

Docket No. TG-180253 - Vol. I

In the Matter of Harold LeMay Enterprises, Inc.

August 24, 2018



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 In the Matter of the)DOCKET TG-180253
 Penalty Assessment Against)
 5 HAROLD LEMAY ENTERPRISES,)
 6 INC.)
 7 In the Amount of \$200)
)

9 BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
 10 Pages 1-84
 11 ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

13 August 24, 2018
 14 9:33 a.m.

15 Washington Utilities and Transportation Commission
 16 1300 South Evergreen Park Drive Southwest
 Olympia, Washington 98504

20 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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 19 ROBERT AUDERER
 20 IAN MARSH
 21 DONALD KENNEY
 22 LARRY MEANY
 23 * * * * *

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1 OLYMPIA, WASHINGTON; AUGUST 24, 2018
 2 9:33 A.M.
 3 P R O C E E D I N G S
 4 --o0o--
 5
 6 JUDGE CHARTOFF: Let's be on the record.
 7 Good morning. Today is Friday, August 24th, 2018, and
 8 the time is approximately 9:33 a.m.
 9 This is Docket TG-180253, captioned In the
 10 Matter of the Penalty Assessment Against Harold LeMay
 11 Enterprises, Inc. in the Amount of \$200.
 12 We are here today because the Commission
 13 issued a penalty assessment in the amount of \$200 for
 14 two violations of Washington Administrative Code
 15 480-70-201 concerning vehicle and driver safety
 16 requirements. The Company requested a hearing to
 17 contest the violations and the Commission granted that
 18 request.
 19 My name is Laura Chartoff. I am the
 20 administrative law judge presiding over today's brief
 21 adjudicative proceeding.
 22 Let's start by taking appearances from both
 23 parties starting with Staff.
 24 MS. CAMERON-RULKOWSKI: Jennifer
 25 Cameron-Rulkowski, Assistant Attorney General, appearing

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1 on behalf of Staff. And my full appearance has already
 2 been entered in the record.
 3 JUDGE CHARTOFF: Thank you.
 4 MR. LAIHO: Erik Laiho, representing
 5 respondent, Harold LeMay Enterprises, Inc.
 6 JUDGE CHARTOFF: Is your microphone on?
 7 MR. LAIHO: Erik Laiho, representing Harold
 8 LeMay Enterprises, Inc., respondent.
 9 JUDGE CHARTOFF: Thank you.
 10 Okay. And regarding the exhibits, are both
 11 parties willing to stipulate to the admission of the
 12 prefiled exhibits?
 13 MS. CAMERON-RULKOWSKI: Yes, Your Honor.
 14 MR. LAIHO: Yes, Your Honor.
 15 JUDGE CHARTOFF: Okay. So for the record,
 16 Staff's Exhibits SY-1, SY-2, SY-3, and SY-4 are
 17 admitted. And Company's Exhibit DK-1 is admitted.
 18 (Exhibit Nos. SY-1, SY-2, SY-3, SY-4,
 19 and DK-1 admitted.)
 20 JUDGE CHARTOFF: Okay. Are there any
 21 questions before we proceed?
 22 Okay. Ms. Cameron-Rulkowski, you may
 23 proceed with a brief opening statement if you want.
 24 MS. CAMERON-RULKOWSKI: Thank you, Your
 25 Honor.

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1 I'll briefly summarize the allegations.
 2 Staff conducted a destination check of LeMay on
 3 March 20th, 2018, and Staff alleges that the stop lamps
 4 were not working on the truck driven by Mr. Molinek.
 5 This is a violation of 49 CFR 393.9(a).
 6 Staff also alleges that the front tire on
 7 the truck driven by Mr. Marsh contacted the vehicle when
 8 the wheel was turned. This is a violation 49 CFR
 9 396.3(a)(1).
 10 Staff has two witnesses to present this
 11 morning, and I would like to go ahead and call our first
 12 witness, Ms. Sandra Yeomans, at this time.
 13 JUDGE CHARTOFF: Okay. Mr. Laiho, would you
 14 like to make a brief opening statement?
 15 MR. LAIHO: I'd like to reserve for when I
 16 do my case-in-chief, Your Honor, if that's okay.
 17 JUDGE CHARTOFF: Okay.
 18 Okay. Please proceed.
 19 MS. CAMERON-RULKOWSKI: Then Staff calls
 20 Ms. Yeomans and asks that the Bench please swear in
 21 Staff's first witness.
 22 JUDGE CHARTOFF: Okay.
 23 ////
 24 ////
 25 ////

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 SANDRA YEOMANS, witness herein, having been
 2 first duly sworn on oath,
 3 was examined and testified
 4 as follows:
 5
 6 E X A M I N A T I O N
 7 BY MS. CAMERON-RULKOWSKI:
 8 Q. Good morning, Ms. Yeomans.
 9 A. Good morning.
 10 Q. Please state and spell your last name for the
 11 record.
 12 A. My name is Sandra Yeomans. Last name is
 13 Y-e-o-m-a-n-s.
 14 Q. Please state the name of your employer.
 15 A. I work for Washington State Utilities and
 16 Transportation Commission.
 17 Q. In what position are you employed with the
 18 Commission?
 19 A. Special investigator under motor carrier.
 20 Q. And how long have you been employed in this
 21 position?
 22 A. A little over three years.
 23 Q. And how long have you been employed by the
 24 Commission?
 25 A. Little over three years.

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 Q. Do you have prior experience with motor carrier
2 safety?

3 **A. Yes, I do. I worked eight years as a general
4 manager of a motor coach company. I was in charge of
5 compliance and worked with a mechanic on multiple
6 occasions. I also was seven years as a transit driver
7 that required inspecting vehicles both pre-, post-trip
8 and making sure it was in safe operation. And also
9 seven years as an assistant director with the school
10 district where I overseen the compliance.**

11 Q. And when you talk about overseeing compliance,
12 does that relate to vehicle safety at all?

13 **A. That's exactly what it relates to.**

14 Q. Thank you.

15 Please describe any training that you have
16 completed for conducting motor carrier safety
17 inspections with the Commission.

18 **A. I spent two years -- or two years, excuse me --
19 two weeks with federal classroom training that is
20 specifically for training you to inspect vehicles and
21 making sure that they're in compliance. With that, you
22 have 32 inspections that you do with an already
23 certified inspector, you do another 32 on your own
24 before you get certification, and then you have to
25 accomplish 32 every year to keep that certification.**

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 The inspections are level one, which is complete vehicle
2 and driver qualifications.

3 Q. Please briefly describe your responsibilities as
4 they pertain to this matter.

5 **A. I was the investigator doing the inspections on
6 LeMay vehicles.**

7 Q. Approximately how many motor vehicle inspections
8 do you personally do per year with the Commission?

9 **A. Well over a hundred.**

10 Q. Are you familiar with Harold LeMay Enterprises,
11 Inc.?

12 **A. Yes, I am.**

13 Q. How did you become familiar with LeMay?

14 **A. I have done inquiries when they've had
15 accidents, and I've also -- was working with them for
16 the inspections. And I have done compliance review with
17 one of their companies.**

18 Q. Thank you.

19 All right. Let's talk about the inspection at
20 issue in this case.

21 Were you present at a safety inspection of LeMay
22 that the Commission conducted March 20th, 2018?

23 **A. Yes, I was.**

24 Q. Would you characterize the inspection as a
25 destination check?

Page 11

EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 **A. Yes.**

2 Q. And what is that?

3 **A. That is where we show up to a location and we do
4 inspections on vehicles that are in operation.**

5 Q. And what time of day approximately did the
6 destination check begin?

7 **A. About 2 o'clock is when we actually started
8 inspecting vehicles.**

9 Q. Have you read Mr. Meany's declaration?

10 **A. Yes, I have.**

11 Q. He states that Staff's inspection took place in
12 the LeMay yard and notes that the Federal Motor Carrier
13 Safety Administrations Safety Measurement System lists
14 the violations that Staff identified as roadside
15 violations.

16 Can you please explain why this inspection might
17 be considered a roadside inspection even though it took
18 place on LeMay's premises?

19 **A. Roadside inspection is when the vehicle is in
20 service versus an inspection that is done during a
21 compliance review.**

22 Q. All right. And this inspection was done, then,
23 while the vehicles were in service?

24 **A. Correct, we were inspecting them as they came
25 off the road from their routes that day.**

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 Q. And is it common that a destination check or
2 roadside inspection of solid waste collection vehicles
3 is conducted at a carrier's premises?

4 **A. That is the first time that we did it at a
5 carrier's place of business. The dumps do not like us
6 stopping the trucks because they lose money.**

7 Q. And so are you saying that instead of performing
8 the inspection at a dump or a transfer station, you
9 decided to do it at the LeMay yard?

10 **A. Correct.**

11 Q. Who else from the Commission was present?

12 **A. Jason Sharp who is the supervisor, Wayne
13 Gilbert, special investigator, Ed Steiner, special
14 investigator, and Bobby Auderer who was training at the
15 time.**

16 Q. During the destination check, did you inspect
17 vehicle No. 3571 driven by Nathan Molinek?

18 **A. Yes.**

19 Q. During the destination check, did you inspect
20 vehicle No. 1044 driven by Ian Marsh?

21 **A. Yes.**

22 Q. All right. Let's talk about the safety
23 requirements that are applicable to inspection.

24 Does the Commission follow federal regulations
25 governing vehicle and driver safety?

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 **A. Yes, we do.**

2 Q. Does the Commission follow the North American

3 Uniform Out-of-Service Criteria?

4 **A. Yes, we do.**

5 Q. Can you please explain what the North American

6 Uniform Out-of-Service Criteria are?

7 **A. It is a publication that is updated every year**

8 **that investigators use to determine if a violation is to**

9 **the point that it puts the vehicle out of service.**

10 Q. All right. Please direct your attention to

11 Exhibit SY-1.

12 Is it Exhibit SY-1 excerpts from the publication

13 that you just -- that you just testified about?

14 **A. Yes.**

15 Q. Thank you.

16 Let's talk about Mr. Molinek's vehicle.

17 What problem did you identify with vehicle

18 No. 3571, Mr. Molinek's vehicle?

19 **A. 3571 did not have brake lights that were**

20 **operable.**

21 Q. All right. And which federal regulation do you

22 understand to be at issue here?

23 **A. That would be 49 CFR 393.9(a).**

24 Q. All right. Thank you.

25 I'll ask you to refer again to Exhibit SY-1 and

Page 14

EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 turn to page 5.

2 And can you please point out the sections that

3 are applicable here?

4 **A. It would be 8(b)(1), anytime, day or night, did**

5 **not have at least one operative stop lamp on the rear of**

6 **a single unit vehicle.**

7 Q. All right. Thank you.

8 And did the truck driven by Mr. Molinek have at

9 least one operating stop lamp?

10 **A. No, it did not.**

11 Q. Did you place the vehicle out of service?

12 **A. Yes.**

13 Q. Did LeMay fix the inoperable stop lamps while

14 you were there?

15 **A. Yes, they did. They replaced a fuse.**

16 Q. Did you reinspect the brake lights at that time?

17 **A. Yes, I did.**

18 Q. Were they working?

19 **A. Yes.**

20 Q. Was the truck returned to service then?

21 **A. Yes.**

22 Q. And did you prepare a vehicle inspection report

23 for vehicle No. 3571?

