

PUBLIC UTILITIES COMMISSION OF OHIO
PUBLIC HEARING BEFORE THE PUCO COMMISSION

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IN RE:

CASE NO. 22-14-TR-CVF,
IN THE MATTER OF BRIAN JOBE, NOTICE
OF APPARENT VIOLATION AND INTENT TO
ASSESS FORFEITURE

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The above-styled cause came on for
hearing before Lisa K. Keller, a Notary Public in
and for the State of Ohio at the Public Utilities
Commission of Ohio, 180 East Broad Street,
Columbus, Ohio, on Tuesday, September 26, 2023
beginning at 11:00 a.m.

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1 APPEARANCES:

2 On behalf of the Public Utilities Commission:

3 Assistant Ohio Attorney General

4 By: Werner L. Margard, III

Attorney at Law

5 30 East Broad Street, 16th Floor

Columbus, Ohio 43215

6 Werner.Margard@OhioAttorneyGeneral.gov

7 On behalf of Sportsman's Market, Inc.:

8 Vorys, Sater, Seymour and Pease, LLP

9 By: Anna Sanyal

Attorney at Law

10 52 East Gay Street

Columbus, Ohio 43216

11 Aasanyal@vorys.com

12 ALSO PRESENT:

13 William Anderson

14 * * *

1 MR. LYNN: Let's go on the record at
2 this time. The Public Utilities Commission of
3 Ohio is assigned for hearing at this time and
4 place, concerning 22-14-TRC-VF, in the matter of
5 Brian Jobe. This is an apparent violation, also
6 an apparent violation and intent to assess
7 forfeiture. I'm Jim Lynn, the attorney examiner
8 assigned to hear this case. At this time we'll
9 have the appearances of the parties. We'll begin
10 with the Commission staff.

11 MR. MARGARD: Thank you, Your Honor.
12 On behalf of the transportation staff of the
13 Public Utilities Commission of Ohio's, Dave Yost,
14 Ohio Attorney General, John Jones, section chief
15 of the public utility section, by Werner L.
16 Margard, 30 East Broad Street, 26th Floor,
17 Columbus, Ohio. Thank you.

18 MR. LYNN: Thank you. And on behalf
19 of Mr. Jobe?

20 MS. SANYAL: Thank you, Your Honor.
21 On behalf of Sportsman's Market, Inc. and Brian
22 Jobe, Anna Sanyal from the law firm of Vorys,
23 Sater, Seymour and Pease, LLP, 52 East Gay Street,
24 Columbus, Ohio, 43215. And I also have several
25 representatives from Sportsman's Market here with

1 me today. We have Michael Wolf, who is the CEO,
2 Brian Jobe, Rod Hoskins and Bill Anderson. Thank
3 you, Your Honor.

4 MR. LYNN: Thank you all for making
5 the trip. And Mr. Margard, we can begin with you.

6 MR. MARGARD: Thank you, Your Honor.
7 For our first witness we'd call Kevin Swartz to
8 the stand.

9 KEVIN SWARTZ
10 of lawful age, having been first duly cautioned
11 and sworn, as hereinafter certified, was examined
12 and said as follows:

13 MR. LYNN: Have a seat and lean into
14 the microphone, please. Thank you. Mr. Margard,
15 go ahead.

16 DIRECT EXAMINATION
17 BY MR. MARGARD:

18 Q. Thank you. Please state and spell
19 your name.

20 A. Kevin Swartz, K-E-V-I-N, S-W-A-R-T-Z.

21 Q. And by whom are you employed and in
22 what capacity?

23 A. Public Utilities Commission of Ohio.
24 I'm a hazardous material investigator.

25 Q. And how long have you held that

1 position?

2 A. Since 2014.

3 Q. And can you briefly describe your
4 work experience?

5 A. I started with the state patrol in
6 2004 at weigh stations. So I was a logo
7 inspector. I went from there to commercial bus --
8 sorry, school buses. I used to inspect the school
9 buses for the State of Ohio for several years.
10 Moved to commercial motor vehicle inspector for
11 motor carrier enforcement with the state patrol
12 and moved to PUCO in 2014.

13 Q. Do you have any training or any
14 certifications to perform your job?

15 A. Yes, I do.

16 Q. Can you briefly outline those for us,
17 please?

18 A. I've had North American A & B through
19 CVSA. I've had hazmat, hazmat auto bulk, tanker,
20 passenger carrier. Other certifications, anything
21 to do with commercial enforcement.

22 Q. Thank you, sir. Were you on duty on
23 October 10th of 2021?

24 A. Yes, I was.

25 Q. And in the course of your duties that

1 day, did you have an opportunity to inspect a
2 vehicle being operated by Mr. Jobe?

3 A. Yes, I did.

4 Q. By the way, your job assignment, what
5 were your duties that day?

6 A. We were doing passenger vehicle
7 inspection at the Bengals game at Paul Brown
8 Stadium.

9 Q. Very good. Thank you. As a result
10 of your inspection of Mr. Jobe and his vehicle,
11 did you have occasion to generate an inspection
12 report?

13 A. Yes, I did.

14 MR. MARGARD: May I approach, Your
15 Honor?

16 MR. LYNN: Yes.

17 MR. MARGARD: Your Honor, could the
18 record please reflect that I've handed the witness
19 a multi-page document marked for purposes of the
20 hearing as Staff Exhibit Number 1.

21 (Thereupon, Staff Exhibit 1,
22 multi-paged document, was marked for purposes of
23 identification.)

24 BY MR. MARGARD:

25 Q. Sir, have you seen this document

1 before?

2 A. Yes, I have.

3 Q. Can you identify it for me, please?

4 A. It's my inspection report, report
5 number OH3209302431.

6 Q. And was this prepared by you?

7 A. Yes, it was.

8 Q. Was it prepared at the time of the
9 inspection?

10 A. Yes.

11 Q. This indicates that it was a level
12 one inspection, correct?

13 A. Correct.

14 Q. Was there a reason you inspected this
15 particular vehicle?

16 A. We were looking for commercial motor
17 vehicles, passenger carriers in this detail that
18 we were working, saw the Sportsman's Market going
19 down the road. Followed him to his parking spot
20 and proceeded with my investigation and telling
21 him what it was and what I was doing and went on
22 with the inspection from there.

23 Q. Did you specifically identify it as a
24 Sportsman's Market vehicle?

25 A. Yes, it was marked on the side with

1 USDOT number 02989162.

2 Q. As a result of your inspection, did
3 you find any violations?

4 A. Nothing maintenance wise on the
5 vehicle, but the driver, Mr. Jobe, did not have a
6 medical certificate that was required for a
7 private motor carrier passenger business.

8 Q. Did he have a commercial driver's
9 license?

10 A. No, he did not. He did not need
11 that.

12 Q. Okay. And consequently, in the
13 violation section, you have cited him for
14 operating a passenger-carrying vehicle without
15 possessing a valid medical certificate; is that
16 correct?

17 A. Correct.

18 Q. Now, when you entered this
19 information in the violation section, what do you
20 put in here? Do you put in a number? Do you put
21 in a description? What do you put in?

22 A. I put in a 39341, and it gives me the
23 option to put in, and under passengers required to
24 have a medical certificate, there's property and
25 passenger. So this was done as a passenger, which

1 was required to have it to operate a passenger bus
2 and then subsequently since he did not have that
3 basically.

4 Q. And what does out of service mean?

5 A. Not available to operate. So he
6 needed to have find somebody that had a proper
7 medical certificate and license to drive that
8 vehicle.

9 Q. Now, you indicate that this was a
10 passenger vehicle. Were there passengers in the
11 vehicle?

12 A. Yes.

13 Q. Do you know how many passengers were
14 in the vehicle?

15 A. Approximately a dozen.

16 Q. Did you have a conversation with Mr.
17 Jobe about the trip?

18 A. Yes.

19 Q. And what was that conversation?

20 A. We talked about why we were there,
21 what we were doing, that we would be doing an
22 inspection for safety. Went over that. Asked for
23 his license, registration for the bus, medical
24 card, things like that and kind of where he came
25 from. He said he was starting in Batavia, took

1 the interstate, went the back way into the Bengals
2 game, so in Kentucky and such.

3 Q. Did you actually see them cross from
4 Kentucky into Cincinnati?

5 A. No, I did not.

6 Q. You indicated they gave a
7 registration for the vehicle. Did they have a
8 registration for the vehicle?

9 A. They did not have the registration
10 for the vehicle at the time.

11 Q. Are you aware, sir, that there's an
12 exception in the code for certain passenger
13 vehicles from having a medical certificate?

14 A. Yes.

15 Q. What's your understanding of that
16 exception?

17 A. So when you are a private motor
18 carrier passenger business, you have to have a
19 medical card. When you are a private passenger
20 carrier non-business, you do not. You are
21 exempted from that. So between the business and
22 the non-business, the non-business would be church
23 groups, scouting organizations, things like that.
24 Where if it's a business, it's part of a
25 commercial enterprise furthering different things.

1 So this was registered as a commercial vehicle.

2 Q. So in your opinion, this was in
3 furtherance of their commercial business?

4 A. Correct.

5 Q. Did the driver or any of the
6 passengers identify themselves as any kind of
7 specific organization or non-business entity?

8 A. No. I talked to Mr. Jobe, the
9 driver, and then -- was it you (indicating) that
10 was there? You were there. Okay, Michael Wolf.
11 We talked about it, what he was doing and he said
12 they brought the people down for the Bengals game,
13 and we talked about what it was and that they got
14 their new bus.

15 Q. You indicated it's a new bus.

16 A. Correct.

17 Q. Did they indicate that this was the
18 reason they bought the bus?

19 A. No, they did not.

20 Q. Is there anything further about your
21 inspection that you think would be useful to the
22 Commission?

23 A. The only thing I did wrong, they did
24 not have the registration. I can run previous
25 plates. I ran the plate, found this previous

1 inspection that was done. It is wrong because
 2 they had a new bus. It's not a 2002 Chevy. So
 3 that was an issue, but as far as the new bus was a
 4 little bit bigger, a lot newer and was still
 5 within regulations at that time.

6 Q. Okay. You're specifically referring
 7 to the vehicle identification portion of the
 8 report?

9 A. Correct.

10 Q. And that information is incorrect?

11 A. Correct.

12 MR. LYNN: Can you pause for a
 13 minute, Mr. Margard? Mr. Swartz, so you are
 14 indicating what's on the driver/vehicle
 15 examination report, Staff Exhibit 1, that
 16 information about the bus, Chevrolet, license
 17 plate, license plate might be accurate, but the
 18 gross weight, you are saying that's actually
 19 incorrect information?

20 THE WITNESS: Correct. That was the
 21 previous bus.

22 MR. LYNN: And did you get this
 23 incorrect information because you were looking at
 24 a prior vehicle registration or something?

25 THE WITNESS: I was looking at a

1 previous DOT inspection and it asked for this.

2 MS. SANYAL: Your Honor, may we go
3 off the record --

4 MR. LYNN: Yes.

5 (Off the record.)

6 BY MR. MARGARD:

7 Q. If I could just clarify based on your
8 question, the license plate number was the same;
9 is that correct?

10 A. Correct.

11 Q. So it's your understanding the plate
12 was transferred and just didn't get in this
13 registration paperwork?

14 A. Correct.

15 MR. MARGARD: That's all the
16 questions I have. Thank you.

17 MR. LYNN: All right. Ms. Sanyal?

18 MS. SANYAL: I will have some
19 questions, if I may have one moment.

20 MR. LYNN: Sure.

21 CROSS-EXAMINATION

22 BY MS. SANYAL:

23 Q. Mr. Swartz, you know, this event
24 happened a couple years ago, so it's been a while.
25 Now, you mentioned during direct examination that

1 you pulled over the Sporty's bus because you were
2 doing passenger vehicle inspections, correct?

3 A. That's correct.

4 Q. Can you help me understand what that
5 means and what the purpose of what, you know, PUCO
6 staff was on that date?

7 A. Okay. One of the things the PUCO
8 does is we enforce commercial passenger buses. So
9 instead of stopping them on the roadways, you
10 know, full of passengers where it's not safe for
11 everything, we do destination inspections. So
12 we'll go to Kings Island, concerts, events,
13 Bengals games. We are down there to stop
14 commercial vehicles, buses.

15 So we saw the DOT number on it,
16 Sporty's listed on the back, and he was pulled
17 over and explained why he was getting an
18 inspection.

19 Q. Was there a specific purpose for the
20 stop or were you pulling over every -- actually,
21 let me rephrase that. Was there a specific
22 purpose for the stops?

23 A. For safety. We had been down there
24 numerous times and the City of Cincinnati Police
25 requested that we attend as many games as we'd

1 like to to help them in their enforcement.

2 Q. And did you pull over every bus?

3 A. Every bus we could get to. It's a
4 little chaotic there. We sit in certain places
5 and we circle and we are on the radios. When we
6 see one, we see who is in position and try to get
7 to them.

8 Q. And how many PUCO staff were there?

9 A. I want to say four.

10 Q. Okay. And how many buses
11 approximately did you pull over?

12 A. Myself or as a Commission?

13 Q. As a team.

14 A. As a team, we probably did six or
15 eight. I don't recall the numbers, but that's
16 usually -- everybody usually gets around one, two.

17 Q. Okay. And you were near lot ERV,
18 correct?

19 A. Sure.

20 Q. Okay.

21 A. Was it Mehring Way? And I think we
22 were in there.

23 Q. So you were near the lot, just to
24 clarify, where all the recreational vehicles and
25 the buses go?

1 A. Right. I followed him from the
2 roadway into that area to his parking spot.

3 Q. Okay. And how many buses or RVs were
4 in that lot that day?

5 A. Commercial or private?

6 Q. An approximation of all.

7 A. That lot, probably 50 to 100 buses,
8 but probably 90 percent of that was private people
9 in their Bengals buses.

10 Q. What do you mean by private people in
11 Bengals buses?

12 A. Non-commercial.

13 Q. And how did you know some of these
14 were non-commercial?

15 A. Didn't have any markings on how they
16 were registered and most of them that get there
17 are way before we got there to tailgate.

18 Q. So for clarification, the way you
19 tell a bus is commercial is by markings or other
20 indications?

21 A. Markings, registration, things like
22 that, yes, size.

23 Q. And how often are you at lot ERV on
24 Bengals game days?

25 A. I'm by it. I try not to go in the

1 lots because they don't like us in there
2 necessarily, but we are up and down Mehring Way
3 and circling multiple times a game.

4 Q. So every game?

5 A. It depends on our staffing, what
6 we're doing. We probably average about four
7 Bengals games a year.

8 Q. Now, Mr. Swartz, during direct
9 examination you brought up the private motor
10 carrier passenger's non-business designation. Do
11 you remember that?

