

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21C-0054-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 VEHICLES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING AUTHORITIES AND PERMITS**

Mailed Date: March 1, 2021

TABLE OF CONTENTS

I. SUMMARY.....	2
II. STATEMENT, FINDINGS, LAW, ANALYSIS, AND CONCLUSIONS	2
A. Background.....	2
B. Factual Findings.	3
1. Staff Evidence.	3
2. Respondents' Evidence.....	5
C. Applicable Law.	8
1. Financial Responsibility Requirements and the Commission’s Authority to Revoke Permits and Authorities.....	8
2. Notice and Service Requirements.	10
3. Burden of Proof.....	11
D. Findings, Analysis, and Conclusions.....	12
III. ORDER.....	21
A. The Commission Orders That:	21

I. SUMMARY

1. Except as discussed, this Recommended Decision grants the relief sought in the Public Utilities Commission Staff's (Staff or Commission Staff) Complaints against the motor-carrier Respondents listed in Appendix A to this Recommended Decision, revoking Respondents' authorities and permits based on the failure to keep currently effective proof of financial responsibility on file with the Commission. This Recommended Decision also provides avenues for Respondents listed in Appendix A to avoid revocation by taking action before this Recommended Decision becomes effective, and dismisses the Complaints against two Respondents.

II. STATEMENT, FINDINGS, LAW, ANALYSIS, AND CONCLUSIONS

A. Background.

2. Commission Staff instituted the cases in this proceeding by filing its "Order of Summary Suspension and Complaint and Notice of Hearing" against the motor carrier-Respondents¹ (Complaints) on January 25, 2021. Hearing Exhibit 2.

3. The Complaints against each of the Respondents allege that the Commission received notice from the Respondents' insurance or surety carriers that the Respondents' insurance or surety coverage will be cancelled as specifically identified in each Complaint. *Id.* The Complaints further notify Respondents that their authorities or permits have been, or will be, summarily suspended on the date specified in each Complaint and informs Respondents that a hearing will be held on February 10, 2021 at 12:00 p.m. by video-conference to determine whether

¹ This proceeding involves numerous Respondents against whom the Commission initiated Complaints by sending them each an "Order of Summary Suspension and Complaint and Notice of Hearing." Hearing Exhibit 2. Each of those Complaints is assigned a unique "Case No." which specifies the grounds unique to each Respondent. And, each of those case numbers are part of this single proceeding.

their authorities or permits should be permanently revoked for failing to maintain proper evidence of insurance or surety coverage with the Commission. Hearing Exhibits 2-3.

4. On February 9, 2021, Staff made a filing stating that Hearing Exhibits 1 through 5 were served on Respondents by e-mail that same day. *See* Notice Concerning the Service of Exhibits 1-5 for the February 10, 2021 Show Cause Hearing on Respondents (Notice), filed on February 9, 2021.

5. As noticed in the Complaints, on February 10, 2021, at approximately 12:00 p.m., the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints by video-conference. Ms. Marquita Riley appeared and testified on behalf of Commission Staff; counsel also appeared on behalf of Commission Staff. Representatives of the following Respondents appeared and testified: Hilltop Garage, Inc. (Hilltop); A Ride Town Car (Town Car); Moving Done Right Inc. (Moving Done Right); Mr. Austin Carroll; and Kids Wheels LLC (Kids Wheels).² During the hearing, Hearing Exhibits 1 through 8 were admitted into evidence.

B. Factual Findings.

1. Staff's Evidence.

6. Ms. Riley is a Program Assistant with the Commission's Transportation Unit. She is responsible for reviewing Commission records and coordinating with other Commission Staff to commence proceedings against motor carriers to suspend and revoke their permits and authorities when they do not have currently effective proof of insurance or surety coverage on file

² Before beginning the evidentiary portion of the hearing, based on the information that each Respondent provided and the record in this matter, the ALJ determined that the following non-attorneys are authorized to represent their companies in this proceeding consistent with Rule 1201(b)(II), 4 *Code of Colorado Regulations* 723-1 of the Commission's Rules of Practice and Procedure: Mr. Kyle Lanckriet for Hilltop; Mr. Mohamed Nur for Town Car; Mr. Marcus Chandler for Moving Done Right; Ms. Phyllis Eggert for Kids Wheels. In addition, because Mr. Carroll operates Proper Towing as a sole proprietorship, the ALJ found that he may represent himself per Rule 1201(b)(I), 4 CCR 723-1.

with the Commission. Ms. Riley assisted with initiating this proceeding against Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the imminent cancellation of their insurance or surety coverage. Hearing Exhibits 1-3.

