron been in your
2 employment?

3 A. He's been with me about ten years.

4 Q. So before he left, did you -- or departed
5 to obtain this particular trailer, did you discuss
6 with him the possible repairs that would be necessary
7 to transport it?

8 A. Yes, we do. We tell them what needs to
9 be done, and that's what he does, and he did
10 everything according to our specs.

11 Q. And how many different states do you
12 operate in?

13 A. I would say all of them except we hardly
14 go to California. It's too far, but Texas, Florida,
15 West Coast, East Coast, every state.

16 Q. And how long have you been doing this
17 type of work or been involved in this industry?

18 A. I've been doing this since 1994. I was a
19 mechanic. I also have a CDL license. I also pull
20 trailers, and I also secure them. Basically I do
21 everything.

22 Q. And during -- since 1994 have you ever
23 seen a trailer of this size being transported on a
24 lowboy or any other method?

25 A. No.

1 Q. Is there any other method that you could
2 transport this type of the trailer to a repair
3 facility?

4 A. No.

5 Q. If a trailer is in such a condition that
6 it cannot be repaired or can't be transported, what
7 happens to it at that point?

8 A. Most cases it's taken apart at the towing
9 place by local scrap companies.

10 Q. In your view, was this a trailer that was
11 repairable or subject to being able to be repaired,
12 properly repaired?

13 A. Yes. What it does, when we receive
14 e-mail from a customer with the pictures, we also
15 conduct estimates what the repair is going to be.
16 Then the customer even gives us the go-ahead, meaning
17 we're going to fix it. We need to bring it. Please
18 tow it to our facility; fix it.

19 Q. I hand you what has been marked as
20 Exhibit 2D. Can you identify that for the record?

21 A. Yes. It's a called a bottom rail. And
22 this particular one is a three-piece bottom rail. We
23 see in the picture here is a crack between the bolts.
24 It's down. It's only a two-piece bottom rail
25 cracked. The third piece is still attached.

1 Q. When you say three-piece rail, how would
2 you describe that for somebody that is not familiar
3 with trailers or the trucking industry. What does a
4 rail consist of?

5 A. Okay. This particular rail is a newer
6 type of trailer. It called a high base rail. It is
7 a 22-inch rail high, and the crack on it is about
8 three inches. This type of rail is actually the
9 newest that came out. It is the strongest in the
10 market right now.

11 Q. Now, this rail, what direction does it
12 run or where is it situated on the truck itself or on
13 the trailer itself?

14 A. It's actually the lower side on the right
15 and left side of the trailer that runs from the front
16 to the back of the trailer.

17 Q. Is it above or below the walls of the
18 trailer?

19 A. It's below of the actual wall.

20 Q. Okay. And what is it attached to on the
21 trailer then?

22 A. It is attached to cross-members in the
23 floor and the upper side rails.

24 Q. And relative to this issue with the
25 trailer, I mean, how would you specify --

1 A. This is actually the smallest case, I
2 would say, because it's only so small of crack. I
3 mean, we bring trailers with complete rails missing.
4 Let me put it that way. This trailer is built, it is
5 very strong. It is almost impossible to break. The
6 flooring is so strong if you look, that trailer was
7 damaged under load and it only cracked that much. It
8 is impossible to break it. Let me put it that way.

9 Q. Okay. What steps were taken by your
10 company, your driver, to secure the damage that is
11 set forth in that exhibit?

12 A. Okay. The necessary -- what we do is
13 basically releasing the pressure of the four rails.
14 When you run a come-along in the middle of the
15 trailer underneath from the axle to the top landing
16 leg, it basically releases the pressure so there's no
17 most more pressure on any of the four rails.

18 Q. Okay. Now, you're saying four rails, so
19 there's --

20 A. Upper and lower.

21 Q. But the four rails that run lengthwise
22 or --

23 A. Lengthwise, right. They're 52 feet long,
24 exactly.

25 Q. All right. So this is one of four rails.

1 Where are the other three rails situated at?

2 A. The other one is on the other side, and
3 then you have on each side at the top on the same
4 side of it along with each other.

