

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of Jim :
Schnoll, Notice of :
Apparent Violation and : Case No. 13-1408-TR-CVF
Intent to Assess :
Forfeiture. :

- - -

PROCEEDINGS

before Ms. Sarah J. Parrot, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at
1:57 p.m. on Monday, August 26, 2013.

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APPEARANCES:

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

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

James Schnoll
P.O. Box 662
Jackson, Wisconsin 53037

On his own behalf.

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1 Monday Afternoon Session,
2 August 26, 2013.

3 - - -

4 EXAMINER PARROT: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place, Case No. 13-1408-TR-CVF, being in the
7 matter of Jim Schnoll, Notice of Apparent Violation
8 and Intent to Assess Forfeiture.

9 My name is Sarah Parrot. I'm the
10 Attorney Examiner assigned by the Commission to hear
11 the case today.

12 At this time, let's just get started with
13 appearances from the parties and we'll start with
14 Staff.

15 MR. BEELER: Thank you, your Honor. On
16 behalf of the Staff of the Public Utilities
17 Commission of Ohio, Ohio Attorney General Michael
18 DeWine, Steven Beeler, Assistant Attorney General,
19 180 East Broad Street, Columbus, Ohio.

20 EXAMINER PARROT: All right.

21 And for the Respondent, Mr. Schnoll, if
22 you could state your full name and address for the
23 record, please.

24 MR. SCHNOLL: James Schnoll. The address
25 I use is Post Office Box 662, Jackson, Wisconsin,

1 53037.

2 EXAMINER PARROT: Okay. Thank you.

3 Mr. Schnoll, you understand that you have
4 the right to an attorney to represent you today if
5 you so choose. It appears you're proceeding --

6 MR. SCHNOLL: Yes.

7 EXAMINER PARROT: -- on your own behalf.
8 I just want to make sure you understand that you
9 could have had an attorney if you decided to go that
10 route.

11 MR. SCHNOLL: Okay.

12 EXAMINER PARROT: Great. Well, at this
13 point are there any preliminary matters before we
14 officially get started with our first witness?

15 MR. BEELER: No, your Honor.

16 EXAMINER PARROT: All right. Very good.
17 Staff, you may call your first witness.

18 MR. BEELER: Thank you, your Honor. The
19 Staff calls Trooper Rodney Ramps.

20 EXAMINER PARROT: Please raise your right
21 hand.

22 - - -

23 RODNEY D. RAMPS

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

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DIRECT EXAMINATION

By Mr. Beeler:

Q. Please state your full name for the record.

A. Trooper Rodney Ramps.

Q. Where are you employed?

A. The Ohio State Highway Patrol's Warren District Headquarters, Motor Carrier Division.

Q. Okay. What is your position within the Patrol?

A. I'm a commercial motor vehicle inspection trooper within the division.

Q. Okay. How long have you been with the Patrol?

A. Almost 14 years.

Q. What are your duties in your capacity at the Patrol?

A. Currently, at this time, as a commercial motor vehicle trooper, it's for the enforcement and safety inspection of commercial motor vehicles.

Q. Okay. What training do you have in that area?

A. I spent 6 weeks in Columbus being trained on all of the procedural aspects. I spent several months with a coach out in the field. I've obtained

1 certifications through completion of the required
 2 Level I's, hazmat inspections and so forth, and I
 3 complete probably between 800 to a thousand
 4 inspections a year.

5 Q. Okay. And the reasons for motor carrier
 6 inspections of Ohio are to protect the safety of the
 7 traveling public; is that correct?

8 A. That's correct.

9 MR. BEELER: May I approach the witness,
 10 your Honor?

11 EXAMINER PARROT: You may.

12 MR. BEELER: I've marked, as Staff
 13 Exhibit 1, the Driver/Vehicle Examination Report,
 14 with an inspection date of February 28th, 2013.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Do you recognize this document?

17 A. Yes, sir.

18 Q. Is this document a Commission -- or, a
 19 Patrol record?

20 A. Yes.

21 Q. Is it kept in the ordinary course of your
 22 business?

23 A. Yes.

24 Q. Is it the practice of the Patrol to make
 25 the report?

1 A. Yes.

2 Q. And did you report on matters observed
3 pursuant to a duty imposed by law as to which there
4 was a duty to report?

5 A. Yes.

6 Q. Is this document in the same condition
7 substantially as when you prepared it?

8 A. Correct.

9 Q. Was the reason for you producing this
10 report an inspection of a motor vehicle carrier
11 vehicle owned by Jim Schnoll doing business as
12 JJEBCO?

13 A. Yes.

14 Q. Do you remember the inspection?

15 A. Yes.

16 Q. And you prepared this report at the
17 scene; is that correct?

18 A. Yes.

19 Q. Just generally describe how you prepare
20 the reports.

21 A. Essentially it's a history check on the
22 company's credentials using the internet and
23 different programs available to us through the FMCSA.
24 It's essentially a walk-around inspection of the
25 vehicle for this type of inspection and then it's a

1 computer-generated report that I perform on my
2 laptop.

3 Q. Okay. So for this particular inspection
4 it was a walk-around, which then you filled the
5 information out in your vehicle that produces the
6 report; is that correct?

7 A. Yes.

8 Q. Does the driver get a copy of the report
9 at the stop?

10 A. They do.

11 Q. Okay. Who was the driver?

12 A. His first name is Russell, I believe the
13 last name is Heberer.

14 Q. Okay. And Mr. Heberer was present at the
15 inspection?

16 A. Yes.

17 Q. Was there anybody else present?

18 A. No.

19 Q. How was the, just from your memory, how
20 was the truck marked or the vehicle marked?

21 A. Best of my recollection, a black flatbed
22 tow truck with duct tape on both sides bearing the
23 carrier's identification name and DOT number.

24 Q. Okay. Are there any violations noted on
25 the report?

1 A. Yes.

2 Q. Can you just go through them, please?

3 A. The first is a driver violation 395.8(a)
4 for the driver not having a record of duty status.
5 He had no logbook with him at the time of the stop.

6 The second is a 390.19(a)(1) which is a
7 carrier violation because the carrier failed to file
8 the biennial update of the MCS-150. The last time it
9 was filed prior to the stop was on October 12th of
10 2004.

11 And the final violation is 392.9(a) which
12 is essentially failing to secure load per the
13 commodities specific requirements of 393.128.

14 Q. Okay. And from your understanding, the
15 violation that we're here to talk about today is the
16 failure to secure the load; that would be a violation
17 of 392.9(a) of the Federal Code of Regulations?

18 A. From what I've been told, yes.

19 Q. Just from the inspection report, what
20 does "OOS" mean?

21 A. Out of service.

22 Q. And what are the out of service
23 violations here?

24 A. One is for the driver for having no
25 record of duty status and one is for the vehicle for

1 failing to have the load secured properly.

