

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
Midwest Logistics :
Systems, LTD. : Case No. 17-2556-TR-CVF
 :
Notice of Apparent :
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

before Ms. Stacie Cathcart, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 10:00
a.m. on Wednesday, August 15, 2018.

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APPEARANCES:

Sanborn, Brandon, Duvall & Bobbitt, Co., LPA
By Mr. Bryan M. Griffith
2515 West Granville Road
Columbus, Ohio 43235

On behalf of the Respondent.

Mike DeWine, Ohio Attorney General
William L. Wright, Section Chief
Public Utilities Section
By Mr. Robert Eubanks
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3793

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

Also Present:

Mr. Peter Voelker, General Counsel,
Midwest Logistics Systems, Ltd.

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1 Wednesday Morning Session,
2 August 15, 2018.

3 - - -

4 THE ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has assigned for hearing
6 at this time and place Case No. 17-2556-TR-CVF, being
7 In the Matter of Midwest Logistics Systems, Notice of
8 Apparent Violation and Intent to Assess Forfeiture.

9 My name is Stacie Cathcart, and I am the
10 Attorney Examiner assigned by the Commission to hear
11 this case.

12 At this time I would like to take
13 appearances of the parties, beginning with staff.

14 MR. EUBANKS: Robert Eubanks,
15 representing PUCO staff, AG's office, 30 East Broad
16 Street, 16th Floor, Public Utilities Commission
17 section.

18 THE ATTORNEY EXAMINER: Thank you.

19 MR. GRIFFITH: Your Honor, Bryan
20 Griffith, Sanborn, Brandon, Duvall & Bobbitt, Supreme
21 Court No. 0085911, representing Midwest Logistics
22 Systems, Inc.

23 THE ATTORNEY EXAMINER: Thank you.

24 MR. GRIFFITH: My client and cocounsel is
25 general counsel for Midwest. He will make his

1 appearance as well.

2 MR. VOELKER: Peter Voelker, general
3 counsel for Midwest Logistics Systems.

4 THE ATTORNEY EXAMINER: Thank you.
5 Staff, are you ready to proceed?

6 MR. EUBANKS: We are. I'd like to call
7 to the stand Rod Moser.

8 THE ATTORNEY EXAMINER: You may be
9 seated.

10 MR. EUBANKS: May I approach?

11 THE ATTORNEY EXAMINER: You may.

12 - - -

13 ROD MOSER

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

16 DIRECT EXAMINATION

17 By Mr. Eubanks:

18 Q. Good morning. Could you state your name
19 for the record?

20 A. My name is Rod Moser, M-O-S-E-R.

21 Q. Your position with the PUCO?

22 A. My title is chief of compliance within
23 the Transportation Department for the Public
24 Utilities Commission of Ohio.

25 Q. As chief of compliance, what are your

1 duties?

2 A. Basically to manage the administrative
3 hearing process. Anybody who requests a conference,
4 as it moves forward to the hearing process, I get
5 involved in that.

6 MR. EUBANKS: I would like to have marked
7 as State's Exhibit 1 the Notice of Preliminary
8 Determination.

9 THE ATTORNEY EXAMINER: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. I'd like you to review the documents
12 before you to identify.

13 A. It would be a copy of what we informally
14 refer to as the NPD, Notice of Preliminary
15 Determination, for the compliance review, Midwest
16 Logistics Systems.

17 Q. Okay. Are you trained in enforcement
18 violations?

19 A. Yes. Somewhat, yes. I have a
20 certification in North American Standards, Part A and
21 B, motor codes, hazardous materials, cargo tank. I
22 do not have certification as a compliance review
23 investigator.

24 Q. Do you have training in how forfeiture
25 amounts are assessed?

1 A. Yes.

2 Q. I would like you to -- first of all, is
3 this an accurate copy of the Notice of Preliminary
4 Determination?

5 A. Yes, it is.

6 Q. And is the \$1,000 forfeiture amount
7 assessed for 391.11(b)(4) an appropriate forfeiture?

8 A. Yes, it is.

9 MR. EUBANKS: I have no more questions of
10 this witness.

11 THE ATTORNEY EXAMINER: Thank you.

12 Mr. Griffith, any cross-examination?

13 MR. GRIFFITH: Nothing from Midwest
14 Logistics Systems.

15 THE ATTORNEY EXAMINER: Thank you.

16 MR. EUBANKS: At this time I would like
17 to have State's Exhibit 1 moved into evidence.

18 THE ATTORNEY EXAMINER: Any objection?

19 MR. GRIFFITH: No objection.

20 THE ATTORNEY EXAMINER: So moved.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MR. EUBANKS: At this time I would like
23 to call the inspector to the stand.

24 May I approach?

25 THE ATTORNEY EXAMINER: You may.

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MICHAEL J. BLACKBURN

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

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Please state your name for the record.

A. Michael, M-I-C-H-A-E-L, middle initial J, Blackburn, B-L-A-C-K-B-U-R-N.

Q. And what is your position?

A. I am a hazardous materials specialist 2 with the Public Utilities Commission of Ohio.

Q. And as part of that position, what are your duties?

A. My duties include compliance reviews, roadside inspections, new entrant audits, training for companies, training other inspectors, along with any other miscellaneous duties that the Commission may assign.

Q. Do you have training in those areas?

A. I do. I have multiple hazardous material certifications, compliance review, new entrant certification, motor code certification, cargo tank. I think that's all.

Q. Is all of your training current?

1 A. It is.

2 MR. EUBANKS: At this time I would like
3 to have marked as Staff Exhibit 2 the Case View
4 Report.

5 THE ATTORNEY EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. I'd like you to take a look at the
8 documents handed to you, and if you could, please
9 identify it.

10 A. This is a copy of the compliance review
11 that we conducted at the company's principal place of
12 business.

13 Q. Is it accurate?

14 A. It appears so, yes.

15 Q. How are you related to the current case
16 at hand?

17 A. I was the lead investigator on the
18 assignment.

19 Q. Okay. Did you conduct a compliance
20 review in this case?

21 A. Yes.

22 Q. And for Midwest Logistics Systems?

23 A. Correct.

24 Q. And the violations that were assessed,
25 are they appropriately outlined on the front page of

1 the Case View Report?

2 A. Yes.

3 Q. And the forfeiture amount?

4 A. Yes.

5 Q. How did you come to perform a compliance
6 review in this case?

7 A. The Federal Motor Carrier Safety
8 Administration assigns motor carriers for us to
9 review, and at this time last year when we did the
10 compliance review, it was what was called Operation
11 Safe Driver.

12 So the company had categories were that
13 indicative of involvement in potential future
14 crashes. The assignment was made, and right before
15 the assignment began, there was a change in the scope
16 because of some additional areas that needed reviewed
17 to make it a full-on comprehensive investigation.

18 Q. Okay. Particularly when it comes to
19 violation 391.11(b)(4), how did you come to notice
20 that violation?

21 A. The driver in question was part of our
22 sample for driver qualification review. We noticed
23 that he did have a K2 restriction on his license,
24 which means he is restricted to Ohio only, intrastate
25 transportation. So as part of the driver

1 qualification investigation, we wanted to follow up
2 and make sure, number one, why was the K2 present;
3 and, number two, had he violated the restriction.

4 Q. Okay. So as a part of the review, did
5 you look at paperwork available at the company?

6 A. Yes.

7 Q. And what did the paperwork tell you?

8 A. The paperwork told us that the driver in
9 question was insulin dependent and, therefore, should
10 not be operating commercial motor vehicles without a
11 federal waiver for insulin-dependent diabetes.

12 MR. GRIFFITH: I am going to object, just
13 that there is no foundation for that. You haven't
14 identified the documents, the evidence, or why you
15 are making that statement.

16 MR. EUBANKS: We will, but just giving a
17 summary of what he did as part of the compliance
18 review.

19 THE ATTORNEY EXAMINER: Overruled. I'll
20 allow the question.

21 MR. EUBANKS: Would you read the last
22 question.

23 (Record read.)

24 MR. GRIFFITH: At this time may I
25 approach?

1 THE ATTORNEY EXAMINER: You may.

2 MR. EUBANKS: I would like to have the
3 document which on the front page says "Part 319
4 Documentation" to be marked as State's Exhibit 3.

5 THE ATTORNEY EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Eubanks) I would like you to take
8 a look at the documentation in front of you, and if
9 you could, identify what the documentation is.

10 A. This is the evidence we gathered related
11 to the fact the driver had a history of insulin
12 dependency and also the fact that he had been denied
13 a medical card, and the very next day he went to
14 another physician and was granted one.

15 Q. Okay. Now speaking specifically about
16 the whole package, where did you get each page of
17 this document?

18 A. The vast majority of the documents were
19 from Mr. Goubeaux's driver qualification file.

20 Q. So would that be at Midwest Logistics
21 Systems, Ltd?

22 A. Correct.

23 Q. You said the vast majority. Is there any
24 paperwork that did not come --

25 A. The very last page, the log book, did not

1 come from his driver qualification file.

2 Q. And where did you receive that
3 documentation?

4 A. We asked one of the folks at the company
5 to provide us a copy of the log.

6 Q. What company?

7 A. Midwest Logistics Systems.

8 Q. So even the final pages came from Midwest
9 Logistics Systems?

10 A. Yes, just not from Mr. Goubeaux's driver
11 file.

12 Q. Okay. Would it be fair to say all of the
13 documentation before you came from Midwest Logistics
14 Systems?

15 A. All except the notes and the
16 correspondence with the FMCSA to determine if he did,
17 in fact, need a diabetes waiver.

18 Q. All right. I know the pages are not
19 numbered, but could you kind of help guide us to what
20 page that is?

21 A. Sure. So the first 11 pages are notes
22 and items that I would have prepared. Page 12 is an
23 e-mail correspondence from the FMCSA indicating that
24 folks who use insulin pumps do need a waiver. And
25 then the next three pages would be an MVR or moving

1 violation record that we would have obtained using
2 our CDLIS account during the investigation, and the
3 rest of the documents would have come from files at
4 the company.

5 Q. So is it fair to say then that the page
6 that is marked -- this is what's on the page. It
7 doesn't really have a title. It says, "Medical
8 Restriction Card. This card must be carried with
9 your driver's license," is a copy of that card. Is
10 that the first page of the documents that you
11 obtained from Midwest Logistics Systems, Ltd.?

12 A. Correct.

13 Q. And all the pages after that would have
14 been from Midwest Logistics Systems?

15 A. Correct.

16 Q. The three pages that precede that, which
17 are search results, are those coming from PUCO
18 records?

19 A. It comes from a federal system that we
20 have access to as investigators to check license
21 status.

22 Q. Okay. And then all the pages that
23 precede that are notes or correspondence that you had
24 with -- I should say -- I'm sorry. The page that
25 immediately precedes that one, you said that was

1 correspondence you got with the federal government?

2 A. That is correct.

3 Q. In order to -- what was the purpose of
4 that document?

5 A. In order to verify that someone who uses
6 an insulin pump does, in fact, require a diabetes
7 waiver.

8 Q. Okay. What were the purposes of the
9 notes that precede that page?

10 A. We went through and made notes for all of
11 the drivers that were reviewed for any additional
12 violations that may have been discovered or anything
13 that may have been anomalous that we would need to
14 let the FMCSA know about.

15 Q. Okay. Those are your personal notes?

16 A. My personal notes or notes from other
17 investigators that assisted on the investigation.

18 Q. Was it all compiled by you?

19 A. At the very end, yes.

20 Q. Are those notes accurate, to your
21 knowledge?

22 A. Yes.

23 Q. The correspondence that you had with the
24 federal government, take a look at that. Is that a
25 true and accurate copy of the correspondence you had?

1 A. Yes.

2 Q. Taking a look at the notes you got from
3 the federal website regarding the license, does that
4 seem to be a true and accurate copy of what you
5 reviewed online?

6 A. Correct.

7 Q. Is that a yes?

8 A. Yes.

9 Q. And taking a look at the documents that
10 you pulled from Midwest Logistics Systems, Ltd., do
11 they appear to be true and accurate copies of the
12 documents you received?

13 A. Yes.

14 Q. Before I gave you the copy of these
15 documents, you stated that there was a violation that
16 you noticed for Midwest Logistics Systems, Ltd. where
17 they had an unqualified driver driving, and,
18 specifically, that they were using insulin; is that
19 correct?

