BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY ASSESSMENT AGAINST Albert G. Flick d/b/a Classic Limousine, in the amount of \$1,000.00

DOCKET NO. TE-061099

DECLARATION OF LEON MACOMBER

I, LEON MACOMBER, under penalty of perjury under the laws of the state of Washington, declare as follows:

- 1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
- 2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Special Investigator in the Motor Carrier Safety Section. I have been employed at the Commission for over 30 years, holding various positions. As a Special Investigator, my responsibilities include conducting investigations regarding the motor carrier safety practices of regulated transportation companies. As part of those duties, I conduct in-depth and complex audits, perform carrier reviews of terminal safety records and equipment, including driver and vehicle safety requirements and issue safety ratings.
- 3. On July 27, 2006 Albert G. Flick d/b/a Classic Limousine (Classic Limousine) filed with the Commission an Application for Mitigation of Penalties (Mitigation Request) in Docket No. TE-061099. I have read the Mitigation Request.
- 4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on July 6, 2006, in Docket No. TE-061099. In that Notice, the Commission issued penalties of \$1,000.00 for one or more violations of RCW 81.04.530, which adopts by reference Title 49, Code of Federal Regulations (CFR) §382.301(a), using a driver before receiving a negative pre-employment controlled substance test result. RCW 81.04.530 allows penalties of five hundred dollars for every such violation.
- 5. Before recommending the Commission issue penalties, I, Leon Macomber, as part of my job, conducted a carrier review on May 24, 2006, of Classic Limousine's terminal safety records and equipment. I found the following two drivers were operating a vehicle, although Classic Limousine did not receive a negative pre-employment controlled substance test result for either of them. See Appendix A for a true and correct copy of the Compliance Review report.
 - a) Arland J. Babb. His first trip as a driver was on October 1, 2005. He was hired on September 22, 2005. His first controlled substance test date was April 21, 2006.

b) Joseph L. Edwards. His first trip as a driver was on May 29, 2005. He was hired on May 24, 2005. His first controlled substance test date was April 17, 2006.

Specific Issues Addressed by Classic Limousine in its Mitigation Request

In its Mitigation Request, Classic Limousine, on the issue of using drivers before receiving a negative pre-employment controlled substance test result, stated Arland Babb and Joseph Edwards are intermittent, occasional drivers, who are self-employed with their own businesses and that anyone hired in the future will be required to provide drug test results.

6. 49 CFR §382.103(a) states that Part 382 applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State. In addition, 49 CFR §382.301(a) states that prior to the first time a driver performs safety sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used. There are no exceptions for intermittent, occasional drivers.

In addition, Classic Limousine stated that the drivers are two very qualified and responsible men who have been driving for years and are friends who help the company when needed.

- There are no exceptions for personal knowledge of drivers' backgrounds. Classic Limousine currently operates three 44 49 passenger vehicles and one 18 passenger vehicle. All four vehicles are commercial motor vehicles by definition under 49 CFR §383.5. Drivers are required to have commercial driver's licenses. Classic Limousine's vehicles are driven by two Class A commercial licensed drivers and one Class B commercial licensed driver. Given four vehicles that meet the definition of commercial motor vehicle and three commercial licensed drivers operating these four vehicles, Classic Limousine is subject to 49 CFR §382.301(a), requiring its drivers to undergo testing for controlled substances as a condition prior to being used.
- 8. The violation associated with this matter is appropriate.

Staff Recommendation

9.	Staff does not recommend mitigation based on Classic Limousine's request.

DATED this 3rd day of August, 2006 at Olympia, Washington.

LEON MACOMBER

Appendix A

v			Was	hington Utilities	& Transportati	on Commissio	n		
	US DO	T# Leg	al: ALBER						
	527781	Ope	erating (DB	A):CLASSIC LIM	OUSINE				
MC/MX #:	240		State #: CH		ral Tax ID: 308-	42-4675 (SSN)			
Review T	ype: Cor					12 1070 (0011)			
Scope:	Prir	cipal Office	•	Location of Rev	iew/Audit: Con	npany facility in t	the U. S.	Territory	r:
Operation	Types	Interstate	Intrastate						
	arrier:	Non-HM	Non-HM	Business: Indivi					
SI	nipper:	N/A	N/A	Gross Revenue	\$165,000.00	for ye	ar ending:	12/31/2009	5
Cargo	Tank:	N/A							
Company	Physica	l Address:							
18320 E 0	Cowley								1 .
Spokane \	Valley, V	VA 99016							
Contact N	lame:	Alhert (G. Flick			,			_
Phone nu	mbers:			(2) 888-468-82	46 Fav	509-922-5531			
E-Mail Ad			@icehouse.		Fax	009-922-0031			
Company	Mailing								
P O Box 8									
Veradale,		37							
Carrier Cla									
Author	rized for	Hire							
Cargo Clas		on							
Passer									
			ırdable qua	ntities of HM?	No				
Is an HM		•			N/A				
Driver Info	rmation	1						:	
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< 10	0 Miles:	:	1		Total Dri				
>= 10	0 Miles:	3			CDL Dri				
Equipment									
		Ow	ned Term	Leased Trip Lea	sed		Owned To	rm ! oseo	Trip Leased
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				. WA. 98504-725	so.				
	At	tention: Lea	n Macombe	r (360) 664-1236	Office, (360) 41	12-8614 Pager			
		110-12-12-12-12-12-12-12-12-12-12-12-12-12-	This rep	ort will be used t	o assess your	safety complia	nce.		
Person(s) l	nterviev	ved							7
Name: Alt	bert G. F	lick			Ti	tle: Owner/Drive	er .		
Name:		,	1	,	Tit	tle:			
Reporte	d By	mille	acon	abol Title;	MCLESON	real tur	Code:WA	.0526 Dat	e: 5/24/2006
Receive	d By:	WAD	(In)			Dune			
	U	0							

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U.S. DOT #: 527781

State #: CH-386

Review Date: 05/24/2006

Part B Violations

1 FEDERAL CRITICAL	Primary: 382.301(a)	Discovered 2	Checked 3	Drivers/V In Violation 2	
Description Using a driver	before the motor carrier has received a negative pre-emp	lovment control	ed substance	test result	
Example Drivers Arland	J. Babb, Hire Date 09/22/05, Trip Date 05/23/06 and Jose before the motor carrier received a negative pre-employe	eph L. Edwards.	Hire Date 05/	24/05. Trip Dat	e
2 FEDERAL CRITICAL	Primary: 382.305(b)(1)	Discovered 6	Checked 9	Drivers/V In Violation 3	
Description Failing to conduct of driver position	uct random alcohol testing at an annual rate of not less th	an the applicab	le annual rate	of the average	number
Consortium Ave	J. Babb, Trip Date 05/23/06, Joseph L. Edwards, Trip Daerage Pool Size for 2005 was 81 requiring 9 random alco	te 05/13/06 and hol test to be co	Albert G. Flick	x, Trip Date 05/	06/06. pleted for
3 FEDERAL CRITICAL	Primary: 382.305(b)(2)	Discovered 25	Checked 41	Drivers/V In Violation 3	
Example Drivers Arland Consortium Rai	act random controlled substances testing at an annual rater of driver positions. J. Babb, Trip Date 05/23/06, Joseph L. Edwards, Trip Date dom Controlled Substances Pool Size 81 for 2005. Randrug test completed instead of the 50% required.	te 05/13/06 and	Albert G. Flick	x. Trip Date 05/	06/06.
4 FEDERAL CRITICAL	Primary: 391.51(b)(2)	Discovered 2	Checked 3	Drivers/V In Violation 2	
Example Drivers Arland J	ain inquiries into driver's driving record in driver's qualification. Babb, Hire Date 09/22/05, Trip Date 05/23/06 and Jose have inquiries into driver's driving record in first 30-days	ph L. Edwards,	Hire Date 05/	24/05, Trip Dat	е
5 FEDERAL	Primary: 391.51(b)(2)	Discovered	Checked 3	Drivers/V In Violation 1	
Example Driver, Joseph L	nin inquiries into driver's employment record in driver's qu Edwards, Hire Date 05/24/05, Trip Date 05/13/06 did not 30-days of employment.		ry into driver's	employment re	ecord

