

**ORIGINAL**Decision No. 67932

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
WELLS CARGO, INC., a corporation,  
and M. W. ENGLEMAN, as Assignee for  
the benefit of creditors of LAWSON  
TAYLOR LINES, INC., for authority of  
WELLS CARGO, INC. to purchase the  
operative rights of LAWSON TAYLOR  
LINES, INC.

Application No. 45562

CALIFORNIA CARTAGE COMPANY, et al.,

Complainants,

vs.

WELLS CARGO, INC., a corporation,  
et al.,

Defendants.

Case No. 7671

Frank Loughran, and G. Alfred Roensch, for Wells  
Cargo, Inc. and M. W. Engleman, applicants.

Graham James & Rolph, by Boris H. Lakusta and  
E. Myron Bull, Jr., for California Cartage  
Co., et al., protestants in Application  
No. 45562 and complainants in Case No. 7671.

O P I N I O N

Application No. 45562 was filed on June 27, 1963 by  
Wells Cargo, Inc., hereinafter called Wells, and by Lawson Taylor,  
Inc., hereinafter called Lawson, wherein Lawson requested authority  
to transfer its operating authority - between San Francisco Territory,  
Morgan Hill, Madrone, San Martin, and Gilroy, on the one hand, and  
Los Angeles Territory, on the other hand - to Wells Cargo, Inc.

On July 17, 1963, a Petition to Intervene was filed by the protestants herein to request that the matter be set for hearing and that the certificate be revoked because of a lack of public need for the proposed service. (No service was performed under the certificate for at least fourteen months and Lawson suffered a deficit of \$186,399 during the twenty-month period it operated.)

Complainants (who are also the protestants and will be hereafter called protestants) instituted Case No. 7671 by a complaint filed on July 19, 1963, which alleges that the unauthorized cessation of operations by Lawson was a violation of the obligation of a public utility to provide continuous service and the attempt to sell the rights to Wells for the inflated price of \$32,500 is a violation of the spirit of Section 820 of the Public Utilities Code. The complaint then requests that the matter be set for hearing and that the certificate be revoked. A Motion to Dismiss the Complaint was filed on August 16, 1963 and a reply on August 23, 1963. The Commission issued a Preliminary Order on November 5, 1963, (Decision No. 66250, as amended on November 12, 1963 by Decision No. 66303), which dismissed the complaint in all respects except as to the issues of whether or not there was an unauthorized discontinuance of public utility operation, and whether or not, for that reason, the certificate should be revoked. The defendants (applicants) filed their Answer to the Complaint on December 23, 1963 and the matters were consolidated and set for hearing.

Public hearings were held before Examiner Fraser in San Francisco on March 10, 11 and 12, 1964. The matters were submitted on June 22, 1964 on receipt of closing briefs.

The record shows that an assignment of all Lawson assets and liabilities to Mr. M. W. Engleman, of the Credit Managers Association of Southern California (formerly the Los Angeles Board of Trade), was executed on April 1, 1962 and that Mr. Engleman took possession of the assets on April 2, 1962. A witness testified that the merchandise at the Lawson Los Angeles and Oakland terminals was delivered to the consignees and that all trucking operations then stopped, since Mr. Engleman had neither cash on hand nor credit to provide the necessary wages and fuel and there was no way to provide the necessary insurance coverage. A witness from the Credit Managers Association testified that a few days after Mr. Engleman took the Lawson assets, the Controller of the State of California seized all of the Lawson trucks and other operating equipment as security for unpaid taxes; this equipment was later sold and the money received was retained by the State as a partial payment on the taxes due. The witness further testified that the total liabilities on the first day of hearing (March 10, 1964) totaled \$205,046.41, which sum is steadily increasing due to the continuing interest on the unpaid taxes. If the certificate is sold for \$32,500, less than \$3,000 will remain after the taxes are paid.