20 A. That's correct.

21 Q. Could you point us to the documentation
22 that supports that that you received from Midwest
23 Logistics Systems?

24 A. So this would be -- at the top it says
25 page 5. It's a copy of his medical examiner's

1 certificate. If you notice --

2 Q. Could you hold that up again so everyone
3 can look at that?

4 A. It has his name at the top, the date of
5 exam, and his date of birth.

6 Q. I'm still trying to find it myself.

7 A. It's the third page from the last.

8 MR. EUBANKS: Counsel, were you able to
9 find the document?

10 MR. GRIFFITH: Yes, thank you.

11 Q. (By Mr. Eubanks) How does the document
12 identify a driver that is driving with diabetes and
13 using insulin?

14 A. The item that's checked that says, "Meets
15 standards, but periodic monitoring required:
16 Diabetes mellitus." And if we go three pages prior
17 to that --

18 Q. One second.

19 A. Okay.

20 Q. Okay. So that alerted you to the fact he
21 had diabetes?

22 A. Yes.

23 Q. But it didn't necessarily alert you to
24 the fact that he was using insulin?

25 A. The subsequent pages, three pages prior

1 to that.

2 Q. Okay. Could you take us to those pages?

3 A. The three pages we just looked at,
4 question No. 13 says, "Diabetes or sugar problems,
5 Insulin used," and the box is checked yes.

6 Q. Okay.

7 A. And beneath that, provide answers to any
8 yes questions above, "diabetic" is written in the
9 box.

10 Q. Okay. Is there any other documentation
11 that supports the fact that the driver was using
12 insulin?

13 A. The physician wrote down in the box at
14 the very bottom of the page we were just referencing
15 to question No. 13, "On insulin, denies hypoglycemic
16 events."

17 Q. Thank you. Is there any other
18 documentation that supports the fact that the driver
19 was using insulin and was diabetic?

20 A. Yes. So seven pages prior to the one we
21 were just on is a copy of an additional medical
22 examiner's report.

23 Q. That would be -- could you read what is
24 at the very top of the page?

25 A. "Medical Examination Report for

1 Commercial Driver Fitness Determination." The date
2 of exam is 12/28/2010.

3 Q. Okay. One second. Okay.

4 A. If you note in the middle column, there
5 are yes or no boxes to be checked. "Diabetes or
6 elevated blood sugar controlled by," it is checked
7 yes, and then subsequently, "diet" and "insulin" are
8 also checked.

9 Q. Okay.

10 A. Further down where the physician
11 describes any yes answers, the doctor wrote that he
12 is a patient at the Diabetic Center and that he has
13 been diabetic for 14 years requiring insulin.

14 Q. Is there any other information that
15 supports the fact there was a driver that was using
16 insulin for Midwest Logistics Systems, Ltd.?

17 A. This particular exam, if you go back to
18 the page we were just on, two additional pages, you
19 can see where the physician voided the exam.

20 Q. I'm sorry. Okay. Just read at the top
21 of that page what it says.

22 A. It says "No. 7, Physical Examination,"
23 and the driver's name on the right.

24 Q. Okay. Go ahead.

25 A. The physician voided the exam. Notice at

1 the bottom where he wrote diabetes mellitus, and note
 2 the date on that particular exam was 12/28.

3 Q. Actually, where is it written "diabetes
 4 mellitus"?

5 A. I may have misspoke. The physician did
 6 check the box, "Does not meet standards," and has a
 7 note next to it.

8 Q. Okay.

9 MR. GRIFFITH: I'm going to just object.
 10 That's not what the page says that I'm looking at.

11 MR. EUBANKS: Could you hold the page up?

12 THE WITNESS: (Witness complies.)

13 THE ATTORNEY EXAMINER: Maybe I have a
 14 different copy.

15 MR. EUBANKS: Do you have one at the very
 16 top that says "No. 7, Physical Examination"?

17 MR. GRIFFITH: I do.

18 MR. EUBANKS: Okay.

19 MR. GRIFFITH: Does yours reflect what it
 20 says?

21 MR. EUBANKS: It has a checked box, "Does
 22 not meet standards."

23 MR. GRIFFITH: What I heard him testify
 24 to he checked the box, "Does not meet standards" and
 25 wrote "Void" on it.

1 THE WITNESS: Okay. That's after this
2 page, the one you're looking at.

3 MR. GRIFFITH: Did you write "Void" on
4 the sheet?

5 MR. EUBANKS: No, the physician did.

6 MR. GRIFFITH: Did you produce a copy of
7 that page for us?

8 THE ATTORNEY EXAMINER: Yes. It's later
9 in the packet. There's two different copies of the
10 medical report.

11 MR. GRIFFITH: Thank you, your Honor.

12 THE ATTORNEY EXAMINER: I just kept
13 flipping.

14 MR. GRIFFITH: Just give me one second.

15 THE ATTORNEY EXAMINER: It's labeled
16 page 3 of 4 in the bottom right-hand corner towards
17 the back of the packet.

18 MR. GRIFFITH: Okay.

19 MR. EUBANKS: So you need to go in the
20 other direction. We both made the same mistake. We
21 went three pages in the wrong direction.

22 MR. GRIFFITH: Okay, thank you, your
23 Honor. I've located it.

24 THE ATTORNEY EXAMINER: Okay. Now we are
25 all on the same document.

1 Q. (By Mr. Eubanks) Again, could you point
2 out to -- so you're at the bottom of this document.

3 A. Correct.

4 Q. At the bottom of this page it says
5 page 3 of 4, just to be clear.

6 A. Yes.

7 Q. There's a section of boxes in the middle
8 that says "Body System," and then below that
9 "Comments," and then below that, "Note certification
10 status here"; is that correct?

11 A. That's correct.

12 Q. And below the "Note certification status
13 here," there's a second box that says, "Does not meet
14 standards." Is that what you're referring to?

15 A. Yes.

16 Q. Okay. So what is the point that you're
17 making by the box checked that says "Does not meet
18 standards"?

19 A. The point that this physician made is
20 that he could not be qualified because of insulin
21 dependency. He did the correct procedure by voiding
22 the exam without a valid federal waiver.

23 Q. Where do you see the void?

24 A. The box checked "Does not meet
25 standards," it is written "Void" next to that in the

1 middle of the page.

2 Q. Okay.

3 A. Now, please note two pages prior to that
4 the date of the exam was 12/28/2010. The documents
5 that you were referring to go with the next physical.
6 Note the date that is done on that particular exam,
7 12/29/2010, the very next day. The driver went to a
8 different physician, and if you look in the middle of
9 that certification, it stated he does not have
10 insulin dependency and was granted a card.

11 Q. Okay. Just for the point of clarity, so
12 the physical examination that took place where the
13 doctor voided out the physical examination, you're
14 saying if you go back two pages prior to the page
15 entitled Medical Examination Report?

16 A. Correct.

17 Q. For Commercial Driver Fitness
18 Determination --

19 A. Correct.

20 Q. -- it gives the date which that physical
21 examination and the voiding thereof would have
22 occurred?

23 A. Yes.

24 Q. And that's 12/28/2010?

25 A. Correct.

1 Q. Okay. Now, you went on to make the point
2 that subsequent to this examination, he had another
3 examination.

4 A. Correct, the very next day.

5 Q. And where, again, is the documentation
6 for that? In the packet where do we find it?

7 A. I believe it would be right after the one
8 dated 12/28/10 where the void took place.

9 Q. Okay. So page 4/4?

10 A. 1 of 4 titled "Medical Examination Report
11 for Commercial Driver Fitness Determination" dated
12 12/29/2010.

13 Q. Okay. So the point that you're making
14 there is that there was a physical examination that
15 was conducted one day after the 28th?

16 A. Correct.

17 Q. Where there was a previous examination
18 that was voided?

19 A. Correct.

20 Q. Okay. And this physical examination,
21 you're saying that the driver stated that he was not
22 a diabetic?

23 A. He stated he was not insulin dependent.

24 Q. Could you show us where that is?

25 A. Certainly. Section No. 2 says "Health

1 History." Note to the right, "Driver completes this
2 section." I'll repeat, "Driver completes this
3 section, but medical provider is encouraged to
4 discuss with driver." There in the middle column,
5 "Diabetes or elevated blood sugar controlled by," the
6 driver checked yes, but subchecked "diet" and "pills"
7 and did not indicate insulin.

8 Q. Is there a significance to the driver
9 stating he is not on insulin?

10 A. Absolutely.

11 Q. And what is that significance?

12 A. As we saw in the previous medical that
13 was voided, he could not be medically qualified with
14 insulin dependence without a valid federal waiver.

15 Q. Is there a law that you're referencing in
16 order to make that claim?

17 A. Yes. In 391.41(b)(3).

18 Q. Could you read the language that you're
19 referring to?

20 A. "A person is physically qualified to
21 drive a commercial motor vehicle if that person has
22 no established medical history or clinical diagnosis
23 of diabetes mellitus currently requiring insulin for
24 control."

25 Q. Again, that's CFR 391.41 -- what

1 subsection?

2 A. B, as in boy, 3.

3 Q. Okay. So by marking that it's been
4 controlled by food and diet, that would allow him to
5 drive?

6 A. It would deceive the physician of the
7 fact that he is insulin dependent and possibly allow
8 the physician to qualify him.

9 MR. GRIFFITH: Objection. He doesn't
10 have any idea what the physician is thinking or what
11 the driver thought or is thinking.

12 THE ATTORNEY EXAMINER: Overruled.

13 Q. (By Mr. Eubanks) In this particular case,
14 or I should say during this particular examination
15 where the driver is marking diet and pills, was he
16 subsequently allowed to drive by the physician?

17 A. He was issued a valid medical
18 certification.

19 Q. Could you show us where that would be
20 with the documentation?

21 A. It would be the certification itself,
22 this page.

23 Q. Where would that be located?

24 A. I apologize. I have these out of order.

25 Q. Okay.

1 A. It has punch holes on the side. It's
2 labeled 4 of 4.

3 MR. GRIFFITH: Could you describe it one
4 more time, please.

5 MR. EUBANKS: It's immediately preceding
6 the page where --

7 MR. GRIFFITH: The certification card?

8 THE WITNESS: Yes.

9 MR. GRIFFITH: What's the date on the
10 card.

11 THE WITNESS: 12/29/2010.

12 MR. GRIFFITH: I have not located that
13 one yet.

14 All right, okay, we have it. Thank you.

15 Q. (By Mr. Eubanks) So the point that you're
16 making, on the same day he had the second physical
17 examination, he was subsequently issued a card to
18 drive?

19 A. Yes, for one year.

20 Q. For one year.

21 A. Yes.

22 Q. Okay. That's why it says 12/29/11 and
23 not 12/29/10?

24 A. The date of the exam is on the top on the
25 right and the expiration date is at the bottom,

1 12/29/11.

2 Q. Okay. And just for clarity, the date of
3 the examination is kind of in the middle of the
4 documentation on the card on the right, correct?

5 A. Yes, correct.

6 Q. And by the way, the medical examiner
7 there is S. Huffman on the card; is that correct?

8 A. Yes.

9 Q. On the 12/29/10 examination record, would
10 it list the physician? Maybe it does. Yes, on the
11 third page of that examination report, the second
12 one, could you take a look at the signature line for
13 the medical examiner and state the name of the
14 medical examiner?

15 A. S. Huffman, MD.

16 Q. Okay. So as a result of this
17 investigation, you reached what conclusion?

18 A. The driver has had insulin-dependent
19 diabetes for a number of years and should not have
20 been issued a valid medical card without a valid
21 federal diabetes waiver.

22 Q. Okay. How do you obtain the waiver?

23 A. It's an application process. I don't
24 know exactly what happens, but there's an application
25 process through the Federal Motor Carrier Safety

1 Administration that involves correspondence with the
2 driver's physician. They would then be issued a
3 waiver, which they must carry with them at all times
4 in order to have a valid CDL.

5 Q. Is there any documentation of the waiver
6 in the documentation at Midwest Logistics Systems,
7 Ltd., on your date of compliance?

8 A. No, sir.

9 Q. Are those waivers grandfathered waivers,
10 or do you have to --

11 A. There is a grandfathering clause in the
12 regulations, but I believe it's well out of date in
13 terms of the driver's age.

14 Q. Okay.

15 A. Yes, there is a grandfathering.

16 Q. Could you read the grandfather clause?

17 A. "The provisions of 391.41(b)(3) do not
18 apply to driver who was a participant in good
19 standing on March 31, 1996, in a waiver study program
20 concerning the operation of commercial motor vehicles
21 by insulin controlled diabetic drivers provided..."
22 There's several items here. Do you want me to read
23 all of them?

24 Q. No. No. Well, are there any that would
25 be relevant in this case?

1 MR. GRIFFITH: We will stipulate it's not
 2 an issue in this case whether or not he was
 3 grandfathered in, if that is okay with you?

4 MR. EUBANKS: Okay.

5 THE ATTORNEY EXAMINER: Thank you.

6 Q. (By Mr. Eubanks) Could you look at the
 7 rest of the violations on the Case View Report, which
 8 would have been State's Exhibit 2.

