

Page 1

1 BEFORE THE WASHINGTON STATE
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 In the Matter of the)
 Investigation of)
 5) Docket Nos.
 LEAVENWORTH SHUTTLE & TAXI, LLC) TE-161020 &
 6) TE-161021
 For Compliance with WAC) (Consolidated)
 7 480-30-221)
 8)

11 BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
 Pages 1 - 33
 12 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

15 9:31 A.M.
 16 October 20, 2016
 17 Washington Utilities and Transportation Commission
 1300 South Evergreen Park Drive Southwest
 18 Olympia, Washington 98504-7250

20 REPORTED BY: ANITA W. SELF, RPR, CCR #3032
 21 Buell Realtime Reporting, LLC.
 1325 Fourth Avenue
 22 Suite 1840
 Seattle, Washington 98101
 23 206.287.9066 | Seattle
 360.534.9066 | Olympia
 24 800.846.6989 | National
 25 www.buellrealtime.com

Page 3

1 HEARING
 2 VOLUME I: INDEX

4 WITNESSES: PAGE

6 SANDI YEOMANS
 Examination by Mr. Shearer 8

8 DAVID WITT
 Testimony by Mr. Witt. 17

10 DAVE PRATT
 Examination by Mr. Shearer 24

13 EXHIBITS FOR IDENTIFICATION MARKED/ADMITTED

14 SY-1 Assignment Report, Motor Carrier
 Safety 10

15 SY-2 Compliance Review 11

17 * * * * *

Page 2

2

1 A P P E A R A N C E S
 2 ADMINISTRATIVE LAW JUDGE:
 3 RAYNE PEARSON
 Washington Utilities and
 4 Transportation Commission
 1300 So. Evergreen Park Drive SW
 5 P.O. Box 71750
 Olympia, Washington 98504
 6 360.664.1136
 rpearson@utc.wa.gov

8 FOR WASHINGTON UTILITIES AND
 9 TRANSPORTATION COMMISSION:
 10 BRETT P. SHEARER
 Attorney General of Washington
 11 P.O. Box 40128
 Olympia, Washington 98504-0128
 12 360.664.1187
 brets@atg.wa.gov

14 FOR LEAVENWORTH SHUTTLE & TAXI:
 15 DAVID WITT, In Propria Persona

17 ALSO PRESENT:
 18 Dave Pratt
 Sandi Yeomans
 19 * * * * *

Page 4

4

1 OLYMPIA, WASHINGTON; OCTOBER 20, 2016
 2 9:31 A.M.

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

6 JUDGE PEARSON: Good morning. Let's be on
 7 the record. This is Docket TE-161021, which is
 8 captioned In the Matter of the Investigation of
 9 Leavenworth Shuttle & Taxi, LLC, for Compliance with WAC
 10 480-30-221.

11 My name is Rayne Pearson. I'm the
 12 administrative law judge presiding over today's brief
 13 adjudicative proceeding. Today is Thursday, October 20,
 14 2016, and the time is approximately 9:35 a.m.

15 On September 28th, 2016, the Commission
 16 issued a Notice of Intent to Cancel Certificate as an
 17 Auto Transportation Carrier, Notice of Brief
 18 Adjudicative Proceeding; Setting Time for Oral
 19 Statements.

20 The Commission issued the Notice of Intent
 21 to Cancel following a compliance review conducted by
 22 Commission Staff in July 2016, which resulted in a
 23 proposed unsatisfactory safety rating for Leavenworth
 24 Shuttle.

