

Docket Nos. TE-200016 and TE-200272  
(Consolidated) - Vol. I

Washington Utilities and Transportation  
Commission v. Blessed Limousine, Inc.

May 1, 2020



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

**206.287.9066**

[www.buellrealtime.com](http://www.buellrealtime.com)

Olympia | 360.534.9066 Spokane | 509.624.3261 National | 800.846.6989

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



Page 1

1                    BEFORE THE WASHINGTON  
2                    UTILITIES AND TRANSPORTATION COMMISSION

---

4 WASHINGTON UTILITIES AND ) DOCKETS TE-200016 and  
TRANSPORTATION COMMISSION,) TE-200272 (Consolidated)

5                    Complainant, )  
6                    vs.                    )  
7                    BLESSED LIMOUSINE, INC., )  
8                    )  
9                    Respondent.    )

---

11 TELEPHONIC BRIEF ADJUDICATIVE PROCEEDING, VOLUME I  
12                    PAGES 1-56  
13                    ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

---

15                    May 1, 2020  
16                    9:30 a.m.

17                    Washington Utilities and Transportation Commission  
18                    621 Woodland Square Loop Southeast  
19                    Lacey, Washington 98503

20 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

21 Buell Realtime Reporting, LLC  
22 1325 Fourth Avenue, Suite 1840  
23 Seattle, Washington 98101  
24 (206) 287-9066 | Seattle  
(360) 534-9066 | Olympia  
(800) 846-6989 | National

25 www.buellrealtime.com

Page 3

1                    EXAMINATION INDEX

2 JASON SHARP                    PAGE

3 By Mr. Fukano. . . . . 11

4 By Mr. Ware. . . . . 22

5 By Mr. Fukano. . . . . 23

6 CLUSSIE BAGBY

7 By Mr. Kimball. . . . . 25

8 By Mr. Fukano. . . . . 39

9 By Mr. Kimball. . . . . 45

---

11                    EXHIBIT INDEX

12 EXHIBITS FOR ADMISSION                    PAGE

13 JS-1                    8

14 JS-2                    8

15 JS-3                    8

16 JS-4                    8

17 JS-5                    8

18 JS-6                    8

19 JS-7                    8

20 JS-8                    8

21 JS-9                    8

22 CB-1                    8

23 CB-2                    8

24 CB-3                    8

25 CB-4                    8

Page 2

1                    A P P E A R A N C E S  
2 ADMINISTRATIVE LAW JUDGE:  
3                    MICHAEL HOWARD

4

5 FOR COMMISSION STAFF:

6                    HARRY FUKANO  
7                    Assistant Attorney General  
8                    Office of the Attorney General  
9                    PO Box 40128  
10                    Olympia, Washington 98504  
(360) 664-1225  
harry.fukano@utc.wa.gov

11 FOR BLESSED LIMOUSINE:

12                    MARK KIMBALL  
13                    JAMES WARE  
14                    777 - 108th Avenue Northeast  
15                    Suite 2000  
16                    Bellevue, Washington 98004  
(425) 455-9610  
mkimball@mdklaw.com  
jware@mdklaw.com

17 ALSO PRESENT:

18                    JASON SHARP  
19                    CLUSSIE BAGBY  
20                    \* \* \* \* \*

Page 4

1                    EXHIBIT INDEX (Cont.)

2 EXHIBITS FOR ADMISSION                    PAGE

3 CB-5                    8

4 CB-6                    8

5 CB-7                    8

6 CB-8                    8

7 CB-9                    8

8 CB-10                    8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 5	Page 7
<p>1 LACEY, WASHINGTON; MAY 1, 2020                  2 9:30 A.M.                  3 --oOo--                  4 P R O C E E D I N G S                  5                  6 JUDGE HOWARD: Let's be on the record. Good                  7 morning. Today is Friday, May 1st, 2020, and the time                  8 is 9:33 a.m. This case is captioned The Washington                  9 Utilities and Transportation Commission v. Blessed                  10 Limo -- Limousine, Incorporated in consolidated Dockets                  11 TE-200016 and TE-200272.                  12 My name is Michael Howard, and I am the                  13 administrative law judge presiding over today's brief                  14 adjudicative proceeding.                  15 Let's take appearances from both parties,                  16 and then we will talk about how we're going to proceed                  17 this morning. Let's start with Commission Staff.                  18 MR. FUKANO: Good morning. My name is Harry                  19 Fukano, Assistant Attorney General, for Commission                  20 Staff, and my last name is spelled F-u-k-a-n-o for the                  21 record.                  22 JUDGE HOWARD: Thank you.                  23 And could we have an appearance for Blessed                  24 Limousine?                  25 MR. KIMBALL: So this is Mark Kimball,</p>	<p>1 then allow Blessed Limousine to present its case and                  2 challenge any of the allegations made by Staff in either                  3 docket and to explain why its certificate should not be                  4 cancelled. We can then end the hearing by allowing each                  5 party a chance to give a closing statement.                  6 I see that each party submitted exhibits,                  7 and we had an off-the-record discussion earlier about                  8 resubmitting exhibits in a redacted form to protect                  9 personally identifiable information.                  10 Mr. Kimball, the -- I see that the company                  11 submitted I believe it was ten exhibits, and they were                  12 numbered, but the Commission does include the                  13 witness's -- sponsoring witness's initials when                  14 numbering exhibits. So is -- is Mr. -- is your -- the                  15 company owner going to be sponsoring the exhibits today?                  16 MR. KIMBALL: Yes, Your Honor.                  17 JUDGE HOWARD: Okay. If -- unless you have                  18 any concerns, I was going to go ahead and renumber the                  19 company exhibits CB, dash, and then the number.                  20 MR. KIMBALL: No objection.                  21 JUDGE HOWARD: Okay. Does either party --                  22 and the parties stipulate to the admissibility of the                  23 exhibits? Or --                  24 MR. FUKANO: We have no objection.                  25 JUDGE HOWARD: Okay.</p>
Page 6	Page 8
<p>1 attorney for the company. James Ware, also the attorney                  2 for the company, and then Clussie Bagby who is the owner                  3 of the company.                  4 JUDGE HOWARD: Thank you.                  5 Since we are doing this hearing over the                  6 phone today, I'm going to ask that the parties be aware                  7 of background noise and that you mute your microphone                  8 when you are not speaking. If you need to object to                  9 raise an issue, please identify yourself when you are                  10 speaking. And we should make an effort not to talk over                  11 each other so the court reporter can make a clear record                  12 of our hearing today.                  13 I will just briefly provide a roadmap for                  14 today's proceeding. In Docket TE-200272, the Commission                  15 Staff cancelled the company's charter and excursion                  16 certificate due to insufficient proof of insurance. And                  17 in the earlier Docket TE-200016, the Commission gave                  18 notice that it intended to cancel the company's                  19 certificate due to alleged violations of Federal Motor                  20 Carrier safety regulations.                  21 We consolidated these dockets to consider                  22 all the relevant facts in one proceeding. Since Staff                  23 is essentially the moving party, I'm going to ask that                  24 Staff present their case first giving their reasons why                  25 the company's certificate should be cancelled. I'll</p>	<p>1 MR. FUKANO: This is Harry Fukano.                  2 MR. KIMBALL: No objection.                  3 JUDGE HOWARD: Was that no objection from                  4 you, Mr. Kimball?                  5 MR. KIMBALL: It was. So my understanding                  6 is that there's no objection from either the AG or                  7 from -- from our office.                  8 JUDGE HOWARD: Okay. Since there are -- are                  9 no objections, I'll go ahead and admit all the submitted                  10 exhibits into the record. This includes Staff exhibits                  11 numbered JS -- JS-1 through JS-9 and it also includes                  12 Blessed Limousine Exhibits CB-1 through CB-10.                  13 (Exhibits JS-1 through JS-9 and CB-1                  14 through CB-10 admitted.)                  15 JUDGE HOWARD: With that roadmap for our                  16 hearing today, do we have any questions before we turn                  17 to the parties offering their cases?                  18 MR. FUKANO: Judge Howard, this is Harry                  19 Fukano. I just wanted to clarify that you would prefer                  20 that Staff proceed initially on both the insurance                  21 matter and the cancellation matter?                  22 JUDGE HOWARD: Yes, that's right.                  23 MR. FUKANO: And should Staff present the                  24 issues in -- Staff's understanding of the insurance                  25 matter at this time is that -- that the company's</p>

