

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Quality :  
Fixtures Installations, :  
Notice of Apparent : Case No. 15-1103-TR-CVF  
Violation and Intent to :  
Assess Forfeiture. :

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In the Matter of Mark :  
Burgess, Notice of :  
Apparent Violation and : Case No. 15-1209-TR-CVF  
Intent to Assess :  
Forfeiture. :

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PROCEEDINGS

before James M. Lynn, Hearing Examiner, at the Public  
Utilities Commission of Ohio, 180 East Broad Street,  
Room 11-D, Columbus, Ohio, called at 1:00 p.m. on  
Tuesday, November 10, 2015.

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APPEARANCES:

Mike DeWine, Ohio Attorney General  
William Wright, Section Chief  
By Mr. Steven Logan Beeler  
Assistant Attorney General  
180 East Broad Street, 6th Floor  
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On behalf of the Staff of the Public  
Utilities Commission of Ohio.

Garell M. Burgess  
5560 North Dixie Highway  
Elizabethtown, Kentucky 42701.

Pro se.

Dustin Bass  
617 Robin Lane  
Steinhatchee, Florida 32359

Pro se.

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1                                   Tuesday Afternoon Session,  
2                                   November 10, 2015.

3                                   - - -

4                                   THE EXAMINER: The Public Utilities  
5                                   Commission has assigned for hearing at this time and  
6                                   place two cases actually, Case No. 15-1103-TR-CVF, In  
7                                   the Matter of Quality Fixture Installations, Notice  
8                                   of Apparent Violation and Intent to Assess  
9                                   Forfeiture. We also have Case No. 15-1209-TR-CVF, In  
10                                   the Matter of Mark Burgess -- The inspection report  
11                                   says Garell Burgess, but you go by Mark?

12                                   MR. BURGESS: I go by Mark.

13                                   THE EXAMINER: Notice of Apparent  
14                                   Violation and Intent to Assess Forfeiture.

15                                   At this time, we'll have the appearances  
16                                   of the parties. We'll start with counsel for Staff.

17                                   Mr. Beeler?

18                                   MR. BEELER: Thank you, your Honor. On  
19                                   behalf of the Staff of the Public Utilities  
20                                   Commission of Ohio, Ohio Attorney General Mike  
21                                   DeWine, Steven Beeler, Assistant Attorney General,  
22                                   180 East Broad Street, Columbus, Ohio.

23                                   THE EXAMINER: Thank you.

24                                   Gentlemen, I see Mr. Burgess, if you'd  
25                                   give your name and address first, please.

1 MR. BURGESS: My name is Garell Mark  
2 Burgess. My address is 5560 North Dixie Highway,  
3 Elizabethtown, Kentucky, 42701.

4 THE EXAMINER: And Mr. Bass?

5 MR. BASS: Dustin Bass, 617 Robin Lane,  
6 Steinhatchee, Florida, 32359.

7 THE EXAMINER: Thank you.

8 Mr. Beeler, if you'd like to proceed.

9 MR. BEELER: Thank you, your Honor. At  
10 this time, the Staff would call Inspector Drew Fowler  
11 to the stand.

12 THE EXAMINER: Mr. Fowler, if you'd come  
13 up here and raise your right hand, please.

14 (Witness placed under oath.)

15 THE EXAMINER: Thank you. Please have a  
16 seat.

17 And Mr. Beeler, you may continue.

18 MR. BEELER: Thank you, your Honor.

19 - - -

20 DREW A. FOWLER

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

23 DIRECT EXAMINATION

24 By Mr. Beeler:

25 Q. Good afternoon.

1           A.    Afternoon.

2           Q.    Please state your full name for the  
3 record.

4           A.    Drew A. Fowler.

5           Q.    Where are you employed?

6           A.    I'm with the State Highway Patrol.

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

9           A.    I'm a Motor Carrier Inspector 2.

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

11          A.    24 years now.

12          Q.    What are your duties in your capacity as  
13 an Inspector or Motor Carrier Inspector with the  
14 Highway Patrol?

15          A.    I'm a Commercial Truck and Bus Inspector,  
16 Safety, for vehicle and driver.

17          Q.    And as part of that capacity, you do  
18 motor vehicle inspections throughout the year,  
19 correct?

20          A.    Roadside, yes, yes.

21          Q.    What training do you have in the area of  
22 motor carrier inspections, continuing education or  
23 certifications, et cetera?

24          A.    We have five schools we attend: North  
25 American Level 1, Level 2, Level 3, Hazardous

1 Materials and Commercial Bus.

2 Q. Okay. Now, is that training updated  
3 yearly?

4 A. It is. If there's something new that  
5 comes out, we're updated in our computers, yes.

6 Q. Those would be courses that you would  
7 attend, correct?

8 A. If that's needed to be, yes, yes. What  
9 happens that they usually do, they do updates. And  
10 if it's something they have to do a two or three-day  
11 thing, they'll bring us up to Columbus.

12 Q. Are motor carrier inspections conducted  
13 to protect the safety of Ohio's traveling public?

14 A. Yes.

15 Q. How many inspections on average do you  
16 perform in a year?

17 A. Over a thousand.

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

20 THE EXAMINER: Yes.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. I hand you what has been previously  
23 marked as Staff Exhibit 1 and this is the  
24 Driver/Vehicle Examination Report, inspection date of  
25 March 20th, 2015. Inspector Fowler, do you recognize

1 this document?

2 A. Yes, sir, I do.

3 Q. What is it?

4 A. This is our Driver Vehicle Examination  
5 Report. Whenever we do an inspection, it always goes  
6 to the driver when it's completed.

7 Q. Is this document a Patrol record?

8 A. Yes, it is.

9 Q. Is it kept in the ordinary course of  
10 business?

11 A. Yes, it is.

12 Q. Is it the practice of the Patrol to make  
13 the report?

14 A. Yes, it is.

15 Q. As part of that report, do you report on  
16 matters observed pursuant to a duty imposed by law to  
17 which there was a duty to report?

18 A. Yes, I do.

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

21 A. Yes.

22 Q. Is the reason for you producing this  
23 report an inspection of the motor carrier vehicle  
24 owned at least in part by Quality Fixtures  
25 Installations?



1           A.    Yes.

2           Q.    How do you know that it was owned by  
3   Quality Fixtures Installations?

4           A.    I ran the trailer tag, the Florida tag on  
5   the trailer.

6           Q.    Okay.  Were there any markings on the  
7   trailer?

8           A.    There was.

9           Q.    How about the truck, who owned it?

10          A.    There was not --

11          Q.    Well, who owned the truck?

12          A.    The driver did.  Once I found out -- Once  
13   I went and spoke to him, he said he owned the truck.

14          Q.    Okay.  Who was the driver listed on your  
15   report?

16          A.    Mr. Burgess.

17          Q.    Is Mr. Burgess here today?

18                MR. BURGESS:  Present.

19          A.    Yes, he is.

20          Q.    Again, I believe you said this, but just  
21   to clarify, the truck was registered in Kentucky and  
22   the trailer was registered in Florida, correct?

23          A.    Correct.

24          Q.    As far as you know, the driver owned the  
25   truck and the carrier owned the trailer?

1           A.    Correct.

2           Q.    Do you remember this stop on March 20th,  
3           2015?

4           A.    Yes, I do.

5           Q.    Please describe it.

6           A.    I was traveling on 275 eastbound,  
7           probably was in the afternoon.  And I saw this  
8           vehicle, and I saw a Florida trailer plate.  And I  
9           saw an image of a marking on the trailer, so I got a  
10          little closer to the vehicle, ran up on the side of  
11          them, looked on the left door, did not see anything  
12          on the vehicle on the truck.  So I backed off a  
13          little bit, looked over at the trailer.  Did not see  
14          the breakaway switch which is supposed to be there.  
15          And once I did that, then I got up behind him, and I  
16          made my traffic stop.

17                    THE EXAMINER:  Mr. Fowler, when you say  
18                    you did not see anything on the truck, do you mean  
19                    there were no --

20                    THE WITNESS:  No markings.

21                    THE EXAMINER:  -- markings to indicate  
22                    like a name of a carrier?

23                    THE WITNESS:  It wasn't the same as it  
24                    said on the trailer.

25                    THE EXAMINER:  Oh, it was different from

1 what was said on the trailer?

2 THE WITNESS: There was nothing on the  
3 truck at all.

4 THE EXAMINER: On the tractor part?

5 THE WITNESS: Well, it's not a tractor;  
6 it was a pickup truck.

7 THE EXAMINER: Oh, I see. Then on the  
8 trailer, were there markings at all?

9 THE WITNESS: Yes, "Installation  
10 Fixtures." It was faded, but it was there.

11 THE EXAMINER: All right. Thank you.

12 Q. (By Mr. Beeler) Please go on and describe  
13 the inspection, if you could.

14 A. After I pulled the vehicle over, I called  
15 into dispatch, told them I'd probably be 30, 35  
16 minutes on my inspection. I walked to the left  
17 side -- Actually, I went to the right side, because  
18 we were on the interstate, of Mr. Burgess' vehicle  
19 and went around the right side to the driver's side  
20 door so I could see the traffic coming to me and  
21 asked him, "How are you today, sir?"

22 And he asked me why I pulled him over.  
23 And I said, "You have a Florida trailer plate and  
24 Kentucky tags, and it looks like you are a  
25 construction contractor type." He said, "Yes, I am."

1 I said, "Well, sir, where are you coming from?" He  
2 said, "Fairfield." I said, "You're working in  
3 Fairfield today?" He goes, "Yes, I am."

4 And so he gave me his driver's license.  
5 I said, "Do you have a medical card?" He said, "No,  
6 I do not." He had a registration, a temporary,  
7 nothing for the trailer which they do sometimes,  
8 sometimes they don't. As long as the trailer's  
9 valid, it doesn't really matter on the plates.

10 THE EXAMINER: Sorry, what was your  
11 comment about the registration?

12 THE WITNESS: The registration on the  
13 truck, he had. Nothing for the trailer. By law,  
14 there is a law that you are required to have that for  
15 the trailer too, but if the plate is okay, there's no  
16 problems, I really don't get excited about it. The  
17 plate goes back to who it belongs to. He tells me  
18 who it belongs to, make sure it's not a stolen  
19 vehicle. Then I pursue, go on from there.

20 I got his credentials, went back to my  
21 vehicle, started running everything in the system.  
22 He stayed in his truck. I didn't want him out of his  
23 vehicle getting hit or anything for his safety.

24 Went back up to his truck after I did  
25 the paperwork on the computer, started talking to

1 him. Told him I'm going to turn the lights on, going  
2 to check things out. I also mentioned to him, "Your  
3 breakaway switch is missing." I don't know if he  
4 really knew it or not. He didn't really say much  
5 about that. I showed him where it has a pin that  
6 goes in, emergency braking for the trailer. He said  
7 okay. So I started from the front of the vehicle  
8 checking the lights, tires and then so on.