24 **A. Yes, I did.**

25 Q. Please direct your attention to Exhibit SY-2.

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 Is this the vehicle inspection report for

2 vehicle 3571 that you prepared?

3 **A. Yeah, it is.**

4 Q. And before this, had you ever placed a vehicle

5 out of service for this violation?

6 **A. Yes.**

7 Q. Thank you.

8 Now let's discuss Mr. Marsh's vehicle.

9 What problem did you identify with vehicle

10 No. 1044, Mr. Marsh's vehicle?

11 **A. One problem that it had was the tire was rubbing**

12 **against a part of the vehicle.**

13 Q. And which federal regulation do you understand

14 to be at issue here?

15 **A. That would be 49 CFR 396.3(a)(1).**

16 Q. All right. I'm going to ask you to refer again

17 to Exhibit SY-1, the Out-of-Service Handbook, and please

18 turn to page 7.

19 Can you please point out the section that is

20 applicable here?

21 **A. That would be 11(8)(a), so mounted or inflated**

22 **that it comes in contact with any part of the vehicle.**

23 Q. Thank you.

24 And I'm going to ask you, I believe it's

25 11(a)(8). That looks like what you just --

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 **A. Right.**

2 Q. -- what you just read; is that right?

3 **A. Correct.**

4 Q. Thank you.

5 And did the truck driven by Mr. Molinek have a

6 tire that was so mounted or inflated that it came into

7 contact with a part of the vehicle?

8 **A. Yes.**

9 Q. Which wheel was at issue?

10 **A. It was front steer tire, left side.**

11 Q. During your inspection, did you ask the driver,

12 Mr. Marsh, to turn the front wheels?

13 **A. Yes, I did.**

14 Q. Did you see the tire come into contact with the

15 vehicle when Mr. Marsh turned the wheels?

16 **A. Yes, I did.**

17 Q. Did the tire contact the vehicle only when the

18 wheel was turned?

19 **A. Yes.**

20 Q. Do you have an opinion about whether the driver

21 from his vantage point, behind the steering wheel, could

22 see the tire contacting the vehicle?

23 **A. He would not be able to see the tire. It's --**

24 **he's up above and there's a fender over the tire, so you**

25 **could only see where the contact -- the tire was making**

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 contact if you were at that level and kind of crouching
 2 down.
 3 Q. When you instructed Mr. Marsh to turn the wheel,
 4 do you recall if anyone on the ground was in a position
 5 to observe the left front wheel contacting the vehicle?
 6 **A. No, there was no one.**
 7 Q. Did you prepare a vehicle inspection report for
 8 vehicle No. 1044?
 9 **A. Yes, I did.**
 10 Q. Please direct your attention to Exhibit SY-3.
 11 Is this the vehicle inspection report for
 12 vehicle No. 1044 that you prepared?
 13 **A. Yes.**
 14 Q. When the wheel was turned, what part of the
 15 vehicle did it contact?
 16 **A. Came in contact with the pitman arm.**
 17 Q. Please refer to Exhibit SY-4.
 18 Are these images the actual truck or pitman arm
 19 that you inspected during the inspection that we're
 20 talking about today?
 21 **A. No.**
 22 Q. Using these images, can you please explain what
 23 the pitman arm is and where it is located on the truck?
 24 **A. The pitman arm is behind the front tires, and**
 25 **its purpose is to -- it's part of the steering**

Page 18

EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 components that allow the tires to move from right to
 2 left.
 3 Q. Was there anything about the condition of the
 4 pitman arm on Mr. Marsh's truck that you observed that
 5 is worth noting?
 6 **A. The pitman arm was worn, and to me, it looked**
 7 **like it had a dent. Later I learned that that's the way**
 8 **the pitman arm was built, but there was a large portion**
 9 **that was rubbed away.**
 10 Q. And when you say "a large portion that was
 11 rubbed away," do you mean metal or paint or something
 12 else?
 13 **A. I'm assuming it is just paint.**
 14 Q. Before this inspection, had you ever placed a
 15 vehicle out of service for the violation of a tire
 16 contacting the vehicle?
 17 **A. Yes, I have.**
 18 Q. All right. Now I want to ask you about the
 19 penalty.
 20 What is the status of the \$200 penalty that the
 21 Commission assessed for the violations that we've just
 22 discussed?
 23 **A. It's been paid by LeMay.**
 24 Q. And what is your recommendation regarding the
 25 violation?

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EXAMINATION OF YEOMANS / LAIHO

1 **A. That they are accurate and they should stand.**
 2 MS. CAMERON-RULKOWSKI: Thank you. I have
 3 no further questions for Ms. Yeomans at this time, and I
 4 would now like to call Mr. Auderer.
 5 MR. LAIHO: Your Honor, I'd like to do cross
 6 on Ms. Yeomans obviously. I can wait until after Mr. --
 7 next witness or now.
 8 JUDGE CHARTOFF: Typically we have -- we
 9 allow cross at this time?
 10 MS. CAMERON-RULKOWSKI: Absolutely, and
 11 I'm -- it may be -- I have a fairly short examination
 12 for Mr. Auderer, and it may be more convenient for you
 13 to be able to cross either one of them. But I'm happy
 14 to -- absolutely. Typically we do cross right after the
 15 witness.
 16 MR. LAIHO: I think that would be better
 17 just so I can -- so I'm not flipping back and forth my
 18 notes so much, Your Honor.
 19 JUDGE CHARTOFF: Okay.
 20 MR. LAIHO: Thank you.
 21
 22 **E X A M I N A T I O N**
 23 BY MR. LAIHO:
 24 Q. So, Inspector Yeomans, we met briefly off the
 25 record. My name is Eric Laiho. I'm the counsel for the

Page 20

EXAMINATION OF YEOMANS / LAIHO

1 respondent. I just have a couple brief questions for
 2 you regarding this inspection.
 3 How many garbage trucks have you inspected
 4 before?
 5 **A. I don't have an actual number, but well over 50**
 6 **I'm sure.**
 7 Q. Including this inspection?
 8 **A. Including this inspection.**
 9 Q. And do you recall how many vehicles were
 10 inspected during this inspection?
 11 **A. I believe there was 12.**
 12 Q. Okay. And you testified before, this is the
 13 first time you did an inspection such as this at a
 14 carrier's place of business. What do you mean by that?
 15 **A. Usually destination checks are done at the**
 16 **airport, Safeco Field, those type of places. To**
 17 **actually do one on the person's property, we had tried**
 18 **that to do inspections on vehicles, garbage truck**
 19 **vehicles, while they're in service.**
 20 Q. And concerning -- we'll turn to Exhibit SY-4,
 21 page 1.
 22 You testified this is not a picture of the
 23 pitman arm -- page 1, yeah. This is not the pitman arm
 24 that you inspected at that time?
 25 **A. Correct.**

Page 21

EXAMINATION OF YEOMANS / LAIHO

1 Q. Do you know who took this picture?

2 **A. I do not.**

3 Q. Do you know what truck or vehicle this is the

4 pitman arm of?

5 **A. I do not.**

6 Q. What about this diagram underneath, what is this

7 a diagram of?

8 **A. It looks like steering components.**

9 Q. Okay. And is this at all part of the vehicle

10 you inspected?

11 **A. No.**

12 Q. Okay. And turning to page 2 of that same

13 exhibit, is this the vehicle you inspected?

14 **A. No.**

15 Q. Okay. Do you know the arrow -- maybe this is

16 your other witness, do you know what this arrow is

17 pointing towards?

18 **A. Basically towards the general location of the**

19 **pitman arm.**

20 Q. Did you place that arrow there?

21 **A. No.**

22 Q. Do you know who took this picture?

23 **A. No.**

24 Q. Do you know when this picture was taken?

25 **A. No.**

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EXAMINATION OF YEOMANS / LAIHO

1 Q. Do you know if this is the same type of truck

2 that was inspected by you?

3 MS. CAMERON-RULKOWSKI: I'm going to object

4 at this point to relevance. We've clearly labeled the

5 exhibit as illustrative, and Staff is making no claims

6 that this is the actual vehicle. So if -- if the -- if

7 Counsel is trying to -- trying to -- is trying to

8 challenge the location of the pitman arm, then we can

9 continue, but otherwise, it's simply illustrative.

10 JUDGE CHARTOFF: Yeah, where are you going?

11 MR. LAIHO: I was just establishing, Your

12 Honor, this was not the vehicle that was inspected.

13 It's not even the same type of vehicle that was

14 inspected.

15 JUDGE CHARTOFF: Okay. I think that's been

16 established so...

17 MR. LAIHO: I just wanted to -- I know it's

18 been admitted, but a weight issue. That's all I had,

19 Your Honor.

20 JUDGE CHARTOFF: Okay.

21 BY MR. LAIHO:

22 Q. And, Inspector Yeomans, what part of the vehicle

23 did the tire touch during -- on Mr. Marsh's vehicle?

24 **A. The pitman arm.**

25 Q. Okay. And going to Mr. Molinek's vehicle

Page 23

EXAMINATION OF YEOMANS / LAIHO

1 regarding the brake light, did you affix a CVSA decal

2 after the brake light was fixed?

3 **A. I don't believe I did.**

4 Q. But it was fixed during the time of the

5 inspection and you --

6 **A. Yes, it was fixed.**

7 Q. Okay. Perfect.

8 And, Inspector Yeomans, going back to

9 Mr. Marsh's vehicle regarding the pitman arm, about how

10 long -- were you there during the entire time that

11 Mr. Marsh's vehicle was inspected?

12 **A. Yes, I was.**

13 Q. How long was that?

14 **A. I'm not sure exactly how long it was. I could**

15 **look on the -- here and it would tell me that the -- it**

16 **started at 2:17 and ended at 3:01.**

17 Q. So you were there during the entire time?

18 **A. Yes.**

19 Q. Okay. And to determine that this was an

20 out-of-service violation, is that a determination you

21 made very quickly?

22 **A. I made it at the point that the -- I saw the**

23 **tire touch the pitman arm.**

24 Q. And did you know it was an out-of-service

25 violation at that time?

Page 24

EXAMINATION OF YEOMANS / LAIHO

1 **A. Yes.**

2 Q. Okay. And did anyone from the UTC take a

3 picture of the tire allegedly touching this pitman arm?

4 **A. No, that is not our normal practice.**

5 Q. Why not?

6 **A. There has never been a need.**

7 Q. Do you recall was -- when you noticed that the

8 tire allegedly touched the pitman arm, what -- were you

9 having the driver conduct a certain test when that

10 happened?

11 **A. I had him turn the steering wheel to see if it**

12 **touched.**

13 Q. Is there a name for that test?

14 **A. I don't believe so.**

15 Q. Okay. And last question, Inspector Yeomans.

16 At what point during this 45-minute inspection

17 did you see the tire make contact with the pitman arm?

18 **A. I would not be able to give exact time. We have**

19 **a routine. It was after the front lights had been**

20 **checked. It was a two-person team, so I would have been**

21 **inspecting the front lights and then gone down the side**

22 **and at that point. So I don't know exactly what time it**

23 **was.**

24 Q. Would it have been within five minutes of the

25 inspection starting?