The former president of Lawson testified as follows: the Company was incorporated approximately two years prior to April 1, 1962 as a certificated highway common carrier between the San Francisco and Los Angeles Territories under the authority of Commission Decision No. 59903, dated April 12, 1960, in Application No. 41913; the company started operations with a large fleet, running two to seven schedules a day between terminals in Oakland and Los Angeles; it failed to obtain the additional financial

support it had been promised and was in financial difficulty from the start; on April 1, 1962 a voluntary assignment for the benefit of creditors was executed and operations were terminated. The record shows that on May 2, 1962 the certificate held by Lawson was suspended by the Commission because proof of insurance coverage had not been filed with the Commission. This suspension order was continued by Decision No. 63928, dated July 10, 1962, in Application No. 41913 and is still in effect.

The facts are not in dispute, although the protestants alleged that Lawson was forced out of business due to increasing competition in the trucking business; that the certificate had been dormant for at least twenty-three months prior to the hearings in March, 1964; and that since all of the former customers of Lawson were now apparently being served satisfactorily by other carriers, there is no need to revive the service and the certificate should therefore be revoked and canceled. Protestants maintain that the Lawson certificate has not been used for almost two years and to revive it now will have the same effect as if a new certificate had been granted. Protestants further allege that a sale price of \$32,500 is excessive and violative of the spirit of Section 820 of the Public Utilities Code, when it is paid for a certificate which has been dormant for two years, especially where the transferor has been out of business for the same period and has no good will or customers as of the date of the sale. Protestants claim it is adverse to the public interest to revive and transfer the certificate due to the detrimental effect of another large carrier being authorized to operate in an area where it is not needed. It was admitted that Wells Cargo, Inc., is a large, capable interstate carrier with ample available equipment and facilities to serve the needs of present and prospective customers. Protestants raised the issue of public convenience and

necessity during the proceeding. Evidence bearing on this issue was excluded on the basis that the Commission had already ruled that public convenience and necessity is not an issue in a proceeding involving a transfer of a highway common carrier certificate (Henry Stovall (Henry's Freight Lines), February 1962, 59 Cal. PUC 363, 376); and the further basis that Decision No. 66250, dated November 5, 1963, as amended by Decision No. 66303, dated November 12, 1963, in Case No. 7671, dismissed the complaint filed herein in all respects except as to whether or not there was an unauthorized discontinuance of public utility operation, and whether or not, for that reason, the certificate should be revoked.

After consideration, the Commission finds that:

1. Lawson Taylor Lines, Inc., a corporation, discontinued operations on April 1, 1962 and assigned its assets to the Credit Managers Association of Southern California.
2. The cessation of operations was due to a combination of factors, including competition, but principally to a decision by the officers of the corporation that further operation would increase the corporation's debts and further deplete its assets.
3. The Lawson certificate was suspended on May 2, 1962 due to a failure to file proof of insurance coverage. This suspension was continued by Decision No. 63928, dated July 10, 1962, in Application No. 41913 and still remains in effect.
4. Wells Cargo, Inc., is a large, capable interstate carrier with ample available equipment and facilities to serve the needs of present and prospective customers.
5. There was no unauthorized discontinuance of service justifying the revocation of the certificate in question.

6. Public convenience and necessity is not in issue in a proceeding involving the transfer of a highway common carrier certificate.

7. The transfer of operating rights to Wells will not be adverse to the public interest.

Based upon the foregoing findings, the Commission concludes that:

1. The applicants have not violated Section 820 of the Public Utilities Code.
2. The complaint should be dismissed in its entirety.
3. The application should be granted.
4. The suspension of the Lawson certificate should be vacated.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

#### O R D E R

IT IS ORDERED that:

1. The complaint in Case No. 7671 is hereby dismissed.
2. On or before January 1, 1965, Lawson Taylor Lines, Inc. may sell and transfer, and Wells Cargo, Inc. may purchase and acquire the operative rights and property referred to in the application.
3. Within thirty days after the consummation of the transfer herein authorized, Wells Cargo, Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

4. Wells Cargo, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

5. On or before the end of the third month, after the consummation of the transfer as herein authorized, Wells Cargo, Inc. shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

6. Effective concurrently with the consummation of the transfer authorized by paragraph 2 hereof, Decision No. 63928, dated July 10, 1962, in Application No. 41913, as amended, is hereby vacated and set aside.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 30th day of SEPTEMBER, 1964.

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

Frederick B. Helbert  
President  
John E. Helbert  
George H. Grover  
William W. Grover  
Commissioners