12 A. Yes.

13 Q. And do you receive training about
14 that specific designation?

15 A. Yes, we do.

16 Q. Okay. How many hours?

17 A. It's ongoing. We spend I think it's
18 a 40-hour class for passengers, the initial, and
19 then it's ongoing training every year to make sure
20 we get enough proper buses inspected to keep our
21 certifications year to year.

22 Q. And just specifically on that
23 designation, the private motor carrier passengers
24 non-business, how much training just specifically
25 on that designation do you receive?

1 A. You want hours? You want weeks? I
2 don't understand. I mean, it's an ongoing thing.
3 So every time we get an assignment or we stop a
4 bus, we have to identify what kind of bus it is.
5 Every time we stop it, for hire, not for hire,
6 private non-business, private business, things
7 like that.

8 Q. Sure.

9 A. So it's, I don't know, 15, 20 hours a
10 year.

11 Q. Okay. And that's just you doing
12 inspections?

13 A. Correct.

14 Q. Okay.

15 A. And other training. We cover stuff
16 like this. We'll go to ongoing training at PUCO
17 and we've actually had bus stuff that we go over
18 this stuff and that would be maybe an hour
19 presentation a year.

20 Q. Okay. Thank you, that's helpful.
21 And how many times have you provided a citation to
22 an entity that was claiming it was a private motor
23 carrier of passengers non-business?

24 A. Non-business?

25 Q. Correct.

1 MR. MARGARD: Can I get a
2 clarification? For any reason?

3 MS. SANYAL: Yes, for any reason.

4 MR. MARGARD: Any reason.

5 THE WITNESS: Very rarely.

6 BY MS. SANYAL:

7 Q. Now, Mr. Swartz, you've also kind of
8 explained that you received a lot of training in
9 this area about passenger vehicles specifically.
10 Now, in your training and experience, does an
11 entity have to be a charitable organization to be
12 a private motor carrier of passengers
13 non-business?

14 A. No, but it leans that way pretty
15 heavy.

16 Q. And I think you also covered this
17 with Mr. Margard, and you're aware there's a
18 medical certificate exemption for private motor
19 carrier of passengers non-business, right?

20 A. Correct.

21 Q. And in your experience and training
22 that you receive, what types of entities fall
23 under this exemption?

24 A. Usually churches, occasional scout
25 groups, is the two main ones that I run into.

1 Q. And for clarification, does a private
2 motor carrier of passengers non-business have to
3 fall under these groups -- sorry, let me rephrase.
4 That was a bad question. Okay.

5 So is a private motor carrier of
6 passengers non-business only a church or a scout
7 group or a group like that, in your training?

8 A. For the majority, yes.

9 MS. SANYAL: One moment, Your Honor.

10 MR. LYNN: Sure.

11 MS. SANYAL: I think those are all
12 the questions we have, Your Honor.

13 MR. LYNN: Mr. Margard, any
14 follow-up?

15 MR. MARGARD: If I can, thank you,
16 Your Honor.

17 FURTHER DIRECT EXAMINATION

18 BY MR. MARGARD:

19 Q. You were asked about the charitable
20 organizations. A charitable organization doesn't
21 necessarily have to own the vehicle; does it?

22 A. No, it does not.

23 Q. For example, had you stopped this
24 Sportsman's Market bus and it had been full of boy
25 scouts coming to usher at the game, for instance,

1 how would you have treated that situation?

2 A. I would have interviewed -- a direct
3 examination of the driver to find out how the
4 scout group got onto this bus. Was it a family
5 member? Were they paid to hire it? Was it for
6 hire? What brought them together to make this a
7 commercial or non-commercial business?

8 Q. Same would be true if, for example,
9 it was a church choir?

10 A. Correct. Churches. So a church
11 traditionally would be moving their own
12 constituents, patrons.

13 Q. Parishioners?

14 A. Okay. We'll do it that way,
15 parishioners, to and from different things like
16 that. Say they were up on a retreat and they were
17 going to Tennessee for a retreat and they only
18 have 20 people going and then, well, I've got a
19 sister that wants to go and somebody else that
20 doesn't go to the church and they pay a nominal
21 fee to get on the bus, now they are going to that
22 retreat and then it becomes a for-hire business.

23 Q. I see. So if there's --

24 A. Indirect compensation.

25 Q. If there's compensation paid, that

1 changes the status?

2 A. Correct.

3 Q. You mentioned a moment ago that you
4 might have a conversation with the driver, like
5 how did these folks come to be on this bus? You
6 also indicated earlier in your testimony that you
7 did have a conversation with Mr. Jobe, correct?

8 A. Correct.

9 Q. And at any time did he indicate to
10 you who the passengers on his bus were or how they
11 came to be on the bus?

12 A. I talked to him and Mr. Wolf about
13 it. We all talked. I explained what was going
14 on, how I was doing things, what the regulations
15 were. So we all had an understanding of what he
16 was doing that day and what I was doing that day.

17 Q. And what was your understanding who
18 the passengers were and how they came to be on the
19 bus?

20 A. Company employees.

21 MR. MARGARD: Nothing further. Thank
22 you.

23 MR. LYNN: Ms. Sanyal?

24 MS. SANYAL: I have no further
25 questions.

1 MR. LYNN: All right. Thank you.
2 You can take your seat for the time being,
3 Inspector Swartz. And Mr. Margard, you have an
4 additional witness?

5 MR. MARGARD: I do. Thank you, Your
6 Honor. I call Mr. Rob Moser to the stand, please.

7 ROB MOSER
8 of lawful age, having been first duly cautioned
9 and sworn, as hereinafter certified, was examined
10 and said as follows:

11 MR. LYNN: Have a seat, please.

12 DIRECT EXAMINATION

13 BY MR. MARGARD:

14 Q. State and spell your name.

15 A. Rod Moser, R-O-D, M-O-S-E-R.

16 Q. And by whom are you employed and in
17 what capacity?

18 A. I'm the chief of the compliance and
19 registration section within the transportation
20 department for the Public Utilities Commission of
21 Ohio.

22 Q. And how long have you been in that
23 position?

24 A. Six and a half years.

25 Q. Can you give me some idea of what

1 your work experience was prior to joining?

2 A. Sure. Prior to the Public Utilities
3 Commission, I worked for the Ohio State Highway
4 Patrol just shy of 30 years. My most recent
5 position with them was the commercial enforcement
6 coordinator for the District 6, which is Columbus
7 and surrounding counties, Franklin County and
8 surrounding counties.

9 As part of my training and
10 experience, I am certified North American
11 Standards, parts A, B; motor coach, I was trained
12 in that, I'm no longer certified; general hazmat,
13 cargo tank, bulk and non-bulk.

14 Q. You indicated your different
15 certifications were while you were a member of the
16 patrol?

17 A. Some of them, yes, but mostly after I
18 joined the PUCO.

19 Q. So those are all current
20 certifications?

21 A. Except for motor carrier.

22 Q. When were you last certified for
23 motor carrier?

24 A. It would have been about 2018.

25 Q. Okay. Thank you. Could you please

1 describe for us how a civil forfeiture is
2 calculated?

3 A. Sure. For non-hazmat inspections,
4 which is this, all violations are subdivided into
5 groups, groups zero through four. Group zero
6 violations are mechanical violations, which in and
7 of themselves are not considered likely to cause a
8 crash and so therefore they never have a civil
9 forfeiture attached to it.

10 Groups one, two and three are
11 mechanical violations that may cause a crash or,
12 you know, contribute to a crash. Group one being
13 the most severe of those and then two and then
14 three. Those violations are assessed for civil
15 forfeiture if they are marked as an out-of-service
16 violation on the inspection.

17 And then the last group is group
18 four. Those are things like driver behaviors,
19 authority, insurance, registration. Those are
20 violations that always carry a civil forfeiture.

21 So in this particular case, it's just
22 one violation, a medical card issue and it's a
23 group four violation. It is always assessed a
24 civil forfeiture and it's always \$400.

25 Q. And is the procedure that you just

1 described consistent with that recommended by the
2 Commercial Vehicle Safety Alliance?

3 A. It is, yes.

4 Q. And you mentioned a forfeiture
5 amount. Is there a schedule of amounts for the
6 various violations?

7 A. Group four have varying civil
8 forfeiture amounts, depending on the violation.
9 Groups zero, as I said, is always zero. Groups
10 one, two and three vary with group one being a
11 higher civil forfeiture amount and then decreasing
12 to group three.

13 Q. And are those various forfeitures
14 also consistent with that generally recommended by
15 the Commercial Vehicle Alliance?

16 A. Yes.

17 Q. And is this process and are these
18 forfeiture amounts applied in the same manner for
19 everyone who receives a violation?

20 A. Whenever it's a non-hazmat
21 inspection, yes. The process is fully automated.

22 Q. All right. Thank you. You've been
23 present throughout the hearing?

24 A. Yes, sir.

25 Q. You heard my examination of Inspector

1 Swartz with respect to what was marked as Staff
2 Exhibit Number 1. Have you had an opportunity to
3 review that exhibit?

4 A. I did, yes.

5 Q. Do you need to see that exhibit to
6 refresh your memory?

7 A. No.

8 Q. Is that a document that's routinely
9 maintained as part of the Commission's business?

10 A. It is.

11 MR. MARGARD: May I approach, Your
12 Honor?

13 MR. LYNN: Yes. Go ahead.

14 (Thereupon, Staff Exhibit 2, October
15 12, 2021 letter, was marked for purposes of
16 identification.)

17 BY MR. MARGARD:

18 Q. Let the record reflect I've handed a
19 multi-page document marked for purposes of
20 identification as Staff Exhibit Number 2. Do
21 recognize this document, sir?

22 A. I do.

23 Q. What is this document?

24 A. This is what we refer to internally
25 as an NIF, notice of intent to assess civil

1 forfeiture.

2 Q. And was this sent to the Respondent
3 in this case, Mr. Jobe?

4 A. It was, yes.

5 Q. And maintained as part of the files
6 as part of the Commission's files?

7 A. Yes.

8 Q. You'll note that there are redactions
9 in this document. Is it your understanding these
10 redactions are to obscure personally identifying
11 information, potentially identifying information?

12 A. The only thing that I see redacted is
13 the pin related to Mr. Jobe's account with the
14 PUCO, yes.

15 Q. But that would be a unique account?

16 A. Yes.

17 MR. MARGARD: May I approach, Your
18 Honor?

19 MR. LYNN: Yes, please. Go ahead.

20 (Thereupon, Staff Exhibit 3, notice
21 of preliminary determination, was marked for
22 purposes of identification.)

23 BY MR. MARGARD:

24 Q. Let the record reflect I've handed
25 the witness a multi-page document marked for

1 purposes of identification as Staff Exhibit Number
2 3. Can you identify this document for me, sir?

3 A. Sure. This is a notice of
4 preliminary determination. This particular
5 document was mailed to Mr. Jobe's representative,
6 Mr. William Anderson, following an unsuccessful
7 attempt to resolve issues during the telephone
8 conference.

9 Q. And you will note on the last page of
10 this document as well, sir, that there's also a
11 redaction for that pin number?

12 A. Yes.

13 Q. Otherwise, this document is the same
14 as that maintained at this Commission's regular
15 business files?

16 A. It is.

17 Q. In your opinion, has the forfeiture
18 amount for the violation alleged in this case been
19 properly calculated?

20 A. It has.

21 Q. And in your opinion, did the
22 Respondent receive all of the notices that they
23 were required to receive under the Commission's
24 regulations?

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

1 Q. Now, you indicated you were present
2 during Inspector Swartz's testimony, correct?

3 A. Yes, sir.

4 Q. And you heard me ask him about the
5 exception with respect to passenger vehicles,
6 correct? Are you familiar with that exception?

7 A. I know of it, yes.

8 Q. What is your understanding of that
9 exception?

10 A. That if you are operating a motor
11 coach, that it's private, non-business, that you
12 don't have to have a medical card.

13 Q. And what is your understanding of
14 non-business in that context?

15 A. Largely the same as Mr. Swartz. My
16 reading of the federal regs and interpretations
17 that were available and other opinions online,
18 largely said that it would have to be a charitable
19 organization or they also reference a scientific
20 organization. I'm not real sure what that would
21 be. But if the motor coach is owned and operated
22 by the business for a commercial purpose, then it
23 would be a business, not a non-business.

24 Q. And what do you understand commercial
25 purpose to mean?

1 A. Well, in this case, I believe that
2 it's furthering a commercial enterprise through --
3 even if it's team building, you know. This is a
4 corporate sponsored event that is only available
5 to their employees. If they had other employees,
6 then I could maybe understand that there was, you
7 know, this isn't really related to our business.
8 This is just us doing good will, but it's only
9 their employees. So I believe it's a team
10 building and that's the furtherance of the
11 commercial enterprise.

12 Q. That's based on your understanding of
13 review of the Commission file and testimony today
14 and conversations that you've had with Mr. Swartz?

15 A. Yes, sir.

16 MR. MARGARD: Thank you, Your Honor.
17 I have no further questions for this witness.

18 MR. LYNN: Ms. Sanyal, cross?

19 CROSS-EXAMINATION

20 BY MS. SANYAL:

21 Q. Just a couple of clarifications, Mr.
22 Moser. When you mentioned -- you just said during
23 direct, and I'm paraphrasing, that if they had
24 other employees, then maybe it would not be a
25 commercial enterprise. Could you help me

1 understand what you meant by that?

2 A. I didn't say other employees. If
3 they had other occupants that were not employees.

4 Q. Okay. And then one more question,
5 Mr. Moser. To be a private motor carrier of
6 passengers non-business, do you have to fall under
7 the charitable/scientific bucket, if you will?

8 A. I don't know that that's an
9 imperative, but that was the only examples that
10 were given in all of my research.

11 Q. And when you say examples in your
12 research, where did you research?

13 A. Oh, the notice of rule makings,
14 federal regs, conversation with other motor
15 carrier -- not motor carrier, but commercial
16 enforcement personnel.

17 Q. And in your research, did you consult
18 any other agencies or you just did, you know,
19 online research into the federal register?

20 A. I did online research, yes.

21 MS. SANYAL: I think those are all
22 the questions we have, Your Honor.

23 MR. LYNN: Thank you.

24 MR. MARGARD: Your Honor, may I?

25 MR. LYNN: Yes, I'm sorry.

1 FURTHER DIRECT EXAMINATION

2 BY MR. MARGARD:

3 Q. Just to clarify, you were asked about
4 other occupants who might not be employees. Would
5 your opinion change if those other occupants were
6 spouses or family members of employees?

7 A. I think the definition, as brief as
8 it is, in what I could find was that it was
9 limited to employees only.

10 MR. MARGARD: Very good. Thank you.

11 MR. LYNN: Thank you, Mr. Moser.

12 MR. MARGARD: Your Honor, I have no
13 further witnesses and I respectfully move for
14 admission of Staff Exhibits 1, 2 and 3.

