

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19C-0503-INS

IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S) AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008 OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: October 10, 2019

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I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. The Commission instituted the cases listed on the attached Appendix A (Hearing Exhibit 4) by “Order of Summary Suspension and Complaint and Notice of Hearing” (Complaint or Complaints), issued by the Commission Director and served upon the Respondents¹

¹ Reference to Respondents is a reference to each Respondent identified in Hearing Exhibit 4, which is Appendix A to this Decision.

on September 20, 2019 by United States mail, at the most recent addresses on file with the Public Utilities Commission (Commission) for the Respondents.²

2. The Complaints provide notice of the allegations against the Respondents.³ In particular, the Complaint against each of the Respondents listed on Appendix A alleges that the Commission has received notice from the Respondents' insurance or surety companies of the cancellation of the Respondents' insurance or surety coverage as specifically identified in each Complaint.⁴ The Complaint further notifies the Respondents that their authorities or permits have been, or will be, summarily suspended on the date stated in the Complaint. The Complaint also states that at the date, time, and location noticed in the Complaint, a hearing will be held regarding whether their authorities or permits should be permanently revoked, based upon the Respondents' failure to maintain proper evidence of insurance or surety coverage on file with the Commission.⁵

3. As noticed in the Complaint, on October 9, 2019 at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing. Commission Staff member Vanessa Condra appeared through counsel and testified on behalf of the Staff of the Commission (Staff). None of the Respondents appeared.

4. Hearing Exhibits 1 through 4 were admitted into evidence during the hearing.

² See Hearing Exhibits 1 through 3.

³ See Hearing Exhibit 2.

⁴ See *id.*

⁵ See *id.*

A. The Commission's Requirements Relating to Financial Responsibility.

5. Pursuant to § 40-10.1-107, C.R.S., and Rule 6008 of the Rules Regulating Transportation by Motor Vehicle,⁶ every motor carrier must keep and maintain evidence of financial responsibility in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest.

6. In addition to motor vehicle liability insurance, towing carriers and household goods movers must maintain and keep in force at all times cargo liability insurance (among other insurance).⁷ Those towing carriers providing storage must maintain and keep in force at all times garage keeper's liability coverage.⁸ In addition, towing carriers with employees must also maintain and keep in force at all times workers' compensation insurance in accordance with the "Workers' Compensation Act of Colorado" found in Articles 40 to 47 of Title 8, C.R.S.⁹

7. The motor carriers are responsible for filing proof of the required financial responsibility coverage with the Commission.¹⁰ Such certificates of insurance and surety bonds cannot be terminated or cancelled unless and until the insurance or surety carrier provides 30 days' written notice of the same to the Commission.¹¹ Consequently, the Commission regularly receives notice from insurance or surety carriers when they have cancelled the insurance or surety bonds of motor carriers who are licensed by the Commission.

8. A notice of cancellation from a motor carrier's insurance and surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the

⁶ 4 *Code of Colorado Regulations* (CCR) 723-6 of the Commission's Rules Regulating Transportation by Motor Vehicle.

⁷ See Rule 6008(a)(III), 4 CCR 723-6.

⁸ See Rule 6008(a)(IV), 4 CCR 723-6.

⁹ See Rule 6008(a)(V), 4 CCR 723-6.

¹⁰ See § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

¹¹ See § 40-10.1-107(4), C.R.S.; Rule 6008(i), 4 CCR 723-6.

Commission. Failure to have proof of current and effective insurance or surety coverage on file with the Commission creates a rebuttable presumption that the carrier is in violation of the financial responsibility requirements.¹²

B. Governing Legal Standards.

9. Section 40-10.1-112, C.R.S., and the Commission's rules implementing that section, provide that a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission at a properly-noticed hearing that the holder of that authority or permit has violated any applicable statute, rule, regulation, or Commission decision.¹³

10. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations of the Complaint are true.¹⁴ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.¹⁵ A party has met this burden of proof when the evidence, on the whole, tips in favor of that party.¹⁶

C. Witness Testimony.

11. At the hearing on October 9, 2019, Ms. Condra testified that the Commission served the Complaints upon the Respondents listed in Appendix A by United States mail on September 20, 2019, to the addresses of the agents for the Respondents listed in the

¹² See Rule 6008(e), 4 CCR 723-6.

¹³ See Rule 6009, 4 CCR 723-6.

¹⁴ See § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1 of the Commission's Rules of Practice and Procedure.

¹⁵ See *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹⁶ See *Schocke v. State, Dep't of Revenue, Motor Vehicle Div.*, 719 P.2d 361, 363 (Colo. App. 1986) ("If a party has the burden of proof by a preponderance of the evidence, and the evidence presented weighs evenly on both sides, the finder of fact must resolve the question against the party having the burden of proof.").

Commission's files for service.¹⁷ The Respondents provided the addresses for their agents to the Commission.

12. Ms. Condra further testified that the Commission sent the Complaints to Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the impending cancellation of their insurance or surety. Hearing Exhibit 4 (Appendix A) is a list of motor carriers for which the Commission has received notice from their insurance or surety carriers that their insurance or surety has been or will be cancelled, as of the date of the October 9, 2019 evidentiary hearing.¹⁸

13. No evidence was submitted at the October 9, 2019 hearing establishing that any of the Respondents listed in Appendix A have come into compliance with the Commission's financial responsibility requirements. In addition, Ms. Condra searched Commission records prior to the hearing to determine whether any Respondent has a pending application or proceeding before the Commission that may impact the instant proceeding (*e.g.*, application seeking to transfer or suspend Respondents' permits). Ms. Condra found that none of the Respondents listed in Appendix A have filed an application to transfer or suspend or abandon their authorities or permits that is pending before the Commission.

14. Based on the foregoing, Staff recommended and requested that the authorities and permits of the Respondents listed in Appendix A be revoked.

D. Conclusions.

15. The evidence was undisputed.

¹⁷ See Hearing Exhibits 1 through 3.

¹⁸ In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints. As the difference in the numbers of carriers listed in Hearing Exhibits 1 and 4 makes evident, many carriers have come into compliance since the Commission issued the Complaints.

16. The ALJ finds and concludes that service of the Complaints upon each of the Respondents was proper because they were served by United States mail at the most recent addresses on file with the Commission.¹⁹ The ALJ further finds that the Complaints are in compliance with Commission Rule 6009(a) because the Complaints provide: (a) notice of the nature of the allegations and the relief sought against the Respondents; (b) the opportunity for each of the Respondents to respond to the allegations; and (c) notice of the hearing on the Complaints.²⁰

17. The ALJ finds that Staff established by a preponderance of the evidence that the Commission received notice from the insurance or surety providers for the motor carriers identified in Appendix A that their insurance or surety was cancelled or terminated as of the date of the hearing. This creates the rebuttable presumption that the Respondent carriers are in violation of their respective financial responsibility requirements.²¹ No evidence was submitted that rebuts this presumption.

18. The ALJ finds that Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility, including, but not limited to motor vehicle liability insurance, cargo liability coverage, garage keeper's liability coverage, and worker's compensation coverage in such form and in such manner as required for the Respondents identified in Appendix A.²² Staff thus met its burden of proof as to the Respondents listed in Appendix A.

¹⁹ See Hearing Exhibits 1 through 3.

²⁰ See Hearing Exhibit 2.

²¹ See Rule 6008(e), 4 CCR 723-6.

²² See § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

19. The Commission must fulfill its important duty to the public to guarantee that those persons who hold an authority or permit from the Commission have current, effective insurance or surety, as required by law. The Commission's only means of performing this important health and safety function is to have documentation of that fact furnished in a uniform format to the Commission. The holder of the authority is responsible for providing that documentation to the Commission.²³

20. Because the Respondents listed in Appendix A have failed to keep currently effective proof of financial responsibility on file with the Commission, including but not limited to motor vehicle liability insurance, cargo liability coverage, garage keeper's liability coverage, and worker's compensation coverage, the authorities and permits listed in Appendix A should be revoked.

21. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. ORDER

A. The Commission Orders That:

1. The authorities or permits listed in Appendix A attached hereto are revoked as of the effective date of this Decision.

2. Ordering Paragraph No. 1 shall be void and the case dismissed as to any Respondent who:

a) files the required Certificate of Insurance or surety with the Commission before the effective date of this Recommended Decision; or

²³ See § 40-10.1-107, C.R.S.; Rule 6008, 4 CCR 723-6.

b) files a notice with the Commission before the effective date of this Recommended Decision that workers' compensation coverage is no longer required; the notice shall include a factual basis for the conclusion that workers' compensation coverage is not required.

3. Proceeding No. 19C-0503-INS is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director