

PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of IMG Trucking, :
Inc., Notice of Apparent : Case No.
Violation and Intent to : 22-536-TR-CVF
Assess Forfeiture. :

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PROCEEDINGS

Before Jim Lynn, Attorney Examiner, held at the
Public Utilities Commission of Ohio, Hearing
Room 11-D, Columbus, Ohio, on Thursday, August
24, 2023, at 10:00 A.M.

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- - -

1 APPEARANCES:

2 Mr. Michael J. Yemc, Jr.
3 P.O. Box 468
4 Delaware, Ohio 43015

5 On behalf of the Respondent.

6 Ms. Ambrosia Wilson
7 Senior Assistant Attorney General
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the
11 Public Utilities Commission
12 of Ohio.

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INDEX TO WITNESSES		
- - -		
STAFF WITNESSES	DIRECT	CROSS
Tom Bartfai	6	16
Rod Moser	25	39

- - -

INDEX TO EXHIBITS

- - -

STAFF EXHIBITS	MARKED	ADM
1 Driver/Vehicle Examination Report	8	40
1A Pictures of Truck and Bill of Lading	8	40
2 Notice of Apparent Violation And Intent to Assess Forfeiture	29	40
3 Notice of Preliminary Determination	29	40

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2
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14
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Thursday Morning,
August 24, 2023.

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ATTORNEY EXAMINER: The Public
Utilities Commission of Ohio has assigned for
hearing at this time and place Case No.
22-536-TR-CVF In the Matter of IMG Trucking
Notice of Apparent Violation and Intent to
Assess Forfeiture.

I am Jim Lynn, the Attorney Examiner
assigned to hear this case. And at this time we
will have the appearances of the parties
beginning with the Commission's Staff.

MS. WILSON: Thank you, your Honor.
On behalf of the Ohio Attorney General, David
Yost; Public Utilities Chief John Jones;
Ambrosia Wilson, on behalf of the Staff of
the PUCO.

ATTORNEY EXAMINER: Okay. And for
IMG Trucking.

MR. YEMC: Yes, good morning.
Michael Yemc, Supreme Court No. 0065390 on
behalf of IMG Trucking.

ATTORNEY EXAMINER: Thank you. Ms.
Wilson, you can proceed with your case and who

1 would you like to call as your witness?

2 MS. WILSON: Thank you. I would
3 like to call Inspector Bartfai

4 (WITNESS SWORN)

5 - - -

6 TOM BARTFAI

7 called as a witness, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Wilson:

11 Q. Would you please state and spell
12 your name for the record?

13 A. Tom Bartfai, T-O-M B-A-R-T-F-A-I.

14 Q. Thank you. And where are you
15 employed?

16 A. The Public Utilities Commission of
17 Ohio, Transportation Department.

18 Q. And what's your position?

19 A. My title, position, my title is
20 Hazardous Materials Specialist 2.

21 Q. And how long have you been in this
22 position?

23 A. This October will be 29 years.

24 Q. And what's your involvement in this
25 case?

1 A. I was the inspector who performed
2 the inspection.

3 Q. Would you please describe or explain
4 the training you had for this position?

5 A. There is a litany of classes you
6 have to take to be certified to complete
7 roadside inspections. Do you want all those
8 listed?

9 Q. No. That is okay. And you have
10 done specific training for hazmat, obviously?

11 A. I am actually one of two in the
12 State certified to teach the USDOT 40-hour
13 roadside inspection course which enables other
14 State Troopers, State employees in the State of
15 Ohio to inspect trucks carrying hazmat. And
16 also teach it out of state as well.

17 Q. And besides what you just said have
18 you had any other training directly related to
19 the matter that you inspected? Just what you
20 already said?

21 A. I am not sure I understand.
22 There are requirements that we have to meet
23 every year to be able to do it.

24 Q. But you had specific training in
25 hazmat and how to perform these inspections?

1 A. Right. Class I teach, I had 29
2 years ago.

3 Q. As part of your inspection did you
4 write an inspection report?

5 A. I did.

6 MS. WILSON: Your Honor, may I
7 approach?

8 ATTORNEY EXAMINER: Yes, you may.

9 MS. WILSON: I am actually handing
10 out two exhibits that are related. And they
11 have been premarked as Staff Exhibit 1 and Staff
12 Exhibit 1A.

