

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

Go VIP, LLC

For a certificate to operate as a
charter and excursion carrier

DOCKET TE-161295

STAFF'S ANSWER TO GO VIP,
LLC'S PETITION FOR REVIEW

I. INTRODUCTION

1 An Administrative Law Judge (ALJ) of the Washington Utilities and Transportation Commission (Commission) denied Go VIP, LLC's (Go VIP) application for a certificate to operate as a charter or excursion carrier by entering Order 01 in this matter. Go VIP now petitions for review of that order,¹ contending that it proved its safety fitness and that the denial of its application resulted from a wide-ranging conspiracy to discriminate against it.

2 The Commission should deny Go VIP's petition because: (1) the ALJ properly collaterally estopped Go VIP from re-litigating violations found by the Federal Motor Carrier Safety Administration (FMCSA) against Go VIP's predecessor companies; (2) the ALJ properly determined that Go VIP lacked safety fitness; (3) Go VIP is a reincarnation of motor carriers ordered out of service by FMCSA, and therefore cannot

¹ Go VIP's filing states that the company seeks a formal hearing or a reopening of the record. *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Motion and Certificate of Service (May 24, 2017). The statutory and regulatory provisions that Go VIP cites in support of its request for a hearing govern administrative review, and Go VIP only provides argument as to why Order 01 in this matter is incorrect; it does not provide any argument as to why the Commission should reopen the record. Accordingly, Staff treats the filing as a petition for review. If the Commission were to treat the filing as a motion to reopen, Go VIP fails to show that the evidence it seeks to admit was unavailable and not reasonably discoverable with due diligence at the time of the hearing. Nor does Go VIP show any other good and sufficient cause to reopen the record. The Commission should therefore deny the motion. *See* WAC 480-07-830.

operate; and (4) Go VIP fails to offer any evidence that discrimination played a role in the denial of its application.

II. STATEMENT OF FACTS

3 On December 20, 2016, Go VIP filed an application for authority to engage in business as a charter and excursion carrier in the state of Washington. That application lists Mr. Steve Valentinetti as Go VIP's owner and manager.²

4 Mr. Valentinetti, before incorporating Go VIP, owned and managed two other transportation companies: AMI Coaches, LLC (AMI Coaches) and Airline Shuttle Inc. (Airline Shuttle).³ Each of those two companies has a negative compliance history with FMCSA.

5 FMCSA ordered AMI Coaches out of service in late 2013 after a safety audit produced an unsatisfactory safety rating for the company.⁴ That unsatisfactory rating resulted from a FMCSA inspector finding numerous acute, critical, and other violations committed by AMI Coaches.⁵ The conduct underlying those violations would have violated state law had Staff discovered it in the course of a safety audit.⁶ The United States Department of Transportation (DOT) has terminated review of the out-of-service order against AMI Coaches⁷ and it remains in effect today.⁸

² Perkinson, TR. 78:21-79:1; Valentinetti, TR. 47:21-48:4.

³ Perkinson, TR. 75:3-6, 77:17-21, 79:19-22; *see* Perkinson, TR. 79:2-6.

⁴ Perkinson, TR. 75:9-10, 85:20-86:8; Exh. MP-2.

⁵ Perkinson, TR. 83:11-84:18.

⁶ Perkinson, TR. 85:17-19.

⁷ *See In re AMI Coaches LLC*, US DOT No. 2351390, Docket Number FMCSA-2015-0110 (W. Serv. Ctr.), Final Order on Petition for Review of Denial of Upgrade of Safety Rating, at 11 (Dec. 2, 2015) (noting that AMI Coaches never challenged the finding of violations or the unsatisfactory safety rating).

⁸ Perkinson, TR. 86:9-11; Exh. MP-4.

