

ORIGINALDecision No. 62522

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, and practices of Maier Brewing Company, a corporation, Lomita Transportation Company, a corporation, and W-J Distributing Company, a corporation, relating to the transportation of property by motor vehicle over the highways of the State of California.

Case No. 7074

Murray M. Chotiner, for W-J Distributing Company.
Hugh N. Orr, for the Commission staff.

O P I N I O N

The original Order Instituting Investigation herein was filed on March 14, 1961, and copies thereof were served on the Lomita Transportation Company, Maier Brewing Company, and Lydia Kalmanovitz (owner of all stock of W-J Distributing Company). The Amended Order Instituting Investigation was served by registered mail on Maier Brewing Company, Lomita Transportation Company, and W-J Distributing Company on April 25, 1961. No answers were filed. The matter was set for hearing in Los Angeles on May 12, 1961, and due notice thereof was served on the respondents. On said date a public hearing was held at the Commission's Courtroom in Los Angeles, California, before Commissioner Frederick B. Holoboff and Examiner Kent C. Rogers. An appearance was made by the respondent, W-J Distributing Company, but no appearance was made by Lomita Transportation Company or Maier Brewing Company.

The main purpose of the investigation herein is to determine whether respondents, or any of them, acting independently or jointly with any or all of the other respondents, have violated Section 3571 of the Public Utilities Code by acting as a highway carrier in the business of transportation of property for compensation by motor vehicle on any public highway of this State without first having obtained from the Commission a permit authorizing such operation.

The order states that the scope of the investigation includes but is not limited to certain specified transportation performed under agreements of Lomita Transportation Company (formerly Best Distributors) and by W-J Distributing Company (formerly Citywide Distributors) with National Can Corporation, San Francisco, California, or DeSoto Chemical Coatings, Inc., for transportation of goods from San Leandro, Modesto or Berkeley to Los Angeles, California, and all transportation performed with motor vehicle equipment owned by Maier Brewing Company under trip lease agreements.

The evidence shows the following facts which we find to be true:

Maier Brewing Company, formerly known as S. and P. Company, is a California corporation. As of October 15, 1958, it had 750 voting shares of stock of which 375 shares were held by Paul Kalmanovitz and 375 shares were owned by Lydia Kalmanovitz (Exhibit No. 3); that on said date its president was Paul Kalmanovitz and its secretary was George Alef.

Lomita Transportation Company is a California corporation. Prior to August 22, 1960, its name was Best Distributors.

As of that date its sole voting stockholder was Elmer Baffoni (Exhibit No. 4). On said date its president was Elmer Baffoni and its secretary was Rose Baffoni.

W-J Distributing Company is a California corporation. Prior to August 22, 1960, it was known as Citywide Distributors. All of its voting shares, of which there were 170, were owned by L. Koehnen, who is also known as Lydia Kalmanovitz. The president of the corporation is William Jasper and the secretary is G. V. Brumbaugh. Prior to being named Citywide Distributors on September 28, 1954, this corporation was known as Olympic Corporation. On the latter date Paul Kalmanovitz and George Alef were the president and secretary, respectively, of said corporation and Paul Kalmanovitz and Lydia Kalmanovitz owned all of the stock (170 shares) thereof (Exhibit No. 5).

At various times between October 14, 1960, and October 27, 1960, various authorized employees of this Commission stopped certain tractors and trailers on the highways between San Francisco and Los Angeles. These vehicles were owned by the Maier Brewing Company (Exhibit No. 2), were driven by various drivers, including a Frank Gibler, and contained shipments of various commodities, including can ends, steel cans, and oil cans. The shipments originated in some instances at the National Can Corporation in San Leandro and were destined to the National Can Corporation in Los Angeles (Exhibit No. 1). Frank Gibler, one of the drivers called as a witness, testified that he was employed by the Maier Brewing Company; that he was paid by the Maier Brewing Company; and that his immediate boss in Los Angeles was Elmer Baffoni, and

Elmer Baffoni told him to make the pickups for return loads hereinafter referred to.

