

Docket No. TV-210170 - Vol. I

In the Matter of: Jake Theis d/b/a Royal Moving

May 11, 2021



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) DOCKET TV-210170
Investigation of)
))
JAKE THEIS D/B/A ROYAL)
MOVING)
))
For Compliance with WAC)
480-15-555, WAC 480-15-560,)
and WAC 480-15-570)
))
))
))

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
Pages 1-40
ADMINISTRATIVE LAW JUDGE SAMANTHA DOYLE

May 11, 2021
9:30 a.m.

Washington Utilities and Transportation Commission
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Lacey, Washington 98503

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3 SAMANTHA DOYLE

4

5

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11

FOR THE COMPANY:

12

13 JAKE THEIS
Royal Moving
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14 Brier, Washington 98036
jaketheisroyals@gmail.com

15

16

ALSO PRESENT:

17

18 SANDRA YEOMANS
JASON SHARP
19 GUS MANSOUR

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EXAMINATION INDEX

SANDRA YEOMANS	PAGE
By Mr. Roberson.	7
JASON SHARP	
By Mr. Roberson.	25, 33

EXHIBIT INDEX

EXHIBITS FOR ADMISSION	PAGE
SY-1 Compliance Report	11

1 LACEY, WASHINGTON; MAY 11, 2021

2 9:30 A.M.

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4 P R O C E E D I N G S

5

6 JUDGE DOYLE: Good morning. This is Docket
7 TV-210170, which is captioned In the Matter of the
8 Investigation of Jake Theis, doing business as Royal
9 Moving for Compliance with Washington Administrative
10 Code Chapter 480-15.

11 My name is Samantha Doyle, and I'm the
12 administrative law judge presiding over today's brief
13 adjudicative proceeding.

14 Today is Tuesday, May 11th, 2021, and the
15 time is approximately 9:30 a.m.

16 On April 2nd, 2021, the Commission issued a
17 notice of intent to cancel permit notice of brief
18 adjudicative proceeding setting time for oral
19 statements. The Commission issued the notice of intent
20 to cancel following a compliance review conducted by
21 Commission Staff between February and March 2021, which
22 resulted in a proposed conditional safety rating for
23 Royal Moving.

24 And as we just discussed off the record, I
25 will be consolidating this docket with TV-210171 so we

1 can address the reasons the company has for requesting
2 mitigation of the penalty.

3 And let's first take an appearance from
4 Commission Staff.

5 Mr. Roberson?

6 MR. ROBERSON: Good morning. This is Jeff
7 Roberson, Assistant Attorney General, representing
8 Commission Staff. My contact information is on file in
9 the docket. With me at counsel table are the motor
10 carrier safety supervisor, Jason Sharp, and special
11 investigator, Sandra Yeomans.

12 JUDGE DOYLE: Great. And I'm going to pause
13 one moment here. Bear with me. Thank you for holding
14 on a moment there. It looked like -- I thought the
15 court reporter was trying to contact me separately.

16 Okay. Thank you for taking that brief
17 pause, and for the company, please state your name and
18 address for the record, spelling your last name for the
19 court reporter.

20 MR. THEIS: Jake Theis, T-h-e-i-s, and
21 23009 - 29th Avenue West, Brier, Washington 98036.

22 JUDGE DOYLE: And can you also give your
23 phone number and email address, please.

24 MR. THEIS: 425-350-3386 and Jaketheis, my
25 first and last name, royals, r-o-y-a-l-s, @gmail.com.

1 JUDGE DOYLE: When I call on each party to
2 testify, I will swear you in with the oath of witness so
3 that anything you tell the Court will be under oath and
4 can be considered sworn testimony. For the court
5 reporter's benefit, please speak slowly and clearly.
6 Once you are sworn in, you can present your testimony
7 and call witnesses, provide the Commission was notified
8 about -- provided the Commission was notified in advance
9 as the rules require.

10 You can also introduce any exhibits you
11 prefiled, and I will rule on the admissibility of each
12 of those.

13 Let's first have Staff address the
14 investigation report of proposed safety rating.
15 Following Staff's presentation, the company will have
16 the opportunity to ask Staff's witnesses any questions
17 and then you may present testimony. At that time, you
18 can address the violations in the penalty assessment.
19 Once you are done testifying, Staff's attorney may have
20 some questions for you, and then Staff will make a
21 recommendation on the penalty.

22 Do you have any questions before we get
23 started?

24 MR. THEIS: No.

25 JUDGE DOYLE: Thank you.

1 Mr. Roberson, you may proceed with the issue
2 of the company's safety rating and Staff's investigation
3 when you're ready.

4 MR. ROBERSON: Thank you, Your Honor. And
5 I'm going to call Investigator Yeomans to the stand, but
6 before I do so, just I will be referring to one exhibit,
7 which is the prefiled exhibit from Staff. I was hoping
8 everyone could take a moment to download that from the
9 website or at least bring it up on a browser so it's
10 handy.