13 (EXHIBITS HEREBY MARKED FOR
14 IDENTIFICATION PURPOSES)

15 Q. Inspector, do you have in front of
16 us what I have premarked as Staff Exhibits 1 and
17 1A?

18 A. Yes.

19 Q. Okay.

20 A. I have Exhibit 1 and Exhibit 1A.

21 Q. Yes. Can you describe the document
22 marked as 1A, please?

23 A. This is the electronic version of
24 the roadside inspection I completed once it gets
25 uploaded. The format is pretty much the same.

1 It doesn't look quite the same as what was given
2 to the driver, but it's identical.

3 Q. So this is basically what gets
4 imported to the PUCO system from your computer?

5 A. Yes.

6 Q. Obviously you have seen this report
7 before?

8 A. I have.

9 Q. Is this the report that you created
10 of the inspection?

11 A. It is.

12 Q. Is this a true and accurate copy?

13 A. It is.

14 Q. Is this document a Commission
15 record?

16 A. It is.

17 Q. Is it kept in your ordinary course
18 of business?

19 A. Me?

20 Q. The Commission.

21 A. The Commission, yes.

22 Q. Yes. And is it the practice of
23 the Commission to make this report?

24 A. It is.

25 Q. And did you report on matters

1 observed pursuant to a duty imposed by law as to
2 which was a duty to report?

3 A. I did.

4 Q. And is this document in
5 substantially the same condition as when it was
6 prepared? If not, what's different?

7 A. It's identical, the content is
8 identical, physically what it looks like.

9 Q. Got it. And was the reason for
10 producing this report an inspection of carrier
11 IMG trucking?

12 A. Correct.

13 Q. And does the driver get a copy of
14 the report at the stop?

15 A. He does.

16 Q. Can you describe for us what
17 happened during the inspection just from start
18 to finish?

19 A. This was February of 2022. My
20 process for inspecting a truck is pretty much
21 the same.

22 Q. That is fine.

23 A. Been that way for almost 30 years.
24 I greet the driver, ask him for his bill of
25 lading. Second question would be to ensure he

1 has got emergency response information. Once I
2 look at the bill of lading it's common practice
3 to view the load, to inspect the load.

4 If it's sealed, of the seal is brook
5 it gets replaced by one of the State's. At
6 least on the report it will show seal changed.
7 It would on the one given to him.

8 Inspect the load, frequently I climb
9 on top of it, depending on what you need to see.
10 Then I verify placards, markings, labels and
11 shipping papers to make sure they meet all the
12 requirements in Title 49.

13 Q. Okay.

14 A. Do you want to cover non-hazmat
15 stuff I do or just hazmat?

16 Q. Well, this is a hazmat case, so --

17 A. Okay. We are good.

18 Q. All right. Would you explain why
19 you wrote the violations that you wrote?

20 A. Okay. Go right in order? You want
21 to do it that way?

22 Q. Yes.

23 A. The first one for no technical name.
24 Am I allowed to use these?

25 Q. Yes.

1 A. On the picture of the bill of lading
2 for the shipping description, UN1993, Flammable
3 liquids n.o.s. 3, PG III. It specifically
4 requires a technical name, chemical name in
5 parentheses, that would make that commodity or
6 that product flammable. So that was missing,
7 that was the first one.

8 The 172.502(a)(1), prohibited
9 placarding. And the one right below it,
10 172.504A, vehicle not placarded as required.

11 For this shipping description it
12 says it's a flammable liquid. There is nothing
13 included in it that would denote that it's
14 combustible at all.

15 The placards displayed on the
16 trailer with the white bottom are for
17 combustible liquids. So first that is
18 prohibited. You can't display a combustible
19 placard for a flammable load.

20 And then 504 is where it
21 specifically says a flammable placard has to be
22 displayed for a flammable product.

23 The 172, bank up real quick,
24 172.203K, is where the technical name is
25 required. That was actually cited against the

1 shipper since they prepared the bill of lading.

2 So then consequently 177.817(a) is a
3 carrier site or violation for the shipping paper
4 not having a technical name.

5 The 502A1, 172.502A1 and 172.504A,
6 the shippers are required by law to provide or
7 offer placards. So those two are actually cited
8 probably against the shipper.

9 And 177.823A is the corresponding
10 placarding violation for the carrier, of which
11 the way this one was it was out of service.