15 MR. LYNN: Ms. Sanyal, any objection?

16 MS. SANYAL: No objection.

17 MR. LYNN: We'll admit Staff 1, 2 and
18 3 in the record. And Ms. Sanyal, who would you
19 like to call?

20 MS. SANYAL: I would like to call Mr.
21 Brian Jobe to the stand.

22 MR. LYNN: Come up please.

23 BRIAN JOBE
24 of lawful age, having been first duly cautioned
25 and sworn, as hereinafter certified, was examined

1 and said as follows:

2 MR. LYNN: Thank you. Have a seat,
3 please.

4 DIRECT EXAMINATION

5 BY MS. SANYAL:

6 Q. Good morning, Mr. Jobe. Would you
7 please provide your full legal name and business
8 address for the record.

9 A. My name is Brian Jobe, address is
10 2001 Sportys Drive, Batavia.

11 Q. Okay. You may have to speak a little
12 louder or move the mike a little closer to you.
13 Perfect. And where are you currently employed,
14 Mr. Jobe?

15 A. The Sportsman's Market is the
16 business name, but our customers call us Sporty's.

17 Q. Okay. And what is your position?

18 A. I'm in charge of our security as well
19 as supervisor of our retail store and I help out
20 in the warehouse in those departments.

21 Q. Okay. And how long have you worked
22 at Sporty's?

23 A. 37 years.

24 Q. Okay. And we're here today because
25 you were driving the bus on October 10, 2021. So

1 how long have you been driving the Sporty's bus?

2 A. 15 to 20 years.

3 Q. Okay. And are you the only person
4 who drives the bus?

5 A. No, but I drive it most of the time.

6 Q. And why do you end up driving it most
7 of the time?

8 A. Because I do not drink.

9 Q. Okay. So you are just the designated
10 driver all the time?

11 A. Right, yes.

12 Q. And do you have a commercial driver's
13 license?

14 A. No, I do not.

15 Q. And can you help us understand why
16 you don't have one?

17 A. Michael informed me that we do not
18 need one for that bus.

19 Q. And who is Michael?

20 A. Michael Wolf, I'm sorry.

21 Q. And what is Michael Wolf's position?

22 A. At the time it was president and now
23 CEO.

24 Q. Okay. And did you ever get any type
25 of medical certification because of the Federal

1 Motor Carrier Safety Administration regulations in
2 order to drive the bus?

3 A. No, I did not.

4 Q. Okay. And why is that?

5 A. Since we did not need a CDL, I did
6 not hear that we needed any other license.

7 MR. LYNN: I want to step in for a
8 moment. Mr. Jobe, you indicated in your words you
9 drive this bus most of the time. How often is
10 that and under what circumstances?

11 THE WITNESS: Just to the games.

12 MR. LYNN: To the games, okay. I
13 see. So you are not driving it through the week
14 to pick up employees or something like that?

15 THE WITNESS: No, sir.

16 MR. LYNN: Okay. All right. I have
17 no more questions at this time. Go ahead, Ms.
18 Sanyal.

19 MS. SANYAL: That's a great question,
20 Your Honor, actually.

21 BY MS. SANYAL:

22 Q. Actually, let's clarify. I mean,
23 what is the bus mainly used for?

24 A. To take myself and other employees
25 and their guests to the games.

1 MS. SANYAL: Okay. At this point I'm
2 going to mark an exhibit, Your Honor. It's
3 Company Exhibit 1.

4 (Thereupon, Company Exhibit 1,
5 photograph, was marked for purposes of
6 identification.)

7 BY MS. SANYAL:

8 Q. And Mr. Jobe, do you recognize
9 Exhibit 1?

10 A. Yes.

11 Q. And what is Company Exhibit 1?

12 A. It's a picture of the bus.

13 Q. Okay. Did you take this photograph?

14 A. No, I did not.

15 Q. Who took this photograph?

16 A. Michael Wolf.

17 Q. But you've seen this photograph
18 before?

19 A. Yes.

20 Q. Okay. And I just have some questions
21 about the bus. How many passengers does the bus
22 carry?

23 A. 14 passengers plus the driver.

24 Q. Okay. So 14 plus you?

25 A. Yes.

1 Q. Okay. And who are the passengers in
2 the bus most often?

3 A. Usually employees or friends of
4 employees.

5 Q. Okay. Any spouses?

6 A. Spouses, yes.

7 Q. And so you mentioned that the bus is
8 used for game days. Now, where do you pick up
9 passengers from?

10 A. Some get on the bus at Sporty's and
11 the rest get on at Michael Wolf's house.

12 Q. And could you just help us understand
13 where Sporty's is and where Michael's house is?

14 A. The bus is at our work and then --

15 Q. Just the address, I'm sorry.

16 A. 2001 Sportys Drive.

17 Q. And where does Michael live?

18 A. He lives about six miles away.

19 Q. Okay. And does Sporty's charge
20 anyone for the cost of travel?

21 A. No.

22 Q. Does Sporty's offer the bus
23 transportation to any members of the public?

24 A. No, we do not.

25 Q. So who can ride the bus on game days?

1 A. Just employees and their spouse or
2 their friend.

3 Q. Okay. You can put aside this
4 exhibit.

5 MR. LYNN: Question.

6 MS. SANYAL: Of course.

7 MR. LYNN: Mr. Jobe, on this occasion
8 when you were stopped, do you recall was it only
9 company employees on the bus? It's been quite a
10 while ago.

11 THE WITNESS: Most of the employees,
12 their spouse or friend, but Mr. Wolf had two of
13 his friends on the bus as well.

14 MR. LYNN: Okay. And really then
15 from what you are saying, the only occasions when
16 you are driving this bus is to take whoever the
17 passengers are to Bengals games; am I right?

18 THE WITNESS: Correct.

19 MR. LYNN: I see. And is that
20 considered to be part of your ordinary job, for
21 lack of a better description, job duties, driving
22 this bus?

23 THE WITNESS: No, it's just I'm going
24 to the game anyway, so since I'm not drinking, I
25 drive.

1 MR. LYNN: I see. And so this is
2 something you were doing outside of your ordinary
3 employment hours; am I correct?

4 THE WITNESS: Yes, sir.

5 MR. LYNN: I see. Okay. Ms. Sanyal,
6 go ahead.

7 MS. SANYAL: Thank you, Your Honor.

8 BY MS. SANYAL:

9 Q. So let's talk about October 10, 2021.
10 So what time was that game?

11 A. Game was at 1:00.

12 Q. Okay. And then I know you mentioned
13 that you pick up people from Sporty's and then you
14 pick up people from Mr. Wolf's. So what time did
15 you leave for the game after picking everyone up?

16 A. I leave Sporty's at 10:00, picking up
17 people there. Then I go to Michael Wolf's and we
18 leave shortly after that and head down to the
19 game. We are usually at the stadium by 11:00.

20 Q. And on October 10, how many
21 passengers were on that bus that day?

22 A. 11, plus myself.

23 Q. Okay. And I know Examiner Lynn just
24 asked you, but again if you could, if you remember
25 who was on the bus that day, I think that would be

1 helpful.

2 A. Myself and my friend Simon, Mr. Wolf
3 and his wife and their friends, three employees
4 with their spouse or friend.

5 MS. SANYAL: Okay. At this time,
6 Your Honor, I would like to mark another exhibit,
7 Company Exhibit 2.

8 (Thereupon, Company Exhibit 2, map,
9 was marked for purposes of identification.)

10 BY MS. SANYAL:

11 Q. Okay. And do you recognize Company
12 Exhibit 2, Your Honor -- I'm sorry. Sorry, Mr.
13 Jobe, do you recognize it?

14 A. Yes.

15 Q. Okay. And what is Company Exhibit 2?

16 A. Map of the parking lots around the
17 Bengal stadium.

18 Q. Okay. And have you seen this exhibit
19 before?

20 A. Yes.

21 Q. And where have you seen it?

22 A. When we were first trying to figure
23 out where our lot was to park in.

24 Q. So just for clarification, where did
25 you see it? On a website?

1 A. Yeah, online.

2 Q. Okay. So on October 10, 2021, can
3 you just, using this map, can you tell me where
4 you were headed?

5 A. Heading to lot ERV.

6 Q. Okay. And why were you heading to
7 that particular lot?

8 A. That's where all the buses park.

9 Q. Okay.

10 A. So that's where our pass was for.

11 Q. And what route were you taking?

12 A. From Michael's, we took 275 to 471
13 north, and then down Mehring Way.

14 Q. And does this route take you into
15 Kentucky?

16 A. Yes.

17 Q. Why do you take this route instead of
18 taking a route within Ohio?

19 A. Because it's all highway travel, no
20 stops.

21 Q. Okay. So you were telling us you
22 were using the map and you were going towards lot
23 ERV. Now, where on your way did you encounter
24 Inspector Swartz?

25 A. He was parked in the median near

1 where it's marked entrance E.

2 Q. Okay. And then can you just help us
3 understand what happened?

4 A. As we passed him, we did a U-turn and
5 he flipped on his lights.

6 Q. Okay. And what did you do when you
7 saw the lights?

8 A. Pulled over to the edge of the road.

9 Q. And what happened after you stopped?

10 A. He asked us where we were heading.
11 So I told him the ERV lot and he said he would
12 follow us in. Once we got in there, he asked if I
13 had a medical license. I told him no. I gave him
14 my driver's license. He had me start the bus up
15 to check the lights and such. He went to his
16 vehicle for several minutes, came back and told me
17 it would be \$100 fine and no points on my license.

18 Q. Okay. And just some follow-up
19 questions. So how long did the inspection take?

20 A. Total, about 40 minutes.

21 Q. Okay. And did you primarily talk to
22 the inspector or did anyone else from Sporty's get
23 involved?

24 A. No. Michael Wolf talked to him.

25 Q. And is there anything else you would

1 like to add, Mr. Jobe, about that particular date
2 and that inspection?

3 A. No.

4 MS. SANYAL: Okay. Those are all the
5 questions I have.

6 MR. LYNN: Okay. Mr. Margard, before
7 you step in, Mr. Jobe, I have a question just for
8 my greater knowledge and for the record.
9 Sporty's, can you tell me what exactly is
10 Sporty's? Apparently a business of some sort, but
11 help me out.

12 THE WITNESS: We are a mail order
13 company primarily towards aviation.

14 MR. LYNN: All right. And another
15 question. You said that you do the driving with
16 this bus and you do it only on game days
17 apparently. So it's outside of the ordinary hours
18 of employment and you are the driver because you
19 are the designated driver, you do not drink. From
20 my own information, and again for the record, is
21 there anyone else with the company you were
22 unavailable that could drive?

23 THE WITNESS: There's a couple other
24 people who occasionally will drive if I'm not
25 going.

1 MR. LYNN: I see. All right. Thank
2 you. Ms. Sanyal, do you have any other questions?
3 If not, we'll go to Mr. Margard.

4 MR. MARGARD: I only have a couple
5 questions. Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MARGARD:

8 Q. And further I want to thank you for
9 being a designated driver. It's important that we
10 have such drivers and I applaud you for taking
11 that on.

12 You indicated that you were the
13 primary driver of this vehicle. Does anyone else
14 ever drive this vehicle?

15 A. Yeah. Again, if I'm not going to a
16 game, there are other people who will sometimes
17 drive.

18 Q. Is this vehicle used for any purpose?
19 Has it ever been used for any purpose other than
20 going to a Bengals game?

21 A. No, sir.

22 Q. Does the company own other vehicles?

23 A. Vans and cars.

24 Q. Other registered vans?

25 MS. SANYAL: Objection. It's not

1 clear what is meant by registered.

2 BY MR. MARGARD:

3 Q. If you know, are there any other
4 vehicles that are DOT registered?

5 A. I don't know of any.

6 MR. MARGARD: Okay. No, I don't
7 think I have any other questions. Thank you.

8 MR. LYNN: Okay. No further
9 follow-up?

10 MS. SANYAL: No. All good.

11 MR. LYNN: Thank you, Mr. Jobe. You
12 can take your seat for the time being.

13 MS. SANYAL: And then --

14 MR. LYNN: You have additional
15 witnesses?

16 MS. SANYAL: Yes. I would like to
17 call Mr. Michael Wolf to the stand, please.

18 MICHAEL WOLF
19 of lawful age, having been first duly cautioned
20 and sworn, as hereinafter certified, was examined
21 and said as follows:

22 MR. LYNN: Thank you. Have a seat,
23 please. And Ms. Sanyal.

24 MS. SANYAL: And, Your Honor, we hope
25 that with Mr. Wolf, you'll understand more about

1 the Sporty's business model.

2 MR. LYNN: I'm quite willing to
3 listen. Go ahead.

4 DIRECT EXAMINATION

5 BY MS. SANYAL:

6 Q. Mr. Wolf, could you please provide
7 your full legal name and business address for the
8 record.

9 A. Michael James Wolf, 2001 Sportys
10 Drive, Batavia, Ohio, 45103.

11 Q. Okay. And I think we've all
12 discussed you work for Sporty's. You are the CEO.
13 Could you tell us about what Sporty's is and what
14 you do?

15 A. Sporty's is an aviation business. It
16 started 60 plus years ago selling education
17 materials for pilots and blossomed into a nice
18 business in the '70s and '80s. I started working
19 for Sporty's in 1972 as a high school student and
20 worked in the warehouse picking and shipping
21 orders. Watched the company grow from like 12
22 employees to over 200, and it's a family company
23 and we know each other like family.

24 We sell -- our main product is
25 aviation education materials to make flying safe

1 and fun, but we also sell everything you need for
2 an airplane. But the primary business at Sporty's
3 at the airport is a warehouse, as Brian said,
4 warehouse and fulfillment center, cost center.

5 We also run the University of
6 Cincinnati's flight programs and we operate that
7 out of the Clermont County Airport. And I started
8 in high school and just worked hard and now I'm
9 the CEO 51 years later.

10 MR. LYNN: Congratulations.

11 BY MS. SANYAL:

12 Q. As the chairman and CEO, Mr. Wolf,
13 what are your duties?

14 A. Just like any leader, I just make
15 sure the operation is running smoothly and
16 properly and plan for the future, look for
17 problems, talk to my employees to keep the
18 business running forever.

19 Q. Okay. Mr. Wolf, I'd like to talk to
20 you about employee group activities at Sporty's.
21 So can you give us an overview of the type of
22 group activities that Sporty's employees engage
23 in?

24 A. Well, the one today, as Brian
25 obviously explained, we have Bengals tickets and

1 we take people to Bengals games, but Sporty's
2 started out with three guys and they were big in
3 sports. So we always had tickets to games. So
4 when I started in high school, I used to go to
5 baseball games and football games, and as the
6 years go by, I actually started driving a van to
7 the games.

8 But we have also tickets to
9 Cincinnati Reds, Xavier, FC, UK. So we try, you
10 know, it's a sports thing, so we try to -- we have
11 all those tickets to give to our employees so they
12 can take their friends.