2 Q. Okay. Going to the failure to secure the
3 load violation, have you inspected this type of
4 violation before?

5 A. Yes, sir.

6 Q. Just generally what is your understanding
7 of how that regulation, 49 CFR 392.9(a), works?

8 A. 392.9(a) is essentially, not to put it in
9 these terms, but a coverall section for various other
10 terms of low securement as with relation to this.
11 The more specific violation comes in the commodities
12 specific requirements of 393.128.

13 Q. Okay.

14 A. We just utilize 392.9(a) as the actual
15 failing to secure load violation for the report.

16 Q. Okay. Could you please, there's a field
17 on your report that says "Inspection Notes." Could
18 you please, just for the record, read those notes?

19 A. "OBVI/Load Securement" -- OBVI standing
20 for "obvious violation" -- "I was westbound on State
21 Route 5 behind the driver. I was able to observe the
22 manner in which the transported vehicle was secured.
23 The driver was operating a 2013 flatbed Ford tow
24 truck, with a gray Pontiac Vibe on the flatbed. The
25 driver had four 3/8" gold chains securing the Pontiac

1 at four corners. All four chains were noticeably
2 excessively loose. The left front, right front, and
3 right rear were all laying flat against the desk of
4 the bed. The left rear chain had a noticeable sag.
5 The Pontiac was also secured at the middle front by a
6 steel rope with a hook attached to a hydraulic
7 mechanism. The steel rope also had a noticeable sag,
8 and was excessively loose. Thus, the driver did not
9 have a single adequate tie down to prevent forward,
10 rearward, vertical, or lateral movement of the
11 Pontiac, as is required in 393.128B1."

12 "The driver was operating as a drive
13 away/tow away operation. The Pontiac on the rear of
14 the tow truck was registered to the driver. The
15 shipping papers were for the 2013 Ford tow truck,
16 that he was transporting from Mercer PA to West Bend
17 Wisconsin. The driver stated that he did not think
18 he needed a log book."

19 Q. Okay. So dealing with the failure to
20 secure the load violation, it's your testimony that
21 all four chains and the steel rope were not secure --

22 A. Correct.

23 Q. -- on the vehicle.

24 A. Uh-huh.

25 Q. And, as you stated earlier, the reason

1 for your inspection was OBVI, which means obvious
2 violation.

3 A. Right. Correct.

4 Q. So you saw the unsecured load; is that
5 correct?

6 A. As it was in front of me, yes, sir.

7 Q. Okay. Did the driver dispute -- did the
8 driver or carrier dispute the violation at the scene?

9 A. Not to my recollection, no.

10 Q. What sort of safety risk would this
11 violation cause for other Ohio drivers?

12 A. If that Pontiac comes off of that
13 flatbed, there's going to be a mess in the roadway.

14 Q. So is it your testimony that, according
15 to the report, the vehicle was in violation of 49 CFR
16 392.9 because the load was not properly secured?

17 A. Yes, sir.

18 MR. BEELER: May I approach, your Honor?

19 EXAMINER PARROT: You may.

20 MR. BEELER: Thank you.

21 I'd like to have marked Staff Exhibits 2
22 through 15 and they're just a series of photographs
23 that were taken at the scene.

24 EXAMINER PARROT: They're so marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 Q. Just take a second to flip through those,
2 take a look at them.

3 Okay. I'm going to try to go through
4 these as quickly as possible.

5 If you turn to Staff Exhibit 2. Do you
6 recognize this picture?

7 A. I do.

8 Q. Did you take this picture?

9 A. I did.

10 Q. Does this picture accurately represent
11 the scene on the day of the inspection?

12 A. It does.

13 Q. What does the picture show?

14 A. It is the markings on the left side of
15 the tow truck, that being the driver's door. Two
16 pieces of duct tape, the upper reading "JJEBSCO," and
17 the DOT number of the carrier "527228."

18 Q. Did you see any other markings on the tow
19 truck?

20 A. These markings are also on the right side
21 of the vehicle in the same manner on the tow truck, I
22 just did not photograph it up close.

23 Q. Okay. So is it your testimony that this
24 picture demonstrates that the truck was marked Jim
25 Schnoll doing business as JJEBSCO?

1 A. Yes.

2 Q. Turn your attention to Staff Exhibit 3.

3 Do you recognize this picture?

4 A. I do.

5 Q. Did you take this picture?

6 A. I did.

7 Q. Does this picture accurately represent

8 the scene on the day of the inspection?

9 A. It does.

10 Q. What does this picture show?

11 A. The gray Pontiac Vibe on the flatbed
12 portion of the tow truck with two loose gold chains
13 attached to the rear.

14 Q. Okay. This picture shows that the
15 vehicle was not secured; is that correct?

16 A. That's correct.

17 Q. How do you know that?

18 A. If you look at the right rear chain you
19 can tell that it's laying on top of the deck,
20 obviously not having adequate securement. The left
21 rear chain doesn't show as well from this picture,
22 but I have it in other pictures where you can see the
23 slack in the chain.

24 Q. Okay. So, again, it's your testimony
25 that this picture supports your statement that the

1 vehicle was in violation because the load was not
 2 secure; is that correct?

3 A. Yes, sir.

4 Q. Turn to Staff Exhibit 4. Do you
 5 recognize this picture?

6 A. I do.

7 Q. Did you take this picture?

8 A. I did.

9 Q. Does the picture accurately represent the
 10 scene on the day of the inspection?

11 A. Yes.

12 Q. What does this picture show?

13 A. This is the right rear chain that was
 14 attached to the right rear of the Pontiac, showing
 15 it's laying flat against the deck of the flatbed
 16 trailer, leading to the fact that the vehicle was not
 17 secured adequately on the flatbed.

18 Q. So, again, it's your testimony that this
 19 picture supports a violation of 49 CFR 392.9 because
 20 the load was insecure, correct?

21 A. Yes, sir.

22 Q. Turn to Staff Exhibit 5. Again, do you
 23 recognize this picture?

24 A. I do.

25 Q. Did you take this picture?

1 A. I did.

2 Q. Does it accurately represent the scene on
3 the day of the inspection?

4 A. It does.

5 Q. What does the picture show?

6 A. This is the left rear chain connected to
7 the left rear of the Pontiac. It shows a little bit
8 of the sag that's in the chain in this photograph,
9 leading to the fact that the Pontiac was improperly
10 secured.

11 Q. So, again, this picture supports the
12 violation of the load insecurement, correct?

13 A. Yes, sir.

14 Q. Turn to Staff Exhibit 6. Do you
15 recognize this picture?

16 A. I do.

17 Q. Did you take the picture?

18 A. I did.

19 Q. Does the picture accurately represent the
20 scene on the day of the inspection?

21 A. It does.

22 Q. What does this picture show?

23 A. This also is the left rear chain attached
24 to the left rear of the Pontiac. That's my left arm
25 in the photograph, showing how much slack is actually

1 in the chain by how far I am able to pull it forward.