11 And with that, Staff calls Sandra Yeomans.

12 MS. YEOMANS: Good morning.

13 JUDGE DOYLE: And, Ms. Yeomans, will you
14 please raise your right hand.

15 (Sandra Yeomans sworn.)

16 JUDGE DOYLE: Thank you.

17 Go ahead, Mr. Roberson.

18

19 E X A M I N A T I O N

20 BY MR. ROBERSON:

21 Q. Good morning. Would you please state your name
22 and spell your last name for the record?

23 A. My name is Sandra Yeomans, Y-e-o-m-a-n-s.

24 Q. Who employs you?

25 A. I am employed by Washington State Utilities and

1 Transportation in the motor carrier division.

2 Q. How long have you worked for the Commission?

3 A. Approximately six years.

4 Q. What is your position with the Commission?

5 A. I am a special investigator.

6 Q. What are your duties as a special investigator?

7 A. I investigate the performance of carriers to
8 assure that they are in compliance with the Federal,
9 State, and local rules and regulations.

10 Q. Have you had any training to enable you to carry
11 out your duties as a special investigator?

12 A. Yes, I have all required Federal and State
13 training for compliance investigation and vehicle
14 inspection.

15 Q. And given that background, are you familiar with
16 the State and Federal rules governing the operation of
17 motor carriers and household goods carriers?

18 A. Yes.

19 Q. Are you familiar with Mr. Jake Theis who does
20 business as Royal Moving?

21 A. Yes.

22 Q. How are you familiar with Mr. Theis?

23 A. I performed a compliance investigation on his
24 company that I started on February 23rd of 2021.

25 Q. Does Mr. Theis hold a conditional permit

1 authorizing him to engage in business as a household
2 goods carrier?

3 A. Yes.

4 Q. Does the Commission review the operation of
5 permitted household goods carriers to ensure they're
6 operating safely?

7 A. Yes.

8 Q. And you reviewed Mr. Theis's operations pursuant
9 to that duty?

10 A. Yes.

11 Q. And when did you complete your investigation of
12 Mr. Theis's operation?

13 A. I closed with Mr. Theis on March 18th, 2021.

14 Q. When you finish a compliance review, do you
15 memorialize the findings you make in the course of that
16 review?

17 A. Yes.

18 Q. How do you do so?

19 A. We write a compliance investigation report that
20 explains all violations that were discovered during the
21 investigation.

22 Q. Do you complete those reports in the ordinary
23 course of business after every inspection?

24 A. Yes.

25 Q. Do you complete those reports contemporaneously

1 with your inspection?

2 A. Yes.

3 Q. Is it important that those reports are accurate?

4 A. Yes.

5 Q. And why is that?

6 A. The findings of the report can determine if a
7 carrier is able to continue operation.

8 Q. Did you write a report after finishing your
9 compliance review of Mr. Theis's operations?

10 A. Yes.

11 Q. Would you please turn to the exhibit marked
12 SY-1?

13 A. Okay.

14 Q. Would you please identify that document?

15 A. This is the comple- -- CAPRI report for
16 Mr. Theis's review.

17 Q. And the CAPRI report is your compliance report?

18 A. Yes.

19 Q. Is that a true and accurate copy of the report
20 that you wrote after your review of Mr. Theis's
21 operations?

22 A. Yes.

23 MR. ROBERSON: Judge Doyle, at this point,
24 Staff would move to admit Exhibit SY-1.

25 JUDGE DOYLE: Thank you. SY-1 will now be

1 admitted into the record.

2 (Exhibits SY-1 admitted.)

3 BY MR. ROBERSON:

4 Q. I'd like to turn to your records of duty status.

5 Would you please briefly explain what a record
6 of duty status is?

7 A. It's a time record that a driver keeps that
8 shows their start time, stop time, total time for each
9 day that they worked.

10 Q. When you perform a compliance review, do you
11 review a carrier's records of duty status?

12 A. Yes.

13 Q. How do you do that?

14 A. We -- by inspecting the supporting documents
15 such as bill of lading, pay records, and time sheets.

16 Q. Did you request Mr. Theis's records of duty
17 status during your investigation?

18 A. Yes.

19 Q. Did he produce them?

20 A. No.

21 Q. Did he explain why not?

22 A. He just explained that he didn't do them.

23 Q. Is the failure to make a record of duty status
24 considered a critical violation?

25 A. Yes.

1 Q. And what does it mean that the violation is
2 considered critical?

3 A. That's a sign of poor safety control management.

4 Q. And are critical violations linked to safety
5 hazards?

6 A. Yes.

7 Q. I would now like to turn to the MCS-150.

8 Would you please briefly explain what the form
9 MCS-150 is?

10 A. The MCS-150 is to update the information that's
11 associated with your DOT number.

12 Q. Do carriers -- are carriers required to update
13 the MCS-150 according to a schedule?

14 A. Yeah, they -- yes, they have a biannual schedule
15 that they need to update.

16 Q. When you review a carrier's operations, do you
17 check to make sure that is has updated the MCS-150
18 according to the schedule?