Page 25

EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 **A. I do not know.**
 2 Q. What about ten minutes?
 3 **A. I do not know.**
 4 Q. But towards the beginning of your inspection?
 5 **A. It was towards the beginning of the inspection.**
 6 Q. Excellent.
 7 MR. LAIHO: No further questions.
 8 JUDGE CHARTOFF: Thank you.
 9 Any redirect?
 10 MS. CAMERON-RULKOWSKI: Yes, Your Honor.
 11
 12 EXAMINATION
 13 BY MS. CAMERON-RULKOWSKI:
 14 Q. Ms. Yeomans, when you asked Mr. Marsh to turn
 15 the front wheel, is that a standard component of a
 16 vehicle inspection?
 17 **A. If we see that there is something that would**
 18 **bring to your attention that there may be contact with**
 19 **the tire and the vehicle, then we would do that.**
 20 Q. And in this case, was that the case?
 21 **A. Yes. I had seen the pitman arm was very shiny**
 22 **in one section of it, and that would be an indication**
 23 **that possibly the tire could touch. So at that point, I**
 24 **would do that test.**
 25 MS. CAMERON-RULKOWSKI: Thank you. No

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EXAMINATION OF AUDEKER / CAMERON-RULKOWSKI

1 further questions.
 2 JUDGE CHARTOFF: Okay. You may call your
 3 next witness.
 4 MS. CAMERON-RULKOWSKI: Thank you, Your
 5 Honor. I call Robert Auderer.
 6
 7 ROBERT AUDEKER, witness herein, having been
 8 first duly sworn on oath,
 9 was examined and testified
 10 as follows:
 11
 12 EXAMINATION
 13 BY MS. CAMERON-RULKOWSKI:
 14 Q. Good morning, Mr. Auderer.
 15 **A. Good morning.**
 16 Q. Go ahead and pull that close to you.
 17 Please state your name and spell your last name
 18 for the record.
 19 **A. Robert Auderer, A-u-d-e-r-e-r.**
 20 Q. Please state the name of your employer.
 21 **A. Washington Utilities and Transportation**
 22 **Commission.**
 23 Q. In what position are you employed with the
 24 Commission?
 25 **A. I'm an investigator.**

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EXAMINATION OF AUDEKER / CAMERON-RULKOWSKI

1 Q. How long have you been employed in this
 2 position?
 3 **A. Approximately five months.**
 4 Q. And how long have you been employed by the
 5 Commission?
 6 **A. Approximately five months.**
 7 Q. Do you have prior experience working with motor
 8 carrier safety?
 9 **A. Yes, I do.**
 10 Q. Can you please describe that experience?
 11 **A. Prior to my employment with the State, I was a**
 12 **police officer and enforced the traffic code of the**
 13 **state of Washington which includes commercial motor**
 14 **vehicles being operated.**
 15 Q. All right. Please describe your
 16 responsibilities as they pertain to this matter.
 17 **A. I was a trainee at the time and was brought to**
 18 **the -- the event to act as an observer.**
 19 Q. Are you familiar with Harold LeMay Enterprises,
 20 Inc.?
 21 **A. Yes.**
 22 Q. How did you become familiar with LeMay?
 23 **A. I performed contract safety training for LeMay**
 24 **through a previous employer prior to my employment with**
 25 **the State.**

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EXAMINATION OF AUDEKER / CAMERON-RULKOWSKI

1 Q. And when you talk about a previous employer,
 2 this was not -- am I understanding this correctly that
 3 this is not LeMay, this was a third party?
 4 **A. Correct.**
 5 Q. Have you read the declaration of Mr. Meany?
 6 **A. Yes.**
 7 Q. And are you the trainee referred to there?
 8 **A. Yes.**
 9 Q. I want to discuss the violation associated with
 10 the tire contacting the pitman arm.
 11 Did you read the declaration of Donald Kenney?
 12 **A. I did.**
 13 Q. Did you meet Mr. Kenney?
 14 **A. Yes.**
 15 Q. Did you learn anything from him concerning the
 16 tire violation on vehicle No. 1044?
 17 **A. Yes.**
 18 Q. All right. And could you please share with us
 19 what it is that you learned?
 20 **A. After the violation was pointed out to me, I was**
 21 **talking to Mr. Kenney and was looking at the pitman arm,**
 22 **and it had a what I at the time thought was a dent also**
 23 **towards the bottom half of the pitman arm, and I was**
 24 **corrected and advised that that's how that particular**
 25 **pitman arm was designed. And then I was advised that**

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EXAMINATION OF AUDERER / CAMERON-RULKOWSKI

1 the typical reason for the damage that was present at
 2 the top of the pitman arm would be the lack of steering
 3 stop or a steering stop that was no longer on the
 4 vehicle or out of adjustment.
 5 Q. And did you see the pitman arm on vehicle
 6 No. 1044?
 7 **A. Yes, I did.**
 8 Q. And what did you observe?
 9 **A. I observed missing material at the output shaft**
 10 **where the pitman arm is connected to the steering box.**
 11 Q. And what's the significance of that?
 12 **A. It appeared to me that there was metal missing**
 13 **from both the output shaft and the steering box and the**
 14 **pitman arm, and it was smooth and shiny as though it had**
 15 **been slowly eroded away by contact with something**
 16 **rotational on the vehicle.**
 17 **It was almost like a cross-section of metal was**
 18 **removed from the top of the pitman arm and the output**
 19 **shaft or the steering box to the point to where there**
 20 **were castellations that were missing and degraded as a**
 21 **result of the material being gone.**
 22 Q. Can you explain the word "castellations"?
 23 **A. It was either -- it's a series of grooves**
 24 **that -- that are on maybe the output shaft or on the top**
 25 **of a nut that allow for a pin to be placed through them**

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EXAMINATION OF AUDERER / LAIHO

1 so it will hold the mechanism in place. It's hard to
 2 describe without being able to illustrate it, but the
 3 material was damaged to the point where I don't know if
 4 there were grooves that had a pin in them that were
 5 missing or if it was a castellated nut that had been
 6 damaged.
 7 MS. CAMERON-RULKOWSKI: All right. Thank
 8 you. I have no further questions for Mr. Auderer.
 9 JUDGE CHARTOFF: Thank you.
 10 Cross?
 11 MR. LAIHO: Just a couple, Your Honor.
 12
 13 **E X A M I N A T I O N**
 14 **BY MR. LAIHO:**
 15 Q. Mr. Auderer, at any time during the inspection,
 16 did you see the tire of Mr. Marsh's vehicle make contact
 17 with any other part of Mr. Marsh's vehicle?
 18 **A. No, I didn't.**
 19 Q. Didn't see it make contact with the pitman arm?
 20 **A. No.**
 21 Q. Mr. Auderer, did anyone from the UTC take a
 22 picture of the pitman arm during this inspection?
 23 **A. Not to my knowledge.**
 24 Q. Why not?
 25 **A. Because I don't have knowledge that somebody**

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EXAMINATION OF AUDERER / LAIHO

1 took a picture.
 2 Q. Okay. And you don't know why they wouldn't take
 3 a picture?
 4 **A. No, I was -- I'm -- I was new at the time.**
 5 Q. Okay.
 6 MR. LAIHO: No further questions, Your
 7 Honor.
 8 JUDGE CHARTOFF: Okay. Okay. So you may
 9 make an opening statement.
 10 MR. LAIHO: Thank you, Your Honor.
 11 So, Your Honor, LeMay -- Harold LeMay
 12 Enterprises, Inc., which I'll refer to as LeMay, filed a
 13 contest to the UTC's notice of penalties. We also --
 14 just to make sure the record's clear, there was an
 15 amended notice of penalties that was issued about a week
 16 and a half ago. We filed a contest yesterday as well
 17 electronically just to make sure that was part of the
 18 record as well. Same arguments, same issues, it was
 19 just there was a change to the original notice of
 20 penalties, so we wanted to make sure it was clear for
 21 the record that we also contested the amended notice of
 22 penalties.
 23 JUDGE CHARTOFF: Yes.
 24 MR. LAIHO: So LeMay cooperated with the UTC
 25 for this March 20th inspection. We scheduled this. The

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1 UTC wanted to give its inspectors a look at LeMay's
 2 vehicles, and we were very open to that idea. We
 3 scheduled that. The inspection occurred on LeMay's
 4 property. Again, we take issue with the fact this is
 5 considered a roadside violation. This was very deep in
 6 a private property. It was done before the drivers
 7 completed their -- or were allowed to complete their
 8 post-trip safety inspections. This was after they
 9 completed a pretrip, but before they completed the
 10 post-trip inspections.
 11 District general manager, Larry Meany, who
 12 will testify as well as maintenance manager, Donald
 13 Kenney. LeMay didn't cherry-pick the vehicles that were
 14 going to be inspected. They wanted to give the UTC a
 15 full look at a cross-section of their fleet. Didn't
 16 pick new vehicles, they didn't pick certain vehicles
 17 that they knew had just been -- or they did a
 18 cross-section. Again, they were very cooperative
 19 throughout this inspection with the UTC.
 20 MS. CAMERON-RULKOWSKI: Excuse me, Your
 21 Honor. If Counsel is testifying, then he should be
 22 sworn in. This is a brief adjudicatory proceeding and
 23 he can present a statement, but I would ask that he be
 24 sworn in if he is making -- going to continue to make
 25 a -- make factual statements.

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1 MR. LAIHO: You'll hear testimony about
 2 this, Your Honor, so for the opening statement, I'm
 3 previewing what the testimony will be.
 4 JUDGE CHARTOFF: I'm going to allow it.
 5 MR. LAIHO: So going to the alleged
 6 out-of-service violations, for the alleged
 7 out-of-service violation related to the brake light. At
 8 the time the vehicle was determined to be out of
 9 service, the brake light was already operational. It
 10 was fixed. And as you see from the exhibit, page 16 of
 11 the North American Standard Out-of-Service Criteria
 12 Handbook, which is page 3 on Exhibit 1 for the UTC,
 13 provides an out-of-service violation, if successfully
 14 repaired on site and reinspected by the same inspector,
 15 will qualify for a CVSA decal.
 16 That decal was not provided. It wasn't
 17 provided for the UTC at the time that this was repaired.
 18 Moreover, the brake light must have been out of
 19 operation only for a shorter period of time. You'll
 20 hear testimony that this would have been something that
 21 was inspected and replaced if this was during the
 22 post -- pretrip safety inspection, certainly the
 23 post-trip.
 24 Regarding the alleged out-of-service
 25 violation related to the tires and the pitman arm,

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1 you'll see again this is Exhibit 1 for the UTC, page 7,
 2 page 59 of the North American Standard Out-of-Service
 3 Criteria Handbook, provides that an out-of-service
 4 condition exists only if the tire can be made to contact
 5 another component at the time of the inspection.
 6 Your Honor, this is really the crux here.
 7 These words matter, and you're going to hear testimony
 8 that that did not happen at the time of the inspection
 9 here. This is a fatal flaw. This is really the reason
 10 why we're here. This -- these out-of-service violations
 11 affect LeMay's CSA scores. This is something that is a
 12 big deal, as you'll see, for LeMay.
 13 And it's just -- we're going to basically
 14 present three witnesses who will testify that this
 15 didn't happen. Besides district general manager, Larry
 16 Meany, and maintenance manager, Don Kenney, we'll
 17 present the time -- the driver of one of the trucks, Ian
 18 Marsh, who was there during the inspection as well.
 19 And, Your Honor, I just want to make this
 20 very clear as well, we're not here to call anyone a
 21 liar. We're not here to -- what we're here to do is
 22 really just -- I think you know having done these many,
 23 many times before is two witnesses can see things
 24 differently, and I will present what my witnesses saw or
 25 didn't see. And as you see, the UTC will present their

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1 witnesses who will state what they saw.
 2 So this isn't meant to be any sort of name
 3 calling or anything like that. I just want to make sure
 4 that we're presenting our side of the case. So LeMay
 5 has pride in its safety-conscious reputation, and we
 6 want to make sure we defend that, so that's why we're
 7 here. Thank you.
 8 JUDGE CHARTOFF: Okay. I have a question, a
 9 legal question. So you've mentioned that this is not a
 10 roadside -- does not qualify as a roadside inspection.
 11 Do you have a definition, a legal definition, that
 12 you're referring to or what is your basis for that?
 13 MR. LAIHO: The basis for that -- I don't
 14 have a legal definition, Your Honor. It's something
 15 that -- it just pops up in the FMCSA database. So the
 16 fact that -- I mean, this was on private property. So
 17 this wasn't something at a scale house or anything like
 18 that. This was on the private property.
 19 JUDGE CHARTOFF: Okay. You can call your
 20 first witness.
 21 MR. LAIHO: First witness is Donald Kenney.
 22 /////
 23 /////
 24 /////
 25 /////

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EXAMINATION OF KENNEY / LAIHO

1 DONALD KENNEY, witness herein, having been
 2 first duly sworn on oath,
 3 was examined and testified
 4 as follows:
 5
 6 EXAMINATION
 7 BY MR. LAIHO:
 8 Q. Good morning, Mr. Kenney.
 9 A. Good morning.
 10 Q. Can you please spell your full name for the
 11 record.
 12 A. It's Donald Kenney, D-o-n-a-l-d, K-e-n-n-e-y.
 13 Q. And are you currently employed?
 14 A. Yes.
 15 Q. Where are you currently employed?
 16 A. Murrey's Disposal.
 17 Q. And what's your job title at Murrey's Disposal?
 18 A. Maintenance manager.
 19 Q. When did you start working for Murrey's
 20 Disposal?
 21 A. I took that position on July 30th of this year.
 22 Q. Very recently.
 23 A. Yes.
 24 Q. Okay. Did you work for any company before
 25 Murrey's Disposal?

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EXAMINATION OF KENNEY / LAIHO

1 **A. Yes.**
 2 Q. Which company did you work for before Murrey's
 3 Disposal?
 4 **A. Harold LeMay Enterprises.**
 5 Q. When did you start working for Harold LeMay
 6 Enterprises?
 7 **A. In July of 2010.**
 8 Q. And when I refer to "LeMay," just for the
 9 record, and I'll be referring to Harold LeMay
 10 Enterprises, your previous employer; is that understood?
 11 **A. Yes.**
 12 Q. And what was your job title when you were
 13 working for LeMay?
 14 **A. Maintenance manager as well.**
 15 Q. And are you a certified mechanic?
 16 **A. Yes.**
 17 Q. When did you first become a certificate
 18 mechanic?
 19 **A. I took two years of classes at Highline**
 20 **Community College in 1995.**
 21 MR. LAIHO: Can everyone hear Mr. Kenney?
 22 BY MR. LAIHO:
 23 Q. And what were your job duties as maintenance
 24 manager for LeMay?
 25 **A. In a nutshell, it's really to make sure that**

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EXAMINATION OF KENNEY / LAIHO

1 we're adhering to all policies, be it company or
 2 Department of Motor Vehicles.
 3 Q. And do you have experience attending Utilities
 4 and Transportation Commission, UTC, inspections of LeMay
 5 vehicles?
 6 **A. Yes, because of this one.**
 7 Q. Okay. So were you present for a UTC inspection
 8 on March 20th, 2018, for LeMay?
 9 **A. Yes, I was.**
 10 Q. What time of day did the inspection occur?
 11 **A. 2:00 p.m.**
 12 Q. And on that day, when did LeMay drivers begin
 13 their routes?
 14 **A. They break them up in groups. The early groups**
 15 **start at 4:00 a.m. through the last group leaving at**
 16 **6:00 in the morning.**
 17 Q. And at the time of the UTC inspection, were
 18 LeMay drivers required to complete a pretrip inspection
 19 before their route each day?
 20 **A. Yes.**
 21 Q. At the time of this UTC inspection, were LeMay
 22 drivers required to complete a post-trip inspection
 23 after their route each day?
 24 **A. Yes.**
 25 Q. At the time of this UTC inspection, had drivers

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EXAMINATION OF KENNEY / LAIHO

1 conducted their pretrip safety inspections?
 2 **A. Their pretrip, yes.**
 3 Q. At the time of the UTC inspection, had drivers
 4 conducted their post-trip safety inspections?
 5 **A. No, we were stopping them prior to where they**
 6 **conduct their post-trip.**
 7 Q. And where did this March 20th, 2018 inspection
 8 occur?
 9 **A. On Harold LeMay property.**
 10 Q. And how far in Harold LeMay's property was this
 11 inspection?
 12 **A. I would guess that it's about a hundred yards**
 13 **off the street.**
 14 Q. Okay. And describe the location where the UTC
 15 inspection occurred.
 16 **A. It's a side portion of our yard where we store**
 17 **some containers, but it's out of the way of truck**
 18 **traffic.**
 19 Q. And do you recall how many people were present
 20 from the UTC during this inspection?
 21 **A. Five.**
 22 Q. Do you recall any of their names?
 23 **A. Mrs. Yeomans, Wayne Gilbert, those are the two**
 24 **off the top of my head that I remember.**
 25 Q. And did any inspector identify themselves as a

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EXAMINATION OF KENNEY / LAIHO

1 trainee?
 2 **A. Yes.**
 3 Q. Okay. And who was present for LeMay during this
 4 UTC inspection most of the time?
 5 **A. Myself, Larry Meany, some of our supervisor**
 6 **staff, Chris Twiggs from our maintenance shop.**
 7 Q. And how were vehicles selected to be inspected
 8 by the UTC?
 9 **A. As they were coming in and as the inspectors**
 10 **were ready for a next one, the next truck that came in**
 11 **is the one that we had them inspect. So it was a mix of**
 12 **whatever was coming in.**
 13 Q. Okay. And about how many LeMay trucks were
 14 inspected during that March 20th inspection?
 15 **A. 12.**
 16 Q. So, Mr. Kenney, did Inspector Yeomans inspect a
 17 truck driven by Mr. Nathan Molinek during this
 18 inspection?
 19 **A. Yes.**
 20 Q. And what type of truck is Mr. Molinek's truck?
 21 **A. We call it an ASL. It's an automated side**
 22 **loader.**
 23 Q. And did Inspector Yeomans say she had found any
 24 alleged out-of-service violations on Mr. Molinek's
 25 truck?

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EXAMINATION OF KENNEY / LAIHO

1 **A. Yes.**
 2 Q. What was that?
 3 **A. Brake lamps inoperable.**
 4 Q. And what could be the cause of a brake light not
 5 being operational?
 6 **A. Typically the first thing we check is the fuse**
 7 **for the power.**
 8 Q. And did you do that in this time?
 9 **A. Yes.**
 10 Q. And so what occurred?
 11 **A. We immediately checked it when it was noted that**
 12 **they weren't operational and replaced the fuse, which**
 13 **made them operational over the course of a minute or**
 14 **two.**
 15 Q. And who fixed this for LeMay?
 16 **A. Chris Twiggs from our shop.**
 17 Q. And after the brake light was fixed, what did
 18 Inspector Yeomans do?
 19 **A. The vehicle was placed out of service.**
 20 Q. So the brake light was already operational at
 21 the time the vehicle was placed out of service?
 22 **A. Yes.**
 23 Q. Would the brake light have been not operational
 24 at the time Mr. Molinek's truck left LeMay's yard in the
 25 morning?

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EXAMINATION OF KENNEY / LAIHO

1 **A. No, he would have checked it on his pretrip**
 2 **inspection before leaving the yard.**
 3 Q. And he's required to do that?
 4 **A. Yes.**
 5 Q. Is that just a LeMay requirement?
 6 **A. No, that's a federal law.**
 7 Q. During this inspection, did the UTC issue any
 8 additional alleged out-of-service violations?
 9 **A. Yes.**
 10 Q. What was this other alleged violation?
 11 **A. On Ian Marsh's unit, 1044, for pitman arm.**
 12 Q. What type of truck is Mr. Marsh's truck?
 13 **A. It is a rear loader.**
 14 Q. And what -- is it a garbage truck?
 15 **A. Yes, it's a garbage truck.**
 16 Q. Were you present when this vehicle was
 17 inspected?
 18 **A. Yes.**
 19 Q. And who from the UTC inspected this vehicle?
 20 **A. Ms. Yeomans and the inspector that was assisting**
 21 **her.**
 22 Q. Okay. And you don't recall the name of that
 23 other inspector?
 24 **A. I don't.**
 25 Q. Okay. Did Inspector Yeomans do anything to

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EXAMINATION OF KENNEY / LAIHO

1 inspect the tires or steering components of Mr. Marsh's
 2 truck?
 3 **A. The only inspection I saw for the steering**
 4 **components was the rock test where they check for free**
 5 **play in the linkage of the steering components.**
 6 Q. What -- describe the rock test for me.
 7 **A. Engine off, in this case, since it's a**
 8 **conventional hood up, they ask the driver to grab the**
 9 **steering wheel and move it without moving the tires to**
 10 **check for how many inches of free travel they got**
 11 **versus -- and they're also looking for failed components**
 12 **moving like it should.**
 13 Q. Okay. And just for the record, when you were
 14 indicating that the driver was rocking the steering
 15 wheel, what position of the clock would the driver be
 16 rocking the steering wheel? Like between 11:00 and 1:00
 17 or 12:00 and 2:00 or what would...
 18 **A. In that particular truck sensor was no worn**
 19 **components. It doesn't really move that far. So the**
 20 **worse it is, the further you get. So I -- if I did**
 21 **this, I apologize. It was this.**
 22 Q. So between, what, 11:00 and 1:00 or...
 23 **A. Approximately, yeah. It was very minor, so it**
 24 **was not out of compliance for that portion.**
 25 Q. And during this inspection, did you see the tire

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EXAMINATION OF KENNEY / LAIHO

1 make contact with any part of Mr. Marsh's vehicle?
 2 **A. I did not.**
 3 Q. Did -- during this inspection of Mr. Marsh's
 4 vehicle, did Inspector Yeomans make any comments
 5 concerning the pitman arm?
 6 **A. She noticed that there was a shiny spot on the**
 7 **pitman arm.**
 8 Q. Did Inspector Yeomans tell you she saw the tire
 9 make contact with any portion of Mr. Marsh's vehicle?
 10 **A. No.**
 11 Q. Did the UTC inspectors find that this was an
 12 out-of-service violation immediately?
 13 **A. No.**
 14 Q. Why do you say that?
 15 **A. They congregated, they -- Ms. Yeomans and I**
 16 **believe it was Mr. Gilbert were looking over the regs to**
 17 **determine exactly which -- which one it was that -- so**
 18 **they could state which violation it was.**
 19 Q. About how long did that process take?
 20 **A. It seemed like a long time because we were**
 21 **curious as to the outcome, and if -- if I had to**
 22 **speculate, at least five minutes.**
 23 Q. Did you witness Inspector Yeomans or anyone else
 24 from the UTC take a picture of this alleged violation?
 25 **A. No, I did not.**

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EXAMINATION OF KENNEY / LAIHO

1 Q. And after Mr. Molinek's truck had the fuse
 2 popped back in, were there -- was his truck inspected by
 3 anyone from LeMay?
 4 **A. From -- excuse me?**
 5 Q. From LeMay?
 6 **A. From LeMay?**
 7 Q. Mm-hmm.
 8 **A. Myself, I can't attest to who else exactly.**
 9 **Myself for sure and verified that they did come back on**
 10 **so...**
 11 Q. Okay. Was there a --
 12 **A. Larry may have been present with me there. I**
 13 **don't -- I don't want to speculate so...**
 14 Q. Were there any other problems with the brake
 15 lights beyond just the fuse?
 16 **A. With that truck --**
 17 Q. Yes.
 18 **A. -- no.**
 19 Q. I'm sorry.
 20 **A. With that truck, no.**
 21 Q. Okay. And do you have any explanation for why
 22 the pitman arm might appear shiny for that particular
 23 truck?
 24 **A. One scenario could be because this truck does**
 25 **spend a lot of time off road on our rural -- rural**

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EXAMINATION OF KENNEY / LAIHO

1 routes on dirt roads, that when it's in a full turn
 2 position hitting potholes, that these components flex
 3 and may allow it to reach when it normally wouldn't in a
 4 static stop-to-stop turn on a hard surface.
 5 Q. Can you tell the -- what the issue was without
 6 seeing the tire make contact with the vehicle at the
 7 time of the inspection?
 8 **A. You can speculate, but unless you actually make**
 9 **it happen, it's still speculation.**
 10 Q. Okay. And I'll have you turn -- which I'll get
 11 you a copy here.
 12 MR. LAIHO: So what I handed the witness was
 13 Staff Exhibits SY-1 through SY-4.
 14 BY MR. LAIHO:
 15 Q. Turning to SY-4, page 2, and just -- I know
 16 we've done this. I just want to make sure it's clear
 17 for the record, this -- do you recognize the vehicle in
 18 that picture?
 19 **A. Yes, I do.**
 20 Q. What vehicle is that?
 21 **A. 2017.**
 22 Q. And what type of vehicle is that?
 23 **A. That is a front load garbage truck.**
 24 Q. What sort of vehicle was Mr. Marsh's vehicle?
 25 **A. A rear load garbage truck.**

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EXAMINATION OF KENNEY / CAMERON-RULKOWSKI

1 Q. And do -- is that vehicle that's in that
 2 picture, is that still part of LeMay's fleet at this
 3 time?
 4 **A. No, that was scrapped in 2014.**
 5 Q. So it's no longer part of LeMay's fleet?
 6 **A. No.**
 7 MR. LAIHO: Reserve for redirect, Your
 8 Honor.
 9 JUDGE CHARTOFF: Okay. Cross?
 10 MS. CAMERON-RULKOWSKI: Yes, Your Honor.
 11 Thank you.
 12
 13 EXAMINATION
 14 BY MS. CAMERON-RULKOWSKI:
 15 Q. Good morning, Mr. Kenney.
 16 **A. Morning.**
 17 Q. Now, you testified that, following Ms. Yeomans'
 18 inspection, that Commission safety staff congregated and
 19 appeared to be discussing -- discussing something for
 20 what seemed like a long time to you; have I
 21 characterized that correctly?
 22 **A. Sounds right.**
 23 Q. All right. And did you hear what Commission
 24 Staff was discussing?
 25 **A. No, I did not.**

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EXAMINATION OF KENNEY / CAMERON-RULKOWSKI

1 Q. Now, I -- I understand from the testimony today
 2 or from the presentation today that -- that the trucks
 3 start their trips somewhere between 4:00 a.m. and 6:00
 4 a.m.; is that correct?
 5 **A. Correct.**
 6 Q. So the brake lights on truck No. 1044, they
 7 could have been inoperable all day starting at sometime
 8 shortly after the time the truck left in the morning,
 9 correct?
 10 MR. LAIHO: Objection. Calls for
 11 speculation.
 12 **A. Well, there was no problem with --**
 13 MR. LAIHO: Just hold on. Wait until the
 14 judge rules.
 15 THE WITNESS: I'm sorry.
 16 JUDGE CHARTOFF: Okay.
 17 MS. CAMERON-RULKOWSKI: And I'm sorry, I
 18 have the wrong truck number.
 19 JUDGE CHARTOFF: I'm -- I'm going to allow
 20 it because -- yeah, his testimony already speculated
 21 that it might have -- when it might have occurred so...
 22 MS. CAMERON-RULKOWSKI: Thank you, Your
 23 Honor. And I'll correct my question to reflect vehicle
 24 No. 3571, the vehicle driven by Mr. Molinek.
 25 **A. Yeah, I responded to vehicle 1044, though.**

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EXAMINATION OF KENNEY / CAMERON-RULKOWSKI

1 There was no -- there was no brake light problem with
 2 that truck.
 3 BY MS. CAMERON-RULKOWSKI:
 4 Q. So I have the wrong number?
 5 All right. Vehicle No. 3571, the vehicle driven
 6 by Mr. Molinek, and I would ask again that, given that
 7 the trucks started their trips between 4:00 and 6:00
 8 a.m., isn't it possible that the -- that the -- the
 9 brake lights on that truck could have been inoperable
 10 all day starting shortly after the time that they began
 11 service in the morning?
 12 **A. In my opinion, it's very unlikely.**
 13 Q. At any rate, you do agree that the stoplights
 14 were inoperable at the time of the inspection, right?
 15 **A. Correct.**
 16 MS. CAMERON-RULKOWSKI: Thank you. That's
 17 all the questions that I have.
 18 JUDGE CHARTOFF: Okay. Redirect?
 19 MR. LAIHO: No redirect, Your Honor.
 20 JUDGE CHARTOFF: Okay. Mr. Laiho, you may
 21 call your next witness.
 22 MR. LAIHO: Respondent calls Ian Marsh, Your
 23 Honor.
 24 ////
 25 ////

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EXAMINATION OF MARSH / LAIHO

1 IAN MARSH, witness herein, having been
 2 first duly sworn on oath,
 3 was examined and testified
 4 as follows:
 5
 6 **EXAMINATION**
 7 BY MR. LAIHO:
 8 Q. Good morning, Mr. Marsh.
 9 **A. Good morning.**
 10 Q. Can you please spell your name for the record.
 11 **A. My name is Ian Marsh. It's I-a-n, M-a-r-s-h.**
 12 Q. Okay. Are you currently employed?
 13 **A. Yes, I am.**
 14 Q. Where are you employed?
 15 **A. At LeMay or Harold LeMay, Incorporated.**
 16 Q. And what is your job title?
 17 **A. I am a garbage man.**
 18 Q. Specifically do you drive any vehicles?
 19 **A. I drive a rear load garbage truck.**
 20 Q. And when did you start working as a driver for
 21 LeMay?
 22 **A. In 2011.**
 23 Q. Do you have a commercial driver's license?
 24 **A. Yes, I do.**
 25 Q. How long have you had a commercial driver's

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1 license?
 2 **A. Since 2010.**
 3 Q. And what were your job duties as a driver for
 4 LeMay?
 5 **A. I clock in, I start at a 5:00, grab my paperwork**
 6 **or any work orders, go through the morning meeting, go**
 7 **out pretrip, go out on my route, pick up all the cans**
 8 **and work orders, dump, come back, fuel, and then I have**
 9 **post-trip and finish up all my paperwork.**
 10 Q. And when do you typically begin your route each
 11 day?
 12 **A. I start at 5:00 a.m.**
 13 Q. Okay. And on March 20th, 2018, when would you
 14 have began your route?
 15 **A. 5:00 a.m.**
 16 Q. As a driver for LeMay, was your truck inspected
 17 by the UTC on March 20th, 2018?
 18 **A. Yes, it was.**
 19 Q. And were you driving your rear loader garbage
 20 truck that day?
 21 **A. Yes, I was.**
 22 Q. And how long had you driven that truck?
 23 **A. At the time of the inspection, about three and a**
 24 **half years.**
 25 Q. And what time of day did the inspection occur?

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1 **A. Around 2:00, 2:15-ish.**
 2 Q. And on March 20th, 2018, had you completed a
 3 pretrip safe inspection?
 4 **A. Yes, I did.**
 5 Q. At the time of the inspection, had you completed
 6 your post-trip safety inspection?
 7 **A. No, I did not.**
 8 Q. Would you have been -- were you required to
 9 complete a post-trip inspection that day?
 10 **A. Yes, I was.**
 11 Q. On the day of the inspection, do you recall how
 12 many UTC inspectors were present in inspecting your
 13 truck on that day?
 14 **A. There was two inspectors inspecting my truck**
 15 **that day, but I know there was more in the yard, but I**
 16 **do not recall the number.**
 17 Q. Okay. Do you recall the names of the UTC
 18 inspectors that inspected your truck?
 19 **A. No.**
 20 Q. Do you recall what sex the inspectors were?
 21 **A. There was a female and a male.**
 22 Q. Okay. Describe for me what happened when you
 23 were first approached by an inspector.
 24 **A. It was the female inspector, and she came up and**
 25 **asked for all my paperwork, like the registrations and**

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1 the insurance, my driver's license and the VCRs and
 2 stuff like that.
 3 Q. Did you provide those documents?
 4 **A. I -- yes, I did.**
 5 Q. And during the inspection of your truck, did the
 6 UTC inspectors make you conduct any tests related to
 7 your tires or steering?
 8 **A. Yes, they did.**
 9 Q. What -- what tests or tests was that?
 10 **A. It was the rock test on the steering wheel.**
 11 Q. Okay. And before conducting this test, was your
 12 engine on or off?
 13 **A. It was off.**
 14 Q. Okay. And describe the test for me.
 15 **A. They asked me to rock the steering wheel left**
 16 **and right, so I grabbed the steering wheel roughly about**
 17 **10:00 and 2:00-ish and pulled to the left and to the**
 18 **right as hard as I could and for as long as they wanted**
 19 **me to do it.**
 20 Q. Could you turn the steering wheel very far?
 21 **A. No, I could not.**
 22 Q. Why not?
 23 **A. Because the engine was off.**
 24 Q. Did you have power steering at that time?
 25 **A. No, I did not.**

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EXAMINATION OF MARSH / LAIHO

1 Q. Why not?
 2 **A. Because the engine was off.**
 3 Q. Okay.
 4 **A. And it was disengaged.**
 5 Q. How far -- how many -- how far could you turn
 6 your steering wheel?
 7 **A. Maybe a couple of inches. That was it.**
 8 Q. Okay.
 9 **A. Back and forth.**
 10 Q. Okay. And how long did you rock the steering
 11 wheel for this test?
 12 **A. It seemed like forever because my shoulders were**
 13 **getting sore because I was doing it for like two or**
 14 **three minutes. The gentleman was doing it at the time,**
 15 **and he just kept having me do it over and over and over**
 16 **again.**
 17 Q. Okay. Did the lady inspector, did she tell you
 18 to do this test?
 19 **A. No.**
 20 Q. Okay. Where was the lady inspector during this
 21 time?
 22 **A. If I remember right, she was standing near the**
 23 **truck.**
 24 Q. And was the lady inspector there the entire time
 25 your truck was being inspected?

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1 **A. No, she was not.**
 2 Q. Okay. About how long was she present inspecting
 3 your vehicle?
 4 **A. She was there for at least the first 15 minutes**
 5 **for sure, and then I don't know where she went to, and**
 6 **the gentleman kind of kept going with the inspection,**
 7 **and then she came back later.**
 8 Q. Okay. And the gentleman was the one who
 9 instructed you to do the rock your steering wheel test?
 10 **A. Yes.**
 11 Q. During the time you were doing that rock your
 12 steering wheel test, were you able to see down to your
 13 tires?
 14 **A. I could see the top of my tires with the hood**
 15 **open, yeah.**
 16 Q. So you could see because your hood was open?
 17 **A. Yes.**
 18 Q. Why was your hood open?
 19 **A. They instructed me to have it open during that**
 20 **section of the inspection.**
 21 Q. At any time during the inspection of your
 22 vehicle, did the tire make contact with any other part
 23 of your vehicle?
 24 **A. I did not see them make contact, no.**
 25 Q. Would they have?

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1 **A. No.**
 2 Q. Why not?
 3 **A. There's no power steering. You can barely move**
 4 **them.**
 5 Q. Did you ever feel the tire make contact with any
 6 other part of your vehicle during the inspection?
 7 **A. No, I did not.**
 8 Q. Did any inspector tell you they saw the tire
 9 make contact with another portion of your vehicle during
 10 the inspection?
 11 **A. No.**
 12 MR. LAIHO: Reserve for redirect, Your
 13 Honor.
 14 JUDGE CHARTOFF: Okay. Any cross?
 15 MS. CAMERON-RULKOWSKI: I don't have any
 16 cross for Mr. Marsh, but I will be asking to call --
 17 recall Ms. Yeomans when we're -- when we're finished
 18 with the -- with the Company's presentation.
 19 JUDGE CHARTOFF: Okay. Okay.
 20 So -- okay. You're -- you can call your
 21 next witness.
 22 MR. LAIHO: Okay. Thank you, Mr. Marsh.
 23 THE WITNESS: Thank you.
 24 MR. LAIHO: LeMay calls Larry Meany, Your
 25 Honor.

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EXAMINATION OF MEANY / LAIHO

1 LARRY MEANY, witness herein, having been
 2 first duly sworn on oath,
 3 was examined and testified
 4 as follows:

5

6 JUDGE CHARTOFF: Thank you. Please be
 7 seated.

8 And before he gets started, we've been going
 9 for about an hour. Does anybody need a break?

10 MS. YEOMANS: I would like a break.

11 JUDGE CHARTOFF: Is it okay if we do a
 12 five-minute --

13 MR. LAIHO: Certainly, Your Honor.

14 JUDGE CHARTOFF: Okay. Let's do a
 15 five-minute break. We're off the record.

16 (A break was taken from
 17 10:36 a.m. to 10:45 a.m.)

18 JUDGE CHARTOFF: We are back on the record
 19 at 10:45.
 20 Okay.

21

22 EXAMINATION

23 BY MR. LAIHO:

24 Q. Mr. Meany, you still are under oath.
 25 Can you please spell your name for the record.

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EXAMINATION OF MEANY / LAIHO

1 **A. My name is Larry Meany, L-a-r-r-y, M-e-a-n-y.**

2 Q. Are you currently employed?

3 **A. Yes, I am.**

4 Q. And where are you employed?

5 **A. Employed at Waste Connections in McKinney,**
 6 **Texas.**

7 Q. And how long have you been employed there?

8 **A. Since Memorial Day.**

9 Q. Of this year?

10 **A. May 20th, yes.**

11 Q. Did you work for any other companies before
 12 Waste Connections in McKinney, Texas?

13 **A. Yes, I did.**

14 Q. Which company did you work for?

15 **A. Harold LeMay Enterprises, Incorporated.**

16 Q. And when did you work for Harold LeMay
 17 Enterprises, Inc.?

18 **A. From 2002, November of 2002 until May 20th.**

19 Q. Okay. And so when I refer to "LeMay," I'll be
 20 referring to Harold LeMay Enterprises, Inc.; is that
 21 understood?

22 **A. That's fine.**

23 Q. And what sort of work does LeMay perform?

24 **A. We perform commercial and residential refuse and**
 25 **recycling collection.**

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EXAMINATION OF MEANY / LAIHO

1 Q. And what was your job title when you worked for
 2 LeMay?

3 **A. I was the district general manager.**

4 Q. How long did you work for LeMay?

5 **A. Since November of 2002.**

6 Q. And what were your job duties as district
 7 general manager?

8 **A. General manager in oversight of safety and**
 9 **operations as well as financial and administrative**
 10 **operations.**

11 Q. When you worked for LeMay, did you have any
 12 experience attending Utilities and Transportation
 13 Commission inspections of LeMay vehicles?

14 **A. Yes, I did.**

15 Q. Were you present for a UTC inspection of LeMay
 16 vehicles on March 20th, 2018?

17 **A. Yes, I was.**

18 Q. Was this a surprise inspection or a scheduled
 19 inspection?

20 **A. No, this was a scheduled inspection.**

21 Q. How was it scheduled?

22 **A. Wayne Gilbert had called to schedule an**
 23 **inspection stating that he -- it had been a while since**
 24 **the Commission had been to see our vehicles and he'd**
 25 **like to come in and do an inspection of our vehicles.**

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EXAMINATION OF MEANY / LAIHO

1 Q. And do you know who Mr. Gilbert works for?

2 **A. The Washington Utilities and Transportation**
 3 **Commission.**

4 Q. And do you recall what time of day this March
 5 20th inspection occurred?

6 **A. It was after lunchtime. I believe it was around**
 7 **1:30 or 2 o'clock. I don't recall the exact time**
 8 **they -- they came to our facility.**

9 Q. At the time of the UTC inspection, were LeMay
 10 drivers required to complete pretrip safety inspection
 11 of their vehicles?

12 **A. Yes, they were.**

13 Q. At the time of the UTC inspection, were LeMay
 14 drivers required to complete post-trip safety
 15 inspections of their vehicles?

16 **A. Yes.**

17 Q. At the time of the UTC inspection, had drivers
 18 completed their post-trip safety inspections?

19 **A. No, they had not.**

20 Q. Where -- at what location did the March 20th UTC
 21 inspection occur?

22 **A. This one occurred in our yard in Fredrickson,**
 23 **Washington, well off of the road through -- in a storage**
 24 **area where we store commercial containers that's out of**
 25 **the way of the traffic, and it's a safe area and clean**

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EXAMINATION OF MEANY / LAIHO

1 area for the inspection to take place.
 2 Q. Is this outside or inside LeMay's gate?
 3 **A. Well inside.**
 4 Q. Do you recall who was -- or how many UTC
 5 inspectors were present for this inspection?
 6 **A. I believe there was five.**
 7 Q. Do you recall the names of any of those
 8 inspectors?
 9 **A. Not all of them. Sandi Yeomans and Wayne**
 10 **Gilbert, I recall they were the initial inspectors**
 11 **onsite. And they would contact [inaudible] I don't**
 12 **recall the other names at this time.**
 13 Q. And who was present for LeMay during most of the
 14 inspection?
 15 **A. There was myself and Donald Kenney.**
 16 Q. And how were vehicles selected to be inspected
 17 by the UTC?
 18 **A. Don or I selected them at random as they came in**
 19 **our gate. We wanted to provide a good cross-section of**
 20 **the types of vehicle -- collection vehicles that are**
 21 **used, and as they came in the gate, we had them go into**
 22 **that area to -- to be inspected.**
 23 Q. Okay.
 24 JUDGE CHARTOFF: Excuse me. Mr. Meany,
 25 could you speak a little -- I'm having a little trouble

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EXAMINATION OF MEANY / LAIHO

1 hearing you.
 2 THE WITNESS: Yes, ma'am. I apologize.
 3 JUDGE CHARTOFF: Okay.
 4 THE WITNESS: Thanks.
 5 BY MR. LAIHO:
 6 Q. Mr. Meany, do you recall an alleged
 7 out-of-service violation related to a nonoperational
 8 brake light during this inspection?
 9 **A. Yes, I do.**
 10 Q. How did you become aware of this alleged
 11 violation?
 12 **A. Don Kenney had waved me over to let me know that**
 13 **there was a violation found with the brake lights.**
 14 Q. Okay. What happened after that?
 15 **A. We made a decision immediately to have our**
 16 **mechanic who was on -- there at the time of the**
 17 **inspection immediately check the fuse panel. Just a**
 18 **common practice. He replaced a fuse and the brake**
 19 **lights became immediately operational.**
 20 Q. Okay. And after the brake light was
 21 operational, was the vehicle declared to be out of
 22 service by Inspector Yeomans?
 23 **A. Yes, it was.**
 24 Q. During this March 20th inspection, did the UTC
 25 issue any additional alleged out-of-service violations

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EXAMINATION OF MEANY / LAIHO

1 related to LeMay vehicles?
 2 **A. Yes, they did.**
 3 Q. Do you recall what other violation there was?
 4 **A. There was a violation with one of our rear**
 5 **loader collection vehicles concerning a pitman arm part**
 6 **of the steering linkage.**
 7 Q. Were you present when this vehicle was
 8 inspected?
 9 **A. I was in the area, yes.**
 10 Q. Okay. Do you recall who inspected this vehicle?
 11 **A. I recall Inspector Yeomans being in the area and**
 12 **looking into the hood. I don't recall the other**
 13 **inspector.**
 14 Q. Okay. Were you -- during -- when you were -- or
 15 did you watch any portion of this inspection of
 16 Mr. Marsh's vehicle?
 17 **A. Not directly, no.**
 18 Q. Okay. And did Inspector Yeomans at any time
 19 tell you anything about this inspection?
 20 **A. After it had taken some time, the inspection was**
 21 **going on for a lengthy amount of time compared to the**
 22 **other ones, and we inquired if there was an issue. And**
 23 **she indicated there was a problem with the steering**
 24 **linkage on the pitman arm was shiny at that point. And**
 25 **there was some -- quite a bit of deliberation between**

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EXAMINATION OF MEANY / LAIHO

1 inspectors, and I don't recall which ones. I know
 2 Inspector Yeomans was there, quite a bit of deliberation
 3 back and forth I'm assuming about that -- that
 4 violation.
 5 Q. And about how long did UTC inspectors discuss
 6 this violation?
 7 **A. It was definitely greater than five minutes, but**
 8 **I could not tell you the exact time.**
 9 Q. Mr. Meany, do you have any explanation as to why
 10 the pitman arm might be shiny at that time?
 11 **A. It's just an assumption, but these collection**
 12 **vehicles operate in all types of different terrain,**
 13 **off-road, on-road, in parking lots, and there's a lot of**
 14 **articulation and undulation in the ground, articulation**
 15 **in the trucks, and it is possible for the tire to hit**
 16 **the pitman arm from time to time during that type of**
 17 **operation. So that's purely speculation, but it could**
 18 **happen.**
 19 Q. Did you see the tire make contact with any
 20 portion of Mr. Marsh's vehicle during this inspection?
 21 **A. No, I did not.**
 22 Q. Okay. And how did you react to those two
 23 alleged out-of-service violations?
 24 **A. I was a little frustrated.**
 25 Q. Okay. Why is that?

