

Decision 97-12-095 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Mr. Trucker, a California corporation, and of its president, Rodney Lawley,

Respondents.

I.95-06-005
(Filed June 8, 1995)

ORIGINAL

Edward J. Hegarty, Attorney at Law, for Mr. Trucker and
Rodney Lawley, respondents.
Carol Dumond, Attorney at Law, for Safety and Enforcement
Division, interested party.
Moira Simmerson, for Safety and Enforcement Division.

OPINION

Summary

On June 8, 1995, the Commission issued this Order Instituting Investigation (OII) into the operations and practices of respondents, Mr. Trucker, a California corporation, and of its president, Rodney Lawley, to determine whether respondents have violated the following provisions.

1. Section 3611 of the Public Utilities (PU) Code by conducting operations as a dump truck carrier without a valid permit in force issued by the Commission.
2. Section 3775 of the PU Code by conducting operations as a highway carrier during a period of suspension.

The Commission would determine whether respondents' operating authority should be suspended, cancelled, or revoked, or in the alternative, a fine of not exceeding \$20,000 should be imposed pursuant to PU Code § 3774; whether they should be ordered to cease and desist from any unlawful operations and practices; and whether any other appropriate orders should be entered in the lawful exercise of the Commission's jurisdiction.

Hearings

Duly noticed hearings were held on January 8 and February 20, 1996.

The Formal Report of the then Safety and Enforcement Division (S&E) staff now the Rail Safety and Carriers Division (Rail Safety), found that respondents had operated during the following two periods when satisfactory Public Liability and Property Damage (PL&PD) insurance was not in effect.

- January 15 through March 14, 1994. Initially McAfee Insurance Services stated that Mr. Trucker had insurance through Scottsdale Insurance Company (Scottsdale) during this period. Since there was no record of this at the Commission, S&E staff contacted Scottsdale, who confirmed that Mr. Trucker's policy had been cancelled on January 15, 1994 for nonpayment of premium.

- June 6 through August 10, 1994, when coverage was obtained with Alpine Assurance, LTD, Turks & Caicos Islands (Alpine). Alpine is not listed as an acceptable insurance company authorized to do business in California. On June 3, 1993, the California Department of Insurance prohibited Alpine from issuing new insurance or renewing insurance coverage in California.

As a result of continuing negotiations between respondents and S&E staff, a Stipulation for Settlement (Settlement) was reached during the February 20 hearing, which was signed by William Schulte, Director of S&E Division, and by Lawley.

Amended Order Instituting Investigation

On June 19, 1996, the Commission issued Decision (D.) 96-06-049 which amended the OII and ordered respondents to appear on July 10, 1996 to show cause why their operating authority should not be revoked for cause. The basis for the amended OII was new information indicating that Lawley and Mr. Trucker had pleaded nolo contendere in San Joaquin County Superior Court to misdemeanor charges of illegal transport and disposal of asbestos.

Further Hearings

At the first hearing on the amended OII on July 10, 1996, counsel for respondents requested additional time to prepare for the further evidentiary hearings, and a delay

until July 29, 1996 was granted. Evidentiary hearings were held July 29, 30, 31, August 1 and 5, 1996 at the Commission Courtroom in San Francisco. Counsel for respondents withdrew agreement with the settlement.

Assembly Bill (AB) 1683

Before briefs were filed on the amended OII, respondent's attorney filed a motion for dismissal of this investigation based on changes resulting from AB 1683 becoming law. Section 28 of AB 1683 repeals Chapter 1 of Division 2 of the PU Code. Respondents argue that the result is that the Highway Carriers' Act by which the Commission has regulated highway permit carriers has been repealed, and is no longer in effect. Chapter 1 of Division 2 of the PU Code is entitled Highway Carriers, and is cited as the Highway Carriers Act.

This investigation was opened to determine whether respondents violated §§ 3611 and 3775 of the PU Code, and whether their operating authority should be suspended, cancelled or revoked, or alternatively fined, under § 3774 of the PU Code. These three sections are under Chapter 1 of Division 2 of the PU Code and thus have been repealed.

Briefs

Counsel for respondents filed a motion to set aside and dismiss the proceeding. As a result, this matter was withdrawn from the Commission's agenda and a briefing schedule was set by ALJ Ruling to allow the parties an opportunity to brief the matter. Neither party filed an opening brief; both parties filed reply briefs. Reply briefs are intended to respond to opening briefs. In this case since opening briefs did not exist, the reply briefs are in effect opening briefs.

Respondents argue the following:

- This investigation must be dismissed and the proceeding closed, since the adoption of AB 1683 has made the investigation and its allegations moot, and the authority to regulate motor carriers such as respondent has been transferred from the Commission to the Department of Motor Vehicles (DMV) and California Highway Patrol (CHP), and the former powers of the Commission in this area are void.

- There is no provision to allow the Commission to conclude investigations started under the old law to continue under the new law.
- Since respondents have been in full compliance with the insurance requirements in effect on the day prior to the effective date of AB 1683, and have continuously complied since then, they are in full compliance with all relevant insurance requirements.
- Since the CHP has not contracted with the Commission to administer AB 1683, the Commission has no authority to impose a fine or sanctions for prior periods of insurance violations.

Consumer Services Division (CSD) Staff

CSD believes that the Commission has authority to fine respondents for insurance violations and operations during suspension of operating authority that occurred prior to the change in law resulting from AB 1683. CSD argues that respondents, through delays they requested, now are attempting to avoid any sanctions for their many and repeated violations.

The Commission should adopt the current proposed decision of the administrative law judge including the fine it imposes, which is a mild penalty in comparison to the serious nature of respondents' violations.