6 FMCSA ordered Airline Shuttle out of service in 2014.⁹ FMCSA based that order on a safety audit of the company; that audit produced an unsatisfactory safety rating when an inspector found numerous acute, critical, and administrative violations.¹⁰ The conduct underlying those violations would have constituted a violation of state law had Staff discovered it in the course of a safety audit.¹¹ Again, the DOT has terminated review of the out-of-service order and it remains in effect today.¹²

7 Go VIP's commonality with AMI Coaches and Airline Shuttle does not end with sharing an owner and manager. Go VIP would, if granted operating authority, conduct business using some of the same property and equipment used by AMI Coaches and Airline Shuttle.¹³ Go VIP would also engage in substantially the same business that AMI and Airline Shuttle did.¹⁴ In fact, as Mr. Valentinetti explained at hearing, Go VIP exists solely because of the out-of-service orders against AMI Coaches and Airline Shuttle.¹⁵

8 Staff reviewed Go VIP's application and recommended that the Commission deny it, for two reasons.¹⁶ First, Staff alleged that Go VIP lacked the safety fitness necessary for authority to operate.¹⁷ Staff based this allegation on the negative compliance history of AMI Coaches and Airline Shuttle.¹⁸ Staff noted that the conduct giving rise to the

⁹ Perkinson, TR. 77:22-25; 88:3-5; Exh. MP-3.

¹⁰ Perkinson, TR. 86:14-87:16; Exh. MP-1.

¹¹ Perkinson, TR. 87:17-20.

¹² *In re Airline Shuttle Inc.*, US DOT No. 2158025, Docket Number FMCSA-2014-0414 (W. Serv. Ctr.), Final Order on Petition for Review of Unsatisfactory Safety Rating (Dec. 11, 2014) (denying review of unsatisfactory safety rating).

¹³ Valentinetti, TR. 48:5-7, 49:-:15-22.

¹⁴ Perkinson, TR. 79:7-12.

¹⁵ Valentinetti, TR. 53:11-14, 24-25.

¹⁶ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Notice of Intent to Deny Application for Certificate; Notice of Opportunity for Hearing, at ¶ 3 (Apr. 4, 2017) (Notice of Intent to Deny Application).

¹⁷ Notice of Intent to Deny Application at ¶ 14.

¹⁸ Notice of Intent to Deny Application at ¶ 14.

violations found by FMCSA would constitute violations of state law if found by Staff, and reasoned that Go VIP had a history of non-compliance.¹⁹ Second, Staff alleged that the commonalities between Go VIP, AMI Coaches, and Airline Shuttle should require the Commission to deny the application.²⁰ Staff noted that the Washington Administrative Code (WAC) incorporates provisions from the Code of Federal Regulations (CFR) forbidding operation by reincarnated carriers, meaning, among other things, carriers sharing common ownership or management with carriers ordered out of service.²¹

9 The Commission issued a notice stating its intent to deny Go VIP’s application and offering the company a chance to request a hearing.²² Go VIP did so, requesting a hearing as quickly as possible.²³ The Commission ultimately scheduled a hearing on April 20, 2017.²⁴

10 Go VIP explained its theory of the case and trial strategy during opening statements. The company stated that

The violations that were assessed against AMI Coaches and Airline Shuttle were false and it was an attack by the DOT. We’re here today to try and get Go VIP on the road and give DOT an opportunity to back down from their reckless disregard for the law and personal attacks.

But we’re also here to establish for the record we’ll address every violation that’s been assessed against AMI Coaches and Airline Shuttle and dispel all of those. At the end of today, if there is any negative impact after we’ve proved, we’re going to continue it, we’re going to call that continuing discrimination.²⁵

¹⁹ Notice of Intent to Deny Application at ¶ 14.

²⁰ Notice of Intent to Deny Application at ¶ 15

²¹ WAC 480-30-221; 49 C.F.R. § 385.1003.

²² Notice of Intent to Deny Application at ¶¶ 13, 16-17.

²³ Perkinson, TR. 96:2-4.

²⁴ *See generally*, TR. (Apr. 20, 2017).

²⁵ Valentinetti, TR. 8:9-20.

11 Go VIP did, in fact, attempt to re-litigate every violation found by the FMCSA.²⁶ Staff objected, arguing that collateral estoppel prevented Go VIP from doing so.²⁷ The ALJ sustained that objection,²⁸ but gave Go VIP a chance to argue that it was fit to operate because AMI Coaches and Airline Shuttle never committed any violations.²⁹ Go VIP availed itself of that opportunity and made that argument.³⁰

12 After the close of the hearing, Go VIP submitted a written document to the Commission. In it, Go VIP again argued that AMI Coaches and Airline Shuttle had never committed regulatory violations.³¹ The company also contended that Staff's recommendation resulted from discriminatory animus.³² Staff answered and denied that Go VIP was fit or that it had engaged in discrimination.³³

13 The ALJ denied Go VIP's application with Order 01 (Order 01) in this matter. The ALJ found Go VIP's denials that AMI Coaches or Airline Shuttle had committed any regulatory violations lacked credibility,³⁴ especially given that Mr. Valentinetti admitted to a number of them at hearing when claiming to disprove them.³⁵ The ALJ determined that Go VIP lacked safety fitness given the regulatory violations by AMI Coaches and

²⁶ Valentinetti, TR. 25:9-10.