Page 9

1 certificate is currently cancelled, and the company is  
 2 alleging that the Commission erred in cancelling its  
 3 certificate. And so is that an appropriate framing of  
 4 that -- of that issue?  
 5 MR. KIMBALL: Yes. This is Mark Kimball,  
 6 Your Honor. That's -- we would concur with that  
 7 framing.  
 8 JUDGE HOWARD: Okay, great.  
 9 Does that make -- does that accord with you,  
 10 Mr. Fukano?  
 11 MR. FUKANO: It does. Thank you for the  
 12 clarification, Judge and Mr. Kimball.  
 13 JUDGE HOWARD: Okay. Unless there's any  
 14 further questions, Mr. Fukano, you may proceed with your  
 15 opening statement or you may call your first witness.  
 16 MR. FUKANO: Thank you, Judge.  
 17 Good morning. I'm Harry Fukano, Assistant  
 18 Attorney General, representing Commission Staff. We are  
 19 here today this morning for the matter involving Blessed  
 20 Limousine. This consolidated hearing presents two  
 21 general issues; first, whether the Commission properly  
 22 cancelled the company's charter and excursion operating  
 23 authority for failing to file proper insurance with the  
 24 Commission; and second, and whether the violations and  
 25 outcome of the company's FMCSA, Federal Motor Carrier

Page 10

1 Safety Administration, inspection presents good cause to  
 2 cancel the company's charter and excursion operating  
 3 authority.  
 4 Staff asserts that the Commission did not  
 5 err by cancelling Blessed Limo's operating authority for  
 6 failure to have proper insurance filed, and  
 7 alternatively that the result of the FMCSA investigation  
 8 present good cause for the Commission to cancel the  
 9 company's operating authority. Staff intends to present  
 10 evidence through its witness, Mr. Jason Sharp.  
 11 Thank you, and I would now like to call  
 12 Mr. Jason Sharp to the stand.  
 13 JUDGE HOWARD: Mr. Sharp, are you on the  
 14 line?  
 15 MR. SHARP: Yes, Your Honor.  
 16 JUDGE HOWARD: Okay. Mr. Sharp, I know we  
 17 are on the phone, but would you please stand and raise  
 18 your right hand and I will swear you in?  
 19 (Jason Sharp sworn.)  
 20 JUDGE HOWARD: Thank you. You may be  
 21 seated.  
 22 And, Mr. Fukano, you may proceed.  
 23 MR. FUKANO: Thank you, Your Honor.  
 24 ////  
 25 ////

Page 11

EXAMINATION OF SHARP / FUKANO

1 EXAMINATION  
 2 BY MR. FUKANO:  
 3 Q. Mr. Sharp, please state your name and spell your  
 4 last name for the record.  
 5 A. Jason Sharp, S-h-a-r-p.  
 6 Q. And what is your current position with the  
 7 Commission?  
 8 A. I am the motor carrier safety supervisor.  
 9 Q. And are you familiar with the Commission's  
 10 regulations and statutes regarding motor vehicles  
 11 including charter and excursion carriers?  
 12 A. Yes, I am.  
 13 Q. And how did you become familiar with Commission  
 14 statutes and regulations regarding motor vehicles?  
 15 A. I had been a safety investigator with the  
 16 Utilities and Transportation Commission for three and a  
 17 half years with the last two and a half in a supervisory  
 18 role. I have been trained by the FMCSA in conducting  
 19 commercial vehicle safety inspections as well as  
 20 conducting safety investigations.  
 21 Q. I would now like to discuss the issues  
 22 pertaining to Blessed Limousine beginning with the  
 23 insurance issue.  
 24 Are you familiar with the insurance issue  
 25 pertaining to Blessed Limousine's operating authority?

Page 12

EXAMINATION OF SHARP / FUKANO

1 A. Yes, I'm familiar.  
 2 Q. Would you please refer to Exhibit JS-8.  
 3 A. Okay. I have it open.  
 4 Q. Who -- what is this exhibit?  
 5 A. This is a notice of cancellation of insurance  
 6 letter sent by the Commission's licensing services to  
 7 the company notifying it that it has received notice  
 8 that its policy would be cancelled and that the company  
 9 would need to submit sufficient proof of insurance by  
 10 March 24th, 2020, or have its certificate be cancelled.  
 11 Q. And to clarify, who is this exhibit addressed  
 12 to?  
 13 A. Blessed Limousine, Inc.  
 14 Q. Are you familiar with Commission records  
 15 pertaining to Blessed Limousine?  
 16 A. Yes.  
 17 Q. Does the address on this letter match the  
 18 address for Blessed Limousine contained in Commission  
 19 records?  
 20 A. Yes, it does.  
 21 Q. And did you confirm with licensing service staff  
 22 that this notice was sent to the company?  
 23 A. Yes.  
 24 Q. And how was it sent?  
 25 A. It was sent via mail and email.

<p style="text-align: right;">Page 13</p> <p>EXAMINATION OF SHARP / FUKANO</p> <p>1 <b>Q. Thank you.</b></p> <p>2 <b>Would you please refer to Exhibit JS-9?</b></p> <p>3 A. Okay. I have it open.</p> <p>4 <b>Q. What is this exhibit?</b></p> <p>5 A. This is a letter to Blessed Limousine, Inc.</p> <p>6 notifying the company that its certificate had been</p> <p>7 cancelled due to insufficient proof of insurance.</p> <p>8 <b>Q. Have you reviewed Commission records pertaining</b></p> <p>9 <b>to Blessed Limousine's insurance?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Did Blessed Limousine have active current</b></p> <p>12 <b>insurance information filed with the Commission on</b></p> <p>13 <b>March 24th, 2020?</b></p> <p>14 A. Commission records did not indicate that, no.</p> <p>15 <b>Q. Does Blessed Limousine have active current</b></p> <p>16 <b>insurance information filed with the Commission today?</b></p> <p>17 A. Currently it does not.</p> <p>18 <b>Q. Earlier you stated you were familiar with</b></p> <p>19 <b>Commission statutes and rules pertaining to charter and</b></p> <p>20 <b>excursion carriers, correct?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Based on your understanding and experience with</b></p> <p>23 <b>motor carrier safety regulations, may a charter or</b></p> <p>24 <b>excursion carrier regulated by the Commission operate</b></p> <p>25 <b>without filing appropriate insurance with the</b></p>	<p style="text-align: right;">Page 15</p> <p>EXAMINATION OF SHARP / FUKANO</p> <p>1 <b>Q. Did the inspection result in any violations for</b></p> <p>2 <b>the company?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Of those violations, were any of the violations</b></p> <p>5 <b>acute or critical?</b></p> <p>6 A. Yes, the report identifies two acute violation</p> <p>7 types as well as three separate critical violations.</p> <p>8 <b>Q. And overall, how many violations were contained</b></p> <p>9 <b>in the report?</b></p> <p>10 A. The report identifies 24 separate violation</p> <p>11 types.</p> <p>12 <b>Q. Turning back to the acute and critical-type</b></p> <p>13 <b>violation, based on your understanding and experience</b></p> <p>14 <b>with motor carrier safety regulation, what is the</b></p> <p>15 <b>significance of an acute violation?</b></p> <p>16 A. Well, both acute and critical regulations are</p> <p>17 considered more serious as they are linked to inadequate</p> <p>18 safety management controls and higher than average</p> <p>19 accident rates. Acute violations are those as such</p> <p>20 where noncompliance is so severe as to require immediate</p> <p>21 corrective action by a motor carrier regardless of its</p> <p>22 overall safety posture, while critical violations are</p> <p>23 those identified as such where noncompliance is</p> <p>24 indicative of breakdown in a company's safety management</p> <p>25 controls and are demonstrated by a pattern of</p>
<p style="text-align: right;">Page 14</p> <p>EXAMINATION OF SHARP / FUKANO</p> <p>1 Commission?</p> <p>2 A. No, it may not.</p> <p>3 <b>Q. More specifically, is appropriate insurance a</b></p> <p>4 <b>condition of possessing a charter and excursion</b></p> <p>5 <b>operating authority from the Commission?</b></p> <p>6 A. Yes, with the appropriate liability levels in</p> <p>7 place.</p> <p>8 <b>Q. Thank you. No further questions regarding this</b></p> <p>9 <b>issue. I would now like to discuss the issue involving</b></p> <p>10 <b>the FMCSA report.</b></p> <p>11 <b>Are you familiar with the matter at issue</b></p> <p>12 <b>involved in today's hearing regarding the FMCSA report?</b></p> <p>13 A. Yes, I am.</p> <p>14 <b>Q. Would you please refer to Exhibit JS-1.</b></p> <p>15 A. Okay. I have it open.</p> <p>16 <b>Q. What is this exhibit?</b></p> <p>17 A. This is the FMCSA safety investigation report</p> <p>18 that was dated October 31st, 2019.</p> <p>19 <b>Q. And who does this exhibit pertain to?</b></p> <p>20 A. Blessed Limousine, Inc.</p> <p>21 <b>Q. And you have reviewed this exhibit?</b></p> <p>22 A. Yes, I have.</p> <p>23 <b>Q. When was this inspection performed?</b></p> <p>24 A. During the month of October 2019 with the close</p> <p>25 date being October 31st.</p>	<p style="text-align: right;">Page 16</p> <p>EXAMINATION OF SHARP / FUKANO</p> <p>1 noncompliance.</p> <p>2 <b>Q. How many acute violations did the inspection</b></p> <p>3 <b>result in?</b></p> <p>4 A. The report identified two separate acute</p> <p>5 regulations that were found in violation a total of</p> <p>6 three acute violations -- or occurrences were identified</p> <p>7 for one regulation while one was identified for another.</p> <p>8 <b>Q. And what specifically were those violations?</b></p> <p>9 A. The report identifies three acute violations of</p> <p>10 49 CFR part 383.37(a), and those were found in violation</p> <p>11 for allowing a driver to operate a commercial motor</p> <p>12 vehicle during anytime in which the driver did not</p> <p>13 possess a current commercial learner permit or a</p> <p>14 commercial driver license or does not have a commercial</p> <p>15 learner permit or a commercial driver license with the</p> <p>16 proper endorsements.</p> <p>17 <b>Q. And the remaining violations?</b></p> <p>18 A. The company was found to have one additional</p> <p>19 acute violation of 49 CFR part 396.9(c)(2) for</p> <p>20 permitting the operation of a motor vehicle that had</p> <p>21 been declared out of service before repairs were made.</p> <p>22 <b>Q. How many critical violations did the inspection</b></p> <p>23 <b>result in?</b></p> <p>24 A. There were three.</p> <p>25 <b>Q. And what were those violations?</b></p>

