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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Penalty)
Assessment Against)
4) DOCKET NO. TV-072234
DANIEL J. BUSBY, D/B/A) Volume I
5 CAREFUL MOVERS) Pages 1 - 44
6 In the Matter of Determining)
the Proper Carrier)
7 Classification of) DOCKET NO. TV-071670
) Volume I
8 DANIEL JOHN BUSBY d/b/a) Pages 1 - 44
CAREFUL MOVERS)
9 -----

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11 A hearing in the above matter was held on
12 January 15, 2008, at 1:37 p.m., at 1300 South Evergreen
13 Park Drive Southwest, Olympia, Washington, before
14 Administrative Law Judge ADAM TOREM.

15

16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by MICHAEL A. FASSIO, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
19 telephone, (360) 664-1192.

20 DANIEL J. BUSBY, by KEVIN KEEFE (via bridge),
Attorney at Law, Post Office Box 20362, Seattle,
21 Washington 98102; telephone, (206) 325-9390.

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23

24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE TOREM: Good afternoon. I'm Adam
3 Torem, the administrative law judge presiding over this
4 hearing on behalf of the Washington Utilities and
5 Transportation Commission. Today is Tuesday, January
6 15th, 2008. This afternoon we are assembled at about
7 1:30 p.m. I am here in the Commission's offices in
8 Olympia to begin a hearing in two different dockets.
9 They are TV-071670. That docket is captioned, In the
10 Matter of Determining the Proper Carrier Classification
11 of Daniel John Busby, d/b/a Careful Movers. The second
12 docket is TV-072234. This is a request for a hearing
13 on a penalty assessment that was originally set out in
14 the amount of \$2,000.

15 In accordance with the Revised Code of
16 Washington, RCW 81.04.510, the focus of the hearing is
17 whether Careful Movers is operating as a common carrier
18 engaged in transportation of property for compensation
19 on the public highways of Washington state, and if they
20 are, should they be required to apply for and hold a
21 permit from the Commission as required by Chapter 81.04
22 RCW.

23 The Commission staff has alleged as much, and
24 they seek an order from the Commission requiring
25 Mr. Busby and Careful Movers to cease and desist from

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1 their business of moving household goods. Again,
2 Commission staff requested imposition of a penalty
3 first in the amount of \$1,500 for failure to obtain
4 that required permit, and there is an additional
5 penalty sought in the amount of \$500 for failure to
6 list a UTC permit number in the Company's advertising.

7 Originally upon Commission staff's request
8 back on December 6th, 2007, Administrative Law Judge
9 Ann Rendahl, the head of the administrative law
10 division, issued Order 01 in Docket TV-071670. That's
11 the classification hearing, and that included a
12 subpoena to Careful Movers requiring Mr. Busby to
13 appear and produce certain documents, and it gave a
14 notice of hearing which originally scheduled this
15 matter for last week, January 8th, 2008, at 1:30 p.m.
16 However, due to a change in staffing here on December
17 21st, 2007, the Commission issued a notice rescheduling
18 the matter for today, January 15th, and they noted a
19 change of presiding officers.

20 Also on December 21st, 2007, in response to
21 the request for a hearing on the penalty assessment,
22 the Commission issued a notice of hearing in Docket
23 TV-072234, the penalty assessment case, and set that
24 matter for hearing this afternoon as well but still as
25 a separate proceeding. Having all that preliminary out

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1 of the way now, for the record, I want to take
2 appearances from the parties and then address some
3 other administrative details, including Careful Movers'
4 appearance by telephone today and a formal
5 consolidation of these two dockets, and then we can get
6 into presentation of each party's case.

7 First let me remind Mr. Keefe, you will hear
8 Mr. Michael Fassio give his appearance for Commission
9 staff, and he's going to give more than you might
10 normally do in Superior Court. He's going to give what
11 we call the full contact information after his name,
12 which is address, telephone number, fax number, and
13 e-mail address, so it's sometimes helpful to simply
14 read your business card into the record and then
15 indicate which party you represent, so Mr. Fassio if
16 you will go first.

17 MR. FASSIO: Thank you, Your Honor. Michael
18 Fassio present on behalf of the Commission staff. My
19 address is 1400 South Evergreen Park Drive Southwest,
20 PO Box 40128, Olympia, Washington, 98504. Telephone
21 number is (360) 664-1192. Fax number is (360)
22 586-5522. E-mail is mfassio@wutc.wa.gov.

23 MR. KEEFE: Kevin Keefe on behalf of Careful
24 Movers and/or Daniel Busby. Address, Post Office Box
25 20362, Seattle, 98102; telephone, (206) 325-9390; fax,

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1 (206) 328-3590.

2 JUDGE TOREM: Sir, do you have an e-mail
3 address?

4 MR. KEEFE: I don't do e-mail.

5 JUDGE TOREM: Let me note that earlier this
6 afternoon, I got a phone call from Mr. Keefe indicating
7 that due to weather conditions and some snow in the
8 Seattle area, he was not going to be able to be in
9 Olympia this afternoon. Mr. Fassio has indicated to me
10 in a separate telephone call he has no problem with a
11 telephonic appearance and prior to the hearing today
12 faxed what appeared to be the rest of the exhibits, and
13 before we went on the record explained where most of
14 the exhibits had already been part of a staff
15 investigation report that was served on Careful Movers,
16 and I hope provided to Mr. Keefe, that the appearance
17 by phone, although not directly permitted by the
18 original subpoena, would be acceptable. Mr. Keefe, you
19 are comfortable appearing for your client by phone
20 today?

21 MR. KEEFE: Yes, I am.

22 MR. FASSIO: No objection.

23 JUDGE TOREM: The next matter I want to take
24 up is consolidation. The Commission has a rule under
25 WAC 480-07-320, and to put it bluntly, it gives wide

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1 discretion to the judge to consolidate on motion from
2 the parties' or the Bench's own motion any matters that
3 it thinks are appropriate.

4 In my conversation with Mr. Keefe earlier
5 today, you indicated that you thought the issues were
6 rather similar in these cases, if not exactly the same,
7 so unless there is an objection that I would like to
8 hear, I want to consolidate these cases not only into
9 one hearing today but into one order that will come out
10 under both docket numbers. If I count this correctly,
11 it will be Order 02 in Docket 071670, and Order 01 in
12 the penalty assessment Docket 072234, but because the
13 penalty assessment was not set up as a brief
14 adjudicative proceeding either in the penalty
15 assessment itself or in the notice of hearing the same
16 rules would apply, I don't see any reason we can't do
17 one administrative hearing and issue one administrative
18 order handling both the classification matters and the
19 penalty issues. Mr. Fassio, any comments?

20 MR. FASSIO: No. I would concur.

21 JUDGE TOREM: Mr. Keefe, any problems with
22 that?

23 MR. KEEFE: No. I would concur as well.

24 JUDGE TOREM: Then we will consolidate the
25 cases at this point.

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1 I've been handed an exhibit list from
2 Commission staff. It's labeled with 14 different
3 exhibits, and Mr. Keefe, you received the exhibit list
4 as well by fax?

5 MR. KEEFE: Yes, I did.

6 JUDGE TOREM: Let me run down these items,
7 and I'm not going to go into how many pages each one is
8 but list what we have.

9 First, the Commission is listing one witness,
10 Sheri Hoyt; is that correct, Mr. Fassio?

11 MR. FASSIO: Yes.

12 JUDGE TOREM: And Ms. Hoyt is going to
13 sponsor her staff investigation report, which is
14 Exhibit 1. She'll sponsor also Exhibit 2, which is the
15 cancellation order in a separate docket number from
16 February 9th, 2006, and that was Docket TV-051482.
17 That's Exhibit 2, and it was previously contained
18 within Appendix E of that investigation report.

19 Exhibit 3 is a Commission letter to Careful
20 Movers dated February 21st, 2006. It was previously
21 contained within Appendix F of the staff investigation
22 report. Exhibit 4 is a declaration of John Foster in
23 TV-071670. Exhibit 5 is a declaration also of John
24 Foster of similar content in TV-072234. Neither
25 Exhibit 4 nor Exhibit 5 were previously contained in

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1 the staff investigation report.

2 Exhibit 6 was previously contained in the
3 staff investigation report. It can be found as part of
4 Appendix D starting at Page 26. It's a final order
5 approving a settlement agreement and rescinding a cease
6 and desist order. Is that the date, September 7th,
7 2007, or is that earlier?

8 MR. FASSIO: I think it should be 2000.

9 JUDGE TOREM: September 7th, 2000?

10 MR. FASSIO: Yes.

11 JUDGE TOREM: So we will make a correction on
12 the cover sheet for the exhibit list. That final order
13 approving settlement agreement and rescinding a cease
14 and desist order is from September 2000, and there is
15 also a settlement agreement in TV-000418. That
16 settlement agreement was July 31st, 2000, and again,
17 that's all Exhibit 6.

18 Exhibit 7 is a consumer affairs complaint
19 file for Colleen Kelly. Exhibit 7 was previously
20 contained in the staff investigation report,
21 Appendix G. Exhibit 8 is a declaration of Ms. Colleen
22 Kelly. Exhibit 8 was previously contained in the staff
23 investigation report, Appendix H. Exhibit 9 is a bill
24 of lading associated with Ms. Kelly's move. Exhibit 9
25 was previously contained in Appendix G of the

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1 investigation report at Page 47.

2 Exhibit 10 is a payment documentation
3 associated with Ms. Kelly's move. Exhibit 10 was
4 previously contained in the investigation report at
5 Appendix G, pages 50 and 51. Exhibit 11 is refund
6 documentation associated with Ms. Kelly's move, also
7 previously indicated in the investigation report.
8 Exhibit 11 could be found at Appendix G, page 46.

9 Exhibit 12 is a printout of Careful Movers'
10 Web site. It was printed out on August 14th, 2007. It
11 was previously contained in the investigation report as
12 Appendix I. Exhibit 13 is the most recent printout of
13 the Careful Movers' Web site dated yesterday, January
14 14th, 2008. It was not previously included in the
15 investigation report, and the last exhibit are four
16 online telephone directory listings for Careful Movers
17 that was printed out on August 14th, 2007, and this
18 Exhibit 14 was previously included in Appendix J of the
19 staff investigation report.

20 Mr. Keefe, in an administrative hearing such
21 as this, it's customary that we may preadmit some of
22 these exhibits rather than go through the somewhat
23 laborious process of offering them one at a time during
24 the course of the hearing. If you have no objection to
25 that procedure, then I'll ask Mr. Fassio if he wants to

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1 offer these documents for admission at this time.

2 MR. KEEFE: I have no objection to that.

3 JUDGE TOREM: Have you had a chance to review
4 these individual exhibits and you are ready to indicate
5 any objection to authenticity or to their content?

6 MR. KEEFE: No.

7 JUDGE TOREM: So no objection if I admit
8 Exhibits 1 through 14?

9 MR. KEEFE: No.

10 JUDGE TOREM: Then those will all be admitted
11 for the purpose of the hearing.

12 The only other note I have is a clarification
13 of the scope of the issues, and Mr. Keefe, when I
14 looked at your initial request, and this may have come
15 from Mr. Busby as opposed to you, on the penalty
16 assessment, which was signed on December the 14th by --
17 maybe it is by you. It says, "Keefe, attorney for
18 Daniel Busby," in the significant block?