²⁷ Valentinetti, TR. 25:11-15.

²⁸ Valentinetti, TR. 25:16-17.

²⁹ Valentinetti, TR. 27:16-28:1.

³⁰ Valentinetti, TR. 31:17-47:10.

³¹ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, WUTC Hearing Valentinetti's Explanation of Evidence Book Submitted & Closing Statement (Apr. 27, 2017).

³² *See generally id.*

³³ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Staff's Response, (May 3, 2017).

³⁴ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Order 01, ¶ 36 (May 5, 2017) (Order 01).

³⁵ *Id.* at ¶ 26

Airline Shuttle.³⁶ The ALJ also found that the company shared common ownership and management with AMI Coaches and Airline Shuttle.³⁷

14 Go VIP now petitions for review.³⁸

IV. ARGUMENT

15 Go VIP argues that the ALJ erred by denying its application because: (1) the ALJ improperly allowed Staff to estop it from collaterally challenging FMCSA’s findings about AMI Coaches and Airline Shuttle, (2) it was fit for authority because AMI Coaches and Airline Shuttle never committed any regulatory violations, and (3) the denial of its application was a product of discrimination.

16 The Commission should reject each of those arguments and deny the petition. Go VIP *was* collaterally estopped from attacking findings made by FMCSA about violations committed AMI Coaches and AMI Shuttles. Given those findings, and a record of contradictory statements and unpersuasive evidence, the ALJ properly refused to credit Go VIP’s attempts to contest those violations when allowing the company to explain why it is fit to operate. Regardless, the undisputed evidence shows that Go VIP is a reincarnation of AMI Coaches and Airline Shuttle, and therefore cannot obtain operating authority. Finally, Staff denies that discrimination played any role in the denial of Go VIP’s application, and Go VIP fails to show that it did.

³⁶ *Id.* at ¶¶ 29, 30.

³⁷ *Id.* at ¶ 25.

³⁸ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Formal Motion and Certificate of Service (May 24, 2017).

A. FMCSA's orders precluded Go VIP from contesting that AMI Coaches and Airline Shuttle committed regulatory violations

17 An administrative tribunal's order may have a preclusive effect on later proceedings.³⁹ An order has preclusive effect upon the showing of seven elements: (1) the two matters must involve identical issues; (2) the earlier matter must have ended with a final decision on the merits; (3) the party against whom estoppel is asserted must have been a party to, or in privity with, a party to the prior matter; (4) estopping the party will not work an injustice; (5) the agency issuing the order must make a factual decision within its competence; (6) there must be no significant procedural differences between the tribunals deciding the two matters; and (7) policy considerations warrant application of estoppel.⁴⁰ The record here satisfies each of those elements.

18 The prior dockets resulted in final orders on the merits concerning identical issues based on findings made by an agency acting within its competency. FMCSA ordered AMI Coaches and Airline Shuttle out of service due to unsatisfactory safety ratings,⁴¹ orders resulting from FMCSA finding numerous violations of motor safety regulations. Go VIP sought to contest that AMI Coaches or Airline Shuttle committed those violations. FMCSA regulates the safety of motor carriers, and it acted within its expertise when finding violations of regulations that it enforces.⁴²

³⁹ *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998).

⁴⁰ *Id.* (quoting *Southcenter Joint Venture v. Nat. Democratic Party*, 113 Wn.2d 413, 418, 780 P.2d 1282 (1989); *id.* at 450 (quoting *Stevedoring Servs., Inc. v. Eggert*, 129 Wn.2d 17, 40, 914 P.2d 737 (1996)).

⁴¹ Go VIP's failure to seek review of those orders or successfully obtain reversal of those orders on review gives those orders preclusive effect. *See Kemmer v. Keiski*, 116 Wn. App. 924, 932-37, 68 P.3d 1138 (2003); accord *TEGLAND*, 14A WASH. PRAC., Civil Procedure §§ 35:23, 35:34 (2d ed) (failure to seek review makes the orders final for purposes of collateral estoppel).