9 THE EXAMINER: Again, Mr. Fowler, you  
10 said that this actually was a pickup truck?

11 THE WITNESS: Pickup truck pulling a  
12 trailer, yes, sir. There's a lot of that out there,  
13 your construction contractors.

14 THE EXAMINER: All right. Thank you.

15 THE WITNESS: You're welcome, sir. So I  
16 was going through my inspection, and I was just  
17 checking. I checked the steering. I checked the tie  
18 rods. I checked the drag link. I checked for idler  
19 arms, anything moving out of the ordinary.

20 It has to be if the tie rod or drag  
21 link, if there's more than an eighth of an inch of  
22 hand pressure applied and you grab ahold of it and  
23 you move it, and that one you can see on my pictures  
24 there, you can see where it had a gap. It was not  
25 safe, let's put it that way. So I wrote that up.

1           And then I walked down the vehicle,  
2 checked the tire, checked underneath the truck,  
3 checked the lug nuts, checked anything to do with the  
4 safety of the vehicle, the vehicle and the trailer  
5 itself.

6           Q.    Okay.

7           A.    Lights, turn signals, brake lights.

8           Q.    Did you put the vehicle out of service?

9           A.    I put both vehicles out of service, the  
10 tie rod end on the right front of the truck, I think  
11 King Ranch I believe it was. And the trailer, I put  
12 it out of service when it didn't have the breakaway  
13 hooked up.

14          Q.    Then on Page 2 of Staff Exhibit 1 of your  
15 report, about midway down, there's a Reason Code  
16 "OBVI," that means it was an obvious stop, correct?

17          A.    Correct.

18          Q.    Just please explain that.

19          A.    There was no markings on the vehicle.  
20 Due to the vehicles both being out-of-state, anything  
21 over 10,001, a combination of both, the GVWR, gross  
22 vehicle weight rating, the vehicle has to have  
23 company markings.

24          Q.    Did you witness anything else that would  
25 be an obvious violation?

1           A.     Then also the breakaway was not -- there  
2 was no pin in the breakaway, just a hole was there.

3           THE EXAMINER: Mr. Beeler, if I can step  
4 in for a minute. Mr. Fowler, you mentioned a gross  
5 vehicle weight or combined weight, I guess, for  
6 towing unit in the trailer. On the inspection report  
7 on Page 1, there's some indication what the gross  
8 vehicle weight rating is for the trailer as well as  
9 the pickup truck.

10          THE WITNESS: Yes, sir.

11          THE EXAMINER: How did you obtain what  
12 the gross weight is for each of those?

13          THE WITNESS: It's on the door jamb of  
14 the driver's side door of the truck. You can open up  
15 the door, it's either right here (indicating) or down  
16 at the bottom (indicating), and it has a -- it's VIN  
17 plate.

18          THE EXAMINER: Vehicle Identification  
19 Number. What about for the trailer, where was that?

20          THE WITNESS: It was on the left front  
21 corner.

22          THE EXAMINER: So they have a similar  
23 plate?

24          THE WITNESS: By law, you have to have  
25 some ID on that vehicle.

1 THE EXAMINER: So you were able to  
2 determine by checking both of those locations --

3 THE WITNESS: Yes, sir. That's a --

4 THE REPORTER: Sir, can you please let  
5 him finish the question.

6 THE EXAMINER: By checking at both  
7 locations on the pickup truck and on the trailer,  
8 you're able to determine the combined gross weight  
9 was over 10,001 pounds?

10 THE WITNESS: Yes, sir.

11 THE EXAMINER: Thank you. Apologies to  
12 the reporter.

13 MR. BEELER: Thank you, your Honor.

14 Q. (By Mr. Beeler) Does the driver get a  
15 copy of your report --

16 A. Yes, he does.

17 Q. -- at the stop?

18 So yes, he does?

19 A. Yes, he does.

20 Q. So there are violations listed on this  
21 report, correct?

22 A. Yes, sir.

23 Q. I know you've mentioned it, but if you  
24 could, please, just go through them and tell me what  
25 they are listed on the report.



1           A.    Okay.  On the top, "Carrier name and/or  
2   USDOT number not displayed as required."

3           Q.    Okay.

4           A.    "Operating a property-carrying vehicle  
5   without possessing a valid medical certificate."

6           Q.    That would be a driver violation?

7           A.    That's a driver violation, yes, sir.

8                   And then "No improper breakaway or  
9   emergency braking was not hooked up, see my notes."

10                   "No fire extinguisher with vehicle."

11                   "No/insufficient warning devices, none  
12   with the vehicle," meaning that is emergency -- if  
13   you break down on the roadside, you need either three  
14   triangles reflective or you need three cones or three  
15   flares.

16           Q.    Okay.  And as we discussed earlier, there  
17   are both driver violations and carrier violations  
18   listed on this report?

19           A.    That is correct.

20           Q.    So we have two separate cases here today,  
21   a carrier case and a driver case, but this one report  
22   covers both of those cases; correct?

23           A.    Yes, sir.

24           Q.    I'm just going to go through each of the  
25   violations very quickly, and I'm going to start with

1 no fire extinguisher. You did not find a fire  
2 extinguisher on the commercial motor vehicle,  
3 correct?

4 A. Correct.

5 Q. Did the driver dispute that during the  
6 stop?

7 A. No, he did not.

8 Q. So as a result, you cited the carrier for  
9 that violation, correct?

10 A. Yes, sir.

11 Q. So it's your testimony that by observing  
12 the lack of a fire extinguisher, the carrier was in  
13 violation of 49 CFR 393.95(A)?

14 A. Yes, sir.

15 Q. Similarly, with the warning devices, the  
16 vehicle did not have proper warning devices, correct?

17 A. Correct.

18 Q. Why not? Can you explain why?

19 A. I don't know why. I'm not sure. They're  
20 required to have them.

21 Q. You tested to see that they didn't work?

22 A. No, you don't look to see that they work.  
23 They don't have a box of them. It's a box of  
24 triangles, it's like triangles. And they don't have  
25 it in the vehicle with them, so you can't produce it

1 or show me or anything.

2 Q. Thank you for that clarification. So as  
3 a result of that observation, you cited the carrier  
4 for that violation?

5 A. Yes, I did.

6 Q. So it's your testimony here today that  
7 you observed the vehicle without warning devices,  
8 correct?

9 A. Yes.

10 Q. Turning to the improper breakaway and  
11 emergency braking not being hooked up, the vehicle  
12 did not have proper breakaway emergency braking,  
13 correct?

14 A. Correct.

15 Q. Just, again, please explain why that was  
16 the case.

17 A. The breakaway for emergency braking, if  
18 the trailer disconnects from unit 1, which is the  
19 truck, this breakaway pulls out, the wire comes out  
20 and automatically shuts the trailer down so it  
21 doesn't roll down the road freely hitting oncoming  
22 cars.

23 THE EXAMINER: So it activates the brakes  
24 on --

25 THE WITNESS: It activates the brakes on

1 the trailer only, emergency braking, yes, sir.

2 Q. (By Mr. Beeler) So as a result of your  
3 observations at the scene, you cited that driver for  
4 that?

5 A. Yes, equipment violation.

6 Q. And it's your testimony today that you  
7 observed this lack of emergency braking system,  
8 correct?

9 A. Yes.

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

11 THE EXAMINER: Yes.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. I hand you what's been previously marked  
14 as Staff Exhibit 2. It's just a photo taken by  
15 Inspector Fowler at the stop. Do you recognize this  
16 picture?

17 A. Yes, I do.

18 Q. Did you take this picture?

19 A. Yes, I did.

20 Q. Does this picture accurately represent  
21 the scene at the day of -- the scene at the day of  
22 the inspection?

23 A. Yes, sir.

24 Q. What does this picture show?

25 A. It shows the breakaway box where it's

1 connected where it goes into the battery, and then  
2 where you see the hole in the front there, there's a  
3 pin that goes in that, and the pin is missing.

4 Q. Okay. So this picture does show an  
5 improper --

6 A. Breakaway system.

7 Q. -- breakaway system?

8 A. Yes, sir.

9 Q. So it's your testimony that this picture  
10 supports your testimony that the vehicle was in  
11 violation of 49 CFR 393.43 because the breakaway  
12 system was not hooked up correctly?

13 A. Yes, sir.

14 Q. Turning back to what we were discussing,  
15 the violation, the right front steer axle rod which  
16 is 49 CFR 396.3(A)(1), you observed the right front  
17 steer axle tie rod with excessive play, correct?

18 A. Yes, sir.

19 Q. How do you know that?

20 A. First of all, you visualize it. You look  
21 at it and what it does. It has a rotation. It's a  
22 lack of rotation that's allowed, but when it has -- I  
23 always call it the yo-yo syndrome like this. So if I  
24 see that, I reach in there and I grab it with my  
25 hands, pull it, push it up wherever it will go. If

1 it goes more than an eighth of an inch, it's out of  
2 service.

3 Q. So as a result of that observation, you  
4 cited the carrier for the violation, correct?

5 A. Yes, sir.

6 Q. And it's your testimony that you observed  
7 the excessive play on the tie rod, correct?

8 A. Yes, sir.

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

10 THE EXAMINER: Yes.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. I have what's previously been marked as  
13 Staff Exhibit 4. We're going to skip 3 if that's  
14 okay. I decided not to introduce that one. Do you  
15 recognize this picture?

16 A. Yes, I do.

17 Q. Did you take this picture?

18 A. Yes, I did.

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

21 A. Yes, it does.

22 Q. What does this picture show?

23 A. This shows the right front of the  
24 driver's vehicle tie rod and drag link bar which  
25 controls your steering.

1 Q. And this picture essentially shows the  
2 axle tie rod, right?

3 A. Yes.

4 Q. And in the way you test the excessive  
5 play, is you use hand pressure; is that correct?

6 A. Yes, sir.

7 Q. This picture at least gives the  
8 Commission an idea of what a tie axle rod is, right?

9 A. Yes, sir.

10 THE EXAMINER: Mr. Fowler, can you give  
11 me a little better idea where the rod is in the  
12 picture?

13 THE WITNESS: May I approach?

14 THE EXAMINER: Certainly, yes.

15 THE WITNESS: This is the....

16 (Off the record.)

17 THE EXAMINER: For purposes of our  
18 reporter, the tie rod is in the photograph with the  
19 tire still on the ground. Where the dirt is, the  
20 tire rod goes from left to right from the inside of  
21 the rim, I guess.

22 THE WITNESS: Inside the wheel.

23 THE EXAMINER: Or inside the wheel and  
24 toward the outside apparently across the wheel, I  
25 suppose.

1 THE WITNESS: Right. What that does is  
 2 that controls the steering on the right side of the  
 3 vehicle itself.

4 THE EXAMINER: Okay, thank you.

5 THE WITNESS: You're welcome, sir.

6 Q. (By Mr. Beeler) So it's your testimony  
 7 that this picture supports your claim that the  
 8 vehicle was in violation of the tie rod violation; is  
 9 that correct?