13 Q. Okay. And how long has the company
14 had season tickets to the Bengals?

15 A. They were, the founders of the
16 company, were really excited so they have had
17 season tickets since the Bengals started at
18 Nippert Stadium in 1968. So it's been going -- I
19 started going to the games in the '70s when I
20 started working at Sporty's and then became a
21 driver and just kept working my way up through the
22 company and now I have Brian and others that drive
23 for us.

24 Q. And how do you give away the tickets?

25 A. The tickets, we have sign-up sheets

1 in our locker area where people can sign up for
2 the tickets and how many they want. And then we
3 look at how often the people go and who they are.
4 So it's kind of a seniority, try to make it fair
5 to the employees so everybody gets a chance to go.

6 Q. And are only employees able to go to
7 the games?

8 A. Employees and their spouses,
9 children, friends.

10 Q. Okay. And how is the Sporty's bus
11 used for this activity?

12 A. Well, just for this activity, you
13 know. People meet at 10:00 on Sunday morning and
14 at Sporty's in the parking lot, the people that
15 live in that vicinity, and I live up on the way to
16 downtown, so they pick me up on the way and other
17 people that live near me, they come to my house
18 and we load up the bus and head to the game.

19 Q. Okay. And is the bus used for any
20 other purposes?

21 A. No, just for the sporting events to
22 take a group down.

23 Q. Okay. And you mentioned that you've
24 driven the bus previously when you were younger?

25 A. When I was younger, I was driving it.

1 We didn't have enough people in the company then,
2 so I was driving a van back in the day.

3 Q. And then now it's mostly Brian. Is
4 there anyone else that drives?

5 A. Yeah, there are several other
6 employees. When Brian can't make it, they can
7 step in.

8 Q. Who drives the bus most often?

9 A. Brian drives the most.

10 Q. And why?

11 A. Because Brian likes football and he's
12 my DD, so why not?

13 Q. Okay. And then you mentioned that
14 Sporty's employees have been attending Bengals
15 games for like 45, 50 years along with their
16 friends and family. Has transportation always
17 been provided for this group activity?

18 A. It's mostly provided. If we don't
19 have enough people, we don't take a bus. 90
20 percent of the time we take the bus or a van.

21 Q. And then you've mentioned that you
22 have Bengals tickets and Sporty's has tickets to
23 other sporting events. Are any of these tickets
24 used to develop business for Sporty's?

25 A. No. We are an international company.

1 We have -- I was told we don't have a million
2 customers yet, but we have hundreds of thousands,
3 almost half a million customers on file that we
4 deal with, but we are a worldwide company. We
5 deliver merchandise for aviation all over the
6 world. The Internet makes it easier because our
7 educational courses are online so we don't have to
8 ship anything to Europe or Japan. But --

9 Q. So going back to my question, do you
10 use those tickets to develop business or
11 clientele?

12 A. No. There's no way we can get --
13 most of our customers are spread out all over
14 America. There's no way. It's just for
15 employees.

16 Q. Okay. And I think you may have a
17 copy of Exhibit 1 up there. Actually, no, not
18 that one. Thank you. Thank you for being so
19 helpful.

20 MS. SANYAL: But I'm going to
21 approach, Your Honor. This one (indicating).

22 BY MS. SANYAL:

23 Q. So do you recognize Exhibit 1?

24 A. Yes, that's Sporty's bus, the new
25 Sporty's bus. This is our second bus.

1 Q. And did you take a photo -- I'm
2 sorry. Let me rephrase that. Who took this
3 photograph?

4 A. I took the photo I think last spring.

5 Q. Okay. And is this an accurate
6 depiction of the bus?

7 A. Yes, it is.

8 Q. Okay. And what is the make and model
9 of this bus?

10 A. It's a Ford F-450.

11 Q. Okay.

12 A. 2021.

13 Q. And when did you -- when did Sporty's
14 purchase this bus?

15 A. We purchased the bus in February of
16 2021, and then it went to the bus company to
17 convert it to a bus like we currently have. So we
18 didn't take delivery until May.

19 Q. Okay. Thank you. That's helpful.
20 So May of 2021?

21 A. May of 2021.

22 Q. And how many passengers does this bus
23 carry?

24 A. 14, plus a driver.

25 Q. Okay. And I think you mentioned this

1 a couple of times, but who are the passengers
2 usually?

3 A. Yeah, they are always employees,
4 employees' friends and family.

5 Q. And does Sporty's charge anyone for
6 the cost of travel to the Bengals stadium?

7 A. None at all.

8 Q. Can a member of the public pay to use
9 the bus?

10 A. No.

11 Q. Thank you. You can put that exhibit
12 aside.

13 MS. SANYAL: And I'd like to mark
14 another exhibit, Your Honor, Company Exhibit 3.

15 (Thereupon, Company Exhibit 3, motor
16 carrier identification report, was marked for
17 purposes of identification.)

18 BY MS. SANYAL:

19 Q. Have you had a moment to look at
20 Company Exhibit 3?

21 A. Yes.

22 Q. Okay. Do you recognize Company
23 Exhibit 3?

24 A. Yes.

25 Q. And what is Company Exhibit 3?

1 A. The motor carrier identification
2 report that we fill out. Bill Anderson, who is
3 present here, our corporate counsel, it's his
4 responsibility to fill these forms out.

5 Q. Okay. And you've seen this document
6 before being prepared?

7 A. Yeah. He did the research and he
8 discussed it with me. So he was telling me how he
9 was going to file it, and that's pretty much the
10 last I dealt with it.

11 Q. And how often is this form filed?

12 A. It's got to be re-filed every two
13 years, and Bill Anderson takes care of that.

14 MR. LYNN: A question. This then
15 refers to the current bus? The one that's in
16 this?

17 THE WITNESS: Both. The previous bus
18 we started filling the forms --

19 MR. LYNN: This refers to your prior
20 bus, obviously not the one in Company Exhibit 1.

21 THE WITNESS: No, no, the same bus.
22 Our old bus had the same DOT, so we got a new bus
23 registered and we had to fill out the same form.

24 MR. LYNN: So this exhibit is
25 applicable to the current bus?

1 THE WITNESS: Current bus. The old
2 bus is no longer in our possession.

3 MR. LYNN: Thank you. Go ahead.

4 BY MS. SANYAL:

5 Q. And do you know why you have to
6 submit this form once every two years?

7 A. Yeah, through corporate counsel, Bill
8 Anderson, he says because our bus is over 10,001
9 pounds and it's got -- so we have a DOT number and
10 it holds 15 passengers.

11 Q. And just to clarify something that
12 you said in your answer, do you know why the
13 Sporty's bus had to get a USDOT number?

14 A. The weight, because of the weight
15 basically, another reason Bill Anderson advised me
16 on the reasons.

17 Q. And then just staying on Company
18 Exhibit 3, if you look at question 23, let me know
19 when you are there. Do you see in question 23
20 private motor carrier or passengers non-business
21 is selected?

22 A. That's correct.

23 Q. To your knowledge, has the Federal
24 Motor Carrier Safety Administration ever reached
25 out to Sporty's and indicated that this form was

1 filled out incorrectly?

2 A. No.

3 Q. You can put this aside. On the day
4 of the incident, let's go over October 10, 2021.
5 You were attending -- were you attending the game?

6 A. Yes, I was attending the game with my
7 wife.

8 Q. Anyone else?

9 A. The other passengers on the bus,
10 including, you know, my friend who actually is an
11 employee that brought one of her friends. I had a
12 flight instructor and his mother. Brian had a
13 friend on board and there were another couple of
14 people. It's been a while. I was there no doubt.

15 Q. Okay. It has been two years. And
16 what time was the game?

17 A. The game was a 1:00 game.

18 Q. And when did you leave for the game?

19 A. We leave for the game approximately
20 -- leave my residence about quarter after 10:00.

21 Q. And you mentioned there were several
22 passengers on the bus. Could you maybe give us a
23 guesstimate of how many passengers were on the
24 bus?

25 A. Well, there were 11 passengers at the

1 game and I didn't remember because that was a long
2 time ago.

3 Q. And was this including Brian or not
4 including?

5 A. 11 plus Brian.

6 Q. Okay. And when you left your home,
7 where were you all headed?

8 A. We were all headed to the stadium.

9 Q. Okay. And is there a specific place
10 in the stadium that you had to park?

11 A. Yes, we had to park in lot ERV where
12 all the recreational vehicles park.

13 Q. What route were you taking to go to
14 lot ERV?

15 A. We take, as Brian said, we take I-275
16 to 471 into town and cross Mehring Way and head to
17 the parking area because it's the most efficient
18 shortest way. We're too smart to go another way.

19 Q. And that route does take you through
20 Kentucky?

21 A. Yes, it does.

22 Q. But you still take it -- why do you
23 take this route that goes through another state?

24 A. Just the shortest route to
25 Cincinnati.

1 Q. Okay. And when did you encounter
2 Inspector Swartz?

3 A. Yeah, like Brian said, I was in the
4 passenger section of the bus and Brian made the
5 comment that there was a policeman behind us and
6 we weren't sure who it was, but then the officer
7 came up and told us to go to the parking lot and
8 so we went to the parking lot and parked and
9 that's when the officer came up and started
10 getting information from Brian and then I stepped
11 in right then as well. Being the CEO I needed to.

12 Q. When you say stepped in, what do you
13 mean?

14 A. Well, the officer was talking to
15 Brian and he got his registration and his stuff
16 from him and then was asking him questions and
17 that's when I stepped in and said I'm the CEO and
18 introduced myself and then we just started
19 communicating. And he was asking if anyone was
20 paid or paid to be on the bus, and I said no, this
21 is just totally a group event out here.

22 Q. And how long did the inspection take?

23 A. 40 minutes, maybe longer, but we were
24 tailgating, so when he started his inspection, I
25 went to tailgate for a while. So there was maybe

1 some beer involved.

2 Q. And did you have any other
3 communication with Inspector Swartz after your
4 initial --

5 A. Yeah, we talked initially and then he
6 told me what he was doing and he mentioned the
7 medical certificate, and it's my understanding of
8 the way we registered the bus, it's not needed.
9 So that was -- we didn't need the medical
10 certificate and then he wanted to inspect the bus
11 and I kind of took a deep breath because I thought
12 this bus is brand new, we just got this bus five
13 months ago, and he did make the comment that he
14 found stuff on buses that weren't done from the
15 factory.

16 That's when I switched to the
17 tailgate part and let him do what he wanted and
18 then we had communications that he would ask Brian
19 to start the bus and turn the turn signals on.

20 Q. So what happened after the inspection
21 ended?

22 A. After the inspection, the officer
23 went to his car and was in there a while and then
24 came out with the citation, and we said, okay,
25 we'll deal with this later. The game is about to

1 start.

2 Q. And so after October 10th, did you
3 receive any follow-up documentation from the PUCO?

4 A. We got something in the mail.

5 Q. And did you have any conferences, now
6 without telling us what you talked about in the
7 conferences, did you have any conferences with the
8 PUCO?

9 A. Yes, we had at least one Zoom
10 conference.

11 Q. Okay. And you were here during
12 Inspector Swartz's direct examination, correct?

13 A. Yes.

14 MS. SANYAL: Your Honor, I'm going to
15 use Staff Exhibit Number 1 real quick.

16 MR. LYNN: I have a question and I
17 better ask while I think of it. Again, you are
18 indicating that this vehicle was designed to carry
19 15 passengers, maximum 15, including the driver;
20 am I correct?

21 THE WITNESS: Yes.

22 MR. LYNN: Okay. And you also
23 indicated the vehicle, let's see, you've completed
24 and submitted this Form 150, it's Company Exhibit
25 3 because the vehicle was exceeding the 10,001

1 pound gross weight; am I right?

2 THE WITNESS: Correct.

3 MR. LYNN: Okay. Thank you. Ms.
4 Sanyal, go ahead.

5 MS. SANYAL: Of course.

6 BY MS. SANYAL:

7 Q. Okay. We are referring back to staff
8 Exhibit Number 1. And Mr. Wolf, take a minute to
9 look it over, and under the vehicle identification
10 box, what is listed over there?

11 A. It's the 2002 blue Chevy van.

12 Q. Okay. Was that the bus that was
13 pulled over on October 10, 2021?

14 A. No, that was our old van.

15 Q. Okay. And you can put that exhibit
16 aside.

17 MS. SANYAL: And just for
18 clarification, Your Honor, we'll go through a few
19 more exhibits. I would like to mark Company
20 Exhibit 4.

21 (Thereupon, Company Exhibit 4,
22 certificate of title, was marked for purposes of
23 identification.)

24 BY MS. SANYAL:

25 Q. And Mr. Wolf, what is Company Exhibit

1 4?

2 A. Ohio certificate of title for the bus
3 we purchased in February 2021.

4 Q. And have you seen Exhibit 4 before?

5 A. Yes.

6 Q. And what is the issue date of this
7 title?

8 A. February 24th, 2021.

9 Q. And what is the make and model
10 listed?

11 A. It is a Ford EF4 -- E4F.

12 Q. Okay. And then you can put that one
13 aside, and we just have one other exhibit to clear
14 up this issue.

15 MS. SANYAL: I would like to mark
16 Company Exhibit 5, Your Honor.

17 MR. LYNN: Go ahead. Please bring
18 that up. Thank you.

19 (Thereupon, Company Exhibit 5,
20 registration, was marked for purposes of
21 identification.)

22 BY MS. SANYAL:

23 Q. And Mr. Wolf, what is Company Exhibit
24 5?

25 A. It's the State of Ohio registration

1 for the vehicle.

2 Q. And have you seen this document
3 before?

4 A. Yes.

5 Q. Okay. And what is the registration
6 period for this?

7 A. It's for May 13, 2023. This current
8 one expired in 2024.

9 Q. And what type of registration is
10 this?

11 A. Commercial registration.

12 Q. Specifically if you look in the
13 middle part, there's a registration type listed.

14 A. Vehicle class, bus, Ford with a GVW,
15 14500.

16 Q. If you look in the middle of the
17 column, there's a category, do you see it's called
18 registration type?

19 A. Center?

20 Q. Yep.

21 A. Renewal.

22 Q. Okay. And what is the vehicle year
23 listed on this registration?

24 A. 2021.

25 Q. Okay. Now, I need to find out where

1 I'm looking. And what is the purchase date listed
2 on this?

3 A. Purchase date listed is February 24,
4 2021.

5 Q. Okay. And so just to come back, Mr.
6 Wolf, the car, the bus that was pulled over, what
7 was the make and model of the bus that was pulled
8 over?

9 A. It was the Ford E4F.

10 Q. Okay. Thank you. You can put that
11 exhibit aside. Mr. Wolf, has the Sporty's bus
12 ever been pulled over prior to October 10, 2021?