5 Q. You said -- I think you said come-along,
6 C-O-M-E-A-L-O-N-G.

7 A. Yes, come-along.

8 Q. And is that terminology that's used for
9 the chain binders? Is that another word --

10 A. Yes. It's actually stronger than the
11 binders that some of the companies use for basically
12 strapping steel coils on flatbeds.

13 Q. Right. So what is -- how does the
14 come-along operate? What does it do?

15 A. Basically you attach to one side of the
16 equipment, and basically you attach a chain to it,
17 and you can pull it, and it pulls it with force and
18 strength.

19 Q. Is it used to tighten the chains?

20 A. Yes.

21 Q. Whatever you have chained up?

22 A. Yes.

23 Q. I will hand you what is marked Exhibit F
24 or 2F.

25 A. Yes.

1 Q. And what does that depict?

2 A. I'm sorry?

3 Q. What does that picture depict?

4 A. The picture shows basically chain chained
5 to the front of the axle, which is the first axle in
6 the middle, and it runs to the dolly legs, which are
7 they are in front of the trailer.

8 Q. Okay. And is there a come-along pictured
9 in that?

10 A. Yes, there is. You see the red thing
11 that you pull in?

12 Q. Is there something that attaches to the
13 come-along to tighten the chains then?

14 A. There's big hooks that you attach chains
15 to them.

16 Q. Is it like a gear mechanism then?

17 A. Right. It's -- how do I describe it? It
18 basically pulls the chains together.

19 Q. All right. Okay. And then did you
20 observe this trailer when it arrived at your repair
21 facility?

22 A. Yes, I did.

23 Q. And were the chains that are depicted in
24 Exhibit 2F still in the same position?

25 A. Yes, they were.

1 Q. And were they still tight?

2 A. Yes, they were.

3 Q. And were you able to observe what that
4 temporary -- or what that chaining did to the damaged
5 rail?

6 A. It didn't do nothing.

7 Q. Okay. I also show you what has been
8 marked as 2L. Can you identify that picture for the
9 record? Can you identify what that is?

10 A. Yes. It's a picture of inside of the
11 trailer that shows the bottom rail, side panel, and
12 the side bolts.

13 Q. And the trooper testified that showed
14 rivets being pulled away.

15 A. Yes, correct.

16 Q. Would that have been from the top or the
17 bottom? What area was that on that trailer; do you
18 recall?

19 A. It's the bottom rail. That's where the
20 rivet came out, the bottom rail.

21 Q. Okay. Would that be the front or the
22 back of the trailer?

23 A. That's center.

24 Q. Towards the center. Is that on the
25 inside or outside?

1 A. That is actually right at the crack of
2 the rail. If you look outside of the trailer, the
3 rail was cracked on the outside, and it's only bent
4 on the inside. That's why those rivets came out off
5 of that.

6 THE ATTORNEY EXAMINER: That crack that
7 you referenced, is that pictured in Staff Exhibit 2D?

8 THE WITNESS: 2D, correct.

9 THE ATTORNEY EXAMINER: Is that the
10 same?

11 THE WITNESS: Yes, it's the same spot.
12 It's just a picture of it from inside of it.

13 THE ATTORNEY EXAMINER: Thank you.

14 Q. (By Mr. Lehenbauer) And then adjacent to
15 where that area is riveted, it looks like there's
16 another metal plate?

17 A. Yes. It's called the side post. That's
18 where the panels are connected together and with the
19 rail.

20 Q. Okay. And to get an example of the side
21 posts, I hand you what is marked Exhibit 2B. Does
22 that show various side posts from the outside of this
23 particular trailer?

24 A. Yes, it does. It basically shows
25 connection of these panels. When you see these

1 lines, there's basically 13 of them.