19 A. Yes.

20 Q. And how do you do that?

21 A. That is checked through FMCSA's portal, which we
22 can pull up their DOT number and check to make sure
23 their information is accurate and the last time that
24 they did their biannual updates.

25 Q. Did you check to see if Mr. Theis had a current

1 MCS-150 at the time of your investigation?

2 A. Yes.

3 Q. Did he?

4 A. No.

5 Q. I'd now like to turn to medical certification.

6 Would you please explain what it means to be
7 medically certified?

8 A. Each driver needs to be physically examined by a
9 physician on the National Registry of Medical Examiners
10 to receive a certificate that shows that they are
11 physically able to perform the duties of a driver.

12 Q. When you review a carrier's operations, do you
13 look to see whether its drivers are medically certified?

14 A. Yes.

15 Q. And do you do that just by requesting the
16 certificate you just described?

17 A. Yes.

18 Q. Did Mr. Theis or any other employee drive during
19 the period you reviewed?

20 A. Mr. Theis did.

21 Q. And did you request Mr. Theis's medical
22 certificate during your investigation?

23 A. Yes.

24 Q. Did he produce one?

25 A. No.

1 Q. Did he explain why he did not produce one?

2 A. He had just not gotten one.

3 Q. Can the use of a driver who is not medically
4 certified constitute a critical violation?

5 A. Yes.

6 Q. Did it do so here?

7 A. No.

8 Q. Would you explain why not?

9 A. In order to -- CAPRI to mark it as a critical
10 violation, it has to be more than one driver in
11 violation, and Mr. Theis is an owner/operator, so there
12 is only one driver.

13 Q. So if Mr. Theis employed another employee who
14 was also not medically certified, this would have been a
15 critical violation, correct?

16 A. Yes.

17 Q. I'd now like to turn to driver qualification
18 files.

19 Would you please explain what a driver
20 qualification file is?

21 A. It's a collection of information that assists in
22 determining if a driver is qualified to operate a
23 commercial motor vehicle accident.

24 Q. When you review a carrier's compliance, do you
25 look at its driver qualification file?

1 A. Yes.

2 Q. And what do you look for when you review those
3 files?

4 A. If they have an application, have they checked
5 into previous employment, is their medical certification
6 in there with the verification of the examiner that
7 they're on the National Registry. They need to have an
8 abstract within 30 days, road test, as well as a
9 certificate the road test was passed.

10 Q. You just mentioned that Mr. Theis had driven
11 during the compliance review period, correct?

12 A. Yes.

13 Q. Did you ask him to produce his driver
14 qualification file?

15 A. Yes.

16 Q. Did he produce it?

17 A. No.

18 Q. Did he explain why he did not produce it?

19 A. He just didn't understand how to do it and what
20 he needed.

21 Q. So he didn't keep a driver qualification file?

22 A. No.

23 Q. Would the failure to maintain a driver
24 qualification file constitute a critical violation?

25 A. Yes.

1 Q. Did it do so here?

2 A. No.

3 Q. Is that for the same reason you described above?

4 A. Yes, it has to be more than one driver.

5 Q. So, again, if Mr. Theis had employed another
6 driver for him, he did not maintain a driver
7 qualification file, this would have been a critical
8 violation, correct?

9 A. Yes.

10 Q. I'd like to discuss criminal background checks.
11 When you review a carrier's operations, do you
12 look to see if it performed criminal background checks
13 for all employees?

14 A. For household goods, yes, we do.

15 Q. How do you do that?

16 A. By asking for copies of the results of the
17 criminal background checks.

18 Q. Did you ask Mr. Theis to produce criminal
19 background checks for him and any other employees?

20 A. Yes.

21 Q. Did he do so?

22 A. No.

23 Q. And did he have other employees other -- did he
24 have employees other than himself that he should have
25 had a background check for?

1 A. Yes, he has -- he has one helper.

2 Q. Okay. And does the Commission consider the
3 failure to maintain -- or keep criminal background check
4 data critical type violation?

5 A. It is a critical violation, but again, because
6 there was only one, it does not put it in that category.

7 Q. I'd like to talk about the annual report.

8 When you review a carrier's operations, do you
9 look to see whether it has filed the required annual
10 reports with the Commission?

