

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-161144
PENALTY AMOUNT: \$4,300

Sunwest Enterprises LLC
d/b/a Sunwest Limousine
305 Division Street
Yakima, WA 98902

The Washington Utilities and Transportation Commission (Commission) believes you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 382 - Controlled Substances and Alcohol Use and Testing, Part 383 – Commercial Driver’s License Standards, Requirements and Penalties, Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers, and Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of \$1,500 for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of \$100 for each violation of Parts 383, 387 and 391. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation

In August 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Sunwest Limousine Tours and documented the following violations of acute and critical regulations:

- **One violation of 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.** Sunwest Limousine does not have an alcohol and/or controlled substances testing program.
- **Three violations (seven occurrences) of CFR 383.23(a) – Operating a commercial motor vehicle (CDL) without a valid commercial driver’s license.** Driver Juan Guillen drove on August 6 and 13, 2016; Edward Rocha drove on May 14, 2016; and Emilio Mendoza drove on March 26, May 6, July 23 and August 13, 2016. None of these drivers possessed a valid commercial driver’s license on the dates they drove.
- **One violation (five occurrences) of CFR 383.37(a) – Allowing, requiring, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver’s license with the proper class or endorsements.** Driver Raymond Silva drove on March 18, May 7, and

June 4, 11 and 17, 2016, without the required passenger vehicle endorsement on his commercial driver's license.

- **One violation (three occurrences) of CFR 387.7 – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.** At the time of the compliance review, the company had no liability insurance in effect. The company's insurance policy had expired on July 28, 2016. Company employees made three trips in August 2016, while the company had no insurance in effect. Juan Guillen drove on August 6 and 13, 2015; Emilio Mendoza also drove on August 13, 2016.
- **Four violations (twelve occurrences) of CFR 391.45(a) – Using a driver not medically examined and certified.** Sunwest Limousine employee Juan Guillen drove on August 6 and 13, 2016; Edward Rocha drove on May 14, 2016; Raymond Silva drove on March 18, May 7, and June 4, 11 and 17, 2016; Emilio Mendoza drove on March 26, May 6, July 23 and August 13, 2016. None of these drivers had been medically examined and certified on the dates they drove for Sunwest Limousine.
- **One violation of CFR 391.51(a) – Failing to maintain driver qualification file on each driver.** Sunwest Limousine had no driver qualification files for any of its five drivers.

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. Companies that do not have an alcohol and/or controlled substances testing program, that employ non-CDL drivers or drivers not medically examined and certified, or that do not have driver qualification files or liability insurance place the traveling public at risk. A driver who is under the influence of alcohol or a controlled substance, is not properly licensed or medically examined and certified or otherwise is unqualified, or who operates without insurance presents serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's (Staff) 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 its November 2013 application for charter and excursion authority, the company acknowledged its responsibility to understand and comply with applicable motor carrier safety rules. Staff also provided new-entrant technical assistance to the company in December 2013. 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.** Sunwest Limousine was very cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company took immediate steps to correct these violations.
6. **The number of violations.** For a small company like Sunwest Limousine, the number of acute and critical violations is significant.
7. **The number of customers affected.** Sunwest Limousine is a small company and reported 12,000 miles travelled in 2015. A moderate number of customers were potentially put at risk by these violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company has provided evidence of immediate steps it has taken to correct the violations and prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** Sunwest Limousine has no history of previous compliance review, violations, or penalties.
10. **The company's existing compliance program.** Sunwest Limousine has no formal compliance program.
11. **The size of the company.** Sunwest Limousine is a smaller company, operating one commercial vehicle with five drivers. In addition, the company operates a small fleet of limousines not regulated by the Commission. In 2015, the company reported \$80,000 in gross revenue and 12,000 miles travelled.

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.¹ Otherwise, the Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Sunwest Limousine \$4,300 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Parts 382, 383, 387 and 391, calculated as follows:

- One violation of CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

vehicle operations. The Commission assesses the statutory penalty amount of \$1,500 for this acute violation, per RCW 81.04.530.

- Three violations (seven occurrences) of CFR 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver’s license. The Commission assesses a penalty of \$100 for each occurrence of this critical violation for a total of \$700.
- One violation (five occurrences) of CFR 383.37(a) – Allowing, requiring, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver’s license with the proper class or endorsements. The Commission assesses a penalty of \$100 for each occurrence of this acute violation for a total of \$500.
- One violation (three occurrences) of CFR 387.7 – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. The Commission assesses a penalty of \$100 for each occurrence of this acute violation for a total of \$300.
- Four violations (twelve occurrences) of CFR 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation for a total of \$1,200
- One violation of CFR 391.51(a) – Failing to maintain driver qualification file on each driver. This is a first-time, critical violation, and staff recommends a penalty of \$100 for one violation of this type.

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.

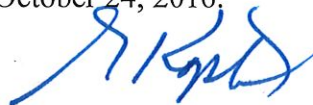
You must act within 15 days after receiving this notice to do one of the following:

- 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 24, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-161144

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:

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:

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.”