9 MR. GRIFFITH: Object, because I don't
 10 believe those things are relevant to the issue today.

11 THE ATTORNEY EXAMINER: I'll allow the
 12 question and give a little bit of leeway to see where
 13 he's going.

14 Q. (By Mr. Eubanks) That was my question.
 15 Are any of the other violations at issue here today?

16 A. Not to my knowledge, no.

17 MR. EUBANKS: Can we go off the record
 18 one second?

19 THE ATTORNEY EXAMINER: Yes.

20 (Discussion off record.)

21 THE ATTORNEY EXAMINER: Back on the
 22 record.

23 Q. (By Mr. Eubanks) Just for the sake of
 24 making sure this Case View Report is accurate, were
 25 those the other violations you cited at that

1 particular time?

2 A. Yes.

3 Q. Is there anything else you would like to
4 add in support of the fact there was a physically
5 unqualified driver that you noticed as a part of
6 compliance review?

7 A. Are you asking for an opinion?

8 Q. Well, I'm asking if you have any other
9 testimony you would like to add in support of that.

10 A. We did interview the driver, and the
11 driver seemed to be mistaken in terms of what he
12 could and could not do with the insulin pump. And if
13 you go back to the first document that was obtained
14 from the principal place of business --

15 Q. The card?

16 A. It's titled "Medical Restriction Card."

17 Q. Yes.

18 A. The driver was under the assumption that
19 this was his federal waiver when we interviewed him.

20 Q. Okay.

21 A. I don't have anything else to add.

22 MR. EUBANKS: I have no further
23 questions.

24 I would like to move to have State's
25 Exhibits 2 and 3 moved into evidence, subject to

1 cross.

2 THE ATTORNEY EXAMINER: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Griffith:

6 Q. Let's start with the document you were
7 just holding up, the Medical Restriction Card. Do
8 you know what a Medtronic 630G is?

9 A. It is an insulin pump.

10 Q. Okay. All right. So you have presented
11 to us medical examinations from 2010 and 2017; is
12 that correct?

13 A. Yes.

14 Q. Did you review any other medical
15 examination documents related to this driver?

16 A. All the other subsequent documents that
17 are here.

18 Q. So in your investigation you did not
19 review any other documents related to Mr. Goubeaux?

20 A. His other driver qualification records.

21 Q. Could you tell us about those? What
22 other documents are in there that you did not
23 produce?

24 A. His application for employment, copies of
25 his driving records, previous employment

1 verifications, if applicable, obviously, copies of
2 his medical exams.

3 Q. What years did you have medical
4 examination documents for?

5 A. In there?

6 Q. Of the documents you reviewed in your
7 investigation, what years did he have valid medical
8 cards that you reviewed or medical examination forms
9 that you reviewed?

10 A. For the documentation we submitted here,
11 2017, 2016, 2015, 2014, 2010, two for 2010.

12 Q. So 2016, 2015, 2014; is that correct?

13 A. Yes.

14 Q. Did 2016, 2015, or 2014 indicate insulin
15 use? Are you saying those documents are in the
16 packet you provided today?

17 A. Yes. I have copies of medical cards for
18 all those dates.

19 Q. So in this packet you have medical cards
20 for 2016, 2015, and 2014, correct?

21 A. That is correct.

22 Q. And those medical cards suggest that he
23 is physically qualified to operate a commercial motor
24 vehicle?

25 A. Yes.

1 Q. And did you review the other documents
2 related to those medical examinations, what we refer
3 to as the long-form medical examination that we
4 looked at for 2010 and 2017?

5 A. For 2010 and 2017, yes.

6 Q. Did you review any other long-form
7 medicals for Mr. Goubeaux?

8 A. Without having them here, I can't answer
9 that positively yes or no.

10 MR. GRIFFITH: May I approach, your
11 Honor?

12 THE ATTORNEY EXAMINER: You may.

13 MR. EUBANKS: Can we go off the record?

14 THE ATTORNEY EXAMINER: Yes, let's go off
15 the record.

16 (Recess taken.)

17 THE ATTORNEY EXAMINER: Back on the
18 record.

19 MR. GRIFFITH: Permission to approach,
20 your Honor.

21 THE ATTORNEY EXAMINER: You may.

22 Q. (By Mr. Griffith) Do you prefer Inspector
23 Blackburn, Officer Blackburn?

24 A. Just Mike.

25 Q. Mike, do you recognize the document?

1 A. I do.

2 Q. Would you tell us what the document is
3 titled and what the date of the document is?

4 A. This is the Medical Examination Report
5 for Commercial Driver Fitness Determination dated
6 12/29/12.

7 Q. Did you review this during your
8 investigation of Mr. Goubeaux?

9 A. Again, since it is not in the
10 documentation, I can't answer that yes or no.

11 Q. Does the documentation you produced for
12 us today contain every document that you reviewed in
13 the personnel file of Mr. Goubeaux?

14 A. No.

15 Q. Do you have any reason to believe this
16 was not in the personnel file at the time you
17 reviewed it?

18 A. I have no reason to believe that, no.

19 Q. If you had seen a medical examination for
20 2012, would you have flipped through those pages and
21 read it?

22 A. Possibly.

23 Q. Could you tell us what this Medical
24 Examination Report says about Mr. Goubeaux's diabetes
25 and insulin use?

1 A. It says he was controlling it with diet
2 and pills.

3 Q. In the comments below that, can you
4 explain -- or just read the comments and tell us what
5 that means to you.

6 A. "Dr. Imler treating diabetes. Diabetic
7 since 1997. Taking metformin. High blood pressure
8 since 2010 and also being seen by Dr. Imler for that
9 as well as Dr. John" -- looks like W-I-N-N-I-E-R.

10 Q. John Winnier.

11 A. Okay. "Taking Enalapril & metoprolol.
12 Had a right great toe amputated in July 2012."

13 Q. Do you know what metformin is?

14 A. I do not.

15 Q. All right. Are you familiar with the
16 FMCSA diabetic control guidelines?

17 A. I'm familiar with them, yes.

18 MR. GRIFFITH: Permission to approach,
19 your Honor.

20 THE ATTORNEY EXAMINER: You may.

21 Q. Mike, can you tell me what that document
22 is titled?

23 A. National Registry of Certified Medical
24 Examiners. Federal Motor Carrier Safety
25 Administration (FMCSA) Medical Examiner Handbook.

1 Q. Have you ever seen that document before?

2 A. I may have.

3 Q. Okay. Can you just take a minute to flip
4 through those pages and get familiar, you know, with
5 those, and then I will ask you what it says about
6 metformin.

7 MR. EUBANKS: I am going to object, lack
8 of foundation.

9 MR. GRIFFITH: Mike says that he thinks
10 he's seen it before, so I think this is a regulation
11 that he has read that informed his decision about
12 whether or not to pursue this violation.

13 MR. EUBANKS: I guess what I'm looking
14 for is a definitive statement from the witness that
15 says he knows what this document is. Thinking and
16 knowing would be two different things.

17 Q. (By Mr. Griffith) Mike, do you know if
18 you reviewed the FMCSA Medical Examiner Handbook?

19 A. I can't say for certain whether I've
20 reviewed it. I'm not a physician, so...

21 Q. How do you know what the FMCSA requires
22 about diabetes?

23 A. It's in the federal regulations.

24 Q. Okay. So if this is a copy of the
25 federal -- interpretation of those regulations, you

1 don't review that information?

2 A. This is to certify the individual from
3 the doctor's perspective.

4 Q. Okay. So you only read your guidance on
5 how to interpret the regulations only reading the
6 regulations itself. That's the extent of your
7 training?

8 A. Correct.

9 Q. You have never had any other training
10 about diabetes with commercial motor vehicle drivers?

11 A. Correct.

12 Q. Okay. I'll withdraw the document.

13 THE ATTORNEY EXAMINER: Thank you. Just
14 to go back, were you marking the Medical Examiner
15 Report from 2012?

16 MR. GRIFFITH: I can either do that now
17 or do that on direct in the next round. Do you have
18 a preference? Do you want me to start marking them?

19 THE ATTORNEY EXAMINER: Yes, let's mark
20 them now.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Griffith) Are you aware of any
23 drivers with diabetes being able to operate vehicles
24 if they don't take insulin? Is that an option?

25 A. It is.

1 Q. Okay. What do they do for their
2 diabetes?

3 A. They control it with diet and medication.

4 Q. Okay. Do you know what those medications
5 are?

6 A. No.

7 Q. But if the medication is not insulin,
8 they're okay.

9 A. To my knowledge, yes.

10 Q. Okay. So this 2012 Defense Exhibit 1, it
11 says treating diabetes with diet and pills; is that
12 correct?

13 A. For this particular exam, correct.

14 Q. So he would be physically qualified to
15 operate as determined by this physician in 2012?

16 A. If all of these statements are true and
17 accurate, yes.

18 Q. Okay. Then flip to the last page there
19 and tell me what that last page is.

20 A. The colored page?

21 Q. Yes, please.

22 A. That is a Medical Examiner's Certificate
23 dated 12/29/2012.

24 Q. Is that the same date that's on the first
25 page?

1 A. It is.

2 Q. At the end of the examination he received
3 the medical certification?

4 A. He did.

5 Q. And that indicates what?

6 A. Indicates he is medically certified based
7 upon the driver's answers to the questions and the
8 physician's determination he's qualified for one
9 year.

10 MR. GRIFFITH: Permission to approach,
11 your Honor.

12 THE ATTORNEY EXAMINER: You may.

13 Q. Do you recognize that document?

14 A. I do.

15 Q. Can you read the title and date for us?

16 A. Medical Examination Report for Commercial
17 Driver Fitness Determination.

18 MR. GRIFFITH: We will mark that Defense
19 Exhibit 2.

20 THE ATTORNEY EXAMINER: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Can you tell us what it says about
23 diabetes?

24 A. It says that he is controlling it with
25 diet and pills.

1 Q. And the very first line, handwritten
2 line, in the Comment box, what does that say about
3 his treatment?

4 A. It says, "Dr. Imler is treating diabetes
5 with 1500 milligrams of metformin daily since 1997."

6 Q. Does that indicate to you that metformin
7 is an oral diabetes medication?

8 A. It does.

9 Q. Does that suggest -- do you think
10 metformin is insulin?

11 A. No.

12 Q. And on the last page of this document,
13 can you describe that page for us, page 4 of 4?

14 A. That is a Medical Examiner's Certificate.

15 Q. And what does that tell us about the
16 result of this medical examination?

17 A. Based upon the driver's answers to the
18 questions and the physician's analysis of the exam,
19 he was issued a one-year medical card expiring
20 3/29/14.

21 Q. So the physician that issued that is
22 saying he is physically qualified to operate a motor
23 vehicle?

24 A. Based upon the answers provided, yes.

25 Q. I heard you say a couple times "based

1 upon the answers provided," but does the medical
 2 examination involve anything other than that looking
 3 at the answers and writing out the form?

4 A. It does.

5 Q. What else is provided in the medical
 6 examination?

7 A. There are procedures, such as hearing
 8 check, vision check, blood pressure, things of that
 9 nature.

10 Q. And that's something that is in-person,
 11 the physician and driver in the same room?

12 A. That's correct.

13 Q. They interact and ask questions?

14 A. Yes.

15 Q. The doctor physically looks at the driver
 16 and does things a doctor does to examine the driver?

17 A. Correct.

18 Q. And does the doctor have the option to
 19 call other physicians, treating physicians, to get
 20 more information about the driver?

21 A. Yes, to my knowledge.

22 MR. GRIFFITH: Permission to approach,
 23 your Honor.

24 THE ATTORNEY EXAMINER: You may.

25 Q. Mike, can you read the title and date of

1 this document?

2 A. Medical Examination Report for Commercial
3 Driver Fitness Determination.

4 Q. What is the date on the document?

5 A. 3/21/2014.

6 Q. Do you recognize the document?

7 A. I do.

8 MR. GRIFFITH: Mark this Defense Exhibit
9 3.

10 THE ATTORNEY EXAMINER: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Can you tell us what this document says
13 about Mr. Goubeaux's diabetes?

14 A. It says he is continuing to control it
15 with diet and pills.

16 Q. Okay. In the Comment box at the second
17 line there, what does the second handwritten line say
18 about his diabetes?

19 A. It says, Blood pressure & diabetes,
20 Dr. Imler. Diabetic since 1997. Metformin & diet.

21 Q. And does anything here indicate he's
22 using insulin?

23 A. I can't read the handwriting on page 3
24 in the Comment section, but I would say no.

25 Q. Okay. The last page, what does the last

1 page tell us?

2 A. That is a Medical Examiner's Certificate
3 that was issued for one year expiring 3/21/2015.

4 Q. And who is the examiner?

5 A. Juan V. Torres, T-O-R-R-E-S.

6 Q. And what do the letters after his name
7 mean?

8 A. MD.

9 Q. Do you know what that means?

10 A. Medical doctor.

11 Q. The next three letters?

12 A. MPH.

13 Q. Do you know what that means?

14 A. I do not.

15 Q. (By Mr. Griffith) Permission to approach,
16 your Honor.

17 THE ATTORNEY EXAMINER: You may.

18 Q. Mike, this is a little bit different than
19 the last document. Can you tell us what you see
20 there?

21 A. The first page is a Medical Examiner's
22 certificate good for one year, expiring on 3/20/2016.

23 Q. Do you recognize the document?

24 A. I do.

25 Q. Do you think that you reviewed this

1 during your investigation of the personnel file?