19 MR. KEEFE: Yeah.

20 JUDGE TOREM: I wanted to see if I could
21 clarify. Nothing was indicated in the Staff's
22 prehearing conference phone calls to me or prehearing
23 calls from you as to whether you are contesting the
24 allegations or conceding them. In the penalty
25 assessment form, the box under No. 3 is marked, and

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1 No. 3 would an application for mitigation admitting the
2 violations but believing that the penalty should be
3 reduced, and below, the reason is, "I ask for a hearing
4 by an ALJ." Can you clarify the position you are
5 taking for your client as to conceding any of the
6 allegations about the operation and advertising without
7 a permit?

8 MR. KEEFE: He's conceding the admissibility
9 of the documentation that you've provided, which if
10 considered by the hearing examiner would be found to
11 have been violations.

12 JUDGE TOREM: I guess is that an artful way
13 of saying you are not arguing about the facts. You are
14 simply allowing that when the documents come in, it's
15 more likely than not that the hearing examiner or
16 myself as an administrative law judge would find that
17 the Commission through these documents carries its
18 burden of proof that your client was operating without
19 a permit and was advertising without listing the permit
20 number?

21 MR. KEEFE: If that's what the documents
22 show, yeah.

23 JUDGE TOREM: So the purpose of the penalty
24 assessment request for hearing, was that simply to
25 argue the amount of the penalty or whether a penalty

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1 should be imposed at all?

2 MR. KEEFFE: If the violations are found,
3 which I'm assuming they will be, then it would be more
4 of a mitigation of the amounts.

5 JUDGE TOREM: Well, we've admitted these
6 documents 1 through 14, which you had no objection to,
7 so I think maybe at this point I'll ask if there is a
8 need for opening statements, so that may clarify some
9 things as to where we need to go. Ms. Hoyt is
10 available to give witness testimony today and be
11 subject to any cross-examination.

12 In your telephone call to me earlier agreeing
13 to appear by telephone today as opposed to request a
14 continuance due to the weather conditions, you
15 suggested that this would be mainly legal argument. So
16 I'll ask maybe for Mr. Fassio to give a brief couple of
17 sentence position from Staff and then I'll ask for you,
18 Mr. Keefe, to give me your brief opening statement, and
19 then we will see if Ms. Hoyt needs to testify and if
20 so, as to what cross-examination you want to put her
21 to, and then I'll take closing statements, because that
22 appears all we need to do in this case. Mr. Keefe, was
23 there anything else you were looking for in this
24 procedure today?

25 MR. KEEFFE: No.

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1 JUDGE TOREM: Mr. Fassio, is there an opening
2 statement?

3 MR. FASSIO: Sure. A couple of preliminary
4 matters as Staff was preparing for this case, Staff
5 notes that the Company has the burden of establishing
6 its reasons for mitigation, and under RCW 81.04.510,
7 the Company has the burden of proof in a show-cause
8 proceeding. Because these two proceedings share a
9 common Staff investigation, Staff intends to respond to
10 both of these proceedings in its testimony. Staff is
11 prepared to address both the penalty assessment issue
12 by the Commission as well as the show-cause proceeding
13 and respond to any arguments put forth by the Company.

14 I can run through laws and regulations that
15 provide a framework for Staff's case in each of these
16 and state what Staff expects to show or prove. WAC
17 480-15-020 defines household goods carriers as common
18 carriers. RCW 81.01.010, through adoption of RCW 80.01
19 authorizes the Commission to regulate motor carriers.
20 RCW 81.80 defines "motor carrier" to include common
21 carrier provides the authority for the Commission to
22 classify and regulate motor carriers and to enforce the
23 motor carrier laws.

24 Specifically regarding the penalty assessment
25 in Docket TV-072234, RCW 81.80.070 provides that no

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1 common carrier shall operate for the transportation of
2 property for compensation in this state without first
3 obtaining from the Commission a permit to do so and
4 provides that a carrier is subject to a penalty of
5 \$1,500 for operating without first obtaining a permit
6 from the Commission. RCW 81.83.57 provides that no
7 person in the business of transporting household goods
8 shall advertise without first listing the carrier's
9 permit number in the advertisement and provides that
10 the carrier may issue a penalty of \$500 for every
11 violation.

12 Regarding the show-cause proceeding, Docket
13 TV-071670, RCW 81.80.070 also directly applies, and RCW
14 81.04.510 authorizes and directs the Commission to
15 issue a cease and desist order when it finds a person
16 or corporation subject to Title 81 and is operating
17 without the required authority from the Commission.
18 Staff's evidence will show that Careful Movers has
19 transported household goods within the state of
20 Washington for compensation which subjects the Company
21 to Commission regulation.

22 Furthermore, Staff will present evidence that
23 Careful Movers did not hold a permit for these
24 operations. Staff's evidence will show that Careful
25 Movers has advertised its services without listing its

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1 permit number. Staff's evidence will show the basis
2 for both penalties assessed Careful Movers in the one
3 docket as well as the basis for the allegations for the
4 order instituting special proceeding and notice of
5 hearing against Careful Movers in the other docket.

6 JUDGE TOREM: Thank you, Mr. Fassio.

7 Mr. Keefe?

8 MR. KEEFE: I don't have any opening on this.
9 Like you say, we are not objecting to the evidence
10 that's already been provided, which the hearing officer
11 will be able to make the findings that number one, he
12 didn't have a permit, and number two, he violated the
13 listing his permit number in the ads. We don't have
14 evidence contrary to that to present.