13 A. There was one other time. It was our
14 old bus. They were working on the I-275 bridge on
15 the east side of town and they said there was a
16 weight limit on the bridge and after the game, I
17 looked -- during the game I looked at the door to
18 check the weight and we were below the weight
19 limit. So I told Brian, he was driving that day,
20 I said, let's go back that way. Well, the weight
21 limit was in pounds and the weight on the door is
22 in kilos. So I made that mistake, so the officer
23 just said turn around and we just turned around
24 and went back downtown and came home. That was
25 the only other time that I know of.

1 Q. And have you ever been pulled over by
2 a PUCO inspector?

3 A. We were approached by a PUCO
4 inspector I am guessing 2018, 2019. We were at a
5 game. In this time it was we were preparing to
6 leave the game and a PUCO car drove up and the
7 driver or the officer got out and came to the
8 window and asked very similar questions that Kevin
9 was asking, are you being paid? Is anybody being
10 paid? And the officer actually, you know, talked
11 to the people on the bus asking them, and we said
12 no, it's a company event. We are out here at the
13 game, and he left.

14 Q. Okay. Is there anything else you
15 would like to add, Mr. Wolf?

16 A. Well, a little bit. You know, we are
17 running a private bus for a private operation and
18 getting pulled over and inspected when we have a
19 brand new bus and seeing all that other stuff down
20 there, we all know what goes on with these
21 personal buses. Everybody is drinking and driving
22 and playing, but we do things right at Sporty's.
23 We are an aviation company, so we really do things
24 right. So Bill did the research and we understand
25 the question.

1 I'm disappointed that we have to go
2 this far. We are doing it on my end for a reason
3 because we want to keep driving the bus the way
4 we've been operating our vehicle for 40 years, and
5 we'd like to keep doing that. Wasting all the
6 taxpayers' money with all of this is just -- I'm
7 not happy about that. I'm taking the time to do
8 it right because we do things right.

9 Q. Anything else, Mr. Wolf?

10 A. That's it.

11 MS. SANYAL: Okay. Those are all of
12 our questions.

13 MR. MARGARD: Just a few questions,
14 Your Honor, and mostly just to make sure that the
15 record is very clear here.

16 CROSS-EXAMINATION

17 BY MR. MARGARD:

18 Q. With respect to the exhibits your
19 counsel provided you, the title and the
20 registration. And just to kind of close the loop
21 on that, you transferred the plate from the one
22 van to the other? So the plate was the same; is
23 that correct?

24 A. That's correct.

25 Q. With respect to the tickets to the

1 various games and this game in particular, these
2 tickets are all purchased by the company? They
3 are owned by the company?

4 A. That's correct.

5 Q. And no guests pay for anything?

6 A. No.

7 Q. They don't make any contribution to
8 the gas?

9 A. Not at all.

10 Q. No contribution to parking or the
11 parking pass? The parking pass is also a company
12 pass?

13 A. Yes, it is.

14 Q. With respect to the guests, and
15 you've been clear that the only guests that day
16 were employees and their guests; is that correct?

17 A. That's correct.

18 Q. That the only passengers on that bus
19 ever are employees and their guests?

20 A. Employees, guests, friends and
21 family.

22 Q. You do not transport customers in
23 this van ever?

24 A. No. Our customers are spread out all
25 over. We just don't do it.

1 Q. You do have a local retail store?
2 You have local customers?

3 A. We have some, a handful. We have
4 customers at the airport, but they are never
5 offered the opportunity to ever ride on the bus.

6 Q. That would also presumably be true of
7 vendors?

8 A. No vendors. It's just for our
9 employees and their guests and friends just to
10 make it a group activity.

11 Q. Okay. This bus is only used to
12 attend sporting events?

13 A. Yes.

14 Q. It's not used ever to pick up any
15 kind of supplies?

16 A. No, it's full of seats. It's never
17 used for that. We have other vehicles for that.

18 Q. Not used for deliveries?

19 A. No. We use UPS, all those guys.

20 Q. Not used to attend meetings?

21 A. No.

22 Q. Conferences?

23 A. Nope. We have other vehicles that we
24 use. Vans are not DOT registered if it's a
25 smaller group, no.

1 Q. For example, something like the show
2 up in Oshkosh, Wisconsin?

3 A. Yes.

4 Q. This van would not have been used?

5 A. No, we take some other non DOT vans
6 and we rent vehicles up there. We don't use it.
7 It's too far to take basically.

8 Q. Only on a personal note, I'll note
9 that I was in elementary school when the Bengals
10 were created, and our school adopted the Bengals
11 school mascot as a result of that. So I remember
12 very well when the Bengals came about. I'm old
13 enough. Thank you, sir. I have no other
14 questions.

15 MR. LYNN: Mr. Margard, I'll say I
16 can remember the Bengals' expansion team. We'll
17 talk about that after the hearing. Just a
18 question for the witness.

19 MS. SANYAL: I have one clarification
20 question, if it's okay.

21 MR. LYNN: Better not be about what I
22 just said. I'm dating myself.

23 MS. SANYAL: I hope it's on the
24 record so I can review it.

25 FURTHER DIRECT EXAMINATION

1 BY MS. SANYAL:

2 Q. Could you just help us, when you go
3 to these tailgates, tell us what the environment
4 is. What happens when you get to ERV and you get
5 to the bus -- you get the bus there?

6 A. We get the bus there. Everybody, we
7 jump out and the regulars know their duties, set
8 up a table and we put up a flag, put up an
9 American flag and a Bengals flag and put up a
10 little cover and drink some beer and play corn
11 hole and typical tailgate stuff all day and then
12 hopefully the Bengals win.

13 Back in the '90s we left at the half
14 time a lot. Now we're staying longer at the
15 games. We just have fun, and then Brian is there
16 with us to make us a safe trip home.

17 Q. Who all is at the tailgate?

18 A. Same people that rode the bus, plus
19 other employees. We have several employees that
20 live downtown and they'll come down and join the
21 tailgate party at the bus, because they are not
22 going to drive out to my house. The employees
23 that live downtown, if they have their own tickets
24 and come to the game, they are welcome to join us
25 for tailgating.

1 Q. Any other people?

2 A. No.

3 MS. SANYAL: Okay. That's all we
4 have.

5 MR. LYNN: Mr. Margard, any other
6 questions?

7 MR. MARGARD: No.

8 MR. LYNN: I have a question for the
9 witness then. Is Mr. Jobe often the driver,
10 apparently not all the time for this vehicle?

11 THE WITNESS: Not all the time.

12 MR. LYNN: Does he receive any
13 additional compensation, any pay for that?

14 THE WITNESS: No.

15 MR. LYNN: All right. Thank you.
16 Take your seat. And also I'll ask Mr. Jobe just
17 to clarify this again for the record. You don't
18 receive any additional pay or compensation for
19 doing this taking people to the events?

20 MR. JOBE: No, I do not.

21 MR. LYNN: All right. Ms. Sanyal,
22 I'm assuming you'll make a motion to admit all
23 these exhibits into evidence?

24 MS. SANYAL: Yes, Your Honor. I move
25 to make Company Exhibit 1 through 5 into the

1 record.

2 MR. LYNN: And Mr. Margard, any
3 objection?

4 MR. MARGARD: No objection.

5 MR. LYNN: All right. I don't
6 believe I have more questions. This has been an
7 interesting hearing. Thank you all for attending,
8 especially those who drove up from Cincinnati.
9 And thanks for your court reporter for being here
10 too. And I believe that will wrap things up for
11 the day. So everybody have a good rest of the
12 week. Thank you.

13 (Thereupon, the hearing concluded at
14 12:15 p.m.)

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1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Lisa K. Keller, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified,

6 DO HEREBY CERTIFY that the above-named
7 hearing was reduced to writing by me
8 stenographically in the presence of the parties
9 and thereafter reduced to typewriting.

10 I FURTHER CERTIFY that I am not a
11 relative or Attorney of either party nor in any
12 manner interested in the event of this action.

13

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1 IN WITNESS WHEREOF, I have hereunto
2 set my hand and seal of office at Dayton, Ohio, on
3 this 9th day of October, 2023.

4 *Lisa K. Keller*
5 _____

6 LISA K. KELLER

7 NOTARY PUBLIC, STATE OF OHIO

8 My commission expires 11-6-2023
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&	150 61:24	22270 75:5	50 16:7 51:15
& 5:18	16th 2:5	23 56:18,19	51 48:9
0	180 1:13	24 65:3	52 2:10 3:23
02989162 8:1	1968 49:18	24th 63:8	6
1	1972 47:19	26 1:14	6 24:6
	1:00 40:11	26th 3:16	60 47:16
	57:17	275 42:12	7
1 6:20,21 12:15	2	58:15 65:14	70s 47:18 49:19
27:2 33:14,17	2 27:14,20	3	8
37:3,4,9,11	33:14,17 41:7	3 28:20 29:2	80s 47:18
52:17,23 55:20	41:8,12,15	33:14,18 54:14	9
61:15 62:8	20 18:9 21:18	54:15,20,23,25	90 16:8 51:19
72:25	35:2	56:18 61:25	90s 71:13
10 34:25 40:9	200 47:22	30 2:5 3:16	9th 75:3
40:20 42:2	2001 34:10	24:4	a
57:4 62:13	38:16 47:9	37 34:23	a.m. 1:15
65:12	2002 12:2	39341 8:22	aasanyal 2:11
10,001 56:8	62:11	4	able 50:6
61:25	2004 5:6	4 62:20,21 63:1	above 1:10
100 16:7 43:17	2014 5:2,12	63:4	74:6
10:00 40:16	2018 24:24	40 17:18 43:20	account 28:13
50:13 57:20	66:4	59:23 67:4	28:15
10th 5:23 61:2	2019 66:4	400 25:24	accurate 12:17
11 40:22 57:25	2021 5:23	43215 2:5 3:24	53:5
58:5	27:15 34:25	43216 2:10	action 74:12
11-6-2023 75:6	40:9 42:2	45 51:15	activities 48:20
11:00 1:15	53:12,16,20,21	450 53:10	48:22
40:19	57:4 62:13	45103 47:10	activity 50:11
12 27:15 47:21	63:3,8 64:24	471 42:12	50:12 51:17
12:15 73:14	65:4,12	58:16	69:10
13 64:7	2023 1:14 64:7	5	actually 10:3
14 37:23,24	75:3	5 63:16,19,24	12:18 14:20
53:24	2024 64:8	72:25	18:17 36:20,22
14500 64:15	22-14 1:5 3:4		
15 18:9 35:2			
56:10 61:19,19			

49:6 52:17 57:10 66:10 add 44:1 66:15 additional 23:4 46:14 72:13,18 address 34:8,9 38:15 47:7 administration 36:1 56:24 admission 33:14 admit 33:17 72:22 adopted 70:10 advised 56:15 age 4:10 23:8 33:24 46:19 agencies 32:18 ago 13:24 22:3 39:10 47:16 58:2 60:13 ahead 4:15 27:13 28:19 36:17 40:6 47:3 56:3 62:4 63:17 airplane 48:2 airport 48:3,7 69:4 alleged 29:18 alliance 26:2,15 america 52:14 american 5:18 24:10 71:9	amount 26:5,11 29:18 amounts 26:5,8 26:18 anderson 2:13 4:2 29:6 55:2 55:13 56:8,15 anna 2:9 3:22 answer 56:12 anybody 66:9 anyway 39:24 apparent 1:7 3:5,6 apparently 44:10,17 72:10 appearances 2:1 3:9 applaud 45:10 applicable 55:25 applied 26:18 approach 6:14 27:11 28:17 52:21 approached 66:3 approximately 9:15 15:11 57:19 approximation 16:6 area 16:2 19:9 50:1 58:17 aside 39:3 54:12 57:3	62:16 63:13 65:11 asked 9:22 13:1 20:19 33:3 40:24 43:10,12 66:8 asking 59:16,19 66:9,11 assess 1:8 3:6 27:25 assessed 25:14 25:23 assigned 3:3,8 assignment 6:4 18:3 assistant 2:3 assuming 72:22 attached 25:9 attempt 29:7 attend 14:25 69:12,20 attending 51:14 57:5,5,6 73:7 attorney 2:3,4 2:9 3:7,14 74:11 authority 25:19 auto 5:19 automated 26:21 available 9:5 30:17 31:4 average 17:6	aviation 44:13 47:15,25 52:5 66:23 aware 10:11 19:17
b			
b 5:18 24:11 back 10:1 14:16 43:16 51:2 52:9 62:7 65:5,20,24 71:13 bad 20:4 baseball 49:5 based 13:7 31:12 basically 9:3 56:15 70:7 batavia 9:25 34:10 47:10 beer 60:1 71:10 beginning 1:15 behalf 2:2,7 3:12,18,21 behaviors 25:18 believe 31:1,9 73:6,10 bengal 41:17 bengals 6:7 10:1 11:12 14:13 16:9,11 16:24 17:7 39:17 45:20 48:25 49:1,14			