2 Q. Okay. So, again, it is your testimony
3 that this picture supports your statement that the
4 vehicle was in violation of the securement load
5 section 392.9(a) of the CFR?

6 A. Yes, sir.

7 Q. Okay. Turn to Staff Exhibit 7. Do you
8 recognize this picture?

9 A. I do.

10 Q. Did you take the picture?

11 A. I did.

12 Q. Does it accurately represent the scene on
13 the day of the inspection?

14 A. It does.

15 Q. What does this picture show?

16 A. It's a photograph of the right rear chain
17 connected to the right rear of the Pontiac as I
18 lifted it off the deck to show the excessive slack
19 that was in that chain. That's my left hand holding
20 the chain.

21 Q. Okay. So, again, this picture supports
22 your statement that the vehicle was in violation of
23 49 CFR 392.9(a)?

24 A. Yes, sir.

25 Q. Turn to Staff Exhibit 8. Do you

1 recognize this picture?

2 A. I do.

3 Q. Did you take it?

4 A. I did.

5 Q. Does this picture accurately represent
6 the scene on the day of the inspection?

7 A. Yes, sir.

8 Q. What does this picture show?

9 A. This is a photograph of the license plate
10 that was on the flatbed tow truck. We utilize the
11 photograph of the license plate for documentation
12 purposes.

13 Q. Okay. So this picture is just basically
14 to identify the license plate.

15 A. Yes, sir.

16 Q. That chain in the picture, it wasn't a
17 securement-of-a-vehicle chain?

18 A. Not in this photograph, no.

19 Q. Turn to Staff Exhibit 9. Do you
20 recognize this picture?

21 A. I do.

22 Q. Did you take the picture?

23 A. I did.

24 Q. Does it accurately represent the scene on
25 the day of the inspection?

1 A. It does.

2 Q. What does this picture show?

3 A. This is the two front gold chains
4 attached to the front of the Pontiac as well as the
5 steel coiled rope attached to the front of the
6 Pontiac.

7 Q. Okay. Does this picture show that the
8 vehicle wasn't securely fastened?

9 A. Correct. You can tell by the slack in
10 both of the chains, visible in this photograph, that
11 it was insecurely fastened in that manner.

12 Q. Okay. So it would be your testimony that
13 this picture supports the violation that's at issue
14 in this case?

15 A. Yes, sir.

16 Q. Turn to Staff Exhibit 10. Do you
17 recognize this picture?

18 A. I do.

19 Q. Did you take it?

20 A. I did.

21 Q. Does this picture accurately represent
22 the scene on the day of the inspection?

23 A. It does.

24 Q. What does this picture show?

25 A. This is a photograph of the left front

1 chain attached to the left front of the Pontiac.

2 It's my left arm in the picture, holding up the
3 chain, to show the amount of slack in it in evidence
4 to support the violation on the report.

5 Q. Okay. So it's your testimony that this
6 picture supports your testimony that the vehicle was
7 in violation of 392.9(a) of the Code of Federal
8 Regulations, correct?

9 A. Yes, sir.

10 Q. Okay. Turn to Staff Exhibit 11. Do you
11 recognize this picture?

12 A. I do.

13 Q. Did you take this picture?

14 A. I did.

15 Q. Does it accurately represent the scene on
16 the day of the inspection?

17 A. It does.

18 Q. What does this picture show?

19 A. It's a photograph of my left arm, holding
20 the right front chain that was connected to the right
21 front of the Pontiac as I lifted it off of the deck
22 to show how it leads to the violation of an insecure
23 load by showing the slack in it.

24 Q. So, again, this picture supports your
25 statement that the vehicle was in violation of 49 CFR

1 392.9(a)?

2 A. Yes, sir.

3 Q. Turn to Staff Exhibit 12. Do you
4 recognize this picture?

5 A. Yes, sir.

6 Q. Did you take it?

7 A. I did.

8 Q. Does it accurately represent the scene on
9 the day of the inspection?

10 A. It does.

11 Q. What does this picture show?

12 A. It's a photograph of my left hand,
13 utilizing my left forefinger and thumb to twist the
14 steel rope that was in the middle of the flatbed
15 trailer attached to the front of the Pontiac Vibe.
16 I'm trying to demonstrate that with only mere finger
17 pressure I'm able to turn this rope which I should
18 not be able to do if it was adequately secured.

19 Q. Okay. So, again, this picture supports
20 your statement that the vehicle was improperly
21 adequately secured, correct?

22 A. Correct.

23 Q. Okay. Getting close to the end here.

24 Turn to Staff Exhibit 13. Do you
25 recognize this picture?

1 A. I do.

2 Q. Did you take the picture?

3 A. I did.

4 Q. Does it accurately represent the scene on
5 the day of the inspection?

6 A. It does.

7 Q. What does this picture show?

8 A. It is a pick up and delivery order with
9 the attention of the driver's first name on there.
10 This was more so for the log book violation, to be
11 able to prove where it was picked up from and where
12 the driver was transporting it to.

13 Q. Do you know, is the driver's name on
14 there?

15 A. It is. It says "Attention Russell,"
16 which was the first name of the driver who was
17 driving the tow truck at the time.

18 Q. Okay. Turn to Staff Exhibit 14. Did you
19 take this -- or, do you recognize this picture?

20 A. I do.

21 Q. Did you take the picture?

22 A. I did.

23 Q. Does it accurately represent the scene on
24 the day of the inspection?

25 A. It does.

1 Q. What does this picture show?

2 A. It's essentially an overall shot of the
3 vehicle, just showing that in fact it was a black
4 2013 Ford flatbed tow truck.

5 Q. Okay.

6 A. And I believe you can see the markings on
7 the right door in that picture.

8 Q. Okay. Finally, turn to Staff Exhibit 15.
9 Do you recognize this picture?

10 A. I do.

11 Q. Did you take it?

12 A. I did.

13 Q. Does the picture accurately represent the
14 scene on the day of the inspection?

15 A. It does.

16 Q. What does this picture show?

17 A. This is a photograph of the actual
18 shipping acknowledgment, showing where the vehicle
19 was destined to be carried to and exactly what it is.

20 Q. Okay. So this picture shows pick up and
21 delivery or not?

22 A. I believe it only shows delivery on here,
23 but it's more descriptive of what the tow truck was.

24 Q. Okay. Are you familiar with the Federal
25 Motor Carrier Safety Regulations?

1 A. I am.

2 Q. Are you familiar with guidance questions
3 that are provided along with certain sections in the
4 code?

5 A. Yes, sir.

6 MR. BEELER: If I could approach, your
7 Honor?

8 EXAMINER PARROT: You may.

9 Q. Are you aware of any guidance questions
10 that would relate to this issue in any way?

11 A. Specifically, at this moment, I can't say
12 without my book in front of me, but I'm sure that
13 there are.

14 Q. If I were to show you just this question,
15 and this question corresponds with the definitional
16 section of 390.5 of the Code of Federal Regulations,
17 that's 49 CFR 390.5, if you could just read that
18 question for me.