25 The company had until October 10th, 2016, to

<p>Page 5</p> <p>5</p> <p>1 file a proposed safety management plan, and the company 2 also had 45 days from the day it received the notice of 3 the proposed unsatisfactory safety rating on 4 September 7th, 2016, to request and receive an upgraded 5 safety rating, and Monday, October 24th, is the 45th 6 day; is that correct? 7 MR. PRATT: (Nods head.) 8 JUDGE PEARSON: So at the conclusion of the 9 hearing, I may be issuing a ruling from the bench 10 regarding the status of the company's auto 11 transportation certificate. 12 And before we came on the record this 13 morning, we spoke briefly about the penalty assessment 14 in Docket TE-161020 in the amount of \$19,800, and 15 Mr. Witt indicated that he filed an application for 16 mitigation, and Staff indicated that that has not yet 17 been received. 18 But I do think that it makes sense to 19 address the penalty while we're all here today, which 20 will give you, Mr. Witt, an opportunity to explain any 21 corrective actions that you have taken to prevent the 22 violations from recurring, and Staff can consider that 23 information and then make a recommendation about whether 24 or not the penalty should be reduced. 25 So I am assuming that Staff has no objection</p>	<p>Page 7</p> <p>7</p> <p>1 penalty. 2 So do you have any questions before we get 3 started? 4 MR. WITT: No. No, I don't. 5 JUDGE PEARSON: Okay. So first let's take a 6 short appearance from Commission Staff. 7 MR. SHEARER: Hello, Commissioner -- or 8 your Honor. My name is Brett Shearer. I'm assistant 9 attorney general representing Commission Staff. 10 JUDGE PEARSON: Thank you. 11 And for the company, Mr. Witt, if you could 12 state your first and last name for the record, spelling 13 your last name, and give us your address, phone number 14 and e-mail address. 15 MR. WITT: Sure. My name is David Witt, 16 W-I-T-T. My address is 11610 Eagle Creek Road, 17 Leavenworth, Washington 98826. Phone number is 18 (509) 670-1849. E-mail is David_Witt, W-I-T-T, 19 @hotmail.com. 20 JUDGE PEARSON: Thank you, Mr. Witt. 21 So Mr. Shearer, you may proceed with the 22 issue of the proposed unsatisfactory safety rating 23 whenever you're ready. 24 MR. SHEARER: Yes, your Honor. And I would 25 call Ms. Sandra Yeomans to the stand, the Staff</p>
<p>Page 6</p> <p>6</p> <p>1 to consolidating Dockets TE-161021 and TE-161020? 2 MR. SHEARER: No objection, your Honor. 3 JUDGE PEARSON: Okay. So then those matters 4 are consolidated and we will hear from the parties on 5 both dockets this morning. 6 So when I call on each party to testify, I 7 will swear you in with an oath of witness, which means 8 that everything that you say here today will be under 9 oath and is considered sworn testimony. 10 And so for the court reporter's benefit, 11 please speak slowly and clearly and into the microphone. 12 Also make sure that we only speak one at a time. Please 13 don't interrupt when anyone else is speaking. And once 14 you're sworn in, you can present your testimony and 15 introduce any exhibits, if you have pre-filed any, and I 16 will rule on the admissibility of each of those. 17 So I think first what we should do is have 18 Staff address the Notice of Intent to Cancel, and then 19 following Staff's presentation, the company will have 20 the opportunity to ask Staff's witness any questions, 21 and then you can present your testimony to address the 22 violations and the penalty assessment. 23 Once you're done testifying, Staff's 24 attorney may have some questions for you, and then Staff 25 can make a final recommendation with respect to the</p>	<p>Page 8</p> <p>EXAMINATION BY MR. SHEARER / YEOMANS 8</p> <p>1 investigator in this case. 2 JUDGE PEARSON: Okay. Ms. Yeomans, if you 3 could stand and raise your right hand. 4 5 SANDI YEOMANS, witness herein, having been 6 first duly sworn on oath, 7 was examined and testified 8 as follows: 9 10 JUDGE PEARSON: Okay. You may be seated. 11 *** EXAMINATION BY MR. SHEARER *** 12 BY MR. SHEARER: 13 Q. Hello, Ms. Yeomans. Can you please state your 14 name for the record and spell your last name? 15 A. My name is Sandi Yeomans. Last name is 16 Y-E-O-M-A-N-S. 17 Q. And what is your position here at the UTC, 18 Ms. Yeomans? 19 A. I'm a special investigator. 20 Q. And can you please explain your role in Dockets 21 TE-161020 and TE-161021 involving Leavenworth Shuttle & 22 Taxi, LLC? 23 A. I was an investigator for the compliance review. 24 Q. And can you please explain what an investigation 25 or a compliance review is?</p>

Page 9

EXAMINATION BY MR. SHEARER / YEOMANS 9

1 A. The compliance review is going into the company
 2 and checking to see if they are in compliance with the
 3 laws and regulations.
 4 **Q. And did you document your review of Leavenworth
 5 Shuttle & Taxi?**
 6 A. Yes, I did.
 7 **Q. And how did you document that?**
 8 A. It was documented on the CAPRI report, which we
 9 file after doing a review.
 10 **Q. Thank you, Ms. Yeomans.
 11 I'd like to turn your attention to a proposed
 12 exhibit from Staff.**
 13 MR. SHEARER: Your Honor, I haven't given
 14 you a copy yet. Would you like --
 15 JUDGE PEARSON: I would like a copy.
 16 MR. SHEARER: I will take a moment to do
 17 that here.
 18 JUDGE PEARSON: Does Mr. Witt have a copy as
 19 well?
 20 MR. SHEARER: I'll give him one.
 21 JUDGE PEARSON: Thank you.
 22 BY MR. SHEARER:
 23 **Q. All right.
 24 Ms. Yeomans, I will turn your attention to the
 25 document in front of you labeled Exhibit No. SY-1.**