<p style="text-align: right;">Page 17</p> <p><b>EXAMINATION OF SHARP / FUKANO</b></p> <p>1 A. Company was found to have four critical                  2 violations of 49 CFR part 391.51(b)(2) for failing to                  3 maintain inquiries into a driver's driving record in the                  4 driver qualification file. There were 49 critical                  5 violations of 49 CFR 395.8(a)(1) for failing to require                  6 a driver to prepare a record of duty status used in the                  7 appropriate method, and then there were two critical                  8 violations of 49 CFR 396.17(a) for using a commercial                  9 motor vehicle not periodically inspected.</p> <p>10 <b>Q. Have any of these critical or acute violations</b>                  11 <b>been previously identified -- identified by Staff in a</b>                  12 <b>prior investigation?</b></p> <p>13 A. Yes. Staff identified critical violations                  14 against the company in its intrastate review in January                  15 of 2019 for the company's failure to require drivers to                  16 prepare record of duty status.</p> <p>17 <b>Q. And do you recall what docket number that would</b>                  18 <b>be associated with?</b></p> <p>19 A. The company was issued a penalty assessment in                  20 Docket TE-190072.</p> <p>21 <b>Q. Based on your experience, do the critical and</b>                  22 <b>acute violations found in the report present any</b>                  23 <b>particular concerns to you?</b></p> <p>24 A. Well, yes. Anytime there's an acute violation,                  25 it definitely raises alarms. As I said, those are</p>	<p style="text-align: right;">Page 19</p> <p><b>EXAMINATION OF SHARP / FUKANO</b></p> <p>1 request an upgrade and have that safety rating upgraded                  2 before that unsatisfactory rating becomes final at which                  3 time the carrier is placed out of service and on -- or                  4 is ineligible to operate an intrastate or interstate.</p> <p>5 <b>Q. Based on your experience and on the violations</b>                  6 <b>contained in the report, do you agree with FMCSA's</b>                  7 <b>determination of an unsatisfactory safety rating?</b></p> <p>8 A. I do. The Commission adopts part 385, which                  9 houses the safety fitness standards. The Commission                  10 adopts it in its entirety and Commission rules are                  11 consistent with the Federal Motor Carrier Safety                  12 Administration's rating methodology.</p> <p>13 <b>Q. So just to clarify, Staff -- Staff investigators</b>                  14 <b>use the same rating formula as would be used by FMCSA?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. After the conclusion of the investigation, did</b>                  17 <b>FMCSA take any further action regarding Blessed</b>                  18 <b>Limousine?</b></p> <p>19 A. The -- the FMCSA did issue notice to the company                  20 of its proposed unsatisfactory rating and gave it                  21 instructions for how to request a safety upgrade.</p> <p>22 <b>Q. Would you please refer to Exhibit JS-2.</b></p> <p>23 A. I have the document open.</p> <p>24 <b>Q. What is this exhibit?</b></p> <p>25 A. This is a letter from the FMCSA dated</p>
<p style="text-align: right;">Page 18</p> <p><b>EXAMINATION OF SHARP / FUKANO</b></p> <p>1 generally violations that are so severe that they                  2 require immediate corrective action, for example,                  3 drivers operating commercial motor vehicles without a                  4 license or operating without a sufficient insurance.</p> <p>5 In looking at the totality of the findings in                  6 this report, there are several alarming violations in                  7 which the company allowed its drivers and vehicles to                  8 operate in.</p> <p>9 <b>Q. And would -- do you associate that with any</b>                  10 <b>specific violations?</b></p> <p>11 A. Each of them that -- that we just discovered.                  12 Again, the acute violations are -- are definitely                  13 alarming, including the fact that the -- one of the                  14 vehicles had been placed out of service and operated on                  15 a public roadway prior to getting repaired.</p> <p>16 <b>Q. Did the investigation report include a proposed</b>                  17 <b>safety rating for Blessed Limousine?</b></p> <p>18 A. Yes, the proposed rating was unsatisfactory.</p> <p>19 <b>Q. What is the significance of an unsatisfactory</b>                  20 <b>safety rating?</b></p> <p>21 A. An unsatisfactory rating is notification to the                  22 company that its safety management program is unfit and                  23 is in need of immediate corrective action. The company                  24 is given notice of this rating and given -- for a                  25 passenger carrier, they are given a 45-day period to</p>	<p style="text-align: right;">Page 20</p> <p><b>EXAMINATION OF SHARP / FUKANO</b></p> <p>1 November 19th, 2019, giving notice to the company of its                  2 proposed unsatisfactory safety rating.</p> <p>3 <b>Q. If an unsatisfactory rating -- excuse me. If an</b>                  4 <b>unsatisfactory safety rating became final, would it</b>                  5 <b>necessarily result in a company being placed out of</b>                  6 <b>service?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. To your knowledge, is Blessed -- is Blessed</b>                  9 <b>Limousine still out of service?</b></p> <p>10 A. Yes. The company as of January 4th, 2020, was                  11 placed out of service.</p> <p>12 <b>Q. And when did you last check?</b></p> <p>13 A. I checked this morning to verify that the                  14 conditions still remained.</p> <p>15 <b>Q. Has Blessed Limousine attempted to request a</b>                  16 <b>safety upgrade through FMCSA?</b></p> <p>17 A. Yes. I noticed in the exhibits submitted to                  18 this docket, that they are on their fourth attempt at                  19 upgrade.</p> <p>20 <b>Q. To your knowledge, has FMCSA granted a safety</b>                  21 <b>upgrade to Blessed Limousine?</b></p> <p>22 A. To my knowledge, not at this time.</p> <p>23 <b>Q. And when did you last inquire?</b></p> <p>24 A. Around 8:00 a.m. this morning.</p> <p>25 <b>Q. I would now like to discuss Staff's role and</b></p>

Page 21

**EXAMINATION OF SHARP / FUKANO**

1 recommendation in this case.  
 2 Based on the October report and the November  
 3 letter, what action, if any, does Staff take with  
 4 regards to Blessed Limousine's intrastate charter and  
 5 excursion carrier operating authority?  
 6 A. Staff recommended that the company's certificate  
 7 be cancelled based on the findings of the FMCSA safety  
 8 investigation, and due to the company being placed out  
 9 of service per 49 CFR 3 -- or 49 CFR 385.13 stating that  
 10 the company was ineligible to operate in both interstate  
 11 and intrastate commerce.  
 12 **Q. Sorry, can you repeat the last portion of your**  
 13 **response? I -- I got cut off on my end.**  
 14 A. Oh, I apologize. Yes. So the FMCSA issued the  
 15 out-of-service order against the company, and per  
 16 385.13, the company is ineligible to operate with an  
 17 out-of-service order in interstate and intrastate  
 18 commerce, and so Staff's recommendation was to  
 19 acknowledge the rating and cancel the company's  
 20 certificate with the Commission.  
 21 **Q. And to clarify, has the Commission adopted all**  
 22 **of the CFRs associated with the critical and acute**  
 23 **violations found in the October FMCSA report?**  
 24 A. Yes, the Commission has.  
 25 **Q. Stated another way, would the critical and acute**