2 Q. So do you know what the spacing is then
3 of those?

4 A. 48 inches.

5 Q. So every 48 inches. And is that the only
6 area on this trailer where there was this type of
7 damage?

8 A. Yes, correct.

9 Q. I hand you what is marked as Exhibit 2G.
10 Can you identify that?

11 A. It basically shows a picture of the
12 bottom rail and the attached strap to it.

13 Q. Is that the same crack from a different
14 angle or a different area?

15 A. Basically, if you look on the other
16 picture, it's right -- it's right next to it,
17 basically.

18 Q. Then I'm going to hand you what is marked
19 as Exhibit 2E. Can you identify that for the record?

20 A. Okay. It shows a picture of inside of
21 the trailer, and it has three straps that the walls
22 are secured from inside so they don't collapse on the
23 outside, and it has a missing roof, and it has some
24 roof bolts and there's some missing. There's some
25 bent.

1 Q. And what is the procedure that you would
2 follow relative to securing the walls of the trailer?

3 A. Basically what we have to do is secure it
4 in a spot where the trailer was damaged, where it has
5 cracks, and where the walls are falling apart.

6 Q. Then does the roof of the trailer lend
7 additional support to the trailer?

8 A. Usually no, because if you chain a
9 trailer from underneath, you are releasing all the
10 pressure from all sides, so it's just basically
11 securing with the straps so it will not fall apart.

12 Q. I know it's not well pictured on here,
13 but how far back was the roof damage? I hand you
14 Exhibit 2A.

15 A. It was probably about 50 percent of the
16 roof missing.

17 Q. So from the front of the trailer, about
18 how many panels?

19 A. It's actually past the third strap about
20 a few feet. Usually we put the last strap right
21 above where that roof is missing so if the wind
22 wanted to pick it up, it will not be able to because
23 the last strap will hold it down.

24 Q. Okay. Do you know if that was the
25 case --

1 A. Yes, it was.

2 Q. -- in this particular instance?

3 A. Yes.

4 Q. And the pictures that were offered here
5 as exhibits were pictures that were taken at the
6 scene of where the citation was issued?

7 A. Correct.

8 Q. And when the trailer arrived back in your
9 repair facility, was it in any different condition
10 than what was pictured here?

11 A. Yes, it was, where we had to do -- we
12 were told that we had to plate those cracks, so we
13 sent a service truck, and we put in two overlay
14 plates. Then we had the driver take it back to our
15 facility.

16 Q. So besides that, besides the plates that
17 were put on by your repair people, was there any
18 additional damage to the trailer --

19 A. No.

20 Q. -- caused by its down the road?

21 A. No. And there were no other straps put
22 on or nothing.

23 Q. All right. And the plates that you put
24 on or that your repair people came out and put on
25 this trailer, would that be considered a certified

1 repair by the manufacturer?

2 A. It's -- they call it a temporary repair.

3 Q. And what is required to properly repair
4 the damage that's exhibited to this trailer?

5 A. The rail would have to be replaced.

6 Q. So what repairs did you ultimately then
7 make to this trailer?

8 A. We only just put a plate -- replated
9 those cracks. We put 24-inch plates on them.

10 Q. After you arrived at your repair
11 facility, what repairs did you then commence to make?

12 A. We replaced all four rails, put a new
13 roof on it with all missing and broken roof bolts,
14 put a new nose rail on it, and that was it.

15 THE ATTORNEY EXAMINER: So we have a very
16 clear record, if you can refrain from answering the
17 question until the actual question is out, that would
18 be helpful for the court reporter.

19 THE WITNESS: Okay.

20 THE ATTORNEY EXAMINER: Thank you.

21 Q. The type of damage to the rails in this
22 case, is that something that was susceptible that you
23 could weld?

24 A. No, you cannot weld aluminum outside.
25 It's basically you have to do it indoors, and it's

1 really hard to do it, and we usually -- I've never
2 seen anybody do one, and usually they just put a
3 temporary plate if it's necessary.

4 Q. All right. And of all the other repair
5 facilities that you're familiar with that do this
6 same type of work, how do they transport their
7 damaged trailers?

8 A. Same way as we do.

9 Q. And the type of unit that you sent to
10 pick up this trailer, would you describe it for the
11 court, the tractor unit?

12 A. It's a towing truck that has the proper
13 lights on it, proper insurance, proper markings. It
14 had all of the proper stuff to be a towing truck.
15 It's not a regular truck.