Page 10

EXAMINATION BY MR. SHEARER / YEOMANS 10

1 Do you have that document in front of you?
 2 A. Yes.
 3 **Q. And what -- can you explain what this document
 4 is?**
 5 A. This is the assignment report, which is a
 6 summary of the investigation.
 7 **Q. And is this document a true and correct copy of
 8 that report that you completed?**
 9 A. Yes.
 10 MR. SHEARER: Your Honor, I would move to
 11 admit Exhibit SY-1 into the record.
 12 JUDGE PEARSON: And Mr. Witt, do you have
 13 any objection to admitting this into the record?
 14 MR. WITT: No, I do not.
 15 JUDGE PEARSON: Okay. Then I will admit
 16 that and mark it Exhibit No. SY-1.
 17 (Exhibit No. SY-1 marked and
 18 admitted.)
 19 BY MR. SHEARER:
 20 **Q. I'll direct you to turn your attention to a
 21 subsequent Exhibit labeled SY-2.
 22 And do you recognize this document, Ms. Yeomans?**
 23 A. Yes.
 24 **Q. And what is this document?**
 25 A. This is Part A of a CAPRI report that explains

Page 11

EXAMINATION BY MR. SHEARER / YEOMANS 11

1 that it's a compliance review, who was contacted during
 2 that review, what their classification is, number of
 3 vehicles, and overview of the company.
 4 **Q. And is this a true and correct copy of the
 5 compliance review you completed during your
 6 investigation of Leavenworth Shuttle & Taxi, LLC, in
 7 this case?**
 8 A. Yes.
 9 MR. SHEARER: Your Honor, I would move to
 10 admit Exhibit SY-2 into the record.
 11 JUDGE PEARSON: Okay. Mr. Witt, do you have
 12 any objection to this exhibit?
 13 MR. WITT: I don't.
 14 JUDGE PEARSON: Okay. Then I will admit and
 15 that and mark it as SY-2.
 16 MR. SHEARER: Thank you, your Honor.
 17 (Exhibit No. SY-2 marked and
 18 admitted.)
 19 BY MR. SHEARER:
 20 **Q. Now, I'd like to explore some of the contents of
 21 this report with you, Ms. Yeomans.
 22 If you could turn to page 3 of that exhibit, the
 23 top of the document says Part B, Violations, just for
 24 everybody's reference.
 25 Now, what is this section of this document, this**

Page 12

EXAMINATION BY MR. SHEARER / YEOMANS 12

1 Part B, Ms. Yeomans?
 2 A. This is Part B of the compliance report that is
 3 a listing of all violations that were discovered during
 4 the compliance review.
 5 **Q. And I will call your attention to the -- in the
 6 upper left corner, there's a "1" and then the
 7 terminology "Federal" and "Critical."**
 8 **Can you explain what that means, Ms. Yeomans?**
 9 A. That is the first violation. It is a federal
 10 violation, and it is critical, which is -- I don't know
 11 the word. It's more severe than a regular violation.
 12 **Q. And then one column over, there's a -- it says
 13 "Primary" and there's a list of numbers there. Can you
 14 explain what that column heading means?**
 15 A. That would be the regulation that was not done.
 16 **Q. And if I flip through this page and the next few
 17 pages, I see 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and
 18 13.
 19 Does that -- so that all indicates that you
 20 found and documented 13 types of violations; is that
 21 accurate?**
 22 A. That's correct.
 23 **Q. And the headings and columns that we just went
 24 through for the first one apply to all of those.
 25 They're similarly labeled; is that correct?**

Page 13

EXAMINATION BY MR. SHEARER / YEOMANS 13

1 A. Correct.

2 **Q. Now, to start off with, the first Federal**

3 **Critical violation that we just discussed, there's a**

4 **description there in that box, and it says, "Using a**

5 **driver before the motor carrier has received a negative**

6 **preemployment controlled substance test result."**

7 **Can you please explain what that means?**

8 A. Before a driver is eligible to drive a

9 commercial motor vehicle, they have to have a

10 preemployment and receive the results back from that

11 preemployment test, and it has to be negative before

12 they are able to drive a commercial motor vehicle, and

13 that was not done.

14 **Q. And Ms. Yeomans, can you please explain how you**

15 **determined that Leavenworth Shuttle & Taxi had not**

16 **performed those, had not complied with that rule?**

17 A. I contacted their consortium, who gave me a list

18 of all tests that had been given, and in these two

19 cases, a preemployment test had not been done.

