



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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October 9, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Lemyn's Legacy Inc., d/b/a
Spokane Party Bus*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-190790

Dear Mr. Johnson:

On October 2, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against Lemyn's Legacy Inc., d/b/a Spokane Party Bus (Spokane Party Bus or company) in the amount of \$5,700 for violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualifications of Drivers, 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation, and 49 CFR Part 395 – Hours of Service of Drivers, as follows:

- **Fifty-three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Spokane Party Bus allowed driver Chauncy Welliver to drive without being medically certified on 53 occasions between March 2 and August 23, 2019.
- **One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The company failed to maintain a driver qualification file for Chauncy Welliver.
- **One violation of 49 CFR § 393.75(c) – Tire tread depth measuring less than 1/32 of an inch measured in two adjacent major tread grooves three separate locations eight inches apart.** Commission staff (staff) discovered a commercial motor vehicle with less

than 1/32 tread depth across three separate locations eight inches apart on both duals of rear passenger side tires.¹ This commercial motor vehicle was placed out-of-service.

- **Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method.** Spokane Party Bus failed to require driver Chauncy Welliver to prepare a record of duty status on 30 occasions between July 1 and July 30, 2019.
- **One violation of WAC 480-30-900 – Carrier operating under interstate authority issued by the United States Department of Transportation or its successor agency must register with the commission and pay fees as required by the Uniform Carrier Registration (UCR) program.** The company failed to register for UCR program and pay fees.

On October 3, 2019, Spokane Party Bus filed with the commission its application for mitigation of penalties. In the request for mitigation, Sarah Grant, part owner of Spokane Party Bus, admits the violations and believes the penalties should be reduced.

On October 2, 2019, the company submitted to staff a corrective action safety plan in which the company acknowledges the violations and provides supporting documentation of the corrections made to prevent future occurrences. For this reason staff recommends mitigation of the penalties as follows:

- **Mitigation Request: 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Spokane Party Bus provided staff with a copy of Chauncy Welliver's valid medical certificate, effective September 16, 2019.
- **Staff response:** The company corrected these first-time violations and provided staff with a copy of Chauncy Welliver's valid medical certificate. The assessed penalty is \$5,300 for 53 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$2,650.
- **Mitigation Request: 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Spokane Party Bus provided staff with a copy of Chauncy Welliver's driver qualification file. The driver qualification file includes an application for employment, the medical examiner's certificate, a copy of the driver's motor vehicle record, and a list relating to violations of motor vehicle laws and ordinances.
- **Staff response:** The company promptly corrected this first-time violation and provided staff with supporting documentation of Chauncy Welliver's driver qualification file. The assessed penalty is \$100 for one violation of this regulation. Staff recommends the penalty be reduced by half, to \$50.

¹ Vehicle Identification Number 1GBJG31U761256761.

- **Mitigation Request: 49 CFR § 393.75(c) – Tire tread depth measuring less than 1/32 of an inch measured in two adjacent major tread grooves three separate locations eight inches apart.** Spokane Party Bus provided staff a record of inspection, repair, and maintenance indicating both dual tires of the rear passenger side were replaced on August 29, 2019.
- **Staff response:** Spokane Party Bus immediately corrected this out-of-service violation by replacing both duals of rear passenger side tires; however, it is the company's responsibility to ensure that its commercial motor vehicle is free of defects that may potentially put the traveling public at risk. The assessed penalty is \$100 for this out-of-service violation. Staff recommends no mitigation of this penalty.
- **Mitigation Request: 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using appropriate method.** Spokane Party Bus provided staff with a copy of a completed record of duty status for driver Chauncy Welliver for the month of September 2019.
- **Staff response:** The company corrected these first-time violations and provided staff with supporting documentation of a completed record of duty status. Because the commission assessed a "per category" penalty of \$100 for 30 occurrences of this first-time violation, staff recommends no mitigation of this penalty.
- **Mitigation Request: WAC 480-30-900 – Carrier operating under interstate authority issued by the United States Department of Transportation or its successor agency must register with the commission and pay fees as required by the Uniform Carrier Registration (UCR) program.** Spokane Party Bus did not respond to this violation in its mitigation request.
- **Staff response:** Staff verified that the company is not registered with the UCR program. The assessed penalty is \$100 for one violation of this regulation. Staff recommends no mitigation of this penalty.

Spokane Party Bus is a small company that operates one commercial motor vehicle and employs one driver. The company reported \$27,441 in gross revenue for 2018.

Staff recommends the penalty of \$5,700 be reduced to \$3,000. Staff is sensitive to the company's financial situation and understands the impact a significant penalty has on a small business. For these reasons, staff further recommends that \$2,500 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: (1) staff conducts a follow-up safety investigation in two years or as soon thereafter as practicable to review the company's safety management practices, (2) the company not incur any repeat violations of critical regulations, and (3) Spokane Party Bus pays the \$500 portion of the penalty that is not suspended.

Mark L. Johnson

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If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at (360) 867-8305, or by email at Jason.Hoxit@utc.wa.gov.

Sincerely,

/s/ Mathew Perkinson

MATHEW PERKINSON

Assistant Director, Transportation Safety