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	DOCKET NO. TV-060415 COMMISSION STAFF'S RESPONSE TO CLASSIC LIMOUSINE'S APPLICATION FOR MITIGATION OF PENALTIES

1 Pursuant to WAC 480-07-370(1)(c), Commission Staff submits this response to Classic Limousine's Application for Mitigation.

I. BACKGROUND

2 The Washington Utilities and Transportation Commission (Commission) assessed a penalty of $1000 against Albert G. Flick d/b/a Classic Limousine (Classic Limousine) on July 7, 2006. The penalty was assessed for alleged violations of RCW 81.04.530 and 49 C.F.R. § 382.301(a), which require that, prior to the first time a driver performs safety-sensitive functions for an employer, the driver undergo testing for controlled substances.

3 Classic Limousine operates in Washington as a passenger charter carrier under Permit No. CH-386. On May 24, 2006, the Motor Carrier Safety Section Staff (Staff) conducted a carrier review of Classic Limousine's terminal safety records and equipment.[1] As a result of the inspection, Staff found that Classic Limousine had not received a negative pre-employment controlled substance test result for two drivers who were operating company vehicles.[2] One driver was hired on September 22, 2005, made his first trip as a

[1] *See* Declaration of Leon Macomber at ¶ 5 and Appendix A.
[2] *Id.* at ¶ 5.

driver on October 1, 2005, and was first tested for controlled substances on April 21, 2006. Another driver was hired on May 24, 2005, made his first trip as a driver on May 29, 2005, and was first tested for controlled substances on April 17, 2006.[3] Under the authority of RCW 81.04.530, which allows the Commission to assess penalties of five hundred dollars per violation against companies that use a driver without first receiving a negative pre-employment controlled substance test result, the Commission issued a $1000 penalty.[4] On July 27, 2006, Classic Limousine filed an Application for Mitigation of Penalties (Application), waiving a hearing and asking for an administrative decision on the information it presented.[5]

II. ARGUMENT

A. The company's statement that the two drivers are intermittent, occasional drivers who are self employed with their own businesses, and that those hired in the future will be required to provide a drug test, does not excuse the company from ensuring that drivers undergo controlled substance testing.

4 In its Application, Classic Limousine states that the two drivers are intermittent, occasional drivers, who are self employed with their own businesses.[6] The company further states that drivers hired in the future will be required to provide a drug test.[7] Mitigation for these reasons is inappropriate. The testing requirements apply to every person and to all employers of such persons who operate a commercial motor vehicle in the state. 49 C.F.R. § 103(a). Under 49 C.F.R. § 382.301(a), prior to the first time a driver performs safety-sensitive functions for an employer, as a condition to being used, the driver shall undergo testing for controlled substances. The employer must receive a negative test result for the

[3] *Id.* at ¶ 5.
[4] *See* Penalty Assessment.
[5] *See* Application for Mitigation of Penalties.
[6] *Id.*
[7] *Id.*

driver. Classic Limousine operates four vehicles, and its vehicles are driven by three drivers holding commercial licenses.[8] Therefore, the company, and all of its drivers, is subject to the regulations set forth in 49 C.F.R. § 382. There are no exceptions for intermittent, occasional drivers. Mitigation of the penalty for this reason is not warranted, and the penalty is appropriate.

B. The company's statement that the two drivers are very qualified and responsible men who have been driving for years and are friends who help the company when needed does not excuse the company from requiring its drivers to undergo testing.

Classic Limousine states that its drivers are very qualified and responsible men who have been driving for years, and are friends who help the company when needed.[9] This reason does not warrant mitigation of the penalty. The requirement that drivers undergo pre-employment controlled substances testing does not exempt those whom the employer knows and subjectively considers as "qualified" and "responsible." Classic Limousine is required by 49 C.F.R. § 382.301, and state law by incorporation, to ensure that all of its drivers, prior to performing safety-sensitive functions, undergo pre-employment controlled substance testing with a negative test result, regardless of the employer's personal knowledge of drivers' prior backgrounds and qualifications. Additionally, the requirement serves an important public interest in protecting passenger safety and the safety of the driving public. Classic Limousine failed to comply with 49 C.F.R. § 382.301(a) with respect to the two drivers, and the penalty is appropriate.

[8] Declaration of Leon Macomber at ¶ 7 and Appendix A.
[9] Application for Mitigation of Penalties.

III. CONCLUSION

6 Staff does not support mitigating the assessed penalty based on Classic Limousine's Application. Accordingly, Staff requests that the Commission deny Classic Limousine's Application for Mitigation of Penalties.

DATED this 4th day of August, 2006.

Respectfully submitted,

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