⁴² *See* 49 C.F.R. § 1.86.

19 Go VIP was either essentially a party to the previous adjudications or in privity with parties to the previous adjudications. Go VIP shares extensive commonality with AMI Coaches and Airline Shuttle. Some of the property and vehicles Go VIP would use to conduct business belonged to those other companies.⁴³ Go VIP will engage in the same business as those companies.⁴⁴ Go VIP shares common ownership and management with those companies.⁴⁵ Go VIP essentially *is* AMI Coaches and Airline Shuttle seeking to operate under a different name. At the very least, Go VIP is a successor to those companies.

20 Estopping Go VIP does not work an injustice here.⁴⁶ AMI Coaches and Airline Shuttle had the opportunity to appeal the results of the safety audits and the resulting unsatisfactory safety ratings.⁴⁷ AMI Coaches did not take advantage of that opportunity, and the DOT denied Airline Shuttle's appeal.

21 There are no meaningful differences between the procedures FMCSA employs and the procedures the Commission employs for determining whether a violation has occurred. Both entities apply the same substantive and procedural law.⁴⁸

22 Finally, public policy indicates that the Commission should apply collateral estoppel here, for two reasons. First, Go VIP asks the Commission to encourage forum shopping. If the Commission approves Go VIP's application, it sends a signal that any

⁴³ Valentinetti, TR. 48:5-7, 49-:15-22.

⁴⁴ Perkinson, TR. 79:7-12.

⁴⁵ Perkinson, TR. 75:3-6, 77:17-21, 79:19-22; *see* Perkinson, TR. 79:2-6.

⁴⁶ *See Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 795-96, 982 P.2d 601 (1999) (quoting *In re Marriage of Murphy*, 90 Wn. App. 488, 498, 952 P.2d 624 (1998)) (injustice element focuses on procedural irregularity).

⁴⁷ Valentinetti, TR. 116:9-25; Exh. MP-1 at Part B Violations 4 (providing for an appeal of the finding of violations or allowing for creation of a safety plan to upgrade the proposed safety rating); Exh. MP-2 at Part B Violations 7-8 (same).

⁴⁸ WAC 480-30-221; *see* 49 C.F.R. part 385.

company unsatisfied with a federal revocation of its operating authority should seek state operating authority, and vice versa. Staff would then apparently have to prove every violation found by federal inspectors when attempting to deny state operating authority to those companies, creating significant administrative burdens. Second, collateral estoppel is intended to prevent exactly what Go VIP seeks to produce here: inconsistent findings by different tribunals about the same factual matter.⁴⁹

B. The ALJ properly determined that Go VIP is not fit for authority

23 While prohibiting Go VIP from arguing that it had not committed the violations found by FMCSA, the ALJ did allow Go VIP to make the argument that it was fit for authority because the alleged violations never happened. Go VIP made this argument. Extensively.⁵⁰ The ALJ simply rejected the argument and determined that Go VIP lacked safety fitness. The Commission should affirm that determination because it is supported by the record and the ALJ's adverse credibility finding.

24 The Commission considers an applicant's failure to follow the Commission's rules "one of the best predictors of willingness and ability to comply with regulatory requirements."⁵¹ A pattern of frequent and serious violations "clearly indicate" an applicant's unfitness for a permit.⁵² The Commission does not treat a negative compliance history as a per se bar to a finding of fitness, but to overcome a negative compliance

⁴⁹ See Thompson, 138 Wn.2d at 795.

⁵⁰ See Valentinetti, TR. 33:12-47:10.

⁵¹ *In re Application of Redline Courier, Inc.*, Cause No. P-77664, Order M. V. No. 148367, at ¶ 14 (Dec. 13, 1994).

⁵² *In re Application of Don B. Hightower d/b/a The Navajo Trucking*, Cause No. E-76397, Order M. V. No. 146902 (Aug. 31, 1993) (citing *In re Application of Horizon Trucking, Inc.*, Cause No. P-75496, Order M.V. No. 145901, at ¶ 15 (Jan 6, 1993)).

history the applicant must present “credible assurances of future compliance” and “objective manifestations of intent to comply.”⁵³

25 As discussed above, that AMI Coaches and Airline Shuttle committed a number of safety violations is an established fact. The recency and severity of those violations alone justifies the denial Go VIP’s application.⁵⁴