In the drivers' possession, on various trips checked, were documents consisting of truck rental agreements, reciting that the Citywide Distributors were renting a truck to the National Can Corporation on a certain date for a certain trip between designated points for a stated rental. An example of said document is the first page of Exhibit No. 6 and the back of said document is represented by Exhibit No. 6-A. Also in the drivers' possession were documents reflecting an agreement between Best Distributors and the National Can Corporation for the hiring of a driver for the trip involved in the Citywide Distributors' truck rental agreement. An example of said agreement is the September 1, 1960, agreement which is the second document on Exhibit No. 6. Similar documents were used for transportation for DeSoto Chemical Coatings, Inc., (Exhibits Nos. 8 and 9). With the exception of one trip in a period of two years, one of the drivers for the Maier Brewing Company (Frank Gibler) received such documents on each of the trips which he performed with Maier Brewing Company equipment from the Bay region to Los Angeles, after transporting beer for Maier Brewing Company as its employee from Los Angeles to the Bay area. Each agreement for rental of a truck or for the hire of a driver was for one specified trip from the north to the south.

The record herein shows that for the period between April 15, 1960, and October 27, 1960, the respondents herein, by means of the operations herein described, transported shipments of respondent Maier's own beer from Los Angeles to the San Francisco

Bay area; that said shipments were carried in Maier Brewing Company trucks and equipment driven by Maier's driver; that on the return trips arrangements were entered into whereby the respondent, Citywide Distributors (W-J Distributing Company), purported to rent the Maier Brewing Company equipment for a set fee and in turn rented the equipment for a higher set fee to some shipper as for example, National Can Corporation, or DeSoto Chemical Coatings, Inc.; that as to each shipment reflected by Exhibits Nos. 6, 7, 8 and 9 herein, the charges agreed to be paid by either National Can Corporation or DeSoto Chemical Coatings, Inc., were, in fact, paid by said companies to W-J Distributing Company and Lomita Transportation Company; that the Maier Brewing Company driver purportedly became the driver for Best Distributors and as such driver, pursuant to an agreement between the shipper and the Best Distributors, drove the equipment from Northern California to Los Angeles for a set fee; that the totals of the charges paid by the shippers to Best Distributors, also known as Lomita Transportation Company, and Citywide Distributors, also known as W-J Distributing Company, with few exceptions, totalled less than the minimum rates specified in Minimum Rate Tariff No. 2; that the documents of Best Distributors, also known as Lomita Transportation Company, were signed by Elmer Baffoni; and that Elmer Baffoni was the man in charge of shipping for Maier Brewing Company in its operations in Los Angeles.

The evidence on behalf of the W-J Distributing Company (Citywide Distributors) shows that William Jasper is the president thereof; that the sole stockholder thereof, L. Koehnen, also known

as Lydia Kalmanovitz, owns 50% of the voting stock of Maier Brewing Company; that W-J Distributing Company leases trucks from Maier Brewing Company; that the basis of the lease is that Maier Brewing Company delivers its own beer to the Bay area and that W-J Distributing Company pays approximately \$50 per trip to lease the truck from Maier Brewing Company for the return trip; that this fee does not include the driver; that W-J Distributing Company in turn leases the Maier Brewing Company truck to National Can Corporation for transporting its shipments to Los Angeles; and that the estimated cost of re-leasing the truck is approximately \$70 on the return trip; that the driver on the return trip is furnished by Best Distributors (by Elmer Baffoni) and that the rental for the truck on the return trip was paid by National Can Corporation to W-J Distributing Company and that W-J Distributing Company did in turn pay Maier Brewing Company its fee for the use of the truck.

W-J Distributing Company has pending before this Commission Application No. 43172 for a radial highway common carrier permit and a city carrier permit. The Commission has not rendered a decision on this application at this time.

None of the respondents has any authority from this Commission to transport property for compensation over the highways between points in this State as a common carrier or as a highway contract carrier.

Upon consideration of the evidence herein we find and conclude that respondents and each of them are highway carriers within the meaning of Section 3511 of the Public Utilities Code and that as such they and each of them have violated the provisions

of Section 3571 of the Public Utilities Code in that they and each of them are and have been transporting property for compensation by motor vehicle upon the highways of this State without having obtained from this Commission a permit authorizing such operation.

Respondents and each of them will be ordered to cease and desist the transportation of property for compensation by motor vehicle between points in this State unless and until they or each of them shall secure from this Commission a permit or permits as required by Section 3571 of the Public Utilities Code.

Inasmuch as it would be difficult to break down the charges and collections between the named respondents or their successors, and W-J Distributing Company, the successor of Citywide Distributors, is applying for a city carrier permit and a radial highway common carrier permit (Application No. 43172), prior to the issuance of said permits W-J Distributing Company will be required (a) to itemize all instances in which it, as Citywide Distributors or W-J Distributing Company, has leased or had the use of, for a consideration, Maier Brewing Company equipment in the period between December 31, 1959, and the effective date of this order; (b) determine the correct total charges under the appropriate minimum rate tariff of the transportation service involved; (c) determine the total amount of charges paid by the shipper including the charges for the transportation equipment involved and the driver or drivers performing the services; (d) collect from the shipper the difference, if any, between the total charges and the minimum rates prescribed by this Commission for said transportation; and (e) pay to the Commission the fees required by Chapter 6 of Division 2 of the Public Utilities Code.

O R D E R

The Commission having commenced an investigation into the operations and practices of Maier Brewing Company, Lomita Transportation Company, and W-J Distributing Company, a public hearing having been held thereon, the Commission having made the foregoing findings and conclusions and based thereon,

IT IS ORDERED that:

1. Maier Brewing Company, Lomita Transportation Company and/or W-J Distributing Company shall cease and desist from, in any manner or by any device, directly or indirectly, individually or in concert with any other person, firm or corporation, transporting, or causing to be transported, property for compensation by motor vehicle on any public highway in this State, unless and until they or each of them shall have obtained from this Commission a permit or permits authorizing them or any of them to engage in said business.

2.(a) W-J Distributing Company shall submit to this Commission, within ninety days after the effective date of this order, lists of all instances since December 31, 1959, in which it or its predecessor, Citywide Distributors, leased to any person, firm or corporation any transportation equipment, including tractors, trucks, trailers, or semitrailers. Said list shall show the period for which W-J Distributing Company, or its predecessor, leased said equipment, the terms of said lease, and the owner or owners of said leased equipment.

(b) W-J Distributing Company shall determine the applicable minimum rate for the transportation of the shipment or service performed in each instance and the total amount of charges paid for the transportation involved, including the cost to the shipper of the trucking equipment and the driver.

(c) Where such charges specified in (b) above were lower than the applicable minimum rates specified by this Commission, W-J Distributing Company shall take all necessary steps to collect such

undercharges. W-J Distributing Company shall collect such charges within sixty days after the effective date of this order, and if not so collected shall advise this Commission each thirty days, in writing, until further order, of the steps being taken to effect such collections.

3.(a) W-J Distributing Company shall pay to this Commission, within sixty days after the effective date hereof, all fees required by Chapter 6 of Division 2 of the Public Utilities Code.

(b) W-J Distributing Company is hereby placed on notice that the continued use of any permits which may hereafter be issued it is contingent on compliance with the requirements of this opinion and order and that failure to comply therewith may result in the cancellation of any such permits so issued.

The Secretary of the Commission is directed to cause service of this order to be made on the respondents and each of them.

This order shall become effective as to each respondent twenty days after service on the respondent so served.

Dated at San Francisco, California, this 5th day of September, 1961.

Charles B. Rogers
President

Ed. J. Mitchell

E. J. Fox

George J. Brown

Frederick B. Holbrook
Commissioners