5/25/2006 6:40:15 AM

Page 1 of 2



U.S. DOT #: 527781

State #:

CH-386

Review Date: 05/24/2006

Part B Violations

6 FEDERAL	Primary: 396.3(a)(1)		Disco	vered	Checked 4	Drivers/\ In Violation	
Performed Lev vehicles inspec	ect and maintain vehicle to en el 5 terminal safety inspection ted was found with defects (2 . Specific defects can be sec	ns on 4 of 4 vehicles on 25% Defect Ratio). 0 of	urrently owner of 4 vehicles in	d/operate	were placed	out-of-service	(0%
7 FEDERAL	Primary: 396.21(b)		Disco	vered	Checked 4	Drivers/V In Violation 4	
Example Vehicle Unit #1 been periodical Safety Fitness R Total Mile Recordab	periodic inspection report for 03, #175, #178 and #266 did y inspected 12 months prior in dating Information: s Operated le Accidents	not have a record reta to current annual perio 70,000	ined periodic odic inspection	inspection date.	OOS Vehicl cle Inspecte S Vehicle (M	e (CR): 0 d (CR): 3 ICMIS): 0	hicle had
Your proposed s	safety rating is	R	ating Factors			cute Critica	ı
тош ргорозси с	aroty rating is .		Factor 1:	. 8	3	0 0	
;	CONDITIONS	. 1	Factor 2: Factor 3:	U S		0 4	
	CONDITIONA	L	Factor 4:	S		0 0	
			Factor 5:	N		0 0	
			Factor 6:	S		-	

This rating will become the final rating 45 days from the date indicated on a forthcoming official notice from the Federal Motor Carrier Safety Administration headquarters office in Washington, D.C.

However, if this rating improves a previous Unsatisfactory rating, it will become effective on the date of the official notice from the FMCSA headquarters.

Corrective actions must be taken for the violations (deficiencies) listed on Part B of this review. Title 49 CFR Sections 385.15 and 385.17 provide for administrative review of and a change to a safety rating based on corrective actions, respectively. A request for a change to a safety rating under section 385.17 may be made at any time. A request for administrative review under section 385.15 must be made within 90 days of the date of the proposed safety rating issued under section 385.11(c) or a final safety rating issued under section 385.11(b), or within 90 days after denial of a request for a change in rating under section 385.17.

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2

CLASSIC LIMOUSINE (ALBERT G FLICK dba)

U.S. DOT #: 527781

State #:

CH-386

Review Date: 05/24/2006

Part B Requirements and/or Recommendations

- 1. Ensure that all drivers subject to pre-employment, random, reasonable cause, post accident, return to duty, and/or follow-up controlled substance testing are tested as required by 49 CFR Parts 40 and 382 of the FMCSR. Make sure when drivers are hired that they are sent to have pre-employment controlled substance tested and receive a negative test result prior to driving the first time. In addition, make sure that your consortium meets the 50% annual controlled substances testing and 10% annual alcohol testing requirements.
- Send response letter to WUTC within 15 days addressed to WUTC P.O. Box 47250, Olympia, Washington 98504-7250, Attention: Carolyn Caruso
- 3. Ensure that the persons or entities that perform preventative maintenance inspections on your equipment are abiding by agreed time or mileage intervals. Ensure that records are kept of such periodic preventative maintenance inspections. Take corrective action, if schedules are not being adhered to. Make sure your annual periodic inspections are performed within 12 months and that you retain records for 14 months.
- 4. Ensure that all drivers are fully and properly qualified before operating in interstate and/or intrastate commerce. Maintain a complete file as required for each driver, documenting the qualification process. Make sure you perform an inquiry into driver's driving record and previous employment checks within 30-days of employment.