19 A. "Question No. 17: May a motor carrier
20 that employs owner-operators who have their own
21 operating authority issued by the ICC or the Surface
22 Transportation Board transfer the responsibility for
23 compliance with the FMCSRs to the owner-operators?"

24 The guidance is: "No. The term
25 'employee,' as defined in 390.5, specifically

1 includes an independent contractor employed by a
2 motor carrier. The existence of operating authority
3 has no bearing upon this issue. The motor carrier
4 is, therefore, responsible for compliance with the
5 FMCSRs by its driver employees, including those who
6 are owner-operators."

7 Q. Is there anything else that you would
8 find important to note that the Commission may want
9 to know for the record that you can think of?

10 A. Nothing other than what we've already
11 documented and what I've reported upon.

12 MR. BEELER: Okay. I have no further
13 questions, your Honor, but I would reserve the
14 witness for rebuttal if necessary.

15 EXAMINER PARROT: Thank you, Mr. Beeler.

16 Mr. Schnoll, do you have any questions
17 for the Trooper?

18 MR. SCHNOLL: Yes, I do.

19 THE WITNESS: Yes, sir.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Schnoll:

23 Q. Did you ask Mr. Heberer if I knew he was
24 going to be driving the truck with a car on the back
25 of it?

1 A. Specifically without my videotape here, I
2 couldn't say. And, for the record, I don't have
3 copies of that videotape anymore because it gets
4 purged in our system after a certain period of time.

5 Q. Did Mr. Heberer say anything about my
6 knowledge of the transportation of that vehicle
7 coming to Wisconsin?

8 A. To recall that at this time, I can't.

9 Q. So as far as your recollection, you don't
10 know if I knew anything about this before he left
11 with the vehicle.

12 A. I can't say we had any conversation with
13 regards to that.

14 Q. Did you have any conversations about how
15 he was supposed to get to Pennsylvania to pick up the
16 vehicle?

17 A. Again, I don't believe that I can say one
18 way or another. I guess I would probably make the
19 assumption he drove because the Pontiac was there.

20 MR. SCHNOLL: All right. Your Honor, the
21 point I'm trying to make is I had no knowledge that
22 Mr. Heberer was going to take that --

23 MR. BEELER: And I'll object.

24 EXAMINER PARROT: Mr. Schnoll, you'll
25 have the chance to testify here very shortly. So, at

1 this point, just pose questions to Trooper Ramps,
2 then we'll get to that.

3 MR. SCHNOLL: I'm sorry, I've got a head
4 cold. My hearing is not that great today.

5 EXAMINER PARROT: You're doing good.

6 Q. Did you check the vehicle to see if there
7 was any forward, backward, lateral movement or
8 anything like that?

9 A. You mean by, like, pushing the vehicle
10 myself?

11 Q. Pushing it, moving it, shoving it, doing
12 anything?

13 A. I did not physically attempt to push the
14 vehicle, no.

15 Q. The vehicle itself, being an automobile,
16 there are certain limits to what and how you can tie
17 it to and how much let's say stress you can put on
18 the vehicle without actually ruining the alignment or
19 bending it because it is a unibody. In section
20 No. 392.128, one of the rules securing automobiles
21 and light trucks to a van, if it is under
22 10,000 pounds, it can be secured by a total of two
23 tie downs.

24 A. That's correct. Two adequately-secured
25 tie downs.

1 Q. And the tie downs, in looking at the
2 pictures and everything, the rear left and the front
3 rope cable, they look like they are tight as they
4 should be for something like that, so that you are
5 not damaging the vehicle.

6 A. If that's a question, I would say that's
7 your opinion, and I'm at the scene and I was the one
8 that was pulling the slack on the left rear and
9 twisting with finger pressure the front middle. And
10 if I'm able to do that, in my opinion for doing it as
11 long as I have, neither of those are secure.

12 Q. We are talking now opinion and you did
13 not test to see if the vehicle would move forward or
14 backward, left, right, up or down. Am I correct on
15 that?

16 A. That's correct.

17 Q. The other thing -- okay.

18 One of the biggest points on this is my
19 permitting Mr. Heberer to operate the vehicle.

20 A. Okay.

21 Q. Is there any attempt to find out that I
22 gave him permission to operate it in which you would
23 consider an unsafe manner?

24 A. I'm not sure -- are you asking me if you
25 told him it was okay to operate it --

1 Q. Correct.

2 A. -- unsecurely? That's not a
3 conversation, in the normal course of doing my job,
4 we would have. It's more simply a matter of is it
5 unsecure or is it secure, not whether or not you
6 actually specifically gave him permission to do so.

7 Q. Because, according to the statute that
8 we're quoting here, I cannot permit him to operate in
9 an unsafe manner, but if I do not know he's operating
10 in an unsafe manner there is no way that I can stop
11 him when I'm 500 miles away from him.

12 MR. BEELER: I'd object. There's no
13 question.

14 MR. SCHNOLL: Excuse me?

15 EXAMINER PARROT: Again, at this point,
16 you just need to pose questions to Trooper Ramps. So
17 reframe from testifying at this point; you'll get the
18 chance to do that.

19 MR. SCHNOLL: I understand what you're
20 saying.

21 EXAMINER PARROT: I think you were
22 getting there, you just need to more directly pose a
23 question.

24 MR. SCHNOLL: Yes. Try to regroup my
25 thoughts here.

1 EXAMINER PARROT: Take your time.

2 Q. (By Mr. Schnoll) Is Mr. Heberer, when he
3 is driving a commercial vehicle, is he the person
4 that's in charge of that vehicle?

5 A. He is in charge of it as a driver, for
6 the laws that the driver himself --

7 MR. BEELER: I'm going to object here. I
8 feel like this calls for somewhat of a legal opinion
9 involving agency and who's responsible for employees.

10 EXAMINER PARROT: I'm going to overrule
11 the objection.

12 To the extent you can answer the
13 question, please do so. But we're not -- to be
14 clear, though, we're not asking for a legal opinion
15 on the matter.

16 THE WITNESS: Good, because I don't think
17 I can give one.

18 A. The driver, himself, is responsible for
19 what he can control. As the driver operates as an
20 extension of the carrier, the carrier is still
21 responsible for what the driver does when operating
22 as an agent of the carrier.

23 Q. As you just stated, the driver is
24 responsible for doing the proper things.

25 A. Such as observance of his speed, whether

1 or not he's wearing his seat belt, things that in
2 this report would be listed with a "D" as a violation
3 for driver offenses.