15 JUDGE TOREM: Okay. Let me then swear in
16 Ms. Hoyt. Understanding the limitations of your case
17 as I understand it, Mr. Keefe, I'll ask Mr. Fassio to
18 streamline the examination he may have had planned for
19 today, and I know he may have done a more thorough
20 preparation of this witness and anticipate greater
21 depth in the questions, but if I understand again that
22 there is no objection to and essentially a concession
23 that the evidence here will hold up the allegations in
24 both docket numbers as made by the Commission staff,
25 and that when I do a complete review of the documents,

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1 I'll be able to make a findings accordingly, then we
2 will have the focus of Ms. Hoyt's testimony, if
3 possible, on how this Commission staff came to the
4 amount of penalty they wish to assess and the remedy
5 they also would like in the classification hearing. So
6 we will focus on the remedies that are being sought
7 once a basic foundation is laid, and if you have
8 cross-examination within the scope of the documents as
9 well as anything on direct, I'll allow you to go beyond
10 the scope of the direct exam because of the concessions
11 made and the foundation of being asked to take notice
12 of in the documents; all right?

13 MR. KEEFE: Sure.

14 JUDGE TOREM: Mr, Fassio, let me ask Ms. Hoyt
15 to raise your hand.

16

17 Whereupon,

18 Sheri Hoyt,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21 JUDGE TOREM: Can you state and spell your
22 last name for the record?

23 THE WITNESS: Sheri Hoyt, S-h-e-r-i, H-o-y-t.

24 JUDGE TOREM: Mr. Fassio?

25 MR. FASSIO: Thank you, Your Honor.

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1 DIRECT EXAMINATION

2 BY MR. FASSIO:

3 Q. Please state your name.

4 A. Sheri Hoyt.

5 Q. Please state the name of your employer.

6 A. Washington Utilities and Transportation
7 Commission.

8 Q. In what position are you employed by the
9 Commission?

10 A. I'm a compliance specialist in the
11 Commission's safety and consumer protection division,
12 business practices investigations.

13 Q. Please briefly describe your responsibilities
14 as they pertain to this matter.

15 A. I conduct investigations on the business
16 practices of regulated utilities and transportation
17 companies. As part of those duties, I would
18 investigate companies that appear to be operating as
19 transportation company without the necessary
20 certificate or permit.

21 Q. Did you conduct such an investigation of
22 Careful Movers?

23 A. I did. The investigation is documented,
24 Staff investigation, Daniel John Busby, d/b/a Careful
25 Movers, Docket No. TV-071670. It's dated October 2007.

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1 Q. Can you please turn to what's been marked as
2 Exhibit 1. Is Exhibit 1 a true and correct copy of
3 that investigation report?

4 A. It is.

5 Q. And what will your testimony cover this
6 afternoon?

7 A. The investigation.

8 Q. I would like to turn first to the status of
9 Careful Movers' operating authority. Does Careful
10 Movers currently hold Commission authority to transport
11 household goods in Washington?

12 A. It does not.

13 Q. Did Careful Movers ever have that authority?

14 A. It did.

15 Q. When did the Company lose the authority?

16 A. February 9th, 2006. The permit was canceled
17 for failure to file the 2004 annual report and pay the
18 2005 regulatory fees in Docket No. TV-051482.

19 Q. Please turn to what's been marked as
20 Exhibit 2. Is Exhibit 2 a true and correct copy of the
21 Commission's final order in that docket?

22 A. It is.

23 Q. Did the Commission follow up this order with
24 any written communication with the Company?

25 A. It did. A letter was sent under the

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1 executive secretary, Carol Washburn's name, on February
2 21, and the letter explains to the Company the meaning
3 of the final order in Docket TV-051482. It provided
4 information on what steps the Company could take to
5 resume operations by submitting an application, how he
6 could obtain such an application, and it provided
7 information on what would happen if the UTC received
8 information or proof that Careful Movers continued to
9 operate without the permit.

10 Q. Please turn to what's been marked and
11 admitted as Exhibit 3. Is this a true and accurate
12 copy of the Commission letter sent to Careful Movers on
13 February 21st, 2006?

14 A. It is.

15 Q. Did the Commission provide any additional
16 technical assistance to Careful Movers after its permit
17 was canceled?

18 A. It did. On February 15th, 2006, special
19 investigator John Foster went to the Company's office
20 in Everett. He had appeared there to conduct a
21 previously scheduled safety compliance review, and so
22 he discussed the status of the Company's permit with
23 Mr. Busby and the office manager.

24 He determined that because the permit had
25 been canceled that the CR should be basically stopped

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1 or postponed until Mr. Busby's permit had been
2 reissued. He discussed the rules relating to filing
3 the annual reports, payment of regulatory fees, and how
4 to apply for that permit, and he provided the permit
5 application, the annual report forms to Mr. Busby and
6 his office manager.

7 Q. Did you receive declarations from Mr. Foster
8 in preparation for each of these proceedings today?

9 A. I did.

10 Q. And can you turn to what's been marked and
11 admitted as Exhibit 4 and Exhibit 5? Are these true
12 and accurate copies of those declarations?

13 A. They are.

14 Q. To your knowledge, has the Commission
15 received any communications from Mr. Busby or Careful
16 Movers since Mr. Foster's visit?

17 A. No, other than the request for mitigation
18 that was received on December 17th, 2007, we've had no
19 contact from Mr. Busby.

20 Q. Prior to these dockets being initiated, have
21 there been any other penalty assessments or cease and
22 desist orders issued by the Commission against Careful
23 Movers?