Page 22

**EXAMINATION OF SHARP / WARE**

1 violations found also constitute violations of  
 2 Commission regulation?  
 3 A. Yes.  
 4 MR. FUKANO: Thank you. No further  
 5 questions.  
 6 JUDGE HOWARD: Mr. Kimball, do you have any  
 7 cross-examination?  
 8 MR. KIMBALL: We do, Your Honor, and  
 9 Mr. Ware is going to conduct the cross-examination of  
 10 this witness.  
 11 MR. WARE: I just have one question.  
 12  
 13 **E X A M I N A T I O N**  
 14 BY MR. WARE:  
 15 **Q. If FMCSA upgrades Blessed Limousine's rating to**  
 16 **satisfactory, do you believe that the issues outlined in**  
 17 **I believe it's Exhibit 1 have been resolved?**  
 18 A. So --  
 19 (Multiple speakers.)  
 20 BY MR. WARE:  
 21 **Q. I was going to say, so in FMCSA's report where**  
 22 **it outlines a acute and critical violation, if FMCSA**  
 23 **upgrades Blessed Limousine's rating to satisfactory, do**  
 24 **you believe that the critical and acute issues have been**  
 25 **resolved, the critical and acute violations?**

Page 23

**EXAMINATION OF SHARP / FUKANO**

1 A. I would -- I would say that if FMCSA were to  
 2 approve an upgrade to its safety rating, that Commission  
 3 Staff would recommend the Commission acknowledge and  
 4 adopt that rating.  
 5 **Q. And therefore, if FMCSA upgrades Blessed**  
 6 **Limousine's rating to satisfactory, would you maintain**  
 7 **the recommendation that its certificate be cancelled?**  
 8 A. I would say that Staff would want to entertain  
 9 or would be willing to entertain the fact that the  
 10 company has brought its compliance into -- or brought  
 11 its safety systems into compliance and would be open to  
 12 recertification.  
 13 **Q. Okay. And that's because Commission adopts the**  
 14 **FMCSA standards; is that correct?**  
 15 A. Correct.  
 16 **Q. Okay.**  
 17 MR. WARE: No further questions -- well, no  
 18 further questions.  
 19 JUDGE HOWARD: Okay. Mr. Fukano, do you  
 20 have any redirect examination?  
 21 MR. FUKANO: Very briefly, Your Honor.  
 22  
 23 **E X A M I N A T I O N**  
 24 BY MR. FUKANO:  
 25 **Q. Mr. Sharp?**

Page 24

**EXAMINATION OF SHARP / FUKANO**

1 A. Yes?  
 2 **Q. If the company were to have a safety upgrade**  
 3 **from FMCSA, would Staff conduct any further review of**  
 4 **the company's safety operations including whether or not**  
 5 **the company has filed appropriate insurance?**  
 6 A. Yes, that would need to be a requirement prior  
 7 to receiving authority.  
 8 MR. FUKANO: Thank you. No further  
 9 questions.  
 10 JUDGE HOWARD: Thank you, Mr. Sharp, for  
 11 your testimony. You can be excused from the hearing.  
 12 Mr. Fukano, do you intend to call any other  
 13 witnesses or would you -- would Staff rest its case?  
 14 MR. FUKANO: Nothing further from Staff,  
 15 Your Honor.  
 16 JUDGE HOWARD: Okay. Mr. Kimball, if you'd  
 17 like to make an opening statement, you may do so or you  
 18 may proceed to call your witness.  
 19 MR. KIMBALL: Proceed to call witness.  
 20 JUDGE HOWARD: Okay. And -- I'm sorry?  
 21 MR. KIMBALL: And the first witness, and the  
 22 only witness, will be Clussie Bagby.  
 23 JUDGE HOWARD: Okay. Mr. Bagby, I will  
 24 swear you in.  
 25 (Clussie Bagby sworn.)

Page 25

EXAMINATION OF BAGBY / KIMBALL

1 JUDGE HOWARD: Thank you. You may be  
 2 seated.  
 3 And, Mr. Kimball, you may proceed.  
 4 MR. KIMBALL: Thank you.  
 5  
 6 EXAMINATION  
 7 BY MR. KIMBALL:  
 8 **Q. Mr. Bagby, can you state your name for the**  
 9 **record, please?**  
 10 A. Clussie Bagby.  
 11 **Q. Okay. And what is your current professional**  
 12 **address or business address?**  
 13 A. 15 South Grady Way, Renton, Washington 98057.  
 14 **Q. Okay. And what is your relationship to the**  
 15 **company called Blessed Limo?**  
 16 A. I am owner/operator.  
 17 **Q. Okay. And are you 100 percent owner?**  
 18 A. Yes.  
 19 **Q. And how long has Blessed Limousine been in**  
 20 **existence?**  
 21 A. This is year maybe 16.  
 22 **Q. Okay. And what kind of transportation services**  
 23 **does Blessed Limousine provide?**  
 24 A. It provides charter transportation, limousine,  
 25 town car --

Page 26

EXAMINATION OF BAGBY / KIMBALL

1 (Phone interference.)  
 2 THE COURT REPORTER: This is the court  
 3 reporter. I'm having a hard time hearing the witness.  
 4 MR. WARE: Move the phone closer to the  
 5 witness.  
 6 MR. KIMBALL: Sorry about that.  
 7 Are you there?  
 8 JUDGE HOWARD: This is Judge Howard, yes, I  
 9 can hear you now.  
 10 MR. KIMBALL: Is that better, Court  
 11 Reporter?  
 12 THE COURT REPORTER: It is. Thank you.  
 13 BY MR. KIMBALL:  
 14 **Q. And how many vehicles are there in the fleet?**  
 15 A. There is seven vehicles in the fleet.  
 16 **Q. Okay. What are the passenger capacities in the**  
 17 **different vehicles?**  
 18 A. It goes from 57 passengers down to three  
 19 passengers, four passengers.  
 20 **Q. Okay. You heard some testimony this morning**  
 21 **concerning safety reviews and safety ratings conducted**  
 22 **by the Federal Motor Carrier Safety Administration; do**  
 23 **you recall that testimony?**  
 24 A. Yes, sir.  
 25 **Q. Okay. And specifically, there was a reference**

Page 27

EXAMINATION OF BAGBY / KIMBALL

1 to a review report that was done on October 31st and  
 2 then a notification from the UTC in November 19th if I'm  
 3 not mistaken; is that correct?  
 4 A. Yes, sir.  
 5 **Q. Okay. So starting out, you did receive notice**  
 6 **from the FMCSA of several violations; is that correct?**  
 7 A. Yes, sir.  
 8 **Q. And is it true that three of those violations**  
 9 **then -- or excuse me, two of the violations have been**  
 10 **changed from unsatisfactory to satisfactory?**  
 11 A. Yes, sir.  
 12 **Q. And which are those violations?**  
 13 A. Which two have been changed from...  
 14 **Q. From unsatisfactory to satisfactory.**  
 15 A. The two that were changed were -- the two that  
 16 changed were 49 CFR 391.51, failing to maintain into a  
 17 driver's record; 49 CFR 396.6, the crime of permitting  
 18 the operation of a motor vehicle declared out of  
 19 service.  
 20 **Q. Okay. And even though those have been changed**  
 21 **from unsatisfactory to satisfactory, can you just give**  
 22 **us a very brief statement about what you did to -- to**  
 23 **get them into the satisfactory standard?**  
 24 A. I now take -- we had a problem with MVRs.  
 25 Washington State changed their process in letting people

Page 28

EXAMINATION OF BAGBY / KIMBALL

1 getting MVRs. We've now changed our process along with  
 2 the Washington State, and we now take MVRs on every  
 3 driver. And not only do we take an MVR, but every 90  
 4 days, we again take another MVR.  
 5 We've now brought a company on board called  
 6 Foley Services, which now they'll be taking MVRs also.  
 7 So it'll be like a two-tier. Not only will I take them,  
 8 the company take them, but also Foley Services will take  
 9 them. And so if there's anything missing, they will  
 10 catch them.  
 11 **Q. And do you plan on keeping Foley Services on**  
 12 **board for compliance issues?**  
 13 A. Oh, absolutely. Foley Services will be coming  
 14 on a little bit more taking on some more responsibility,  
 15 like the services that they render.  
 16 **Q. Okay. And there are some other violations that**  
 17 **have been discussed today including ones relating to**  
 18 **insurance; do you recall that testimony?**  
 19 A. Yes, sir.  
 20 **Q. What is the issue with -- or what is the current**  
 21 **status of Blessed Limo and its insurance coverage?**  
 22 A. Blessed Limo has had insurance from day one. I  
 23 know insurance is quite an important factor in  
 24 transportation. So we've had insurance from day one,  
 25 but during this FMCSA, being out of service, the



Page 29

EXAMINATION OF BAGBY / KIMBALL

1 insurance company would not allow us to renew our  
 2 insurance until we got an order from FMCSA saying we're  
 3 back in service. They said they would love to reinsure  
 4 me, which they continuously do year after year, but  
 5 because of the out of service, they would -- they're not  
 6 allowed to give us insurance.