4 Q. Okay. Does Section 4901:2-07-07, what I
5 am being charged with, it also says, Section (B), "In
6 determining the amount of forfeiture to be assessed,
7 Staff shall consider," and No. (3) is "the degree of
8 the Respondent's culpability," meaning that,
9 according to this section, part of the driver and
10 then part of mine of what you're charging us with.
11 Mr. Heberer was not charged with anything as far as
12 this goes and he was not charged with any
13 responsibility for this.

14 MR. BEELER: I'm going to --

15 Q. If Mr. Heberer is not charged with any
16 responsibility for this, what is going to stop him
17 from doing it again? A forfeiture is supposed to be
18 put out for somebody so they do not let this happen
19 again and do not do it again. He was not charged
20 anything with this and he was the person that was in
21 control of the vehicle.

22 MR. BEELER: I'm going to object, your
23 Honor. There's multiple questions asked there and I
24 would move to strike some of the editorial within
25 there and it's also asking my witness to again

1 interpret the law that he was citing within the
2 question.

3 EXAMINER PARROT: I agree, Mr. Beeler.

4 If you could, let's try to condense that
5 down. And, again, just ask one question at a time
6 and give the witness a chance to answer and then you
7 can pose another question.

8 Q. (By Mr. Schnoll) Was Mr. Heberer charged
9 at all with this violation?

10 MR. BEELER: Objection, your Honor. My
11 witness was there at the inspection to inspect the
12 facts of the case. He wouldn't know the charges.

13 EXAMINER PARROT: And if that's the case,
14 I think the witness can say that himself, so your
15 objection is overruled.

16 A. The -- in terms of saying the word
17 "charge," I interpret that probably a bit differently
18 than you do. The charge of failing to secure load is
19 a carrier violation as far as this federal motor
20 carrier report form goes. I don't have the capacity
21 to charge that violation against the driver based on
22 the way the system is set up.

23 Q. With the system being set up the way it
24 is, how would the driver be able to take
25 responsibility for something that he is doing in

1 violation of the law?

2 MR. BEELER: I object. That's asked and
3 answered.

4 EXAMINER PARROT: Overruled. He can
5 answer the question.

6 A. Can you repeat that again, please?

7 Q. With the system set up the way it is, how
8 would the driver be able to take responsibility for
9 the violation that he's supposedly committed?

10 A. I don't believe currently that there's a
11 way that he can be the one held responsible for that
12 violation. To the best of my understanding, because
13 the driver is an agent of the carrier, the carrier is
14 the one who bears the brunt of that blow for lack of
15 a better of way of putting it.

16 MR. SCHNOLL: Can I stop with the
17 questions right now and reserve the chance to talk to
18 the Trooper again?

19 EXAMINER PARROT: You would only have
20 that opportunity if the Staff determines that it
21 needs to recall Trooper Ramps for the purpose of
22 rebuttal testimony and then, at that point, your
23 questions are limited to what Staff elicits during
24 that rebuttal.

25 So take as much time as you need to. We

1 don't want to rush you by any means, so if you --
 2 and, actually, I think I have a few questions for the
 3 witness if it will give you the time to kind of make
 4 sure you've covered everything.

5 MR. SCHNOLL: Sure.

6 EXAMINER PARROT: I can pose my questions
 7 to the Trooper at this point, I guess.

8 - - -

9 EXAMINATION

10 By Examiner Parrot:

11 Q. Trooper Ramps, your report indicates that
 12 the cargo was, it's classified as "other" in your
 13 report.

14 A. Yes.

15 Q. Can you just tell me what exactly is the
 16 cargo?

17 A. The cargo itself is technically the
 18 flatbed tow truck because it's the article being
 19 transported. In a drive away/tow away operation it's
 20 essentially the driver drives his vehicle to where he
 21 picks the vehicle up, puts his vehicle on the rear of
 22 the vehicle which is the actual cargo.

23 Q. Okay. That was consistent with my
 24 understanding, I just wanted to make sure that was
 25 clear for the record.

1 A. Okay.

2 EXAMINER PARROT: That didn't give you a
3 whole lot of time, but a few seconds.

4 MR. SCHNOLL: I think the points I would
5 want to make next would not involve the Trooper, so I
6 guess that would be okay.

7 EXAMINER PARROT: All right. I think
8 we're good for now then.

9 THE WITNESS: Yes, ma'am.

10 EXAMINER PARROT: You are excused for the
11 time being. Again, Staff has reserved the right to
12 re-call you if necessary.

13 THE WITNESS: Yes, ma'am.

14 MR. BEELER: At this point, I guess Staff
15 would move for the admission of Staff Exhibits 1
16 through 15 into the record.

17 EXAMINER PARROT: Very good.

18 Do you have any objections to the
19 admission of any of the Staff Exhibits that have been
20 presented so far?

21 MR. SCHNOLL: No.

22 EXAMINER PARROT: Very good. Staff
23 Exhibits 1 through 15 shall be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MR. BEELER: Thank you, your Honor.

1 EXAMINER PARROT: You may call your next
2 witness, Mr. Beeler.

3 MR. BEELER: Thank you, your Honor. The
4 Staff calls Joe Turek.

5 EXAMINER PARROT: Would you raise your
6 right hand.

7 - - -

8 JOSEPH TUREK

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

11 DIRECT EXAMINATION

12 By Mr. Beeler:

13 Q. Please state your full name for the
14 record.

15 A. Joseph Turek.

16 Q. Where are you employed?

17 A. Public Utilities Commission of Ohio.

18 Q. What is your position at the Commission?

19 A. I have a dual role. I'm a staff attorney
20 for the Transportation Department and I'm also a
21 supervisor within the Compliance Division of the
22 Transportation Department which is the division that
23 assesses the fines.

24 Q. How long have you been in that position?

25 A. I've been a staff attorney for a little

1 over three years. I've been a supervisor within the
2 Division for approximately four months.

3 Q. You already touched on it a little bit,
4 but what are your duties?

5 A. Staff attorney, I assist with
6 representing the Staff at these types of hearings and
7 I provide legal advice to the Staff. As a supervisor
8 in the Compliance Division, I review compliance
9 officers' work and really just kind of deal with
10 everyday issues regarding the civil forfeiture
11 program.

12 Q. Okay. And before we get into the
13 specific violation, just explain generally how the
14 Staff determines the amounts of forfeitures.

15 A. There is a -- there is a fine schedule
16 and each violation has a specific fine.

17 Q. Okay. And with that fine schedule and
18 process, does the Commission apply that process
19 uniformly to everyone?

20 A. Yes.

21 MR. BEELER: May I approach the witness,
22 your Honor?

23 EXAMINER PARROT: You may.

24 MR. BEELER: May I have marked, as Staff
25 Exhibit 16, the Notice of Preliminary Determination,

1 dated March 28th, 2013.