24 A. Yes. In February 2000, the Commission issued
25 a cease and desist order to Careful Movers. It was

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1 actually to Dan Busby, d/b/a Careful Movers, Careful
2 and Courteous Movers. It was accompanied by a \$3,000
3 penalty for advertising without a permit to operate and
4 for operating without the permit. Careful Movers
5 applied for mitigation, and it was assigned Docket No.
6 TV-000418.

7 Q. Turning to what's been marked and admitted as
8 Exhibit 6, is this a true and accurate copy of that
9 final order and settlement agreement that you just
10 described?

11 A. It is.

12 Q. I would like you to turn now to Careful
13 Movers' alleged operation after cancellation. After
14 this cancellation order was issued in 2006, did Staff
15 receive information regarding operation by Careful
16 Movers?

17 A. We did. The Commission received a consumer
18 complaint on July 5th, 2007, from Ms. Colleen Kelly. A
19 complaint was opened, and the move was dated December
20 23rd, 2006.

21 Q. I would like to talk about the Kelly move
22 now. Turning to what was admitted as Exhibit 7 -- you
23 may want to have this in front of you for the next few
24 questions -- is this a true and accurate copy of the
25 complaint file for the Kelly move?

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1 A. It is.

2 Q. Do you see anywhere in that file where
3 consumer affairs contacted Careful Movers regarding the
4 move?

5 A. No, I do not.

6 Q. Is there any explanation in the file as to
7 why Staff didn't contact the Company in an effort to
8 resolve the customer's issue?

9 A. There is. On Page 14, the Staff did not
10 contact the Company because it was determined to be
11 nonjurisdictional. The Commission does not have
12 jurisdiction over a customer incurring additional
13 expenses and then wanting the mover to reimburse them
14 for those expenses.

15 Q. Did the complaint file indicate any other
16 results of the complaint?

17 A. The Staff contacted the licensing office at
18 UTC and determined that the Company did not have a
19 permit to move.

20 Q. Did you obtain a declaration from Ms. Kelly
21 about her move?

22 A. I did.

23 Q. Turning to what has been admitted as
24 Exhibit 8, is that a true and accurate copy of that
25 declaration?

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1 A. It is.

2 Q. Did Ms. Kelly provide Staff with move
3 documents?

4 A. She did.

5 Q. Turning to what's been admitted as Exhibit 9,
6 is this a true and accurate copy of the bill of lading
7 provided by Ms. Kelly?

8 A. It is.

9 Q. And according to the declaration and the bill
10 of lading for her move, when did her move take place?

11 A. December 23rd, 2006.

12 Q. Did Ms. Kelly provide you with documentation
13 that she paid for the move?

14 A. She did. She provided a canceled check drawn
15 on her bank for \$495.25, and it was endorsed for
16 deposit by Careful Movers to US Bank.

17 Q. Is this payment documentation contained in
18 Exhibit 10?

19 A. It is.

20 Q. Did Ms. Kelly provide Staff with
21 documentation that Careful Movers reimbursed her for
22 the move?

23 A. She did. She provided a copy of a check
24 drawn on Careful Movers' account, US Bank, for \$245.00,
25 dated July 5th, 2007.

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1 Q. And turning to what was admitted as
2 Exhibit 11, is this a true and accurate copy of the
3 refund documentation you just described?

4 A. It is.

5 Q. Turning now to your investigation regarding
6 the advertising of Careful Movers after its permit had
7 been canceled, during the investigation of Careful
8 Movers, did Staff determine Careful Movers was
9 continuing to advertise its services?

10 A. I did. I determined that it's operating a
11 Web site at www.carefulmovers.net.

12 Q. Did you print off a copy of that Web site
13 during your investigation?

14 A. I did, on August 14th, 2007.

15 Q. Exhibit 12, which has been admitted, is a
16 copy of the Web site that you printed out?

17 A. It is. The Web site consists of three pages:
18 the home page; a contact desk page, which is contact
19 information for the Company, and an online quote form.

20 Q. When was the last time you visited the Web
21 site?

22 A. Yesterday morning, January 14th.

23 Q. Did you print out a copy of the Web site at
24 that time as well?

25 A. I did, and it remains the same as it did in

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1 August of 2007.

2 Q. To clarify the record, Exhibit 13 that has
3 been admitted, is that a copy of the Web site that you
4 printed yesterday?

5 A. It is. Specifically, I would like to draw
6 attention on the home page. It states in part, Whether
7 you are moving a small household or a 100-person
8 office, Careful Movers is the company for the job.

9 Q. Looking at the Web pages in either exhibit,
10 do you see anywhere where Careful Movers lists the
11 permit number on the Web site?

12 A. I did not.

13 Q. Just confirming for the record that the
14 penalty assessment refers specifically to the Careful
15 Movers' Web site as the evidence Careful Movers
16 committed in violation of RCW 81.80.357?

17 A. That is correct.

18 Q. A couple more questions about advertising.
19 Did Staff determine that Careful Movers was advertising
20 or offering its services in other ways?

21 A. I found four online directory listings: Dex
22 Online, AT&T's --, superpages.com, and whitepages.com.

23 Q. Did you print off copies of these directory
24 listings?

25 A. I did. They are in the investigation report

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1 and dated August 14th, 2007, the date they were
2 printed.

3 Q. Turning to what has been admitted as Exhibit
4 14 in this hearing, is this a true and accurate copy of
5 those directory listings that you printed off?

6 A. They are.

7 Q. Did Staff verify the phone numbers for the
8 listings for Careful Movers?

9 A. Yes. I called each number individually, and
10 at each number, a male voice answered the phone and
11 greeted me with, "Careful Movers."