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EXAMINATION OF MEANY / LAIHO

1 **A. The intent, that I assumed, of the inspection**
 2 **when the initial call was made was similar to the rest**
 3 **of our other regulators that come onto our site**
 4 **regularly. Where, you know, hey, we just want to come**
 5 **in. We haven't seen you for a number of years. We want**
 6 **to come in and take a look at your trucks.**
 7 **We were very cooperative and open to do that**
 8 **just like we are with everybody. It was a little bit of**
 9 **a cavalier approach from my -- in my opinion about the**
 10 **brake lights, you know, as will -- will the truck be put**
 11 **back in service. And Inspector Yeomans made a comment**
 12 **to the effect of well, you know the drill. And I did**
 13 **get a little frustrated with that. So I kind of walked**
 14 **away at that point.**
 15 Q. Following this March 20th, 2018 inspection, did
 16 you receive any email from the UTC related to the
 17 inspection?
 18 **A. I did.**
 19 Q. Okay. And, Mr. Meany, if you'll please turn to
 20 the notebook in front of you that includes respondent's
 21 Exhibit No. 1. Please turn to 10 in the upper
 22 right-hand corner.
 23 Do you recognize this document?
 24 **A. I do.**
 25 Q. What is this document?

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EXAMINATION OF MEANY / LAIHO

1 **A. This is an email, follow-up email, I received**
 2 **from Mr. Gilbert concerning the inspection, thanking us**
 3 **for the time and the drivers for acting professionally**
 4 **and it was a good training exercise, you know, for the**
 5 **inspection vehicles.**
 6 Q. Mr. Meany, did this -- did these alleged
 7 out-of-service violations affect LeMay's business in any
 8 way?
 9 **A. Yes, they did.**
 10 Q. How so?
 11 **A. These scores have a negative impact on the**
 12 **reputation. Our first operating value is safety. We**
 13 **take that very, very seriously. And the negative**
 14 **scores, SCA scores, affect our operation or reputation**
 15 **of our company.**
 16 Q. Is LeMay a safety-conscious company?
 17 **A. Absolutely.**
 18 Q. Why do you say that?
 19 **A. It's our first operating value and we embrace**
 20 **that value. It's not just something on a wall. It's**
 21 **actually engrained and embraced in our culture.**
 22 Q. And, Mr. Meany, did you receive any UTC notice
 23 of penalties related to this inspection?
 24 **A. Yes, we did.**
 25 Q. And did you file any documented response to

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EXAMINATION OF MEANY / CAMERON-RULKOWSKI

1 that?
 2 **A. Yes, I did.**
 3 Q. Okay. So just -- I guess we've already
 4 stipulated to admissibility of it, but if you'll just
 5 look through pages 1 through 20 there briefly and let me
 6 know if that's the appeal you just testified about.
 7 **A. Yes, this looks familiar.**
 8 Q. Okay. This is the document?
 9 **A. Yes, it is.**
 10 Q. Okay. And did you receive any amended UTC
 11 notice of penalties related to this inspection?
 12 **A. Yes, we did.**
 13 Q. And did you also file an appeal for that?
 14 **A. Yes, we did.**
 15 MR. LAIHO: Reserve for redirect, Your
 16 Honor.
 17 JUDGE CHARTOFF: Okay.
 18 MS. CAMERON-RULKOWSKI: Thank you, Your
 19 Honor.
 20
 21 E X A M I N A T I O N
 22 BY MS. CAMERON-RULKOWSKI:
 23 Q. Good morning, Mr. Meany.
 24 **A. Good morning.**
 25 Q. I believe I have just one question for you and

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EXAMINATION OF MEANY / CAMERON-RULKOWSKI

1 that is, did LeMay replace the pitman arm on Mr. Marsh's
 2 vehicle?
 3 **A. Yes, we did.**
 4 Q. And when did that occur?
 5 **A. I don't have a date for that, but it was before**
 6 **we put the truck back in service, but I don't -- I don't**
 7 **have the date for the replacement.**
 8 Q. Would Mr. Kenney know approximately when the
 9 date was?
 10 **A. You would have to ask him that question. I**
 11 **wouldn't -- I wouldn't know that.**
 12 MS. CAMERON-RULKOWSKI: Your Honor, may I
 13 ask Mr. Kenney approximately when the vehicle was placed
 14 back in service to see if he knows?
 15 MR. LAIHO: I can -- I can do one -- I can
 16 stipulate to it. I could look at the date that it was
 17 signed, that Mr. Kenney certified that the -- it was
 18 signed back in service. I can look at that right now
 19 and I'll stipulate to that on the record that that's
 20 when it was repaired.
 21 JUDGE CHARTOFF: Okay.
 22 MR. LAIHO: So for the record, Your Honor,
 23 the date that it was certified, it had been corrected,
 24 was March 26th, 2018.
 25 MS. CAMERON-RULKOWSKI: Thank you. I find I

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EXAMINATION OF MEANY / CAMERON-RULKOWSKI

1 do have one -- one more question for Mr. Meany.

2 BY MS. CAMERON-RULKOWSKI:

3 Q. Mr. Meany, if this inspection had been a

4 terminal inspection as opposed to a destination check,

5 the Company would have received the same out-of-service

6 violation from Staff, correct?

7 **A. I would assume so.**

8 Q. In other words, the fact that it was one type of

9 inspection or another wouldn't have changed the -- how

10 Staff recorded the violations and how they were then

11 ultimately recorded in the electronic safety systems,

12 right?

13 **A. I don't necessarily agree with that, no.**

14 Q. However, you do agree, however, that regardless

15 of the kind of inspection it is, the -- when there is a

16 brake light that's inoperable, it will be recorded as an

17 out-of-service violation and when the -- a tire is found

18 to be contacting the vehicle, it will also be recorded

19 as an out-of-service violation, correct?

20 **A. Again, I would not necessarily agree with that.**

21 Q. If this had been a terminal check and Staff had

22 found that the brake lights on a vehicle were inoperable

23 or that a tire was contacting the vehicle, the vehicle

24 still would have been placed out of service, correct?

25 **A. Could you define "terminal check"? I'm a little**

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EXAMINATION OF MEANY / CAMERON-RULKOWSKI

1 unclear as to what that means.

2 Q. All right. If this had not been a roadside

3 inspection, if it had been an inspection with a

4 different type of -- if it had been a terminal

5 inspection, then -- and Staff had discovered that the

6 brake lights on the vehicle were inoperable or if Staff

7 had discovered that a tire was contacting the vehicle,

8 the vehicle still would have been placed out of service,

9 correct?

10 **A. Again, no. I'm sorry, I don't agree with that.**

11 **This was well into our private property where these**

12 **trucks, you know, went through a gate. They went over a**

13 **speed bump. They're -- they were well inside, you know,**

14 **defined private property. This was not in any way, from**

15 **my opinion, a roadside inspection.**

16 **So when you're saying a terminal inspection, I**

17 **guess I'm still a little bit unclear as to what that**

18 **means. What a terminal -- what the difference between a**

19 **terminal inspection is and what the inspection is inside**

20 **our yard. I'm assuming that means the same thing, so**

21 **perhaps I'm incorrect there and I apologize.**

22 Q. If the -- if -- regardless of where the

23 inspection had occurred, you would still expect that if

24 there was an -- if there was a violation that was in the

25 out-of-service criteria, that Staff would still place

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EXAMINATION OF MEANY / CAMERON-RULKOWSKI

1 the vehicle out of service, correct?

2 **A. No, I would not agree with that. I'm sorry.**

3 Q. Mr. Meany, are -- in your experience, have you

4 experienced safety inspections being conducted on LeMay

5 premises?

6 **A. Not from the Utilities Commission, no, ma'am.**

7 Q. I'm sorry?

8 **A. Not from the Utilities Commission, no. Not on**

9 **LeMay property.**

10 MS. CAMERON-RULKOWSKI: I have no further

11 questions.

12 JUDGE CHARTOFF: Okay. Redirect?

13 MR. LAIHO: No, your Honor.

14 JUDGE CHARTOFF: Okay. All right. You are

15 finished.

16 Okay. Ms. Cameron-Rulkowski, you would like

17 to call -- recall Ms. Yeomans?

18 MS. CAMERON-RULKOWSKI: I would, Your Honor.

19 JUDGE CHARTOFF: Okay. And, Ms. Yeomans,

20 you are still under oath.

21 THE WITNESS: Yes.

22 JUDGE CHARTOFF: Okay.

23 ////

24 ////

25 ////

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q. All right. Ms. Yeomans, I'm going to see if we

4 can clear up a few things.

5 **A. Okay.**

6 Q. In your prior testimony, you had characterized

7 this inspection as a destination check. If -- what

8 other type of inspections are there?

9 **A. We have terminal inspections, which are usually**

10 **done in the process of doing a compliance investigation.**

11 **We may have one in regards to an accident. Mostly they**

12 **are done at a company's location or they are done on**

13 **someone else's premises such as Safeco Field, which is**

14 **private property, or SeaTac, somewhere like that.**

15 Q. Is it unusual that a carrier would undergo a

16 safety inspection at its own premises?

17 **A. This one was unique so that we would have the**

18 **opportunity to stop garbage trucks in the process of**

19 **while they were in service.**

20 Q. All right. I'm going to talk about the -- were

21 you here for -- did you hear the testimony of Mr. Kenney

22 and Mr. Meany?

23 **A. Yes, I did.**

24 Q. All right. Do you recall that Mr. Kenney

25 testified about a rock test?

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EXAMINATION OF YEOMANS / CAMERON-RULKOWSKI

1 **A. Yes.**
 2 Q. And was it during the rock test that you
 3 observed the tire contact the vehicle?
 4 **A. No.**
 5 Q. During your inspection, was the key in the
 6 ignition?
 7 **A. Yes.**
 8 Q. And would this have allowed the tires to turn?
 9 **A. We leave the key in the on or accessory position**
 10 **because most vehicles these days are power steering, and**
 11 **to do the rock test or the turn test, you would have to**
 12 **have it in that position in order for the tires to turn**
 13 **properly, be able to turn them.**
 14 Q. All righty. And Mr. Laiho talked about a CVSA
 15 decal and referenced Exhibit SY-1, page 3.
 16 Are you required to issue a CVSA decal?
 17 **A. No, we're not.**
 18 Q. And if you didn't issue one, would there be any
 19 problem for a carrier that had no CVSA decal?
 20 **A. No. The CVSA decal is basically so that other**
 21 **inspectors know a particular vehicle was inspected in a**
 22 **certain period of time.**
 23 Q. All right. Thank you.
 24 Back to the type of inspection, if this had --
 25 if -- regardless of where the inspection took place,

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EXAMINATION OF YEOMANS / LAIHO