10 A. Yes, sir.

11 MR. BURGESS: If I may, your Honor, may I  
 12 have --

13 MR. BEELER: I object.

14 MR. BURGESS: I'd like --

15 MR. BEELER: I object.

16 THE EXAMINER: You can have your own  
 17 photographs or other comments, but wait until you  
 18 actually take the witness stand.

19 MR. BURGESS: Okay.

20 THE EXAMINER: Thank you.

21 Q. (By Mr. Beeler) Turning now to the  
 22 carrier name and/or USDOT number not displayed as  
 23 required, you observed the carrier without markings,  
 24 correct?

25 A. Yes, sir.



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

2 THE EXAMINER: Yes.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. This was previously marked as Staff  
5 Exhibit 5. It's another photograph. Do you  
6 recognize this picture?

7 A. Yes, I do.

8 Q. Did you take this picture?

9 A. Yes, I did.

10 Q. What does this picture show?

11 A. It shows a door with nothing on it.

12 Q. Is this door the side of the truck that  
13 you inspected?

14 A. Yes, sir.

15 Q. And there's no markings on that door?

16 A. No markings on the vehicle, correct.

17 Q. As a result of that observation, you  
18 cited the carrier of that violation, correct?

19 A. Correct.

20 Q. And it's your testimony that this  
21 photograph supports your observation that the carrier  
22 was in violation of that section, correct?

23 A. Yes, sir.

24 Q. Finally, moving to operating a CMV  
25 without USDOT registration, the driver did not have a

1 USDOT registration, correct?

2 A. Correct. It was not registered.

3 Q. Was unable to produce one?

4 A. Well, they usually don't produce it.

5 It's usually on the doors of the vehicles, so we go  
6 over, we look at it. There's no form they carry with  
7 them.

8 THE EXAMINER: Mr. Fowler, is that  
9 registration required again because of the combined  
10 gross weight of the towing unit and the trailer?

11 THE WITNESS: Yes.

12 Q. (By Mr. Beeler) So --

13 MR. BEELER: Sorry, your Honor.

14 THE EXAMINER: Not a problem, go ahead.

15 Q. (By Mr. Beeler) So as a result of that  
16 observation, you then cited the carrier for lack of  
17 USDOT registration, correct?

18 A. Yes.

19 Q. Finally, turning to the driver violation  
20 failure to produce a medical card, the driver did not  
21 produce a medical card?

22 A. That's correct.

23 Q. You asked for a medical card; is that  
24 correct?

25 A. Yes.

1 Q. Did the driver dispute that?

2 A. Just said he didn't have one.

3 Q. So, again, it's your testimony that the  
4 driver was in violation of the medical card section,  
5 correct?

6 A. Yes, sir.

7 Q. Okay. So throughout this stop, you  
8 believe that this was a commercial move, correct?

9 A. Yes, I do.

10 Q. Why did you believe that?

11 A. I asked the driver where he was working  
12 that day I stopped him. He told me he was working in  
13 Fairfield; Fairfield, Ohio.

14 Q. Okay.

15 A. So that's my determination. I asked,  
16 "Where you going from this point? Coming from  
17 Fairfield and where you heading to?" He said he was  
18 heading back home to Elizabethtown.

19 Q. At any point during the stop, did you  
20 look in the back of the trailer?

21 A. No, I did not.

22 Q. Do you know why you didn't look in the  
23 back of the trailer?

24 A. No.

25 Q. On your report, Staff Exhibit 1, is it --

1 scratch that.

2 Is it that you don't remember looking in  
3 the back of the trailer or you definitely didn't look  
4 in the back of the trailer?

5 A. I'm pretty sure I did not. I did have  
6 camera problems. It fogged up on me, so I didn't  
7 really -- nothing came out. I don't remember opening  
8 it up. I did not.

9 Q. So Staff Exhibit 1, you do note on the  
10 first page where it says "Cargo," "Other, Const  
11 Equipment"; is that correct?

12 A. The reason I put that is because usually  
13 on these vehicles, they are contractors. They do  
14 construction. It could be building or anything doing  
15 with construction.

16 THE EXAMINER: Mr. Fowler, you're  
17 indicating that although you've written that on the  
18 inspection report, you actually did not look inside  
19 of the trailer?

20 THE WITNESS: No, sir, I did not.

21 THE EXAMINER: This is a trailer I assume  
22 that was fully enclosed?

23 THE WITNESS: It was, yes.

24 THE EXAMINER: All right.

25 Q. (By Mr. Beeler) Would it matter if the

1 trailer were empty so long as the truck were used?

2 A. Actually it does not.

3 Q. It's possible for a trailer to be empty?

4 A. The carrier can use a trailer for other  
5 things. I mean, the way we do it is if a truck is by  
6 itself singly, is not pulling a trailer, there's not  
7 too much enforcement done, but if you're pulling a  
8 trailer, you can pick up, do things with it or do  
9 whatever you want to do, so that's how we use it.  
10 I've been doing this for 27 years. The contractors  
11 are all out there, they do this.

12 Q. It's also possible for a trailer to be  
13 empty on the way to pick up materials to go to a job,  
14 correct?

15 A. Yes, it is.

16 Q. How about when the job's done, to return  
17 home, the trailer would be empty?

18 A. Could be, yes, sir.

19 Q. Could be. At the inspection, did the  
20 driver indicate that this was only a personal move?

21 A. That did not -- That was not brought up  
22 until I told him he was placed out of service.

23 Q. Tell me a little more about that.

24 A. After I did my inspection, I do not leave  
25 people on the side of the highways. It's not safe.

1 I told him, I said, "You have a bad tie rod and you  
2 have no breakaway on your trailer. I will escort you  
3 up to the next exit." And it was a Gabriel parking  
4 lot, to get him off the interstate highway.

5 And pretty much when I told him that, he  
6 got on the phone and spoke with somebody. I don't  
7 know who he talked to. I asked him what he wanted to  
8 do. "Do you want to sit here on the interstate and  
9 wait for a tow truck, or do you want me to take you  
10 to a safe haven?" He chose to go up to the next  
11 exit. Everything kind of went sour after I told him.  
12 His attitude and everything changed towards me.

13 Q. Did he make a phone call during this  
14 stop?

15 A. After I told him he was out of service,  
16 he did.

17 Q. Do you know who he called?

18 A. No, I do not.

19 Q. So it's your testimony that the story  
20 changed once he -- it became a personal move once the  
21 phone call was made?

22 A. He said all he was doing was helping  
23 people out, his friends or something like that, but  
24 that was not brought up until the inspection was  
25 completed and after he was placed out of service.

1 Q. Did the driver say he worked for Quality  
2 Fixtures?

3 A. Yes, he did.

4 THE EXAMINER: Mr. Fowler, then at any  
5 point, did the driver indicate what he was hauling in  
6 that trailer? Did he ever say?

7 THE WITNESS: I don't remember, sir.

8 THE EXAMINER: Okay.

9 Q. (By Mr. Beeler) Again, the driver  
10 originally just said that he was doing work in  
11 Fairfield; is that correct?

12 A. Yes, sir.

13 Q. Just kind of a general ask question here,  
14 is there anything else important to note that we have  
15 not discussed that you feel the Commission would like  
16 to know for the record?

17 A. No, sir.

18 MR. BEELER: I have no further questions,  
19 your Honor, on direct, but I would reserve Mr. Fowler  
20 for rebuttal, if necessary.

21 THE EXAMINER: Mr. Fowler, you can take  
22 your seat and still be under oath, so I'll likely be  
23 asking further questions.

24 THE WITNESS: No problem, sir.

25 MR. BEELER: At this time, at least with

1 this witness, I would move for the admission of Staff  
2 Exhibits 1, 2, 4 and 5.

3 THE EXAMINER: And gentlemen, Mr. Bass  
4 and Mr. Burgess, do you have any objection to  
5 admitting these exhibits into evidence?

6 MR. BURGESS: I would like to see 4 and  
7 5, please.

8 MR. BASS: He wants them to be admitted  
9 into evidence. I don't know how this is evidence in  
10 a commercial case whenever it's a private vehicle.  
11 This is a privately owned truck for Mr. Burgess, and  
12 private individuals pull trailers on a regular basis.  
13 I understand there were violations on the trailer and  
14 the truck, but this wasn't being used as a commercial  
15 vehicle.

16 THE EXAMINER: If you feel that -- If you  
17 feel that these photos illustrate what was seen on  
18 the vehicle, that's fine. And then if you go --

19 MR. BASS: There was actually a  
20 statement, your Honor, that went with this one right  
21 here.

22 THE EXAMINER: You're referring to Staff  
23 Exhibit 5?

24 MR. BASS: Yes, sir. The comment was  
25 there were no placards on the vehicle, but it's a



1 private vehicle.

2 THE EXAMINER: Let's say this, first of  
3 all, Staff Exhibit 1, which is the inspection report,  
4 2, which is a photo of the breakaway, and 4, which is  
5 a photo of the tie rod, do you have any objection to  
6 admitting any of those into evidence?

7 MR. BASS: No, sir.

8 THE EXAMINER: And then Staff Exhibit 5,  
9 do you feel that that accurately portrays what the  
10 side of the pickup truck looked like?

11 MR. BASS: I feel it portrays what the  
12 truck looked like, but the comment made with the  
13 introduction of the evidence was inaccurate.

14 THE EXAMINER: I see. Well, but the  
15 photograph itself --

16 MR. BASS: Yes, sir. Yes, sir, it is a  
17 picture of the door.

18 THE EXAMINER: No objection to the  
19 photograph itself, but your perspective is the  
20 vehicle is used for private purposes; am I correct?

21 MR. BASS: And privately owned, sir.

22 THE EXAMINER: What we can do then is if  
23 you have no objection to the photograph itself as to  
24 saying it accurately shows what the side of the  
25 pickup truck looked like, that can be admitted into

1 evidence. And then if you have a different  
2 perspective on why this does not prove Staff's case,  
3 you can state that when you're on the witness stand.  
4 Do you understand what I'm saying, the distinction  
5 I'm trying to make?

6 MR. BASS: Yes, sir.

7 THE EXAMINER: So, therefore, as far as  
8 this accurately showing what the side of the truck  
9 looks like, you have no objection to that?

10 MR. BASS: No objections.

11 THE EXAMINER: So therefore, we'll admit  
12 Staff Exhibits 1, 2, 4 and 5 into evidence.

13 MR. BEELER: Thank you, your Honor.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 THE EXAMINER: Now, gentlemen, whichever  
16 of you two would like to take the stand first.

17 MR. BEELER: Excuse me, your Honor.

18 THE EXAMINER: Oh, just a minute.

19 MR. BEELER: That was just this witness.  
20 I still have another.

21 THE EXAMINER: My mistake.

22 MR. BEELER: Procedurally, I typically  
23 take the exhibits that that witness handled into  
24 evidence, but I still have another Staff witness to  
25 go.

1 THE EXAMINER: We'll go to that person.

2 Thank you.

3 MR. BEELER: Thank you, your Honor. The  
4 Staff would call Jonathan Frye to the stand.

5 THE EXAMINER: Mr. Frye, would you raise  
6 your right hand.

7 (Witness placed under oath.)

8 - - -

9 JONATHAN FRYE

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

12 DIRECT EXAMINATION

13 By Mr. Beeler:

14 Q. Good afternoon, Mr. Frye.

15 A. Good afternoon.

16 Q. Please state your full name.

17 A. Jonathan, and that's J-O-N-A-T-H-A-N.

18 Last name, Frye, F-R-Y-E.

19 Q. Where are you employed?

20 A. Public Utility Commission of Ohio,  
21 Transportation Department.

22 Q. What is your position?

23 A. I'm a Chief of the Compliance Division.

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

25 A. Approximately 12 years.

1 Q. What are your duties in that position?

2 A. To review the fine assessments of the  
3 compliance officers to make sure they're accurate.

4 Q. What are your expert qualifications in  
5 the subject matter of violations, certifications,  
6 continuing education?

7 A. I've taken the North American Out Of  
8 Service, Parts A and B. I've taken Hazardous  
9 Materials training, Bulk Package training as well.

10 Q. Explain how you determine the amount of  
11 forfeitures in these cases.

12 A. The violations are grouped into four  
13 different categories, and based upon the types of  
14 violations and the severity of the violations, we  
15 assess a monetary fine to the violations.

16 Q. Okay. And does the Commission apply that  
17 process uniformly to everyone?

18 A. Yes.

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

21 THE EXAMINER: Yes.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. Beeler) I have what's previously  
24 marked as Staff Exhibits 6 and 7. They are two  
25 Notices of Preliminary Determination, both dated

1 May 29th, 2015. One is in relation to the carrier  
2 case and the other is in relation to the driver case.  
3 Take a second to look these over.

4 Starting with Staff Exhibit 6, do you  
5 recognize this document?

6 A. Yes.

7 Q. What is it?

8 A. It's a Notice of Preliminary  
9 Determination letter, and it's a letter that's sent  
10 to a Respondent when we are unable to reach a  
11 resolution of a case. Provides them with information  
12 on how to pay the fine as well as how to make a  
13 request for an administrative hearing.

14 Q. And Staff Exhibit 6, that's the Notice of  
15 Preliminary Determination that applies to the  
16 carrier, correct?

17 A. That's correct.

18 Q. And you know that because on the case  
19 number there below, up in the "Regarding" section, it  
20 says "OH" and a long number with a "C" at the end,  
21 correct?

22 A. That's correct.

23 Q. That's for carrier?

24 A. Yes.

25 Q. Was this document prepared by you or

1 under your direction?

2 A. Yes.

3 Q. Dated May 29th, 2015, correct?

4 A. Yes.

5 Q. Is this document a Commission record?

6 A. Yes.

7 Q. Is it recorded in the ordinary course of  
8 business?

9 A. Yes.

10 Q. Is it the practice of the Commission to  
11 make this letter or determination?

12 A. Yes.

13 Q. Is this document in the same condition  
14 substantially as when it was prepared?

15 A. Yes.

16 Q. Explain how the civil forfeiture was  
17 derived on Staff Exhibit 6 if you can.

18 A. As I indicated earlier, the violations  
19 are broken up into groups. In this particular case,  
20 it indicates that for carrier name for USDOT number  
21 not displayed, it's a Group 4 violation with a \$100  
22 fine.

23 In addition to that, it also indicates  
24 that a USDOT registration is required. And in the  
25 event that it was not -- it was not registered, this

1 is also a Group 4 violation which receives a \$500  
2 fine.

3 The letter also indicates that there was  
4 one Group 2 violation which was the no or improper  
5 breakaway which was assessed a \$50 fine.

6 There was also one Group 3 violation  
7 which was the right front steer axle tie rod end with  
8 excessive play, and that was assessed a \$40 fine.  
9 Indicates that the total for all the violations was  
10 \$690.

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

15 A. Yes.

16 Q. Again, the total forfeiture amount is  
17 \$690?

18 A. That's correct.

19 Q. Is that the correct amount for this case?

20 A. Yes.

21 Q. Would you recommend that amount to the  
22 Commission?

23 A. Yes.

24 Q. Turning now to Staff Exhibit 7, do you  
25 recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. It's a Notice of Preliminary  
4 Determination letter that was sent to the driver.

5 Q. Okay. Is it prepared by you or under  
6 your direction?

7 A. Yes.

8 Q. Again, it's dated May 29th, 2015?

9 A. Yes.

10 Q. Is this document a Commission record?

11 A. Yes.

12 Q. Kept in the ordinary business of the  
13 Commission?

14 A. Yes.

15 Q. Is it the practice of the Commission to  
16 make this Preliminary Determination?

17 A. Yes.

18 Q. Is this document in the same condition as  
19 when it was originally prepared?

20 A. Yes.

21 Q. Explain how the civil forfeiture was  
22 derived for the driver in this case.

23 A. Again, this is -- the violations are  
24 broken up into various groups based upon the type of  
25 violation, as well as the severity. In this



1 particular case, this was -- the driver was in  
2 violation of not possessing a valid medical  
3 certificate. This is a Group 4 violation for which  
4 there's a \$100 fine for this type of violation.

5 Q. Is that penalty consistent with the  
6 recommended fine schedule and recommended civil  
7 penalty procedure adopted by the Commercial Motor  
8 Vehicle Alliance?

9 A. Yes.

10 Q. That forfeiture is \$100?

11 A. Yes.

12 Q. That's the correct amount for this case?

13 A. Yes.

14 Q. Would you recommend this amount to the  
15 Commission?

16 A. Yes.

17 Q. Is there anything else that you think  
18 would be important to note for the Commission that  
19 you've not discussed?

20 A. No.

21 MR. BEELER: Thank you, your Honor. No  
22 further questions.

23 THE EXAMINER: Thank you. We can go off  
24 the record for just a minute, Cindy.

25 (Off the record.)

1 THE EXAMINER: We're back on the record.  
2 Mr. Burgess has a question.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Burgess:

6 Q. Mr. Frye, the information that you had in  
7 preparing your documents was based solely on this  
8 citation or alleged citation of this officer; is that  
9 correct?

10 A. That's correct.

11 MR. BURGESS: Thank you. That's all.

12 THE EXAMINER: Thank you, Mr. Burgess.

13 Mr. Beeler, you said you had no further  
14 questions?

15 MR. BEELER: Yes. And your Honor, at  
16 this time, I would move for the admission of Staff  
17 Exhibits 6 and 7 into the record.

18 THE EXAMINER: Mr. Bass and Mr. Burgess,  
19 do you have any objection admitting Staff Exhibits 6  
20 or 7 into evidence?

21 MR. BURGESS: No.

22 MR. BASS: No.

23 THE EXAMINER: We'll admit Staff Exhibits  
24 6 and 7 into evidence. Thank you.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 THE EXAMINER: Mr. Frye, you can take  
2 your seat. Thank you.

3 MR. BEELER: Again, I would just reserve  
4 Mr. Fowler for rebuttal, if necessary.

5 THE EXAMINER: Gentlemen, Mr. Burgess,  
6 Mr. Bass, whichever you would prefer to take the  
7 witness stand.

8 MR. BURGESS: I do have a couple  
9 questions for the officer.

10 THE EXAMINER: I'm sorry, you can ask him  
11 questions again related to the violation against you,  
12 the medical card.

13 MR. BURGESS: Yes, sir.

14 THE EXAMINER: You can ask Mr. Fowler,  
15 yes.

16 - - -

17 DREW A. FOWLER  
18 having been previously sworn, as prescribed by law,  
19 was examined and testified as follows:

20 CROSS-EXAMINATION

21 By Mr. Burgess:

22 Q. I guess the first question I would want  
23 to ask, during any time during this stop, was myself  
24 belligerent in any way?

25 A. (Shakes head.)

1 Q. Did I withhold anything --

2 A. No, sir.

3 Q. -- that you asked or requested?

4 A. No, sir.

5 Q. The reason I ask this point, you have  
6 mention on here of fire equipment and things. Did  
7 you ever ask me to produce them?

8 A. Yes, I did.

9 Q. Okay.

10 MR. BEELER: I would object, your Honor,  
11 that's not the medical card violation.

12 THE EXAMINER: Well, that's true.  
13 Mr. Burgess, if you could just limit yourself to the  
14 medical card.

15 Q. (By Mr. Burgess) I guess the next  
16 question I would have is do you carry with you a  
17 medical card to operate your vehicle?

18 A. I don't have to, sir.

19 Q. You don't have to?

20 A. No.

21 Q. Is your vehicle privately owned?

22 A. State of Ohio owns it.

23 Q. The State of Ohio. You're driving a  
24 commercial vehicle that's owned by the state without  
25 a commercial --



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GARELL M. BURGESS

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

DIRECT TESTIMONY

THE WITNESS: I guess my statement would be the premise for -- the stop initially would be my strongest premise. It's a Ford F3 pickup truck. I use it on the farm. I was not conducting any business in Fairfield. I moved some furniture for a family member.

As far as being hooked to the trailer, it's my understanding there's some fine lines here between the DOT stats which means the gross tonnage of the truck is in culmination with the trailer. The trailer gross tonnage is based on the amount of weight you can put in the trailer.

I've done some research on some DOT specifications, and that's where I came up with the combined weight of both vehicles which I weighed at a scale was 9,000 pounds, so I would say that as far as my truck, I do not use for commercial endeavors.

I use it personally. I do farm work. I do some plumbing work at the house. From time to time, I help out friends and other jobs and other work, but as far as registering that vehicle as a

1 commercial vehicle, my personal belief, it's utterly  
2 absurd.

3 I mean, if the premise of the officer at  
4 the time is that it had tools in it, anybody carrying  
5 a cell phone is considered a tool. If you have a  
6 jack in your car, you could be considered a road  
7 repair service. I mean, it's absurd.

8 - - -

9 EXAMINATION

10 By The Examiner:

11 Q. Let's go back to the date you were  
12 stopped for the inspection. When you were stopped,  
13 what do you recall saying to Mr. Fowler?

14 Do you remember any of the conversation  
15 or anything you were asked or answered?

16 A. Yes, he -- he was real cordial. First  
17 thing he told me, he said that my truck was too big  
18 to be pulling this trailer which I thought was kind  
19 of odd, that a pickup truck could be too big to pull  
20 a trailer.

21 And then the second comment he made to  
22 me, he said, "This is merely a safety inspection.  
23 There will be no fines assessed or anything like  
24 that. We just want to check you for safety" which  
25 made me fully cooperative. I mean, anything the

1 gentleman had to say... I will concede the fact that  
2 the emergency brake was -- and I'll be honest with  
3 you, I think and I still to this day the stabilizer  
4 bar had a weak joint in it, and it needed to be  
5 changed.

6 Q. So that's on the trailer?

7 A. No, on the truck.

8 Q. On the truck, I see.

9 A. I do appreciate it; however, I mean, the  
10 trailer and the truck, you can't separate them, but  
11 you can't put them together either. I mean, it's a  
12 tit for tat. The only tools that he saw was in the  
13 back of my truck. I had some scaffolding where I had  
14 done some work on one of my barns, and he  
15 automatically assumed that I was in the construction  
16 business, and I was doing all kind of business in  
17 Ohio. I have never done business in Ohio, none, not  
18 a contracting job or anything like that.

19 Q. Mr. Burgess, did you indicate to  
20 Mr. Fowler, the inspector, what you were doing that  
21 day?

22 A. Yes, I did.

23 Q. Could you tell me again.

24 A. I told him that I dropped off some  
25 furniture up here for a family member's son, and the



1 trailer had been laying at my house. It had been at  
2 one point used for storage in Florida. Basically I  
3 just borrowed a trailer from a friend, and I hate to  
4 see him go through this because I borrowed a trailer  
5 to move a family member, and it's --

6 Q. Did you receive any pay, any compensation  
7 for moving that friend?

8 A. Come on, this is family. You don't take  
9 money from family.

10 Q. Well, it could be a factor to take into  
11 account. You're saying no?

12 A. No. I wasn't up here on any sort of  
13 commercial impact. That truck doesn't hire. It  
14 doesn't lease. I don't subcontract the truck out.

15 Q. You're saying the trailer, where was the  
16 trailer?

17 A. It was in Elizabethtown.

18 Q. In Elizabethtown. And how did it happen  
19 you were towing the trailer? It was not your -- you  
20 didn't own the trailer?

21 A. No, I don't.

22 Q. It was on the pickup truck?

23 A. Yes.

24 Q. How did it happen you were connected to  
25 that trailer?

1           A.    Well, Dustin brought it up.  He asked me  
2 if he could park it there.

3           Q.    That's Mr. Bass?

4           A.    Yes, he asked me if I could drop it off.  
5 I said it was fine.  He said we're going to maybe do  
6 some storage unit later on or something to that  
7 effect.

8           Q.    It was dropped off to where?  At your  
9 home?

10          A.    Yes, at my place.

11          Q.    I see.

12          A.    Three months later, I asked him, "Hey,  
13 I've got -- it's kind of misty and rainy out here," I  
14 said, "I've got some furniture to move, do you mind  
15 if I use your trailer?"  He said, "No, help  
16 yourself."

17          Q.    You're indicating that you had gone into  
18 a weigh station at some point, and that the combined  
19 weight of your pickup truck and the trailer you're  
20 saying is under 9,000?

21          A.    Yeah.  I take that back, it was a little  
22 over 9,000, 9,250 pounds, something like that, or 60  
23 pounds.  I think it goes in 20-pound increments.

24          Q.    That weigh station, did that happen to be  
25 on the day of the inspection?

1           A.    No, it was not.

2           Q.    So at the time that the inspection  
3 occurred, was there anything in the trailer or was it  
4 empty by that time or were you still towing what  
5 you're saying was furniture?

6           A.    It was absolutely empty at the time.  And  
7 I made the sly remark that I was towing sailboats.  I  
8 did that to the officer and I did that to the  
9 attorney which I mean, like I say again, this -- it  
10 was -- the questioning and the things that we were  
11 looking at were so absurd that it just -- I'm a smart  
12 aleck, I guess.  I joke every once in a while.

13          Q.    At any time, did the inspector take a  
14 look inside the trailer?

15          A.    No.  If he would have, I would be more  
16 than happy to open it up.  I was totally compliant.

17          Q.    You're saying at that time it was empty  
18 anyway?

19          A.    Yes, it had been for maybe 40 minutes to  
20 an hour.

21          Q.    I see.  So you were returning from  
22 wherever you had dropped off the furniture?

23          A.    Right.

24          Q.    I see.

25                THE EXAMINER:  Thank you.  I likely will

1 have other questions. I can't think of any right  
2 now.

3 Mr. Beeler, questions?

4 MR. BEELER: Yes, I have questions.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Beeler:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. What is your relationship with Quality  
11 Fixtures?

12 A. I -- I don't know the technical.  
13 Dustin's my friend, and I basically do whatever it  
14 takes to help him out to promote his business.

15 THE EXAMINER: Again, for our court  
16 reporter, that's Mr. Bass who represents Quality  
17 Fixtures.

18 Q. (By Mr. Beeler) So you have worked for  
19 Quality Fixtures in the past, correct?

20 A. Yes.

21 Q. How about currently?

22 A. No, not right now. He doesn't need me.  
23 I do maybe an estimate every once in a while for him  
24 or something like that.

25 THE EXAMINER: You do what?

1 THE WITNESS: Estimate for a project or  
2 something like that.

3 Q. (By Mr. Beeler) When was the last time  
4 you did an estimate for him?

5 A. I'm working on one now, one in Florida.

6 THE EXAMINER: When you say an estimate,  
7 do you mean like how long -- the expense of if you  
8 were to haul something for him?

9 THE WITNESS: No.

10 THE EXAMINER: What do you mean?

11 THE WITNESS: No, Quality Fixtures does  
12 installations in stores in Florida, and we sub out  
13 labor. We're not in the hauling or carrying  
14 business, no shape, form or fashion.

15 Right now I'm in the process of bidding  
16 and would be more than happy to show the Court, we're  
17 bidding a project in Milburn, Florida for a  
18 Victoria's Secret store which is the installation of  
19 everything in the store from the shelving, the  
20 brackets, the carpentry package.

21 THE EXAMINER: All right. Thank you for  
22 that explanation.

23 Mr. Beeler, back to you.

24 Q. (By Mr. Beeler) When you do jobs for  
25 Quality Fixtures, how are you paid?

1           A.    Through a company called Paycor.

2           Q.    And that's -- is that payment hourly?

3           A.    It's direct deposit. Paycor breaks it  
4 down an hour some way. I don't know.

5           Q.    You're paid by the job?

6           A.    No, I'm paid by the hour. A lot of stuff  
7 that I do for Quality Fixtures is pro bono. Just  
8 like the estimations, I don't receive any income from  
9 those.

10          Q.    But you have been paid by Quality  
11 Fixtures in the past, correct, for this?

12          A.    Yes, I have.

13          Q.    And have you ever made a move, a move  
14 with this trailer in the past, with the trailer with  
15 the "Quality Fixtures" markings?

16          A.    It doesn't have "Quality Fixtures"  
17 markings. It's got "Quality Installation." The name  
18 on the trailer was being scrubbed off. Road grime  
19 had stuck to some of the trash, the sticky stuff. If  
20 you'll notice in referring to that truck, you'll see  
21 the road grime that was stuck. There's no signs on  
22 this trailer at all. It's sticky stuff that road  
23 ground has stuck to, flat and simple.

24          Q.    You would agree there's a faded -- there  
25 was a --

1           A.    No, I'm not agreeing to that.  I went  
2 throughout with gasoline and scrubbed it off, and it  
3 still stuck to it.  There's two or three different  
4 people that had different names.  They're not on this  
5 trailer any way, shape or form that say "Quality  
6 Fixtures" that match the license plate.

7           Q.    Did you ever try painting over it?

8           A.    No.

9           Q.    Could you have painted over it?

10          A.    No.

11          Q.    Couldn't have painted over it?

12          A.    No, because the sticky stuff wasn't off  
13 of it.  The paint would have never stuck.  Would have  
14 bled right through.

15                THE EXAMINER:  What's the sticky stuff  
16 you're referring to?

17                THE WITNESS:  We had taken all the  
18 lettering off of the truck.  The adhesive that holds  
19 it on there, I took gas, I scrubbed it.  I did  
20 everything to remove it the best that I could.

21                THE EXAMINER:  All right.  Thank you.

22          Q.    (By Mr. Beeler) You made a phone call  
23 during the stop, correct?

24          A.    Uh-huh.

25          Q.    Who did you call?

1           A.    I called one of my mechanics to see if we  
2 could get the truck road ready for me.

3           Q.    Did you call anyone else?

4           A.    I called my girlfriend, and I think I  
5 called my attorney, too.

6           Q.    Did you call Mr. Bass during that stop?

7           A.    I did, but that wasn't at the end of the  
8 stop. That was at the initial onset of the stop. I  
9 just told him I got pulled over, we'll see what's  
10 going on.

11          Q.    So you did state that this was a personal  
12 move, correct?

13          A.    Yes.

14          Q.    Why would you call -- why did you call  
15 Mr. Bass if this was a personal move?

16          A.    Because the only way the officer could  
17 have stopped me was using the license plate on the  
18 trailer. I have never seen him get behind it, and I  
19 had temporary tags on my truck, so I thought there  
20 might be an issue with the lights or something like  
21 that on the trailer that would need to be corrected.

22          Q.    You said you were moving a family member?

23          A.    Yes. I moved --

24          Q.    What's the name -- What's the  
25 relationship and the name of your family member?



1           A.    It was my brother's daughter's soon-to-be  
2 husband, and his name is Jeremy, and I don't know his  
3 last name. I mean, I did it as a favor for my  
4 brother and my niece is who I did it for.

5           Q.    Did you call any of those family members  
6 when you were stopped on the side of the road?

7           A.    Why should I? I done delivered  
8 everything that I was going to. There was no need to  
9 call them.

10          Q.    You didn't call any of them?

11          A.    No.

12          Q.    Did you bring any of them here today to  
13 testify on your behalf?

14          A.    No.

15          Q.    So besides your testimony here today on  
16 the stand, you didn't bring any other evidence to  
17 show that this was a personal move; is that correct?

18          A.    I think the evidence pretty much speaks  
19 for itself. I mean, if you look at it real close, I  
20 mean, like I say, again, I capitulate the fact that  
21 the trailer brakes needed to be repaired. And I  
22 personally thank this officer right now for catching  
23 the tie on, but the other stuff is muckety muck.

24                I mean, it was all piled on after the  
25 fact. It's a private vehicle that we can make

1 commercial if we can create a premise that I do  
2 construction work or that I haul stuff with it. I  
3 mean, it's -- I don't know. I don't mean to sound  
4 like I'm getting frustrated, but it's like a  
5 three-card money game, and I don't like playing three  
6 card money. Never did.

7 THE EXAMINER: So, Mr. Burgess, if I can  
8 remember your earlier comments, you had indicated  
9 Mr. Fowler and you were -- did you indicate to  
10 Mr. Fowler you were involved in moving furniture for  
11 a family member?

12 THE WITNESS: Yes, I did.

13 THE EXAMINER: I see.

14 THE WITNESS: As a matter of fact, the  
15 company that we had been doing work for happened to  
16 be in the same area. So, I mean, I guess he put two  
17 and two together and got six out of it.

18 THE EXAMINER: When you say a company you  
19 had been doing work for, this was?

20 THE WITNESS: It was CIP, but we didn't  
21 haul material for them either. They gave us an  
22 invoice sheet. I went to a job wherever it was in  
23 Alabama or Florida, and we inventoried the stuff and  
24 went on like that.

25 THE EXAMINER: So you had had the trailer

1 and you had used the trailer for some commercial  
2 work?

3 THE WITNESS: No.

4 THE EXAMINER: I thought you said that.

5 THE WITNESS: No, no. That's not what  
6 I'm saying. I'm saying the trailer does not do  
7 commercial work. The truck does not do commercial  
8 work.

9 THE EXAMINER: You indicated some  
10 company, CIP --

11 THE WITNESS: CIP, he asked me what  
12 company we worked for, I told him CIP.

13 THE EXAMINER: He, being Mr. Fowler?

14 THE WITNESS: Yes, the inspector. I  
15 mean, like I say, I was honest.

16 THE EXAMINER: So you indicated who you  
17 worked for?

18 THE WITNESS: A happenstance is what it  
19 is.

20 THE EXAMINER: You indicated who you  
21 worked for, but you also had indicated you were doing  
22 a move -- moving furniture for a family member?

23 THE WITNESS: That's correct.

24 THE EXAMINER: I just want to try to get  
25 the details straight for the court reporter looking

1 on the record later.

2 Mr. Beeler, any other questions?

3 MR. BEELER: Yes, a few more.

4 Q. (By Mr. Beeler) I know you just had a  
5 discussion with Mr. Lynn about whether you've used  
6 the trailer in the past. Why was the trailer in  
7 Kentucky with you?

8 A. I had intended on using it for some  
9 personal things. It was just there. Dustin really  
10 didn't have a place to store it in Florida. I've got  
11 plenty of places that we can store it in  
12 Elizabethtown, and that's why it was there. And for  
13 the record, if we ever needed it, it would be  
14 available in a centralized location in the eastern  
15 seaboard of the United States.

16 Q. The trailer is registered under Mr. Bass  
17 in Florida, correct?

18 A. Actually, it is now. Because of the  
19 confusion that it created in this case, I told Dustin  
20 and I recommended to him, we need to take this out of  
21 Quality Fixtures' name and put it over in your name  
22 or put it in my name or put it in somebody's name  
23 because it has created all kinds of confusion in this  
24 stop because of the tagging of the trailer.

25 Q. What places in the past have you done

1 work for Mr. Bass?

2 Have you done work in -- Just describe to  
3 me some of the jobs that you've done work for him.

4 A. We did a job in, goodness, Lutz, Florida,  
5 done one in Tampa, Florida, done one in Alabama, done  
6 one in Maine. We've done a couple in Maine. I don't  
7 think that was -- Done a couple in Virginia, some in  
8 Pennsylvania.

9 Q. So you have done work in various states.  
10 So you're a national company that does jobs in more  
11 states than just Florida, correct?

12 A. I guess that's how his business is set  
13 up. I don't really know.

14 THE EXAMINER: Mr. Burgess, did you say  
15 the trailer had been registered in the name of  
16 Quality Fixtures?

17 THE WITNESS: Yes, it was.

18 THE EXAMINER: At that point in time it  
19 was?

20 THE WITNESS: Yes, it was.

21 THE EXAMINER: At the time of the  
22 inspection?

23 THE WITNESS: But it created so much  
24 confusion and this stuff here, I told Dustin, "We  
25 don't use it for the company, get it out of the

1 company name."

2 THE EXAMINER: So now it's in registered  
3 in Mr. Bass's name?

4 THE WITNESS: Yes.

5 THE EXAMINER: Anything else?

6 MR. BEELER: Just a few more.

7 Q. (By Mr. Beeler) As we've been discussing,  
8 you're disputing this was a threshold issue, that  
9 this is a personal move and not a commercial move.  
10 You're not disputing you didn't have a medical card,  
11 correct?

12 A. The medical card, I'm not required to  
13 have one. It's a private truck.

14 Q. And you didn't have one that day?

15 A. No, I don't have one. I don't drive  
16 commercially. The truck isn't under a lease to a  
17 company. It does no commercial hauling at all,  
18 period, my truck doesn't, not for Dustin, not for  
19 anyone.

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

22 THE EXAMINER: Thank you, Mr. Burgess.  
23 That was a lot of questions, if you can take your  
24 seat.

25 THE WITNESS: If you have anymore, feel

1 free.

2 THE EXAMINER: Well, you're still under  
3 oath, so you may be asked. Off the record.

4 (Off the record.)

5 THE EXAMINER: Back on the record. You  
6 can come up. Raise your right hand.

7 (Witness placed under oath.)

8 - - -

9 DUSTIN BASS

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

12 DIRECT TESTIMONY

13 THE EXAMINER: Please have a seat. And  
14 your perspective as far as the alleged violations  
15 against the carrier which would be anything other  
16 than the medical card.

17 THE WITNESS: Yes, sir.

18 THE EXAMINER: Whatever comments you have  
19 to make from your perspective.

20 THE WITNESS: I purchased the trailer  
21 from a man in Florida from a man named Tom Willetts.  
22 The name on the side of that trailer was Quality  
23 Construction, Tom Willetts. It was -- We took a heat  
24 gun and had to remove the lettering off of it.

25 I then in looking down the road thought

1 we could use some storage up there where Mark's at in  
2 Kentucky so we could have somewhere up there to store  
3 stuff if we needed it. Pulled it up there to his  
4 house and it sat for three months without anything  
5 happening to it but the tires getting rotted, dry rot  
6 sitting there.

7 So Mark called me up and asked me if he  
8 could use it to go move some furniture, and I didn't  
9 have no problem with it. It didn't dawn on me that  
10 it's a commercial vessel and all these requirements  
11 would fall in because we haven't used it to this  
12 point.

13 Then he called me and said he had been  
14 pulled over and the officer told him his truck was  
15 too big to pull the trailer. He thought that was  
16 kind of odd, and here we are. I don't know much  
17 about -- He called and asked if he could borrow the  
18 trailer, and I didn't see a problem with that at the  
19 time.

20 - - -

21 EXAMINATION

22 By The Examiner:

23 Q. Mr. Bass, you say you purchased the  
24 trailer. The trailer had what name on it?

25 A. Tom Willetts Construction. It did have



1 DOT numbers on it because he was a full-on  
2 contractor, and he pulled that trailer for work.  
3 That's what he used it for, and he had the stickers  
4 on there. So for the officer to say that if he could  
5 identify that it was a name on the side of it, he  
6 could have identified those DOT numbers as well, but  
7 it wasn't registered to that company.

8 Q. Let me back up and make sure I'm  
9 understanding. The person from whom you obtained the  
10 trailer was in construction?

11 A. A general contractor, yes, sir.

12 Q. You're saying you removed --

13 A. His lettering.

14 Q. -- his markings? I'll call it his  
15 markings from the trailer?

16 A. Yes, sir.

17 Q. And then at that point, were there any  
18 markings on the trailer?

19 A. Whenever it left my house, no, sir. I  
20 had a heat gun and scraped all the lettering off, but  
21 by the time in pulling it up to Kentucky and leaving  
22 it parked there at Mark's house, I guess it was grime  
23 that built up on the adhesive that would still remain  
24 on there, so it stood out.

25 Q. Help me out, too. The carrier violations

1 went to Quality Fixtures. What's your connection to  
2 Quality Fixtures Installations?

3 A. I'm the owner.

4 Q. You're the owner?

5 A. Yes.

6 Q. As Mr. Burgess had said, the company is  
7 involved -- so I can get a better picture and a  
8 better understanding, the company is involved with,  
9 say, setting up the inside of displays or whatever  
10 for retail?

11 A. Yes.

12 Q. Of getting the retail store up and  
13 running with shelving --

14 A. Yes, sir.

15 Q. -- and what goes inside?

16 So Mr. Burgess has worked for you at  
17 times?

18 A. Yes, sir, he has worked for me at times.  
19 He's a good friend of mine.

20 Q. But on the day of this, the day of the  
21 inspection, which is March 20th of 2015, was he doing  
22 any sort of work for you at that time?

23 A. No, sir, he was not. In fact, before  
24 that, it had been about three weeks before I had used  
25 Mark's services or Mr. Burgess' services.

1           Q.    So he apparently did get in touch with  
2 you just to say he was stopped?

3           A.    Yes, sir, he let me know he had been  
4 pulled over with the trailer, and he didn't know  
5 exactly what was going on with it yet, but he'd let  
6 me know. And then he called me and informed me of  
7 what the outcome was, and then I received the  
8 documentation in the mail.

9           Q.    Okay. You're referring to the alleged  
10 violations and fines and so forth?

11          A.    Yes, sir.

12                THE EXAMINER: I probably will have other  
13 questions, but I'll give Mr. Beeler the opportunity  
14 if he is ready.

15                Are you ready, Mr. Beeler, or are you  
16 still jotting some down?

17                MR. BEELER: No, I'm ready, your Honor.  
18 Thank you.

19                               - - -

20                               CROSS-EXAMINATION

21                By Mr. Beeler:

22                Q.    I think you just covered it with  
23 Mr. Lynn. Do you have a business named Quality  
24 Fixtures, right?

25                A.    Yes, sir.

1 Q. That's in Florida?

2 A. In Steinhatchee, Florida.

3 Q. You have a website; is that right?

4 A. Yes, sir.

5 Q. That website says that you do jobs in  
6 some other states, correct?

7 A. Yes, sir.

8 Q. And do you have --

9 A. We provide labor in states, in other  
10 states. We don't go and bid -- we don't contract the  
11 work, pulling permits and all that. We go in  
12 basically under the umbrella of the general  
13 contractor that usually typically lives in that state  
14 or in that area. He pulls the permits, and we go in  
15 and provide -- basically we're a different kind of  
16 labor rate, I guess.

17 Q. Do you have any company trucks or  
18 trailers?

19 A. No, no, not anymore. That trailer I  
20 purchased with anticipation of growth, and once we  
21 got it, it just sat empty, so I had no use for it to  
22 be a company trailer.

23 Q. Have you owned company trucks or trailers  
24 in the past?

25 A. No. We fly to jobs sometimes and are

1 picked up and sometimes we drive our personal  
2 vehicles, but everybody drives their personal vehicle  
3 to work every day. It's not much of a difference.