12 Q. Turning to Commission enforcement, can you
13 briefly summarize what enforcement your investigation
14 recommended to the Commission?

15 A. Our recommendation was that the Commission
16 initiate a proceeding against Careful Movers as
17 provided for by RCW 81.04.510 to show cause why the
18 Company's operations are not subject to Title 81.

19 Q. Were there any other recommendations
20 concerning penalty assessment as well?

21 A. We requested that the UTC issue a cease and
22 desist order for the activities, as well as...

23 JUDGE TOREM: Was there a dollar amount,
24 Ms. Hoyt?

25 THE WITNESS: \$1,500 in the original

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1 investigation record.

2 JUDGE TOREM: What's the Commission
3 recommending prior to this hearing?

4 THE WITNESS: We recommended a penalty of
5 \$2,000.

6 JUDGE TOREM: Can you explain for the record
7 what the breakdown on that is?

8 THE WITNESS: \$1,500 for operating without a
9 permit and \$500 for the advertisement, which would be
10 the Web page that does not have the Company's permit
11 number.

12 JUDGE TOREM: Are those the maximum imposable
13 fines in the Commission's laws and regulations for
14 those alleged violations?

15 THE WITNESS: I believe so.

16 JUDGE TOREM: Mr. Fassio, additional
17 questions?

18 MR. FASSIO: Just a few.

19 Q. (By Mr. Fassio) The Company has requested
20 this hearing for mitigation of the penalty which led to
21 the hearing scheduled today in the docket. Does Staff
22 at this time support mitigation on the penalty?

23 A. It does not.

24 Q. Can you summarize why not?

25 A. The Company has been down this road before in

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1 2000. They went the same way. We had a \$3,000
2 proposed penalty. They had a \$1,500 penalty in the
3 settlement agreement. They paid that. They were
4 required to get a permit. They did that, and the cease
5 and desists order was rescinded.

6 When they failed to file the 2004 annual
7 report, they were issued an order telling them that the
8 permit was canceled. Staff followed that up with a
9 letter telling them again that it was canceled and what
10 that meant to them, how they could rectify that and get
11 their permit back and what would happen if they
12 continued to operate without the permit. Staff did an
13 inperson visit with the Company.

14 There is just no way they didn't know they
15 were operating in violation of the law. So Staff
16 believes that they made a conscious decision to not
17 follow the technical assistance given and continue to
18 advertise and operate without the necessary permit to
19 do so legally, so we feel the penalty is warranted.

20 Q. Just lastly to summarize, although you
21 probably already stated it, what relief are you asking
22 for in this proceeding regarding the show-cause docket,
23 TV-071670?

24 A. Staff would ask that the Commission issue a
25 cease and desist order requiring Careful Movers to

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1 cease and desist activity subject to RCW Title 81.

2 MR. FASSIO: Thank you. I have no further
3 questions for Ms. Hoyt.

4 JUDGE TOREM: Mr. Keefe, did you wish to have
5 any cross-examination questions?

6 MR. KEEFFE: Yes.

7

8

9 CROSS-EXAMINATION

10 BY MR. KEEFFE:

11 Q. Ms. Hoyt, how many movers are you presently
12 investigating for complaints similar to those that
13 Mr. Busby is looking at?

14 A. This is the only one assigned to me as staff
15 at the level where we have documentation of the move.

16 Q. Do you try to treat each one of these movers
17 that you investigate in the same way?

18 A. I don't know how else to treat them but in
19 the same way, so yes.

20 Q. What kind of criteria do you look for in
21 terms of reducing the penalties?

22 A. That decision would not be mine.

23 Q. Do you take into account the amount of
24 complaints that have been filed against a particular
25 mover?

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1 A. Again, that decision would not be mine as
2 staff.

3 Q. Well, with your familiarity with what Staff
4 does, is that taken into consideration?

5 A. I'm sorry --

6 JUDGE TOREM: Ms. Hoyt, you may not have the
7 final decision, but if there is any input that you make
8 or any recommendation you make to a supervisor, why
9 don't you answer Mr. Keefe's questions from your
10 position as the investigator and any recommendations
11 you would make of the chain.

12 THE WITNESS: I suppose that consumer
13 complaints could be taken into account. That could be
14 a factor of it, sure.

15 Q. As far as you know, is the Colleen Kelly
16 complaint the only complaint we are dealing with on
17 Careful Movers?

18 A. To my knowledge.

19 MR. KEEFE: I don't have anything further.

20 JUDGE TOREM: Any redirect?

21

22

23 REDIRECT EXAMINATION

24 BY MR. FASSIO:

25 Q. Ms. Hoyt, it's your responsibility to

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1 recommend to investigate the company and recommend that
2 the Commission assess violations or assess penalties
3 according to Commission rules; is that correct?

4 A. That's correct.

5 Q. And when a penalty is assessed, that penalty
6 is due unless the Company requests for mitigation; is
7 that correct?

8 A. That's correct. If a Company submitted a
9 request for mitigation and they presented in the form
10 their reasons why Staff would investigate that and
11 respond accordingly, and we could agree.

12 Q. So you don't have any response to a request
13 for mitigation if there are no reasons given?

14 A. No, I don't.

15 MR. FASSIO: No further redirect.

16 JUDGE TOREM: Ms. Hoyt, are you aware that
17 Mr. Busby or Careful Movers since the issuance of the
18 show-cause order or the penalty assessment have taken
19 any steps to obtain a permit from the UTC?

20 THE WITNESS: I checked with our licensing
21 office on Friday of last week, and my understanding is
22 that no one there has been contacted to request an
23 application or with assistance for filling one out.

