

**ORIGINAL**Decision No. 66250

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA CARTAGE COMPANY, CALIFORNIA MOTOR TRANSPORT CO., CONSTRUCTORS TRANSPORT COMPANY, DI SALVO TRUCKING COMPANY, FORTIER TRANSPORTATION COMPANY, MERCHANTS EXPRESS OF CALIFORNIA, SOUTHERN CALIFORNIA FREIGHT LINES, PACIFIC INTERMOUNTAIN EXPRESS, PACIFIC MOTOR TRUCKING COMPANY, SHIPPERS EXPRESS, STERLING TRANSIT CO., INC., VALLEY EXPRESS, CO. AND VALLEY MOTOR LINES, INC., AND WILLIG FREIGHT LINES,

Complainants,

vs.

Case No. 7671

WELLS CARGO, INC., a corporation, LAWSON TAYLOR LINES, INC., a corporation, and M. W. ENGLEMAN, an individual,

Defendants.

PRELIMINARY ORDER

Complainants seek revocation of certain highway common carrier operating rights. They allege in substance as set forth below.

Transfer of the rights to defendant Lawson Taylor Lines was authorized in April of 1960. Lawson operated between approximately April 12, 1960 and May 2, 1962. On the latter date the certificate was suspended for failure to have on file the requisite evidence of liability insurance. The suspension was continued by order of July 10, 1962 and is still in effect. Lawson has not operated under its certificate for some fourteen months.

On April 2, 1962 Lawson made a voluntary assignment for the benefit of creditors to defendant Engleman, manager of the Credit

Managers Association of Southern California. On August 30, 1962 Engleman sold the rights to defendant Wells Cargo, the sale being conditioned upon Commission approval. On June 27, 1963 defendants filed Application No. 45562, seeking authority to transfer the rights to Wells Cargo. On July 17, 1963 complainants filed a petition for leave to intervene in the application proceeding, and request a consolidated hearing on the application and the present complaint.

Cessation of operation by defendants Lawson and Engleman, and continued failure to operate during a period of fourteen months, is a breach of utility obligation under the certificated authority and filed tariffs. This is true notwithstanding Commission suspension of the rights, since the suspension was brought on by failure to have the requisite evidence of liability insurance. The price to be paid for the rights by Wells Cargo is far in excess of the cost thereof, and violative of the purpose and spirit of Pub. Ut. Code section 820, prohibiting capitalization of operating authority in excess of the amount paid the State for the grant thereof.

No carrier has conducted any operations under the rights since May 2, 1962. Since then business formerly handled by Lawson has been handled by other carriers, including complainants. Service available to the shipping public is fully adequate for the needs and convenience of the shipping public.

Complainants will be injured by "revival" of the Lawson certificate in the hands of Wells Cargo. Complainants seek revocation of the Lawson rights, whether in the hands of Lawson or of Wells Cargo.

Responsive to formal service of the complaint, defendants filed a motion to dismiss. They seek dismissal on the ground that the subject matter of the complaint is already before the Commission in the transfer proceeding, and that it is illogical and contrary to

established procedure to have two separate and distinct proceedings being heard on the same subject.

Complainants are entitled to be heard on issues raised by alleged unauthorized discontinuance of public utility operation. (Delta Lines v. Todd Freight Lines, Decision 66009 in Case 7695.) The objection to separate and distinct proceedings can be removed by consolidation of the application and complaint matters.

IT IS ORDERED as follows:

1. Defendants are directed to answer the complaint within ten days after service of this order, but only as to two issues,

(a) Whether or not there has been an unauthorized discontinuance of public utility operation, and

(b) Whether or not, for that reason, the Lawson certificate should be revoked.

2. In all other respects Case No. 7663 is hereby dismissed.

3. Case No. 7663 will be consolidated for hearing with Application No. 45562.

4. The Secretary is directed to cause copies of this order to be served upon the parties in Case No. 7663.

Dated at San Francisco, California, this 5<sup>th</sup> day of NOVEMBER, 1963.

William W. Bennett  
President  
George T. Hoover  
Frederick B. Halchett  
Commissioners