7. Ms. Riley testified that on February 9, 2021, Hearing Exhibits 1 through 5 were served on Respondents who remained out of compliance as of that date at their e-mail addresses on file with the Commission. *See* Notice. She also explained that the Respondents provided those e-mail addresses to the Commission.

8. Ms. Riley explained that the Commission served the Complaints and Attachment A to the Complaints upon the Respondents by United States mail on January 25, 2021, at the addresses, and upon the persons identified as designated agents for the Respondents, as provided in the Commission's files. Hearing Exhibits 1-4.

9. Respondents provided the Commission the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding. The Certificate of Service for the Complaints demonstrate that the Commission served the Respondents by mailing the Complaints addressed as indicated in the "Hearing Cycle Listing" Hearing Exhibit 4. The referenced Hearing Cycle Listing is Hearing Exhibit 1. *See* Hearing Exhibits 1 and 4. Hearing Exhibit 1 includes those carriers listed in Hearing Exhibit 5, their designated agents and addresses as on file with the Commission as of January 25, 2021, whose insurance or surety faced imminent termination as of that same date. *See also* Hearing Exhibit 2.

10. On February 9, 2021, Ms. Riley searched Commission records to determine whether any Respondents took other action rendering it unnecessary to revoke their permits, such as coming into compliance with their financial responsibility obligations, cancelling their permits, or initiating a Commission proceeding which may impact this one (*e.g.*, application seeking to

suspend a permit). She identified Respondents who came into compliance with their financial responsibility obligations after the Complaints were mailed on January 25, 2021. She created an updated list of Respondents who remained out of compliance with the Commission's financial responsibility requirements as of February 9, 2021; that list is Hearing Exhibit 5.³

11. On the day of the hearing, February 10, 2021, Ms. Riley again reviewed Commission records to determine if any Respondents in Hearing Exhibit 5 took action to eliminate the need to revoke their permits. She learned that Skyline Moving Company LLC, Permit No. HHG-00472, (Skyline), came into compliance with its financial responsibility requirements since February 9, 2021. Based on this, Ms. Riley asked that the Complaint against Skyline be dismissed. Except for Skyline, Ms. Riley asks that the permits and authorities of the Respondents listed in Hearing Exhibit 5 be revoked for Respondents' failure to meet their financial responsibility obligations.

2. Respondents' Evidence.⁴

12. Mr. Nur owns and operates Town Car and has worked in the transportation industry for 20 years. Town Car owns luxury limousine Permit No. LL-01191. Hearing Exhibit 2 at 1. The Complaint against Town Car alleges that it has failed to maintain proof of active liability insurance or surety coverage (Form E) on file with the Commission. *Id.* Due to COVID-19, Town Car lost a significant amount of business. Mr. Nur testified that as a result, Town Car has been unable to afford its insurance. He testified that he has suspended operating Town Car but plans to reopen the

³ In contrast, Hearing Exhibit 1 is the list of carriers who were non-compliant when the Commission issued the Complaints on January 25, 2021. As the difference in the numbers of carriers listed in Hearing Exhibits 1 and 5 make evident, many carriers came into compliance since the Commission issued the Complaints. All the carriers listed in Hearing Exhibit 5 are listed in Hearing Exhibit 1.

⁴ Before Respondents testified, the ALJ took a recess to allow each Respondent to prepare and upload exhibits they wished to present during the hearing.

company at a later date. His main reason for appearing at the hearing was to explain that when he is ready to reopen his business, he wants to be able to use the same permit number that Town Car currently has. He agreed to follow-up with Ms. Riley to determine the appropriate next steps for his company.