7 **Q. And is that communication memorialized in**  
 8 **Exhibit 10 of our exhibits?**

9 A. Exhibit 10, yes, it is. I think it is, but I  
 10 want to make sure. Yes, it is. It was from Amy, and  
 11 Amy said that the only reason that we wasn't renewed by  
 12 the same company that we've been renewed for for the  
 13 last maybe ten years is because of this out-of-service  
 14 status.

15 **Q. Okay. Is it your understanding that once the**  
 16 **out-of-service status is removed, that you will be able**  
 17 **to get a certificate of insurance?**

18 A. Absolutely for sure. Amy said she's looking  
 19 forward to the opportunity to put Blessed Limo back in  
 20 status of insurance.

21 **Q. Okay. And there was also another violation,**  
 22 **and, again, I want to just be very brief on these.**  
 23 **Another violation that went from unsatisfactory to**  
 24 **satisfactory, which was 49 CFR 396.9(b)(2), requiring or**  
 25 **permitting the operation of a motor vehicle declared out**

Page 30

EXAMINATION OF BAGBY / KIMBALL

1 of service before repairs were made; do you see that?  
 2 A. Yes, I do.

3 **Q. And what did you do to correct that situation?**

4 A. We now know, and it's an absolutely for sure  
 5 fact, that no -- no motor vehicle can be driven when out  
 6 of service. We're not only sending vehicles to the --  
 7 to the mechanic to have them repaired, but every -- for  
 8 the once a year, but now every 90 days, they go for  
 9 5,000 mile -- a 5,000 mile checkup to make for sure  
 10 they're in order. So but there's a fact that we now  
 11 understand that no vehicle is to be moved once out of  
 12 service. The only way it can be moved is on a tow  
 13 truck, period.

14 **Q. Okay. And what was the safety issue or the out**  
 15 **of service issue for the vehicle in question?**

16 A. There was actually four -- four violations on  
 17 it. Oil, there was an oil leak, it was -- the oil can  
 18 was -- was not tight. It was something with the  
 19 muffler, the muffler needed to be (phone interference.)  
 20 It was taken care of. There was one more, and then it  
 21 was -- no, it was two tires. There were two tires on  
 22 the -- on the vehicle that needed to be changed.

23 **Q. So in the report from October, there are -- if I**  
 24 **understand, there were four remaining violations that**  
 25 **still need corrections. What have you done to try to**

Page 31

EXAMINATION OF BAGBY / KIMBALL

1 get your safety upgraded based on those four matters?  
 2 A. We are now -- we are now -- we hired on Foley  
 3 Services, which is going to help us with the keeping  
 4 corrective records for allowing a driver -- every driver  
 5 now not only goes through strenuous background check,  
 6 endorsement check, all -- all checkup through Blessed  
 7 Limo, but now it goes through a strenuous checkup with  
 8 Foley Services. After we do our check, we then turn it  
 9 over to Foley Services, and Foley Services does the same  
 10 check. But not only do they check it at that time, but  
 11 every 90 days, they run that driver to make for sure  
 12 there's no accidents new, there's no passenger  
 13 endorsements taken away, and there is no kind of  
 14 violations at all on that individual.

15 **Q. And so we're clear on this, you're referring to**  
 16 **49 CFR 383.37(a); is that correct?**

17 A. Yes, sir.

18 **Q. Okay. All right. And what about the situation**  
 19 **concerning making sure that all the drivers have an**  
 20 **appropriate license such as a CDL?**

21 A. That's where -- that's where Foley Services come  
 22 in. They're not only going to do a background check  
 23 from the start, but they will be doing a background  
 24 check along with Blessed Limo. Blessed Limo will also  
 25 do a background check and make for sure all credentials

Page 32

EXAMINATION OF BAGBY / KIMBALL

1 are up to date and proper. But along with the second  
 2 tier, Foley Services will be doing the same thing to  
 3 make for sure that not only not will this not happen  
 4 again, but it doesn't occur within the period of time  
 5 that it's going to be checked again.

6 **Q. Okay. And, again, just so we're clear, what was**  
 7 **the violation that FMCSA determined for that particular**  
 8 **citation or that particular violation?**

9 A. The violation was that a driver didn't have a  
 10 proper endorsement.

11 **Q. Okay.**

12 A. And the endorsement was a passenger. He didn't  
 13 have a passenger endorsement. And what happened with  
 14 that, is he actually went to the motor vehicle to get a  
 15 change in endorsement for another situation, and when he  
 16 did, they took his passenger endorsement off that he  
 17 wasn't aware of. By the time this investigation came,  
 18 that's when he found out that his endorsement wasn't on  
 19 there.

20 **Q. Okay. You also have a violation under 49 CFR**  
 21 **Part 391.51(b)(2), which is failing to maintain**  
 22 **inquiries into a driver's driving record and driver's**  
 23 **qualification file; are you aware of that violation?**

24 A. Yes, sir.

25 **Q. Okay. Can you tell me what you have done to**

Page 33

**EXAMINATION OF BAGBY / KIMBALL**

1 correct that?

2 A. We now have a program where we can get MVRs very

3 easy. Why Washington State changed their status of how

4 you can get an MVR, I'll never know. For the first 14,

5 15 years, I never had a problem with it. All of a

6 sudden, they changed it, but I have now got that taken

7 care of, and MVRs is easy for me to get as a company.

8 And also Foley Services will be doing a

9 strenuous background check on every driver, pulling

10 MVRs. Not only will they pull the MVR, but every 90

11 days, they'll pull another MVR to make for sure there's

12 no changes in the MVR they pulled the first time.

13 **Q. Okay. And the next violation cited remaining is**

14 **49 violations of CFR part 395.8(a)(1), failing to**

15 **require a driver to prepare a record of duty status**

16 **using the appropriate method, dealing with accurate**

17 **records concerning start time, stop time, end time.**

18 **So let's talk about at the time the violation**

19 **notice was given, what were your -- your practices with**

20 **regard to those issues?**

21 A. Our practices then were to do the start time,

22 stop time, to make for sure they do the final time, and

23 make for sure that they -- they don't go over 12 hours

24 and to make for sure they go to the same place and come

25 back to the same place. What occurred in the instance

Page 34

**EXAMINATION OF BAGBY / KIMBALL**

1 of getting the violation was that a couple of the

2 drivers did not put the end time. The form was filled

3 out and it was signed, but in a couple instances, there

4 was not an end time on the paper.

5 **Q. Okay. And what have you done to rectify that**

6 **situation?**

7 A. Now I have somebody in charge of looking at --

8 inspecting from Blessed Limo, and not only does they --

9 do they oversee making for sure start time, stop time,

10 end time, but there again, Foley Services, that's

11 their -- that's their duty. No, I'm sorry, Keep on

12 Trucking. I have now hired another company called Keep

13 on Trucking.

14 The driver now has an opportunity to do his time

15 on his phone, and he has to push start time, stop time,

16 and end time, and within six-hour period from the time

17 that the driver turns it in, it has to be approved by

18 the individual at the office. And once it's approved,

19 it's not only kept on record, but it's kept on record up

20 to six or seven months.

21 **Q. Okay. Did the FMCSA explain to you that the**

22 **form you had previously been using was not adequate?**

23 A. No, sir. They -- they said this form that I was

24 using was totally adequate. What was wrong with the

25 form was it was missing an end time on a few of the --

Page 35

**EXAMINATION OF BAGBY / KIMBALL**

1 on a few of the forms. That was the problem with it.

2 **Q. Okay. And the next violation alleged is a**

3 **violation of 49 CFR part 396.17(a), using a commercial**

4 **motor vehicle not periodically inspected; do you recall**

5 **that violation?**

6 A. Yes, sir.

7 **Q. And can you tell us a little about how that**

8 **occurred?**

9 A. Yeah. I had a -- I had a vehicle that was

10 sitting around that was out of service. I -- at that

11 time, each vehicle wasn't marked as it should have been.

12 And now we have markings on our vehicles, but they

13 wasn't marked as it should have been. That vehicle was

14 signed up as going out, which it did not go out. But by

15 it being signed up not having the wrong number, it was

16 deemed as going out and not being inspected.

17 **Q. Okay. Have you heard of a company called GLM**

18 **Charter?**

19 A. GLM Charter, that's Gary Miller. That's my --

20 that's the mechanic for the company. He does all the

21 mechanic work and all the inspections on the company.

22 **Q. Okay. And what -- what have you done**

23 **specifically to ensure that GLM and the company are in**

24 **compliance with regard to the periodic inspections?**

25 A. Not only do they inspect the busses now once a

Page 36

**EXAMINATION OF BAGBY / KIMBALL**

1 year like they were before making for sure everything's

2 taken care of, but now they do a 5,000- and a

3 15,000-mile checkup, which allows the bus to be checked

4 through the month, through the year to make for sure

5 that it's up to par and inspected and everything is up

6 to par.