12 Q. Okay. Now, who is responsible for
13 providing or ensuring that shipping papers are
14 provided?

15 A. The shipper. In this case because
16 it came from a shipper -- depending on the
17 trucking company's line of work, many of them
18 produce their own. This one wasn't. It was
19 produced by Shin-Etsu Silicones in Akron.

20 Q. Okay. Now, these photographs I
21 handed out, Staff Exhibit 1A, did you take these
22 photos?

23 A. I did.

24 Q. And are the photos true and accurate
25 representations of the inspection?

1 A. Correct. They are.

2 Q. And all the photos were taken at the
3 time of the inspection?

4 A. Correct.

5 Q. And do these photos represent the
6 same USDOT number that you included on the
7 inspection report?

8 A. They do.

9 Q. Thank you. And did you also insert
10 the license plate number of the vehicle in the
11 inspection report?

12 A. I did, but that is not on this one.

13 Q. Okay.

14 A. On this copy, or this version of it.

15 Q. Got you. Now, you previously
16 discussed that the wrong placard was provided
17 and placed on the trailer. Why is it important
18 that the placard is provided and placed on the
19 trailer?

20 A. Well, in this specific class, class
21 3 is flammable, so it's for emergency response
22 purposes, specifically the flash point. So,
23 anything combustible that's above a flash point
24 of 140 by definition of Title 49. Products can
25 be reclassified as combustible if the flash point

1 is between -- or above 100.

2 And what shipping description,
3 flammable liquid n.o.s. it's got a packing group
4 3, so packing group 3 by definition in the book
5 is a flash point below 140.

6 Q. And you say the book, what do you
7 mean by book?

8 A. Title 49.

9 Q. You already said that it's usually
10 the shipper or the carrier that provides the
11 placards, and in this case it was the shipper.

12 Does the carrier or driver have
13 responsibility to ensure that correct placards
14 were provided based on the bill of lading before
15 they leave with the load?

16 A. They should. They are the one
17 responsible for it out on the public highways as
18 as soon as they leave.

19 Q. And there wouldn't be any exemptions
20 or any other reasons why the placards were used
21 the way that they are?

22 A. No, because on the shipping
23 description there is nothing that shows that
24 it's combustible because if the portable tanks,
25 the packages inside the trailer, would of had

1 these same ones on it, based on that shipping
2 description there would have been additional
3 labeling violations cited against the shipper.

4 Q. Is there anything we have not
5 discussed that you would like the Commission to
6 know for the record?

7 A. I don't believe so, no.

8 MS. WILSON: Thank you. I have no
9 further questions for the witness at this time.
10 But I would like to reserve him for possible
11 redirect.

12 ATTORNEY EXAMINER: Thank you. Mr.
13 Yemc, any questions?

14 MR. YEMC: Yes. Thank you.

15 CROSS-EXAMINATION

16 By Mr. Yemc:

17 Q. Now, Inspector, this stop happened
18 over a year and half ago; is that correct?

19 A. Yes.

20 Q. Do you remember this stop?

21 A. It was 18 months ago. This specific
22 stop, no. Do you know how many trucks I
23 inspect?

24 Q. Please tell me?

25 A. At a minimum 150 a year. Typically

1 it's between 175 and 200. So since then I have
2 probably inspected somewhere in the neighborhood
3 of 300 trucks.

4 Q. So you don't remember the reason why
5 you pulled this truck over?

6 A. Well, we have various codes that we
7 use. One of them is the next random truck
8 displaying placards. I forget what number I was
9 using that day. Some days I -- every third
10 truck with a placard I stop for inspection. It
11 could be every 5th one.

12 Q. But you don't know specifically for
13 this stop what strategy you used that day?

14 A. It was based on a random number of
15 placarding trucks where trucks were displaying
16 placards. The actual number I was that day, no.

17 Q. You don't know. Okay. So you are
18 just going off of the materials, the exhibits
19 that were presented to you this morning; is that
20 correct?

21 A. Correct.

22 Q. You testified earlier that it is the
23 shipper's responsibility to prepare and provide
24 the carrier with shipping documents unless the
25 carrier is so large that they are doing their

1 own shipping documents; is that correct?

2 A. Right. Or if they are private.

3 Q. In this case you testified that it
4 was the shipper that provided the carrier with
5 the shipping documents; that is correct?

6 A. Yes.

7 Q. And by providing the carrier you
8 mean that the driver that shows up that day; is
9 that correct?

10 A. Correct.

11 Q. It's not going off to IMG Trucking,
12 it's whatever truck driver shows up at the dock
13 that day.

14 A. In this case, yes, the driver, but
15 he is the representative for IMG.

16 Q. I understand, but he is a truck
17 driver, he doesn't work at the corporate
18 headquarters, he is a truck driver, he has got a
19 job to do?

20 A. Correct.

21 Q. And he shows up at the dock and he
22 receives those shipping papers; is that
23 accurate?

24 A. Correct.

25 Q. Okay. Now, you cited the carrier

1 under 177.817 A for no or improper shipping
2 papers; is that correct?

3 A. It is.

4 Q. Now, are you familiar with that
5 section?

6 A. I am.

7 Q. And --

8 A. I won't be able to recite it
9 word-for-word.

10 Q. No, I don't expect you to. But is
11 there something in that code section, and tell
12 me if there is and I can hunt again, that
13 specifically indicates that the truck driver
14 that shows up that day, the carrier
15 representative as you call him, must know
16 whether or not those shipping documents that he
17 receives are accurate?

18 A. You mean what he needs to verify it?

19 Q. How can he know that those documents
20 are accurate?

21 A. Nowadays a lot of drivers when they
22 pick them up before they even leave will contact
23 their Safety Department, send them a text photo,
24 verbalize, tell them what it says.

25 Q. Do you know what was done this day?

1 A. By the driver?

2 Q. Yes.

3 A. No.

4 Q. And in 177.817A that you cited the
5 carrier for is there a specific requirement that
6 provides for the carrier that they -- the driver
7 representative that shows up, needs to contact
8 the carrier to make sure that all the
9 information contained within that bill of lading
10 and the shipping documents are accurate?

11 A. No, I don't believe it does say they
12 specifically have to do that. But, it's common
13 practice.

14 Q. Common practice is one thing. I am
15 asking a specific section, does it require it?

16 A. Without reading it specifically, I
17 don't think it does, no. It doesn't say they
18 have to make a phone call to verify it.

19 Q. Okay. Now, let's go on to the
20 second section you cited the carrier for, which
21 is 177.823. That is no placards or markings
22 when required.

23 And you testified that the carrier
24 was given placards by the shipper; is that
25 correct?

1 A. Well, they were displayed, so, yes.

2 Q. So the company representative or
3 truck driver that showed up that day would have
4 been handed shipping papers as well as placards
5 to put on his trailer to signify what he was
6 hauling; is that correct?

7 A. Correct.

8 Q. It's the shipper that provides that?

9 A. When they are required to, yes, sir,
10 they are supposed to.

11 Q. Okay. Do you know if that was done
12 this day?

13 A. The fact that they were on the
14 trailer, I am sure I asked the driver that day
15 are these placards that they gave you with
16 the bills? That is just a normal question I
17 ask.

18 Q. The normal procedure you go through?

19 A. Correct.

20 MR. YEMC: Sure. I have nothing
21 further.

22 ATTORNEY EXAMINER: Mr. Bartfai, I
23 have a question.

24 THE WITNESS: Sure.

25 EXAMINATION

1 By the Attorney Examiner:

2 Q. Thank you for your testimony. As
3 far as the placards being incorrect, now, the
4 photograph, one of the photos in Exhibit 1 A,
5 shows a placard 1993 has a Class 3. And
6 the shipping paper has a UN1993.

7 So help me out on why those were not
8 the correct placards.

9 A. A flammable placard, the white
10 bottom, would be red. The fact that it's white
11 is combustible. And actually this placard is
12 required by rail transportation. It's a option
13 for highway.

14 Because you can display flammable
15 placards for combustible loads. You cannot do
16 the reverse. You cannot display combustible
17 placards for flammable loads.

18 Q. So this placard then should have had
19 1993; is that correct then?

20 A. Yes. Because it was bulk packages
21 that has to be there at the bottom of it.

22 Q. Where it has the 3 --

23 A. Should be red.

24 ATTORNEY EXAMINER: Okay. I
25 understand. All right. All right. Well, thank

1 you for your testimony. I may have further
2 questions but for the time being you can take
3 your seat.

4 MS. WILSON: I am sorry, your Honor.
5 I have a couple of redirect.

6 ATTORNEY EXAMINER: My mistake.
7 Go ahead, please.

8 REDIRECT EXAMINATION

9 By Ms. Wilson:

10 Q. Thank you, sir. Do you remember a
11 little bit ago that counsel asked you if you
12 remembered this inspection? And how long it had
13 been?