13. Mr. Carroll owns Permit No. T-04976, which he uses to operate his sole proprietorship, Proper Towing. Hearing Exhibit 2 at 19. The Complaint against Mr. Carroll alleges that he failed to maintain proof of the following types of active insurance or surety coverage on file with the Commission: garage keeper's insurance (Form 14); cargo insurance (Form H); and liability insurance (Form E). *Id.* Mr. Carroll's wife, Breann Sharr, assists with running the business, including handling insurance matters. She testified that proof of liability insurance, Form E, has been filed with the Commission, but that insurance policy expires on March 3, 2021. She explained that the insurance company has not filed proof of garage keeper's insurance (Form 14) and cargo insurance (Form H) because the policy is in underwriting. She testified that it has taken over two months to get that process moving. They have been trying to find a different insurance company and are close to settling on one. They have to switch insurance companies because rates at Mr. Carroll's current provider have increased. Coupled with slow business, Mr. Carroll simply could not afford insurance at the increased rates. Ms. Sharr agreed to continue to work with Ms. Riley to determine the appropriate next steps.

14. Mr. Kyle Lanckriet owns Hilltop, which owns Permit No. T-2744. Hearing Exhibit 2 at 28. The Complaint against Hilltop alleges that it failed to maintain proof of active worker's compensation insurance or surety coverage (Form WC) on file with the Commission. *Id.* Mr. Lanckriet testified that Hilltop switched insurance providers in late December 2020, but the new insurance provider did not submit proof of insurance to the Commission. Hearing Exhibit 6. He

explained that Hilltop has continued to maintain the insurance coverage in Hearing Exhibit 6, and that he has been diligently working with the insurance company to get proof of insurance filed with the Commission. Hilltop's insurance policy shows that it has worker's compensation insurance in effect starting December 22, 2020. *Id.* at 2. Mr. Lanckriet understands that the Commission's rules require his company to cause proof of active worker's compensation insurance to be filed with the Commission, and he agreed to work with Ms. Riley to ensure proof of insurance is submitted.

15. Mr. Marcus Chandler owns Moving Done Right with Mr. Nate Bennett, who observed the hearing. Moving Done Right owns Permit No. HHG-00499. Hearing Exhibit 2 at 18. The Complaint against Moving Done Right alleges that it failed to maintain proof of active cargo insurance or surety coverage (Form H) on file with the Commission. *Id.* Mr. Chandler explained that Moving Done Right's insurance was inadvertently cancelled due to mistakes made by the insurance provider (and not based on his company's actions or inaction). He provided an email exchange with his insurance agent, Ms. Victoria Archuleta with Mountain Insurance, explaining how the insurance policy was cancelled. Hearing Exhibit 7. Ms. Archuleta explained that when Moving Done Right provided its down payment and two monthly installment payments to her agency on December 18, 2020, she was out of the office due to a death in her family. *Id.* at 1. She asked coworkers to assist with next steps, but apparently there was confusion on how the payments were processed and managed, resulting in a failure to officially activate the policy. *Id.* Ms. Archuleta has been working to get the policy reinstated immediately so that proof of insurance can be submitted as soon as possible. *Id.* On the afternoon of February 9, 2021, Ms. Archuleta was informed the policy could not be reinstated that day, and that it could take up to 48 hours to complete. *Id.* at 2. Mr. Chandler explained that he and his business partner have been working

closely with their agent to make sure the issues get resolved and proof of insurance is filed with the Commission as soon as possible. He also agreed to continue to work with Ms. Riley to resolve the issues.

16. Ms. Phyllis Eggert owns Kids Wheels. Kids Wheels owns Permit No. 50096 and B-9848. Hearing Exhibit 2 at 16-17. There are two Complaints against Kids Wheels in this proceeding. *Id.* The first alleges that Kids Wheels failed to maintain proof of active liability insurance or surety coverage (Form E) on file with the Commission for its Permit No. 50096. *Id.* at 16. The second alleges that Kids Wheels failed to maintain proof of active liability insurance or surety coverage (Form E) on file with the Commission for its Permit No. B-9848. *Id.* at 17. Ms. Eggert testified that the missing Form E was filed with the Commission in December 2020. She provided a copy of the referenced Form E, Hearing Exhibit 8. The Form E shows that National Casualty Company issued liability insurance for Kids Wheels “covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction” Hearing Exhibit 8. The Form E also shows that it was “successfully filed” on December 22, 2020 at 9:55 a.m. with the Commission. *Id.*