2 A. Yes.

3 MR. GRIFFITH: Mark this Defense
4 Exhibit 4.

5 THE ATTORNEY EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. In order to get this certificate, you
8 would have had to have gone through the medical
9 examination, correct?

10 A. That is correct.

11 Q. And at the end of this medical
12 examination, they issued this card saying he was
13 physically fit to operate a motor vehicle?

14 A. In intrastate-only commerce.

15 Q. Okay. Do you have any evidence that he
16 operated interstate?

17 A. No.

18 Q. Does anything on Defense Exhibit 4
19 indicate he was using insulin?

20 A. No.

21 MR. GRIFFITH: Permission to approach,
22 your Honor.

23 THE ATTORNEY EXAMINER: You may.

24 Q. Move on to the next document. Can you
25 tell me what that document is?

1 A. That is a Medical Examiner's Certificate.

2 Q. What is the date on that certificate, on
3 the bottom right-hand corner?

4 A. That's the expiration date, 3/11/17.

5 Q. So if that's the expiration date, do you
6 have any reason to know what date the examination
7 occurred?

8 A. I would assume, based on the priors, it
9 would be 3/11/16.

10 Q. Okay. And does the document look
11 familiar?

12 A. Yes.

13 Q. Do you think you reviewed this during
14 your inspection?

15 A. Yes.

16 MR. GRIFFITH: Mark this Defense
17 Exhibit 5, your Honor.

18 THE ATTORNEY EXAMINER: It's been marked
19 as 5.

20 MR. GRIFFITH: Thank you.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. And so, once again, the document from
23 2016, does it indicate any insulin use?

24 A. I do not see any, no.

25 Q. Okay. And can you determine from the

1 document who the examiner was?

2 A. Caleb O. Molokwu, M-O-L-O-K-W-U.

3 Q. Okay. And on the next page do you
4 recognize that document?

5 A. Yes.

6 Q. And what is that document?

7 A. It's a copy of the driver's moving
8 violation record.

9 Q. And what would the motor carrier do with
10 this document?

11 A. Verify that he is valid to continue to
12 operate commercial motor vehicles.

13 Q. And the date on this document is
14 April 22, 2016, correct, at the top?

15 A. Yes.

16 Q. So if he had a medical examination in,
17 you know, approximately mid-March, 2016, and then
18 there's an MVR from April of 2016, why would a motor
19 carrier get an MVR for that driver?

20 A. He probably was due for an annual driving
21 record review at that time.

22 Q. Okay. So this is a business record that
23 motor carriers keep in the personnel file on a
24 regular basis?

25 A. Correct.

1 Q. Does anything on that MVR indicate that
2 he was using insulin?

3 A. Something that is indicative is the
4 intrastate-only medical designation.

5 Q. That means that he was using insulin?

6 A. It does not mean he was using insulin.
7 It is indicative of insulin use.

8 Q. Well, what other things could that
9 indicate?

10 A. Could be vision.

11 Q. So does this marking here, does that
12 actually mean he was using insulin?

13 A. Without further investigation, it could
14 be one of many things.

15 Q. Okay. In fact, if he was using insulin,
16 he would not have received a valid medical card as of
17 that date, correct? Isn't that why we're here today?
18 If you are using insulin, you're not going to get a
19 medical card?

20 A. No. He did get a valid medical card with
21 insulin use.

22 Q. Okay. We'll get back to 2010, but right
23 now we are talking about 2016. If in 2016 he had
24 indicated to the examiner he was using insulin, he
25 should not have received a medical card, correct?

1 A. For the exhibit here?

2 Q. We are talking about 2016, the exhibit in
3 front of you, and the MVR. So the MVR there
4 indicates intrastate. And so you have indicated that
5 that means he's using insulin?

6 A. No, no. I did not indicate that.

7 Q. Please correct me, Mike.

8 A. I said it is indicative.

9 Q. What does that mean to you?

10 A. That means potentially.

11 Q. Okay. But it could also mean potentially
12 he wears glasses.

13 A. It means he could have vision problems,
14 yes.

15 Q. Do you know if Mr. Goubeaux wore glasses?

16 A. He does.

17 Q. Okay. Let's flip to the next page. What
18 is at the top of that page saying?

19 A. Midwest Logistics Systems Medical
20 Examiners National Registry Verification.

21 Q. And the National Medical Examiners
22 National Registry, that is where doctors who are
23 allowed to do medical exams on commercial drivers
24 register with the FMCSA, correct?

25 A. Correct.

1 Q. Okay. And this page here, what does it
2 say about Caleb Molokwu?

3 A. It indicates that Rachel Schmitt verified
4 that he was on the National Registry on 4/25/16.

5 Q. Okay. So this medical examiner has gone
6 through some special training and been registered to
7 specifically examine motor vehicle drivers, correct?

8 A. Correct.

9 Q. When you do these sorts of inspections on
10 other motor carriers, do you frequently see -- do all
11 the other motor carries have a page where they verify
12 the examiner is registered?

13 A. I'd say it's about 50/50. They're
14 supposed to.

15 Q. So Midwest Logistics Systems did the
16 right thing in verifying that the doctor was
17 registered and trained to examine motor vehicle
18 drivers.

19 A. Absolutely.

20 MR. GRIFFITH: Permission to approach,
21 your Honor.

22 THE ATTORNEY EXAMINER: You may.

23 Q. Mike, before we talk about that, I want
24 to ask you one question about the last exhibit. In
25 2012, '13, '14, we looked at what I would refer to as

1 the long-form medical exam, correct?

2 A. Correct.

3 Q. And in 2016 we did not see the long-form
4 medical exam in that exhibit; is that correct,
5 Defense Exhibit 5?

6 A. The last one?

7 Q. Yes.

8 A. Correct.

9 Q. And also if you look at Defense Exhibit 4
10 there's also no long-form medical exam attached; is
11 that right?

12 A. The one for 2015?

13 Q. The 2014 -- 2015 to 2016.

14 A. Correct.

15 Q. So it's true that motor carriers are not
16 required to keep long-form medical exams in the
17 driver qualification file, right?

18 A. Correct.

19 Q. So, once again, for the documents in
20 front of you can you explain what this document is?

21 A. The first page is a Medical Examiner's
22 Certificate dated 3/8/17, valid for one year.

23 Q. And does the document look familiar as
24 something you reviewed in your investigation?

25 A. Yes.

1 MR. GRIFFITH: Admit as Defense Exhibit
2 6, your Honor.

3 THE ATTORNEY EXAMINER: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Does anything on this document indicate
6 insulin use?

7 A. No.

8 Q. And can you tell us who the examiner is
9 from the first page?

10 A. Elizabeth J. I'm going to say Rammel.

11 Q. Okay. And so Nurse Rammel is indicating
12 by signing the certificate that Mr. Goubeaux was
13 physically qualified to operate a commercial motor
14 vehicle on March 8, 2017; is that correct?

15 A. That is correct.

16 Q. If you flip to the next page, we are
17 again looking at an MVR for Mr. Goubeaux. The date
18 on there is April 5, 2017; is that correct?

19 A. Correct.

20 Q. That's within about a month of his
21 medical examination, right?

22 A. Yes.

23 Q. And does anything on this page indicate
24 insulin use?

25 A. No.

1 Q. And then if you flip to the last page, we
2 are looking at another National Registry verification
3 form for Elizabeth Rammel; is that right?

4 A. That's correct.

5 Q. This indicates to you that Midwest
6 Logistics Systems verified Elizabeth Rammel was
7 trained and certified to examine commercial motor
8 carrier drivers, right?

9 A. After he was sent to the physician, yes.

10 Q. So the date on the verification is May 1,
11 2017, right?

12 A. Yes.

13 Q. And the examination appears to have been
14 March 8, 2017, right?

15 A. Correct.

16 Q. Okay. Let's go back to the documents you
17 produced. We just looked at the -- we looked at the
18 years -- examinations that occurred in 2012, 2013,
19 2014, 2015, 2016, and 2017, correct?

20 A. Uh-huh.

21 Q. And for all of those years, for those six
22 years, there's no indication of insulin use during
23 those years on any of the medical examinations,
24 correct?

25 A. Correct.

1 Q. So let's go back to the last time there
2 was some indication of the insulin use. We want to
3 look at those 2010 medical examinations. Let's start
4 with the December 2010 medical examination, page 1.
5 It might take a moment to locate that. Let me know
6 when you've found it.

7 A. I believe I have it.

8 Q. And while we are at it, let's just pull
9 out the same page for the very next day, the
10 12/29/2010 medical exam. Can we lay those side by
11 side. Mike, do you have those two documents?

12 A. Yes. I'm sorry.

13 Q. Very good. On 12/28/2010 it's true that
14 he indicates by checking the box he was using insulin
15 on 12/28/2010, correct?

16 A. Yes.

17 Q. And in comments he indicated that his
18 treating physicians are Dr. Imler and Dr. Dozier,
19 correct?

20 A. Yes.

21 Q. And then in the handwritten notes he also
22 indicates he was using Humalog insulin, correct?

23 A. Yes.

24 Q. And then that medical examination
25 resulted in not being found physically fit to operate

1 a commercial motor vehicle, correct?

2 A. Correct.

3 Q. Now, the next day he comes back, and his
4 treatment has changed, indicating by taking metformin
5 in the handwritten comments on 12/29/2010.

6 A. Would you ask the question again?

7 Q. Absolutely. On the 12/29/2010
8 examination, let's start with he checks the box for
9 pills instead of insulin, correct?

10 A. (Witness nods head.)

11 Q. And then in the handwritten comments, he
12 indicated he takes metformin, one tablet, three times
13 daily, correct?

14 A. Correct.

15 Q. And from all the other documents, we have
16 established that metformin is a noninsulin diabetic
17 medication, correct?

18 A. Correct.

19 Q. And we have again indicated he's being
20 treated by Dr. Dryer and Dr. Imler, correct?

21 A. The handwritten comments on 12/29/2010,
22 Dr. Dozier?

23 Q. We got a new doctor. So on 12/28 he was
24 being treating by Dr. Imler and Dr. Dozier. And on
25 12/29 he's being treated by -- oh, the same, Dozier

1 and Imler, right, same doctors?

2 A. Yes. I was just clarifying that.

3 Q. Same doctors, new treatment, and on
4 12/29 he's using the oral metformin, which results in
5 him being found physically fit to operate a
6 commercial motor vehicle, correct?

7 A. Based on the driver's answers, yes.

8 Q. Okay. Did you interview Dr. Dozier or
9 Dr. Imler?

10 A. No.

11 Q. Did you review his medical records with
12 Dr. Dozier or Dr. Imler?

13 A. No.

14 Q. Do you have any information whatsoever to
15 support your claim that he was, you know, lying on
16 12/29?

17 A. I think most common-sense folks would
18 realize that insulin injections one day and pills the
19 next is virtually impossible.

20 Q. And that's based on your extensive
21 reading of the Federal Motor Carrier regulations,
22 which is the extent of your diabetic training.

23 A. No. That's based upon my interaction
24 with cases like this in the past.

25 Q. So it's your assertion that once you take

1 insulin, you can never be qualified to operate a
2 commercial motor vehicle.

3 A. No, I didn't say that.

4 Q. Okay. So from eight years ago till 2017,
5 you think that there's no way that this driver,
6 Mr. Goubeaux, became physically qualified to operate
7 a commercial motor vehicle?

8 A. Never said that.

9 Q. Okay. So the only evidence that we have
10 that he ever used insulin prior to that long form of
11 2017 is 2010, right? The two pieces of evidence are
12 the 2010 medical exam and the 2017 long-form medical
13 exam, correct?

14 A. Correct.

15 Q. So let's take a look at that 2017 long
16 form. Actually, before we get to the long form,
17 let's look at your investigatory notes. It's
18 about -- at the end of your investigatory notes you
19 have some notes about Mr. Goubeaux. Can you find
20 that page that has David Q. Goubeaux at the bottom of
21 the page and the very next page? It's about four
22 pages into the --

23 A. Yes.

24 MR. EUBANKS: Could you hold up the
25 document?

1 THE WITNESS: (Witness complies.)

2 MR. EUBANKS: Okay.

3 MR. GRIFFITH: Robert, this is what I'm
4 looking at.

5 MR. EUBANKS: Okay. I got it.

6 MR. GRIFFITH: Your Honor, did you locate
7 those two pages?

8 THE ATTORNEY EXAMINER: I have it. Thank
9 you.

10 MR. GRIFFITH: Right.

11 Q. (By Mr. Griffith) Look at the bottom
12 there. You indicate that Elizabeth Rammel is on the
13 National Registry, correct?