14 A. Correct.

15 Q. And you said before you have done
16 hundreds of these, and you follow particular
17 steps to do the investigation.

18 A. Correct.

19 Q. So regardless of how long ago it
20 happened you would taken the same steps?

21 A. Absolutely. My process is based on
22 my safety, making sure everything is correct
23 first.

24 Whatever is on the bills, shipping
25 description, the placards should correspond.

1 And then what's in the trailer should correspond
2 to both the bills and the placards.

3 Q. Thank you. And when you were asked
4 earlier about, you know, is the driver required
5 to verify what's in the load based on the bill
6 of lading, and you said that's not a
7 requirement; is that correct?

8 A. Without reading the paragraph or
9 actual cite, I believe it does not say they have
10 to make a phone call to verify it was correct.

11 Q. But in your experience and expertise
12 in doing so many of these over so many years, is
13 ignorance of the materials that's being hauled
14 an excuse to avoid a violation?

15 A. No.

16 MS. WILSON: I have no further
17 questions, your Honor.

18 ATTORNEY EXAMINER: All right.
19 Thank you, Mr. Bartfai. You can take your seat
20 now.

21 Ms. Wilson, your next witness,
22 please.

23 (WITNESS SWORN)

24 - - -

25 ROD MOSER

1 called as a witness, being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 By Ms. Wilson:

5 Q. Would you please state your full
6 name for the record?

7 A. My name is Rod Alan Moser, last name
8 is M-O-S-E-R.

9 Q. And where are you employed?

10 A. I am the Chief of the Compliance and
11 Registration sections of the Transportation
12 Department of the Public Utilities Commission of
13 Ohio.

14 Q. And how long have you been in that
15 position?

16 A. Six and a half years.

17 Q. What are your duties.

18 A. I administer the civil forfeiture
19 process for the Transportation Department and
20 also intrastate operating authority
21 registration.

22 Q. And what expert knowledge or
23 qualifications regarding the violations and the
24 subject matter of the violations do you have?

25 A. I spent just shy of 30 years with

1 the Ohio State Highway Patrol focused primarily
2 on commercial motor vehicle enforcement.

3 During my last -- my last position
4 there was the Commercial Enforcement Coordinator
5 for District 6, which is Franklin County and
6 surrounding counties.

7 I have training in North American
8 Standards Parts A and B, general hazmat, bulk
9 and nonbulk and other, motor couch and cargo
10 tank.

11 Q. Now, would you describe for us how a
12 civil forfeiture is calculated for violations of
13 the Motor Carrier Safety Regulations?

14 A. Sure. Specifically as it applies to
15 this case, since the violations are hazardous
16 materials violations, our process is that hazmat
17 violations start out as a baseline of \$100.

18 And we are required to add factors
19 into that. And those factors are the nature and
20 gravity of the violations. So how serious is
21 it. The materials that are involved, the amount
22 of the material involved, whether there was any
23 actual harm caused, how often that violation has
24 been committed or alleged to have been committed
25 by the respondent, and the carrier's history or

1 respondent's history.

2 Q. Does the Commission apply this
3 process uniformly to everyone?

4 A. The process, yes. Again, since
5 carries have different histories, sometimes
6 violations will have different civil forfeiture
7 amounts for the same material, but that would
8 really be the only change.

9 Q. Okay. And do you know if this
10 carrier has a particular history?

11 A. They do have what's considered a bad
12 history. The way we determine that history is
13 we have a lookback period of two years from the
14 date of the inspection, including the date of
15 inspection, and including this inspection.

16 We will analyze a carrier for
17 history score, if they have at least 10 hazmat
18 inspections during that two-year period. Then
19 we look at how many hazmat violations were
20 recorded during that, on those inspections
21 during that time period, develop a ratio for
22 them and then compare that to other similarly
23 situated carries that have at least 10
24 inspections, 10 Ohio hazmat inspections.

25 So the top five percent or the

1 bottom five, whichever way we look at it, the
2 worst five percent are categorized as history
3 factor 4 which is the bad history. And IMG
4 Trucking falls into that category.

5 Q. And how does this classification
6 affect the carrier when it comes to fines and --

7 A. History score can benefit
8 the carrier if they have a good history score.
9 Some violations could be zeroed out.

10 Generally if you don't qualify, in
11 air quotes, I am sorry, if you don't qualify for
12 a history factor other than 1, which is what
13 everybody gets if you don't have enough
14 inspections, you get a 1.

15 If you have at least 10 hazmat
16 inspections during that two-year period you
17 could have a zero, meaning you are in the best,
18 relatively speaking, of all the carries.

19 2 would mean that you are in 15 --
20 I think it's 80 to 95 percent of the carries as
21 far as bad. That would double your civil
22 forfeiture's total. And then when you are in
23 the worst category it quadruples your civil
24 forfeiture assessment.

25 MS. WILSON: Your Honor, may I

1 approach?

2 ATTORNEY EXAMINER: Yes, you may.

3 MS. WILSON: I am passing out what I
4 have premarked as Staff Exhibits 2 and 3. It's
5 the Notice of Apparent Violation and Intent to
6 Assess Forfeiture.

7 And also the Notice of Preliminary
8 Determination.

9 (EXHIBITS MARKED FOR THE PURPOSE OF
10 IDENTIFICATION)

11 Q. Mr. Moser, do you recognize these
12 documents?

13 A. I do.

14 Q. Could you please tell us what they
15 are?

16 A. Staff Exhibit 2 is a copy of the
17 Notice of Intent to Assess Forfeiture letter
18 mailed to IMG Trucking dated February 17th of
19 2022.

20 Q. Thank you. And the other one?

21 A. It is a Notice of Preliminary
22 Determination. It's mailed to the carrier's
23 representative, Ms. Nataliya Stefanova dated May
24 6th, 2022.

25 Q. And are either of those required to

1 be sent to the respondent?

2 A. In this case, yes. The NPDs don't
3 go to all the respondents depending upon the
4 path of their case with us.

5 Q. But in this particular case did the
6 respondent receive all of the notices required
7 for them?

8 A. To the best of my knowledge.

9 Q. Are these documents Commission
10 records?

11 A. They are.

12 Q. Are they kept in the Commission's
13 ordinary course of business?

14 A. Yes, they are.

15 Q. Is it the practice of the Commission
16 to make the Notices of Apparent Violation and
17 Intent to Assess Forfeiture and also Notice of
18 Preliminary Determination?

19 A. I am sorry. Practice to do what?

20 Q. I am sorry. Is it the practice of
21 the Commission to make these two notices?

22 MS. WILSON: I am sorry. Scratch
23 that.

24 Q. Are there violations noted on these
25 two notices that go to the company?

1 A. There are, yes.

2 Q. What are those violations?

3 A. On the what we call the NIF letter,
4 the Notice of Apparent Violation and Intend to
5 Assess Forfeiture, there are two violations
6 noted. 177.817A and also 177.823A.

7 Q. And what was the total dollar amount
8 for these violations?

9 A. \$4,320.

10 Q. And do you how that amount was
11 distributed between the violations?

12 A. Yes. The first violation, 177.817A
13 was assessed the \$1,440. The second was
14 assessed \$2,880.

15 Q. Now, are these classified as hazmat
16 violations?

17 A. They are.

18 Q. And why is that?

19 A. They are violations that are listed
20 in the hazmat regulations.

21 Q. What happens after the initial
22 Notice of Apparent Violation and Intent to
23 Assess Forfeiture?

24 A. Well, the Respondent has the
25 opportunity to request a conference with the

1 assigned compliance officer. In this case
2 the assign compliance officer was a gentleman
3 named Tom Persinger.

4 If they hold the telephone
5 conference and they are able to resolve issues
6 then there would be what we call settlement
7 letter sent to the carrier. And in this case
8 they were not able to resolve issues, so we sent
9 them the Notice of Preliminary Determination.

10 That notice gives the carrier again
11 the opportunity to either just pay the civil
12 forfeiture amount or request a formal
13 administrative hearing.

14 Q. I may have already asked you this,
15 but can you explain how the forfeiture was
16 derived in this case?

17 A. Sure. So we have point values that
18 are assigned for, at that time, for specific
19 groups of violations. Like shipping paper
20 violations, or placarding or authority. They
21 all have different generalized numbers.

22 This 177.817A was a 3 point
23 violation. And then the type of material has a
24 score value of 0.8 The amount of the material
25 has a, according to our chart, a value of .4.