49:17 51:14,22 54:6 70:9,10 70:12,16 71:9 71:12 best 29:25 better 39:21 61:17 70:21 big 49:2 bigger 12:4 bill 4:2 55:2,13 56:7,15 66:24 bit 12:4 66:16 blossomed 47:17 blue 62:11 board 57:13 bought 11:18 box 62:10 boy 20:24 brand 60:12 66:19 breath 60:11 brian 1:6 3:5 3:21 4:2 33:21 33:23 34:9 48:3,24 49:22 51:3,6,9,11 57:12 58:3,5 58:15 59:3,4 59:10,15 60:18 65:19 71:15 bridge 65:14,16 brief 33:7 briefly 5:3,16	bring 63:17 broad 1:13 2:5 3:16 brought 11:12 17:9 21:6 57:11 brown 6:7 bucket 32:7 building 31:3 31:10 bulk 5:19 24:13 24:13 bus 5:7 9:1,23 11:14,15,18 12:2,3,16,21 14:1 15:2,3 16:19 18:4,4 18:17 20:24 21:4,21 22:5 22:10,11,19 34:25 35:1,4 35:18 36:2,9 36:23 37:12,21 37:21 38:2,7 38:10,14,22,25 39:9,13,16,22 40:21,25 43:14 44:16 50:10,18 50:19,24 51:8 51:19,20 52:24 52:25,25 53:6 53:9,14,15,16 53:17,22 54:9 55:15,17,20,21 55:22,22,25	56:1,2,8,13 57:9,22,24 59:4,20 60:8 60:10,12,12,19 62:12 63:2 64:14 65:6,7 65:11,14 66:11 66:17,19 67:3 68:18 69:5,11 71:5,5,6,18,21 buses 5:8,9 14:8,14 15:10 15:25 16:3,7,9 16:11 17:20 42:8 60:14 66:21 business 8:7 10:18,20,21,22 10:22,24 11:3 11:7 17:10,24 18:6,6,23,24 19:13,19 20:2 20:6 21:7,22 27:9 29:15 30:11,14,22,23 30:23 31:7 32:6 34:7,16 44:10 47:1,7 47:15,18 48:2 48:18 51:24 52:10 56:20	call 4:7 23:6 33:19,20 34:16 46:17 called 64:17 capacity 4:22 23:17 car 60:23 65:6 66:6 card 9:24 10:19 25:22 30:12 care 55:13 cargo 24:13 carrier 5:11,20 8:7 10:18,20 17:10,23 18:23 19:12,19 20:2 20:5 24:21,23 32:5,15,15 36:1 54:16 55:1 56:20,24 carriers 7:17 carry 25:20 37:22 53:23 61:18 carrying 8:14 cars 45:23 case 1:5 3:8 25:21 28:3 29:18 31:1 category 64:17 cause 1:10 25:7 25:11 cautioned 4:10 23:8 33:24 46:19
		c	
		calculated 25:2 29:19	

cdl 36:5 center 48:4,4 64:19 ceo 4:1 35:23 47:12 48:9,12 59:11,17 certain 10:12 15:4 certificate 8:6 8:15,24 9:7 10:13 19:18 60:7,10 62:22 63:2 74:2 certification 35:25 certifications 5:14,20 17:21 24:15,20 certified 4:11 23:9 24:10,12 24:22 33:25 46:20 certify 74:6,10 chairman 48:12 chance 50:5 change 33:5 changes 22:1 chaotic 15:4 charge 34:18 38:19 54:5 charitable 19:11 20:19,20 30:18 32:7	check 43:15 65:18 chevrolet 12:16 chevy 12:2 62:11 chief 3:14 23:18 children 50:9 choir 21:9 church 10:22 20:6 21:9,10 21:20 churches 19:24 21:10 cincinnati 10:4 14:24 49:9 58:25 73:8 cincinnati's 48:6 circle 15:5 circling 17:3 circumstances 36:10 citation 18:21 60:24 cited 8:13 city 14:24 civil 25:1,8,14 25:20,24 26:7 26:11 27:25 claiming 18:22 clarification 16:18 19:2 20:1 41:24 62:18 70:19	clarifications 31:21 clarify 13:7 15:24 33:3 36:22 56:11 72:17 class 17:18 64:14 clear 46:1 63:13 67:15 68:15 clermont 48:7 clientele 52:11 close 67:20 closer 34:12 coach 24:11 30:11,21 code 10:12 columbus 1:14 2:5,10 3:17,24 24:6 column 64:17 come 22:5 33:22 50:17 65:5 71:20,24 coming 20:25 comment 59:5 60:13 commercial 5:7 5:10,21 7:16 8:8 10:25 11:1 11:3 14:8,14 16:5,12,14,19 21:7,7 24:5 26:2,15 30:22	30:24 31:2,11 31:25 32:15 35:12 64:11 commission 1:1 1:2,13 2:2 3:2 3:10,13 4:23 11:22 15:12 23:20 24:3 31:13 75:6 commission's 27:9 28:6 29:14,23 commissioned 74:4 communicating 59:19 communication 60:3 communicati... 60:18 company 22:20 37:3,4,11 39:9 41:7,8,11,15 44:13,21 45:22 47:21,22 49:13 49:16,22 51:1 51:25 52:4 53:16 54:14,15 54:20,22,25 55:20 56:17 61:24 62:19,21 62:25 63:16,19 63:23 66:12,23 68:2,3,11 72:25
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compensation 21:24,25 72:13 72:18 completed 61:23 compliance 23:18 concerning 3:4 concerts 14:12 concluded 73:13 conference 29:8 61:10 conferences 61:5,7,7 69:22 congratulations 48:10 consequently 8:12 considered 25:7 39:20 consistent 26:1 26:14 constituents 21:12 consult 32:17 context 30:14 contribute 25:12 contribution 68:7,10 conversation 9:16,19 22:4,7 32:14	conversations 31:14 convert 53:17 coordinator 24:6 copy 52:17 corn 71:10 corporate 31:4 55:3 56:7 correct 7:12,13 8:16,17 11:4 11:16 12:9,11 12:20 13:9,10 13:14 14:2,3 15:18 18:13,25 19:20 21:10 22:2,7,8 30:2,6 39:18 40:3 56:22 61:12,20 62:2 67:23,24 68:4,16,17 cost 38:20 48:4 54:6 counsel 55:3 56:7 67:19 counties 24:7,8 county 24:7 48:7 74:2 couple 13:24 31:21 44:23 45:4 54:1 57:13 course 5:25 39:6 62:5	courses 52:7 court 73:9 cover 18:15 71:10 covered 19:16 crash 25:8,11 25:12 created 70:10 cross 10:3 13:21 31:18,19 45:6 58:16 67:16 current 24:19 55:15,25 56:1 64:7 currently 34:13 53:17 customers 34:16 52:2,3 52:13 68:22,24 69:2,4 cvf 1:5 cvsa 5:19	days 16:24 38:8 38:25 44:16 dayton 75:2 dd 51:12 deal 52:4 60:25 dealt 55:10 decreasing 26:11 deep 60:11 definition 33:7 deliver 52:5 deliveries 69:18 delivery 53:18 department 23:20 departments 34:20 depending 26:8 depends 17:5 depiction 53:6 describe 5:3 25:1 described 26:1 description 8:21 39:21 designated 35:9 44:19 45:9 designation 17:10,14,23,25 designed 61:18 destination 14:11
		d	
		d 23:15 date 14:6 44:1 63:6 65:1,3 dating 70:22 dave 3:13 day 6:1,5 16:4 22:16,16 40:21 40:25 51:2 57:3 65:19 68:15 71:11 73:11 75:3	

detail 7:17 determination 28:21 29:4 develop 51:24 52:10 different 10:25 21:15 24:14 direct 4:16 13:25 17:8 20:17 21:2 23:12 31:23 33:1 34:4 47:4 61:12 70:25 disappointed 67:1 discussed 47:12 55:8 district 24:6 document 6:19 6:22,25 27:8 27:19,21,23 28:9,25 29:2,5 29:10,13 55:5 64:2 documentation 61:3 doing 6:6 7:21 9:21,21 11:11 14:2 17:6 18:11 22:14,16 22:16 31:8 40:2 60:6 67:2 67:5 72:19 door 65:17,21	dot 13:1 14:15 46:4 55:22 56:9 69:24 70:5 doubt 57:14 downtown 50:16 65:24 71:20,23 dozen 9:15 drink 35:8 44:19 71:10 drinking 39:24 66:21 drive 9:7 34:10 35:5 36:2,9 38:16 39:25 44:22,24 45:14 45:17 47:10 49:22 71:22 driven 50:24 driver 8:5 11:5 11:9 12:14 21:3 22:4 25:18 35:10 37:23 44:18,19 45:9,13 49:21 53:24 61:19 66:7 72:9 driver's 8:8 35:12 43:14 drivers 45:10 drives 35:4 51:4,8,9 driving 34:25 35:1,6 36:13	39:16,21 44:15 49:6 50:25 51:2 65:19 66:21 67:3 drove 66:6 73:8 duly 4:10 23:8 33:24 46:19 74:4 duties 5:25 6:5 39:21 48:13 71:7 duty 5:22 e e 4:20 23:15 43:1 e4f 63:11 65:9 earlier 22:6 easier 52:6 east 1:13 2:5,10 3:16,23 65:15 edge 43:8 education 47:16,25 educational 52:7 ef4 63:11 efficient 58:17 eight 15:15 either 74:11 elementary 70:9 employed 4:21 23:16 34:13 employee 48:20 57:11	employees 22:20 31:5,5,9 31:24 32:2,3 33:4,6,9 36:14 36:24 38:3,4 39:1,9,11 41:3 47:22 48:17,22 49:11 50:5,6,8 51:6,14 52:15 54:3,4 68:16 68:19,20 69:9 71:19,19,22 employment 40:3 44:18 encounter 42:23 59:1 ended 60:21 enforce 14:8 enforcement 5:11,21 15:1 24:5 32:16 engage 48:22 entered 8:18 enterprise 10:25 31:2,11 31:25 entities 19:22 entity 11:7 18:22 19:11 entrance 43:1 environment 71:3 erv 15:17 16:23 42:5,23 43:11 58:11,14 71:4
--	--	---	--

especially 73:8 europe 52:8 event 13:23 31:4 59:21 66:12 74:12 events 14:12 50:21 51:23 69:12 72:19 everybody 15:16 50:5 66:21 71:6 73:11 evidence 72:23 exactly 44:9 examination 4:16 12:15 13:21,25 17:9 20:17 21:3 23:12 26:25 31:19 33:1 34:4 45:6 47:4 61:12 67:16 70:25 examined 4:11 23:9 33:25 46:20 examiner 3:7 40:23 example 20:23 21:8 70:1 examples 32:9 32:11 exceeding 61:25	except 24:21 exception 10:12,16 30:5 30:6,9 excited 49:16 exempted 10:21 exemption 19:18,23 exhibit 6:20,21 12:15 27:2,3,5 27:14,20 28:20 29:1 37:2,3,4,9 37:11 39:4 41:6,7,8,12,15 41:18 52:17,23 54:11,14,14,15 54:20,23,25 55:20,24 56:18 61:15,24 62:8 62:15,20,21,25 63:4,13,16,19 63:23 65:11 72:25 exhibits 33:14 62:19 67:18 72:23 expansion 70:16 experience 5:4 19:10,21 24:1 24:10 expired 64:8 expires 75:6	explained 14:17 19:8 22:13 48:25 f f 53:10 factory 60:15 fair 50:4 fall 19:22 20:3 32:6 familiar 30:6 family 21:4 33:6 47:22,23 51:16 54:4 68:21 far 12:3 67:2 70:7 fc 49:9 february 53:15 63:3,8 65:3 federal 30:16 32:14,19 35:25 56:23 fee 21:21 figure 41:22 file 31:13 52:3 55:9 filed 55:11,12 files 28:5,6 29:15 fill 55:2,4,23 filled 57:1 filling 55:18 find 8:3 9:6 21:3 33:8 64:25	fine 43:17 firm 3:22 first 4:7,10 23:8 33:24 41:22 46:19 five 60:12 flag 71:8,9,9 flight 48:6 57:12 flipped 43:5 floor 2:5 3:16 flying 47:25 folks 22:5 follow 20:14 43:12,18 46:9 61:3 followed 7:19 16:1 following 29:6 follows 4:12 23:10 34:1 46:21 football 49:5 51:11 ford 53:10 63:11 64:14 65:9 forever 48:18 forfeiture 1:8 3:7 25:1,9,15 25:20,24 26:4 26:8,11,18 28:1 29:17 forfeitures 26:13
---	---	--	---

form 55:11,23 56:6,25 61:24 forms 55:4,18 found 11:25 60:14 founders 49:15 four 15:9 17:6 25:5,18,23 26:7 franklin 24:7 friend 39:2,12 41:2,4 57:10 57:13 friends 38:3 39:13 41:3 49:12 50:9 51:16 54:4 57:11 68:20 69:9 fulfillment 48:4 full 14:10 20:24 34:7 47:7 69:16 fully 26:21 fun 48:1 71:15 further 11:20 20:17 22:21,24 31:17 33:1,13 45:8 46:8 70:25 74:10 furtherance 11:3 31:10 furthering 10:25 31:2	future 48:16 g game 6:7 10:2 11:12 16:24 17:3,4 20:25 38:8,25 39:24 40:10,11,15,19 44:16 45:16,20 50:18 57:5,6 57:16,17,17,18 57:19 58:1 60:25 65:16,17 66:5,6,13 68:1 71:24 games 14:13,25 17:7 36:11,12 36:25 39:17 49:1,3,5,5,7,19 50:7 51:15 68:1 71:15 gas 68:8 gay 2:10 3:23 general 2:3 3:14 24:12 generally 26:14 generate 6:11 getting 14:17 59:10 66:18 give 23:25 48:21 49:11,24 57:22 given 32:10 gives 8:22 go 3:1 4:15 13:2 14:12	15:25 16:25 18:16,17 21:19 21:20 27:13 28:19 36:17 40:6,17 45:3 47:3 49:4,6 50:3,5,6 56:3 57:4 58:13,18 59:7 62:4,18 63:17 65:20 67:1 71:2 goes 58:23 66:20 going 7:18 21:17,18,21 22:13 37:2 39:23 42:22 44:25 45:15,20 49:18,19 52:9 52:20 55:9 61:14 71:22 good 6:9 31:8 33:10 34:6 46:10 73:11 great 36:19 greater 44:8 gross 12:18 62:1 group 20:7,7 21:4 25:5,12 25:17,17,23 26:7,10,12 48:20,22 50:22 51:17 59:21 69:10,25	groups 10:23 19:25 20:3 25:5,5,10 26:9 26:9 grow 47:21 guessing 66:4 guesstimate 57:23 guests 36:25 68:5,14,15,16 68:19,20 69:9 guys 49:2 69:19 gvw 64:14 h half 23:24 52:3 71:13 hand 75:2 handed 6:18 27:18 28:24 handful 69:3 happened 13:24 43:3,9 60:20 happens 71:4 happy 67:7 hard 48:8 hazardous 4:24 hazmat 5:19,19 24:12 25:3 26:20 head 40:18 50:18 58:16 headed 42:4 58:7,8
---	---	--	--

heading 42:5,6 43:10 hear 3:8 36:6 heard 26:25 30:4 hearing 1:2,11 3:3 6:20 26:23 70:17 73:7,13 74:7 heavy 19:15 held 4:25 help 14:4 15:1 31:25 34:19 35:15 38:12 43:2 44:11 71:2 helpful 18:20 41:1 52:19 53:19 hereinafter 4:11 23:9 33:25 46:20 hereunto 75:1 high 47:19 48:8 49:4 higher 26:11 highway 24:3 42:19 hire 18:5,5 21:5 21:6,22 holds 56:10 hole 71:11 home 58:6 65:24 71:16	honor 3:11,20 4:3,6 6:15,17 13:2 20:9,12 20:16 23:6 27:12 28:18 31:16 32:22,24 33:12 36:20 37:2 40:7 41:6 41:12 45:5 46:24 52:21 54:14 61:14 62:18 63:16 67:14 72:24 hope 46:24 70:23 hopefully 71:12 hoskins 4:2 hour 17:18 18:18 hours 17:16 18:1,9 40:3 44:17 house 38:11,13 50:17 71:22 hundreds 52:2	identifying 28:10,11 iii 2:4 imperative 32:9 important 45:9 incident 57:4 including 57:10 58:3,4 61:19 incorrect 12:10 12:19,23 incorrectly 57:1 indicate 9:9 11:17 22:9 indicated 10:6 11:15 22:6 24:14 30:1 36:8 45:12 56:25 61:23 indicates 7:11 indicating 11:9 12:14 52:21 61:18 indications 16:20 indirect 21:24 information 8:19 12:10,16 12:19,23 28:11 28:11 44:20 59:10 informed 35:17 initial 17:18 60:4	initially 60:5 inspect 5:8 6:1 60:10 inspected 7:14 17:20 66:18 inspection 6:7 6:10,11 7:4,9 7:12,22 8:2 9:22 11:21 12:1 13:1 14:18 25:16 26:21 43:19 44:2 59:22,24 60:20,22 inspections 14:2,11 18:12 25:3 inspector 5:7 5:10 23:3 26:25 30:2 42:24 43:22 59:2 60:3 61:12 66:2,4 instance 20:25 instructor 57:12 insurance 25:19 intent 1:7 3:6 27:25 interested 74:12 interesting 73:7
	i		
	idea 23:25 identification 6:23 12:7 27:16,20 28:22 29:1 37:6 41:9 54:16,17 55:1 62:9,23 63:21 identify 7:3,23 11:6 18:4 29:2		