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Page 1 of 1

Washington Utilities & Transportation Commission US DOT# Legal: ALBERT G FLICK 527781 Operating (DBA): CLASSIC LIMOUSINE 240757 MC/MX #: State #: CH-386 Federal Tax ID: 308-42-4675 (SSN) Review Type: Compliance Review (CR) - Receipt Scope: Principal Office Location of Review/Audit: Company facility in the U.S. Territory: Operation Types Interstate Intrastate Non-HM Non-HM Carrier: Business: Individual N/A Shipper: N/A Gross Revenue: \$165,000.00 for year ending: 12/31/2005 Cargo Tank: N/A Company Physical Address: 18320 E Cowley Spokane Valley, WA 99016 **Contact Name:** Albert G. Flick Phone numbers: (1) 509-924-4194 (2) 888-468-8246 Fax 509-922-5531 E-Mail Address: classic@icehouse.net Company Mailing Address: P O Box 893 Veradale, WA 99037 Report Summary Report # of Pages Part A - General Part B - Violations Part B - Recommendations Review/Audit Receipt Page **Total Pages** Disclaimer: By signing below, I acknowledge that I have received a copy of this review/audit and agree with the total number of pages indicated (above) for each document. My signature does not imply agreement with the findings of the review/audit, however they have been discussed in detail with me. QUESTIONS regarding this report or the Federal Motor Carrier Safety Regulations should be address to: Washington Utilities & Transportation Commission P.O. Box 47250, Olympia, WA. 98504-7250 Attention: Leon Macomber (360) 664-1236 Office, (360) 412-8614 Pager This report will be used to assess your safety compliance. Person(s) Interviewed Name: Albert G. Flick Title: Owner/Driver Name: Title: Reported By Title://// Code: WA0526 Date: 5/24/2006 Received By:

5/25/2006 6:41:46 AM

Page 1 of 1



U.S. DOT #: 527781

State #:

Review Date:

CH-386

05/24/2006

Part C

Reason for Review: Other

Assign#106106

Planned Action:

Compliance Monitoring

Safestat Category:

Parts Reviewed Certification:

382 383 387 390 391 392 393 395 396 397 398 180

Prior Reviews

Prior Prosecutions

Special Study Information:

Unsat/Unfit Information

Does passenger vehicle transport more than 15 passengers, including driver? Yes - Interstate and Intrastate Does carrier transport placardable quantities of hazardous materials?

Unsat/Unfit rule:45-Day - Interstate Passenger

Corporate Contact: Albert G. Flick Corporate Contact Title: Owner/Driver

Remarks:

Flick, Albert G. CH-386 d/b/a Classic Limousine 18320 E. Cowley Spokane Valley, WA. 99016

On May 24th and 25th, 2006 I contacted Mr. Albert G. Flick, Sole-Proprietor of Classic Limousine, concerning a carrier review "CR" terminal safety inspection of records and equipment.

On May 24th, 2006 I performed Level 5 terminal safety inspections on 3 of 4 vehicles currently owned/operated by Classic Limousine. The fourth vehicle was on a charter and not available to be inspected, so I used an inspection from the company profile to complete my four inspections. The results are as follows:

- 3 of 4 vehicles were inspected and one company profile inspection
- 1 of 4 vehicle inspections was found with a defect (25% Defect Ratio)
- 0 of 4 vehicle inspections were placed out-of-service (0% Out-of-Service Ratio)

Specific defects can be seen by referencing my Uniform Driver/Vehicle Inspection Report forms #1224689 thru 1224691.

Classic Limousine's consortium, Occupational Medicine Associates, 323 East Second Avenue, Spokane, Washington 99202, Phone: (509) 455-5555, FMCSA1 Pool Summary 2005 showed an average pool size of 81 and a Random Drug Tests completed of 16 of 81, which is an annual rate of (16 of 41=19.75%) This falls short by 30.25% given the 50% annual rate requirement in violation of CFR 382.305(b)(2). FMCSA1 Pool Summary 2005 showed an average pool size of 81 and a Random Alcohol Tests completed of 3 of 81, which is an annual rate of (3 of 9=3.70%) This falls short by 6.30% given the 10% annual rate requirement in violation of CFR 382.305(b)(1).

In addition, Classic Limousine used drivers Arland J. Babb, Hired 09/22/05, and Joseph L. Edwards, Hired 05/24/05, before the motor carrier had received a negative pre-employment controlled substance test result in violation of CFR 382.301(a).

Classic Limousine currently employs three drivers and I examined all three driver's qualification files with the following results:

2 Violations of CFR 391.51(b)(2), failing to maintain inquiries into driver's driving record

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Page 1 of 2



U.S. DOT #: 527781

State #:

CH-386

Review Date: 05/24/2006

Part C

1 Violation of CFR 391.51(b)2), failing to maintain inquiries into driver's employment record

Driver's hours of service record were examined on all three drivers from April 1, 2006 thru April 30, 2006 and I found no apparent violations of the 10, 15 and/or 60 7day and/or 70 8day rules.

CDLIS licensing checks were not performed due to lack of access to the system.

Driver's "DVIRS", driver vehicle inspection reports, were examined and found to be well maintained.

All four vehicle inspection, repair and maintenance records were examined and found to be well maintained. I did; however, find that periodic inspection reports were not being maintained for 14 months; consequently, it could not be determined that an annual periodic inspection had been performed within the 12 month required interval in violation of CFR 396.21(b).

This carrier review did result in a "Conditional" safety rating.

All defects and violations were discussed with Mr. Albert G. Flick, Owner/Driver, and considerable technical, educational assistance as well as handouts were given at this time.

Principal Reviewer Signature	Upload Authorized:	Yes	No
Assistant Reviewers Signature(s)	Authorized by: Uploaded: Yes	No	Date: Failure Code:
	Verified by:		Date:

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3000-150-160 R (2/99)







Paula A. Lantsberger.MD. MPH Terrence D. Rempel, MD. MPH Royce F. Van Gerpen, MD, MPH

323 East Second Avenue Spokane, WA 99202 509,455,5555 509,455 4114 FAX

DOT Result

Al Flick Classic Limousines PO Box 593 Spokane Valley WA 99037

Customer ID: 630

Loc Code: CLASSIC LIMO

Lab .1ccount: 4102-8-N

Desc:

Donor Info:

SSN/ID: 536-50-4355

Donor Name: BABB ARLAND J

Reason: Pre-Employment

Industry: FMCSA

Test Info:

Specimen 1D: M00855701

Collected: 4/21/2006

Lab: Pathology Assoc. Med. Lab's

Coll Site Name: OMA

MRO
Comments:

Lab Comments:

Overall Result:

TO 4	-	1111	40
	ega		,

Test Performed: 5 Panel NON-DOT

Substance Tested	Result	Screen	Confirm
Marijuana	Negative	50 ng/mil	15 ng/ml
Cocaine	Negative		150 ng/ml
Amphetamines	Negative		500 ng/ml
Opiates	Negative		2000 ng/mi
PCP	Negative		25 ng/mL

I have reviewed the laboratory results for the specimen identified by this form in accordance with DHHS guidelines and CFR Part 40°

Paula Lantsberger, M9, MPH, MRO

Dr Paula Lantsberger

Date Verified: 4/24/2006

Date MRO CCF Received: 4/21/2006 Report Sent By: carrj

Report Released: 4/24/2006





Paula A. Lantsberger.MD, MPH Terrence D. Rempel. MD, MPH Royce F. Van Gerpen. MD. MPH

323 East Second Avenue Spokane, WA 99202 509.455.5555 509.455.4114 FAX

DOT Result

Al Flick

Classic Limousines PO Box 893

Spokane Valley, WA 99037

Customer ID: 630

Loc Code:

Lab Account: Y317-D

Desc:

Donor Info:

SSN/ID: 405-74-3769

Donor Name: Edwards, Joseph

Reason: Pre-Employment

Industry: FMCSA

Test Info:

Specimen ID: B00600128

Collected: 4/17/2006

Lab: Pathology Assoc Med. Lab's

Coll Site Name: OMA

MRO

Comments:

Lab

Collector: KRIS BINFIELD

5094555555

Comments:

Overall Result:

-	Νe	qa	ti	ve	
	•••	. 9-		• •	

Test Performed: DOT

		A ST. ST. MARKET AND ADDRESS OF THE PARTY AND	
Substance Tested	Result	Screen	Confirm
Marijuana	Negative	50 ng/mL	15 ng/mL
Cocsine	Negative	300 ng/mL	150 ng/mL
Amphetamines	Negative	1000 ng/ml.	500 ng/mL
Opiates	Negative	2000 ng/mL	2000 ng/mL
PCP	Negative	25 ng/mL	25 ng/mL

I have reviewed the laboratory results for the specimen identified by this form in accordance with DHHS guidelines and CFR Part 40.

Paula Landsberger, MD, MPH, MRO

Dr Paula Lantsberger

Date Verified: 4/18/2006

Date MRO CCF Received: 4/17/2006

Report Sent By: carrj

Report Released: 4/18/2006

2006 MCSAP DATA SHEET

Assignment #:	MCSP06/106106
Date of CR/Inspection:	May 24 th , 25 th , 2006
Carrier Name:	Albert G. Flick
DBA:	Classic Limousine
Permit #:	CH-386
DOT #:	527781
MC #:	240757
MotCar #:	9795

COMPLIANCE REVIEW DATA:

Safety Rating:	Conditional	
Number of	4	
Vehicles		
Operated:		
Number of	3	
Drivers Operated:		
Total Miles for	70,000	
Prior Year:		
Recordable	0	
Accidents for		*
Prior Year:		
Accident Ratio:	0%	

PART B VIOLATIONS:

	TAKI D VIOLATIONS:
Part 382/Part 40	3
Part 383	
Part 387	
Part 390	
Part 391	2
Part 392	
Part 395	-
Part 396	2
Part 397	

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2006 MCSAP DATA SHEET (cont):

VEHICLE INSPECTION DATA:

Vehicle		MB	MB	SB	SB	SB	VAN	VAN	1		
Type:	MC	1-15	16+	1-8	9-15	16+	1-8	9-15	TRK	TT	TRA
# of Vehicle	3		1								
Inspections:							ĺ				
# of	1		0								
Defective										1	
Vehicles:					·					1	
Defective					les Chipson		12				
Vehicle	I F A	VT' RI	ANK -	PANTI	O CON	ii Maria ii	n in comm	SEE TO A TE	E DV		4.56
Ratio:						71	01/0101				
# of OOS	0		. 0								and the same of th
Vehicles:											
OOS Vehicle		lin esta e		67 147 0 C							
Ratio:	LEA	VE BI	ANK -	RATI	o con	IPUTI	er Gei	MERAT	ED		
Location of	Spok	ane Va	alley, W	ashing	gton	- AND SOURCE OF	Tables of the same	direction control of the con-	www.com.com/paperson	AMERICAN STREET, LEVEL	SCHOOL STREET,
Inspection:					5						
Level of	5		5								-
Inspection:											

VEHICLE INSPECTION VIOLATIONS

Vehicle	T	MB	MB		Name and Address of the Owner, where the Parket of the Par		YZANI	A TOTAL CONTRACTOR OF THE PARTY			
	MC			SB	SB	SB	VAN	VAN			
Type:	MC	1-15	16+	1-8	9-15	16+	1-8	9-15	TRK	TT	TRA
Brakes						ľ					
Steering							-				
Lights	1.										
Tires/Wheels /Rims											
Horn											
Windshield/ Wipers											
Mirrors									,		
Emergency Equipment/ Exits					-						
Coupling Devices	٠.										
Frame											
Suspension											
Exhaust											
Other											

	Leon Macomber, 3520		
Inspector(s):			
zaspector (s).		-	

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