14 A. Correct.

15 Q. Then on the next page, as your notes
16 continue, you indicate that you interviewed Elizabeth
17 Rammel in Wapakoneta, Ohio, on November 16, 2017,
18 correct?

19 A. Uh-huh.

20 Q. When you met with Ms. Rammel, did you
21 review the documents with her in her office?

22 A. I do remember she pulled his file, yes,
23 but what specific documents we would have looked
24 at...

25 Q. You take any copies of any documents with

1 you from her file?

2 A. I don't know. I don't remember. I don't
3 think so, but I don't remember.

4 Q. Did you ask her to fax you any documents?

5 A. I may have.

6 Q. Okay. Now, let's take a look at that
7 2017 long form. It's right at the end of your packet
8 of documents there. It's about five, six pages from
9 the end. It's got a very gray Medical Examination
10 Report at the top at the start of it. Unless I have
11 the pages in the wrong order, is that the first page?

12 A. I think I'm there.

13 MR. EUBANKS: Point of clarity, that says
14 at the very top, says page 1 of 6, and it has a date
15 of 10/18/2017, 10:31:27.

16 MR. GRIFFITH: Obviously, my copy has
17 that cut off. Can you get a copy that does not have
18 it cut off?

19 MR. EUBANKS: Sure, I think I have
20 another copy.

21 MR. GRIFFITH: Or we can all just look at
22 it.

23 MR. EUBANKS: I don't have another copy.

24 MR. GRIFFITH: May I look at your copy
25 there?

1 MR. EUBANKS: Yes.

2 MR. GRIFFITH: Does your copy, Mike, have
3 the fax header at the top, page 1 of 6?

4 THE WITNESS: It does.

5 MR. GRIFFITH: Your Honor, does your copy
6 have it?

7 THE ATTORNEY EXAMINER: Yes.

8 MR. GRIFFITH: Can I look over your
9 shoulder for a second?

10 MR. EUBANKS: Sure.

11 Q. (By Mr. Griffith) So the top of that
12 document has a date of 10/18/17. Is that date before
13 you went to do your investigation at Midwest
14 Logistics Systems or after?

15 A. That was after.

16 Q. So you testified earlier this document
17 was received from Midwest Logistics Systems, but it
18 looks to me like you received it after the
19 investigation for Midwest Logistics Systems, right?

20 A. It would have been during.

21 Q. Were you at Midwest Logistics Systems on
22 10/10/2017?

23 A. 10?

24 Q. 10/18/2017. Were you at Midwest
25 Logistics Systems on 10/18/2017?

1 A. Yes.

2 Q. Okay. Now, the telephone number at the
3 top of that long-form medical is (567)356-4056,
4 correct?

5 A. Yes.

6 Q. Do you believe that to be the number that
7 this document was faxed from?

8 A. I would assume.

9 Q. And do you think that is from Midwest
10 Logistics Systems?

11 A. I do not know.

12 Q. Can you look at Defense Exhibit 6 for me?
13 And flip to the second or third page from the end.
14 Let's go with the next-to-last page there, Exhibit 6.

15 A. What page is it, sir?

16 Q. It's the map. It's attached to the
17 medical registry certification form for Elizabeth
18 Rammel. Oh, your exhibits are not marked. I
19 apologize for not indicating that document correctly
20 for you. Look at the map. It says Elizabeth J.
21 Rammel on that.

22 A. Uh-huh.

23 Q. The phone number for Elizabeth J. Rammel
24 is (567)356-4054.

25 A. Yes.

1 Q. And the fax this long form came from is
2 (567)356-4056, correct?

3 A. Yes.

4 Q. It seems reasonable that this long form
5 was faxed to you by Elizabeth Rammel, don't you
6 think?

7 MR. EUBANKS: Objection.

8 A. I don't know.

9 Q. Do you have any reason -- is it
10 reasonable to think this document did come from
11 Midwest Logistics Systems?

12 MR. EUBANKS: Objection.

13 Q. Did you ask Midwest Logistics Systems to
14 fax you any documents at all?

15 A. I could have, yes.

16 Q. Okay.

17 A. E-mail, fax, we do that all the time.

18 Q. Do you happen to know what Midwest
19 Logistics Systems' area code is?

20 A. Not off the top of my head, no. I would
21 guess 419.

22 Q. Do you know what area code 567 comes
23 from?

24 A. I believe it's in the same area as 411.

25 Q. Okay. But Midwest Logistics Systems uses

1 a 411 area code and phone numbers?

2 A. It could use a multitude of phone
3 numbers.

4 Q. Okay. All right. Now, the regulation
5 about diabetes requires that Midwest Logistics
6 Systems' driver is currently using insulin, correct?

7 A. Yes.

8 Q. So from 2012 to at least 2016, through
9 the certification valid through March of 2017,
10 Midwest Logistics Systems had certifications
11 indicating he was not using insulin, correct?

12 A. Yes.

13 Q. While we are looking at your documents,
14 just after your interview notes there's a CDLIS
15 report for Mr. Goubeaux. Can you flip to that? It
16 says page 1 of 3, CDLIS.DOT.GOV at the top.

17 A. Page 1 of 3.

18 Q. Uh-huh.

19 A. Yes, sir.

20 Q. Does anything on this CDLIS report
21 indicate that -- in any of those three pages indicate
22 that Mr. Goubeaux was using insulin?

23 A. No.

24 Q. This report indicates Mr. Goubeaux's
25 driving violations, correct?

1 A. It does, in addition to other things.

2 Q. Has he ever received a citation for
3 anything related to using insulin?

4 A. That would not appear on here.

5 Q. On page 1 does it indicate that he has a
6 valid medical certificate?

7 A. It does.

8 Q. On page 1 isn't it true it indicates he
9 wears corrective lenses?

10 A. It does.

11 Q. It also indicates on page 1 Elizabeth
12 Rammel is the medical examiner, correct?

13 A. Correct.

14 Q. It indicates on page 1 that the phone is
15 (567)356-4054, correct?

16 A. Yes.

17 Q. You met with Ms. Rammel in Wapakoneta,
18 correct?

19 A. Yes.

20 Q. Does she share office space with Midwest
21 Logistics Systems?

22 A. No.

23 Q. Her phone number is two digits off from
24 the fax number you received the medical form from,
25 correct?

1 A. Correct.

2 Q. Okay. All right. Let's go back to the
3 2010 medical exam. The 12/28/2010 medical exam,
4 page 1, let me know when you have that in front of
5 you.

6 A. Yes, sir.

7 Q. You had testified that this document
8 correctly says that he has been a diabetic for 14
9 years, right?

10 A. Yes.

11 Q. I just wanted to clarify your testimony
12 that it does not indicate that he had been using
13 insulin for 14 years, correct?

14 A. Correct.

15 Q. When you are writing a violation, do you
16 consider whether or not the motor carrier had any
17 knowledge of the violation at the time?

18 A. Yes.

19 Q. When you left Midwest Logistics Systems,
20 did you have enough information that they were aware
21 of his diabetic use, insulin use?

22 A. Yes.

23 Q. And that information was exclusively --
24 the only document you actually reviewed at Midwest
25 Logistics Systems that indicated insulin was from

1 2010, correct?

2 A. No.

3 Q. So it remains your testimony that the
4 long form with the fax date of October 2017, that
5 that was received by you at Midwest Logistics
6 Systems?

7 A. To the best of my knowledge, yes.

8 Q. If that -- well, I don't need that. And
9 this was the only violation that received a fine for
10 Midwest Logistics Systems --

11 A. Yes.

12 Q. -- as a result of your inspection, right?

13 A. Yes.

14 MR. GRIFFITH: Nothing further, your
15 Honor.

16 THE ATTORNEY EXAMINER: Thank you.
17 Any redirect?

18 MR. EUBANKS: Yes, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Eubanks:

22 Q. If we could first go to your exhibit
23 package, State's Exhibit 3, turning to the 2017
24 examination report, I believe it was your testimony
25 the report showed insulin use?

1 A. Yes.

2 Q. And, again, could you show us where?

3 A. On page 1, the paragraph at the bottom
4 says, "Are you currently taking medications," so on
5 and so forth. Insulin is listed.

6 Q. Do you see any pills listed there?

7 A. I do not.

8 Q. Did he receive a medical card for 2017?

9 A. He did.

10 Q. Is that provided in the packet?

11 A. Yes.

12 Q. How did he receive a medical card for
13 2017 if he had insulin use?

14 A. The physician incorrectly certified him
15 without a federal waiver.

16 Q. Now, this examination, this 2017
17 examination report, would have been given to the
18 physician? In 2017 examination -- I'm sorry -- he
19 filled out this paperwork for the physician to
20 review?

21 A. Correct.

22 Q. Okay. And also in your notes you have
23 notes about this particular examination; is that
24 correct?

25 A. Yes.

1 Q. If we could turn to that, to your notes.
2 I think it's the fourth page of your notes at the
3 very beginning of the document.

4 A. Uh-huh.

5 Q. Could you explain the conversation you
6 had with the doctor?

7 A. Yes. She was under the guise that she
8 could qualify an insulin-dependent driver for
9 intrastate operations only, and provided that he met
10 the PUCO's intrastate waiver for that, that is a true
11 statement, but that did not apply in this particular
12 individual's case. So we educated her with who to
13 contact at our office if future need was needed and
14 also how to help individuals apply for a federal
15 waiver if need be in the future.

16 Q. At the time you spoke to the doctor, did
17 she at any time tell you the reason why she was
18 writing the intrastate -- only allowing him to drive
19 intrastate was because of his vision?

20 A. Because of his vision?

21 Q. Yeah.

22 A. No.

23 Q. Did she give you any other reasons why
24 she would have limited his driving to intrastate?

25 A. His --

1 MR. GRIFFITH: Objection. We need to
2 talk about things that she actually said, not things
3 that she might have said.

4 MR. EUBANKS: No, I'm asking if she did.

5 MR. GRIFFITH: Maybe restate the question
6 for him.

7 Q. (By Mr. Eubanks) The question is, again,
8 did she ever tell -- as a part of that conversation,
9 did she ever list any other reasons why she limited
10 his certificate?

11 A. Yes.

12 Q. His certificate to intrastate only.

13 A. Because of the insulin use.

14 Q. Was that the sole reason that she gave
15 during your interview?

16 A. Correct.

17 Q. And she believed he was using insulin
18 because of the information that the driver provided,
19 correct?

20 A. Correct.

21 Q. I'd like you to take a look at -- you
22 were handed a series of exhibits from the defense.
23 If you could look at Defense Exhibit 3 under the
24 section entitled Health History, the section that's
25 completed by the driver, do you see that?

1 A. What's the date?

2 Q. It is March 21, 2014, would be the date
3 of the examination. Do you see that?

4 A. I do.

5 Q. In the notes do you see where it says
6 "Dr. Imler, diabetic since 1997," and then it says
7 "Metformin & diet."

8 A. Yes.

9 Q. And this would have been in 2014,
10 correct? I believe we established it's 2014.

11 A. Correct.

12 Q. But based off of the 2010 examination
13 report, indeed he was using insulin to medicate the
14 diabetic situation, right?

15 MR. GRIFFITH: Objection. Are we talking
16 about 2014 or 2010?

17 MR. EUBANKS: 2010. That's what I said,
18 I believe.

19 Could you read back the question?

20 (Record read.)

21 THE WITNESS: Can I answer?

22 MR. GRIFFITH: Withdraw the objection.

23 A. That is correct.

24 THE ATTORNEY EXAMINER: You may answer.

25 A. That is correct.

1 Q. So if someone was reading this
2 examination report to conclude that since 1997 he was
3 using metformin and diet in order to control his
4 diabetic situation, that would be a false conclusion,
5 correct?

6 A. Based upon what's here, yes.

7 Q. I'd like you to also look at Defense
8 Exhibit 2. Once again -- I realize yours isn't
9 marked. This would be the exam that's on March 29,
10 2013. Do you see that? Do you have that before you?

11 A. 2013?

12 Q. Yes.

13 A. Yes.

14 Q. If you once again go under the Health
15 History, and in the comment section, once again,
16 filled out by the driver, it says, "Dr. Imler is
17 treating diabetes 150 mg of metformin daily since
18 1997." Do you see that?

19 A. I do.

20 Q. If someone was reading this document and
21 reached the conclusion that since 1997 he was using
22 pills in order to treat his diabetes, would they be
23 reaching a false conclusion based off of the 2010
24 examination report?

25 A. Yes.

1 Q. I'd like you to look at Defense
2 Exhibit 1. That would be the 12/29/2012 exam. Do
3 you have that before you?

4 A. I do, sir.

5 Q. If you could look under the section
6 marked Health History, once again the comment section
7 filled out by the driver, part of it says, "Dr. Imler
8 treating diabetes. Diabetic since 1997. Taking
9 metformin." Do you see that?

10 A. I do.

11 Q. If someone was to read this document and
12 conclude from the document that the driver was using
13 metformin since 1997 in order to treat his insulin,
14 would that be a false conclusion based off of the
15 2010 examination report?

16 A. Yes, sir.

17 Q. So just correct me, if I understand what
18 your testimony is stating today -- first of all, you
19 remember being asked on cross what brought you to --
20 what conclusions -- well, what you reviewed that
21 brought you to the conclusion that the driver was,
22 indeed, insulin dependent. And is it a correct
23 summary to state that you believed that the driver
24 since 2010 has been lying about the fact that he uses
25 insulin in order to treat his diabetes, and that

1 that's confirmed for you from the 2010 examination
2 report and also reconfirmed to you by the 2017
3 examination report in which he indicates that he uses
4 insulin in order to treat his diabetes; is that
5 correct? Is that a correct summary?

6 A. I would say that the 2017 exam no doubt
7 indicates he needs insulin for his treatment. I
8 wouldn't say that he necessarily lied, but the
9 evidence points to that.

10 Q. Do you believe that on the 29th, on
11 1/29 -- sorry. Let me ask the question again.

12 Do you believe that on 12/28/2010 --
13 first of all, 12/28/2010, wasn't that the date of the
14 first 2010 examination report? Let me look at that
15 again.

16 A. Yes.

17 Q. Okay. And then the subsequent one was
18 12/29/2010, correct?

19 A. Correct.

20 Q. So do you believe that he was using
21 insulin on the 28th and no longer using it on the 29?

22 MR. GRIFFITH: Objection. I don't know
23 what the basis for that opinion is.

24 THE ATTORNEY EXAMINER: Overruled. The
25 witness can answer if he knows.

1 A. I believe he was, yes.

2 Q. You believe he was doing what? I'm
3 sorry.

4 A. Using insulin on the 29th.

5 Q. So you do believe that on the 12/29/2010
6 Medical Examination Report, the portion that was
7 filled out by the driver was incorrect?

8 A. Correct. If you look at the fact that
9 the original exam on 12/28 was done by a different
10 physician, if, in fact, he were controlling it with
11 pills and diet, why do you need to go to a different
12 physician on the 29th in order to get certified? The
13 original physician should have said, Okay, good to
14 go.

15 Q. So on the 29th where he says it's diet
16 and pills only, you do believe that's a lie, correct?

17 A. I do.

18 MR. EUBANKS: One second.

19 (Discussion off record.)

20 Q. (By Mr. Eubanks) As a result of the
21 documentation that was provided to you by opposing
22 counsel, the various defense exhibits, has it changed
23 your position in any way on whether or not the driver
24 was using insulin?

25 A. No.

1 MR. EUBANKS: I have no further questions
2 for the witness.

3 MR. GRIFFITH: One quick follow-up, your
4 Honor.

5 - - -

6 REXCROSS-EXAMINATION

7 By Mr. Griffith:

8 Q. Mike, in the beginning of your documents
9 here there is a medical card dated 3/8/17 for
10 Mr. Goubeaux. It's near the beginning of
11 Mr. Goubeaux's documents, two pages after the CDLIS
12 report. Do you see that?

13 A. Yes, sir.

14 Q. And then at the end of your documents,
15 the next-to-last page or the third-from-last page
16 after the long form 2017, there's another medical
17 examiner certificate. Do you see that? It's a big
18 medical examiner certificate also dated 3/8/17, the
19 third page from the end of the packet.

20 A. Yes.

21 Q. Okay. And then Defense Exhibit 6, the
22 front of Defense Exhibit 6, has a medical examiner
23 certificate. Do you see that?

24 A. Uh-huh.

25 Q. Okay. The earlier, the smaller medical

1 exam certificate in your papers, has a couple of
2 circles on the right side of the page, correct, black
3 dark circles?

4 A. Yes.

5 Q. And then Defense Exhibit 6 has the
6 outlines of a couple of circles on the right side of
7 the page, correct?

8 A. Yes, sir.

9 Q. And then the large medical examiner
10 certificate with the same date, 3/8/17, has fax
11 information from this 567 area code number, correct?

12 A. Yes.

13 Q. And it does not have any circles on the
14 right side of the page, correct?

15 A. I do not see any, no.

16 Q. And the small certificate from earlier in
17 your packet has some information blacked out; is that
18 correct?

19 A. It's a highlight. It didn't scan very
20 well.

21 Q. Okay. But the one later in your packet
22 does not have that information, any redaction or
23 highlighting shown, correct?

24 A. No, sir.

25 MR. GRIFFITH: Nothing further, your

1 Honor.

2 THE ATTORNEY EXAMINER: Let's take a
3 ten-minute recess.

4 (Recess taken.)

5 THE ATTORNEY EXAMINER: Back on the
6 record.

7 Mr. Eubanks, would you like to move your
8 exhibits into the record?

9 MR. EUBANKS: I would. At this time I
10 would like to move State's Exhibits 1, 2, and 3 into
11 evidence.

12 THE ATTORNEY EXAMINER: Any objections?

13 MR. GRIFFITH: No objections, subject to
14 marking them confidential for filing purposes.

15 MR. EUBANKS: And I'm in total
16 agreement -- well, for State's Exhibit 3. I don't
17 think it's necessary for 1 and 2.

18 MR. GRIFFITH: Just remind me, 1 and 2 is
19 just a list of drivers?

20 MR. EUBANKS: Exhibit 2 is the Case View
21 Report.

22 MR. GRIFFITH: Do we need to mark them
23 confidential now?

24 THE ATTORNEY EXAMINER: I would like to,
25 if possible.

1 MR. GRIFFITH: I think that's fine, just
2 3.

3 THE ATTORNEY EXAMINER: Okay. We will
4 move 1, 2, and 3 into the record, and Staff
5 Exhibit 3 will be confidential.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 THE ATTORNEY EXAMINER: Mr. Griffith,
8 would you like to call your witness?

9 MR. GRIFFITH: Yes, your Honor. I call
10 Pete Voelker.

11 - - -

12 PETER VOELKER

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

15 DIRECT EXAMINATION

16 By Mr. Griffith:

17 Q. Mr. Voelker, what is your job with
18 Midwest Logistics Systems?

19 A. General counsel.

20 Q. How long have you been in that role?

21 A. Just over three years.

22 Q. And in that role, what are your
23 responsibilities, generally?

24 A. Several responsibilities regarding legal
25 issues that the company faces. In particular here I

1 work in conjunction with our HR department, you know,
2 maintaining employment files and making sure our
3 driver files are accurate and our drivers are
4 qualified.

5 Q. And in preparation for responding to this
6 hearing, did you review Mr. Goubeaux's personnel
7 file?

8 A. I did.

9 Q. And in that personnel file did you see a
10 copy of the 2017 long-form medical examination that
11 we have been reviewing?

12 A. I did not. The first time I've actually
13 seen that document was today.

14 Q. And have you ever seen a document with
15 that GFI FAXmaker at the bottom?

16 A. Not that I know of.

17 Q. And is the phone number at the top, the
18 565 area code number, a Midwest Logistics number to
19 your knowledge?

20 A. I don't think so.

21 Q. So when Mr. Goubeaux was issued a medical
22 card in 2017, all you saw was the medical card,
23 right?

24 A. Correct.

25 Q. And what do you think when you receive a

1 medical card with a driver's qualifications?

2 A. Well, the medical card is the only
3 document in the FMCSA process that we're required to
4 obtain. Often it is is only document that we get.
5 At that point that document is then verified to be on
6 the motor vehicle record, which is why many of the
7 motor vehicle records is with the medical documents.
8 So we rely upon those medical certification as
9 they're the only document in the process that we are
10 required to maintain.

11 Q. And is that FMCSA document in front of
12 you?

13 A. It's not, no.

14 MR. GRIFFITH: I should make more copies.
15 Mike, do you still have a copy of that.
16 Permission to approach, your Honor.

17 THE ATTORNEY EXAMINER: You may.

18 Q. (By Mr. Griffith) Mr. Voelker, in
19 preparing for this hearing and in reviewing Midwest
20 Logistics' obligations under the FSCMA regulations,
21 did you review this document?

22 A. Yes.

23 Q. What did this document tell you about
24 Mr. Goubeaux's medical history and qualifications to
25 drive?

1 A. Well, obviously, in general, there are
2 some specific rules with regard to diabetes. It did
3 speak to the metformin medication.

4 Q. Does taking metformin disqualify Mr.
5 Goubeaux from operating a commercial motor vehicle?

6 A. No. Nor do I believe there was any
7 exception required for the diabetes.

8 Q. And by exception do you mean the special
9 waiver to be able to continue to operate a commercial
10 motor vehicle?

11 A. Correct.

12 Q. That is not required for Mr. Goubeaux to
13 operate a commercial motor vehicle?

14 A. Correct.

15 Q. You also reviewed Defense Exhibits 1
16 through 6, and you found those documents at Midwest
17 Logistics Systems?

18 A. I did, yes.

19 Q. Those are all true and accurate copies of
20 documents in the Midwest Logistics Systems' personnel
21 files?

22 A. They are.

23 MR. GRIFFITH: Move to mark Defense
24 Exhibit 7, the FMCSA document in front of the witness
25 at the moment.

1 THE ATTORNEY EXAMINER: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. GRIFFITH: I have nothing further.

4 THE ATTORNEY EXAMINER: Any
5 cross-examination?

6 MR. EUBANKS: Yes, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Eubanks:

10 Q. Do you have reason to deny the fact that
11 the 2010 examination report was in Midwest's files at
12 the time of the compliance review?

13 A. No. There were two 2010 reports, yes.
14 No, I do not have any reason to deny it.

15 Q. In fact, as head of compliance, at
16 Midwest did you review those documents for the
17 driver?

18 A. I have since reviewed his entire file
19 after we became aware of the alleged violation.

20 Q. Before becoming aware of the violation,
21 you had not reviewed his file?

22 A. I do not recall if I reviewed his file,
23 but I would think based on our normal course that
24 someone in our HR department would have reviewed his
25 file.

1 Q. How long have you been with Midwest?

2 A. Three years.

3 Q. So you would not have been there in 2010.

4 A. Correct.

5 Q. And when you were hired on, would you
6 have brought yourself up to date about the medical
7 files of the different drivers for the company?

8 A. Like I said, I don't recall if I
9 specifically reviewed this file, but I have reviewed
10 several employees' files over the years.

11 Q. Was this particular file ever -- well,
12 was there a person in your position before you took
13 your current job with Midwest?

14 A. There was a general counsel prior to me,
15 yes.

16 Q. That had the same duties you had?

17 A. I'd say similar, yes.

18 Q. Had he been employed there since 2010?

19 A. No.

20 Q. Okay. Has your position existed since
21 2010?

22 A. No.

23 Q. When did your position come into
24 existence for Midwest?

25 A. I'd be speculating exactly, but I want to

1 say early 2014, maybe.

2 Q. Early 2014. Would there have been a
3 nonattorney that would have performed similar types
4 of duties in 2010?

5 A. Yes, I believe so.

6 Q. And was this ever flagged to you by
7 anyone who had your position or a similar position
8 with Midwest? Was the 2010 medical report for
9 David -- I'm having a hard time pronouncing his last
10 name. G-O-U-B-E-A-U-X, was his medical report ever
11 flagged for you?

12 A. I don't know.

13 Q. Okay. Now being aware of the 2010
14 examination report that was performed on 12/28/2010
15 and then the -- I'm sorry. Yes, on 12/28/2010 and
16 then the subsequent one that was performed on
17 12/29/2010, does that cause you any concern with
18 regard to the driver's insulin use?

19 A. Well, I'm not a doctor, so I would say
20 no, particularly in light of 2012 through 2017. All
21 the records we had on file, including three long
22 forms, all indicated no insulin use.

23 Q. Is it possible that the driver could have
24 been lying since 2010?

25 A. It's possible.

1 Q. And is there any records at Midwest that
2 you know of where a person in your position or in a
3 similar position requested from a doctor information
4 that would square up why the examination report on
5 12/28/2010 does not match up with the examination
6 report on 12/29/2010?

7 A. I lost you there. Can you ask that
8 again, please?

9 Q. Would you agree that the examination --
10 have you been looking at the exhibits as they were
11 passed out earlier?

12 A. I did.

13 Q. You would agree that the 12/28/2010
14 report the driver wrote down that he used insulin; is
15 that correct?

16 A. Correct.

17 Q. And then after that report was voided or
18 his certificate was voided, he then went to another
19 doctor on 12/29/2010. Did you see that?