1 when you discover -- when you discovered the inoperable
 2 brake lights and when you discovered the tire touching
 3 the vehicle, would you have placed these vehicles out of
 4 service?
 5 **A. Yeah, the location does not matter as to whether**
 6 **a vehicle is out of service or not. It matters if it**
 7 **meets the criteria in the out-of-service criteria, yes.**
 8 MS. CAMERON-RULKOWSKI: Thank you. Those
 9 are all my questions for Ms. Yeomans.
 10 MR. LAIHO: Couple questions, Your Honor.
 11
 12 E X A M I N A T I O N
 13 BY MR. LAIHO:
 14 Q. So, Inspector Yeomans, with the vehicle
 15 related -- or Mr. Marsh's vehicle, the one concerning
 16 the pitman arm, you talked about how the key in the
 17 ignition, is it your opinion that this allowed the tires
 18 to turn as if there was power steering?
 19 **A. When it's on accessory, it makes it easier for**
 20 **the driver to turn the wheel.**
 21 Q. Okay.
 22 **A. Versus completely off.**
 23 Q. And do you know what year vehicle Mr. Marsh's
 24 vehicle was?
 25 **A. No, I do not.**

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EXAMINATION OF YEOMANS / LAIHO

1 Q. Okay. Do you know if it had access to power
 2 steering with the engine off?
 3 **A. I do not.**
 4 Q. So you don't know if the fact that the truck is
 5 turned off it does not have access to power steering?
 6 **A. Usual practice is to turn it to the auxiliary**
 7 **position to make sure that all lights work and the**
 8 **steering is able to be used.**
 9 Q. Okay. You don't know if this truck had access
 10 to power steering at that time?
 11 **A. I do not.**
 12 MR. LAIHO: No further questions, Your
 13 Honor.
 14 JUDGE CHARTOFF: Ms. Cameron-Rulkowski, any
 15 redirect?
 16 MS. CAMERON-RULKOWSKI: No redirect. Thank
 17 you, Your Honor.
 18 JUDGE CHARTOFF: Okay. So would the parties
 19 like to make closing statements?
 20 MR. LAIHO: I can make a brief one, Your
 21 Honor.
 22 MS. CAMERON-RULKOWSKI: We can go ahead and
 23 do that. I think that it -- this is the case where if
 24 one party makes a closing statement, then the other is
 25 going to want to make a closing statement.

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JUDGE CHARTOFF: Okay.
 MS. CAMERON-RULKOWSKI: Staff doesn't
 necessarily need to do a closing statement, but if the
 Company wishes to, then we will as well.
 JUDGE CHARTOFF: Okay. Okay. So would you
 like to go first?
 MS. CAMERON-RULKOWSKI: Sure.
 In Staff's view, this is a straightforward
 matter of two vehicles' safety rule violations. Staff
 conducted a destination check of LeMay vehicles on March
 20th of this year, and a destination check, as
 Ms. Yeomans testified, is an inspection where the
 vehicles and drivers are actually operating at the time
 of the inspection.
 As we heard from LeMay, the post-trip
 inspections had not yet taken place at the time of the
 inspection, and this is consistent with the destination
 check, which is supposed to be a check of the vehicles
 while they're operating. And as Ms. Yeomans testified,
 the actual location of the inspection is -- is not
 material.
 During the inspection, Staff placed two
 vehicles out of service for violations of the
 Commission's Vehicle and Driver Safety Rule, WAC
 480-70-201. In WAC 480-70-201, the Commission adopts

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1 federal vehicle safety rules including 49 CFR parts 393
 2 and 396. Also, pursuant to WAC 480-70-201, the
 3 Commission follows the North American Uniform
 4 Out-of-Service Criteria and will place out of service
 5 any motor vehicle having safety defects identified in
 6 those criteria.
 7 The criteria are published in a handbook,
 8 and the Commission has adopted the April 2018 edition of
 9 the handbook in WAC 480-70-999. And relevant excerpts
 10 from the April 2018 edition of the handbook are in
 11 Exhibit SY-1.
 12 The safety defects that Staff identified on
 13 the two LeMay vehicles respectively were, one,
 14 inoperable brake lights, and two, tire on the front
 15 steering axle making contact with the vehicle.
 16 Inoperable brake lights is a violation of 49 CFR section
 17 393.9(a), which provides that all required lamps be
 18 capable of being operated at all times. And having a
 19 tire contacting the pitman arm is a violation of 49 CFR
 20 section 396.3, which requires parts and accessories
 21 including axles and attaching parts, wheels and rims and
 22 steering systems, to be in safe and proper operating
 23 condition at all times.
 24 Both of the defects that Staff identified,
 25 inoperable stop lamps and the tire contacting the

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1 vehicle, are defects included in the Out-of-Service
 2 Criteria. This means that Staff must place a vehicle
 3 out of service when they discover either of these
 4 defects in a vehicle.
 5 Staff properly placed each vehicle out of
 6 service. Even though the Company repaired the brake
 7 lights on the spot following the inspection, it is
 8 uncontested that the brake lights were inoperable during
 9 the inspection. Inoperable brake lights are an
 10 out-of-service defect, and Ms. Yeomans followed proper
 11 procedure when she followed through and recorded the
 12 vehicle as out of service.
 13 Regarding the tire contacting the vehicle,
 14 LeMay suggests that Ms. Yeomans did not follow proper
 15 procedure to identify the violation. Ms. Yeomans
 16 testified that no one else was around while she was
 17 conducting the test during which she saw the tire
 18 contacting the pitman arm.
 19 And so in this case, we simply can't rely on
 20 the Company's witnesses because they did not see what
 21 Ms. Yeomans saw. She observed the tire actually
 22 contacting the pitman arm when she asked the driver to
 23 turn the wheel. And as we cleared up, this was not
 24 during the rock test.
 25 Ms. Yeomans -- the wear on the pitman arm

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1 that both Ms. Yeomans and Mr. Auderer testified to is
 2 further evidence that the tire was contacting the pitman
 3 arm. Also, we heard -- also, we learned from the --
 4 from the Company that the pitman arm actually was
 5 replaced soon after the inspection took place, and this
 6 is further indication that -- that there was a problem
 7 associated or involving the pitman arm.
 8 In sum, Staff has supported the violations
 9 alleged in this proceeding and they should stand. That
 10 concludes Staff's presentation.
 11 JUDGE CHARTOFF: Thank you.
 12 MR. LAIHO: Thank you, Your Honor.
 13 So the context of this, Your Honor, is the
 14 respondent, LeMay, was very cooperative before, during,
 15 and after the inspection. After the inspection, even
 16 received an email saying that their staff were
 17 cooperative. They were cooperative with the UTC
 18 throughout this process. They scheduled it, UTC got
 19 some experience with these types of vehicles.
 20 As far as the two alleged out-of-service
 21 violations with the brake light, that was fixed on the
 22 spot, still declared out of service, didn't get a
 23 sticker, even though they're supposed to get a sticker.
 24 As far as the pitman arm violation, again,
 25 this comes down to testimony. We have witnesses testify

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1 that there could be other explanations for why the
 2 pitman arm was shiny. Trucks sometimes go off roads,
 3 they go down gravel roads. That's what happened --
 4 that's -- and, yes, the pitman arm was replaced, but
 5 that doesn't necessarily mean it's because the tire made
 6 contact with the pitman arm. There's no evidence of
 7 that.
 8 Also, during -- there's quite a bit of --
 9 besides direct testimony, there was one person there who
 10 was there the entire time while Mr. Marsh's truck was
 11 being inspected, and that was Mr. Marsh. He was there,
 12 he had clear access to see where the tires were during
 13 any of the tests. The only test you -- that were --
 14 where the steering wheel was being moved was this rock
 15 test. Testified to that. Didn't see the tire make
 16 contact with any component of the vehicle. Couldn't
 17 have because they didn't have power steering. We have
 18 no evidence that, in fact, it did have power steering
 19 with the engine off.
 20 In addition, at the time of the inspection,
 21 all of LeMay's witnesses are -- Mr. Meany and Mr. Kenney
 22 testified at no point did any UTC inspector say that the
 23 tire made contact with the vehicle. They do recall that
 24 Ms. Yeomans said that the paint was worn on the pitman
 25 arm. If there was a situation where there was contact

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1 with the tire and the pitman arm, believe that would
 2 have been what would be mentioned, not the paint. In
 3 addition, they could have taken pictures to demonstrate
 4 this. Did not do so.
 5 These are all -- in addition to the direct
 6 evidence, there's also circumstantial evidence of this,
 7 and the words of the handbook matter as adopted by the
 8 WAC. And it says an out-of-service violation condition
 9 exists only if the tire can be made to contact the other
 10 portion of the vehicle at the time of the inspection.
 11 If you do not have that witness, you do not
 12 have that testimony, do not have that evidence, an
 13 out-of-service condition does not exist and we're left
 14 to speculation. We're left to assumptions, and that's
 15 what -- that's why we're here, Your Honor.
 16 And, again, this is something where two
 17 witnesses can see something different, Your Honor. I
 18 certainly understand that as an attorney. My witnesses
 19 saw what they saw and the UTC had their witnesses as
 20 well.
 21 So, again, intention here is just to
 22 demonstrate our case, present the evidence that's out
 23 there. We're certainly not trying to call out or
 24 question anybody's integrity or anything like that.
 25 That's what we're here for, Your Honor. Thank you.

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1 JUDGE CHARTOFF: Thank you.
 2 MS. CAMERON-RULKOWSKI: Your Honor, I have
 3 one final note, if I may. Counsel for LeMay discussed
 4 taking pictures, and as Ms. Yeomans testified, Staff has
 5 not seen a need to take pictures.
 6 MR. LAIHO: So I guess, Your Honor, this is
 7 out of order. We've had our closing statements.
 8 MS. CAMERON-RULKOWSKI: I would ask for
 9 rebuttal of the closing statement.
 10 JUDGE CHARTOFF: I -- I understand that
 11 it -- it is not -- or let me ask.
 12 Is it -- I believe you stated that it wasn't
 13 UTC's practice to take photos?
 14 MS. YEOMANS: Correct.
 15 JUDGE CHARTOFF: Okay. So is -- is there
 16 anything -- do you need to say anything further?
 17 MS. CAMERON-RULKOWSKI: All I wanted to say
 18 is that Staff treats all of the carriers the same.
 19 JUDGE CHARTOFF: Okay. Okay. So before we
 20 adjourn, I would like to request that the parties waive
 21 the requirement to issue an order in ten days because I
 22 would like to have the transcript available to me when
 23 I'm writing my decision, and it usually takes seven to
 24 ten days to receive the transcript. And I would
 25 anticipate that I would issue an order within five days

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1 from the day the transcript is received. Does either
 2 party have an objection to that waiving that
 3 requirement?
 4 MR. LAIHO: No, Your Honor.
 5 MS. CAMERON-RULKOWSKI: No objection from
 6 Staff, Your Honor.
 7 JUDGE CHARTOFF: Okay. Thank you. Does
 8 either party have anything further before we go off the
 9 record?
 10 MR. LAIHO: No, Your Honor.
 11 MS. CAMERON-RULKOWSKI: Not from Staff, Your
 12 Honor.
 13 JUDGE CHARTOFF: Okay. Thank you all for
 14 coming here today. We are off the record.
 15 (Adjourned at 11:17 a.m.)
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1 C E R T I F I C A T E
 2
 3 S T A T E O F W A S H I N G T O N
 4 C O U N T Y O F T H U R S T O N
 5
 6 I, Tayler Garlinghouse, a Certified Shorthand
 7 Reporter in and for the State of Washington, do hereby
 8 certify that the foregoing transcript is true and
 9 accurate to the best of my knowledge, skill and ability.
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 12 Tayler Garlinghouse, CCR 3358
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