16 Q. Does it have the ability -- the truck you
17 sent out, does it even have the ability to haul loads
18 if the trailer was somehow loaded?

19 A. No, because our truck is only weighted
20 for a certain weight. We do not pull trailers with
21 loads. It's only to pull empty trailers.

22 Q. In the pictures that are here that were
23 presented today, there shows the one chain down the
24 middle. Were there other chains that were attached
25 to the trailer?

1 A. Yes, there are. There's actually three
2 chains. As a picture, you could see -- those two
3 pictures you can exactly see. There's additional
4 chains on each side of the rail that also run from
5 the front to the back. Those are just to make it
6 safer, make sure there is more strength and there are
7 more chains into this trailer.

8 Q. I'm going to hand you back the picture
9 marked as 2F, and can you describe where that --

10 A. This is the one that runs in the middle
11 from the front axle to the landing gear.

12 Q. All right. In reference to that chain,
13 where would the other chains have been placed at?

14 A. The other chains are on the side of the
15 rail underneath next to the air skirts.

16 Q. Pick out the picture that might help to
17 describe that.

18 A. 2C picture, if you look at next to the
19 binder in the middle, you see two bars. Those are
20 bars that you put the come-along. They're usually
21 used to hold down coils when they pull them on
22 flatbeds. So there's a chain on each side
23 additionally.

24 MR. LEHENBAUER: I have nothing further
25 at this point.

1 THE ATTORNEY EXAMINER: Thank you.

2 Mr. Reilly.

3 MR. REILLY: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Reilly:

7 Q. My name is Steve Reilly. Let's talk
8 about some things I think we all agree on here.
9 First of all, just so I'm clear, Relfix Truck &
10 Trailer, that's a speciality operation in the
11 transportation business fixing trucks and trailers?

12 A. Correct.

13 Q. The way you do it.

14 A. Correct.

15 Q. And am I correct that your specialty is
16 fixing badly damaged tractors and trailers that are
17 used in the transportation industry?

18 A. About 70 percent.

19 Q. What is the other 30?

20 A. We do a lot of work with, like, UPS, with
21 Swift Transportation, Canadian National Railroad. We
22 do a lot of business, meaning we go on site and
23 repair smaller repairs off of service trucks.

24 Q. But it's all specialty work?

25 A. Not really; repairing lights, replacing

1 tires, minor stuff.

2 Q. But the repairs, the 70 percent part of
3 your business, that involves repairing tractors and
4 trailers such as the ones involved in this case?

5 A. Correct.

6 Q. That's speciality work, did I understand
7 that correctly?

8 A. Yes.

9 Q. Now, there isn't any question, is there,
10 that the trailer was badly damaged?

11 A. Yes. The roof was missing. That's
12 considered badly damaged.

13 Q. And the chassis and trailer were held
14 together because of the security features that you
15 talked about here today.

16 A. Yes.

17 Q. Okay. You wouldn't have taken that
18 trailer down the road without the security features
19 that you talked about here today, correct?

20 A. I've seen people do it, but I wouldn't.

21 Q. It's a dangerous thing to do without the
22 security features you talked about today?

23 A. Yes. Right.

24 Q. Okay. You weren't present at the site
25 when the pictures that are shown as Staff Exhibit 2,

1 you weren't present when they were taken, were you?

2 A. No.

3 Q. And you weren't present when the truck
4 was stopped?

5 A. No.

6 Q. Now, when you put on the temporary plate,
7 that remedied the problem so you could drive it down
8 the road?

9 A. No. We basically did it because we were
10 told to do it. If we didn't, we were basically told
11 we would be put in jail. That's the only reason we
12 did it.

13 Q. You put on the plate because you tried to
14 comply with the direction you were given?

15 A. Exactly.

16 Q. And the direction you were given was if
17 you put on the plate, you could drive it down the
18 road.

19 A. Yes.

20 Q. Who gave you that?

21 A. The officer.

22 Q. Okay. Are you familiar, generally, with
23 the type of trailer that was involved in this
24 incident?

25 A. Yes, I am.

1 Q. This type of trailer involves removable
2 tandem axles, doesn't it?

3 A. Yes, you can remove the tandems.

4 Q. So you could have removed the wheels.

5 A. By removing them, you still wouldn't be
6 able to put it on a flatbed for two reasons. You
7 still have the ICC bumper and you have the landing
8 gears, and when you remove that support, you wouldn't
9 be able to pick it up and put it on the flatbed.