20 **Q. And moving on to the violation in Part B labeled**

21 **No. 2, where it says "State Critical," and there's**

22 **another list of CFR numbers there, in that box, there's**

23 **a description that says, "Using a driver not medically**

24 **examined and certified."**

25 **Can you please explain what that means,**

Page 14

EXAMINATION BY MR. SHEARER / YEOMANS 14

1 Ms. Yeomans?

2 A. Yeah. It's a state violation, because they are

3 an intrastate company, and in order to drive a

4 commercial motor vehicle, they do need to be medically

5 certified by an examiner that's on the national

6 registry. And in this case, there was no certificate in

7 their file. And when I asked Mr. Witt, he said they had

8 not received any examinations.

9 **Q. And -- well, you answered my next question.**

10 **Please explain how you knew or how you came to**

11 **the conclusion that the company had not complied with**

12 **that requirement. Do you have anything to add to that,**

13 **Ms. Yeomans?**

14 A. I don't believe so.

15 **Q. Thank you.**

16 **And we'll move on down to the number 3 where**

17 **it's again labeled "State Critical." The next column**

18 **over, there's a series of CFR numbers, and the**

19 **description below says, "Failing to require a driver to**

20 **prepare driver vehicle inspection report."**

21 **Can you please explain what that means?**

22 A. At the end of each day, a carrier that

23 transports passengers needs to fill out a driver vehicle

24 inspection report stating that they inspected the

25 vehicle, and if there was any critical things that were

Page 15

EXAMINATION BY MR. SHEARER / YEOMANS 15

1 wrong that needed to be corrected, and they were not

2 done.

3 **Q. And can you please explain how you concluded**

4 **that that was not done in this case?**

5 A. When inspecting the maintenance for this

6 company, I found that there was no driver vehicle

7 inspection reports. And I asked Mr. Witt, he said they

8 had not done them in the past, but they had just started

9 doing the vehicle inspection reports.

10 **Q. Thank you.**

11 **Now, those three categories of violation we just**

12 **discussed, those are all labeled "Critical" in this Part**

13 **B.**

14 **Can you please give a little more detail as to**

15 **what a critical violation is?**

16 A. I forgot the word again. A critical violation

17 means that the carrier is operating in an unsafe manner

18 in those categories.

19 **Q. And if I turn your attention to a few pages**

20 **later, page 6 of Exhibit SY-2, in large bold letters, I**

21 **see the word "Unsatisfactory."**

22 **Can you please explain what that means,**

23 **Ms. Yeomans?**

24 A. That is a safety rating that is given to this

25 compliance review.

Page 16

EXAMINATION BY MR. SHEARER / YEOMANS 16

1 **Q. And is there a relationship between the critical**

2 **violations that we just discussed and this**

3 **unsatisfactory relationship?**

4 A. Yes. If you look to the right, it says "Rating

5 Factors," and because there was two critical [sic] in

6 one factor and one critical in factor four, that would

7 put them in an unsatisfactory status.

8 **Q. And what happens when a company receives an**

9 **unsatisfactory rating?**

10 A. At the closing, we give them information on how

11 to upgrade their status, explain what happens if they do

12 not.

13 **Q. And did you inform Leavenworth Shuttle & Taxi**

14 **that -- of their proposed unsatisfactory rating?**

15 A. Yes.

16 **Q. And have you had -- or have you received a**

17 **written plan for corrective actions from Leavenworth**

18 **Shuttle & Taxi since this proposed rating?**

19 A. No.

20 MR. SHEARER: Thank you, Ms. Yeomans.

21 Now, your Honor, the federal -- the critical

22 violations that we walked through with Ms. Yeomans,

23 those three categories, as you can see, there's also

24 another ten non-critical violations. Staff's happy to

25 walk through those if you'll find those helpful. I

Page 17

1 didn't think that would be necessary, but --
 2 JUDGE PEARSON: It's not necessary.
 3 MR. SHEARER: Thank you. Then I have no
 4 further questions for Ms. Yeomans, your Honor.
 5 JUDGE PEARSON: Okay.
 6 Mr. Witt, do you have any questions for
 7 Ms. Yeomans?
 8 MR. WITT: No -- well, no, I don't believe I
 9 do.
 10 JUDGE PEARSON: Okay. So if you would
 11 please stand and raise your right hand, then we can move
 12 on to the penalty.
 13
 14 DAVID WITT, witness herein, having been
 15 first duly sworn on oath,
 16 was examined and testified
 17 as follows:
 18
 19 *** TESTIMONY BY MR. WITT ***
 20 JUDGE PEARSON: Please be seated. So I
 21 didn't receive any exhibits from you in advance of the
 22 hearing. It does look like you brought something with
 23 you. Did you want to identify that?
 24 MR. WITT: I did. I have my response to the
 25 13 violations in here, and then also the Aspen reports