4 And I know you don't have to have a  
5 medical card to drive a personal vehicle which was  
6 not a part of my infraction, but I don't see how if a  
7 vehicle wasn't registered a commercial vehicle, it  
8 was privately owned, privately managed, privately  
9 maintained, I don't know how the requirement of a  
10 medical card could exist.

11 Q. Okay. You tried to remove the markings  
12 on the trailer?

13 A. Yes. It took me two days of scraping.

14 Q. Did you try --

15 A. Before I had it transported anywhere, I  
16 bought it right there in the town that I live in, and  
17 it was within a mile of my house. I transported it  
18 from there to my house, and I eliminated the  
19 lettering on it at that time.

20 Q. Did you try painting over the lettering?

21 A. No, not at the time. At the time,  
22 whenever I removed the lettering, you could faintly  
23 see, but you couldn't -- it wasn't visible. Until it  
24 made the trek from Florida up to Kentucky, you  
25 couldn't make out the wording on the side, but upon

1 arrival to Kentucky, I guess the road grime on the  
2 road and all that built up on it, and it showed where  
3 the adhesive had been on the trailer.

4 Q. You may have already answered this, but  
5 how did you get the trailer from Florida to Kentucky?

6 A. I pulled it.

7 Q. Pulled it behind a --

8 A. A personal vehicle.

9 Q. Okay.

10 A. It was not -- It was not -- To my  
11 knowledge, because of owning a trailer, I had to go  
12 and get it DOT certified. I mean, I wasn't aware of  
13 that, or I would have done it out the gate. I had no  
14 malice. I didn't have any intent to violate any laws  
15 on DOT side or in any aspect.

16 Q. Why again did you take the trailer to  
17 Kentucky?

18 A. Because we were going to use it for  
19 storage. Because some of these jobs, we have extra  
20 material on, and sometimes the stores will ask us if  
21 we could store the stuff somewhere until further  
22 needed -- when it's required to have it somewhere  
23 else, but we never ended up storing anything in it.

24 And that's why when Mr. Burgess called me  
25 and asked me if he could borrow the trailer, I had no

1 problem with it at the time. There again, I wasn't  
2 aware that because of the trailer being in the  
3 company name, that it was required to have the DOT  
4 stuff on it.

5 And as soon as I found that out because  
6 it wasn't in service for the company, I took it out  
7 of the company name and just put it in my name, and  
8 it still today sits right at Mr. Burgess' house with  
9 all the repairs done to it, but it's just sitting  
10 there because we don't use it, we really don't use  
11 it.

12 Q. Okay. If you were doing a job with this  
13 trailer as you said before, you know you would have  
14 to comply with federal regulations?

15 A. Had it reached that point with that  
16 trailer, yes, I would have investigated more. At the  
17 time, I had just purchased basically a storage unit.

18 Q. Again, and like Mr. Burgess, you're here  
19 more disputing a threshold matter that this was not a  
20 commercial vehicle?

21 A. Yes, sir, it was not being used in a  
22 commercial aspect.

23 Q. You're not really disputing the  
24 violations per se, you just think they're not  
25 applicable, right?

1           A.    If the pin was gone and it's a violation,  
2   the pin was gone, I'm not arguing that at all, and I  
3   will pay the fine for that.  I just don't want to be  
4   penalized for something that wasn't accurate which is  
5   the fact that it wasn't being used in a commercial  
6   aspect.

7           Q.    And that would be the same for the fire  
8   extinguisher and the breakaway?

9           A.    Well, there was a fire extinguisher  
10  inside the trailer, there was one.  It's kind of odd  
11  to me that the officer took pictures of every  
12  violation Mr. Burgess had on his truck and here the  
13  trailer is with all these violations and no pictures  
14  of it, no pictures of the lettering on the sides, no  
15  pictures of the inside of the trailer.

16                Mr. Burgess would have happily complied  
17  to open up the trailer and have the officer look  
18  inside, but it wasn't even suggested.  And that, to  
19  me, says that he didn't see it being used as a  
20  commercial vessel, not unless all of a sudden  
21  everyone you see pulling a trailer down the road is a  
22  contractor and they're doing construction on it, and  
23  that's not accurate.

24                MR. BEELER:  No further questions, your  
25  Honor.  Thank you.



1 THE EXAMINER: Okay. We'll go back to  
2 Mr. Burgess for a minute. You don't have to take the  
3 stand. You're still under oath anyway. I just want  
4 to be clear. I know I asked you this, but just to  
5 clarify. So you're saying that to your memory, you  
6 told the inspector that you had been transporting  
7 furniture for a family member?

8 MR. BURGESS: That's correct.

9 THE EXAMINER: And you're also saying  
10 that the inspector did not look inside the trailer;  
11 am I right about that?

12 MR. BURGESS: Not only did I say that,  
13 the officer also said it too.

14 THE EXAMINER: Well, at any rate, you're  
15 indicating he did not look inside the trailer, and  
16 this is a fully enclosed trailer?

17 MR. BURGESS: Yes, sir, it is.

18 THE EXAMINER: Thank you.

19 Mr. Bass, thank you. You can stay there  
20 for a second.

21 Mr. Beeler, do you have any other  
22 questions at all?

23 MR. BEELER: Not for Mr. Bass, no.

24 THE EXAMINER: Not for Mr. Bass, okay.

25 Mr. Bass, you can take your seat for a

1 moment. Thank you for your testimony and for  
2 traveling here.

3 MR. BASS: Yes, sir.

4 THE EXAMINER: Do you have more questions  
5 for Mr. Burgess or for your Inspector Fowler?

6 MR. BEELER: May I have a moment just  
7 to -- I may re-call Mr. Fowler for rebuttal.

8 THE EXAMINER: That's fine. We'll go off  
9 the record.

10 (Off the record.)

11 THE EXAMINER: Thank you. Back on the  
12 record. And before you get to your questions,  
13 Mr. Beeler, just wanted to also check again with  
14 Mr. Burgess on something.

15 You're still under oath. You indicated  
16 that you were not paid for moving what you are saying  
17 was household furniture, that is, didn't have payment  
18 from a family member or anyone else; is that correct?

19 MR. BURGESS: No. No, it was at my own  
20 expense.

21 THE EXAMINER: It was at your own  
22 expense?

23 MR. BURGESS: Yes.

24 THE EXAMINER: Thank you.

25 Mr. Beeler?

1                   MR. BEELER: Your Honor, I would re-call  
2 as a rebuttal witness Inspector Fowler.

3                   THE EXAMINER: Inspector Fowler, if you'd  
4 like to come back up here and have a seat, please.

5   - - -

6   DREW A. FOWLER  
7 being first duly sworn, as prescribed by law, was  
8 examined and testified as follows:

9   DIRECT REBUTTAL EXAMINATION

10 By Mr. Beeler:

11                   Q. Hello again.

12                   A. Hello.

13                   Q. Mr. Bass and Mr. Burgess mentioned a  
14 number of times while they were testifying the gross  
15 weight of the vehicle. Please explain how gross  
16 weight would work in this situation.

17                   A. The gross vehicle weight is what the  
18 manufacturer puts on a vehicle. They assess what the  
19 number will be on the weight. It's the rating of the  
20 vehicle; it's not weight. It's the rating.

21                   Q. How would that apply to -- How would that  
22 apply to this stop?

23                   A. That applies to anything over 10,001  
24 interstate commerce or private commerce has to have  
25 company markings, USDOT number, medical card, logbook

1 maybe if it's over 150 air miles.

2 Q. And the truck in this case was 10,000  
3 pounds, and the trailer was over 8,000 pounds?

4 A. It was 8 something.

5 Q. And that's stated on your report?

6 A. On my report, yeah.

7 Q. Again, it's not what it actually weighs,  
8 it's --

9 A. It's the rating, the rating of the  
10 vehicle the manufacturer puts on the vehicle.

11 Q. That's what you can read on the side of  
12 the door?

13 A. Of the door of the truck normally. It's  
14 always where the VIN identification information is.

15 MR. BEELER: Okay, thank you.

16 THE EXAMINER: Mr. Beeler, if I can ask a  
17 question.

18 MR. BEELER: Sure.

19 THE EXAMINER: The rating you're  
20 referring to, Inspector Fowler, that's the weight of  
21 the vehicle plus a typical load; am I correct?

22 THE WITNESS: No.

23 THE EXAMINER: What is it then?

24 THE WITNESS: It's just the rating that  
25 the manufacturer puts on the vehicle. It has nothing

1 to do with the weight. They rate it. It's hard to  
2 explain on the rating, but that's how we indicate on  
3 interstate commerce 10,000. It's 26,001 in Ohio  
4 intrastate.

5 THE EXAMINER: Combined weight?

6 THE WITNESS: Again, that's a rating,  
7 also.

8 THE EXAMINER: At any rate, you went on  
9 what was the I'll call it a plate that's both on the,  
10 say, inside the driver's door or around the driver's  
11 door frame on the pickup truck, and then apparently  
12 on like the front of the trailer or something?

13 THE WITNESS: On the side of the trailer,  
14 yes, sir.

15 THE EXAMINER: All right.

16 Mr. Beeler, any other questions?

17 MR. BEELER: Yes, your Honor.

18 Q. (By Mr. Beeler) And the Federal Motor  
19 Carrier Regulations, their premised on gross vehicle  
20 weight; that's correct?

21 A. Rating. GWR, gross weight rating.

22 Q. So they're based --

23 A. That's how they assess the 10,001/26,001.

24 I don't want to confuse you. 26,001 is intrastate.

25 10,001 is interstate.

1 Q. And we're dealing with interstate?

2 A. We're dealing with interstate, yes, sir.

3 Q. Again, Mr. Bass, Mr. Burgess mentioned a  
4 number of times privately owned, the term privately  
5 owned vehicle. Does that have any bearing on this  
6 case?

7 A. No, it does not.

8 Q. Why not?

9 A. Because if they're using that truck and  
10 they're pulling that trailer and then you run their  
11 plates on their vehicle, you can also come back to  
12 Mr. Burgess, the trailer goes back to the company,  
13 and that's how I see it as a private move, private.

14 THE EXAMINER: Mr. Fowler, when you made  
15 the stop, you had asked the driver, Mr. Burgess, who  
16 he was working for?

17 THE WITNESS: Yes, I did.

18 THE EXAMINER: I see. Again, I may be  
19 going over questions I asked before. Just to be  
20 sure, I want to make sure it's in the record, did you  
21 ask him what he was hauling?