10 Q. And when you talk about that support,
11 you're talking about the axles?

12 A. Correct.

13 Q. If you took the wheels off?

14 A. It still will be about 12 inches too
15 high.

16 Q. On Interstate 80, how many bridges are
17 there between -- road bridges are there between
18 Canton, Ohio, and Illinois?

19 A. Hundreds.

20 Q. Did you ever count them?

21 A. Just in Illinois when you enter from
22 Indiana, I usually travel, there's about 22 that we
23 would not make it under.

24 Q. Have you ever done a study of the number
25 of highway bridges and their height?

1 A. No.

2 Q. Are you aware of anybody doing a study on
3 the number of highway bridges between Canton, Ohio
4 and anywhere in northern Ohio and their height?

5 A. No.

6 Q. Have you, yourself, ever measured any
7 highway bridge between Canton, Ohio and Illinois on
8 Interstate 80?

9 A. I couldn't say I measured it, but we've
10 had trailers that we went to remove from underneath
11 the bridge. The trailers were stuck in there so
12 basically I could tell that the bridge was 13 feet 6
13 by looking at the trailer.

14 Q. Did you measure it to determine it was
15 13-6?

16 A. I don't have to because the trailer is
17 13-6.

18 Q. And have you ever measured the trailer?

19 A. Yes, they're all the same.

20 Q. Now, this particular trailer you picked
21 up at a towing yard in Canton, Ohio, correct?

22 A. Correct.

23 Q. Did the accident that disabled the
24 trailer occur at the towing yard, to your knowledge?

25 A. Can you rephrase that?

1 Q. Sure. The towing yard -- the responders
2 to whatever incident occurred to damage the trailer
3 took the trailer to the towing yard, correct?

4 A. Correct.

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

7 THE HEARING OFFICER: Sure.

8 MR. REILLY: Thank you, your Honor.
9 Nothing further.

10 THE ATTORNEY EXAMINER: Mr. Lehenbauer,
11 redirect? Yes, a few questions.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Lehenbauer:

15 Q. The temporary plate that we talked about,
16 did it provide any additional stability to the
17 trailer?

18 A. No.

19 Q. Did it do anything that hadn't already
20 been accomplished through the chains and the
21 strapping?

22 A. Yes. Basically the chains and come-along
23 were replacing the pressure of it.

24 Q. Have you ever seen anyone transport a
25 trailer of this nature on a lowboy trailer by

1 removing its wheels?

2 A. No.

3 Q. Is there even a simple way to accomplish
4 that?

5 A. Never seen one. It cannot be done.

6 Q. And then what is the height, standard
7 height, of highway bridges and overpasses on the
8 interstate system?

9 A. Most of them are 15-5.

10 Q. Are there markings or signs that
11 establish that or tell you what the height is?

12 A. Usually the bridges that are marked are
13 ones that are 13-6 or lower.

14 Q. And you indicated that you're familiar by
15 traveling the interstate system, in Illinois
16 especially.

17 A. Yes. We're virtually located on the
18 border of Indiana and Illinois. We do pull a lot of
19 trailers for Swift Transportation, and there are a
20 lot of bridges we are aware of and we do know the
21 heights.

22 Q. And how many trailers have you removed
23 from underneath bridges during the course of your
24 employment?

25 A. Thousands, maybe more.

1 Q. And these are the same bridges you would
2 have had to take this trailer under in a lowboy, some
3 of the same bridges?

4 A. Exactly.

5 Q. And are there other companies' repair
6 facilities that operate in Ohio similar to yours,
7 that do the same type of repair work?

