



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY 1-800-833-6384 or 711

April 24, 2020

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. Joel Cisneros, d/b/a Always Movin' Moving Company*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-200271

Dear Mr. Johnson:

On April 6, 2020, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Joel Cisneros, d/b/a Always Movin' Moving Company, (Always Moving or Company), in the amount of \$2,900 for violations of Washington Administrative Code (WAC) 480-15-530, Public Liability and Property Damage Insurance; WAC 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 393 – Parts and Accessories Necessary for Safe Operation; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualification of Drivers, as follows:

- **Twenty-five violations of WAC 480-15-530 – Operating a motor vehicle without the required minimum levels of financial responsibility coverage.** Always Moving operated a commercial motor vehicle on 25 occasions between August 13, 2019, and February 5, 2020, without the required minimum levels of insurance.
- **Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Always Moving failed to conduct criminal background checks for employees Desi Salazar and Latchizare Loutichov.
- **One violation of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to maintain proof of inquiries into the driving record of Joel Cisneros.

- **One violation of 49 CFR § 393.75(a)(3) – Tire-flat and/or audible air leak.** Commission staff (Staff) discovered a commercial motor vehicle with a flat tire to an inner dual tire on axle two.¹ This commercial motor vehicle was placed out-of-service.

On April 5, 2020, Always Moving submitted to Staff a corrective action safety plan in which the Company acknowledges the violations and describes steps it took to prevent future occurrences.

On April 17, 2020, Always Moving filed with the Commission its application for mitigation of penalties. In the request for mitigation, Joel Cisneros, owner of Always Moving, admits the violations and asks that the penalties be reduced. Staff addresses the Company's corrective action safety plan and request for mitigation, as follows:

- **Mitigation Request: WAC 480-15-530 – Operating a motor vehicle without the required minimum levels of financial responsibility coverage.** Always Moving states it believed its existing insurance coverage of \$300,000 was enough for its commercial motor vehicles, and the Company was not aware of the \$750,000 insurance requirement until after the routine safety investigation. Further, Always Moving states that the Commission never informed the Company that its policy on file did not meet the requirements of WAC 480-15-530. Always Moving states that it has updated its insurance policy to come into compliance with this regulation.
- **Staff response:** It is Always Moving's responsibility to certify that its commercial motor vehicles are insured to meet the minimum limits of required public liability and property damage insurance. The minimum level of insurance required for a commercial motor vehicle with a gross vehicle weight rating of less than 10,000 pounds is at least \$300,000 in combined single limit coverage; however, the Company's two commercial motor vehicles exceed a gross vehicle weight rating of 10,000 pounds, which requires at least \$750,000 in combined single limit coverage.

The Company promptly corrected these violations by filing an updated insurance policy with the Commission on April 14, 2020. The updated policy shows that Always Moving now has \$750,000 in combined single limit coverage. The assessed penalty is \$2,500 for 25 occurrences of this violation. Staff recommends the penalty be reduced to \$1,250.

- **Mitigation Request: WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Always Moving states it was unaware that criminal background checks must be completed for family members, since they were only utilized on an as-needed basis. Always Moving states it now is aware that criminal background checks must be completed prior to employment for all prospective employees, and the Company has implemented a new hiring process to include acquiring criminal background checks prior to employment.

¹ Equipment Identification Number 1.

- **Staff response:** Employees with unknown criminal histories raise serious concerns about the security of the customer's belongings, as well as the customer's personal safety. Always Moving corrected these violations and provided Staff with supporting documentation of Desi Salazar's and Latchizare Loutichov's criminal background checks. The assessed penalty is \$200 for two occurrences of this violation. Staff recommends the penalty be reduced to \$100.
- **Mitigation Request: 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Always Moving states it now maintains inquiries into its drivers' driving records in all driver qualification files and has implemented a new calendaring process to periodically review all files maintained.
- **Staff response:** Always Moving has implemented new procedures to prevent reoccurrence of this violation. The Company provided Staff with a description of the files it maintains in each driver qualification file and committed to periodically reviewing the records. The assessed penalty is \$100 for one occurrence of this violation. Staff recommends the penalty be reduced to \$50.
- **Mitigation Request: 49 CFR § 393.75(a)(3) – Tire-flat and/or audible air leak.** Always Moving fails to address this violation in both its request for mitigation and its corrective action safety plan.
- **Staff response:** It is Always Moving's responsibility to ensure that its vehicles are free of defects that may potentially put the traveling public at risk. The Company did not address this out-of-service violation in its response. Staff recommends no mitigation of this \$100 penalty.

Always Moving operates two commercial motor vehicles, employs one driver, and reported \$32,461 in gross revenue. Staff recommends the penalty of \$2,900 be reduced to \$1,500. Staff is also sensitive to the Company's financial situation and understands the impact a penalty has on a small business, especially during the COVID-19 pandemic. For these reasons, Staff further recommends that \$1,000 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 acute or critical regulations, and 3) Always Moving pays the \$500 portion of the penalty that is not suspended.

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/ Jason Sharp

Jason Sharp

Motor Carrier Safety Supervisor, Transportation Safety