11 A. Yes.

12 Q. How do you do that?

13 A. By verifying on the annual report tracking
14 system and also with the person that maintains that
15 system.

16 Q. At the time of your review, had Mr. Theis filed
17 the required annual reports?

18 A. No.

19 Q. Turning to vehicle maintenance.

20 When you review a carrier's operations, do you
21 review its vehicle maintenance records?

22 A. Yes.

23 Q. What maintenance records do you review?

24 A. The identification of the vehicle, whether they
25 have a preventative maintenance schedule, records of any

1 inspections, repairs, and maintenance that they've
2 conducted in a chronological order, and to see if they
3 did have any roadside inspections, if those are in there
4 as well.

5 Q. And I'm sorry. I may have missed this. Do you
6 look at the qualifications of the people performing any
7 required vehicle inspections when you review those
8 records?

9 A. Yes.

10 Q. And do carrier's need to maintain evidence of
11 the qualifications of their inspectors?

12 A. Yes, they do.

13 Q. And what qualifications do they need to maintain
14 evidence of?

15 A. There's the question that they can both certify
16 that they have an understanding of Appendix G, which is
17 the requirements for doing annual inspections.

18 Q. Do you also look to make sure that their brake
19 inspector's qualified?

20 A. Yes, because that's a separate category from
21 just the inspections because brakes are so vital.

22 Q. Did you ask Mr. Theis to produce vehicle
23 maintenance records and inspector qualification records?

24 A. Yes -- excuse me, yes.

25 Q. Did he do so?

1 A. Not at the time of the investigation.

2 Q. Did he explain why he did not?

3 A. I believe not besides we don't have them -- did
4 not have them.

5 Q. Fair enough.

6 MR. ROBERSON: Judge Doyle, that's all the
7 questions I have right now.

8 JUDGE DOYLE: Thank you.

9 And, Mr. Theis, I wanted to circle back and
10 give you the opportunity, did you have any objection to
11 the admission of these exhibits into the record?

12 MR. THEIS: Yeah, the only thing was is just
13 I really didn't know. Now that I had an opportunity and
14 knew what I need to do, I felt like I gave all that
15 information forward to Sandy and to Jason.

16 Also, when -- when I supposedly found all
17 this information out, I didn't even attend the class in
18 person. It was all over the phone. It was really hard
19 during the COVID time and getting disconnected with the
20 phone. I'm not trying to make any excuses, but it was
21 hard to pick up all the information. So when she came
22 out, it was kind of all blank to me.

23 JUDGE DOYLE: Okay. Mr. -- sure. And --
24 and to be clear, I'm just asking if you have any
25 objection to admission of them into the record. We're

1 going to go into your explanation and your testimony in
2 a moment after I get an opportunity to swear you in. Do
3 you have any objection to her exhibits being on the
4 record so that we can discuss them?

5 MR. THEIS: Well, I -- can I let my
6 assistant speak for me?

7 MR. MANSOUR: Your Honor, can I say
8 something?

9 JUDGE DOYLE: Mr. Roberson, do you have any
10 objection to --

11 MR. MANSOUR: He -- he have objection to
12 accuracy of all what -- what she said because he had --
13 he did -- he did get the --

14 JUDGE DOYLE: Sir?

15 MR. MANSOUR: Yes? Go ahead, sorry.

16 MR. ROBERSON: Judge Doyle, I have no
17 objection to Mr. Theis receiving assistance. I don't
18 know that it matters whether or not this is an attorney.
19 I will say the objection he's making goes to the weight
20 of the evidence, not its admissibility.

21 JUDGE DOYLE: Thank you.

22 Okay. And can you please give me your name?

23 MR. MANSOUR: Yeah, my name is Gus. I'm a
24 real estate agent. I'm just helping him fill in the
25 paper. He's just -- he have a problem with the --

1 THE COURT REPORTER: I'm sorry, this is the
2 court reporter. I'm having a hard time hearing.

3 MR. MANSOUR: Okay. Well, he doesn't
4 have -- he doesn't have objection to the presentation,
5 but some of things that was said that he didn't do, he
6 did.

7 JUDGE DOYLE: Okay. And in a moment, I am
8 going to swear him in, and he also can have the
9 opportunity right now to ask Ms. Yeomans any questions
10 he would like before giving his testimony about the
11 weight of the evidence and -- and his depiction of the
12 accuracy of the statements.

13 So, Mr. Theis, do you have any questions for
14 Ms. Yeomans?

15 MR. THEIS: Not really any questions just
16 like I say, it's just I didn't -- I didn't know I had to
17 get these things done. Now that I know, I've been in
18 the process of trying to get it done. Obviously it's
19 not in compliance with what you guys asked, so I guess
20 I'll just be working on it until hopefully I can get in
21 compliance with you guys. Because I don't know what
22 else to do at this point. I'm trying my best to get
23 everything done. I'm terrible at the computer and back
24 and forth with her with emails, and so I'm trying my
25 best. It's really all I can say.