1 The Respondent's culpability was a
2 1, and the history was again a 4.

3 So using our calculation we came up
4 with 14.4 points, times 100 would be \$1,440.

5 Q. Okay.

6 A. Then the same for 177.823A. The
7 only difference being that the nature and
8 gravity of point there was 6 instead of 3.
9 Considered a more serious violation.

10 Q. Right. Okay. And is the penalty
11 consistent with the recommended fine schedule
12 and recommended civil penalty procedure adopted
13 by the Commercial Motor Vehicle Alliance?

14 A. By the Commercial Vehicle Safety
15 Alliance.

16 Q. Thank you.

17 A. That chart was developed long before
18 my arrival here. But, yes, it's been in place
19 for some time.

20 Q. Thank you. And do the notices that
21 were sent out, do they state the correct
22 forfeiture amount for this case?

23 A. They do.

24 Q. Would you recommend the forfeiture
25 amount to the Commission?

1 A. Yes, I do.

2 Q. And I believe you noted a conference
3 was held after the Notice of Apparent Violation
4 went out?

5 A. That is my understanding, yes.

6 Q. Okay. Do you know when the
7 conference was held?

8 A. I do not.

9 Q. Do you know if the Respondent's
10 representative attended the conference?

11 A. Well, it would have been by
12 telephone. I might have that in here.

13 The conference was held April 28th,
14 2022. And the name listed on the conference
15 summary is Nataliya Stefanova.

16 Q. And what usually happens after a
17 conference is held?

18 A. Well, we, again, we send out a
19 letter appropriate for the result of
20 the disposition of the conference. In this case
21 it was an NPD letter which then gave the
22 Respondent directions on what their options
23 were; either to pay the civil forfeiture amount
24 or to request a formal administrative hearing.

25 Q. Then after the Respondent requests

1 an administrative hearing is there anything that
2 happens between then and the hearing?

3 A. Sure. Docketing would receive their
4 request for the hearing. Then we will get
5 notified, we create a case packet and forward it
6 to the Attorney General's office.

7 And then the Hearing Examiner would
8 schedule a pre-hearing conference with the
9 Respondent or their representative, also with
10 the assistant AG in the room, or on the phone.
11 And then representative from the Staff and
12 Staff's legal supervisor.

13 Q. And to your knowledge did this
14 prehearing settlement discuss the fine in this
15 case?

16 A. I don't recall.

17 MR. YEMC: I am going to object,
18 your Honor, at this point for relevancy with
19 regards to Mr. Moser's testimony concerning
20 the fine amount.

21 ATTORNEY EXAMINER: Why?

22 MR. YEMC: Where are we going?

23 ATTORNEY EXAMINER: This is laying
24 the foundation for what's being done, I assume.
25 Or what's occurred.

1 MS. WILSON: I am laying a foundation
2 for how we got here and the process that was
3 followed.

4 ATTORNEY EXAMINER: Okay.

5 MR. YEMC: I will renew my objection
6 because she is laying that foundation with
7 somebody who doesn't know the facts with regards
8 to what she is questioning. Whether or not a
9 hearing was held, when that hearing was held.

10 Obviously we don't have the initial
11 Examiner or initial person that conducted that
12 initial hearing. I believe Tom is no longer
13 here and available to testify with regards to
14 that. I don't think we have the person that has
15 the knowledge to give that testimony.

16 ATTORNEY EXAMINER: To calculate
17 this particular fine for this particular --

18 MR. YEMC: Not the fine, but the
19 process that's gone on. He doesn't have the
20 specific knowledge on the specific case because
21 he wasn't the person initially hearing it.

22 ATTORNEY EXAMINER: Well, I would
23 say Mr. Moser just gave a broad description of
24 how the transportation enforcement section
25 operates and how they calculate the penalties.

1 MR. YEMC: And that is fine, but
2 the rest of this testimony -- that's where my
3 objection lies because it's just coming out of
4 not his personal knowledge.

5 ATTORNEY EXAMINER: Well, I will let
6 the testimony stand. I understand your point,
7 but I think he is basically providing a
8 description about how the enforcement department
9 works with the violations and calculates its
10 fines.

11 Ms. Wilson, do you have any other
12 questions?

13 MS. WILSON: I just wanted to add in
14 Mr. Moser's position he is involved in pretty
15 much every step of this process. So although he
16 may not specifically remember the exact
17 conference he typically attends them, so he can
18 testify to the process.

19 MR. YEMC: Objection. That is not
20 accurate. I have had hundreds of hearings with
21 this administrative agency and Mr. Moser,
22 although he is very knowledgeable and involved,
23 he is not involved in the initial conference.
24 He is just not.