internally 27:24	41:13 44:1,7 46:11 72:9,16 72:20	40:12,23 46:3 46:5 47:23 49:10 50:13 56:5,12,18 57:10 65:25 66:10,16,20 71:7	lights 43:5,7,15 likely 25:7 likes 51:11 limit 65:16,19 65:21 limited 33:9 lisa 1:11 74:3 75:5 listed 14:16 62:10 63:10 64:13,23 65:1 65:3
international 51:25	jobe's 28:13 29:5	knowledge 29:25 44:8 56:23	listen 47:3 little 12:4 15:4 34:11,12 66:16 71:10 live 38:17 50:15,15,17 71:20,23 lives 38:18 llp 2:8 3:23 load 50:18 local 69:1,2 locker 50:1 logo 5:6 long 4:25 23:22 34:21 35:1 43:19 49:13 58:1 59:22 longer 24:12 56:2 59:23 71:14 look 48:16 50:3 54:19 56:18 62:9 64:12,16
internet 52:6	john 3:14	l	
interpretations 30:16	join 71:20,24	l 2:4 3:15	lack 39:21 largely 30:15 30:18 law 2:4,9 3:22 lawful 4:10 23:8 33:24 46:19 leader 48:14 lean 4:13 leans 19:14 leave 40:15,16 40:18 57:18,19 57:20 66:6 left 58:6 66:13 71:13 legal 34:7 47:7 letter 27:15 level 7:11 license 8:9 9:7 9:23 12:16,17 13:8 35:13 36:6 43:13,14 43:17
interstate 10:1	joined 24:18	k	
interviewed 21:2	joining 24:1	k 1:11 4:20 74:3 75:5	kept 49:21 kevin 4:7,9,20 66:8 kilos 65:22 kind 9:24 11:6 18:4 19:7 50:4 60:11 67:20 69:15 kings 14:12 know 9:13 13:23 14:5,10 16:13 18:9 25:12 30:7 31:3,7 32:8,18
introduced 59:18	jones 3:14	keep 17:20 48:17 67:3,5	
investigation 7:20	jump 71:7	keller 1:11 74:3 75:5	james 47:9 japan 52:8 jim 3:7 job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7
investigator 4:24	j	kentucky 10:2 10:4 42:15 58:20	
involved 43:23 60:1	issue 12:3 25:22 63:6,14	issues 29:7	j
island 14:12	issues 29:7	issues 29:7	
issue 12:3 25:22 63:6,14	issues 29:7	issues 29:7	j
issues 29:7	issues 29:7	issues 29:7	
j	james 47:9 japan 52:8 jim 3:7 job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j
james 47:9 japan 52:8 jim 3:7 job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
japan 52:8 jim 3:7 job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jim 3:7 job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
job 5:14 6:4 39:20,21 jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	j
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 28:3 33:21,23 34:6 34:9,14 36:8 37:8 39:7	j	j	
jobe 1:6 3:5,19 3:22 4:2 6:2,10 8:5 9:17 11:8 22:7 2			

looked 65:17 65:17 looking 7:16 12:23,25 65:1 loop 67:20 lot 12:4 15:17 15:23 16:4,7 16:23 19:8 41:23 42:5,7 42:22 43:11 50:14 58:11,14 59:7,8 71:14 lots 17:1 41:16 louder 34:12 lynn 3:1,7,18 4:4,13 6:16 12:12,22 13:4 13:17,20 20:10 20:13 22:23 23:1,11 27:13 28:19 31:18 32:23,25 33:11 33:15,17,22 34:2 36:7,12 36:16 39:5,7 39:14,19 40:1 40:5,23 44:6 44:14 45:1 46:8,11,14,22 47:2 48:10 55:14,19,24 56:3 61:16,22 62:3 63:17 70:15,21 72:5 72:8,12,15,21	73:2,5	19:17 20:13,15 20:18 22:21 23:3,5,13 27:11,17 28:17 28:23 31:16 32:24 33:2,10 33:12 44:6 45:3,4,7 46:2,6 67:13,17 70:15 72:5,7 73:2,4 mark 37:2 41:6 54:13 62:19 63:15 marked 6:19 6:22 7:25 25:15 27:1,15 27:19 28:21,25 37:5 41:9 43:1 54:16 62:22 63:20 market 2:7 3:21,25 7:18 7:24 20:24 34:15 markings 16:15 16:19,21 mascot 70:11 material 4:24 materials 47:17 47:25 matter 1:6 3:4 maximum 61:19 mean 9:4 16:10 18:2 30:25	36:22 59:13 means 14:5 meant 32:1 46:1 mechanical 25:6,11 median 42:25 medical 8:6,15 8:24 9:7,23 10:13,19 19:18 25:22 30:12 35:25 43:13 60:7,9 meet 50:13 meetings 69:20 mehring 15:21 17:2 42:13 58:16 member 21:5 24:15 54:8 members 33:6 38:23 memory 27:6 mentioned 13:25 22:3 26:4 31:22 38:7 40:12 50:23 51:13,21 53:25 57:21 60:6 merchandise 52:5 michael 4:1 11:10 35:17,19 35:20,21 37:16
	m 23:15 made 59:4 65:22 mail 44:12 61:4 mailed 29:5 main 19:25 47:24 maintained 27:9 28:5 29:14 maintenance 8:4 majority 20:8 make 17:19 21:6 47:25 48:14 50:4 51:6 53:8 60:13 63:9 65:7 67:14 68:7 69:10 71:16 72:22,25 makes 52:6 making 4:4 makings 32:13 manner 26:18 74:12 map 41:8,16 42:3,22 margard 2:4 3:11,16 4:5,6 4:14,17 6:14 6:17,24 12:13 13:6,15 19:1,4		

38:11,17 40:17 43:24 46:17,18 47:9 michael's 38:13 42:12 microphone 4:14 middle 64:13 64:16 mike 34:12 miles 38:18 million 52:1,3 minute 12:13 62:8 minutes 43:16 43:20 59:23 mistake 65:22 model 47:1 53:8 63:9 65:7 moment 13:19 20:9 22:3 36:8 54:19 money 67:6 montgomery 74:2 months 60:13 morning 34:6 50:13 moser 23:6,7 23:15 31:22 32:5 33:11 mother 57:12 motion 72:22 motor 5:10,11 7:16 8:7 10:17	17:9,23 18:22 19:12,18 20:2 20:5 24:11,21 24:23 30:10,21 32:5,14,15 36:1 54:15 55:1 56:20,24 move 33:13 34:12 72:24 moved 5:10,12 moving 21:11 multi 6:19,22 27:19 28:25 multiple 17:3	66:19 newer 12:4 nice 47:17 nif 27:25 nippert 49:18 nominal 21:20 non 10:20,22 10:22 11:7 16:12,14 17:10 17:24 18:6,23 18:24 19:13,19 20:2,6 21:7 24:13 25:3 26:20 30:11,14 30:23 32:6 56:20 70:5 nope 69:23 north 5:18 24:10 42:13 notary 1:11 74:3 75:6 note 28:8 29:9 70:8,8 notice 1:6 27:25 28:20 29:3 32:13 notices 29:22 number 6:20 7:5 8:1,20 13:8 14:15 27:2,20 29:1,11 56:9 56:13 61:15 62:8 numbers 15:15	numerous 14:24 o o 23:15,15 objection 33:15 33:16 45:25 73:3,4 obscure 28:10 obviously 48:25 55:20 occasion 6:11 39:7 occasional 19:24 occasionally 44:24 occasions 39:15 occupants 32:3 33:4,5 october 5:23 27:14 34:25 40:9,20 42:2 57:4 61:2 62:13 65:12 75:3 offer 38:22 offered 69:5 office 75:2 officer 59:6,9 59:14 60:22 65:22 66:7,10 oh 32:13 oh3209302431 7:5
	n	n 4:20 name 4:19 23:14 34:7,9 34:16 47:7 named 74:6 near 15:17,23 42:25 50:17 necessarily 17:2 20:21 need 8:10 27:5 35:18 36:5 48:1 60:9 64:25 needed 9:6 36:6 59:11 60:8 never 25:8 69:4 69:16 new 11:14,15 12:2,3 52:24 55:22 60:12	

ohio 1:1,12,13 1:14 2:3,5,10 3:3,14,17,24 4:23 5:9 23:21 24:3 42:18 47:10 63:2,25 74:1,4 75:2,6 ohio's 3:13 ohioattorney... 2:6 okay 8:12 11:10 12:6 14:7 15:10,17 15:20 16:3 17:16 18:11,14 18:20 20:4 21:14 24:25 32:4 34:11,17 34:21,24 35:3 35:9,24 36:4 36:12,16 37:1 37:13,20,24 38:1,5,19 39:3 39:14 40:5,12 40:23 41:5,11 41:15,18 42:2 42:6,9,21 43:2 43:6,18,21 44:4,6 46:6,8 47:11 48:19 49:13 50:10,19 50:23 51:13 52:16 53:5,8 53:11,19,25 54:22 55:5	57:15 58:6,9 59:1 60:24 61:11,22 62:3 62:7,12,15 63:12 64:5,22 64:25 65:5,10 66:14 67:11 69:11 70:20 72:3 old 55:22 56:1 62:14 65:14 70:12 once 43:12 56:6 ones 19:25 ongoing 17:17 17:19 18:2,16 online 30:17 32:19,20 42:1 52:7 operate 9:1,5 48:6 operated 6:2 30:21 operating 8:14 30:10 67:4 operation 48:15 66:17 opinion 11:2 29:17,21 33:5 opinions 30:17 opportunity 6:1 27:2 69:5 option 8:23 order 36:2 44:12	orders 47:21 ordinary 39:20 40:2 44:17 organization 11:7 19:11 20:20 30:19,20 organizations 10:23 20:20 oshkosh 70:2 outline 5:16 outside 40:2 44:17 overview 48:21 own 20:21 21:11 44:20 45:22 71:23 owned 30:21 68:3	58:12 parked 42:25 59:8 parking 7:19 16:2 41:16 50:14 58:17 59:7,8 68:10 68:11,11 part 10:24 24:9 27:9 28:5,6 39:20 60:17 64:13 particular 7:15 25:21 29:4 42:7 44:1 68:1 parties 3:9 74:8 parts 24:11 party 71:21 74:11 pass 42:10 68:11,11,12 passed 43:4 passenger 5:20 6:6 7:17 8:7,14 8:25,25 9:1,10 10:12,18,19 14:2,8 19:9 30:5 59:4 passenger's 17:10 passengers 8:23 9:10,13 11:6 14:10 17:18,23 18:23 19:12,19 20:2
		p	
		p.m. 73:14 page 6:19 27:19 28:25 29:9 paged 6:22 paid 21:5,25 59:20,20 66:9 66:10 paperwork 13:13 paraphrasing 31:23 parishioners 21:13,15 park 41:23 42:8 58:10,11	

20:6 22:10,18 32:6 37:21,23 38:1,9 39:17 40:21 53:22 54:1 56:10,20 57:9,22,23,25 61:19 68:18 patrol 5:5,11 24:4,16 patrons 21:12 paul 6:7 pause 12:12 pay 21:20 54:8 68:5 72:13,18 pease 2:8 3:23 people 11:12 16:8,10 21:18 40:13,14,17 44:24 45:16 49:1 50:1,3,13 50:14,17 51:1 51:19 57:14 66:11 71:18 72:1,19 percent 16:8 51:20 perfect 34:13 perform 5:14 period 64:6 person 35:3 personal 66:21 70:8 personally 28:10	personnel 32:16 photo 53:1,4 photograph 37:5,13,15,17 53:3 pick 36:14 38:8 40:13,14 50:16 69:14 picking 40:15 40:16 47:20 picture 37:12 pilots 47:17 pin 28:13 29:11 place 3:4 58:9 places 15:4 plan 48:16 plate 11:25 12:17,17 13:8 13:11 67:21,22 plates 11:25 play 71:10 playing 66:22 please 4:14,18 5:17 6:18 7:3 23:6,11 24:25 28:19 33:22 34:3,7 46:17 46:23 47:6 63:17 plus 37:23,24 40:22 47:16 53:24 58:5 71:18	point 37:1 points 43:17 police 14:24 policeman 59:5 portion 12:7 position 5:1 15:6 23:23 24:5 34:17 35:21 possessing 8:15 possession 56:2 potentially 28:11 pound 62:1 pounds 56:9 65:21 preliminary 28:21 29:4 prepared 7:6,8 55:6 preparing 66:5 presence 74:8 present 2:12 26:23 30:1 55:3 presentation 18:19 president 35:22 presumably 69:6 pretty 19:14 55:9 previous 11:24 11:25 12:21 13:1 55:17	previously 50:24 primarily 43:21 44:13 primary 45:13 48:2 prior 12:24 24:1,2 55:19 65:12 private 8:7 10:17,19 16:5 16:8,10 17:9 17:23 18:6,6 18:22 19:12,18 20:1,5 30:11 32:5 56:20 66:17,17 probably 15:14 16:7,8 17:6 problems 48:17 procedure 25:25 proceeded 7:20 process 26:17 26:21 product 47:24 programs 48:6 proper 9:6 17:20 properly 29:19 48:16 property 8:24 provide 34:7 47:6
---	---	---	--