1 JUDGE DOYLE: Thank you. Okay. Well, at
2 this point, I'm going to swear you in so you can give
3 your testimony and we'll walk through the violations in
4 a more organized manner.

5 Mr. Theis, will you please raise your right
6 hand.

7 (Jake Theis sworn.)

8 JUDGE DOYLE: Thank you. I'm going to walk
9 you through this next part.

10 You were given a deadline of
11 April 27th, 2021, to submit a plan that Staff finds
12 sufficient, which you did not meet. You were provided
13 notice that the Commission will cancel your permit if
14 you are not able to come into compliance by May 18th.
15 This means you will no longer be able to operate after
16 the 18th.

17 Do you have a safety management plan
18 specific to the violations to submit now or by the end
19 of the day tomorrow?

20 MR. THEIS: Yes, I have already submitted
21 it, but I guess I'll continue to work on it until it's
22 fully in compliance with you guys.

23 JUDGE DOYLE: Great. Staff just needs an
24 opportunity to review it, then. Thank you for
25 clarifying that.

1 Okay. Let's move on to the penalty
2 assessment.

3 I did not receive any exhibits from you in
4 advance of the hearing --

5 And I -- I want to clarify for the court
6 reporter, that we have admitted Staff's evidence into
7 the record previously after that discussion.

8 So we did not receive any exhibits from you
9 in advance of the hearing, Mr. Theis, so we can proceed
10 with your testimony. We're going to walk through each
11 of the violations in the penalty assessment, and then
12 you can give your brief explanation of why the
13 violations occurred or didn't occur under your count,
14 and then describe any steps you have taken to correct
15 the violations and to prevent the violations from
16 occurring again.

17 MR. THEIS: Okay. You haven't received
18 anything? Because I've already gave everything I needed
19 to Sandy. I gave her everything that --

20 JUDGE DOYLE: You're saying the safety
21 management plan?

22 MR. THEIS: Correct, and all the pictures of
23 the calendar and how I'm going to keep track of
24 everything and I got my medical report. I got
25 everything to her.

1 JUDGE DOYLE: Sure. And -- go ahead.

2 MR. ROBERSON: Mr. Sharp is going to testify
3 about this.

4 MR. THEIS: What's that?

5 MR. ROBERSON: Sorry, Mr. Sharp is going to
6 testify about the safety management plan. It's just
7 usually rolled into his testimony about the penalty
8 assessment. You'd indicated you wanted that after
9 Mr. Theis's testimony. If you want, he can testify
10 before Mr. Theis. It might help straighten some of this
11 out.

12 JUDGE DOYLE: That sounds great.

13 Mr. Theis, let's go ahead and let
14 Mr. Roberson go ahead if you don't have any objection
15 with that. It might clarify things a little bit. Does
16 that work for you, Mr. Theis?

17 MR. THEIS: Yes.

18 JUDGE DOYLE: Okay. Go ahead.

19 MR. ROBERSON: Staff calls Jason Sharp.

20 JUDGE DOYLE: And, Mr. Sharp, will you
21 please raise your right hand?

22 (Jason Sharp sworn.)

23 JUDGE DOYLE: Okay. Thank you.

24 Go ahead, Mr. Roberson.

25 /////

1 E X A M I N A T I O N

2 BY MR. ROBERSON:

3 Q. Good morning. Will you please state your name
4 and spell your last name for the record?

5 A. My name is Jason Sharp, S-h-a-r-p.

6 Q. Who employs you?

7 A. The Washington Utilities and Transportation
8 Commission.

9 Q. How long have you worked for the Commission?

10 A. I've been employed by the Commission since 2016.

11 Q. What is your position with the Commission?

12 A. I am the motor carrier safety supervisor in the
13 transportation safety division.

14 Q. What are your duties as the motor carrier safety
15 supervisor?

16 A. My duties include assigning safety fitness
17 investigations to our motor carrier staff, I review the
18 investigative reports, and provide recommendations based
19 on the findings of those investigations.

20 Q. Have you had any training to enable you to carry
21 out your duties?

22 A. Yes, in addition to being the motor carrier
23 safety supervisor, I began my career as a safety
24 investigator, which entailed certification trainings
25 through the Commercial Vehicle Safety Alliance for

1 inspecting commercial motor vehicles as well as
2 investigator training courses through the Federal Motor
3 Carrier Safety Administration as well as field training.

4 Q. Is it fair to say, then, that you're familiar
5 with the same Federal rules governing the operation of
6 motor carriers and household goods carriers?

7 A. Yes.

8 Q. Are you familiar with Mr. Jake Theis who does
9 business as Royal Moving?

10 A. Yes.

11 Q. How are you familiar with Mr. Theis?

12 A. I reviewed the safety investigation report that
13 Investigator Yeomans compiled, and I have also been in
14 correspondence with Mr. Theis on developing his safety
15 management plan.