Page 18

1 and my annuals, and my alcohol and controlled substances
 2 training form, as well as the consortium that we now are
 3 a part of for our drivers and their medicals and all
 4 that.
 5 JUDGE PEARSON: Okay. So is that your
 6 proposed safety management plan?
 7 MR. WITT: Well, it's my response to -- it's
 8 not like it's a detailed A, B, C, D. I just did it.
 9 It's -- we're a very small company. I didn't write up,
 10 I'm going to do X, Y, Z, X, Y, Z.
 11 A lot of the things that she discussed,
 12 especially those critical ones, I got on right away. In
 13 fact, when she was there, we were in the process of some
 14 of those and completed them and got her back those
 15 changes, you know, especially, you know, the
 16 preemployment test, every --
 17 JUDGE PEARSON: Well, hold on. Let's walk
 18 through them one by one. I guess what I wanted to know
 19 is if you wanted to distribute them or --
 20 MR. WITT: I would love to, yes.
 21 JUDGE PEARSON: So has this been mailed to
 22 the Commission?
 23 MR. WITT: It has not. I didn't recognize
 24 the dates on the mailing. There was a lot of paperwork,
 25 and I overlooked that. And so once I missed the date, I

Page 19

1 just thought I'd bring it with me when I came.
 2 JUDGE PEARSON: Okay. So this looks to me
 3 more like a response to the penalty assessment.
 4 MR. WITT: Okay.
 5 JUDGE PEARSON: And so I -- you should --
 6 rather than me admitting it into the record as an
 7 exhibit, I would prefer that you file a copy with the
 8 records center before you leave here today --
 9 MR. WITT: Okay.
 10 JUDGE PEARSON: -- since you do have a right
 11 to respond to the penalty assessment. And then I think
 12 probably most of what's in here you're going to testify
 13 to --
 14 MR. WITT: Right.
 15 JUDGE PEARSON: -- today would be my guess.
 16 So does Staff have any objection to treating
 17 that in this way?
 18 MR. SHEARER: No, your Honor. The more
 19 information the better in this case.
 20 JUDGE PEARSON: Okay. So why don't we walk
 21 through each of the violations, and you can just explain
 22 why the violation occurred, and then any steps that
 23 you've taken to correct the violation to prevent it from
 24 recurring.
 25 And we'll start with 49 CFR Part 382.301(a),

Page 20

1 using a driver before receiving a negative preemployment
 2 controlled substance and alcohol use test result.
 3 MR. WITT: Okay. So when -- well, I'm going
 4 to start a little bit at the beginning.
 5 JUDGE PEARSON: Sure.
 6 MR. WITT: When I first purchased this
 7 company a little over three years ago, there was
 8 nothing -- it was kind of blue sky that I was
 9 purchasing, and there was no -- nothing in procedures,
 10 what consortium to belong to, anything that was -- it
 11 was not transferred across, so I walked in blindly. My
 12 background is in tourism and recreation.
 13 I had a very steep learning curve, and that
 14 critical violation occurred because I was ignorant to
 15 the fact that it needed to occur. I knew that the CDL
 16 drivers that I had hired had tests with their other
 17 companies that they worked with, and I assumed that
 18 those would be sufficient, you know, if we needed to
 19 look back on them. I did not have them take the
 20 preemployment test and so -- because I just didn't know.
 21 JUDGE PEARSON: Okay. And so what have you
 22 done to correct that?
 23 MR. WITT: In part of our hiring process,
 24 and immediately from that point -- because when I was
 25 made aware of it, I immediately contacted Foley, who I'd

Page 21

1 been working with since we purchased the company, and
 2 they were not really willing to work with me locally
 3 anyway. I'd spoken with Confluence Health, who does a
 4 consortium in the local area there in that Chelan
 5 County, Okanogan, Douglas County area, and got our
 6 company involved with them, and set up a consortium with
 7 them, immediately had all my employees that were driving
 8 any vehicle go in for a preemployment, and then as well
 9 as their physicals for driving. And then they've become
 10 part of the -- we've become part of the consortium.
 11 JUDGE PEARSON: Okay. And so that kind
 12 of --
 13 MR. WITT: That was the immediate result. I
 14 did -- part with [sic] my hiring processes is, I've got
 15 a list of everything that needs to happen that I have
 16 when I hire people. I just -- just run through that
 17 list, you know, everything from the I-9 IRS forms to our
 18 policies on harassment, and best policies on dealing
 19 with the customers, DVIRs, et cetera.
 20 JUDGE PEARSON: Okay. So that kind of leads
 21 us into that second category of violations, which is 49
 22 CFR Part 391.45(a), which is using a driver not
 23 medically examined and certified.
 24 So does Confluence Health now -- are they
 25 the ones who examined and certified your drivers?