2 EXAMINER PARROT: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It's the Notice of Preliminary

8 Determination that was issued in this case.

9 Q. Okay. Was it prepared by you or under
10 your direction?

11 A. It was -- it was prepared under my
12 direction. I have reviewed it in preparation for
13 this hearing and it is what was issued to the
14 company.

15 Q. So the document, is it a Commission
16 record?

17 A. It is.

18 Q. Is this kept in the ordinary course of
19 business?

20 A. Yes.

21 Q. Is it the practice of the Commission to
22 make this report and send it to respondents?

23 A. Yes.

24 Q. Is this document in the similar or same
25 condition as when it was prepared and sent to --

1 A. Yeah.

2 Q. -- the Respondent?

3 A. Yes.

4 Q. What does this document say?

5 A. Basically, it is informing the Respondent
6 Jim Schnoll, doing business as Jim Schnoll Trucking,
7 it is informing him that he is being -- the company
8 is being assessed a hundred dollars for the violation
9 of 329.92(a) which is failing to secure the load.

10 Q. Okay. And from your understanding, this
11 was a carrier violation and not a driver violation?

12 A. It was.

13 Q. And you would know that from the Notice
14 of Preliminary Determination where it says case
15 number, at the end there's a "C" that indicates
16 carrier violation; is that correct?

17 A. That delineates that this was, yes, a
18 carrier case and, yes, this was a carrier violation.

19 MR. BEELER: Okay. May I approach the
20 witness, your Honor?

21 EXAMINER PARROT: You may.

22 MR. BEELER: I have what's marked as
23 Staff Exhibit 17. This is the Fine Schedule for out
24 of service violations, effective October 1st, 2012.
25 I would like to have this marked as Staff Exhibit 17.

1 EXAMINER PARROT: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. This is the Fine Schedule that we -- that
7 was in effect at the time of the violation.

8 Q. Again, was it prepared by you or under
9 your direction?

10 A. The Fine Schedule was not. The Fine
11 Schedule is something that was produced by the Chief
12 of the Division.

13 Q. Okay. Is it a Commission record, though?

14 A. It is.

15 Q. Is it kept in the ordinary course of
16 business?

17 A. Yes.

18 Q. I think you already mentioned it, but who
19 prepared it?

20 A. It is produced by our Division, the
21 Compliance Division, and it is updated every so
22 often. I am familiar with it.

23 Q. Okay. Using this fine schedule, please
24 explain how the civil forfeiture was derived in this
25 case.

1 A. Yes. If you go to page 5 of the Fine
2 Schedule, there's a number of 392.9 violations. Here
3 it's 392.9(a), it's really (a)(1), it's "Failing to
4 secure cargo/392.100-392.136." The "1" that you see
5 right before, it says "1C failing to secure cargo."

6 Q. Correct.

7 A. The "1" means it's a Group 1 violation.
8 And if you go to the first page of the Fine Schedule,
9 a Group 1 violation, one violation is \$100.

10 Q. And \$100 was what was assessed in the
11 case, correct?

12 A. It is.

13 Q. Is this penalty consistent with the
14 recommended fine or penalty schedule and the
15 recommended civil penalty procedure adopted by the
16 Commercial Motor Vehicle Alliance?

17 A. Yes.

18 Q. Is it the correct forfeiture for this
19 case?

20 A. Yes. This forfeiture was calculated
21 correctly in accordance with the Fine Schedule.

22 Q. Okay. Would you recommend this amount to
23 the Commission?

24 A. Yes.

25 Q. Is there anything else important to note

1 for the Commission? Anything you can think of?

2 A. The only thing I would note is since
3 there was talk about whether securement is a carrier
4 or driver violation, I would note that we see
5 securement violations all the time and they are
6 always assessed to the carrier. The Commission has
7 ruled in previous cases and has held -- and has held
8 that carriers are responsible for securement.

9 MR. BEELEER: Thank you.

10 No further questions. And, again, I
11 don't know if we did it before, but I would reserve
12 Mr. Turek as well for rebuttal if necessary.

13 EXAMINER PARROT: Thank you, Mr. Beeler.

14 Mr. Schnoll, do you have any questions
15 for Mr. Turek?

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Schnoll:

19 Q. For the, again what I'm being charged
20 with, on 4901:2-7-07, it doesn't state anything that
21 it is a carrier's responsibility totally.

22 A. Without seeing what regulation you are
23 referring to, I can't comment.

24 Q. Okay. In 392.9, does it not say that,
25 start out with in "General": "A driver may not

1 operate a commercial motor vehicle and a motor
2 carrier may not require or permit a driver to operate
3 a commercial motor vehicle unless" and then it goes
4 on. And it starts out, though, with "a driver"; am I
5 correct in saying that?

6 A. I do not have the regulation in front of
7 me, so I do not know, but I will take your word for
8 it.

9 Q. Okay. Is this not your job, though, to
10 know the regulations for when you're charging people?

11 A. I have not memorized the whole book of
12 motor carrier violations.

13 MR. SCHNOLL: Is it okay if I show this?

14 EXAMINER PARROT: You may approach the
15 witness to show him your copy of the regulation.

16 A. That's what it says.

17 Q. So does it state "a driver"?

18 A. It says: "A driver may not operate a
19 commercial motor vehicle and a motor carrier may not
20 require or permit a driver to operate a commercial
21 motor vehicle unless," and it goes on to say, unless
22 it's properly secured is essentially what it says.

23 Q. Okay. In the testimony that I've heard
24 so far today at numerous times, it's been stated that
25 it is the carrier's responsibility. Do you have

1 anything where it is written, where it says that,
 2 that it is the carrier's responsibility for something
 3 like that?

4 A. Again, these are considered carrier
 5 violations. The driver is the agent of the carrier.

6 MR. SCHNOLL: Okay. That's all the
 7 questions I have then.

8 - - -

9 EXAMINATION

10 By Examiner Parrot:

11 Q. Mr. Turek, I just want to make sure. Did
 12 you say that the \$100 forfeiture was assessed
 13 pursuant to 392.9(a)(2) specifically --

14 A. No.

15 Q. -- or (1)?

16 A. I believe it's (a)(1).

17 Q. So the --

18 A. There is no just specific (a).

19 Q. So is the Pontiac Vibe then considered
 20 cargo as well as the flatbed truck itself? I just
 21 want to be sure, again, I kind of understand what is
 22 the cargo we're talking about in this case.

23 A. Again, I did not write the inspection
 24 report. My understanding is that the Pontiac Vibe
 25 that was non-secured, that was the cargo that was on

1 the truck.

2 Q. Okay. I just want to be sure I
3 understand what Staff --

4 A. Right.

5 Q. -- which regulation specifically Staff
6 was proceeding under. I understand you did not
7 conduct the inspection yourself. So Staff is
8 proceeding under 392.9(a)(1) then; is that correct?

9 A. That is correct. That was the violation
10 that was -- that was written for the Pontiac not
11 being secured on the tow truck.