provided 18:21 51:17,18 67:19 public 1:1,2,11 1:12 2:2 3:2,13 3:15 4:23 23:20 24:2 38:23 54:8 74:3 75:6 puco 1:2 5:12 14:5,7 15:8 18:16 24:18 28:14 61:3,8 66:2,3,6 pull 15:2,11 pulled 14:1,16 43:8 62:13 65:6,7,12 66:1 66:18 pulling 14:20 purchase 53:14 65:1,3 purchased 53:15 63:3 68:2 purpose 14:5 14:19,22 30:22 30:25 45:18,19 purposes 6:19 6:22 27:15,19 28:22 29:1 37:5 41:9 50:20 54:17 62:22 63:20 put 8:20,20,20 8:21,22,23	39:3 54:11 57:3 62:15 63:12 65:10 71:8,8,9 q qualified 74:5 quarter 57:20 question 13:8 20:4 32:4 36:19 39:5 44:7,15 52:9 55:14 56:18,19 61:16 66:25 70:18,20 72:8 questions 13:16 13:19 20:12 22:25 31:17 32:22 36:17 37:20 43:19 44:5 45:2,5 46:7 59:16 66:8 67:12,13 70:14 72:6 73:6 quick 61:15 quite 39:9 47:2 r r 4:20 23:15,15 radios 15:5 ran 11:25 rarely 19:5 reached 56:24 reading 30:16	real 30:20 61:15 really 31:7 39:14 49:16 66:23 reason 7:14 11:18 19:2,3,4 56:15 67:2 reasons 56:16 recall 15:15 39:8 receive 17:13 17:25 19:22 29:22,23 61:3 72:12,18 received 19:8 receives 26:19 recent 24:4 recognize 27:21 37:8 41:11,13 52:23 54:22 recommended 26:1,14 record 3:1 6:18 13:3,5 27:18 28:24 33:18 34:8 44:8,20 47:8 67:15 70:24 72:17 73:1 recreational 15:24 58:12 redacted 28:12	redaction 29:11 redactions 28:8 28:10 reds 49:9 reduced 74:7,9 refer 27:24 reference 30:19 referring 12:6 62:7 refers 55:15,19 reflect 6:18 27:18 28:24 refresh 27:6 register 32:19 registered 11:1 16:16 45:24 46:1,4 55:23 60:8 69:24 registration 9:23 10:7,8,9 11:24 12:24 13:13 16:21 23:19 25:19 59:15 63:20,25 64:5,9,11,13,18 64:23 67:20 regs 30:16 32:14 regular 29:14 regulars 71:7 regulations 12:5 22:14 29:24 36:1
--	---	---	--

related 28:13 31:7 relative 74:11 remember 17:11 40:24 58:1 70:11,16 renewal 64:21 rent 70:6 rephrase 14:21 20:3 53:2 report 6:12 7:4 7:4 12:8,15 54:16 55:2 reporter 73:9 representative 29:5 representatives 3:25 requested 14:25 required 8:6,23 9:1 29:23 research 32:10 32:12,12,17,19 32:20 55:7 66:24 residence 57:20 resolve 29:7 respect 27:1 30:5 67:18,25 68:14 respectfully 33:13 respondent 28:2 29:22	responsibility 55:4 rest 38:11 73:11 result 6:9 8:2 70:11 retail 34:19 69:1 retreat 21:16 21:17,22 review 27:3 31:13 70:24 ride 38:25 69:5 right 13:17 16:1 19:19 23:1 26:22 35:11 36:16 39:17 44:14 45:1 59:11 62:1 66:22,24 67:8,8 72:15 72:21 73:5 road 7:19 43:8 roadway 16:2 roadways 14:9 rob 23:6,7 rod 4:2 23:15 rode 71:18 route 42:11,14 42:17,18 58:13 58:19,23,24 routinely 27:8 rule 32:13 run 11:24 19:25 48:5	running 48:15 48:18 66:17 rvs 16:3 s s 4:20 23:15 safe 14:10 47:25 71:16 safety 9:22 14:23 26:2 36:1 56:24 sanyal 2:9 3:20 3:22 13:2,17 13:18,22 19:3 19:6 20:9,11 22:23,24 31:18 31:20 32:21 33:15,16,18,20 34:5 36:18,19 36:21 37:1,7 39:6 40:5,7,8 41:5,10 44:4 45:2,25 46:10 46:13,16,23,24 47:5 48:11 52:20,22 54:13 54:18 56:4 61:14 62:4,5,6 62:17,24 63:15 63:22 67:11 70:19,23 71:1 72:3,21,24 sater 2:8 3:23 saw 7:18 14:15 43:7	saying 12:18 39:15 says 56:8 schedule 26:5 school 5:8,8 47:19 48:8 49:4 70:9,10 70:11 scientific 30:19 32:7 scout 19:24 20:6 21:4 scouting 10:23 scouts 20:25 seal 75:2 season 49:14 49:17 seat 4:13 23:2 23:11 34:2 46:12,22 72:16 seats 69:16 second 52:25 section 3:14,15 8:13,19 23:19 59:4 security 34:18 see 10:3 15:6,6 21:23 27:5 28:12 36:13 39:19 40:1,5 41:25 45:1 56:19 61:23 64:17 seeing 66:19
---	--	--	--

seen 6:25 37:17 41:18,21 55:5 63:4 64:2 selected 56:21 sell 47:24 48:1 selling 47:16 seniority 50:4 sent 28:2 september 1:14 service 9:4 25:15 set 71:7 75:2 several 3:24 5:9 43:16 51:5 57:21 71:19 severe 25:13 seymour 2:8 3:23 sheets 49:25 ship 52:8 shipping 47:20 shortest 58:18 58:24 shortly 40:18 show 70:1 shy 24:4 side 7:25 65:15 sign 49:25 50:1 signals 60:19 signature 75:5 similar 66:8 simon 41:2 sir 5:22 6:25 10:11 26:24 27:21 29:2,10	30:3 31:15 36:15 40:4 45:21 70:13 sister 21:19 sit 15:4 situation 21:1 six 15:14 23:24 38:18 size 16:22 smaller 69:25 smart 58:18 smoothly 48:15 somebody 9:6 21:19 sorry 5:8 20:3 32:25 35:20 38:15 41:12,12 53:2 sort 44:10 speak 34:11 specific 11:7 14:19,21 17:14 58:9 specifically 7:23 12:6 17:22,24 19:9 64:12 spell 4:18 23:14 spend 17:17 sponsored 31:4 sporting 50:21 51:23 69:12 sports 49:3,10 sportsman's 2:7 3:21,25	7:18,24 20:24 34:15 sporty's 14:1 14:16 34:16,22 35:1 38:10,13 38:19,22 40:13 40:16 43:22 44:9,10 47:1 47:12,13,15,19 48:2,20,22 49:1,20 50:10 50:14 51:14,22 51:24 52:24,25 53:13 54:5 56:13,25 65:11 66:22 sportys 34:10 38:16 47:9 spot 7:19 16:2 spouse 39:1,12 41:4 spouses 33:6 38:5,6 50:8 spread 52:13 68:24 spring 53:4 ss 74:2 stadium 6:8 40:19 41:17 49:18 54:6 58:8,10 staff 3:10,12 6:20,21 12:15 14:6 15:8 27:1 27:14,20 28:20	29:1 33:14,17 61:15 62:7 staffing 17:5 stand 4:8 23:6 33:21 46:17 standards 24:11 start 43:14 60:19 61:1 started 5:5 47:16,18 48:7 49:2,4,6,17,19 49:20 55:18 59:9,18,24 starting 9:25 state 1:12 4:18 5:5,9,11 23:14 24:3 58:23 63:25 74:1,4 75:6 stations 5:6 status 22:1 staying 56:17 71:14 stenographic... 74:8 step 36:7 44:7 51:7 stepped 59:10 59:12,17 stop 14:13,20 18:3,5 stopped 20:23 39:8 43:9
---	--	---	--

stopping 14:9 stops 14:22 42:20 store 34:19 69:1 street 1:13 2:5 2:10 3:16,23 student 47:19 stuff 18:15,17 18:18 59:15 60:14 66:19 71:11 styled 1:10 subdivided 25:4 submit 56:6 submitted 61:24 subsequently 9:2 sunday 50:13 supervisor 34:19 supplies 69:15 sure 13:20 15:19 17:19 18:8 20:10 24:2 25:3 29:3 30:20 48:15 59:6 67:14 surrounding 24:7,8 swartz 4:7,9,20 12:13 13:23 17:8 19:7 23:3	27:1 30:15 31:14 42:24 59:2 60:3 swartz's 30:2 61:12 switched 60:16 sworn 4:11 23:9 33:25 46:20	talking 59:14 tank 24:13 tanker 5:19 taxpayers 67:6 team 15:13,14 31:3,9 70:16 telephone 29:7 tell 16:19 42:3 44:9 47:13 71:3 telling 7:20 42:21 55:8 61:6 tennessee 21:17 testimony 22:6 30:2 31:13 thank 3:11,17 3:18,20 4:2,4,6 4:14,18 5:22 6:9 13:16 18:20 20:15 22:21 23:1,5 24:25 26:22 31:16 32:23 33:10,11 34:2 40:7 45:1,5,8 46:7,11,22 52:18,18 53:19 54:11 56:3 62:3 63:18 65:10 70:13 72:15 73:7,12 thanks 73:9 thing 11:23 18:2 28:12	49:10 things 9:24 10:23,25 14:7 16:21 18:6 21:15 22:14 25:18 66:22,23 67:8 73:10 think 11:21 15:21 17:17 19:16 20:11 32:21 33:7 40:25 46:7 47:11 52:16 53:4,25 61:17 thought 60:11 thousands 52:2 three 25:10,14 26:10,12 41:3 49:2 tickets 48:25 49:3,8,11,14,17 49:24,25 50:2 51:22,22,23 52:10 67:25 68:2 71:23 time 3:2,3,8 7:8 10:10 12:5 18:3,5 22:9 23:2 35:5,7,10 35:22 36:9,17 40:10,14 41:5 46:12 51:20 57:16 58:2 65:13,25 66:5 67:7 71:14
	t		
	t 4:20 table 71:8 tailgate 16:17 59:25 60:17 71:11,17,21 tailgates 71:3 tailgating 59:24 71:25 take 23:2 36:24 37:13 39:16 42:14,17 43:19 46:12 49:1,12 50:22 51:19,20 53:1,18 58:15 58:15,19,22,23 59:22 62:8 70:5,7 72:16 takes 55:13 talk 40:9 43:21 48:17,19 70:17 talked 9:20 11:8,11,13 22:12,13 43:24 60:5 61:6 66:10		

72:10,11 times 14:24 17:3 18:21 54:1 title 62:22 63:2 63:7 67:19 today 4:1 31:13 34:24 48:24 together 21:6 told 43:11,13 43:16 52:1 59:7 60:6 65:19 took 9:25 37:15 42:12 53:2,4 60:11 total 43:20 totally 59:21 towards 42:22 44:13 town 58:16 65:15 tr 1:5 traditionally 21:11 trained 24:11 training 5:13 17:13,19,24 18:15,16 19:8 19:10,21 20:7 24:9 transferred 13:12 67:21 transport 68:22	transportation 3:12 23:19 38:23 51:16 travel 38:20 42:19 54:6 trc 3:4 treated 21:1 trip 4:5 9:17 71:16 true 21:8 69:6 try 15:6 16:25 49:9,10 50:4 trying 41:22 tuesday 1:14 turn 43:4 60:19 60:19 65:23 turned 65:23 two 15:16 19:25 25:10,13 26:10 39:12 55:12 56:6 57:15 type 35:24 48:21 64:9,13 64:18 types 19:22 typewriting 74:9 typical 71:11	under 8:23 19:23 20:3 29:23 32:6 36:10 62:9 understand 14:4 18:2 30:24 31:6 32:1 35:15 38:12 43:3 46:25 66:24 understanding 10:15 13:11 22:15,17 28:9 30:8,13 31:12 60:7 unique 28:15 university 48:5 unsuccessful 29:6 ups 69:19 usdot 8:1 56:13 use 52:10 54:8 61:15 69:19,24 70:6 used 5:8 36:23 38:8 45:18,19 49:4 50:11,19 51:24 69:11,14 69:17,18,20 70:4 useful 11:21 usher 20:25 using 42:3,22 usually 15:16 15:16 19:24	38:3 40:19 54:2 utilities 1:1,12 2:2 3:2,13 4:23 23:20 24:2 utility 3:15
			v
			v 4:20 valid 8:15 van 49:6 51:2 51:20 62:11,14 67:22 68:23 70:4 vans 45:23,24 69:24 70:5 various 26:6,13 68:1 vary 26:10 varying 26:7 vehicle 5:10 6:2 6:6,10 7:15,24 8:5,14 9:8,10 9:11,14 10:7,8 10:10 11:1 12:7,14,24 14:2 20:21 26:2,15 43:16 45:13,14,18 61:18,23,25 62:9 64:1,14 64:22 67:4 72:10 vehicles 7:17 10:13 14:14 15:24 19:9

30:5 45:22 46:4 58:12 69:17,23 70:6 vendors 69:7,8 vf 3:4 vicinity 50:15 violation 1:7 3:5,6 8:13,19 25:16,22,23 26:8,19 29:18 violations 8:3 25:4,6,6,11,14 25:20 26:6 vorys 2:8 3:22 vorys.com 2:11	65:20 67:3 we've 18:17 47:11 67:4 website 41:25 week 36:13 73:12 weeks 18:1 weigh 5:6 weight 12:18 56:14,14 62:1 65:16,18,18,20 65:21 welcome 71:24 went 5:7 7:21 9:22 10:1 43:15 53:16 59:8,25 60:23 65:24 werner 2:4 3:15 werner.marg... 2:6 whereof 75:1 wife 41:3 57:7 william 2:13 29:6 willing 47:2 win 71:12 window 66:8 wisconsin 70:2 wise 8:4 witness 4:7 6:18 12:20,25 19:5 23:4 28:25 31:17	36:11,15 39:11 39:18,23 40:4 44:12,23 55:17 55:21 56:1 61:21 62:2 70:18 72:9,11 72:14 75:1 witnesses 33:13 46:15 wolf 4:1 11:10 22:12 35:20 37:16 39:12 41:2 43:24 46:17,18,25 47:6,9 48:12 48:19 62:8,25 63:23 65:6,11 66:15 67:9 wolf's 35:21 38:11 40:14,17 words 36:8 work 5:4 24:1 38:14 47:12 worked 24:3 34:21 47:20 48:8 working 7:18 47:18 49:20,21 65:14 world 52:6 worldwide 52:4 wrap 73:10 writing 74:7 wrong 11:23 12:1	x xavier 49:9 y yeah 42:1 45:15 51:5 54:3 55:7 56:7 59:3 60:5 year 17:7,19,21 17:21 18:10,19 64:22 years 5:9 13:24 23:24 24:4 34:23 35:2 47:16 48:9 49:6 51:15 55:13 56:6 57:15 67:4 yep 64:20 yost 3:13 younger 50:24 50:25 z z 4:20 zero 25:5,5 26:9,9 zoom 61:9
w			
w 4:20 want 15:9 18:1 18:1 36:7 45:8 50:2 67:3 wanted 60:10 60:17 wants 21:19 warehouse 34:20 47:20 48:3,4 wasting 67:5 watched 47:21 way 6:4 10:1 15:21 16:17,18 17:2 19:14 21:14 42:13,23 49:21 50:15,16 52:12,14 58:16 58:18,18 60:8			

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