17. Ms. Eggert believes that a problem arose based on a minor change to her company’s name from Kids Wheels LLC to Kids Wheels Ltd. Liability Co. She also testified that her insurance company filed additional proof of insurance with the Commission on the day before the hearing, February 9, 2021. Ms. Eggert agreed to continue to work with Ms. Riley to resolve the issues.

C. Applicable Law.

1. Financial Responsibility Requirements and the Commission’s Authority to Revoke Permits and Authorities.

18. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain and file evidence of financial responsibility with the Commission in such sum, for

such protection, and in such form as the Commission deems necessary to adequately safeguard the public interest. § 40-10.1-107(1), C.R.S. (2020); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Motor carriers must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Commission Rule 6008, 4 CCR 723-6, identifies the amount, type of protection, and form for the insurance or surety coverage that motor carriers must maintain at all times in order to safeguard the public interest.

19. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I), 4 CCR 723-6. In addition to motor vehicle liability coverage, towing carriers and household goods movers must maintain and keep cargo liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I) and (III), 4 CCR 723-6. Towing carriers must obtain and keep worker's compensation insurance in force at all times; and towing carriers providing storage must obtain and keep garage keeper's liability insurance in force at all times. Rule 6008(a)(IV) and (V), 4 CCR 723-6. And, in addition to motor vehicle liability and cargo liability coverage, household good movers must obtain and keep general liability insurance or surety coverage in force at all times. Rule 6008(a)(VI), 4 CCR 723-6.

20. Motor carriers are responsible for maintaining and filing evidence of the required financial responsibility coverage with the Commission. § 40-10.1-107(1), C.R.S., and Rule 6008(a), 4 CCR 723-6. They must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Insurers and sureties must notify the policy or bond holder *and* the Commission when terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid. § 40-10.1-107(4), C.R.S. As a result, the Commission receives notice from insurance

or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission. *Id.*

21. Notice of cancellation from a motor carrier's insurance or surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the Commission. Rule 6008(e), 4 CCR 723-6. 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. *Id.*

22. Section 40-10.1-112(1)(a) and (c), C.R.S., 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 Article 10.1, Title 40 of the Colorado Revised Statutes, or any applicable Commission rule. Rules 6009 and 6011, 4 CCR 723-6, also provide the Commission authority to revoke a permit or authority in the circumstances here.

2. Notice and Service Requirements.

23. The Commission must provide Respondents with notice of the Complaints against them, including sufficient facts to adequately advise Respondents of the relief sought and how they are alleged to have violated the law, as well as the time affixed for a hearing on the Complaints. §§ 40-10.1-112(1) and 40-6-108, C.R.S.; Rule 1302(h), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure; *see also* § 24-4-105(2), C.R.S. Such notice must be served upon the Respondents, which may be accomplished by mail. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1; *see also* § 24-4-104(10), C.R.S.

24. Regulated motor carriers must provide the Commission "its designation of the name, mailing address, and physical address of a Person upon whom service may be made of any

lawful notice, order, process, or demand.” Rule 6006(a), 4 CCR 723-6. That person is the motor carrier’s designated agent upon whom the Commission may serve complaints and other notices. *Id.*; Rule 1205(a) and (d), 4 CCR 723-1. And, regulated motor carriers are responsible for updating the Commission on changes to their designated agent, including the agent’s mailing and email addresses, within two days of the change. Rule 6006(b), 4 CCR 723-6. Service on a motor carrier’s designated agent on file with the Commission is service upon the carrier and is “prima facie evidence” that the carrier received notice. Rule 6006(c) and (d), 4 CCR 723-6. A certificate of service issued by the Commission’s Director is *prima facie* evidence that service has been obtained. § 40-6-108(3), C.R.S.