Page 22

1 MR. WITT: They are. They are.
 2 JUDGE PEARSON: Okay.
 3 MR. WITT: And also with -- in regards to
 4 these three drivers, I did not realize that,
 5 irregardless of them being a non-CDL holder, they needed
 6 to have a medical card if they were transporting people
 7 that were eight and above, and I was -- I did not know
 8 that.
 9 JUDGE PEARSON: Okay. So then the third
 10 category of violations, which is 49 CFR Part 396.11(a),
 11 for failure to require your drivers to prepare driver
 12 vehicle inspection reports?
 13 MR. WITT: So that one's a little more
 14 simple in the fact that we had them perform the DVIR,
 15 except we never reported that the DVIR occurred. And it
 16 was brought to my attention earlier this year that we
 17 needed to have a record of those, and so we started
 18 recording the DVIRs, but they were in an inadequate form
 19 that was not recognized, and so that was the result of
 20 that.
 21 JUDGE PEARSON: So you were --
 22 MR. WITT: Oh, sorry, the correction --
 23 sorry. I keep interrupting you. Go ahead.
 24 JUDGE PEARSON: So you were using an
 25 incorrect format, you were collecting data but not --

Page 23

1 MR. WITT: Correct. It was an incorrect
 2 format. We changed it to page 189 on the -- Your Guide
 3 to Achieving a Satisfactory Safety Report, and that's
 4 our new form for our DVIRs.
 5 JUDGE PEARSON: Okay. Thank you.
 6 Is there anything else that you'd like to
 7 add?
 8 MR. WITT: Yes. When I was -- I had first
 9 bought the company, we had an inspection probably about
 10 maybe a month or so after I was there, or we first
 11 bought it, the vehicles were inspected. The person that
 12 did it, I don't even recall his name, was there for a
 13 very short amount of time. And I had no idea that
 14 this -- this book, the Your Achieving [sic] -- Your
 15 Guide to Achieving a Satisfactory Safety Record even
 16 existed. Had I had this, I believe I could have saved
 17 myself a lot of headaches, and I use it a lot now.
 18 JUDGE PEARSON: Okay. Thank you.
 19 Mr. Shearer, do you have any questions for
 20 Mr. Witt?
 21 MR. SHEARER: No, your Honor.
 22 JUDGE PEARSON: Okay. So does Staff want to
 23 address the penalty?
 24 MR. SHEARER: Yes, your Honor.
 25 JUDGE PEARSON: Okay. So I assume I'll be

Page 24

EXAMINATION BY MR. SHEARER / PRATT 24

1 swearing in Mr. Pratt?
 2 MR. SHEARER: Yes, please, your Honor.
 3 JUDGE PEARSON: Okay. If you could stand
 4 and raise your right hand.
 5
 6 DAVID PRATT, witness herein, having been
 7 first duly sworn on oath,
 8 was examined and testified
 9 as follows:
 10 JUDGE PEARSON: Okay. You may be seated.
 11 *** EXAMINATION BY MR. SHEARER ***
 12 BY MR. SHEARER:
 13 **Q. Mr. Pratt, can you say your name and spell your**
 14 **name for the record?**
 15 A. Sure. My name is David Pratt, last name
 16 P-R-A-T-T.
 17 **Q. What is your role here at the UTC, Mr. Pratt?**
 18 A. I manage the motor carrier and rail safety
 19 programs.
 20 **Q. And are you aware of the penalty assessment in**
 21 **this case against Leavenworth Shuttle & Taxi, LLC?**
 22 A. Yes, I am. I was involved in making the
 23 decisions and preparing that document.
 24 **Q. And can you please explain the nature of that**
 25 **penalty?**