Discussion

As indicated above, in Mr. Trucker's case, the Formal Report of staff found that respondents operated without PL&PD insurance during two periods, January 15 through March 14, 1994 and June 6 through August 10, 1994.

Respondents presented no evidence to the contrary. Respondents' insurance agent may have operated illegally or unethically, but respondents clearly should have known that when no monthly premiums for insurance are paid for months, it is very unlikely that insurance coverage exists for that period.

During the periods when Mr. Trucker operated without insurance on file with the Commission and while its permit was suspended, the PU Code required Mr. Trucker to have insurance on file with the Commission and cease operations during any period of suspension. (See PU Code §§ 3631, 3632, 3611, and 3775, later repealed by

AB 1683 (1996).) While AB 1683 repealed those sections of the PU Code, it simultaneously reenacted substantially identical provisions: requiring motor carriers of property to file proof of insurance with the DMV; suspending the carrier's permit upon the effective date of an insurance cancellation; and prohibiting operations during any such permit suspension. (See VC §§ 34630, 34631, and 34631.5(a), especially subdivisions (8), (9), and (10).) Thus, AB 1683 continued the requirement that motor carriers of property file proofs of insurance with the state and cease operations when a permit is suspended for failure to have proof of insurance on file. It simply transferred responsibility for this program from the PUC to the DMV.

Despite this underlying continuity in the regulatory program, Mr. Trucker argues that the repeal of these PU Code sections by AB 1683 deprives this Commission of any ability to punish Mr. Trucker for acts committed prior to enactment of AB 1683, more specifically, for failure to file proof of insurance with the state of California and for operating during the periods when its permit was suspended for failure to have insurance on file. For the reasons set out below, we cannot agree with Mr. Trucker.

In Sekt v. Justice's Court (1945) 26 Cal.2d 297, the California Supreme Court discussed the rules applicable upon repeal of a statute. Sekt first discusses the general rule that "the outright repeal of a criminal statute, without a saving clause, operates to terminate all pending prosecutions." (26 Cal.2d at 304.) Mr. Trucker apparently believes that this general rule ought to apply here as well. However, Sekt also discusses several important exceptions to this general rule, one of which is especially relevant to the situation here:

"where there is an outright repeal and a substantial reenactment, it will be presumed that the Legislature did not intend that there should be a remission of crimes not reduced to final judgment. . . . When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute. . . . This rule of construction, based as it is on the presumed legislative intent, applies whether the subject of the statute is civil or criminal law." (26 Cal.2d 306-07.)

Sekt also discusses the situations where the new law either increases or decreases the penalty imposed under the old law. Sekt concludes that in either of those situations only the lesser of the penalties may be imposed. (See 26 Cal.2d at 305-10.)

The more recent case of In re Pedro T. (1994) 8 Cal. 4th 1041, 1045-47 further emphasizes the importance of presumed legislative intent in determining the effect of a statutory repeal.

Here, the Legislature has continuously required that motor carriers of property file proof of insurance with the State in order to obtain a permit, and made it illegal for such carriers to operate during any period when their permit is suspended for failure to have proof of insurance on file. Accordingly, the Legislature could not have intended that a motor carrier that disobeyed these requirements when they were administered by the PUC, but who had not yet been punished when responsibility for this program was transferred to the DMV, should escape punishment entirely. Rather, it must be presumed that the Legislature intended that such a violation could still be punished. Furthermore, in light of the substantial reenactment of these requirements "there is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute." (Sekt, 26 Cal.2d at 306.) Of course, consistent with the rules set out in Sekt, any punishment imposed cannot exceed the lesser of the penalties allowed by the old and new statutes.

Under VC § 34660 et seq. violations are punishable by not more than \$2,500, or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment. Each violation and each day's continuance of a violation is considered a separate and distinct offense. Staff's evidence shows that respondents had operated 127 days without PL&PD insurance.

Under the old statute, PU Code § 3774(i), respondents are subject to a fine not to exceed \$20,000 as an alternate to cancellation, revocation or suspension of operating authority.

We will assess a fine of \$20,000, which is clearly the lesser of the maximum fine applicable either under current law or during the time of the violations.

We conclude that this level of fine is appropriate considering respondents' significant violations of insurance requirements.

Comments on Proposed Decision

Comments were filed by counsel for respondents, requesting that the investigation be dismissed and discontinued, essentially based on the same arguments made earlier and discussed above. No reply comments were filed. No changes have been made based on the comments.

Findings of Fact

1. Respondents operated during two separate periods during 1994 without adequate PL&PD insurance.
2. The Highway Carriers' Act was repealed by AB 1683 in 1996.

Conclusions of Law

1. Respondents should be fined for operating without proof of insurance on file with the Commission during periods prior to repeal of the Highway Carriers' Act.
2. During all relevant periods, including 1994 and through the present time, state law has required for-hire carriers of property to file proof of PL & PD insurance with the State of California, and has made it illegal to operate during any period in which such insurance is not on file. Because these requirements have remained in effect both before and after enactment of AB 1683, violation of these requirements during the period prior to repeal of the Highway Carriers' Act by AB 1683 may still be punished, although the penalty imposed cannot exceed the lesser of the penalties allowed under the Highway Carriers' Act and the Vehicle Code sections enacted by AB 1683.
3. This investigation should be closed.

O R D E R

IT IS ORDERED that:

1. Respondents Mr. Trucker and Rodney Lawley shall remit to the Fiscal Office of the Commission in San Francisco the fine in the amount of \$20,000 within 90 days of the effective date of this order.

I.95-06-005 ALJ/BRS/tcg *

2. The Fiscal Office shall deposit the fine amount in the State Treasury to the credit of the General Fund.

3. Investigation 95-06-005 is closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners