



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

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September 13, 2018

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Luxury1 Limo, LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-180596

Dear Mr. Johnson:

On July 2, 2018, Motor Carrier Safety Investigator Francine Gagne completed a routine safety investigation of Luxury1 Limo, LLC (Luxury1 Limo or Company). A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls.

Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Gagne documented twenty-three violations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy, however, provides that some Commission requirements are so critical to safe operations that it may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 25, 2018, the Commission issued a penalty assessment against Luxury1 Limo in the amount of \$1,400 for violations of WAC 480-30-221 – Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, Part 383 – Commercial Driver's License Standards: Requirements and Penalties, Part 393 – Parts and Accessories for safe Operation, and Part 395 – Hours of Service of Drivers, as follows:

- **One violation of Title 49 CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Luxury1 Limo allowed its employee Travis Powell to drive on April 28, 2018, and was unable to provide evidence of a pre-employment controlled substance test.
- **Seven violations of Title 49 CFR Part 383.37(a) – Allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have the proper class endorsements.** Luxury1 Limo allowed its employee Travis Powell to operate a commercial motor vehicle on seven occasions without a passenger endorsement on his commercial driver's license. Mr. Powell drove on March 10, 16, 17, 24, 25 and 31, and April 28, 2018.
- **One violation of Title 49 CFR Part 393.62(c) – Emergency exits for buses.** Upon inspection of the Company's fleet unit number one, staff discovered unmarked emergency exit windows that would not open. This is a defect that places the vehicles out of service.
- **Seven violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** The Company allowed its employee Travis Powell to operate a commercial motor vehicle on seven occasions without keeping a required records of duty status. Mr. Powell drove on March 10, 16, 17, 24, 25, and 31, and April 28, 2018.

As a result of this investigation, motor carrier staff directed Luxury1 Limo to submit a "15-day letter" in which the company must acknowledge the violations and provide its plan for correcting and avoiding future violations. The company failed to submit a 15-day letter.

Mitigation Request: On August 29, 2018, Luxury1 Limo filed with the Commission its application for mitigation of penalties (Mitigation Request). Satwinder Singh, owner of Luxury1 Limo, stated he was not aware of the Commission's safety requirements and asked for a waiver of the penalty. Mr. Singh stated he will have a better tracking system in the future to detect violations.

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Staff Response: Staff finds the company's request for mitigation to be non-compelling. Staff communicated with the company on three occasions offering technical assistance regarding the mitigation process. The company failed to provide evidence of corrective action or procedural changes that will prevent future violations. The company failed to submit a 15-day letter, which would have supported the request for mitigation.

Staff recommendation: Luxury1 Limo is a small company with one driver and one commercial vehicle. In 2017, the company reported \$42,750 in gross revenue and 8,571 miles traveled.

Because the company failed to provide any evidence of having corrected these violations, staff recommends no mitigation on the \$1,400 penalty. However, because staff is sensitive to the impact monetary penalties have on a small company, staff recommends suspension of a \$700 portion of the penalty for two years, and then dismissal, on the following conditions; 1) the Company may not incur any repeat violations of acute or critical regulations, 2) Staff conducts a follow-up safety investigation in two years to evaluate the Company's safety fitness 3) the Company provides the 15-day letter that was requested in writing to be submitted to investigator Gagne, 4) the Company immediately pays the \$700 portion of the penalty that is not suspended.

If you have any questions, please contact Justin Raub, Compliance Investigator, Consumer Protection, at (360) 664-1108, or by e-mail at justin.raub@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection