

Decision 88 03 016 MAR 09 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, charges and practices of )  
 Saccani Distributing Company, aka )  
 Saccani Lines, and Dawson )  
 Distributing Co., Inc., Setzer )  
 Forest Products, Nishimoto Trading )  
 Co., LTD., Robert J. Brazil, dba )  
 Bob Brazil Trucking, Lewis W. )  
 Buckner and Phyllis A. Buckner, )  
 dba L-B Truck Lines, California )  
 Traffic Consultants, Inc., and )  
 Kenneth R. Riedel. )

I.87-06-015  
(Filed June 15, 1987)

Handler, Baker, Greene, & Taylor, by Ronald C. Chauvel, Attorney at Law, for Saccani Distributing Company, respondent.  
Alberto Guerrero, Attorney at Law, and William Waldorf, for the Transportation Division.

OPINION

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Saccani Distributing Company, aka Saccani Lines, (Saccani), to determine whether Saccani violated Sections 458, 494, and 532 of the Public Utilities (PU) Code while transporting beer, Presto-logs, and rice for the following respondent shippers at rates less than the lawful rates provided in Saccani's adopted common carrier tariff. Saccani is incorporated under the laws of the State of California.

1. Dawson Distributing Co., Inc. -  
Total undercharges \$7,915.07 (Exhibit 4).
2. Setzer Forest Products -  
Total undercharges \$2,223.20 (Exhibit 5).
3. Nishimoto Trading Co., Ltd. -  
Total undercharges \$3,595.67 (Exhibit 6).

It is alleged that Saccani has violated Section 458 of the PU Code by failing to pay subhaulers 100% of the applicable rate, when the latter were actually prime carriers, delivering beer for Saccani, who was the shipper.

The following subhaulers were involved, and it is alleged that they have violated Sections 3664, 3667, 3668, 3737, 458, and/or 494 of the PU Code, while providing the transportation described for Saccani.

1. Robert J. Brazil, dba Bob Brazil Trucking.  
Holds a highway contract carrier permit.  
Total undercharges \$544.60 (Exhibit 7).
2. Lewis W. Buckner and Phyllis A. Buckner,  
dba L-B Truck Lines.  
Held a highway contract carrier permit and  
a highway common carrier certificate.  
Total undercharges \$299.00 (Exhibit 8)
3. California Traffic Consultants, Inc.  
Held a highway common carrier certificate  
under April 10, 1986.  
Total undercharges \$945.00 (Exhibit 9)
4. Kenneth R. Riedel  
No operating authority.  
Total undercharges \$1,633.80 (Exhibit 10)

The purpose of the investigation is developed in the ordering paragraphs from pages 3 and 4 of the Order Instituting Investigation, quoted below:

"IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the operations, rates, charges, and practices of respondent Saccani, respondent shippers, and respondent subhaulers for the purpose of determining:

- "1. Whether respondent Saccani violated Sections 494 and 532 of the Public Utilities Code by failing to assess the correct rates and charges as provided for in respondent Saccani's adopted common carrier tariff on shipments of

beer, Pres-to-logs and rice for respondent shippers.

- "2. Whether respondent shippers have paid less than the applicable rates and charges for transportation performed by respondent Saccani.
- "3. Whether, in the event sums less than said applicable rates and charges are found to have been charged, collected or received, a fine in the amount of the undercharges should be imposed upon respondent Saccani pursuant to Section 2100 of the Public Utilities Code.
- "4. Whether respondent Saccani should be ordered to collect from respondent shippers the difference between the charges actually received and the applicable rates and charges.
- "5. Whether respondent Saccani violated Section 458 of the Public Utilities Code by failing to pay respondent subhaulers 100% of the applicable rate since respondent subhaulers actually transported shipments of beer for the account of respondent Saccani and were therefore prime carriers.
- "6. Whether the respondent subhaulers have violated Sections 3664, 3667, 3668, 3737, 458 and/or 494 of the Public Utilities Code by failing to collect the applicable rates and charges from respondent Saccani.
- "7. Whether, in the event sums less than said applicable rates and charges are found to have been charged, collected or received, a fine in the amount of the undercharges should be imposed upon respondent subhaulers pursuant to Section 2100 and/or 3800 of the Public Utilities Code.
- "8. Whether, in lieu of ordering respondent subhaulers to collect from respondent Saccani the undercharges stated in

paragraph 7 and then pay the amount to the Commission, respondent Saccani should be ordered to pay that amount directly to the Commission.

- "9. Whether any or all of the respondent Saccani's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 1070 of the Public Utilities Code.
- "10. Whether any or all of the respondent subhauler's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine imposed pursuant to Section 1070 and/or 3774 of the Public Utilities Code.
- "11. Whether respondent subhauler Riedel violated Section 3571 of the Public Utilities Code by having performed the transportation of property on the public highways of this State for compensation for respondent Saccani without having the proper operating authority.
- "12. Whether respondent Saccani and respondent subhaulers should be ordered to cease and desist from any unlawful operations and practices.
- "13. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction."

The matter was heard and submitted on October 20, 1987 in San Francisco. Submission was on a "Stipulation of Facts, Issues, and Recommended Fines," executed by staff counsel and counsel for Saccani. The latter also presented a \$750 personal check from each of the four subhaulers identified, as payment of the fines levied in the stipulation.

The stipulation provided that certain documents would be received in evidence. The stipulation of the parties was

Exhibit 1. Exhibit 2 is the statement of the former president, who was also the sole shareholder, of Dawson Distributing Co., Inc., a former California corporation and a respondent in this investigation. Proof of the dissolution of that corporation is attached to the statement, which advises that undercharges are totally uncollectible. Copies of Exhibits 1 and 2 are attached hereto as Appendices A and B, respectively.

Exhibit 3 has information on the carrier's operating authorities, employees, equipment, terminals, and income. It includes copies of documents which describe transportation performed by Saccani for shippers Dawson Distributing Co., Inc. and Setzer Forest Products. Exhibits 4 through 10 inclusive have been previously identified as relating to individual respondents. Exhibit 11 was the last exhibit filed. It contains the records referring to Nishimoto Trading Co., Ltd., and to the transportation performed for Saccani by Kenneth R. Riedel. All exhibits received were placed in evidence by the Commission staff.

Copies of the Order Instituting Investigation, Notice of Hearing, and the 11 exhibits were mailed to all respondents. There were no objections or requests for additional hearings.

#### Findings of Fact

1. Saccani operates under an agricultural carrier permit (issued on April 17, 1979); a highway contract carrier permit (issued on April 30, 1980); and a highway common carrier certificate (issued on April 30, 1980).

2. Saccani has five drivers and a dispatcher, operating five tractors and five trailers out of a single terminal located in Sacramento, California.

3. Saccani has received copies of Transition Tariff 2, Exception Rating Tariff 1, and Distance Table 8. Saccani has adopted these tariffs as its own highway common carrier tariffs.

4. Saccani's gross income for 1984 was \$288,027. The gross for the first two quarters of 1985 was \$196,387.

5. Saccani transported property for the named shippers at a lower rate than the lawful rates prescribed by the tariffs.

6. Saccani hired others as prime carriers to move its goods, and paid them less than 100% of the rate due, as though they were subhaulers.

7. Subhaulers Robert J. Brazil, Lewis W. and Phyllis A. Buckner, California Traffic Consultants, Inc., and Kenneth R. Riedel have transported property for Saccani at less than the applicable tariff rates.

8. Kenneth R. Riedel transported property as a highway contract carrier without first obtaining a permit authorizing such operation as required by the PU Code.

9. The four subhaulers named in paragraph 7, above, each submitted a \$750 personal check in payment of fines levied.

10. Saccani and the four subhaulers identified have violated provisions of the Commission's Transition Tariff and sections of the PU Code by the activity described in Ordering Paragraphs 1 through 12 inclusive, quoted herein.

11. Saccani and the four subhauler respondents have agreed to the conclusions and order set forth below.

12. Dawson Distributing Co., Inc. is out of business and has no assets. The corporation was dissolved in 1987 and no longer exists.

#### Conclusions of Law

1. Saccani violated Sections 458, 494, and 532 of the PU Code.

2. Saccani should pay a fine of \$3,422.40 pursuant to Sections 2100 and 3800 of the PU Code, to reimburse for lower rates paid to subhaulers.

3. Saccani should pay a fine of \$5,818.77 as undercharges due pursuant to Section 2100 of the PU Code. This sum does not include \$7,915.07 due from Dawson Distributing Co. Saccani should also pay a fine of \$5,000 under Section 1070 of the PU Code.

4. Subhaulers Robert J. Brazil, Lewis and Phyllis Buckner, California Traffic Consultants, Inc., and Kenneth R. Riedel have violated Sections 458, 494, 3664, 3667, 3668, and 3737 of the PU Code, while transporting property for Saccani.

5. Subhaulers identified should each pay a fine of \$750 pursuant to Sections 1070 and/or 3774 of the PU Code.

6. Kenneth R. Riedel violated Section 3571 of the PU Code and should cease all transportation of property on the public highways of this state for compensation, until he obtains the proper operating authority.

Saccani should promptly take all reasonable actions to collect the undercharges. If necessary, it should file timely complaints according to PU Code Section 737. The Commission staff will investigate respondent's compliance. If it believes that Saccani or its attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

### ORDER

#### IT IS ORDERED that:

1. Saccani Distributing Company (Saccani) shall pay a fine of \$5,818.77 to this Commission under PU Code Section 2100, and an additional fine of \$3,422.40 as money due on subhauls; both fines to be due on or before the 90th day after the effective date of this order.

2. Saccani shall pay a fine of \$5,000 to this Commission under PU Code Section 1070 on or before the 90th day after the effective date of this order.

3. Robert J. Brazil, Lewis and Phyllis Buckner, California Traffic Consultants, Inc., and Kenneth R. Riedel shall each pay a fine of \$750 to this Commission under PU Code Sections 1070 and

and/or 3774 on or before the 40th day after the effective date of this order.

4. Seven percent annual interest will be charged on any fine beginning on the date it becomes delinquent.

5. Saccani shall take such action, including legal action, as may be necessary, to collect the undercharges set forth in Conclusion of Law 3.

6. Saccani shall notify the Commission in writing upon collection and payment.

7. Saccani shall file with the Commission on the first Monday of each month a report of any undercharges or payments remaining uncollected or unpaid 60 days after the effective date of this order, specifying the action taken to collect or pay them and the result of such action, until they have been collected in full and total payments have been made, or until further order of the Commission.

8. Saccani shall not charge or collect less than its applicable tariff rates and charges.

9. Kenneth R. Riedel shall cease all transportation of property on the public highways for compensation, until proper operating authority has been obtained.

10. Respondents will cease and desist from any and all unlawful operations and practices.

11. The stipulation between staff counsel and counsel for Saccani is approved.



The Executive Director shall have this order personally served upon respondents Saccani Distributing Company and Kenneth R. Riedel and served by mail upon all other respondents.

This order shall become effective for each respondent 30 days after order is served.

Dated MAR 09 1988, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Victor Weisser*  
Victor Weisser, Executive Director  
JB

APPENDIX A  
Page 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations, rates,  
charges and practices of Saccani  
Distributing Company aka Saccani  
Lines, and Dawson Distributing Co.,  
Inc., Setzer Forest Products,  
Nishimoto Trading Co., LTD., Robert J.  
Brazil, dba Bob Brazil Trucking,  
Lewis W. Buckner and Phyllis A.  
Buckner dba L-B Truck Lines,  
California Traffic Consultants, Inc.,  
and Kenneth R. Riedel.

OII. 87-06-015

Presented under 87-06-015  
by *Stipulation*  
Date: 10/20/87  
Edward H. Fraser  
Law Judge

STIPULATION OF FACTS, ISSUES  
AND RECOMMENDED FINES

Respondent carrier Saccani Distributing Company aka Saccani Lines, hereinafter referred to as "respondent Saccani;" "respondent shippers" Dawson Distributing Co., Inc., Setzer Forest Products, Nishimoto Trading Co., Ltd.; "respondent subhaulers" Robert J. Brazil, Lewis W. Buckner and Phyllis A. Buckner dba L-B Truck Lines; California Traffic Consultants, Inc., and Kenneth Riedel; and the "staff" of the California Public Utilities Commission hereby stipulate to the following:

1. That the Commission staff has conducted an investigation of the operations, rates, charges and practices of respondent Saccani,
2. That as a result of the investigation, Order Instituting Investigation No. 87-06-015 was issued by the Commission.
3. That as a result of communications between respondents and Commission staff, a stipulated agreement has been reached as set forth herein.
4. That for the purposes of this stipulated settlement, Ordering Paragraph Nos. 1 through 11 in OII 87-06-015 should be deemed answered in the affirmative.

5. That the following documents be marked for identification as exhibits and received as evidence:

Exh. 3 (a) A volume set of documents entitled "Albert Saccani, Pres. SACCANI DISTRIBUTING COMPANY 2600 Fifth Street, Sacramento, CA 95818, Volumes I & II."

Exh. 4 (b) A document entitled "Summary of Certain Shipping Data Contained in the Records of Saccani Distributing Company for Transportation Performed for Dawson Distributing Co. Inc."

Exh. 5 (c) A document entitled "Summary of Certain Shipping Data Contained in the Records of Saccani Distributing Company for Transportation Performed for Setzer Forest Products."

Exh. 6 (d) A document entitled "Summary of Certain Shipping Data Contained in the Records of Saccani Distributing Company for Transportation Performed for Nishimoto Trading Co., Ltd."

Exh. 7 (e) A document entitled "Summary of Certain Shipping Data Contained in the Records of Robert J. Brazil, dba Bob Brazil Trucking for Transportation Performed for Saccani Distributing Company."

Exh. 8 (f) A document entitled "Summary of Certain Shipping Data Contained in the Records of Lewis W. Buckner & Phyllis A. Buckner, dba L-B Truck Lines for Transportation Performed for Saccani Distributing Company."

Exh. 9 (g) A document entitled "Summary of Certain Shipping Data Contained in the Records of T-145,250 California Traffic Consultants, Inc./T-151,333 John Edward Escujuri & Robert Edward Ludlow dba California Traffic Consultants for Transportation Performed for Saccani Distributing Company."

Exh. 10 (h) A document entitled "Summary of Certain Shipping Data Contained in the Records of Kenneth R. Riedel for Transportation Performed for Saccani Distributing Company."

6. That respondent Saccani agrees, within 90 days after the effective date of this order to initiate collection from respondent shippers in this proceeding the undercharges as reflected in the exhibits enumerated above under Section 5(a), (b), (c) and (d) of this stipulation, including, if necessary, filing a timely legal action under Public Utilities Code Section 737; and to pay a fine in the amount of the total undercharges,

pursuant to Section 2100 of the Public Utilities Code. The total undercharges amount of ~~\$5,868.41~~<sup>\$5,381.71</sup> is exclusive of respondent Dawson's undercharges of \$7,915.07.

7. That respondent Saccani agrees, within 90 days of the effective date of this order to pay a fine in the amount of \$3,422.40, the total subhaul shortages found to exist, as reflected in the exhibits enumerated under Section 5 (e), (f), (g), and (h) of this stipulation, to the Commission pursuant to Section 2100 and/or 3800 of the Public Utilities Code.

8. That respondent Saccani will file monthly reports with the Commission noting its progress in collecting the undercharges from respondent shippers.

9. That in response to numbered paragraph 8 in OII. 87-06-015, respondent Saccani agrees to pay the Commission a fine in the amount of \$5,000 pursuant to Section 1070 of the Public Utilities Code, on or before the 90th day after the effective date of the order.


10. That in response to numbered paragraph 9 in OII. 87-06-015 respondent subhaulers Bob Brazil Trucking, L-B Truck Lines, California Traffic Consultants, Inc., and Kenneth R. Riedel agree to pay the Commission a fine in the amount of \$750.00 each pursuant to Section 1070 and/or 3774 of the Public Utilities Code.

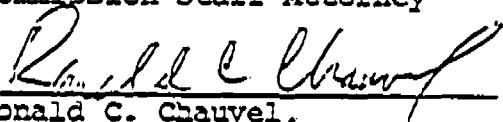
11. That respondent subhauler Kenneth Riedel, in response to numbered paragraph 10 in OII. 87-06-015, agrees to cease all transportation of property on the public highways of the state for compensation until respondent Riedel obtains the proper operating authority.

12. That respondent Saccani, respondent shippers, and respondent subhaulers agree to an order to cease and desist from any and all unlawful operations and practices.

13. That this stipulation shall, along with the exhibits admitted into evidence, serve as staff's and respondents' proposed bases for a Commission decision.

Stipulated on this 19 day of October, 1987 in  
San Francisco, California.

  
\_\_\_\_\_  
Alberto Guerrero,  
Commission Staff Attorney

  
\_\_\_\_\_  
Ronald C. Chauvel,  
HANDLER, BAKER, GREENE & TAYLOR

Representing Saccani Distributing Co.  
aka Saccani Lines

BEFORE THE PUBLIC UTILITIES COMMISSION  
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Co., Ltd., Robert J. Brazil, dba )  
Bob Brazil Trucking, Lewis W. )  
Buckner and Phyllis A. Buckner, )  
dba L-B Truck Lines, California )  
Traffic Consultants, Inc., and )  
Kenneth R. Riedel. )

O.I.I. 87-06-015

*Exh. 2*

DECLARATION OF  
ROBERT DAWSON

Exhibit	<i>2</i>
CPLC Proceeding	<i>O.I.I. 87-06-015</i>
Sponsor/Witness	<i>By Stipulation</i>
Date filed	<i>10/20/87 Rec. 10/20/87</i>
Edward G. Fraser <i>E&amp;F</i> Administrative Law Judge	

DATED: September 8, 1987

RONALD C. CHAUVEL  
HANDLER, BAKER, GREENE & TAYLOR  
2000 Alameda de las Pulgas #228  
San Mateo, California 94403  
Telephone: (415) 573-9666

Attorneys for  
Saccani Distributing Company

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
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 Bob Braxil Trucking, Lewis W. )  
 Buckner and Phyllis A. Buckner, )  
 dba L-B Truck Lines, California )  
 Traffic Consultants, Inc., and )  
 Kenneth R. Riedel. )

O.I.I. 87-06-015

DECLARATION OF

ROBERT DAWSON

I, ROBERT DAWSON, declare and state:

I was the sole shareholder and President of Dawson Distributing Co., Inc. ("Dawson"), a California Corporation. Dawson did business as a beer distributor in Stockton, California.

In 1987, Dawson Distributing Co., Inc. was legally dissolved. Attached hereto as Exhibit "A" is a certified copy of the certificate of final dissolution. Prior to dissolution, all of the assets of the corporation were sold to various persons and businesses. The reason the business was dissolved is that I am sixty-six (66) years old and it was my wish to retire.

While in existence, Dawson hired Saccani Distributing Co., aka Saccani Lines to provide transportation. I am now informed by Saccani that some of the freight rates

assessed were below the minimum legal rates and that Saccani may be required by the California Public Utilities Commission to collect these undercharges from Dawson. Based on the 1987 dissolution of Dawson, I can state unequivocally that the Dawson undercharges are now totally uncollectable.

I respectfully pray that this statement will provide the Public Utilities Commission with good reason not to fine Saccani an amount equal to the Dawson undercharges.

DATED: September 8, 1987



ROBERT DAWSON





# State of California

OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

SEP 2 1987



*March Fong Eu*

Secretary of State . . .

EXHIBIT A

APPENDIX B

Page 5

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FILED

Department of the Superior Court  
County of Los Angeles

JUL 20 1927

*W. H. ...*  
NOTARY PUBLIC

CERTIFICATE OF DISSOLUTION OF  
DAWSON DISTRIBUTING CO., INC.,  
A CALIFORNIA CORPORATION

The undersigned do hereby certify that they are a majority of the authorized number of directors of Dawson Distributing Co., Inc., a California corporation, and they do further certify and state:

1. Dawson Distributing Co., Inc., a California corporation has been completely wound up.
2. The known debts and liabilities of the corporation have been paid.
3. All of the known assets of such corporation have been distributed to the persons entitled thereon.
4. The corporation is dissolved.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 15th day of June, 1927.

*Robert E. Dawson*  
ROBERT E. DAWSON

*Earl Dawson Weigman*  
EARL DAWSON WEIGMAN

*Maria Quijaso*  
MARIA QUIJASO



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
SACRAMENTO, CALIFORNIA 95834  
TELEPHONE (916) 369-4124

TAX CLEARANCE  
CERTIFICATE

June 17, 1957

EXPIRATION DATE: September 15, 1957

Brown, Hall & Spicola  
Attention: Nancy K. Manning  
5700 Quail Lakes Drive  
Stockton, CA 95207

ISSUED TO: DUNSON ENTERPRISES CO., INC.  
Corporate Number 373,403

THIS IS TO CERTIFY THAT ALL TAXES IMPOSED ON THE ABOVE CORPORATION  
UNDER THE BANK AND CORPORATION TAX LAW HAVE BEEN PAID OR ACCRUEDED  
AND THE REPORTS OF OTHER AGENCIES.

A COPY OF THIS TAX CLEARANCE CERTIFICATE HAS BEEN SENT TO THE OFFICE  
OF THE SECRETARY OF STATE AT SACRAMENTO, CALIFORNIA. THE ORIGINAL OF  
THIS CERTIFICATE MAY BE RETAINED FOR THE FILES OF THE CORPORATION.

THE REQUIRED SECRETARY OF STATE FORMS TO DISSOLVE, WITHDRAW, OR MERGE  
MUST BE OBTAINED FROM AND FILED WITH THE OFFICE OF THE SECRETARY OF  
STATE AT 1230 J STREET, SACRAMENTO, CA 95834 BY THE EXPIRATION DATE  
OF THIS NOTICE.

NOTE: IF THE ABOVE PROCESS IS NOT COMPLETED WITH  
THE OFFICE OF THE SECRETARY OF STATE PRIOR TO THE  
EXPIRATION DATE, THE CORPORATION REMAINS SUBJECT  
TO THE FILING REQUIREMENTS OF THE BANK AND  
CORPORATION TAX LAW.

FRANCHISE TAX BOARD

Dr. J. Snyder  
Tax Clearance Unit  
Corporation Audit  
Telephone (916) 369-4124

JS:TC

FEB 25 1957 (227, 1-55)

SECRETARY OF STATE

(END OF APPENDIX B)