8 A. I'm not aware. I'm not sure.

9 Q. You're not sure, okay.

10 MR. LEHENBAUER: I have nothing further.

11 THE ATTORNEY EXAMINER: Thank you.

12 Mr. Reilly, recross?

13 MR. REILLY: We have nothing further.

14 THE ATTORNEY EXAMINER: I have no
15 questions. Thank you. You are excused.

16 MR. LEHENBAUER: We would also call
17 Tadeusz Gawron.

18 - - -

19 TADEUSZ GAWRON

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

22 DIRECT EXAMINATION

23 By Mr. Lehenbauer:

24 Q. Can you please state your name and
25 address for the record?

1 A. Yes, Tadeusz Gawron. My address,
2 10323 South Murphy, Tolona, Illinois.

3 Q. And are you employed by Refix Truck &
4 Trailer Repair?

5 A. Yes.

6 Q. And how long have you been employed by
7 them?

8 A. How long? Ten years.

9 Q. And are you involved in the
10 transportation of damaged trailers for them?

11 A. Transportation, maybe seven years.

12 Q. Okay. What type of work do you do for
13 them besides transportation? Besides driving, do you
14 do any repair work?

15 A. Yeah. When my boss have this driving, I
16 do the driving. When not driving, I go to work.

17 Q. Okay.

18 A. I work as a mechanic.

19 Q. And your work as a mechanic, what do you
20 do? Do you fix trailers or do other mechanical work?

21 A. Fix trailers.

22 Q. And were you the operator of the vehicle
23 in question on the date this citation was issued?

24 Were you driving the tractor-trailer unit?

25 A. Yeah.

1 Q. And where did you depart from? Do you
2 remember where you left from on the date this
3 happened? What city did you leave from? Where did
4 you pick up the trailer.

5 A. From Ohio, from Michigan, from Tennessee,
6 Mississippi.

7 MR. ZCUPTA: I'm sorry, but his English
8 is not that good.

9 Q. On the date you were stopped by Trooper
10 Mealer, did you leave from Canton, Ohio that day?

11 A. Yes.

12 Q. Before you left, did you look at the
13 trailer that you were towing?

14 A. Yes.

15 Q. Did you do repairs to it?

16 A. Yes.

17 Q. And do you remember what you did to the
18 trailer?

19 A. Yes.

20 Q. Could you tell us briefly the different
21 things that you did?

22 A. Yes.

23 Q. What things did you do?

24 A. I don't know.

25 MR. ZCUPTA: Sorry, his English is not

1 that good.

2 Q. I hand you this picture, 2A. It shows
3 some straps over the trailer.

4 A. Yes. Yes, I put the straps.

5 Q. You did that?

6 A. Yes.

7 Q. And 2E shows?

8 A. Yes, inside, I mounted the straps.

9 Q. And 2F?

10 A. Yes. This come out, this chain come from
11 legs.

12 Q. Okay. Were there other chains?

13 A. Yes.

14 Q. And where were the other chains?

15 A. This is heavy chains. I mounted this
16 here from back axle to legs. The chain very, very
17 strong.

18 Q. And after you were stopped by the
19 trooper, did you have a conversation with the
20 trooper, or did your company have a conversation with
21 the trooper?

22 A. Yes.

23 Q. And do you remember what he said about
24 the citation?

25 A. Yes.

1 Q. What did he tell you or tell your company
2 at that time?

3 MR. REILLY: Objection. This is hearsay.
4 If it's what he's told him, fine. If it's what he
5 told somebody else, if he's testifying to what he
6 heard he told somebody else.

7 THE ATTORNEY EXAMINER: Mr. Lehenbauer.

8 MR. LEHENBAUER: If he heard the
9 conversation, as long as he's -- again, it doesn't
10 have to be directed at him, but anything that the
11 trooper may have said isn't hearsay.

12 THE ATTORNEY EXAMINER: Mr. Reilly.

13 MR. REILLY: We haven't established
14 that's the way he got the information. The question
15 is what are they claiming the trooper said directing
16 it to him, whether it was directed to him or somebody
17 else. He could have heard it four-hand.

18 THE ATTORNEY EXAMINER: The objection is
19 sustained at this point. I think you need to ask
20 some more questions.

21 MR. LEHENBAUER: Okay, I will.

22 Q. Do you recall after you received this --
23 after you were ordered to pull off to the side of the
24 road at the turnpike exit, did you call your company?