26 Nevertheless, Go VIP asserts in its petition, as it did at hearing, that FMCSA was incorrect about each and every violation that it found. The ALJ found Go VIP’s denials lacked credibility. The Commission generally gives substantial weight to such a credibility findings⁵⁵ and should do so here. As the ALJ noted in Order 01, Mr. Valentinetti admitted at hearing that AMI Coaches and Airline Shuttle had committed a significant number of the violations.⁵⁶ Further, Go VIP’s evidence often does not support its argument that AMI Coaches or Airline Shuttle did not commit the alleged violation. For example, while Mr. Valentinetti claims to have disproven the allegations related to insurance or random drug testing, no evidence at hearing shows that AMI Coaches maintained proof of insurance or that either AMI Coaches or Airline Shuttle had a random drug testing regime on the date of the violations.⁵⁷ Similarly, Go VIP claims that Staff witness Mat Perkinson testified that Go VIP was exempt from FMCSA jurisdiction.⁵⁸ He did not.⁵⁹

⁵³ *Redline Courier* at p 14.

⁵⁴ *See* Perkinson, TR. 94:8-12.

⁵⁵ *Wash. Utils. & Transp. Comm’n v. Best Moving and Delivery, LLC*, Docket TV-132030, Order 03, at ¶ 11 (May 8, 2015).

⁵⁶ Order 01 at ¶ 25; Valentinetti, TR. 36:17-23, 38:3-5, 8-9, 41:5-6, 20-22, 42:8-22.

⁵⁷ Ferguson, 72:3-14 (no evidence that AMI Coaches maintained proof of insurance); Perkinson, TR. 96:21-99:16, 100:1-9 (evidence does not show a random drug testing program at the time of violation); .

⁵⁸ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Formal Request for a Hearing, at 7 (May 24, 2017).

⁵⁹ *E.g.*, Perkinson, TR. 101:19-102:2, 107:21-108:19, 112:22-113:2.

27 Given FMCSA’s findings and the ALJ’s proper refusal to credit Go VIP’s denials, the record shows that companies owned and operated by Mr. Valentinetti have a history of violating safety regulations⁶⁰ incorporated into state law.⁶¹ The record also reflects that those violations were acute or critical in nature,⁶² indicating that Mr. Valentinetti’s companies operated at a high risk of accident or operational breakdown that would impact the public.⁶³ Mr. Valentinetti’s continuing denials that AMI Coaches and Airline Shuttle committed any violations indicate that Go VIP would not operate any differently than those companies. Go VIP therefore cannot offer the Commission credible assurances of future compliance or objective evidence of an intent to comply with the Commission’s regulations. It is unfit for authority. The Commission should affirm Order 01 on that basis.

C. Alternatively, the Commission should affirm the denial of Go VIP’s application because it is a reincarnation of AMI Coaches and Airline Shuttle

28 Even if the Commission agreed that collaterally estopping Go VIP from contesting the violations amounted to legal error, or that Go VIP had shown that it had not committed any regulatory violations, it should still deny the petition and affirm Order 01. Go VIP is a reincarnation of AMI Coaches and Airline Shuttle, and state law forbids reincarnated carriers from operating.

29 The Commission incorporated the provisions of Title 49 C.F.R. that concern reincarnated carriers into chapter 480-30 WAC.⁶⁴ Those provisions provide that

Two or more motor carriers shall not use common ownership, common management, common control, or common familial relations to enable any

⁶⁰ Perkinson, TR. 83:11-21, 84:7-18, 86:14-87:9; Exh. MP-1, Exh. MP-2, Exh. MP-3, Exh. MP-4.

⁶¹ Perkinson, TR. 85:15-19.

⁶² Perkinson, TR. 83:11-85:2, 86:14-87:14.

⁶³ Perkinson, TR. 83:22-84:6.

⁶⁴ WAC 480-30-221.

or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, or with an order issued under such requirements.⁶⁵

30 The ALJ found that Go VIP is a reincarnation of AMI Coaches and Airline Shuttle: Go VIP shares common ownership, management, property, and purpose with those other companies.⁶⁶ The record supports that finding. Mr. Valentinetti admitted each of the commonalities found by the ALJ.⁶⁷ Further, Mr. Valentinetti essentially admitted that he incorporated Go VIP to enable him to avoid the out-of-service orders against AMI Coaches and Airline Shuttle.⁶⁸ The Commission should deny Go VIP's application on the basis that it is a reincarnation of carriers ordered out of service.⁶⁹

D. Mr. Valentinetti's allegations of discrimination are meritless

31 Finally, Mr. Valentinetti alleges that the denial of Go VIP's application resulted from a discriminatory conspiracy against him and employees of his companies.⁷⁰ Staff treats these allegations with the utmost seriousness and asks the Commission to reject any request for relief by Mr. Valentinetti on these grounds.