24 JUDGE TOREM: To the best of your knowledge,
25 has there been any contact, other than from Mr. Keefe

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1 in regard to appearing and representing his client in
2 the course of these proceedings, hearings, has there
3 been any contact from Mr. Busby or Careful Movers with
4 Commission staff?

5 THE WITNESS: Not that I'm aware of.

6 JUDGE TOREM: Mr. Fassio, does that raise
7 additional questions for you?

8 MR. FASSIO: No.

9 JUDGE TOREM: Any other questions, Mr. Keefe?

10

11

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FURTHER CROSS-EXAMINATION

13 BY MR. KEEFE:

14 Q. You said that Mr. Busby hasn't provided any
15 mitigating circumstances, but you also testified that
16 you would take into consideration your recommendation
17 the amount of complaints that have been brought against
18 him. In this case, I'm assuming that the minimum
19 amount of complaints that you could have would be one,
20 isn't that correct, in terms of going after one of
21 these people for being unlicensed?

22 JUDGE TOREM: Ms. Hoyt, did you understand
23 the question?

24 THE WITNESS: I'm not real sure. They seem
25 to be two different questions to me.

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1 MR. FASSIO: Can I ask counsel to clarify?
2 Are you referring now to the penalty assessment for the
3 single violation of the move, or are you referring to
4 the general investigation that led to the show-cause
5 proceeding?

6 Q. (By Mr. Keefe) In her previous testimony, she
7 said she only knew of the Colleen Kelly complaint.
8 Now, if there was ten complaints that you were
9 investigating in a move, would that be more egregious
10 in terms of your recommendation of the type of fine
11 than a single complaint?

12 A. I don't believe so. I believe the rule is
13 \$1,500 penalty for continuing to operate. I don't
14 believe that Staff would recommend a \$1,500 penalty for
15 each documented case of a move.

16 Q. Well, apparently a few years ago, there was
17 an agreement reached with Careful Movers in terms of
18 reducing the penalties that the Commission had asked or
19 the staff had asked for. What were the mitigating
20 factors there?

21 A. I'm sorry; I'm not familiar with that. I
22 would need to read the settlement agreement to
23 determine that information.

24 Q. And you haven't read the settlement
25 agreement?

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1 A. Not to that extent.

2 MR. KEEFE: I have nothing further.

3 JUDGE TOREM: Are there any other questions
4 for this witness?

5 MR. KEEFE: I have none.

6 JUDGE TOREM: Mr. Fassio?

7

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9 RE-REDIRECT EXAMINATION

10 BY MR. FASSIO:

11 Q. Ms. Hoyt, do you see any information in the
12 record that would lead you to change your
13 recommendation that Staff not mitigate this penalty?

14 A. I do not. We have documentation of a move.
15 We have copies of his Web site, which he's continuing
16 to operate even today.

17 MR. FASSIO: Thank you. I have no further
18 questions.

19 JUDGE TOREM: Mr. Fassio, you've had a
20 witness presented and the 14 exhibits offered and
21 admitted. Was there any other evidence that Commission
22 staff wanted to present this afternoon?

23 MR. FASSIO: No.

24 JUDGE TOREM: Mr. Keefe, did you have any
25 evidentiary items that you wished considered in the

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1 case, or do we simply need to hear an argument as to
2 the mitigation and what you believe might be an
3 appropriate penalty on your client?

4 MR. KEEFE: Just argument.

5 JUDGE TOREM: Did you want to go first,
6 Mr. Keefe?

7 MR. KEEFE: However you guys do it.

8 JUDGE TOREM: I haven't heard much from you,
9 so I'm interested to have rather than more of a tennis
10 match here of arguments, then I'll hear from you first.

11 MR. KEEFE: That's fine. This case was just
12 turned over to me probably the day that I sent in the
13 recommendation on this case. I've known Mr. Busby for
14 a long time, and I know that he's been trying to get
15 the money up, get the company running right so that he
16 can get right with the state in terms of these permits.

17 From the history of the material I have,
18 apparently he has talked to people with the Department
19 to try to get the license back. It goes back,
20 apparently, to 2004 and getting his annual reports in.
21 He was relying a lot for the permitting process on his
22 office manager who basically hasn't been overly
23 competent in doing this.

24 In speaking with Mr. Fassio about this,
25 Mr. Fassio referred me to people with the Department

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1 that can help people work their way through this
2 process. This is something that Mr. Busby wants to do.
3 He wants to get up and running properly. If he had the
4 application in at the time of the hearing, it would
5 probably help him in terms of possibly mitigation of
6 the finds or dating of any order that might be
7 forthcoming.

8 He hasn't done that because he has met with a
9 business consultant that I referred him to, and I spoke
10 with him today and he is working with Mr. Busby to try
11 to figure out how to get this all put together, get the
12 money raised, get the application in and the insurance
13 filed. At this point, it's basically a financial issue
14 in terms of trying to get it up and running and getting
15 the application with the State. Any amounts of money
16 that are going to be levied to him will certainly slow
17 down that process. He has a lot of trucks and
18 employees, apparently, and wants to get right with the
19 State on this.

20 I would ask that, number one, that any cease
21 and desist order that comes out at least have maybe a
22 window of a week or so prior to the issuance of that
23 order as well as a reduction on these fines so he can
24 get his application in. Like I say, he's consulting a
25 person I know and trust to get him to do this right so

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1 he's not coming back and forth doing it improperly, so
2 that's basically our position on this.

