

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TV-171005

PENALTY AMOUNT: \$42,800

Iron Man Movers and Storage Inc.
4215 Britton Road
Bellingham, WA 98226

The Washington Utilities and Transportation Commission (Commission) believes that Iron Man Movers and Storage Inc. (Iron Man Movers) has committed violations of Washington Administrative Code (WAC) 480-15-555 Criminal Background Checks for Prospective Employees, as well as WAC 480-15-560 Equipment Safety Requirements and WAC 480-15-570 Driver Safety Requirements which adopt Title 49 Code of Federal Regulations (CFR) Part 387 – Minimum Levels of Financial Responsibility, Part 391 – Qualifications of Drivers, Part 393 – Parts and Accessories Necessary for Safe Operation, and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In August 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Iron Man Movers and documented the following violations:

- **One-hundred fourteen violations of Title 49 CFR Part 387.7(a) – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.** Iron Man Movers operated 114 days without the required level of cargo insurance in effect. The company operated 15 times in January; 17 times in February; 24 times in March; 27 times in April; 20 times in May; and 11 times in June; 2017.
- **Three-hundred five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** During the six months preceding the compliance review, Iron Man Movers allowed its employees Leonard Kravchenko, Sagan Brownson, Jonathan Waschow, and Michael Stump to drive on 305 occasions without having been medically examined and certified.
 - Leonard Kravchenko drove on 107 occasions: 15 times in January; 17 times in February; 14 times in March; 19 times in April; 21 times in May; and 21 times in June, 2017.
 - Sagan Brownson drove on 20 occasions: two times in January; five times in February; three times in March; two times in April; six times in May; and two times in June, 2017.

- Jonathan Waschow drove on 129 occasions: 15 times in January; 20 times in February; 28 times in March; 25 times in April; 28 times in May; and 13 times in June, 2017.
- Michael Stump drove on 49 occasions: 11 times in January; 16 times in February; 16 times in March; and six times in April, 2017.
- **One violation of Title 49 CFR Part 393.209(b) – Excessive steering wheel lash.** Company unit number 1, a 1999 GMC, has an 18-inch steering wheel with 13 inches of free play.
- **Three violations of Title 49 CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** The company failed to require its drivers to prepare required driver vehicle inspection reports on three occasions.
- **Five violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company had performed no periodic inspections on five of its six vehicles.
- **Four violations of WAC 480-15-555 – Failing to acquire criminal background checks on prospective employees.** The company hired Leonard Kravchenko, Sagan Brownson, Jonathan Waschow, and Michael Stump without obtaining pre-employment background checks.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Household goods movers that fail to carry adequate cargo insurance, hire employees without completing the required background check, use drivers not medically examined and certified, or use vehicles not properly inspected or maintained, put their customers, their customers' household belongings, and the traveling public at risk. An employee with an unknown criminal history or undetected medical condition, or a vehicle with an unknown defect present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

In the company's 2012 application to the Commission for transfer of household goods mover's authority, regarding acquisition of control, Eric and Susan Stewart, officers of the company, acknowledged attending the Commission's training and acknowledged their responsibility for understanding and complying with the safety requirements related

to the industry. Staff believes the company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Iron Man Movers was generally cooperative during the in-person contacts but less responsive to email correspondence and follow-up phone calls.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company took immediate action to correct some of the violations found during the compliance review. For example, the company provided staff copies of the employees' newly obtained medical certificates, copies of criminal background checks, and acquired cargo insurance.
6. **The number of violations.** For a small company the size of Iron Man Movers, the number of violations is excessive.
7. **The number of customers affected.** The company traveled 54,700 miles and reported \$341,850 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Iron Man Movers is likely to repeat these safety violations. However, the company was cooperative and responsive to staff, and has taken the appropriate steps to correct the safety violations documented in the compliance review.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review and safety penalty since the company changed names in 2012. In July 2017, the Commission penalized Iron Man Movers \$21,100 for violations of WAC 480-15 (business practices) and Tariff 15-C.¹ In Docket TV-150908 the Commission penalized Iron Man Movers \$100 for failing to timely file its annual report.
10. **The company's existing compliance program.** Iron Man Movers does not have a formal compliance program.
11. **The size of the company.** Iron Man Movers is a small company with four drivers and five commercial vehicles.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.² The Commission generally will assess penalties per type of

¹ Docket TE-170205

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Iron Man Movers \$42,800 for violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, as well as WAC 480-15-560 Equipment Safety Requirements and WAC 480-15-570 Driver Safety Requirements which adopt Title 49 CFR Parts 387, 391, 393, 396, calculated as follows:

- One-hundred fourteen violations of Title 49 CFR Part 387.7(a) – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. These are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$11,400.
- Three-hundred five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$30,500.
- One violation of Title 49 CFR Part 393.209(b) – Excessive steering wheel lash. This is a violation of a fundamental safety requirement, and thus the Commission assesses a penalty of \$100 for this violation,
- Three violations of Title 49 CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report. This is a repeat violation. The Commission assesses a penalty of \$100 per occurrence, for a total of \$300.
- Five violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.
- Four violations of WAC 480-15-555 – Failing to acquire criminal background checks on prospective employees. These are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$400.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and

resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective October 10, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-171005

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”