Page 25	Page 27
EXAMINATION BY MR. SHEARER / PRATT 25	EXAMINATION BY MR. SHEARER / PRATT 27
<p>1 A. Sure. We have an enforcement policy that we use</p> <p>2 when we make penalty decisions, and so we followed the</p> <p>3 Agency's and the Motor Carrier's enforcement policy.</p> <p>4 Some of the violations that we find out there</p> <p>5 with carriers we consider as mandatory penalties because</p> <p>6 they're so critical to affect public safety. These</p> <p>7 three fall into that category. Specifically, 1 and 2</p> <p>8 are probably the more serious ones of not having the</p> <p>9 proper driving credentials to drive, not having a</p> <p>10 preemployment drug test, and then the medical card</p> <p>11 issue.</p> <p>12 As you can see, the penalties are pretty big on</p> <p>13 number 2 because we assess a penalty for each time the</p> <p>14 vehicle is driven. And in this case, on the 391.45(a)</p> <p>15 penalties, they drove 187 times, so that's \$100 per each</p> <p>16 violation for that. That's why that's -- the bulk of</p> <p>17 this penalty on here was that.</p> <p>18 So basically, when we prepared this, the</p> <p>19 penalties are determined based on the critical</p> <p>20 violations, and in this case, the three first -- or the</p> <p>21 first three violations we've discussed were all</p> <p>22 critical, and those were what drove the penalty amounts</p> <p>23 to a recommendation of \$19,800.</p> <p>24 And to further break that down a little bit, it</p> <p>25 comes down \$1,000 on the first penalty, and that's \$500</p>	<p>1 referring to this -- you used the word "plan," but</p> <p>2 you're not deeming it his proposed safety management</p> <p>3 plan, correct? You're talking about his compliance plan</p> <p>4 with respect to the violations?</p> <p>5 THE WITNESS: Yes.</p> <p>6 JUDGE PEARSON: Okay.</p> <p>7 THE WITNESS: So I would consider his letter</p> <p>8 here his attempt at a safety management plan.</p> <p>9 JUDGE PEARSON: Okay.</p> <p>10 THE WITNESS: Because I see he has</p> <p>11 identified each violation, he has talked about why they</p> <p>12 were allowed to occur, and then he's given a little bit</p> <p>13 of information about what he's done to correct them.</p> <p>14 Those are the three factors of a safety management plan.</p> <p>15 So I think, in spirit, that this attempts to</p> <p>16 meet it. Again, I need to read through all the</p> <p>17 violations, because there were 13, but I do believe he's</p> <p>18 made an attempt to give us a plan. Whether we'll label</p> <p>19 it that way or not, I don't know.</p> <p>20 JUDGE PEARSON: Okay.</p> <p>21 THE WITNESS: So again, like I said, my</p> <p>22 uncertainty now is, until I know whether I feel this is</p> <p>23 adequate and he's got a good plan going forward, is to</p> <p>24 whether -- to how I think that will affect the penalty</p> <p>25 recommendation.</p>
Page 26	Page 28
EXAMINATION BY MR. SHEARER / PRATT 26	EXAMINATION BY MR. SHEARER / PRATT 28
<p>1 per driver; the second one, \$100 per occurrence, which I</p> <p>2 mentioned before, 187 occurrences; and then the third</p> <p>3 one, it's 145 occurrences, but because this is a</p> <p>4 first-time violation, we assess a penalty for the</p> <p>5 violation type. If this were to have been a repeat</p> <p>6 violation, we would have assessed a penalty for each</p> <p>7 occurrence, which would have been 145, so it was</p> <p>8 fortunate from that perspective.</p> <p>9 So my dilemma I have here today is to try and</p> <p>10 make a recommendation to the judge on the penalty when</p> <p>11 I've just now in the last ten minutes gotten a chance to</p> <p>12 review the materials produced by Mr. Witt. And I do</p> <p>13 appreciate him bringing those today.</p> <p>14 And so I really haven't had time to look at</p> <p>15 these, to read them all, to think about them and</p> <p>16 understand them, so I do need a little bit of time to do</p> <p>17 that before I can weigh in on whether or not I think</p> <p>18 it's an adequate plan.</p> <p>19 Normally what I would do is, I would assess the</p> <p>20 plan, and then I would say how well I feel the company</p> <p>21 has addressed the plan, to make a determination on where</p> <p>22 we go with the penalties. And so I'm in a little bit of</p> <p>23 a dilemma here on how to make that determination and</p> <p>24 recommendation, so --</p> <p>25 JUDGE PEARSON: Quick question. Are you</p>	<p>1 JUDGE PEARSON: So another question.</p> <p>2 Would it be useful to take a brief recess,</p> <p>3 or is this something that you would need several days?</p> <p>4 THE WITNESS: I don't think a brief recess</p> <p>5 would be enough today. I think I need at least several</p> <p>6 hours to review it, and so --</p> <p>7 JUDGE PEARSON: Okay.</p> <p>8 THE WITNESS: -- one option might be to</p> <p>9 consider that -- the proposed cancellation date is the</p> <p>10 25th, which is next Tuesday. Ms. Yeomans and I could</p> <p>11 review this between now and then. I could submit</p> <p>12 something to the Commission by Monday with my</p> <p>13 recommendation for the safety plan, the safety rating,</p> <p>14 the permit status and the penalty.</p> <p>15 JUDGE PEARSON: Okay.</p> <p>16 THE WITNESS: If you don't want to wait</p> <p>17 until Monday, I can make a recommendation right now.</p> <p>18 JUDGE PEARSON: I'm fine with waiting until</p> <p>19 Monday. I think that is definitely in the company's</p> <p>20 best interest that we give you some time to look that</p> <p>21 over since we are up against a clock. And it would</p> <p>22 obviously be preferable, I think, from all parties'</p> <p>23 standpoint, that -- if we can save your permit, that we</p> <p>24 do that.</p> <p>25 MR. WITT: Yes.</p>

Page 29

EXAMINATION BY MR. SHEARER / PRATT 29

1 JUDGE PEARSON: Not only for you, but for
 2 the administrative burden that it would place on the
 3 Commission having to reinstate a certificate and issue
 4 an upgraded safety rating and all those other steps. I
 5 think, if it's possible, we definitely should -- and
 6 you're willing, we should hold off on those
 7 recommendations, and then if you can submit them --
 8 THE WITNESS: Yes. I can make a commitment
 9 that Ms. Yeomans and I will review this today. I'm not
 10 sure what her schedule is. I know I have some things
 11 planned. But we can get it reviewed, we can talk about
 12 it. I believe she's off tomorrow, so I can continue
 13 reviewing it this weekend, and I can have a -- I'll
 14 produce a letter to you by Monday kind of outlining what
 15 I learned and what I think and what my recommendation
 16 is.
 17 I can only speculate now what it might be,
 18 so I guess I really don't want to go there until I have
 19 a chance to look, but I can submit, say, Monday morning.
 20 JUDGE PEARSON: I think Monday morning would
 21 be sufficient, because I do think that I am up against a
 22 clock, too, as far as getting an order out with a
 23 decision on the certificate before we hit 12:01 a.m. on
 24 the 25th of October.
 25 THE WITNESS: Correct.

Page 30

EXAMINATION BY MR. SHEARER / PRATT 30

1 JUDGE PEARSON: So if you can get it to me
 2 Monday morning, I think I can probably turn the order
 3 around that same day.
 4 THE WITNESS: Okay. I will commit to trying
 5 to get it to you as early as I can Monday morning, say,
 6 by 10:00?
 7 JUDGE PEARSON: Okay.
 8 THE WITNESS: But I do -- I guess I do want
 9 to make sure Mr. Witt is aware that, if I don't think
 10 this plan is adequate, then the feedback is going to be,
 11 you need to do more work on it, you need to share with
 12 us a little bit more about what you're gonna do. That
 13 might take a few days for him, which might put us in a
 14 period of cancellation while that's worked out. That I
 15 don't know yet, but I want to make sure Mr. Witt's aware
 16 of that.
 17 MR. WITT: In response to that, you will
 18 have my full and undivided attention for this.
 19 THE WITNESS: Okay.
 20 JUDGE PEARSON: And just so you understand,
 21 in the event that it does need more work and we hit that
 22 45th day and I have to issue an order cancelling the
 23 permit, there is that 30-day period where you can
 24 request to have your certificate reinstated without
 25 having to go through the application process and obtain

Page 31

EXAMINATION BY MR. SHEARER / PRATT 31

1 a new certificate, so that's somewhat of a grace period
 2 that you have in the event that you need it.
 3 MR. WITT: Okay.
 4 JUDGE PEARSON: Okay. So anything further?
 5 MR. SHEARER: Nothing from Staff,
 6 your Honor.
 7 JUDGE PEARSON: Okay. So I think -- I'm
 8 trying to think procedurally of the best way to -- we'll
 9 just call it a bench request, the additional information
 10 from Staff, and so you can e-mail it to me directly when
 11 you have your response and just CC Mr. Witt and file it
 12 with the records center, and then we'll just place it in
 13 the record that way.
 14 MR. PRATT: Okay.
 15 JUDGE PEARSON: I think that's probably the
 16 easiest way to handle it.
 17 MR. SHEARER: That makes sense to me,
 18 your Honor. And Staff's more than willing to follow
 19 that path.
 20 JUDGE PEARSON: Okay. Sounds good.
 21 Thank you, Mr. Witt, for driving all the way
 22 over here this morning. We appreciate it.
 23 MR. WITT: Thank you for listening to me
 24 today.
 25 JUDGE PEARSON: Yes.

Page 32

EXAMINATION BY MR. SHEARER / PRATT 32

1 Thank you to Staff as well, and we will be
 2 off the record and be adjourned.
 3 (Hearing concluded at 10:11 a.m.)
 4
 5 -o0o-
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

EXAMINATION BY MR. SHEARER / PRATT 33

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I, ANITA W. SELF, 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.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 27th day of October, 2016.

ANITA W. SELF, RPR, CCR #3032