12 EXAMINER PARROT: Okay. Very good.
13 Thank you.

14 All right. I think at this point, then,
15 you are excused. Thank you very much.

16 I'm sorry. Did you have any follow-up
17 Mr. Beeler? I'm sorry.

18 MR. BEELER: Yeah. I was going to maybe
19 do this in rebuttal, but I may be able to take care
20 of it with this.

21 EXAMINER PARROT: It's up to you. I'm
22 sorry. I didn't mean to cut you off there.

23 MR. BEELER: No problem. Just a few
24 questions, your Honor.

25 EXAMINER PARROT: Sure.

1 - - -

2 REDIRECT EXAMINATION

3 By Mr. Beeler:

4 Q. Mr. Schnoll asked you a few questions
 5 about the regulations and what they say, and
 6 specifically asked you some questions about
 7 392.9(a)(1), but I want to point you to just some
 8 general definitional sections within the FMCSA or the
 9 Code of Federal Regulations. And you're familiar
 10 with the Code of Federal Regulations --

11 A. Yes.

12 Q. -- that apply to . . .

13 I'd like to point you to three
 14 definitions within the definitional section.
 15 Definition of employee, employer, and then finally
 16 the definition of motor carrier. Could you please
 17 read those?

18 A. "Employee means any individual, other
 19 than an employer, who is employed by an employer and
 20 who in the course of his or her employment directly
 21 affects commercial motor vehicle safety. Such term
 22 includes a driver of a commercial motor vehicle
 23 (including an independent contractor while in the
 24 course of operating a commercial motor vehicle), a
 25 mechanic, and a freight handler. Such term does not

1 include an employee of the United States, any State,
2 any political subdivision of a State, or any agency
3 established under a compact between States and
4 approved by the Congress of the United States who is
5 acting within the course of such employment."

6 "Employer means any person engaged in a
7 business affecting interstate commerce who owns or
8 leases a commercial motor vehicle in connection with
9 that business, or assigns employees to operate it,
10 but such term does not include the United States, any
11 State, any political subdivision of a State, or any
12 agency established under a compact between States and
13 approved by the Congress of the United States."

14 "Motor carrier means a for-hire motor
15 carrier or a private motor carrier. The term
16 includes a motor carrier's agents, officers and
17 representatives as well as employees responsible for
18 hiring, supervising, training, assigning, or
19 dispatching of drivers and employees concerned with
20 the installation, inspection, and maintenance of
21 motor vehicle equipment and/or accessories. For
22 purposes of subchapter B, this definition includes
23 the terms employer and exempt motor carrier."

24 Q. As you, I believe, mentioned earlier, but
25 just to clarify, the driver in this case would be an

1 agent of Jim Schnoll doing business as JJEBCO in this
 2 case?

3 A. That is correct.

4 MR. BEELER: I think that's all I have
 5 for this witness, your Honor.

6 EXAMINER PARROT: All right. Any further
 7 questions based on the questions -- the few questions
 8 Mr. Beeler just asked?

9 MR. SCHNOLL: No, I do not, your Honor.

10 EXAMINER PARROT: Thank you, Mr. Turek.

11 MR. BEELER: And, at this point, your
 12 Honor, I would ask to move into evidence Staff
 13 Exhibits 16 and 17.

14 EXAMINER PARROT: Do you have any
 15 objections, Mr. Schnoll, to the admission?

16 MR. SCHNOLL: What is 16 and 17?

17 EXAMINER PARROT: 16 is the Notice of
 18 Preliminary Determination, and 17 is the Fine
 19 Schedule.

20 MR. SCHNOLL: No, I don't have any
 21 objection to that.

22 EXAMINER PARROT: Okay. Very good.

23 Staff Exhibits 16 and 17 are admitted
 24 into the record.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 MR. BEELER: Thank you.

2 EXAMINER PARROT: Any further witnesses,
3 Mr. Beeler?

4 MR. BEELER: No. But if rebuttal is
5 needed, I would request that.

6 EXAMINER PARROT: Thank you.

7 At this point, Mr. Schnoll, if you would
8 like to take the witness stand, I will swear you in.

9 Yeah, please bring any documents you
10 think you need with you.

11 MR. SCHNOLL: Excuse me?

12 EXAMINER PARROT: Bring any documents
13 that you think you need with you to the witness
14 stand.

15 Raise your right hand, please.

16 (Witness sworn.)

17 EXAMINER PARROT: Please be seated.

18 At this point, because you're proceeding
19 without counsel today, you'll just give any testimony
20 that you wish to tell us today just in a narrative
21 fashion.

22 MR. SCHNOLL: One second.

23 EXAMINER PARROT: Oh, yeah.

24 MR. SCHNOLL: I've reached that stage in
25 my life.

1 EXAMINER PARROT: So, again, you'll just
2 present it in a narrative fashion and then, once
3 you've concluded just let us know that and at that
4 point Staff will have the opportunity to ask any
5 questions that they may have as well as myself.

6 And let's get started, if you could
7 again, you've told us before, but your name and
8 address.

9 MR. SCHNOLL: James Schnoll. Post Office
10 Box 662, Jackson, Wisconsin.

11 EXAMINER PARROT: All right. Please
12 proceed.

13 - - -

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

17 DIRECT TESTIMONY

18 MR. SCHNOLL: To start with, Mr. Heberer,
19 I had no knowledge that he was going to be using the
20 Pontiac Vibe to go up to Pennsylvania to get that
21 vehicle. Most of the time what the guys do is they
22 fly out there, they're picked up at the airport, and
23 then they're sent back, they take the vehicle back.

24 Number two, Mr. Heberer has been in the
25 trucking business for over 30 years. He was employed

1 full-time for Bob -- at Bob Fish for probably two and
2 a half years, selling tow trucks and telling people
3 how they work, how to hook up and things like that,
4 so he had all the knowledge of how to do this.

5 Mr. Heberer was just going out there to
6 pick up the vehicle and he was not supposed to be
7 having something on the back of it. He did this on
8 his own. This is something that I have no control
9 over. I also have no control over what he is going
10 to -- how he's going to hook it up. If he's doing it
11 in a proper way and, according to the statutes, he
12 did it in a proper way because it was tied down at
13 two ends, he had two cables, chains or cables holding
14 it steady, and he had three other devices on there
15 that if something would happen, a catastrophe, a
16 wreck, somebody would run into him, he ran into a
17 ditch, that the vehicle would stay on the back of the
18 truck.

19 The whole idea of securing the vehicle
20 with the chains and with the wire rope is to keep it
21 on the vehicle if something would happen and he had
22 done that with the chains that he had. Even if the
23 ones were loose, if something happened and there was
24 a tremendous impact from one side, there was more
25 than one chain that's going to hold it, even though

1 the regulations only called for two chains.