20 A. Yeah. I was confused by the voided. I
21 don't know if the certificate was being voided, if it
22 was the prior indications that were being voided, but
23 what I saw could very well be his change of
24 medication. People change medication. Doctors
25 change people's medications all the time. That's how

1 I viewed from one to the next.

2 Q. My question is, was that ever verified
3 from someone in your position or a similar position
4 in the past? Is there any documentation at Midwest
5 where they verified the best-case scenario, that all
6 he did was the very next day change his medication?

7 A. Yeah. I would say all the records from
8 2012 through 2017 that we had in our files verified
9 that he was using metformin and not insulin because
10 we did not have a long form in 2017 in our file.

11 Q. Okay.

12 A. We had no way of knowing that.

13 Q. Okay. While I understand what you're
14 saying right now, I still don't believe you're
15 answering my question. My question is in 2010 when
16 you had the driver on one day state that he was using
17 insulin and then on the next day state he's switching
18 to pills in order to treat his diabetes, in 2010 was
19 there a person in your position or a similar position
20 that requested information from a doctor in order to
21 square up the two different examination reports that
22 Midwest had on file in its records at that time?

23 A. In 2010?

24 Q. Yes.

25 A. I don't know if anyone specifically

1 verified the change in prescription other than the
2 medical record, the long form and certificate we have
3 on file that showed that.

4 Q. But you did say that after the violation
5 you went back and you reviewed his records, right?

6 A. Correct.

7 Q. Okay. When you reviewed his records, did
8 you see any follow-up in 2010, any documentation of
9 follow-up in 2010?

10 A. I did not.

11 Q. Okay. Why do you keep records dating all
12 the way back to 2010?

13 A. I think it's a good practice to keep
14 medical certification records that we receive.

15 Q. It would allow the person in your
16 position to actually review them, correct?

17 A. Correct.

18 Q. You would agree it would also allow for
19 the company to see whether or not a driver is being
20 consistent in the reports that it -- in the health
21 history that they document on their driver's fitness
22 determination?

23 A. To the extent we have the long form of
24 the examination documents, but we're not required nor
25 often we don't receive the long form.

1 Q. Okay. But currently you don't. In the
2 past, obviously, you did receive them?

3 A. From time to time. The last one we
4 received was on the 2014 examination date.

5 Q. And, obviously, you also received it in
6 2010.

7 A. Yes, and '13 and '12.

8 Q. Okay. The medical exam certificates that
9 the driver has received over the years, have they all
10 been K2 restrictions?

11 A. The medical certificates?

12 Q. Yes.

13 A. I'm not sure. I'd have to look at them,
14 if you would allow me.

15 Q. Sure. I believe Defense Exhibits 1
16 through 6 have various driver examination reports, if
17 you could.

18 MR. GRIFFITH: Permission to approach.

19 MR. EUBANKS: They're not up there?

20 MR. GRIFFITH: No. Mike took them.

21 THE WITNESS: Thank you.

22 Q. (By Mr. Eubanks) If you could review
23 those certificates and tell me if any of them have a
24 K2 restriction.

25 A. I don't see the letters and numbers K2 in

1 particular on any of these.

2 Q. You don't have the marked exhibits, but
3 this would be Defense Exhibit 6. It would be the
4 very front page. It says 3/8/18 is the expiration of
5 the certificate, so the certificate was started on
6 3/8/17, so I'm talking about the second page. Second
7 page, driver's record, service report for Ohio, do
8 you see what I'm talking about? That's at the very
9 top.

10 A. Oh, yes, I'm sorry. Sure.

11 Q. In the middle where it says
12 "Miscellaneous and State Specific Information" --

13 A. Yes.

14 Q. -- one, two, three, four, five, six,
15 seven lines down it says "CDL, RESTR: Intrastate
16 Only - Medical."

17 A. Yes.

18 Q. What do you understand that to say?

19 A. That indicates that his CDL was an
20 intrastate-only CDL, meaning he could only drive
21 commercially in the state of Ohio. That would be
22 consistent with the FMCSA examiner handbook for
23 drivers who take metformin to treat diabetes.

24 Q. So by reading the report, it would be
25 clear that the driver is a diabetic? At least you

1 know that, correct?

2 A. No, that wouldn't be clear.

3 Q. Okay. What wouldn't be clear then? I'm
4 sorry. What are you deriving from that again?

5 A. I'm saying that that CDL --

6 MR. GRIFFITH: I will object. This is an
7 asked-and-answered question. I don't know that we
8 need to rehash the same issue.

9 MR. EUBANKS: Well, I can ask her to read
10 the question and answer again.

11 MR. GRIFFITH: Sure.

12 MR. EUBANKS: I'm not sure I understood
13 his answer.

14 THE ATTORNEY EXAMINER: The witness can
15 clarify.

16 A. Clarify as to what I said before?

17 Q. Yes.

18 A. What that means is he has a CDL
19 restriction of intrastate only for a medical reason.
20 There could be several medical reasons for that. I
21 say several. There's a handful, I think.

22 Q. Okay. So I guess that's my point. So
23 based off of reading that, did you ever inquire from
24 a doctor or his physician what his restriction was or
25 what it's based on?

1 A. I think that it's self-evident from all
2 of his medical records from 2012 to 2017 that MLS had
3 on file that he had diabetes. He was treating
4 diabetes with metformin; otherwise, he wouldn't be
5 able to receive his CDL.

6 Q. Okay. And what law are you referring to
7 that says you can drive intrastate only if you have
8 diabetes and you're treating it with pills?

9 A. I don't -- that was the law I was
10 referring to.

11 Q. Okay.

12 A. To drive intrastate only.

13 Q. Well, correct me --

14 A. I'm not aware of the law that says what
15 you just said.

16 Q. Okay. Correct my paraphrasing of your
17 testimony where I'm wrong. I believe what you just
18 now told me, that the sixth line down that says "CDL,
19 RESTR: Intrastate Only - Medical," that when you
20 read that -- first of all, did you ever read that
21 line before? I imagine you read your own.

22 A. Yes.

23 Q. Okay. And this would also be a part of
24 Midwest Logistic's files?

25 A. Yes.

1 Q. Okay. By reading this you know that he
2 can only drive intrastate?

3 A. (Witness nods head.)

4 Q. But you don't know why, correct?

5 A. Well, in light of all the other records,
6 yes, I would know why, based off of reviewing these
7 records as a whole. From the document alone, had I
8 not looked at anything else, I would not know.

9 Q. But by looking at the rest of his records
10 you believe it was intrastate only because he has
11 diabetes and he's treating it with -- I believe it's
12 a pill.

13 A. I believe it is, too, metformin.

14 Q. Okay. So my question is, what law is it
15 that says if you have diabetes and you're treating it
16 with pills you can drive only intrastate, can only
17 receive a certificate for intrastate only?

18 A. I do not believe there's a law that says
19 that.

20 Q. So if you don't believe there's a law
21 that says that, why would you conclude by reading
22 this information that the reason why he has
23 intrastate only is because he has diabetes and is
24 treating it with a pill?

25 A. Because that is the only medical

1 condition I'm aware of that would raise an issue as
2 to a CDL restriction.

3 Q. Okay. But you performed no follow-up
4 with any physician in order to determine why he had
5 that restriction?

6 MR. GRIFFITH: Objection. That's the
7 third time we've rehashed this question.

8 MR. EUBANKS: I don't believe he's ever
9 said, No, I did not follow up with. We are talking
10 about 12 years of records.

11 MR. GRIFFITH: My objection stands, your
12 Honor. He's not required to answer the same question
13 three times.

14 MR. EUBANKS: But he's required to answer
15 it once.

16 MR. GRIFFITH: And he has answered it.
17 Reread the record, Robert. He has answered the
18 question. He is not required to say yes or no. He
19 can answer it however he wants to.

20 MR. EUBANKS: It's a very specific
21 question. Have you followed up with a doctor in
22 order to determine how --

23 MR. GRIFFITH: And he has given an
24 answer.

25 MR. EUBANKS: He has not.

1 MR. GRIFFITH: My objection stands, your
2 Honor.

3 THE ATTORNEY EXAMINER: The witness can
4 answer.

5 THE WITNESS: Can you ask me the question
6 again?

7 Q. (By Mr. Eubanks) It's a very specific,
8 narrow question. It's just simple. Once you read
9 this document, whenever you read it, whether it
10 was reviewing for this hearing or before, and you
11 read the part that says "CDL, RESTR: Intrastate only
12 - Medical," did you ever call David Q.
13 G-O-U-B-E-A-U-X's doctor and inquire about why he can
14 only drive intrastate?

15 A. The first time I remember reading this
16 was after the violation was assessed, the day that we
17 took Mr. Goubeaux off the highway and moved him into
18 a role where he wouldn't drive anymore because we
19 wanted to make sure that we were complying with the
20 law.

21 Q. That would be a great answer if my
22 question was, Did you take him off the highway?

23 MR. GRIFFITH: Objection, your Honor.

24 THE WITNESS: I'm getting to the point.
25 I did not ask a doctor because it was a moot point at

1 that time.

2 Q. Thank you.

3 A. Because we took him out of that role.

4 Q. That's all. A simple no would have
5 sufficed.

6 A. Okay.

7 Q. As a part of your position, do you have
8 any guidelines, any company guidelines, that you have
9 to follow in order to make sure that drivers are in
10 compliance?

11 A. I would say our primary guidelines are
12 the Federal Motor Carrier Safety regulations.

13 Q. Okay. Do you have any type of guidelines
14 that would require you to follow up on medical
15 examination records filled out by your drivers?

16 A. Not that I'm aware.

17 Q. Do you have any type of guidelines that
18 would -- that are in place that would require you to
19 verify that the information filled out by your
20 drivers in their medical examination reports were
21 accurate?

22 A. I would refer back to the FMCSA. We
23 refer back to this. We study those. We follow those
24 to the best of our ability. Those laws and
25 regulations exist for this whole process, and that's

1 what we follow.

2 Q. In 2010 we already established that at
3 least there's nothing on the record, in the
4 reports -- I mean, there's nothing in the company's
5 files to suggest there was a follow-up by the person
6 in your position or in a similar position that
7 followed up on the difference in the examination
8 reports done on 12/28/2010 and 12/29/2010.

9 As a follow-up question to that, would
10 there have been any company policy in place to
11 require a person in your position or a similar
12 position to inquire about the difference in those
13 examination reports?

14 A. I don't think so.

15 Q. If the same thing were to happen today,
16 let's say a driver came in and for some reason --
17 let's just assume you got the long-form examination.
18 I know you're not required to now, but for some
19 strange reason you got it, and you had information
20 that he went to a physician. He said he had
21 insulin-dependent diabetes one day and he didn't
22 receive a certificate, and then the next day he said
23 he was treating it with pills. Is there any current
24 company policy that would require you to follow up?

25 A. There is no written policy that

1 specifically addresses that situation, no.

2 Q. Is there any policy in general that would
3 cover that situation?

4 A. I don't know.

5 MR. EUBANKS: I have no further
6 questions.

7 THE ATTORNEY EXAMINER: Thank you.

8 Any redirect?

9 MR. GRIFFITH: Yes, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Griffith:

13 Q. Mr. Voelker, approximately how many
14 drivers does Midwest employ?

15 A. I would say between 900 and 1,000.

16 Q. Would you have time to review all of
17 their many years of driver qualification files if you
18 made that your full-time job?

19 A. Well, I couldn't make it my full-time
20 job, unfortunately, but even if I could, probably
21 not.

22 Q. In the three years you have been at
23 Midwest Logistics, I assume some driver issues, maybe
24 qualification related, have come up, right?

25 A. Yes.

1 Q. When something happens, what is the
2 general procedure? What does human resources do if
3 they have a question or something interesting comes
4 up in a driver's file?

5 MR. EUBANKS: Objection. He stated there
6 is no general procedure.

7 MR. GRIFFITH: I'll rephrase the
8 question, your Honor.

9 THE ATTORNEY EXAMINER: Thank you.

10 Q. (By Mr. Griffith) Mr. Voelker, there may
11 not be a written procedure, but what happens when
12 something comes up in a driver's file?

13 A. Well, if HR is confident they know what
14 to do with it, they handle the situation. It's hard
15 to answer that without regard -- without any specific
16 set of facts. But oftentimes they'll bring it to my
17 attention. I'll look into it, research the law,
18 research the regulations, would pull the driver
19 immediately, and make sure that all the driver
20 qualifications, which includes, you know, obviously,
21 medical certification is in the record and in
22 compliance before moving forward with that driver.

23 Q. And the human resources people who most
24 often review those documents, are they experienced
25 employees?

1 A. Yes.

2 Q. Do you have any that have been with the
3 company longer than you?

4 A. At least three of them have been that I
5 believe have reviewed files over the years. I mean,
6 some duties have changed over the years, but they
7 have been with the company longer than me, yes.