7 **Q. And does that apply to all of the vehicles that**

8 **you own and operate?**

9 A. That applies to every vehicle in the fleet.

10 **Q. Okay. Is there a company called A Plus**

11 **Maintenance?**

12 A. It's called A Plus Bus Maintenance, and yes,

13 they're -- they're another bus company -- they're

14 another mechanic that I use.

15 **Q. Okay. And are you -- do you plan on continuing**

16 **to use them?**

17 A. Yes, sir.

18 **Q. Okay. So you submitted -- my understanding**

19 **is -- well, strike that.**

20 **My understanding is there is also a violation**

21 **alleged of 49 CFR 396.9(b)(2), which is requiring or**

22 **permitting the operation of a motor vehicle declared out**

23 **of service before repairs were made.**

24 A. Yes, sir.

25 **Q. Do you --**

Page 37

**EXAMINATION OF BAGBY / KIMBALL**

1 A. That's the same one that I explained to you,  
 2 where the bus was out of service, it was towed to the  
 3 yard, and everything was fixed on the bus, and it needed  
 4 some tires on the bus. The mechanic shop -- the tire  
 5 shop was where the tires needed to be put on. I had  
 6 already purchased the tires, and I had to get the bus to  
 7 where the tires were. But now I found out that a bus is  
 8 never to be driven while it's out of service.

9 **Q. So have you a pending FMC concerning the**  
 10 **violation identified in the October 31st report and in**  
 11 **the notice from UTC from November 19th?**

12 A. Yes, sir.

13 **Q. And what specifically is now pending?**

14 A. It's pending now on the first just like five  
 15 violations that were taken care of, and I thought -- I  
 16 feel that they have been addressed, and if not, it's  
 17 very short. It's a very -- I'm so close. I'm there.

18 **Q. Okay. And do you have an estimated timeline on**  
 19 **when you're going to get a notification concerning**  
 20 **whether or not your status has been changed from**  
 21 **unsatisfactory to satisfactory?**

22 A. I should know by the 7th. If they need anything  
 23 else, it would be a couple days later, but I should know  
 24 by the 7th.

25 **Q. And do you mean May 7th?**

Page 38

**EXAMINATION OF BAGBY / KIMBALL**

1 A. I'm -- I'm sorry. I mean May 7th I should have  
 2 an idea. I should have an answer back by May 7th.

3 **Q. And, again, just so we're clear on the record,**  
 4 **you made the application to the FMCSA for the change of**  
 5 **status; is that -- or status upgrade I guess --**

6 A. Yes, sir, for an upgrade request.

7 **Q. Okay. And have you received anything from the**  
 8 **FMCSA denying your request?**

9 A. No, sir.

10 **Q. Okay. And are you requesting that you be**  
 11 **allowed to receive that -- that status upgrade notice,**  
 12 **or hopefully the status upgrade notice, until -- the**  
 13 **decision be deferred in this matter until you receive**  
 14 **that?**

15 A. Oh, absolutely, because I'm -- when -- once the  
 16 request comes back, whether it be positive or not, it's  
 17 going to be so close to where, yes, I -- I absolutely  
 18 will get an upgrade and will get an SMP that's going to  
 19 come up with an upgrade.

20 **Q. So just one final question. Going back to the**  
 21 **tire issue that you talked about before on the vehicle**  
 22 **that was out of service at that time, was there anytime**  
 23 **when the vehicle was out of service that passengers were**  
 24 **on that vehicle?**

25 A. Absolutely not, and there was -- there was a

Page 39

**EXAMINATION OF BAGBY / FUKANO**

1 driver that had a proper driver's license in it, a CDL  
 2 and all his -- his proper endorsements, but he was just  
 3 going from the shop to the tire shop, which was less  
 4 than two miles away from where the office is.

5 MR. KIMBALL: Nothing further.

6 JUDGE HOWARD: I'm sorry.

7 Mr. Fukano, do you have any cross?

8 MR. FUKANO: Yes, Your Honor. Just some  
 9 brief cross for Mr. Bagby.

10

11 EXAMINATION

12 BY MR. FUKANO:

13 **Q. Mr. Bagby?**

14 A. Yes, sir?

15 **Q. Would you agree -- or to clarify, are you**  
 16 **contesting any of the violations that were found by the**  
 17 **FMCSA in the October FMCSA report?**

18 A. What I found was that contesting wouldn't be the  
 19 right way to get it done. What I want to do is I want  
 20 to try and get in compliance to make it feasible for me  
 21 to be able to drive in compliance with the FMCSA rules  
 22 and WACs. I'm told to contesting -- anything that needs  
 23 to be done is what I want to get done the way they want  
 24 it done.

25 **Q. So -- so stated another way, you are -- you are**

Page 40

**EXAMINATION OF BAGBY / FUKANO**

1 not contesting the violations that were found in the  
 2 report?

3 A. No, sir. More compliance than contesting.

4 **Q. And would you agree that on March 26th, 2020,**  
 5 **you did not have insurance filed with the Commission or**  
 6 **appropriate insurance filed with the Commission?**

7 A. March 20th, that's not true. On March 20th, I  
 8 did have insurance. What happened is my insurance  
 9 actually went out March 24th. When they sent --

10 **Q. My -- my apologies.**

11 A. Yeah, when they sent out the notice on the 20th,  
 12 I then called and he called -- I called and talked to  
 13 the gentleman that was sending me the letters that we  
 14 were responding back and forth. And I explained my  
 15 circumstances to him, that they wouldn't allow me to get  
 16 insurance, and they were trying, but they wouldn't allow  
 17 me because of the out-of-service status. And he  
 18 explained to me also that once I did get reinsured, to  
 19 let him know and he would see what he could do.

20 **Q. My apologies. I -- I had meant to ask if you**  
 21 **had had insurance on file on March 26th, 2020?**

22 A. Oh, I'm sorry. On March 26th or 20th?

23 **Q. Twenty -- 26th, 2-6.**

24 A. Oh, 26th, no, I had insurance on -- my insurance  
 25 expired on the 24th.

Page 41

EXAMINATION OF BAGBY / FUKANO

1 **Q. And in the FMCSA's November notice informing you**  
 2 **of its proposed safety rating, did it provide you an**  
 3 **amount of time to come into compliance?**  
 4 A. No, they gave me -- they gave -- every time I  
 5 put in the SMP, they give me -- they give themselves 30  
 6 days to go through the SMP. At the same time they're  
 7 going through the SMP, I go through it also, which  
 8 allows me to address anything that they may desire  
 9 afterwards. But no, there's no required time.

10 **Q. Do you have a copy of Commission Exhibit JS-2 I**  
 11 **believe it is?**  
 12 A. I think so. Yes, sir.

13 **Q. And do you see the date? What is the date of**  
 14 **this exhibit?**  
 15 A. This exhibit's November 19th, 2019.

16 **Q. And what does the all caps paragraph say? It**  
 17 **should be the fourth paragraph from the top.**  
 18 A. (As read) Unless you have proved your proposed  
 19 unsatisfactory rating, it becomes final and you will be  
 20 prohibited from operating commercial vehicles on --  
 21 vehicle in an interstate and intrastate commerce  
 22 beginning on January 4th, and your registration shall be  
 23 revoked if applicable.

24 **Q. So from this notice from the FMCSA, you -- you**  
 25 **would have had from November 19th, 2019, to**

Page 42

EXAMINATION OF BAGBY / FUKANO

1 January 4th, 2020 to come into compliance; is that  
 2 correct?  
 3 A. To come -- yes, yes, sir.

4 **Q. Thank you.**  
 5 **Referring to Commission Exhibit 7, JS-7 -- or --**  
 6 **oh, I'm sorry. That's maybe the company -- I'm sorry,**  
 7 **it's CB-7, the company exhibit.**  
 8 A. Yes, sir.

9 **Q. The -- the last set of bullet points above that**  
 10 **on the first page beginning with (as read) FMCSA**  
 11 **determines that you failed, would you read that last**  
 12 **paragraph and the bullets under that?**  
 13 A. The after reviewing your upgrade request?  
 14 **Q. The next paragraph, please.**  
 15 A. (As read) FMCSA determines that you failed to  
 16 take the required actions to correct the following  
 17 critical conditions that resulted in an unsatisfactory  
 18 safety rating.

19 **Q. And there are three CFR violations contained in**  
 20 **that list?**  
 21 A. Yes, sir.

22 **Q. And it includes both acute and critical**  
 23 **violations?**  
 24 A. Yes, sir.

25 **Q. On the second page of that on that same**

Page 43

EXAMINATION OF BAGBY / FUKANO

1 document, what does the -- the bolded text paragraph  
 2 state, second paragraph, second full paragraph from the  
 3 top?  
 4 A. (As read) Your unsatisfactory rating became  
 5 effective January 4th and remains in effect. Therefore,  
 6 you are ordered to cease all transportation and  
 7 interstate and intrastate commerce and your operating  
 8 authority registration was revoked effective on that  
 9 date.

10 **Q. And to your knowledge, does FMCSA -- has FMCSA**  
 11 **changed your unsatisfactory safety rating as of today?**  
 12 A. No, I have -- I have a request in now. I'm  
 13 waiting on the request to come back.

14 **Q. And do you -- would you agree that the**  
 15 **Commission has no authority to change the FMCSA's**  
 16 **determination as a result of this proceeding?**  
 17 MR. KIMBALL: Objection. Calls for a legal  
 18 conclusion.  
 19 JUDGE HOWARD: Hi, this is Judge Howard. I  
 20 believe I heard an objection from the company, but it  
 21 was a bit quiet. Could you restate it?  
 22 MR. KIMBALL: Objection. Calls for a legal  
 23 conclusion.  
 24 BY MR. FUKANO:  
 25 **Q. Based on your understanding, Mr. Bagby, do you**

Page 44

EXAMINATION OF BAGBY / FUKANO

1 believe that the Commission can alter the FMCSA's rating  
 2 in this proceeding?  
 3 MR. KIMBALL: Same objection.  
 4 JUDGE HOWARD: Thank you. I'm going to  
 5 allow the question just because the formal rules of  
 6 evidence are more of a guideline in this setting, but I  
 7 will certainly take the objection to the weight of the  
 8 question and the answer.  
 9 Mr. Fukano, you may ask the question.  
 10 BY MR. FUKANO:  
 11 **Q. Mr. Bagby, would you agree that the Commission,**  
 12 **based on your understanding, cannot alter the FMCSA's**  
 13 **safety rating that it has given you as a consequence of**  
 14 **the October inspection?**  
 15 A. I think that they should take into consideration  
 16 the same pretenses that FMCSA is, which is giving me --  
 17 allowing me an opportunity to put in an SMP to get an  
 18 upgrade for the position of what I'm -- what I'm trying  
 19 to get to.  
 20 **Q. You would agree, however, that in -- while you**  
 21 **are coming into compliance with FMCSA, FMCSA has**  
 22 **cancelled your operating authority?**  
 23 A. I don't know if you would call it cancel or  
 24 they're giving an opportunity to come for an upgrade.  
 25 **Q. Can you currently operate under your FMCSA**

<p style="text-align: right;">Page 45</p> <p><b>EXAMINATION OF BAGBY / KIMBALL</b></p> <p>1 authority?</p> <p>2 A. What they explained to me, their explanation to</p> <p>3 me was that all busses are to be parked until you get an</p> <p>4 SMP. That's -- that's -- that's good enough in our</p> <p>5 eyes, that you can -- you can then drive again.</p> <p>6 <b>Q. Would you please refer back to company's Exhibit</b></p> <p>7 <b>7, CB-7?</b></p> <p>8 A. Okay. I'm there.</p> <p>9 <b>Q. On page 2, will you please reread the last</b></p> <p>10 <b>sentence of the bolded paragraph?</b></p> <p>11 A. (As read) Commerce your operating authority</p> <p>12 registration was revoked effective on that date.</p> <p>13 MR. FUKANO: Thank you. No further</p> <p>14 questions.</p> <p>15 MR. Kimball: And I have just one or two</p> <p>16 follow-up.</p> <p>17 JUDGE HOWARD: Certainly --</p> <p>18 MR. KIMBALL: I'm sorry?</p> <p>19 JUDGE HOWARD: Mr. Kimball, go ahead.</p> <p>20 MR. KIMBALL: Thank you.</p> <p>21</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>22</p> <p>23 BY MR. KIMBALL:</p> <p>24 <b>Q. Are you currently operating Blessed Limo?</b></p> <p>25 A. No, sir. All busses are to be parked until I</p>	<p style="text-align: right;">Page 47</p> <p>1 JUDGE HOWARD: Okay. I will give each --</p> <p>2 MR. KIMBALL: Yeah, I -- I don't think I'm</p> <p>3 necessarily going to use this in closing comments, but</p> <p>4 the -- Your Honor has fairly broad authority under</p> <p>5 provisions of WAC 480 Chapter 707 in how these</p> <p>6 proceedings are conducted, again, the formalities</p> <p>7 required of admitting exhibits for admitting evidence,</p> <p>8 and a variety of things. We are asking that for two</p> <p>9 things, and so they sort of do affect whether or not</p> <p>10 we're resting.</p> <p>11 One is that the -- the record be kept open</p> <p>12 until May 10th to allow my client to submit information</p> <p>13 specifically from the FMCSA, and then also pursuant to</p> <p>14 480-07-390, the opportunity to submit a brief as well.</p> <p>15 JUDGE HOWARD: Mr. Fukano, do you have a</p> <p>16 position on that?</p> <p>17 MR. FUKANO: Yes, Your Honor. Taking the</p> <p>18 first request -- the second request first, given that</p> <p>19 this is a brief adjudicative proceeding and given the --</p> <p>20 the issues presented, I am not certain that briefing</p> <p>21 would be of much aid to the Commission in rendering a</p> <p>22 decision on the issues before it. So I think at this</p> <p>23 time, Commission Staff would oppose the request for</p> <p>24 additional briefing at the conclusion of this</p> <p>25 proceeding.</p>
<p style="text-align: right;">Page 46</p> <p><b>EXAMINATION OF BAGBY / KIMBALL</b></p> <p>1 get an SMP that's (phone interference.)</p> <p>2 <b>Q. And, again, you're anticipating getting the SMP</b></p> <p>3 <b>and hoping it will be satisfactory on May 7th?</b></p> <p>4 A. Yes, sir.</p> <p>5 MR. KIMBALL: Nothing further.</p> <p>6 JUDGE HOWARD: Mr. Bagby, I -- I wanted to</p> <p>7 ask you -- this is Judge Howard. I wanted to ask you</p> <p>8 just a couple very brief questions just to make sure our</p> <p>9 record is clear for the court reporter.</p> <p>10 I don't -- I don't believe you had spelled</p> <p>11 your name on the record for the court reporter. Would</p> <p>12 you mind doing that?</p> <p>13 MR. BAGBY: My first name is C, like</p> <p>14 Charlie, I-u-s-s-i-e, Clussie. My last name is B, like</p> <p>15 boy, a-g-b, like boy, Y.</p> <p>16 JUDGE HOWARD: Thank you. And earlier when</p> <p>17 you were testifying, you were using an abbreviation.</p> <p>18 Was it MVR, and it was M, as in Mike, V as in Victor, R</p> <p>19 as in Robert?</p> <p>20 MR. BAGBY: Yeah, that's called a motor</p> <p>21 vehicle report.</p> <p>22 JUDGE HOWARD: Okay. Thank you. I just</p> <p>23 wanted to make sure we had that acronym clear.</p> <p>24 Mr. Kimball, does the company rest its case?</p> <p>25 MR. KIMBALL: We do, Your Honor.</p>	<p style="text-align: right;">Page 48</p> <p>1 As for the keeping the record open, Staff</p> <p>2 would also object to that request. This proceeding has</p> <p>3 been continued a number of times since its initiation,</p> <p>4 and Staff believes the record and the ability to add to</p> <p>5 it has been open for a sufficient amount of time. And</p> <p>6 so Staff does not believe that there is a need to keep</p> <p>7 the record open at this point beyond the need to</p> <p>8 resubmit some of the exhibits that was discussed.</p> <p>9 JUDGE HOWARD: Well, for the -- I will</p> <p>10 address this again before we close the hearing. I am</p> <p>11 inclined to leave the record open for the company to</p> <p>12 submit evidence of any upgraded safety rating from the</p> <p>13 FMCSA, and I will leave the record open actually until</p> <p>14 May 15th at 5:00 p.m. for the company to submit that</p> <p>15 evidence. I think it might just be safer to give the</p> <p>16 company a couple extra days in case there is any kind of</p> <p>17 issues with that being delayed by a day or two.</p> <p>18 And then I would anticipate giving the Staff</p> <p>19 an opportunity to give a brief response as to whether</p> <p>20 that changes their recommendation if we have an upgraded</p> <p>21 safety rating come in.</p> <p>22 Mr. Fukano, what would be an acceptable time</p> <p>23 frame for Staff's response if there -- if there was an</p> <p>24 upgraded rating submitted?</p> <p>25 MR. FUKANO: I believe that one to two weeks</p>

Page 49	Page 51
<p>1 would be sufficient.</p> <p>2 JUDGE HOWARD: Okay. And then I don't</p> <p>3 believe that beyond that very -- what I contemplate</p> <p>4 being a very brief response from Staff, which I will say</p> <p>5 will be due on May 22nd at 5:00 p.m., I don't believe</p> <p>6 that extensive briefing will be -- or any other briefing</p> <p>7 would be necessary.</p> <p>8 Does that address your concerns,</p> <p>9 Mr. Kimball?</p> <p>10 MR. KIMBALL: It does, Your Honor. Thank</p> <p>11 you.</p> <p>12 JUDGE HOWARD: Thank you.</p> <p>13 Well, if the company is resting its case,</p> <p>14 then I would give each party an opportunity for an oral</p> <p>15 closing statement.</p> <p>16 Mr. Fukano, would you -- would you like to</p> <p>17 proceed?</p> <p>18 MR. FUKANO: Yes, Your Honor.</p> <p>19 As stated at the beginning of this</p> <p>20 proceeding, this case presents two primary issues;</p> <p>21 first, whether the Commission erred by cancelling</p> <p>22 Blessed Limo's operating authority for failure to file</p> <p>23 proper insurance with the Commission;</p> <p>24 Second, whether in the alternative, the</p> <p>25 FMCSA investigation and findings present good cause for</p>	<p>1 acquire insurance as a result of being placed out of</p> <p>2 service from FMCSA for violating motor carrier</p> <p>3 regulations, it would not be consistent with the</p> <p>4 purposes underlying regulation by allowing a company to</p> <p>5 continue operating while it has unresolved safety and</p> <p>6 operational issues.</p> <p>7 Finally, to the extent that the insurance</p> <p>8 requirement is intended to provide additional protection</p> <p>9 to the public, allowing the company to operate without</p> <p>10 insurance is not consistent with the public interest.</p> <p>11 As such, Staff argues that the Commission</p> <p>12 did not err by cancelling the company's operating</p> <p>13 authority for failing to file appropriate insurance and</p> <p>14 that no exemption or modification of that requirement is</p> <p>15 warranted.</p> <p>16 Turning to the second issuing regarding the</p> <p>17 October FMCSA report, you heard from Staff that the</p> <p>18 violations detailed in the October FMCSA report presents</p> <p>19 serious concerns. The company has admitted to all of</p> <p>20 the violations and has acknowledged that it is still in</p> <p>21 the process of remedying at least three of those</p> <p>22 critical and acute combined violations. The Commission</p> <p>23 has adopted 49 CFR through WAC 480-30-999, and as such,</p> <p>24 all of the critical and acute violations of the CFR</p> <p>25 detailed in the report, constitute violations of</p>
Page 50	Page 52
<p>1 the Commission to cancel the company's operating</p> <p>2 authority.</p> <p>3 As to the insurance issue, there is no</p> <p>4 dispute that Blessed Limousine did not have insurance on</p> <p>5 file with the Commission on March 24 of 2020 when its</p> <p>6 existing insurance expired. Therefore, Staff asserts</p> <p>7 that it was -- the Commission properly revoked the</p> <p>8 Commission's [sic] operating authority for lack of</p> <p>9 insurance.</p> <p>10 Staff further maintains that the company has</p> <p>11 not demonstrated that the Commission should waive or</p> <p>12 otherwise modify the insurance requirement. Under WAC</p> <p>13 480-07-110, the Commission will exempt or modify the</p> <p>14 application of its rule to such an exemption or</p> <p>15 modification is consistent with the public interest.</p> <p>16 The purpose is underlying the regulation and applicable</p> <p>17 statutes.</p> <p>18 RCW 81.70.280(10) states in part the</p> <p>19 Commission shall require charter party carriers and</p> <p>20 excursion service carriers to procure and continue in</p> <p>21 effect during the life of the certificate liability and</p> <p>22 property damage insurance. As such, accepting a</p> <p>23 carrier -- charter excursion carrier from the insurance</p> <p>24 requirement would conflict with Commission statutes.</p> <p>25 Additionally, insofar as the company cannot</p>	<p>1 Commission regulation.</p> <p>2 You have also heard that an unsatisfactory</p> <p>3 safety rating, if not remedied, will result in a carrier</p> <p>4 being placed out of service.</p> <p>5 As such, Staff does not believe there is any</p> <p>6 reason to find the FMCSA report not credible, and Staff</p> <p>7 has stated that it agrees with the unsatisfactory safety</p> <p>8 rating given by FMCSA, and that an unsatisfactory -- an</p> <p>9 unsatisfactorily rated carrier will necessarily be</p> <p>10 placed out of service and be unable to operate.</p> <p>11 And you -- therefore, Staff argues that the</p> <p>12 critical and acute violations described in the report</p> <p>13 and the final unsatisfactory safety rating given to</p> <p>14 FMCS -- or given to Blessed Limousine by FMCSA, presents</p> <p>15 good cause for the Commission to cancel Blessed</p> <p>16 Limousine's certificate.</p> <p>17 Thank you. Nothing further from Staff.</p> <p>18 JUDGE HOWARD: Mr. Kimball, would you like</p> <p>19 to give a closing statement?</p> <p>20 MR. KIMBALL: Yes, Your Honor.</p> <p>21 So it is -- it is conceded that an</p> <p>22 unsatisfactory safety rating will result in a carrier</p> <p>23 being deemed out of service. It was precisely that</p> <p>24 issue that caused the insurance problem because it sets</p> <p>25 forth in Exhibit 10 of our exhibit he had -- the company</p>

Page 53

1 had insurance. They were not able to renew it because  
 2 they were out of service.  
 3 Many of the problems that have been  
 4 identified have been formally acknowledged in the  
 5 October 31st FMCSA letter to have been corrected, and  
 6 there has been testimony here today that the remaining  
 7 ones have also been corrected.  
 8 And furthermore, the -- the company's owner  
 9 has testified that he is actually in the process of  
 10 seeking a safety upgrade and anticipates receiving that  
 11 on or about May 7th.  
 12 It is sometimes walking a fine line to  
 13 assert that someone may have been out of compliance on  
 14 issues and then essentially say that now they are in  
 15 compliance. And I will make very further a fine point  
 16 that as the Court -- or as Your Honor as already agreed,  
 17 that -- that to receive the -- the updated FMCSA status  
 18 change when it occurs or status upgrade, and that that  
 19 would be of some relevance.  
 20 I think it is not pushing the envelope too  
 21 far to assert that assuming such upgrade does occur,  
 22 that is informative about the prior safety violations  
 23 and about the trajectory and the corrective measures  
 24 taken by Blessed Limo.  
 25 And, again, we're talking a narrow line, I

Page 54

1 acknowledge that, but I fully expect and anticipate that  
 2 Mr. Bagby and Blessed Limo will be receiving a safety  
 3 upgrade in I guess it is seven days from now or six days  
 4 from now.  
 5 So those would be my comments, and I thank  
 6 Your Honor for allowing the record to remain open  
 7 hopefully for something that will not only result in the  
 8 Commission looking at the situation in an updated light,  
 9 but that hopefully the -- the carrier will be in  
 10 complete compliance. Thank you.  
 11 JUDGE HOWARD: Okay. Thank you all for your  
 12 testimony and your appearances today. Just to kind of  
 13 conclude our hearing today, as I said, I will leave the  
 14 record open until May 15th until 5:00 p.m. for that  
 15 evidence of any upgraded safety rating from the FMCSA,  
 16 and then Staff would have an opportunity to give a very  
 17 brief response by May 22nd.  
 18 And then we -- earlier in the hearing, we  
 19 did identify the issue of personal information in some  
 20 of the exhibits. So I am going to give until May 8th at  
 21 5:00 p.m. for both parties to submit redacted --  
 22 appropriately redacted versions of their exhibits by  
 23 eliminating any full Social Security numbers and other  
 24 concerning personally identifiable information.  
 25 And then finally, perhaps the final issue

Page 55

1 would be that normally as the ALJ in this type of case,  
 2 I would have ten days to issue my decision, but I do  
 3 like to have the -- the record of the proceedings from  
 4 the court reporter when I'm writing the order, and we  
 5 are also leaving the record open for a period of time  
 6 into May. So I would ask if the parties would waive the  
 7 requirement for me to issue an order in ten days.  
 8 MR. KIMBALL: The company waives.  
 9 MR. FUKANO: Commission Staff waives.  
 10 JUDGE HOWARD: Thank you.  
 11 Does either party have anything before we go  
 12 off the record?  
 13 MR. KIMBALL: Nothing from the company.  
 14 MR. FUKANO: Nothing from Staff, Your Honor.  
 15 JUDGE HOWARD: All right. Thank you all for  
 16 coming here today and we are off the record.  
 17 (Adjourned at 10:47 a.m.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 56

1 C E R T I F I C A T E  
 2  
 3 S T A T E O F W A S H I N G T O N  
 4 C O U N T Y O F T H U R S T O N  
 5  
 6 I, Tayler Garlinghouse, a Certified Shorthand  
 7 Reporter in and for the State of Washington, do hereby  
 8 certify that the foregoing transcript is true and  
 9 accurate to the best of my knowledge, skill and ability.  
 10  
 11  
 12 Tayler Garlinghouse, CCR 3358  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25