25. In addition, Commission Rule 1205(a), 4 CCR 723-1, requires that a person filing any pleading or other document with the Commission must serve all other parties; the same rule allows parties to serve pleadings and documents by e-mail.

3. Burden of Proof.

26. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the allegations in the Complaints are true and that the Complaints were properly served on each of the Respondents. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, tips in favor of that party. *Schocke v. State, Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

D. Findings, Analysis, and Conclusions.

27. The ALJ concludes that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints and Attachment A thereto upon each of the Respondents listed in Hearing Exhibit 5 by mailing them to the designated agents on file with the Commission for each of the Respondents. Hearing Exhibits 1 through 5; § 40-6-108(3), C.R.S.; Rules 1205(a) and (d) and 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

28. The ALJ finds that the Complaints and Attachment A thereto comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has received insurance or surety cancellation notices for each Respondent and the effective date of such cancellation; (b) advise Respondents that their authorities or permits are summarily suspended as of the coverage cancellation date; (c) notify Respondents that they may not conduct operations under their authorities or permits after the coverage cancellation and summary suspension date; (d) inform Respondents that the Commission has initiated a proceeding to permanently revoke their permits or authorities for failing to maintain and provide proof of effective insurance or surety coverage; (e) notify Respondents of the date, time, and means to attend the remote hearing on the Complaints at which Respondents have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought. Hearing Exhibits 1, 2, and 4; Rule 6009(e), 4 CCR 723-6; *see* §§ 40-6-108 and 24-4-105(2), C.R.S.

29. In addition, the ALJ concludes that on February 9, 2021, Staff served Hearing Exhibits 1 to 5 on Respondents listed in Hearing Exhibit 5 at the e-mail addresses which Respondents provided. As such, Respondents had the opportunity to review those exhibits before

or during the hearing.⁵ *See* Rule 1205(a), 4 CCR 723-1; *see* Notice and Exhibit A to Notice; Hearing Exhibit 5.

30. 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 Hearing Exhibit 5 that their insurance or surety coverage was or will be cancelled or terminated. Hearing Exhibit 2. This creates the rebuttable presumption that the relevant Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6.

31. Kids Wheels provided evidence to rebut that presumption. Specifically, it provided a copy of the proof of liability insurance, Form E, that was filed with the Commission on December 22, 2020.⁶ Hearing Exhibit 8. That Form E shows that Kids Wheels has the required insurance as of the date it was filed with the Commission, December 22, 2020. The question becomes whether the insurance represented in that Form E was cancelled. To be cancelled, the insurance provider must inform the Commission, in writing, that a policy is being terminated at least 30 days before the termination effective date. *See* § 40-10.1-107(4), C.R.S. This means that until notice is received, insurance coverage represented in Kids Wheels's Form E remains valid and effective. *Id.*; *see* Hearing Exhibit 8. For the reasons explained below, the ALJ finds that the evidence fails to establish that the insurance coverage represented in Kids Wheels's Form E, Hearing Exhibit 8, was cancelled.

32. Insurance carriers must provide at least 30 days' advance written notice of a policy termination, but they are not limited to providing *only* 30 days' advance notice under § 40-10.1-

⁵ Exhibits were also displayed on the video-conference screen during the hearing and were available to download during the hearing.

⁶ Staff declined to present rebuttal evidence in response to this.

107(4), C.R.S. In fact, carriers may provide the Commission more than 30 days' advance notice of policy termination. *See* § 40-10.1-107(4), C.R.S. Here, Kids Wheels's Form E was filed on December 22, 2020, exactly 30 days before the policy termination date noted in the Complaints against Kids Wheels. Hearing Exhibit 2, at 16-17; Hearing Exhibit 8. Thus, if the insurance coverage represented in the Form E filed on December 22, 2020 (Hearing Exhibit 8) is the insurance alleged in the Complaints to have been cancelled, Kids Wheels's insurance provider would have had to file notice of termination on the exact same date that it filed the Form E in Hearing Exhibit 8. *See* § 40-10.1-107(4), C.R.S. Put differently, for the Form E in Hearing Exhibit 8 to be invalid, Kids Wheels's insurance provider had to file notice that the insurance coverage in that Form E is being terminated on the same day that it filed the Form E. While it is certainly possible that this happened, the evidence did not establish this.

33. Given that insurance carriers may provide more than 30 days advance notice of a policy termination, it is also possible that the notice of insurance termination referenced in the Complaints are for insurance coverage reflected in a Form E that was in place *before* the Form E in Hearing Exhibit 8 was filed. If that is the case, Kids Wheels's liability insurance coverage represented in Form E may still be active and valid proof of insurance. But, the evidence did not establish whether the notice of policy termination that the Commission received terminates the insurance coverage reflected in Hearing Exhibit 8 (Form E) or if it terminates coverage reflected in another Form E that was on file for Kids Wheels before December 22, 2020. Staff declined to present evidence to clarify this. In the circumstances here, this gap in evidence is fatal, as it cannot be determined by a preponderance of the evidence whether Kids Wheels' Form E in Hearing Exhibit 8 was cancelled or whether it remains live and active. For all these reasons, the ALJ finds that Staff failed to meet its burden to prove by a preponderance of the evidence that Kids Wheels

does not have active workers' compensation insurance and proof thereof on file with the Commission, as alleged in the Complaints. For these reasons, the Complaints against Kids Wheels will be dismissed without prejudice.

34. Kids Wheels is on notice that dismissal of the Complaints against it does not mean that Kids Wheels is in compliance with its financial responsibility obligations. Instead, the Complaints are being dismissed because Staff failed to meet its burden of proof. Kids Wheels is encouraged to work with Staff to ensure that it is in compliance with its financial responsibility obligations. In addition, because the Complaints are dismissed without prejudice, Staff may bring new Complaints at a later date should it determine that Kids Wheels is not in compliance with its financial responsibility obligations.

35. Hilltop provided evidence showing that it has obtained worker's compensation insurance coverage. Hearing Exhibit 6. Specifically, Hilltop's worker's compensation insurance policy, Hearing Exhibit 6, demonstrates that it has workers' compensation coverage starting on December 22, 2020.⁷ However, it is undisputed that as of February 10, 2021, Hilltop had not caused proof of its workers' compensation insurance to be filed with the Commission in the form and manner required (Form WC), in violation of Rule 6008(a)(V)(A), 4 CCR 723-6. Thus, while Hilltop has satisfied a part of its financial responsibility obligations by obtaining the required coverage, it has not satisfied all of its financial responsibility obligations because it has not caused proof of its insurance to be filed with the Commission, as required by § 40-10.1-107, C.R.S. and Rule 6008(a)(V)(A), 4 CCR 723-6.

⁷ Staff declined to present rebuttal evidence in response to this.

36. The requirement that a carrier provide proof of insurance is not a mere formality. Instead, it implicates substantive Commission obligations, impacts the public's health, safety and welfare, and is a vital part of the statutory scheme aimed to provide an additional layer of protection to the travelling public. *See* § 40-10.1-107, C.R.S. To start, proof of insurance on file with the Commission effects an insurance carrier's liability, which directly impacts the travelling public. That is because once a provider files proof of insurance with the Commission, that insurance coverage remains effective unless and until the insurance carrier provides the Commission 30 days' advanced written notice of termination.⁸ § 40-10.1-107(4), C.R.S. But if a motor carrier fails to cause proof of insurance to be filed with the Commission in the first place, its insurance provider may side-step the statutory mandates of § 40-10.1-107(4), C.R.S. that prohibit policy termination without 30 days' advanced written notice to the Commission. This negatively impacts the public interest, health, and safety, and subverts the statutory intent behind § 40-10.1-107(4), C.R.S. What is more, the Commission's only means of performing its important duty to the public to ensure that persons who hold an active motor carrier authority meet their financial responsibility obligations is to require carriers to provide the Commission documentation of that fact in a uniform format. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

37. For all these reasons, and because Staff met its burden to prove, the ALJ concludes that Hilltop's permit should be revoked for failing to cause proof of financial responsibility to be filed with the Commission as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. As noted below, Hilltop has ample time and opportunity to cause its proof of insurance to be filed with the Commission before revocation becomes effective.

⁸ Indeed, by operation of law, an insurance carrier's attempts to terminate a policy without providing that minimum notice are ineffective. § 40-10.1-107(4), C.R.S.

38. Turning to Moving Done Right, the ALJ finds that the evidence established that Moving Done Right attempted to obtain insurance coverage to ensure that it remains compliant with the Commission's financial responsibility obligations, but that those efforts failed. The evidence established that Moving Done Right's insurance provider, broker, or representative made errors that resulted in not activating Moving Done Right's new policy. Hearing Exhibit 7. Moving Done Right did not cause those errors. As the email exchange with its insurance agent demonstrates, Moving Done Right's policy was not "reinstated" and therefore, is not in effect. *Id.*

39. Moving Done Right has been taking reasonable and appropriate steps to rectify the situation to ensure that proof of insurance is filed forthwith. While it is helpful to understand the events that lead to the Moving Done Right's problems maintaining its insurance, this does not, unfortunately, alleviate the Commission's responsibility of fulfilling its important duty to the public to verify that carriers have the required insurance coverage. The ALJ finds that Staff established by a preponderance of the evidence that the allegations in the Complaint against Moving Done Right are true, and that Moving Done Right does not have proof of active insurance on file with the Commission as of February 10, 2021 as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. *See* Hearing Exhibit 2 at 28. For all these reasons, and because Staff met its burden to prove, the ALJ concludes that Moving Done Right's permit should be revoked for failing to meet its financial responsibility obligations per § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. As noted below, Moving Done Right has ample time and opportunity to cause its proof of insurance to be filed with the Commission before revocation becomes effective.

40. Turning to Town Car, the evidence was undisputed that it is not in compliance with its financial responsibility obligations under § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. The ALJ has great sympathy for the financial difficulties that Town Car has faced due to COVID-

19. The ALJ does not question Mr. Nur's testimony that he is no longer operating Town Car. But, the Commission has no means to individually determine whether regulated carriers are no longer operating due to their unique circumstances. So long as they have a valid permit, carriers remain authorized to operate under that permit. That is among the reasons why the Commission remains obligated to enforce financial responsibility obligations even where, as here, a carrier states that it is no longer operating. For the foregoing reasons, the ALJ concludes that Staff met its burden of proof as to Town Car, and that Town Car's permit should be revoked for failing to meet its financial responsibility obligations under § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

41. As to Mr. Carroll, the ALJ finds that Mr. Carroll and Ms. Sharr are making efforts to obtain insurance coverage required by rule and statute. That said, the undisputed evidence established that Mr. Carroll failed to maintain active and effective garage keeper's insurance (Form 14) and cargo insurance (Form H), and failed to cause proof of the same to be filed with the Commission. For the foregoing reasons, the ALJ concludes that Staff met its burden of proof as to Mr. Carroll and that his permit should be revoked for failing to meet his financial responsibility obligations under § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6.

42. The undisputed evidence established that Skyline has come into compliance with its financial responsibility requirements; as such, the Complaint against it, (Case No. 11741-INS), will be dismissed.

43. As to the remaining Respondents listed in Hearing Exhibit 5, the ALJ finds that undisputed evidence established that they are out of compliance with their respective financial responsibility requirements set forth in § 40-10.1-107(3), C.R.S., and Rule 6008, 4 CCR 723-6. Except as discussed, 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, general liability, garage keeper's liability coverage, worker's compensation coverage, and cargo liability coverage in such form and in such manner as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6, for the Respondents identified in Hearing Exhibit 5. As such, the ALJ finds that, as to the remaining Respondents in Hearing Exhibit 5, Staff met its burden of proof to show by a preponderance of the evidence that the allegations in the Complaints are true.⁹

44. As explained, the Commission's only means of performing its important duty to the public to ensure that persons who hold an active motor carrier authority meet their financial responsibility obligations is to require documentation of carriers' current and effective insurance or surety furnished in a uniform format to the Commission. The holder of the authority is responsible for ensuring that documentation is provided to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. Except as discussed, Respondents listed in Hearing Exhibit 5 have failed to do so. This warrants revocation of their permits or authorities.

45. However, Respondents may take action before the effective date of this Decision to avoid revocation. First, carriers may avoid revocation by: (a) obtaining insurance or surety coverage as required by Rule 6008, (b) causing proof of that insurance to be filed with the Commission in the form and manner required by Rule 6008 before the effective date of this Decision. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked.

⁹ Hearing Exhibit 5 is attached to this Recommended Decision as Appendix A.

46. In addition, limited regulation carriers (including luxury limousine carriers),¹⁰ household goods movers, towing carriers, and hazardous materials carriers who submit a form to cancel their permits or authorities before the effective date of this Decision may avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Permit cancellation forms are available on the Commission's website at:

https://drive.google.com/file/d/0B3u7jb_duOQ2QWlrMFlvUDJoNjQ/view?.authuser=0.

47. Fully regulated intrastate carriers, including common carriers operating a shuttle service, sightseeing service, charter service, taxicab service, and contract carriers who submit an application to suspend their authority under Rule 6205, 4 CCR 723-6, before the effective date of this Recommended Decision may also avoid revocation of their permits. The Complaints against carriers who take this action before the effective date of this Decision will be dismissed, and their permits will not be revoked. Applications to suspend a common carrier authority are available at:

https://drive.google.com/file/d/0B3u7jb_duOQ2dXZ0UTNIXzBvRIU/view.

48. Having a permit revoked or cancelled does not always mean that a carrier's business is permanently terminated. Generally, Commission rules allow many types of motor carriers, including luxury limousine, household goods movers, and towing carriers, to obtain new permits without difficulty by filing an application.¹¹ For the most part, such permits may be obtained by completing an application that can be submitted to the Commission on-line, providing related

¹⁰ Limited regulation carriers are defined as carriers who provide transportation service by charter bus, children's activity bus, fire crew transport, luxury limousine, Medicaid client transport, or off-road scenic charter. Rule 6001(qq), 4 CCR 723-6.

¹¹ It is the ALJ's understanding that carriers may request that a prior permit number be reinstated as part of the carrier's permit application.

supporting information and proof of financial responsibility, and paying a fee.¹² Rule 6302 (luxury limousine application and permit); Rule 6503 (towing carrier application and permit); Rule 6603 (household goods mover carrier application and permit). Applications for a luxury limousine, towing, or household goods mover permits are available at the following link: <https://doraapps.state.co.us/puc/TransportationApplications/>. Referenced carrier types who voluntarily cancel their permits or whose permits are revoked may reapply for a permit.

49. As provided below, this Recommended Decision will not become effective for 20 days after the date the Decision is mailed, and only then if no party appeals this Decision by filing exceptions. This allows ample time for Respondents to take action to avoid a final Commission decision revoking their permits or authorities.

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

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, except for the Respondents listed in Paragraph No. 2 below, the authorities and permits listed in Appendix A, attached hereto, are revoked as of the effective date of this Recommended Decision.

¹² Carriers concerned about their ability to comply with application requirements may request that the Commission waive an application requirement, per Rule 1003(a), 4 CCR 723-1. That rule allows parties to request a waiver of a Commission rule; in deciding whether to waive a rule, the Commission may consider hardship, equity, or more effective implementation of a rule on an individual basis. 4 CCR 723-1. Such requests are decided on an individual and case-by-case basis and are outside the scope of this proceeding. *See* Rule 1003(a), 4 CCR 723-1.

2. As discussed, the Complaints against Kids Wheels LLC, Permit No. 50096 (Case No. 11723-INS) and Permit No. B-9848 (Case No. 11776-INS), and Skyline Moving Company LLC, Permit No. HHG-00472 (Case No. 11741-INS) are dismissed without prejudice.

3. Ordering Paragraph No. 1 will be void and the case dismissed as to any Respondent who takes one of the following actions before the effective date of this Recommended Decision:

- a. files the required Certificate of Insurance or surety with the Commission;
- b. files an Application to Suspend their permit or authority with the Commission, if allowed by Commission rule; or
- c. submits a permit cancellation form to the Commission, if allowed by Commission rule.

4. Proceeding No. 21C-0054-INS is closed.

5. 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.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will 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 will 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.

7. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director