

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190072

PENALTY AMOUNT: \$2,200

Blessed Limousine, Inc.
3932 62nd Avenue Court E.
Fife, WA 98424

The Washington Utilities and Transportation Commission (Commission) believes that Blessed Limousine, Inc. (Blessed Limousine or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, CFR Part 393 – Parts and Accessories Necessary For Safe Operation, and CFR Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation of a Commission rule. RCW 81.04.530 allows a penalty of \$1,500 for commercial motor vehicle operations that fail to have a controlled substance and alcohol testing program. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On January 25, 2019, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Blessed Limousine and documented the following violations:

- **One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Blessed Limousine allowed employees Melissa Thomas and Kosene Tuiloma to drive a commercial motor vehicle on at least five separate occasions prior to the Company enrolling in a Department of Transportation testing program on January 30, 2018. The violations occurred between September 9, 2017, and October 5, 2017.
- **One violation of Title 49 CFR Part 393.51 – No or defective brake warning device.** Commission staff discovered one commercial motor vehicle with an inoperable air pressure gauge.¹ This vehicle was placed out-of-service.
- **Three violations of Title 49 CFR Part 393.62(a) – No or defective bus emergency exits.** Commission staff discovered three commercial motor vehicles with emergency exit windows that either do not open or do not close.² These vehicles were placed out-of-service.

¹ Fleet number 81.

² Fleet numbers 29, 81, and 386.

- **One violation of Title 49 CFR Part 393.83(d) – Improper exhaust-bus (diesel).** Commission staff discovered one commercial motor vehicle with an exhaust pipe cut and removed from rear portion of the exhaust pipe.³ This vehicle was placed out-of-service.
- **One violation of Title 49 CFR Part 393.205(c) – Wheel fasteners loose and/or missing.** Commission staff discovered one commercial motor vehicle with three wheel fasteners loose on the front left wheel.⁴ This vehicle was placed out-of-service.
- **One hundred twenty violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Blessed Limousine allowed employees Clussie Bagby, Kosene Tuiloma, Laura Richardson, and Melissa Thomas to drive without making a record of duty status on 120 occasions between June 5, 2018, and October 30, 2018.

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 very serious and potentially harmful to the public. Companies that operate without an alcohol and/or controlled substances testing program, fail to record the hours of service of its drivers, and allow the operation of commercial motor vehicles in need of repairs put the traveling public at significant risk. A potentially impaired or fatigued driver, commercial motor vehicles with defective emergency exits, and commercial motor vehicles operated in conditions likely to cause an accident or a breakdown of the vehicle, all present very 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.

On February 8, 2016, the Commission received the Company’s application for charter and excursion carrier authority. Clussie Bagby, owner of Blessed Limousine, acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety rules in the application.

On February 23, 2016, Commission Motor Carrier Investigator Wayne Gilbert provided technical assistance to Clussie Bagby during Blessed Limousine’s new entrant examination, and Mr. Bagby documented that training was provided.

The Company knew or should have known about these requirements.

³ Fleet number 386.

⁴ Fleet number 81.

3. **Whether the Company self-reported the violation.** The Company did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Blessed Limousine had difficulty providing requested documents and failed to provide Commission staff with the requested payroll documentation during the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Commission staff does not know if Blessed Limousine has corrected these violations.
6. **The number of violations.** Commission staff identified 14 violation types with a total of 212 occurrences.
7. **The number of customers affected.** The Company reported 46,000 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Blessed Limousine is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is Blessed Limousine's first routine safety investigation, and the Company has no history of safety penalties.

On January 26, 2016, the Commission penalized Blessed Limousine \$10,000 for operating as a charter and excursion carrier within the state of Washington without first having obtained a certificate from the Commission.

On June 19, 2017, the Commission penalized Blessed Limousine \$200 for failure to file its 2016 annual report and pay 2017 regulatory fees.

10. **The Company's existing compliance program.** Owner Clussie Bagby is responsible for the Company's safety compliance program.
11. **The size of the Company.** Blessed Limousine is a small company with six drivers and six commercial motor vehicles. The Company reported \$217,000 in gross revenue in 2017.

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.⁵ The Commission generally will assess penalties per type of 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"

⁵ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Blessed Limousine \$2,200 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 382, 393, and 395, calculated as follows:

- One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty in the amount of \$1,500 for this violation.
- One violation of Title 49 CFR Part 393.51 – No or defective brake warning device. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty in the amount of \$100 per occurrence, for a total of \$100.
- Three violations of Title 49 CFR Part 393.62(a) – No or defective bus emergency exits. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$300.
- One violation of Title 49 CFR Part 393.83(d) – Improper exhaust-bus (diesel). This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty in the amount of \$100 per occurrence, for a total of \$100.
- One violation of Title 49 CFR Part 393.205(c) – Wheel fasteners loose and/or missing. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty in the amount of \$100 per occurrence, for a total of \$100.
- One hundred twenty violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status. These are first-time violations. The Commission assesses penalties in the amount of \$100 per violation type, for a total of \$100.

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 through evidence presented at a hearing or in writing. Or, 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 the 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 to contest the violation(s) or for mitigation of the penalty 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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 February 19, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190072

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 violations occurred and enclose \$2,200 in payment of the penalty.
- 2. **Contest the violations.** I believe that some or all of the alleged violations 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 violations, 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.”