2 The statute also calls for, in what I'm
 3 being charged with, so I brought that up earlier, it
 4 does not say anything that it is a motor carrier's
 5 total responsibility to make sure the vehicle is
 6 hooked up properly. The motor carrier in this case
 7 was Russ Heberer and he was the one that was doing
 8 the work. If he did not strap it properly, he's the
 9 one that should be fined because, otherwise, how is
 10 he going to know to do it properly the next time?

11 That's basically what I have to say.

12 EXAMINER PARROT: Okay. Thank you.

13 Mr. Beeler.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Beeler:

17 Q. Just to start with, Mr. Schnoll, you are
 18 the owner of Jill Schnoll Trucking doing business as
 19 JJEBCO, correct?

20 A. No, I am not.

21 Q. You're not the owner. What is your
 22 title?

23 A. I am the lead person in the group.

24 Q. Okay.

25 A. JJEBCO stands for numerous different

1 people. B is for Bob Fish; that's in there. We are
2 a group of people that we transport our own
3 equipment. I am the lead person for the group and
4 I'm the one that files the papers.

5 Q. So you are here today on behalf of the
6 motor carrier JJEBCO, correct?

7 A. On behalf of them, yes.

8 Q. Okay. The driver, Mr. Heberer, that you
9 had, that was the driver the day of the inspection,
10 you had a contract of some sort with Mr. Heberer to
11 pick up this truck?

12 A. No. This was a verbal agreement that he
13 was going to fly out to Pennsylvania, pick up the
14 truck and bring it back.

15 Q. You did have a verbal agreement with him
16 that he would pick up the truck?

17 A. It was a verbal agreement.

18 Q. Do you regularly use this driver?

19 A. Yes.

20 Q. So you've used him before --

21 A. Yes.

22 Q. -- for similar work?

23 A. Yes.

24 Q. And according to your verbal agreement
25 with Mr. Heberer, the driver, you knew the type of

1 tow truck that you were going to pick up, correct?

2 A. Yes.

3 Q. What type it was, you knew that, you
4 know, and what you saw from the pictures you knew
5 that it was a substantial tow truck that could hold a
6 car or some sort of vehicle on it?

7 A. Yes.

8 Q. Okay. I don't know if you still have it
9 up there, but I want to turn your attention to Staff
10 Exhibit 1. Do you have it up there?

11 A. Which one do you --

12 Q. That was the report. I think you have it
13 over here.

14 I'll just have you look at that document.
15 And I think we've talked about it before, but just,
16 you know, according to that report, you know, the
17 driver in this case was -- as it's indicated up
18 there, was Russell R. Heberer; is that correct?

19 A. Heberer, yeah.

20 Q. Heberer. Okay.

21 MR. BEELER: Hold on one second, your
22 Honor.

23 Q. You testified earlier that Mr. Herrer --
24 Mr. Heberer was the motor carrier. The motor carrier
25 in this case is Jim Schnoll doing business as JJEBCO,

1 correct?

2 A. That is correct. I was mistaken. I
3 misspoke when I said he was the motor carrier.

4 Q. Okay. Okay. Good.

5 Okay. So do you agree with me that a
6 securement violation ultimately goes on a carrier's
7 record?

8 A. No, I disagree with that.

9 Q. Okay. But you do agree that whether it's
10 a driver violation or a carrier violation, so long as
11 the driver is an employee of the carrier, all of
12 those violations go on a -- go on the FMCSA record of
13 the company, correct?

14 A. I do not know.

15 Q. You do not know? Okay.

16 And, again, I'm going to have you look at
17 -- this was a -- this was a -- this is the actual
18 regulation, the 392.9(a). Again, you had spoken with
19 Mr. Turek about this earlier and you had him read it.
20 Is there anything in that section that says how the
21 violation or any monetary value that's attributed to
22 it, how it should be assessed to carriers or drivers?
23 Does it say -- does it say anything about that?

24 A. It does not say anything how it should be
25 assessed right here.

1 MR. BEELER: Okay. Thank you.

2 I think that's all the questions I have.

3 Thank you.

4 EXAMINER PARROT: Thank you, Mr. Beeler.

5 Mr. Schnoll, at this point if there's
6 anything you need to add to your testimony,
7 specifically in response to the questions Mr. Beeler
8 posed to you, you may testify further at this point,
9 but, again, your testimony should be limited to
10 further testimony in light of his questions to you.

11 MR. SCHNOLL: Mr. Beeler, in the, what I
12 am being charged with, in the letter it is stating
13 4901:2-7-07. Do you agree with that or --

14 EXAMINER PARROT: You're just testifying.
15 You're not asking questions of Mr. Beeler.

16 MR. SCHNOLL: It states that right here.
17 And it also states that in determining the amount of
18 forfeiture to be assessed, Staff shall consider
19 dividing it up between the driver and the carrier.
20 Do you have --

21 EXAMINER PARROT: Again, you're just
22 testifying.

23 MR. SCHNOLL: Okay.

24 EXAMINER PARROT: Mr. Schnoll, just for
25 clarity, you're looking at the rule itself?

1 MR. SCHNOLL: The rule itself right
2 there.

3 EXAMINER PARROT: Okay. So you're
4 reading from the rule. Thank you.

5 MR. SCHNOLL: Just to sum up what I was
6 saying, I have not found anything or seen anything
7 that says an insecure load is the sole responsibility
8 of the carrier.

9 EXAMINER PARROT: Okay. Thank you.

10 MR. SCHNOLL: That's it.

11 EXAMINER PARROT: Anything based on that,
12 Mr. Beeler, any recross?

13 MR. BEELER: No, your Honor.

14 EXAMINER PARROT: Okay. Thank you,
15 Mr. Schnoll. You're excused.

16 Any rebuttal or do you need a few
17 minutes?

18 MR. BEELER: Give me one second, please.

19 EXAMINER PARROT: Sure.

20 MR. BEELER: Staff has no further
21 witnesses, your Honor.

22 EXAMINER PARROT: Let's go off the record
23 briefly.

24 (Discussion off the record.)

25 EXAMINER PARROT: The parties have agreed

1 to file briefs and those will be due on October 15th,
2 2013.

3 Is there anything else to come before us
4 today?

5 MR. BEELER: No, your Honor.

6 EXAMINER PARROT: Hearing nothing, we are
7 adjourned. Thank you very much.

8 (Thereupon, the proceedings concluded at
9 3:04 p.m.)

10 - - -

11 CERTIFICATE

12 I do hereby certify that the foregoing is a
13 true and correct transcript of the proceedings taken
14 by me in this matter on Monday, August 26, 2013, and
15 carefully compared with my original stenographic
16 notes.

17 _____
18 Carolyn M. Burke, Registered
19 Professional Reporter, and
Notary Public in and for the
State of Ohio.

20 My commission expires July 17, 2018.

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Summary: Transcript in the matter of Jim Schnoll hearing held on 08/26/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn M. Mrs.