16 Q. What does Staff do with the results of a
17 compliance review?

18 A. Following a compliance review, a motor carrier
19 will receive a safety rating, and with that information,
20 the company may or may not be required to do additional
21 follow-on action based off of that rating.

22 Q. How does Staff calculate the proposed safety
23 rating?

24 A. A safety rating is determined based on the
25 company's performance during the compliance review and

1 it is broken -- the overall performance is broken up
2 into six separate factors. As Investigator Yeomans
3 testified as to the severity of critical violations, the
4 company has receive points basically for acute or
5 critical violations, which are violations that are
6 linked to higher accident rates. And based off of the
7 amount of points that they compile in each separate
8 factor, the company is given an overall safety rating.

9 Q. Did Staff calculate a proposed safety rating for
10 Mr. Theis?

11 A. Yes, we did.

12 Q. And what was that proposed safety rating?

13 A. The proposed safety rating was conditional.

14 Q. Can the carrier improve a proposed safety
15 rating?

16 A. Yes, it can.

17 Q. And how would it do so?

18 A. It would do so by submitting an acceptable
19 safety management plan.

20 Q. What is a safety management plan?

21 A. A safety management plan is a document that a
22 motor carrier will provide for Staff's review, and it
23 identifies each violation that was discovered during the
24 recent compliance investigation. The plan must include
25 a description of why the identified violations were

1 allowed to occur, the steps that the carrier has taken
2 to correct the violations supported by actual
3 documentation or records demonstrating this corrective
4 action. It -- the plan must state what management
5 controls have been put in place to prevent the
6 violations from reoccurring in the future. The carrier
7 must certify that its operations are in compliance and
8 meet the safety standard identified in Title 49 Part
9 385, which are adopted by the Commission. And the plan
10 also must be signed by a carrier official.

11 Q. Did Mr. Theis submit a safety management plan?

12 A. Yes, Staff has received a couple of drafts of
13 the safety plan from Mr. Theis.

14 Q. Have you reviewed those various drafts?

15 A. Yes.

16 Q. And that includes the most recent draft I take
17 it?

18 A. Yes.

19 Q. And is the most recent draft acceptable?

20 A. As of this time, the plan does not address each
21 step that I previously laid out that a safety plan must
22 include. Staff has been working with the company on,
23 you know, providing technical assistance to provide a
24 better understanding of what the plan requires and what
25 documentation that the company will need to provide.

1 Q. And is Staff continuing to provide that
2 technical assistance?

3 A. Yes, Staff -- Staff is available and -- and
4 providing guidance to the company currently.

5 Q. And so your recommendation at this time is that
6 the Commission not find the submitted safety management
7 plan acceptable, correct?

8 A. At the time, correct.

9 MR. ROBERSON: And so, Judge Doyle, at this
10 time, Mr. Sharp is also going to testify about the
11 company's request for mitigation, but it seems like the
12 company should present that request before he testifies.
13 So I'm done discussing the safety management plan unless
14 you have discussions or the company has discussions --
15 or questions, sorry.

16 JUDGE DOYLE: Thank you. I just wanted to
17 ask Mr. Sharp, have you notified the company about which
18 specific violations that -- that have not been addressed
19 within the safety management plan at this point?

20 MR. SHARP: Yes, I provided feedback to the
21 company with detail on where the plan is deficient
22 currently, and we've been in communication via email and
23 telephonically on what the company needs to do to -- to
24 have its plan be accepted by Staff.

25 JUDGE DOYLE: Thank you.

1 Mr. Theis, do you have any questions for
2 Mr. Sharp?

3 MR. THEIS: No, huh-uh. He's been -- he's
4 been really helpful, they both have been. And like I
5 say, it was just I'm very new to this, so I'm trying to
6 get everything in order, and they've been helping me out
7 with it. I really appreciate the help. I've also been
8 going to my buddy's real estate office and using all of
9 his computer and stuff because I am terrible with all
10 that so...

11 JUDGE DOYLE: Thank you. Do you have any
12 other questions?

13 MR. THEIS: Not at -- not at the moment, but
14 if I do, I'll just be in contact with Jason.

15 JUDGE DOYLE: Okay. Great. Then let's
16 discuss the violations shortly from your perspective so
17 that -- and Mr. Sharp --

18 (Cross talking.)

19 JUDGE DOYLE: Thank you.

20 Let's discuss the violations so that if you
21 had any testimony about why the violation occurred, how
22 you're going to prevent the violation from occurring
23 again, you can do so right now for me.

24 Let's first discuss the hundred dollar
25 violation of WAC 480-15-555, the failure to complete a

1 criminal background check for every person the carrier
2 intends to hire. Do you want to explain why the
3 violation occurred and how you're going to prevent it
4 from occurring again?

5 MR. THEIS: Yeah, I just -- I didn't know
6 that I needed to have one. So now that I know, I'm
7 going to keep up on that every year.

8 JUDGE DOYLE: And for the violation 44 --
9 violation of 49 CFR 391-45(a), \$4,400 penalty, using a
10 driver not medically examined and certified, which would
11 be yourself.

12 MR. THEIS: I -- I have it now. And -- and
13 like I say, it was -- I mean, I found all this
14 information out with the online meeting when they did
15 the class on -- or over the phone, and I just -- I had
16 trouble getting all the information. So and I have it
17 now and presented it to Jason and Sandy and they both
18 have it. So every two years, I'll be sure to get it.

19 JUDGE DOYLE: Okay. And so then just to
20 clarify, and it's not a lack of -- of your explanation,
21 I am just going one by one. So then for the hundred
22 dollar category penalty for 30 violations of 49 CFR
23 395.8 -- 395.8(a)(1), failing to require a driver to
24 make a record of duty status. Is that the same
25 situation, then, Mr. Theis?

1 MR. THEIS: Correct, yeah.

2 JUDGE DOYLE: Okay. And then finally the
3 hundred dollars for the one violation of 49 CFR
4 396.3(b), failing to keep minimum records of inspections
5 and vehicle maintenance.

6 MR. THEIS: Yeah, I mean, I -- I have all my
7 maintenance. I just got the truck and I have all my
8 maintenance records and I presented them, but I guess it
9 just wasn't in the right order on how you guys want me
10 to present. I mean, I have all my maintenance records
11 and all that. And now that I know that I had to get the
12 brake inspection, I got all that stuff signed. And like
13 I say, I just -- I didn't know. So now that I know, I
14 will keep up on all of it.

15 JUDGE DOYLE: Okay. Thank you.

16 And, Mr. Roberson, do you have any questions
17 for the company at this point?

18 MR. ROBERSON: I do not, Judge Doyle.

19 JUDGE DOYLE: Okay. And, Mr. Roberson,
20 would you like to make your recommendation on the
21 request for mitigation of the penalty?

22 MR. ROBERSON: I would. I'd actually like
23 to recall Mr. Sharp to testify about it.

24 JUDGE DOYLE: Great. Thank you.

25 Mr. Sharp, you can return, please.

1 MR. ROBERSON: And, Mr. Sharp, you're still
2 under oath.

3

4 E X A M I N A T I O N

5 BY MR. ROBERSON:

6 Q. Did you listen to Mr. Theis's explanation as to,
7 I guess, the state of things?

8 A. Yes.

9 Q. Having heard from Mr. Theis, does Staff have a
10 recommendation as to what the Commission should do with
11 the penalties assessed against Mr. Theis?

12 A. Yes. So looking at -- Mr. Theis had submitted a
13 request for mitigation of the penalty, looking at
14 factors that would either contribute towards or -- or
15 away from Staff recommending mitigation of the penalty,
16 Staff looked at the company's history of compliance and
17 its interactions during the most recent safety review,
18 items that were presented to Staff, as well as
19 corrective action upon discovery of violation.

20 Taking into consideration that Staff had --
21 initially had some difficulty getting the company to
22 attend the required safety training from its inception,
23 the company finally got through the training in August
24 of 2020. And considering other factors such as Staff
25 having difficulty in scheduling the safety investigation

1 with the company as Mr. Theis claimed to be out of state
2 when Investigator Yeomans had contacted him. During
3 this time, we found documentation of performed household
4 goods moves in the state as well as the company's
5 vehicle being annually inspected during that time.

6 There was some -- some evidence of corrective
7 action that the company did provide, though, as I
8 mentioned such as when -- when Mr. Theis was notified of
9 not having his required medical certificate, he went and
10 got -- got an exam right away and got into compliance
11 there.

12 So looking at those factors, Staff would
13 recommend that there be no mitigation of the penalty of
14 the \$4,800 that was assessed; however, due to Mr. Theis
15 taking initiative of immediately correcting the
16 391.45(a) violation for not being medically certified,
17 Staff would recommend that that portion of the penalty
18 have \$2,200 suspended for a period of two years subject
19 to a follow-up review in compliance.

20 So overall Staff's recommendation would be no
21 mitigation of the \$4800 penalty, but have \$2,200 of
22 that suspended for a period of two years subject to the
23 company not incurring any repeat violations of critical
24 regulations upon reinspection and also to have the
25 company owner attend the next Commission-provided

1 household goods training, which I believe is currently
2 set for June 16th.

3 Q. Now, Mr. Sharp, those factors that you're
4 discussing, those come from the Commission's enforcement
5 policy, correct?

6 A. Correct.

7 Q. And you're familiar with the policy?

8 A. Yes.

9 Q. So your recommendation is consistent with your
10 evaluation of that policy and its application to
11 Mr. Theis's specific operations and the review of
12 Mr. Theis's operations?

13 A. Correct, correct. And -- and with the idea
14 behind the suspended penalty being to encourage future
15 compliance for the company.

16 Q. So if you could summarize Staff's
17 recommendations with regard to the compliance review and
18 the penalty assessment, that would be great.

19 A. Sure. So should the company submit a -- an
20 acceptable safety plan, then Staff would recommend that
21 the -- at this point, Staff is unable to recommend
22 anything other than canceling the permit without an
23 acceptable plan, but should that plan be submitted and
24 the company allowed to continue operation, Staff would
25 recommend a follow-up investigation at least six months

1 from the date of the order in which the company would
2 have the suspension of \$2,200 portion of the penalty
3 assessment in play should they not have any repeat
4 violations of critical regulations and that the company
5 owner also re-attend the household goods safety
6 training.

7 MR. ROBERSON: And, Judge Doyle, at this
8 point I have no further questions for Mr. Sharp, so I
9 tender him for questions from the bench or from
10 Mr. Theis.

11 JUDGE DOYLE: Thank you.

12 Mr. Theis, you'll have an opportunity to
13 discuss your view, but for right now, do you have any
14 questions for Mr. Sharp while he's still available?

15 MR. THEIS: No, huh-uh. My assistant just
16 wants to say one thing.

17 MR. MANSOUR: If you don't mind. Your
18 Honor, can you hear me?

19 JUDGE DOYLE: I'm going to excuse Mr. Sharp,
20 thank you.

21 And yes, go ahead.

22 MR. MANSOUR: Yeah, I'm sorry, I have a
23 client waiting. But all I want to say is thank you very
24 much and I thank Sandy for helping Jake get better in
25 doing things. And I'm helping him in my office. You

1 know, every day he comes to me. But I just want to say
2 one thing. Jake is a good member of community. He's
3 been helping us deliver food for the seniors and the
4 homeless in this area. He's providing his time for free
5 for us.

6 So what I'm saying is he's a good person.
7 Definitely he has made mistakes, definitely needs to be
8 on top of it. I just want to say he's a really good
9 member of the community and we would love -- he would
10 love to work with you, and I will stay on top of him to
11 make sure that we comply with all -- with all what needs
12 to be done.

13 So I just want to say that he's a very
14 important member of our community, so I hope and pray
15 that you allow him within the next few months to
16 continue complying and do what you want. And I
17 apologize, I have to go. But please I urge you, I
18 encourage you to allow him to continue working in sake
19 of his brother, his father and yes, he made mistakes.
20 He -- he's admitting it. He's provided everything to
21 Ms. Sandy, and he's going to provide everything to you
22 guys on a regular basis.

23 So thank you for allowing me even to say
24 something, and I thank you very much. I will put
25 Mr. Theis back.

1 JUDGE DOYLE: Thank you.

2 Mr. Theis, in regards to your request for
3 mitigation of the penalty assessment and the
4 recommendation that you just heard, do you have any
5 explanation that you would like to give on your ability
6 to pay the assessed penalty and the reasons why you
7 requested mitigation of the assessed penalty?

8 MR. THEIS: Yeah, I mean, if I could get on
9 payment plan for it, but I just want to thank Jason for
10 being a little lenient with me, you know, and helping me
11 out there.

12 JUDGE DOYLE: I just want to let you know
13 that you can definitely discuss with Staff payment plan
14 options. You can -- you can request that after this
15 hearing. I also want to clarify so that you know, I
16 know you're working to get your safety management plan
17 in compliance, and I believe your window is about 48
18 hours, give or take the Staff's ability to assess that,
19 the plan, in order to make your deadline.

20 However, should you not make that deadline,
21 you do have a 30-day window to request your permit be
22 reinstated with an accessible safety management plan
23 without having to file a new application. If you miss
24 this window, it will mean that you have to start the
25 permit process over again and apply as if you were a new

1 business. Do you have any questions about that?

2 MR. THEIS: No, I am going to be working on
3 it today and hopefully present the full thing again
4 tonight to -- to Jason.

5 JUDGE DOYLE: Okay. Great. And before we
6 conclude, do you have any other requests -- or pardon
7 me, questions?

8 MR. THEIS: No, huh-uh.

9 JUDGE DOYLE: And, Staff, do you have any
10 other issues or questions before we resume for the day?

11 MR. ROBERSON: Staff has nothing further,
12 Judge Doyle.

13 JUDGE DOYLE: Thank you.

14 Thank you all for appearing today. I will
15 issue an order reflecting my decision on the company's
16 request for penalty assessment and the safety rating.
17 Is there -- oh, I believe that was it. Okay. Well,
18 thank you all. We are adjourned for the day.

19 (Adjourned at 10:19 a.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse
Tayler Garlinghouse, CCR 3358

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