32 As it did in responding to Go VIP's post-hearing arguments,⁷¹ Staff strenuously denies ever discriminating against Mr. Valentinetti or his employees. Staff has never

⁶⁵ 49 C.F.R. § 385.1005.

⁶⁶ Order 01 at ¶ 43.

⁶⁷ Valentinetti TR. 48:5-7, 49:15-22; Perkinson, TR. 79-7-12.

⁶⁸ Valentinetti, TR. 53:11-14, 24-25.

⁶⁹ WAC 480-30-221; 49 C.F.R. § 385.1005

⁷⁰ Mr. Valentinetti also alleges that the undersigned AAG mocked his heritage. The undersigned AAG denies ever doing so in this signed pleading. Mr. Valentinetti seemed to have no problem with the undersigned AAG at hearing, e.g. Valentinetti, TR. 62:10-12, 97:21-23, and no contact with Mr. Valentinetti has occurred since the hearing other than the service of documents in this docket.

⁷¹ *In re Application of Go VIP, LLC for a certificate to operate as a charter and excursion carrier*, Docket TE-161295, Staff's Response, (May 3, 2017).

made any comment on or about Mr. Valentinetti, or any decision about Go VIP's application, based in any way on race, nationality, religion, or parentage.

33 Further, Mr. Valentinetti presents no direct evidence that discriminatory animus motivated any relevant Staff member.⁷² Mr. Valentinetti's claims of discriminatory conduct involve John Foster, a former Commission employee. Mr. Valentinetti offers no evidence of discriminatory animus on the part of Mr. Perkinson, the Staff member recommending denial of Mr. Valentinetti's application. As Mr. Valentinetti fails to offer evidence that Mr. Foster had any influence over Mr. Perkinson's recommendations, he cannot obtain relief, even if the Commission credits Mr. Valentinetti's allegations in the face of Staff's denials.⁷³

34 Mr. Valentinetti also fails to offer evidence that would allow the inference that discriminatory intent played a part in denying Go VIP's application.⁷⁴ For example, Mr. Valentinetti did not show that Staff should have recommended his application for approval, or that Staff has recommended approval for other applicants with similar regulatory histories, both of which would raise the inference that discrimination played a role in the denial of Go VIP's application.⁷⁵ Without those showings, the Commission should not, and cannot, credit Mr. Valentinetti's allegations.

⁷² See *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 179-80, 23 P.3d 440 (2001), *overruled on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006) (direct evidence as a means of proving discrimination claim).

⁷³ *Cf. City of Vancouver v. Pub. Employment Relations Comm'n*, 180 Wn. App. 333, 351-58, 325 P.3d 213 (2014) (discussing cat's paw or subordinate bias liability). Mr. Valentinetti appears to argue that Mr. Foster was at the root of all of his troubles. But the record shows that Mr. Foster had no part in the FMCSA safety audits that resulted in the out-of-service orders for AMI Coaches and Airline Shuttle. Perkinson. TR. 95:10-24.

⁷⁴ See *Hill*, 144 Wn.2d at 179-80 (indirect evidence as a means of proving discrimination claim).

⁷⁵ See *Domingo v. Boeing Employees Credit Union*, 124 Wn. App. 71, 81, 98 P.3d 1222 (2004) (disparate treatment).

35 In the end, Go VIP's evidence of discrimination reduces to evidence that Staff recommended denial its application and that the Commission followed that recommendation. Mr. Valentinetti was quite convinced that Staff had no discriminatory intent at hearing.⁷⁶ The only change between then and now is the fact that he has not obtained the result that he wanted. Go VIP's evidence cannot form the basis of relief on such serious allegations.

V. CONCLUSION

36 Staff respectfully requests that the Commission deny Go VIP's petition for review.

DATED June 1, 2017.

Respectfully submitted,

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⁷⁶ See Valentinetti, TR. 54:8-9; Perkinson, TR. 97:21-23.