3 JUDGE TOREM: Mr. Fassio?

4 MR. FASSIO: The evidence shows and Careful
5 Movers has admitted or conceded through its counsel
6 that it is conducting moves for compensation in the
7 state of Washington, which is an activity regulated by
8 the Commission, and the Company has engaged in this
9 activity without the required permit. The evidence
10 shows their permit has been canceled, and they never
11 have applied for or been granted a new permit. The
12 fact that Careful Movers advertises its moving services
13 on the internet shows that they are continuing to offer
14 to transport household goods and that their Web site
15 still does not list a Commission permit number because
16 they do not have one.

17 The evidence presented shows that they have
18 received considerable technical assistance from the
19 Commission on these issues going as far as back as
20 February of 2006; that they have been previously
21 assessed penalties and a cease and desist order. They
22 are well aware of the Commission orders; therefore, the
23 process for paying and permit, consequences of their
24 actions for not doing so, the fact that they've taken
25 none of these steps and made no further contact with

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1 Staff to comply, particularly even in the interim since
2 the notice of hearing in this docket was issued, that
3 they continue to operate shows a conscious decision to
4 operate without a permit in violation of Commission
5 rules.

6 Staff has made their prima facie case, and
7 the Company has not appeared itself to provide
8 testimony or otherwise rebut Staff's allegations with
9 regard to the show-cause proceeding. If Careful Movers
10 intends to conduct operations subject to Title 81,
11 Staff certainly supports the effort to Careful Movers
12 to come into compliance with the Commission rules and
13 operate legally by successfully obtaining a household
14 goods permit, but as of this juncture, they have not
15 been granted a permit, so Staff would ask the
16 Commission first that they not mitigate the penalty
17 assessed to Careful Movers in Docket TV-072234; that
18 the Commission find Careful Movers has not met its
19 burden in Docket TV-071670, and that the Commission
20 issue a cease and desist order so that it can stop this
21 carrier from operating so long as it does not have a
22 valid permit before the Commission, and if at such time
23 the carrier is successfully granted a permit, the
24 Commission may at that point consider revoking the
25 cease and desist order, but in the meantime, Staff

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1 recommends that this company cease and desist from
2 operating. Thank you.

3 JUDGE TOREM: Mr. Keefe, is there anything
4 else I need to hear on the case?

5 MR. KEEFE: If the Commission is interested
6 in having Mr. Busby operate with a permit by reducing
7 the fine would certainly help facilitate an early
8 application after his final consultation with the
9 business consultant I put him in touch with, which is
10 probably the intent of everyone is to get him licensed,
11 properly permitted, and to put an extra burden in his
12 way in terms of getting the application in I don't
13 think is appropriate.

14 Depending on what the fine is, if there would
15 be at least a payment program that wouldn't hold him up
16 in terms of applying. If there is an outstanding fine,
17 possibly holding up his application, and that's all I
18 have.

19 JUDGE TOREM: Thank you, sir.

20 MR. FASSIO: May I address that? Thank you.
21 If I understand correctly, the Company would propose
22 perhaps a payment arrangement or something to make the
23 penalty assessment less of an up-front burden, and
24 Staff would support payment arrangements of the penalty
25 assessment in full, not to exceed 12 monthly payments,

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1 if that's amenable to the Commission and Careful
2 Movers.

3 MR. KEEFFE: It's more amenable than paying it
4 all up front, yes. If you do find there is the full
5 fine, a payment program of that type would probably
6 help everything move forward.

7 JUDGE TOREM: All right. Thank you,
8 Mr. Fassio. Thank you, Mr. Keefe. My plan then is to
9 reduce this to an order consolidated of these two
10 dockets. The order will contain findings of fact and
11 conclusions of law. It will be preceded by a
12 memorandum opinion which lays out and surveys the
13 evidence in this case needed to meet the prima facie
14 burden of the Commission on its allegation. That will
15 be relatively short based on the concessions made. It
16 will address the burden of the applicant for the
17 hearing to rebut any of that evidence, and again, based
18 on how facts went today, that should be relatively
19 short as well.

20 I will spend some time looking at the record
21 and any basis for the requested mitigation of the
22 penalty and the cease and desist order being requested
23 as well and then address as needed a payment plan as
24 part of the opinion. It may be that there is no direct
25 administrative code provision that grants me as a judge

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1 the ability to set up that payment plan, but it would
2 be something that Commission staff having agreed to
3 hear can set up for whatever the payment will be of the
4 entire penalty. Having not issued an order with that
5 particular language before, I will look into it.

6 I think I will be able to get this out by the
7 end of the month at the latest, so plan on by the 31st
8 of January or the 1st of February to see the
9 consolidated initial order come out. Mr. Keefe, this
10 is an initial order, as I'm an administrative law
11 judge. There are some provisions for making appeal for
12 a final order if there is disagreement with any of the
13 findings or conclusions or the order itself, and that
14 goes to the full Commission, which are three appointed
15 UTC commissioners. That will be explained in the
16 notice attached at the back of the hearing. Any
17 questions about the process from here; Mr. Keefe?

18 MR. KEEFE: No.

19 JUDGE TOREM: Mr. Fassio?

20 MR. FASSIO: No.

21 JUDGE TOREM: Is there anything else we need
22 to do on the record today?

23 MR. KEEFE: I don't believe so.

24 JUDGE TOREM: Then again, I have the witness
25 testimony and the Commission's 14 exhibits. Mr. Keefe,

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1 you weren't submitting any evidence, just the argument,
2 so I think that completes our record. Any other
3 questions?

4 MR. KEEFE: No.

5 MR. FASSIO: No.

6 JUDGE TOREM: We are adjourned.

7 (Hearing adjourned at 2:34 p.m.)

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