25 ATTORNEY EXAMINER: Let me ask you a

1 question. Are you objecting to --

2 MR. YEMC: There is testimony that's
3 being presented and things are being presented
4 that aren't accurate. I am just trying to get
5 an accurate record as to what actually occurs.

6 ATTORNEY EXAMINER: Are you
7 objecting though to how the fine was calculated,
8 or the issuance of an NIF or NPD?

9 MR. YEMC: The fine, I am fine with
10 that testimony, I believe that is the reason he
11 was called to be put on the stand to testify
12 with regard to the calculation of the fine. And
13 I plan on cross-examining with regards to that.

14 But, his knowledge with the process
15 in this particular case is -- he is just not --
16 was not involved in it.

17 ATTORNEY EXAMINER: Okay. Ms.
18 Wilson.

19 MS. WILSON: Your Honor, I misspoke
20 about the conference. I was referring to the
21 prehearing settlement conversations that usually
22 happens. So we can strike that question.

23 ATTORNEY EXAMINER: Okay. All
24 right. Do you have any other questions, Ms.
25 Wilson?

1 Q. Mr. Moser, is there anything else
2 we have not discussed you would like
3 the Commission to know with regarding the NPD or
4 anything else?

5 A. No.

6 MS. WILSON: Your Honor, again I
7 would like to reserve Mr. Moser for possible
8 redirect.

9 And at this time I would like to
10 move Staff Exhibits 1 through 3 into the record.

11 ATTORNEY EXAMINER: Mr. Yemc, do you
12 have any questions for the witness?

13 MR. YEMC: I do have questions for
14 the witness

15 ATTORNEY EXAMINER: In that case
16 before we get into moving these into evidence I
17 will let you ask your questions.

18 MR. YEMC: Thank you, your Honor.

19 CROSS-EXAMINATION

20 By Mr. Yemc:

21 Q. Mr. Moser, you testified that IMG
22 Trucking is a "bad carrier." Is that correct?

23 A. At that time of this inspection,
24 yes.

25 Q. Do you have documentation to show

1 this truck, with you here today, that IMG
2 Trucking at the time was a quote-unquote bad
3 carrier?

4 A. I do have a report generated if you
5 look in our system that shows their relative
6 position to other carries, yes.

7 Q. Okay. But it's not part of your
8 exhibits; is that correct?

9 A. It is not.

10 MR YEMC: I have nothing further.

11 ATTORNEY EXAMINER: Okay. Mr.
12 Moser, then you can take your seat, thank you,
13 unless Ms. Wilson, you had other questions.

14 MS. WILSON: No, I do not. I would
15 just like to renew my motion to admit.

16 ATTORNEY EXAMINER: Mr. Yemc, any
17 objections.

18 MR. YEMC: No objections.

19 ATTORNEY EXAMINER: We will admit
20 into evidence Exhibits 1, 2 -- 1, 1A, 2 and 3.

21 (EXHIBITS ADMITTED INTO EVIDENCE)

22 MS. WILSON: Thank you, your Honor.

23 ATTORNEY EXAMINER: All right. Mr.
24 Moser, thank you. Mr. Yemc, it is finally your
25 turn.

1 MR. YEMC: It is my turn and I am
2 not calling my witness. I don't think there is
3 any need.

4 ATTORNEY EXAMINER: Okay. Well,
5 with that being said I want to thank everyone
6 for attending today. And please have a safe
7 trip wherever you are traveling.

8 Have a good afternoon, or a good
9 morning and afternoon. And, Mr. Court Reporter,
10 we can go off the record. Thank you.

11 MS. WILSON: Your Honor, would you
12 like a brief in this case?

13 ATTORNEY EXAMINER: Briefs are
14 optional. I always give the parties a choice.
15 Sometimes they are interested, sometimes they
16 are not.

17 And if one is filed, Mr. Yemc, you
18 don't have to file. It's optional, not
19 required.

20 MS. WILSON: Okay. I am fine if
21 opposing counsel is fine.

22 ATTORNEY EXAMINER: So no brief.
23 We are off the record.

24 (At 10:50 A.M. the hearing was
25 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on August
24, 2023, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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Case No(s). 22-0536-TR-CVF

Summary: Transcript August 24th 2023 In the Matter of IMG Trucking, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr..