

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In the Matter of the General Investigation )  
of **Benfer Enterprises II LLC of** ) Docket No. 17-GIMM-269-KHP  
**Independence, Missouri,** Pursuant to the )  
Kansas Highway Patrol Issuance of a )  
Notice of Violation(s) and Invoice for the )  
Violations of the Kansas Motor Carrier )  
Safety Statutes, Rules and Regulations. )

**DIRECT TESTIMONY**  
  
**OF**  
  
**TROOPER NICHOLAS WRIGHT**  
  
**ON BEHALF OF**  
  
**THE STATE CORPORATION COMMISSION**  
  
**OF THE STATE OF KANSAS**

March 31, 2017

1 **Q. Please state your full name and business address.**

2 A. Trooper Nicholas Wright

3 700 SW Jackson, Suite 704, Topeka, Kansas 66603

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by the Kansas Highway Patrol as a State Trooper.

6 **Q. Please summarize your educational and professional background.**

7 A. I have a high school diploma and six hours of college credit, not including hours obtained  
8 through police academies. I began my law enforcement career in 1998 as a civilian  
9 Telecommunicator for the Independence, Missouri Police & Fire Departments. I  
10 answered 9-1-1 and non-emergency calls for service, dispatched police & fire units,  
11 trained new dispatchers, accessed local, state and national information systems and  
12 trained many new dispatchers during my employment, which spanned three years and  
13 nine months. I left Independence PD to pursue a sworn law enforcement career with the  
14 Shawnee, Kansas Police Department in May 2002. I attended the Johnson County  
15 Regional Police Academy in Overland Park, KS, where I received nearly 600 hours of  
16 instruction, both classroom and hands-on, over the course of approximately 14 weeks  
17 through the basic police academy. I successfully completed the academy and the field  
18 training program. My duties included responding to calls for service, both emergency  
19 and non-emergency, collecting evidence, preparing reports, testifying in court, making  
20 custodial arrests, traffic enforcement and all facets of a city police officer in a  
21 metropolitan city that could be expected. I was also certified through Kaminsky &  
22 Associates as a Field Training Officer. During my time at Shawnee PD, I trained several  
23 new officers. I left Shawnee PD to pursue my current career as a state trooper with the

1 Kansas Highway Patrol. In January 2005, I attended the Kansas Highway Patrol Training  
2 Academy in Salina, KS. During the 22-week residential academy, I received nearly  
3 1,000 hours of instruction, both classroom and hands-on. I successfully completed the  
4 training academy and graduated as president of my academy class. Following the  
5 training academy, I was assigned to Troop A, Johnson & Wyandotte Counties in June  
6 2005. I performed duties as a road trooper which included the enforcement of traffic and  
7 criminal laws on the roadways of Kansas, with a specific focus on interstate, US and  
8 Kansas highways. My primary duties were traffic enforcement and the investigation of  
9 traffic collisions, assisting motorists, making custodial arrests, collecting evidence,  
10 testifying in court and preparing written reports. I attended the North American Standard  
11 (NAS) Level I inspection course at the Kansas Highway Patrol Training Academy in  
12 August 2006. The course is a two week course, broken up into the NAS Part A, which is  
13 the driver credential inspection, and the second week is the NAS Part B, the vehicle  
14 portion. The course is 40 hours for each week, for a total of an 80 hour course. The  
15 course includes both classroom and hands-on inspection of commercial motor vehicles in  
16 the field during Part B. Following the course, each student is required to complete at  
17 least 32 "on the job training" inspections with another certified inspector. I completed  
18 more than the minimum number of both Level I and Level II inspections to complete the  
19 certification process. In February 2012, I transferred to the Kansas Highway Patrol's  
20 Troop I, Motor Carrier Safety Assistance Program, or Commercial Vehicle Enforcement  
21 troop. After my transfer, I was recertified to a Level I inspection as I had been certified  
22 as Level II during my time as a road trooper. In February 2012, I successfully passed the  
23 Performance Based Brake Testing course, which certified me to operate the VIS brand

1 PBBT. The PBBT is an instrument used to measure braking force as a percentage of  
2 gross weight of a vehicle. In March 2012, I attended the 40-hour General Hazardous  
3 Materials course and successfully passed it. Following the class, I completed at least 16  
4 “on the job training” supervised inspections to complete the certification process. In May  
5 2012, I attended the Cargo Tank Inspection 40-hour course and successfully passed it.  
6 Following the class, I completed at least 16 “on the job training” supervised inspections  
7 to complete the process. In May 2012, I attended the Passenger Carrier Inspection 24-  
8 hour course to be certified to inspect buses and motorcoaches. I successfully completed  
9 the course and finished the certification process after completing at least 8 bus “on the  
10 job training” supervised inspections. In July 2012, I attended the Other Bulk Packaging  
11 40-hour course and successfully passed it. Following the class, I completed at least 16  
12 “on the job training” supervised inspections to complete the process. In February 2014, I  
13 was certified to instruct the North American Standard Part B course as a National  
14 Training Center Associate Staff Instructor. In March 2015, I was certified to instruct the  
15 General Hazardous Materials course as an associate staff instructor. In June 2016, I was  
16 certified to instruct the Cargo Tank Inspection course as an associate staff instructor. In  
17 August 2016, I was certified to instruct the Other Bulk Packaging course as an associate  
18 staff instructor. In February 2017, I was certified as Master Instructor for National  
19 Training Center. The duties of a master instructor include coaching, mentoring and  
20 evaluating other NTC instructors throughout the nation. Since being certified as CVSA  
21 inspection in August 2006, I have inspected an estimated 4,000 commercial motor  
22 vehicles of all sizes and types.

23 **Q. Please explain your duties and responsibilities in your current position.**

1 A. In addition to maintaining public safety by enforcing traffic and other laws of the state of  
2 Kansas, I am a MCSAP Trooper responsible for inspecting commercial motor vehicles,  
3 and enforcing the federal motor carrier laws and regulations. I am also the Kansas  
4 Highway Patrol MCSAP state training coordinator, responsible for scheduling and  
5 ensuring all CVSA courses are in place, as well as maintaining databases for the  
6 approximately 350 certified CVSA inspectors statewide. I am also the Kansas Highway  
7 Patrol's Local Liaison for the local agencies with CVSA certified officers. I am deeply  
8 involved in training of CVSA personnel including the four courses I am certified to teach,  
9 as well as the 12 hours of required CVSA in-service each year for every CVSA certified  
10 officer, and the 8 hours of required haz-mat in-service each year for certified haz-mat  
11 inspectors. I have been involved since the spring of 2015, with the Kansas Department of  
12 Education's School Bus Safety unit in the delivery of an "Appendix G inspection for the  
13 school bus mechanics" course and a school bus driver "train the trainer" course. I have  
14 worked directly with the director and assistant director of the school bus safety unit in the  
15 development and delivery of the courses. I have presented countless safety presentations  
16 to the trucking industry, trucking driving schools, other law enforcement, fire department  
17 and EMS personnel. Since 2014, I have been responsible for answering "DataQs" for the  
18 Kansas Highway Patrol. Each year, KHP receives 700-800 DataQs. I am currently one  
19 of two primary reviewers of all DataQs. Those duties include reviewing inspections and  
20 collision reports for accuracy when challenged by carriers, making a determination as to  
21 the violations, responding to requests in a timely manner, preparing responses back to the  
22 requestor, and making changes to the inspection or collision reports when necessary. In

1           addition, I frequently work with new inspectors to complete the certification process for  
2           their initial CVSA courses, or any of the haz-mat or passenger carrier inspection courses.