8 Q. When you have a question and you're still
9 stumped, what do you do?

10 A. I'll research it or I might call you or
11 call another attorney to get a second opinion so we
12 can ensure we are in compliance.your Honor

13 MR. GRIFFITH: Thank you.

14 THE ATTORNEY EXAMINER: Any additional
15 cross?

16 MR. EUBANKS: Just a couple.

17 - - -

18 RE-CROSS-EXAMINATION

19 By Mr. Eubanks:

20 Q. How many people are in your human
21 resources section?

22 A. We're not a company real big on titles,
23 so I would say people who handle human resources
24 issues and matters probably -- including myself?

25 Q. Sure.

1 A. Five, maybe four; four or five.

2 MR. EUBANKS: No further questions.

3 THE ATTORNEY EXAMINER: Thank you.

4 MR. GRIFFITH: Nothing further. We move
5 to admit Defense Exhibits 1 through 7, all subject --
6 1 through 6 marked confidential, please.

7 THE ATTORNEY EXAMINER: Any objections?

8 MR. EUBANKS: No objection.

9 THE ATTORNEY EXAMINER: We will move
10 Exhibits 1 through 7 into the record and 1 through 6
11 will be marked confidential.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 THE ATTORNEY EXAMINER: Is there any
14 other matters that need to be handled?

15 MR. EUBANKS: No.

16 MR. GRIFFITH: May we submit a written
17 statement to summarize our closing, or do you want to
18 do oral closings?

19 THE ATTORNEY EXAMINER: Do you have a
20 preference, Mr. Eubanks?

21 MR. EUBANKS: I'd rather just do it
22 orally, but, I mean, if you are leaving it up to me.

23 MR. GRIFFITH: That's fine with me. I'm
24 prepared to do it now if you want to proceed.

25 THE ATTORNEY EXAMINER: Yes. Let's go

1 with closing statements.

2 MR. GRIFFITH: Your Honor, may
3 Mr. Voelker retire?

4 THE ATTORNEY EXAMINER: I'm sorry. You
5 may be excused.

6 THE WITNESS: Thank you, your Honor.

7 MR. EUBANKS: Do you want me to start?

8 THE ATTORNEY EXAMINER: Sure, if you have
9 any closing remarks.

10 MR. EUBANKS: I do.

11 Your Honor, today the evidence that was
12 presented was that an inspector conducting a
13 compliance review was able to review several drivers
14 at Midwest Logistics Systems and came across one
15 specific driver who had a restriction on his driving
16 certificate. He followed up on that by looking into
17 the company files that were readily available; saw
18 that in those company files the driver was diabetic,
19 and that in 2010 he put on the driver's examination
20 report that he used insulin in order to treat his
21 diabetes.

22 Then subsequently, the very next day,
23 because he wasn't able to get a driver's certificate,
24 he went to another physician and said, No, I don't
25 use insulin. I use pills, and he got a driver's

1 certificate.

2 And from that day forward, having learned
3 the lesson that if he goes in and puts down he's
4 using insulin, he's not going to get a driver's
5 certificate, he became wise, and on all of these
6 subsequent driver examination reports, at least the
7 part that he fills out, he never mentions insulin
8 again.

9 In fact, he says that on Defense Exhibit
10 1, the 12/29/2012 examination, and on Defense
11 Exhibit 3, which would have been the March 21, 2014,
12 examination, and Defense Exhibit 2, which would have
13 been the March 29, 2013, examination, what he
14 basically says is, I've been a diabetic since 1997,
15 and the only thing I've ever used to treat it was
16 metformin daily.

17 Now, he kind of says that in a roundabout
18 way on the 12/29/2012 report and on the 3/21/2014
19 report. But on the Defense Exhibit 2 it's clear that
20 he lies. He says, "Dr. Imler is treating diabetes,
21 1,500 mg metformin daily since 1997."

22 So here we have an inspector doing what
23 apparently the compliance review person for Midwest
24 could not do, what apparently the human resources
25 department of Midwest could not do. Somehow they're

1 just overwhelmed, and they can't look at the past
2 reports and determine that they have a driver that's
3 clearly lying in order to get his examination
4 reports.

5 Instead, they just plead ignorance.
6 There's too many drivers for us to review. We
7 wouldn't go back and review things all the way back
8 to 2010, even though the witness for the defense on
9 the stands says the reason why they keep this stuff
10 in the records is so they can review it, so that they
11 can educate themselves. But, apparently they don't
12 educate themselves, and they don't follow up. They
13 don't call doctors in order to figure out why one day
14 a driver is using insulin and the next day he's not.

15 Had they followed up, particularly in
16 2017, just looking at the documentation in 2017, they
17 would have known that he went to a doctor who once
18 again stated that he uses insulin. So if there's any
19 doubt that somehow in 2010 he just about-faced and
20 went from insulin to pills, that should be completely
21 corrected by the fact that in 2017 he once again
22 states for the record that he uses insulin.

23 And, therefore, the inspector quite
24 correctly reached the conclusion that Midwest, even
25 if they didn't know, they should have known that they

1 had a driver who was obtaining driving certificates
2 by falsely filling out the medical examination
3 records.

4 The violation that was cited is proper.
5 The forfeiture as well is proper, and that's all.

6 THE ATTORNEY EXAMINER: Thank you.

7 Mr. Griffith.

8 MR. GRIFFITH: Your Honor, I object
9 sternly to impugning Mr. Goubeaux's reputation here.
10 There's nothing in the record that suggests he was
11 lying and nothing that suggests his lies were
12 overlooked by my client.

13 The only thing stated correctly here in
14 closing is that the issue is whether or not Midwest
15 Logistics Systems knew or should have known about the
16 current use of insulin by Mr. Goubeaux while he was
17 operating a commercial motor vehicle.

18 Now, I think the evidence is crystal
19 clear that they had nothing in their file that
20 indicated use since 2010. In fact, he had gone and
21 changed his medical treatment record, and for the
22 next seven years he was using a noninsulin treatment
23 for diabetes, which clearly qualified him to operate
24 a commercial motor vehicle.

25 If he lied for six years, why did he go

1 and all of the sudden, now I'm going to be truthful
2 in 2017. Now I want to reveal I've been using
3 insulin for all these years.

4 But the truth is that all of those
5 medical long forms in evidence say that he is honest,
6 that he has been diabetic since 1997. Being diabetic
7 does not disqualify you from operating a commercial
8 motor vehicle and is not the issue today. The issue
9 is whether or not he used insulin.

10 Those long forms do not indicate that he
11 used insulin. The two that indicated he used insulin
12 were in 2010, which he subsequently corrected, you
13 know, apparently changed his medical treatment plan
14 so that he could retain his job, and he went back and
15 became qualified to operate a commercial motor
16 vehicle. And he remained qualified and controlled
17 his diabetes for at least six years without using
18 insulin before he honestly went to the doctor and
19 apparently revealed insulin.

20 We don't know anything about when he
21 started using insulin or whether he actually is using
22 insulin. All we have is that long form that I think
23 clearly has been produced after this investigation
24 began by the doctor directly to the PUCO and was
25 never in the personnel files of Midwest Logistics

1 Systems.

2 If they did not know, and they did not
3 have any reason to know that he was using insulin
4 while operating a commercial motor vehicle, there is
5 no violation. And the fact that the investigator
6 can't remember where he got that record I think is
7 not a barrier to the Court clearly evaluating the
8 evidence on its own and deciding that the October 18,
9 2017, facts didn't come from Midwest Logistics and
10 was not in Midwest Logistics' personnel files.

11 The case that I think, the decision that
12 I think is most determinative here is an FMCSA
13 decision, and the PUCO should defer to FMs
14 interpretation on these matters. In re: RoadRunner
15 Expeditors, Inc., FMCSA Docket 2004-19519, petitioner
16 knew or should have known see that his driver had an
17 established medical history or clinical diagnosis of
18 diabetes mellitus currently requiring insulin to
19 control it.

20 And that is the standard. I think
21 everybody agrees that the question is whether or not
22 Midwest Logistics knew or should have known. But you
23 heard my client, general counsel for Midwest
24 Logistics, a large, well-organized motor carrier,
25 state this was not in the personnel file. They had

1 no knowledge of this use of insulin. They had no
2 reason to know that he had insulin, and the staff
3 apparently wants to hold them to a standard that
4 requires their head attorney to review 900 medical
5 records on a regular basis. That's just
6 unreasonable, and that's not what the standard is.
7 That's not what the regulations require.

8 Once a physician, a medically trained,
9 specially certified doctor or nurse who is registered
10 with the FMCSA has evaluated that individual, a
11 driver, knowing what the regulations are and the
12 obligations of driving a large vehicle, commercial
13 motor vehicle, once they have signed off that that
14 driver is physically qualified, Midwest Logistics is
15 not in a position to double-check, double-guess that
16 opinion.

17 If something were to appear that would
18 cause them to do that, you heard him testify that
19 they would do that, that they have experienced staff
20 that know what the regulations are and that they run
21 those things up the chain of command all the way to
22 their outside counsel's office when necessary.

23 There's a whole chain of FMCSA opinions
24 that hold the same standard, that the question is
25 whether or not there is currently any use of insulin

1 for control. The RoadRunner case holds that in 2004,
2 the FMCSA in that case had a recent roadside
3 inspection where a driver had been cited for using
4 insulin, for injecting insulin, and then the motor
5 carrier put him right back on the road without doing
6 any investigation.

7 That is not the case here. Here eight
8 years ago the driver had some indication that he
9 possibly used insulin and then changed his medical
10 treatment and was no longer using insulin. And eight
11 years ago that happened. And when the investigation
12 occurred in 2017, he had more than six years of clean
13 medical examinations with no indication of using
14 insulin, and, in fact, three long-form medicals that
15 explicitly indicated he had not been using insulin
16 for that control.

17 Other FMCSA cases that hold the same
18 standard include In Re: Cogan's Wrecker Service,
19 FMCSA 2012-0251. That was an uncorrected vision
20 case, and in that case the motor carrier had a recent
21 long form where the driver had disclosed uncorrected
22 vision and received a medical card anyway.

23 That is not the case here. Here we did
24 not have a long-form medical disclosing anything in
25 more than eight years, more than seven years, at

1 least, and there was just no duty to go back and
2 reinvestigate that case.

3 There's another series of cases that look
4 at hours-of-service violations, including Goya Foods,
5 Inc., FMCSA 2011-0156. The same standard applies,
6 did they know or should they have known of the
7 violation.

8 Those cases the motor carrier is expected
9 to have some process in place in order to track those
10 violations. Hours of service is a different kind of
11 violation because they keep logs. In fact, today it
12 is all kept by computers so those are basically
13 automated.

14 This is not that case. This is case
15 where we have medical records. We have a doctor who
16 is reviewing those medical records and signing off on
17 them. The system in place to monitor that is an
18 experienced human resources department, doctors who
19 are registered with the FMCSA, and all of those
20 people who review those documents and whether or not
21 that person is qualified to drive, and then running
22 up the chain of command if there is any question at
23 all.

24 The staff has not met their burden in
25 this case. Their burden is to show that Midwest

1 Logistics knew or should have known that Mr. Goubeaux
2 was operating a commercial motor vehicle while
3 currently using injectable insulin or, I guess, any
4 insulin to manage it, but he was not. The records
5 indicate he was not, and the only indication that he
6 had been using insulin in 2017 was a document that
7 the inspector found by apparently driving to
8 Wapakoneta.

9 And if that is the expectation, that
10 Midwest Logistics send inspectors out all across the
11 state of Ohio into doctors' offices to obtain medical
12 records, that is a new standard, and Midwest
13 Logistics, obviously, has no knowledge of that
14 requirement. I think that is a ridiculous assertion.

15 They did not meet their burden. Midwest
16 Logistics is a responsible company that operates very
17 safely, and if they had known about this, they would
18 have operated differently, would have treated
19 Mr. Goubeaux differently, and would have made a safe
20 choice to keep him off the road, as they did as soon
21 as they learned about his insulin use.

22 We respectfully ask you dismiss the
23 violation.

24 Thank you.

25 THE ATTORNEY EXAMINER: Thank you.

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Anything further?

MR. EUBANKS: No, your Honor.

THE ATTORNEY EXAMINER: The case is submitted on the record and the hearing is adjourned.

MR. GRIFFITH: Thank you, your Honor.

THE ATTORNEY EXAMINER: Thank you.

(The hearing adjourned at 1:10 p.m.)

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113

CERTIFICATE

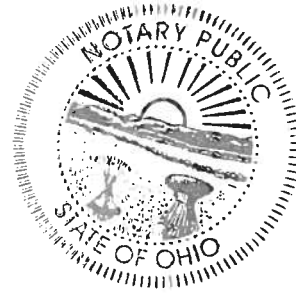
I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, August 15, 2018, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson

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

My commission expires April 5, 2019.

(rfa-87591)



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in

Case No(s). 17-2556-TR-CVF

Summary: Transcript In the Matter of: Midwest Logistics Systems, LTD., Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on August 15th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.