25 A. Yes, I called the company. This officer

1 put that sticker out of order. They tell me to "go
2 with me. I show you where." This trailer not go to
3 work. That's when I call to my boss. My boss tell
4 me to please go with trooper because next day it's
5 coming to service with parts and fixing this trailer
6 and back to the company.

7 Q. Did the trooper talk to somebody at your
8 company while you were present?

9 A. Yes.

10 Q. And when did that take place? When did
11 the trooper talk to your company? Only if you
12 remember.

13 A. I don't know.

14 MR. ZCUPTA: It actually was me and my
15 secretary.

16 Q. So you weren't present during any further
17 conversations the trooper might have had with your
18 company?

19 A. No.

20 Q. But how long have you been making repairs
21 to vehicles such as the trailer? How many years?

22 A. How many years? Six years, seven years.

23 Q. From the time you left Canton, Ohio until
24 the time you were stopped by the trooper, did
25 anything come off the trailer or blow off the

1 trailer?

2 A. No.

3 Q. Was it in the same condition as when you
4 left --

5 A. Yes.

6 Q. -- Canton, Ohio?

7 A. Yes. This officer made an inspection,
8 inspection trailer, inspection truck. For trailer
9 have this problem; this truck, no, no problem.

10 MR. LEHENBAUER: I have nothing further.

11 THE ATTORNEY EXAMINER: Thank you.

12 Mr. Reilly.

13 MR. REILLY: Just a couple of questions.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Reilly:

17 Q. Good afternoon, Mr. Gawron. I'm Steve
18 Reilly.

19 A. Yes.

20 Q. When you went to Canton, Ohio, to the
21 facility at Canton, Ohio, you did some repair work on
22 the trailer, correct?

23 A. Yes.

24 Q. The repair work you did, the repair work
25 you did was considered necessary to put it on the

1 road; is that correct also?

2 A. Yes.

3 Q. And you did a lot of repair work?

4 A. Yeah.

5 MR. REILLY: Thank you.

6 THE ATTORNEY EXAMINER: Thank you.

7 MR. LEHENBAUER: One follow-up question.

8 - - -

9 REDIRECT EXAMINATION

10 By Mr. Lehenbauer:

11 Q. Repairs that you made to the trailer, did
12 the trailer go straight down the road, or was it
13 sidetracking?

14 A. No, it was straight. It was straight for
15 inside.

16 Q. Okay. But when you were pulling it down
17 the road --

18 A. Outside and inside. When was putting it
19 on the mounts inside, the straps, I straighten on
20 inside.

21 Q. But when you were driving down the road,
22 was the trailer straight behind you?

23 A. Yeah, behind me it go straight. No left
24 side, no right side. It go straight.

25 MR. LEHENBAUER: Thank you. No further

1 questions.

2 THE ATTORNEY EXAMINER: Mr. Reilly,
3 recross?

4 MR. REILLY: No recross.

5 THE ATTORNEY EXAMINER: I have no
6 questions, so thank you.

7 THE WITNESS: Thank you.

8 THE ATTORNEY EXAMINER: Off the record
9 briefly.

10 (Discussion off the record.)

11 THE ATTORNEY EXAMINER: Back on the
12 record.

13 Mr. Lehenbauer, does that conclude your
14 case?

15 MR. LEHENBAUER: Yes, thank you.

16 THE ATTORNEY EXAMINER: Any other matters
17 to come before us today?

18 MR. REILLY: We have none.

19 THE ATTORNEY EXAMINER: Mr. Lehenbauer?

20 MR. LEHENBAUER: Nothing further.

21 MR. REILLY: Hearing none we are
22 adjourned. Thank you.

23 (The hearing adjourned at 3:30 p.m.)

24 - - -

25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, May 6, 2013, and carefully compared with my original stenographic notes.

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

My commission expires April 5, 2014.

(RFA-72302)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/23/2013 11:02:38 AM

in

Case No(s). 12-3198-TR-CVF

Summary: Transcript in the matter of Refix Truck & Trailer Repair hearing held on 05/06/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.