3   **Q.   Have you previously testified before this Commission?**

4   A.   Yes. I have testified one time approximately four years ago.

5   **Q.   Please explain circumstances leading to the September 27, 2016, stop and the**  
6           **subsequent inspection of the commercial motor vehicle.**

7   A.   Several members of Troop I, Zone A were assisting the Roeland Park Police Department  
8           with a driver's license checklane at 48<sup>th</sup> and Roe. The purpose of the lane was for  
9           member of RPPD to stop all drivers and check their driver's license. The Kansas  
10          Highway Patrol MCSAP troop was requested to stand by in the event a commercial  
11          motor vehicle came through the lane and an inspection was deemed necessary. The three  
12          Benfer tow trucks in question were called to the scene by RPPD prior to the checklane to  
13          stand by to tow vehicles of drivers who were caught driving without a license per their  
14          department policy. I noticed the tow trucks displayed Missouri registrations which  
15          seemed odd to me initially that a Kansas agency would be using Missouri tow trucks. At  
16          the conclusion of the lane Technical Trooper Mills, Technical Trooper Beabout and I  
17          walked over to the three tow trucks and saw obvious critical violations. I ran the USDOT  
18          number displayed on the trucks, which returned to "Benfer Enterprises II LLC." I noticed  
19          the carrier did not have UCR fees paid for calendar years 2014, 2015 or 2016. Since we  
20          had observed critical violations and the UCR violation, I decided an inspection was  
21          necessary. Once the lane was over we inspected the three trucks. Each trooper  
22          completed one inspection.

1 **Q. Are you familiar with the challenge raised by Benfer Enterprises II LLC in this**  
2 **matter?**

3 A. In his request for hearing, Benfer Enterprises questions our reasons for conducting the  
4 inspections and specific issues with some of the violations.

5 **Q. Did you formally document the September 27, 2016, inspection?**

6 A. Yes. This inspection was documented on the Driver/Vehicle Examination Report  
7 Number KSHP01000842. A true and correct copy of this report is attached hereto as  
8 Wright Attachment "A".

9 **Q. Please describe the vehicle involved in this stop.**

10 A. The vehicle was a 2008 Kenworth truck with Missouri plate 44B4AF with a Gross  
11 Vehicle Weight Rating of 19,500 lbs.

12 **Q. Who was the driver operating the vehicle at the time of the stop?**

13 A. The driver was Richard E. Moffett, identified with the Missouri driver's license he  
14 presented.

15 **Q. Can you please explain the Kansas Highway Patrol's authority as it relates to the**  
16 **stop and inspection of commercial motor vehicles?**

17 A. K.S.A. 74-2108 gives the Kansas Highway Patrol the authority to require the driver of  
18 any motor vehicle operated by any motor carrier to stop and submit to an inspection to  
19 determine compliance with the laws, rules and regulations relating to motor carriers.  
20 Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine  
21 motor carrier equipment operating on the highways in Kansas, and examine the manner  
22 of the motor carrier's conduct as it relates to the public safety and the operation of  
23 commercial motor vehicles in Kansas.

1 **Q. At the time of the inspection, how did you determine that the vehicle and its driver**  
2 **were subject to the Federal Motor Carrier Safety Administration's (FMCSA) rules**  
3 **and regulations?**

4 A. The gross vehicle weight rating of the vehicle was 19,500 pounds, which exceeds the  
5 10,001 pound threshold definition of Commercial Motor Vehicle under K.A.R. 82-4-1  
6 and 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f. This was an interstate operation, as  
7 the driver told me he started his day in Independence, Missouri, and drove to Roeland  
8 Park, Kansas. The operation was unable to claim the exception in 390.23(a)(3), because  
9 the request from the Roeland Park Police Department was not for the tow service to  
10 remove wrecked or disabled motor vehicles. The request was only to tow vehicles from a  
11 parking lot where drivers had been cited for not having a valid driver's license.

12 **Q. Is there any additional information that helped you determine this trip was subject**  
13 **to the FMCSA's rules and regulations?**

14 A. Upon speaking with the driver, I confirmed that they were there to tow vehicles from  
15 Roeland Park, KS to Independence, MO, indicating this vehicle was involved in for-hire  
16 transportation subject to FMCSA and Commission regulation. During the lane, while  
17 standing to the side of the roadway, one of the drivers who was being cited for no license  
18 asked me where her vehicle would be towed. I asked one of the tow truck operators  
19 where their tow lot was located and he told me Independence, Missouri. Again, this  
20 indicated to me the first leg in the continuation of an interstate movement since the towed  
21 vehicle would be taken back across the state line.

22 **Q. For the sake of clarification, where did the inspection take place?**



1 A. The inspection took place at a parking lot at 48<sup>th</sup> and Roe Parkway in Johnson County,  
2 Kansas. This is the parking lot where I saw the tow trucks pull into from the public  
3 roadway as they arrived on scene. I was the second person on scene of the checklane  
4 from KHP, and as I was speaking to the police chief, I saw the three tow trucks pull into  
5 the lot. Therefore, I saw them operating on the public roadway in commerce. This  
6 parking lot was also open to use by the public, as it was to the side of city street with no  
7 restricted access and led up the hill to a business.

8 **Q. What type of inspection did you conduct? Please explain.**

9 A. I conducted a Level I, full inspection. This inspection includes at a minimum,  
10 examination of the driver's license, medical examiner's certificate and Skills  
11 Performance Evaluation Certificate (if applicable); alcohol and drugs; driver's record of  
12 duty status as required; hours of service; seat belt systems; frames; fuel systems; lighting  
13 devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting);  
14 securement of cargo; steering mechanisms; suspensions; tires; van and open-top trailer  
15 bodies; wheels, rims and hubs; windshield wipers; and Hazardous Materials/Dangerous  
16 Goods (HM/DG) requirements as applicable.

17 **Q. Did you identify any violations for which a Notice of Violations went out resulting**  
18 **from the September 27, 2017, Level I Inspection?**

19 A. Yes, I identified a violation of motor carrier safety rules and regulations identified as  
20 "Failure to pay UCR Fee: No UCR fees paid for 2014, 2015 or 2016 – verified on UCR  
21 website and CVIEW."

22 **Q. Please explain the rule relevant to UCR fees.**

1 A. Pursuant to 49 U.S.C. 14504a and K.A.R. 82-4-30a, Unified Carrier Registration fees are  
2 required to be paid by any motor carrier or other entity that should be registered as an  
3 interstate carrier.

4 **Q. Is there anything further you wish to add to aid the Commission in its decision?**

5 A. Not at this time.

6 **Q. Thank you, Trooper Wright. Does this conclude your testimony?**

7 A. Yes, it does.

8

**ATTACHMENT "A"**

**DRIVER/VEHICLE EXAMINATION REPORT**

Kansas Highway Patrol  
 MOTOR CARRIER SAFETY ASSISTANCE  
 700 SW Jackson, Ste 704  
 Topeka, KS 66603  
 Phone #: (785)296-7189 Fax #: (785)296-2858  
 truckinspection@khp.ks.gov

Report Number: K3HP01000842  
 Inspection Date: 9/27/2016 Certification Date:  
 Time Started: 07:50 Time Ended: 09:05  
 Inspection Level: I - Full Inspection  
 HM Inspection Type: No HM Inspection

**BENFER ENTERPRISES II LLC**

Driver: **MOFFETT, RICHARD E**  
 License #: [REDACTED] State: MO  
 Date of Birth: [REDACTED]

INDEPENDENCE, MO 64053

Phone #: (816)836-4200

USDOT #: 02405874

MC/MX #: [REDACTED]  
 State #: [REDACTED]

Location: JOHNSON COUNTY - 091  
 Highway: 48TH & ROE PKWY  
 County: JOHNSON  
 Shipper: N/A

MilePost:  
 Origin: INDEPENDENCE, MO Bill of Lading: N/A  
 Destination: ROELAND PARK, KS Cargo: EMPTY

**VEHICLE IDENTIFICATION:**

Unit	Type	Make	Year	State	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CVSA Issued #	OOS Str.#
1	TR	KWDT	2008	MO	[REDACTED]	[REDACTED]	230790	10,600			

**BRAKE ADJUSTMENTS:**

Axle #	1	2
Right	N/A	N/A
Left	N/A	N/A
Chamber	HYDR	HYDR

**VIOLATIONS :**

Vio Code	Section	Unit	OOS	State Citation		Crash	Violation Description
				Number	Verify*		
392.2UCR	392.2	1	N		N	N	Failure to pay UCR Fee: No UCR fees paid for 2014, 2015 or 2016 - verified on UCR website and CVIEW
393.205C	393.205(c)	1	N		N	N	Wheel fasteners loose and/or missing: Axle #1, Driver side, 1 of 8 wheel fasteners loose, able to be turned easily by hand
393.205C	393.205(c)	1	N		N	N	Wheel fasteners loose and/or missing: Axle #2, Driver side, 1 of 8 wheel fastener studs missing
390.21B	390.21(b)	1	N		N	N	Carrier name and/or USDOT Number not displayed as required: Carrier name reads "Benfer's Trucking LLC Auto & Collision" - registered as "BENFER ENTERPRISES II LLC" with no DBA name. Must read as registered
393.9	393.9(a)	1	N		N	N	Inoperable Required Lamp: Driver side front ID lamp inoperable
393.9H	393.9(a)	1	N		N	N	Inoperable head lamps: Passenger side low beam headlamp inoperable
393.81	393.81	1	N		N	N	Horn inoperative: Driver said horn went out during last rainstorm: Previous violation for same on 03/03/2016, inspection #MO00K9011841
396.9D2	396.9(d)(2)	1	N		N	N	Failure to correct defects noted on previous inspection report: Same horn violation documented on 03/03/2016, insp #MO00K9011841 - still doesn't work today
392.7A	392.7(a)	D	N		N	N	Driver failing to conduct pre-trip inspection: Driver said he d'dn't do a pre-trip yet today, and therefore missed numerous violations including critical violations (headlamp and wheel fasteners)

\* N - Non-OOS or Driver OOS Violation

HazMat: No HM Transported. Placard: NA Cargo Tank:

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> PASA Conducted Inspection	<input type="checkbox"/> PBBT Inspection
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> EScreening		

Report Prepared By:  
 N.B. Wright

Badge #:  
 0100

Copy Received By:  
 MOFFETT, RICHARD E

Page 1 of 2



K3HP01000842

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X

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol  
MOTOR CARRIER SAFETY ASSISTANCE  
700 SW Jackson, Ste 704  
Topeka, KS 66603  
Phone #: (785)296-7189 Fax #: (785)296-2858  
truckinspection@khp.ks.gov

Report Number: KSHPO1000842  
Inspection Date: 9/27/2010 Certification Date:  
Time Started: 07:50 Time Ended: 08:05  
Inspection Level: I - Full Inspection  
HM Inspection Type: No HM Inspection

BENFER ENTERPRISES II LLC

Driver: MOFFETT, RICHARD E  
License #: [REDACTED] State: MO  
Date of Birth: [REDACTED]

[REDACTED]  
INDEPENDENCE, MO 64053  
USDOT #: 02405874  
MC/MX #: [REDACTED]  
State #: [REDACTED]

Phone #: [REDACTED]  
Fax #: [REDACTED]

Inspection Notes: [REDACTED]

%% CIVIL RECOMMENDED FOR UCR %%

Special Study Fields:

Special Study1: Special Study6:  
Special Study2: Special Study7:  
Special Study3: Special Study8:  
Special Study4: Special Study9:  
Special Study5: Special Study10:

\*\*\* DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. \*\*\* \*CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature of Carrier Official: X Date: \_\_\_\_\_

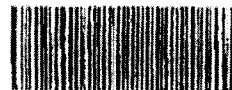
\* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature of Repairer: X Facility: \_\_\_\_\_ Date: \_\_\_\_\_

Report Prepared By:  
N.B. Wright

Badge #:  
0100

Copy Received By:  
MOFFETT, RICHARD E



KSHPO1000842

X \_\_\_\_\_ X \_\_\_\_\_

**CERTIFICATE OF SERVICE**

17-GIMM-269-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Trooper Nicholas Wright on Behalf of the Kansas Corporation Commission was placed in the United States mail, postage prepaid, or hand-delivered this 3<sup>rd</sup> day of April, 2017, to the following:

BILL BENFER, MANAGING MEMBER  
BENFER ENTERPRISES II LLC  
10047 E WILSON RD  
INDEPENDENCE, MO 64053

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
a.latif@kcc.ks.gov

  
\_\_\_\_\_  
Vicki Jacobsen