22 THE WITNESS: Yes, I did.

23 THE EXAMINER: You did ask him what was  
24 in the trailer?

25 THE WITNESS: I did, but I didn't ask him

1 to open it up --

2 THE EXAMINER: Nor did you --

3 THE WITNESS: -- his truck or his  
4 trailer.

5 THE EXAMINER: You didn't ask him to open  
6 up, nor did you look inside the trailer?

7 THE WITNESS: When he told me he worked  
8 for this company, I took it installation means  
9 construction.

10 THE EXAMINER: Who did he say he worked  
11 for?

12 THE WITNESS: Installation Fixtures.

13 THE EXAMINER: I see, Installation  
14 Fixtures. At any rate, though, you did not open up  
15 the trailer?

16 THE WITNESS: No, I did not, sir.

17 THE EXAMINER: Although he told you who  
18 he worked for, you did not ask him what he was  
19 hauling; am I correct?

20 THE WITNESS: I did not.

21 THE EXAMINER: Just wanted to be sure.

22 Thank you.

23 Mr. Beeler?

24 By Mr. Beeler:

25 Q. You just stated to Mr. Lynn that he said

1 Installation Fixtures. I thought you said earlier he  
2 said Quality Fixtures?

3 A. Well, it's the same thing to me, Quality  
4 Fixtures, Installation.

5 Q. Why is it the same thing?

6 A. Oh, you mean the name of the company?

7 Q. Yes. So you were discussing --

8 A. I understand what they haul,  
9 construction, the equipment they use, what they do.  
10 That's why I'm saying it's for fixtures.

11 Q. Thanks for clarifying that.

12 A. That's what Mr. Burgess told me, they do  
13 fixtures.

14 Q. Again, the driver did say he was working  
15 for Quality Fixtures at the stop, right?

16 A. Yes, he did.

17 Q. He also said he was working in Fairfield?

18 A. That day, yes, sir.

19 THE EXAMINER: Inspector, did you say  
20 there was -- I know when you originally saw the  
21 trailer go by, you didn't see any markings on it, am  
22 I right, or did you see some sort of faint markings?

23 THE WITNESS: There was faint markings.

24 THE EXAMINER: What did those say?

25 THE WITNESS: I don't remember.



1 THE EXAMINER: Just wanted to clarify.

2 Thank you.

3 Q. (By Mr. Beeler) So when you do an  
4 inspection regarding the registration issue, it  
5 really wouldn't matter who the trailer was registered  
6 to; it was what they were using it for, correct?

7 A. Correct.

8 Q. At one point -- Moving on here, at one  
9 point, one of the Respondents mentioned that the  
10 trailer has recently -- the registration has recently  
11 been transferred to another name, to Mr. Bass's name.  
12 Does that have any bearing on this case?

13 A. No, if you get stopped and it belongs to  
14 him and he's pulling with his truck and if they open  
15 the doors on the back of the truck and open the  
16 trailer and see there's stuff inside which is  
17 normally construction equipment to do the job....

18 Q. Again, I think you said this earlier, but  
19 the driver mentioned that he was moving a family or  
20 friend only after he was put out of service; is that  
21 correct?

22 A. Was placed out of service. That's when  
23 he mentioned to me he was just helping a family  
24 member, helping family and friends.

25 Q. Finally here, we've been talking about

1 the markings on the trailer quite a bit today and  
2 what they were and whether they were faded or not.  
3 The markings on the trailer, would that matter for a  
4 stop?

5 A. No, sir, because they're required to be  
6 on the truck. The markings are required to be on the  
7 truck, not on the trailer.

8 Q. Can you explain that a little further, if  
9 you could?

10 A. Well, the way it's set up, if you're  
11 displaying your markings, usually trailers do have  
12 them on, they do, and the trucks do not. People will  
13 say, "Well, I had them on my trailer, why isn't that  
14 good enough?" Because Unit 1 is required to have it  
15 on both sides of their door.

16 Q. Unit 1 would be the truck?

17 A. The truck, yes.

18 MR. BEELER: No further questions. Thank  
19 you.

20 THE EXAMINER: Mr. Bass or Mr. Burgess,  
21 any other questions for the inspector about the  
22 particular violation against you?

23 MR. BURGESS: Yes, I do.

24 - - -

25

## CROSS-EXAMINATION

1  
2 By Mr. Burgess:

3 Q. You said the initial reason you pulled me  
4 over was the signage on the side of the trailer; is  
5 that correct?

6 A. Excuse me?

7 Q. You said earlier in your statement that  
8 the reason that you pulled the trailer over was the  
9 signage on the trailer; is that correct?

10 A. No, I pulled you over because of your  
11 Florida tags.

12 Q. But the initial stop was --

13 A. I can't view your truck until I see the  
14 door.

15 Q. The marking on the trailer, if I'm not  
16 mistaken, the reason you said was the tag, then you  
17 came up to the side of the truck, saw the lettering  
18 on the side of the truck and then saw the trailer  
19 brake which indicated to you that it was a commercial  
20 vehicle; is that correct?

21 A. No -- Well, I saw your tags, Florida  
22 tags, did see your markings on the trailer, which I  
23 really don't care about the markings on the trailer,  
24 then I saw your truck did not have anything on it at  
25 all.

1           Q.    Well, that's because there was nothing on  
2    the truck.

3           THE EXAMINER:   Just to clarify, you said  
4    no markings, like no identifying name?

5           THE WITNESS:   No identification.

6           THE EXAMINER:   USDOT number?

7           Q.    (By Mr. Burgess) So you're in agreement  
8    there was no identification other than the license  
9    plate on the side of the trailer?

10          A.    There was no markings on your trailer.

11          Q.    My second thing is, I would like to go to  
12    -- and this time I don't want to skip step one --  
13    just a statement you made a moment ago. You said  
14    that the gross weight was specific to engaged in  
15    commercial use; is that correct?

16          A.    Say it again, please.

17          Q.    The identifying stickers were indicated  
18    for a gross weight in commerce is your exact words;  
19    is that correct?

20          A.    You mean your identification plate on  
21    your truck and trailer?

22          Q.    That's correct.

23          A.    That identifies if you're over the weight  
24    rating.

25          Q.    In commerce is what you said?

1           A.    It's commerce.

2           Q.    Well, step one is if you're not engaged  
3 in commerce, how would step two, three and four be  
4 applicable? I mean, that's I guess my initial  
5 premise of our argument.

6           THE EXAMINER: Well, you're going back to  
7 statements you made on the witness stand.

8           MR. BEELER: I would just object to that  
9 question. That is their argument. They've said that  
10 on the stand.

11          THE EXAMINER: Well, Mr. Burgess, I think  
12 we understand your point. You're actually making a  
13 point you had earlier on the stand, which from your  
14 perspective you were not engaged in commerce, so  
15 therefore, you're saying the gross weight of the  
16 vehicle shouldn't be an issue.

17          MR. BURGESS: It's not applicable.

18          MR. BASS: Because of the statement made  
19 earlier that it was in commerce.

20          MR. BEELER: Objection.

21          MR. BASS: It's -- Yeah.

22          THE EXAMINER: Mr. Bass, do you have  
23 questions for the inspector?

24          MR. BASS: Just sounded like a minute  
25 ago --

1 MR. BEELER: Objection.

2 MR. BURGESS: Are you objecting to him?

3 MR. BASS: To me asking questions?

4 THE EXAMINER: Let's back up then.

5 MR. BASS: I can make a statement.

6 THE EXAMINER: Mr. Burgess, do you have  
7 anymore questions for the inspector?

8 MR. BURGESS: Other than the fact that  
9 it's more of a statement than a question. I mean, I  
10 was not belligerent, and I would love to see the  
11 photos of --

12 THE EXAMINER: You mentioned earlier --

13 MR. BURGESS: I mean, I would. I mean, I  
14 was totally in compliance.

15 THE EXAMINER: Well, you mentioned  
16 earlier you were not belligerent. Thank you for  
17 indicating that.

18 MR. BURGESS: I would just ask the Court  
19 not to skip over one, two and three and get to seven,  
20 eight, nine.

21 THE EXAMINER: We understand.

22 Mr. Bass, any questions?

23 MR. BASS: I can't ask questions of the  
24 witness, but I could make a statement.

25 THE EXAMINER: You can? Okay.

1 MR. BASS: Did he say a minute ago --

2 MR. BEELER: Objection. This is more in  
3 the form of surrebuttal which is not typically  
4 permitted in Commission proceedings.

5 THE EXAMINER: I guess we'll assume  
6 that --

7 MR. BURGESS: I will say one thing for  
8 the record, if I may. I really do appreciate the  
9 officer looking at and finding the issues to my truck  
10 because my safety and the safety of the other drivers  
11 around me, I mean, I'm grateful for that. It was  
12 something that I would not have caught until I done  
13 an alignment, and I totally capitulate to that. Once  
14 again, officer, I thank you for your inspection.

15 THE EXAMINER: Thank you.

16 Mr. Bass, you're correct, you are not  
17 permitted to ask questions of the witness. I had a  
18 little difficulty switching from one track to another  
19 given the multiple situations we have here; however,  
20 do you have any other statements you want to make?  
21 Would you like to come up with any other remarks?

22 MR. BASS: I still don't -- the case  
23 against the company?

24 THE EXAMINER: Exactly.

25 MR. BASS: Being that the trailer --

1 THE EXAMINER: Any other comments you  
2 wanted to make beyond what you've already said.

3 MR. BASS: I just heard the officer say  
4 the reason he pulled the trailer over is because he  
5 saw the Florida plates which makes me feel like it  
6 was singled out because of that and that drew his  
7 attention to it because of the out-of-state tags  
8 which I don't know -- Probably nothing to do with the  
9 case, just a prejudice.

10 THE WITNESS: Can I explain it to him?

11 MR. BEELER: I would object.

12 THE EXAMINER: Mr. Beeler, anything else?

13 MR. BEELER: No, your Honor.

14 THE EXAMINER: Okay. Now, different  
15 point, Mr. Beeler, do you want to file a brief at all  
16 in the matter?

17 And gentlemen, a brief is just simply a  
18 written summary of the arguments from both sides.  
19 You do not have to do it. Often it isn't done. I'm  
20 only allowing the opportunity.

21 MR. BEELER: I'm not requesting writing a  
22 brief.

23 THE EXAMINER: That's fine. Gentlemen,  
24 you don't have to. If you want to file any written  
25 comments summarizing what you had to say, fine. If



1     you don't, that's okay.  You certainly expressed  
2     yourself very well here today.  Any other remarks  
3     then?  And if not, I believe --

4                 MR. BASS:  No, sir.

5                 THE EXAMINER:  Thank you all for making  
6     the trip.  Nobody had a short distance to drive.  
7     With that, we'll draw the proceedings to a close.  
8     And thanks to our court reporter for keeping track of  
9     all the multiple voices going on.

10                (The hearing was concluded at 2:37 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 10, 2015, and carefully compared with my original stenographic notes.

---

Cynthia L. Cunningham

- - -

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**in**

**Case No(s). 15-1103-TR-CVF, 15-1209-TR-CVF**

Summary: Transcript in the matter of Quality Fixtures Installations and Mark Burgess hearing held on 11/10/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Cunningham, Cindy