

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Received  
on  
**JUL 26 2013**  
by  
State Corporation Commission  
of Kansas

In the Matter of the Investigation of **Mark Buss, d/b/a** )  
**Auto Transport of Newton, Kansas**, Pursuant to the )  
Kansas Highway Patrol Issuance of a Notice of )  
Violation for Violation(s) of the Kansas Motor Carrier )  
Safety Statutes, Rules and Regulations and the )  
Commission's Authority to Impose Penalties, )  
Sanctions and/or the Revocation of Motor Carrier )  
Authority. )

Docket No. 13-GIMM-702-KHP

**DIRECT TESTIMONY**  
  
**OF**  
  
**MIKE HOEME**  
  
**ON BEHALF OF**  
  
**THE STATE CORPORATION COMMISSION**  
  
**OF THE STATE OF KANSAS**

July 26, 2013

1   **Q.    Please state your name.**

2    A.    Mike Hoeme.

3   **Q.    By whom, and in what capacity, are you employed?**

4    A.    I am the Director of the Transportation Division of the Kansas Corporation  
5           Commission (KCC or Commission).

6   **Q.    Please summarize your educational and professional background.**

7    A.    I have a bachelor's degree in business. My professional background is directly  
8           related to safety compliance in the Transportation industry. Prior to joining the  
9           Commission, I worked for a private motor carrier as its Safety Compliance  
10          Director (1985-2000). My responsibilities were to oversee the company's safety  
11          program, including compliance with motor carrier statutes and regulations.

12                 In 2000, I accepted a position with the Commission as Public Service  
13                 Administrator in its Transportation Division. In 2001, I accepted the position of  
14                 Transportation Division Director. In this capacity, I oversee the Commission's  
15                 Transportation Division and am responsible for implementation and enforcement  
16                 of the Commission's motor carrier safety program.

17                 In 2004, I was elected by my peers to the Executive Committee for the  
18                 National Conference of State Transportation Specialists, and on May 1, 2012, I  
19                 was elected by my peers to the Unified Carrier Registration (UCR) Board of  
20                 Directors. Overall, I have more than twenty years experience in the transportation  
21                 industry.

22   **Q.    Have you previously testified before this Commission?**

23    A.    Yes.

24

1   **Q.    What is the purpose of your testimony in this proceeding?**

2    A.    The purpose of my testimony is to explain the Commission's jurisdiction as it  
3       relates to Mark Buss d/b/a Auto Transport, specifically during the March 27, 2013  
4       transportation, and to provide the Commission with an overview of Mark Buss  
5       d/b/a Auto Transport's history with the Transportation Division and the  
6       Commission.

7   **Q.    Please explain this Commission's jurisdiction as it relates to motor carriers.**

8    A.    K.S.A. 2012 Supp. 66-1,111, provides that "no public motor carrier of property or  
9       passengers or private motor carrier of property or local cartage carrier shall  
10       operate any motor vehicle for the transportation of either persons or property on  
11       any public highway in this state except in accordance with the provisions of this  
12       act, and amendments thereto, and other applicable laws." K.S.A. 2012 Supp. 66-  
13       1,108(m) defines "public motor carrier of property" as any person who undertakes  
14       for-hire to transport by commercial motor vehicle, the property of others who may  
15       chose to employ or contract with the motor carrier.

16   **Q.    How is "commercial motor vehicle" defined?**

17   A.    "Commercial motor vehicle" is defined by K.A.R. 82-4-1(d)(1) as a vehicle that  
18       has a gross vehicle weight rating or gross combination weight rating, or a gross  
19       vehicle weight or gross combination weight, of 10,001 pounds or more,  
20       whichever is greater.

21   **Q.    What is your understanding of Mr. Buss' reasons for requesting this**  
22       **hearing?**

1 A. Mr. Buss seems to be contesting the \$150 civil assessment based on a load  
2 securement violation as documented in invoice H000539334. A copy of this  
3 invoice is attached hereto as "Hoeme Attachment A." In his request for hearing,  
4 Mr. Buss indicates that this was a private trip.

5 **Q. In his request for hearing, Mr. Buss indicates this was a private trip; not a**  
6 **for-hire transportation. However, Lieutenant Hoffman's testimony states—**  
7 **and the video recording of this stop and inspection supports—that Mr. Buss**  
8 **stated he was getting "good money," also indicated he would be getting**  
9 **money for fuel from Mr. Ayesh in return for picking up and delivering the**  
10 **GMC pickup. Does accepting money for gas constitute a for-hire**  
11 **transportation?**

12 A. Yes. The Federal Motor Carrier Safety Administration provides guidance on this  
13 topic. The term "for-hire motor carrier" is interpreted to mean a person engaged  
14 in the transportation of goods or passengers for compensation. This includes by a  
15 fee, monetary or otherwise, either directly or indirectly. With respect to Auto  
16 Transport's March 27, 2013 transportation, you have to look at the available facts  
17 to determine if a carrier is operating for-hire.

18 **Q. Does the evidence in this docket indicate this was a personal or for-hire trip?**

19 A. Yes. Here, the evidence supports that the vehicle Auto Transport was hauling  
20 was not the property of Auto Transport; and Mr. Buss' statements to Lieutenant  
21 Hoffman, as contained in Lieutenant Hoffman's testimony and the video of the  
22 stop and inspection, indicate Mr. Buss would be receiving compensation, either in  
23 the way of gas money, other monetary compensation, or services or parts by way

1 of exchange with Mr. Ayes. Adding all of those facts together leads to the  
2 conclusion that Auto Transport was operating as a for-hire motor carrier at the  
3 time of the March 27, 2013 stop and inspection.

4 **Q. Mr. Hoeme, based on the information in this docket, do you believe Mark**  
5 **Buss d/b/a Auto Transport is a motor carrier subject to Commission**  
6 **authority?**

7 A. Yes. According to Lieutenant Hoffman's inspection, the combination vehicle  
8 operated by Auto Transport had a gross vehicle weight rating of 16,000, which  
9 means it meets the definition of a commercial motor vehicle under K.A.R. 82-4-  
10 1(d)(1). Additionally, the evidence in the docket suggests that Auto Transport  
11 was making a for-hire transportation, thereby meeting the definition of a public  
12 motor carrier.

13 **Q. In your capacity as Director of Transportation, have you had previous**  
14 **dealings with Mark Buss d/b/a Auto Transport?**

15 A. Yes. The Transportation Division has had several interactions with this carrier in  
16 the past, including Commission-issued Penalty Orders, an Emergency Suspension  
17 of Operations Order, and numerous civil assessments.

18 **Q. Are any of these presently active before the Commission?**

19 A. No, all other Commission dockets related to Mark Buss d/b/a Auto Transport are  
20 closed, and this is merely a historical account of past dealings.

21 **Q. Please detail your previous dealings with this carrier as it pertains to**  
22 **Commission-issued Penalty Orders.**

1 A. In Commission docket number 12-TRAM-165-PEN, on October 25, 2011, Mark  
2 Buss d/b/a Auto Transport was assessed a \$5,400 penalty for various violations of  
3 Kansas Motor Carrier Safety Statutes, Rules and Regulations including failure to  
4 implement drug and alcohol testing, failure to maintain motor vehicle reports in  
5 driver qualification files, failure to maintain vehicle registration in accordance  
6 with the International Registration Plan (IRP) registration, and failure to obtain  
7 Commission authority to operate. This penalty went unpaid and was turned over  
8 to collections on March 15, 2012.

9 Additionally, in Commission docket 13-TRAM-436-PEN, on January 23,  
10 2013, the Commission assessed a \$8,450 penalty against Mark Buss d/b/a Auto  
11 Transport for various violations of Kansas Motor Carrier Safety Statutes, Rules  
12 and Regulations including hours of service violations, fraudulently reproducing a  
13 false medical examination certificate, failing to confirm each driver is medically  
14 examined and certified as physically fit to operate commercial motor vehicles,  
15 creating false records of duty status, failing to maintain supporting documents for  
16 records of duty status, failing to obtain Commission authority to operate, failure to  
17 maintain motor vehicle reports in driver qualification files, and failing to perform  
18 annual inspections on its commercial motor vehicles. This Penalty Order was not  
19 appealed and the penalty became due on February 25, 2013. No payment has  
20 been made on this penalty.

21 **Q. Please detail your previous dealings with this carrier as it pertains to the**  
22 **Emergency Suspension of Operations order.**

1           In Commission docket number 12-TRAM-876-OOS, on June 21, 2012,  
2           the Commission issued an Emergency Order Suspending All Intrastate Motor  
3           Carrier Operations against Mark Buss d/b/a Auto Transport based on Auto  
4           Transport's continued disregard for Kansas Motor Carrier Safety Statutes, Rules  
5           and Regulations, including fifteen separate Kansas Highway Patrol Driver  
6           Vehicle Inspection Reports each containing serious safety violations. This  
7           suspension order remains in effect to date.

8           In addition to the Commission's intrastate suspension order in docket 12-  
9           TRAM-876-OOS, the Federal Motor Carrier Safety Association (FMCSA) issued  
10          an Order to Cease All Transportation in Interstate and Intrastate Commerce and  
11          Revocation of Registration, effective February 27, 2013.

12   **Q.    You mention Mark Buss d/b/a Auto Transport had received multiple civil**  
13   **assessments. Please explain those.**

14   A.    Commission records indicate that since June of 2007, Mark Buss d/b/a Auto  
15   Transport has received 20 civil assessments based on routine KHP roadside stops  
16   and inspections, for a total of \$5,250 in fines (including the presently disputed  
17   invoice). Of those, six invoices remain unpaid and have a delinquent status, for a  
18   total of \$1,750 in unpaid fines. A summary of these fines is attached hereto as  
19   "Hoeme Attachment B."

20   **Q.    Was any other enforcement action taken with respect to the March 27, 2013**  
21   **stop and inspection?**

22   A.    Yes. On March 27, 2013, pursuant to the authority granted under K.S.A. 66-  
23   1,129a, I directed the Kansas Highway Patrol (KHP) to impound a commercial

1 motor vehicle operated by Mark Buss d/b/a Auto Transport subsequent to a  
2 Kansas Highway Patrol motor carrier stop and inspection. The letter directing the  
3 KHP to impound the vehicle operated by Mark Buss d/b/a Auto Transport is  
4 attached hereto as "Hoeme Attachment C."

5 **Q. While the only violation incurring a fine is the violation for improper load**  
6 **securement, there are several other violations noted on the Driver/Vehicle**  
7 **Inspection Report attached to Lieutenant Hoffman's testimony. Do these**  
8 **violations present any safety concerns?**

9 A. Yes, they do. According to Lieutenant Hoffman's inspection and report, the  
10 driver did not have a valid medical certificate, and was driving on a suspended  
11 driver's license. In addition, the violation for driving after an operational out of  
12 service designation raises great safety concerns based on the fact that both the  
13 federal and the state orders were predicated upon multiple safety violations. If I  
14 may draw your attention to the Commission's Emergency Order Suspending All  
15 Intrastate Motor Carrier Operations issued in docket 12-TRAM-876-OOS, the  
16 Commission found "Auto Transport's repeated failures to comply with Kansas  
17 Motor Carrier Safety Rules and Regulations is sufficient evidence of unsafe motor  
18 carrier operations and as such poses a potential immediate threat to the safety and  
19 welfare of the public of the state of Kansas..." Despite the Commission's  
20 directive that Auto Transport cease all intrastate motor carrier operations, the  
21 carrier has continued to operate, giving rise to serious safety concerns.

22 **Q. Based on your experience with the Commission policies and practices as it**  
23 **applies to the issuance of civil penalties, do you believe the assessment of the**



1           **recommended penalty is fair and consistent with Kansas law and**  
2           **Commission practices?**

3    A.     Yes, I do.

4    Q.     **Does this conclude your testimony?**

5    A.     Yes, it does.

**HOEME  
ATTACHMENT "A"**



Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

## NOTICE OF VIOLATION

April 2, 2013

MARK BUSS D/B/A AUTO TRANSPORT  
620 E 9TH ST  
NEWTON, KS 67114

Re: Roadside Driver/Vehicle Examination Report No. KS00QB000288

This is a Notice of Probable Violation(s) of Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a roadside inspection conducted by the Kansas Highway Patrol.

Kansas Highway Patrol Officer J.A. HOFFMAN inspected vehicle [REDACTED] on March 27, 2013 and violation(s) of Federal Motor Carrier Safety Regulations, as adopted by K.S.A. 66-1,129 and K.A.R. 82-4-3 et seq. were discovered. After a thorough review of your inspection, violation(s), along with associated penalties, have been assessed.

You have thirty (30) days, from the date of this letter, to pay the fine amount, as indicated in the enclosed invoice. Failure to address this matter may negatively impact your KCC operating authority or result in the issuance of an Out-of-Service order in the State of Kansas. You have the following options:

**1. Direct any disputed questions regarding violations and /or hearing requests to:**

**Kansas Highway Patrol  
Motor Carrier Safety Assistance  
700 SW Jackson, Suite 704  
Topeka, Kansas 66603  
(785) 296-8157**

2. Pay the fine amount as indicated in the enclosed invoice: **H000539334**
3. You have the right to an administrative hearing with the Kansas Corporation Commission by contacting the Kansas Highway Patrol.
4. Failure to pay the fine amount or request a hearing within thirty (30) days will result in carrier being in default. Carrier will not be able to make changes to KCC authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

###

## KANSAS CORPORATION COMMISSION

## INVOICE



MARK BUSS D/B/A AUTO TRANSPORT  
620 E 9TH ST  
NEWTON, KS 67114

Invoice Date: April 2, 2013

Invoice Number: H000539334

Due Date: May 2, 2013

## Power Unit Identification at Time of Inspection:

Unit #	Unit Make	Unit License	VIN	License Number	Company ID
1	FORD				
2	HMDE				

Unit	Violation	Violation Description	Penalty
1	386.72B4-OOSOMC	OOS Order Motor Carrier operating CMV while OOS order in effect: Imminent Hazard-Motor Carrier	0.00
2	393.100A	No or improper load securement	150.00
	391.11B5-DNL	Driver does not have a valid operator's license for the CMV being operated.	0.00
Total Due:			\$150.00

***Please return the enclosed invoice with your payment,  
payable to the Kansas Corporation Commission.***

Failure to pay the fine amount or request a hearing within thirty (30) days will result in carrier being in default. Carrier will not be able to make changes to authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

Carriers registered under the Unified Carrier Registration Act (UCRA) program that maintains intrastate authority will be reviewed annually for compliance.

Payment options: check, money order or credit card.

Circle the type of credit card (Visa, MasterCard, Discover, or American Express)

Credit card number \_\_\_\_\_ and Expiration Date \_\_\_\_ / \_\_\_\_

Please direct any questions regarding the violations and/or fine amounts to the  
Kansas Highway Patrol, Motor Carrier Safety Assistance at **(785) 296-8157**.

**HOEME  
ATTACHMENT "B"**

# KHP/KCC CIVIL ASSESSMENT PROGRAM - FINES STATUS

**Invoice Number** highlighted in black indicates the Invoice is on HOLD.

Invoice Date	Invoice Number	Carrier	Invoice Total	Status Date	Fine Status	Message Area
06/08/07	H000486162	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	150.00	02/17/11	PAID	
10/18/07	H000490155	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	300.00	04/19/11	PAID	
10/26/07	H000490296	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	04/23/08	PAID	
11/20/07	H000490883	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	150.00	04/23/08	PAID	
04/04/08	H000493899	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	700.00	07/19/11	PAID	
05/14/09	H000505432	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	450.00	09/16/11	PAID	
05/28/10	H000514295	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	07/09/10	PAID	
09/02/10	H000516990	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	300.00	03/16/12	PAID	
11/09/10	H000519126	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	300.00	02/15/11	DELINQUENT	*** Delinquent Invoice at HARRIS-HARRIS is uncollected for over a year.
11/19/10	H000519339	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	300.00	04/17/12	PAID	
01/20/11	H000520540	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	150.00	05/16/12	PAID	
05/12/11	H000523447	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	300.00	08/17/11	DELINQUENT	*** Delinquent Invoice at HARRIS-HARRIS is uncollected for over a year.
07/28/11	H000525162	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	400.00	10/25/11	DELINQUENT	*** Delinquent Invoice at HARRIS-HARRIS is uncollected for over a year.
08/15/11	H000525574	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	01/17/12	DELINQUENT	*** Delinquent Invoice at HARRIS-HARRIS is uncollected for over a year.
03/13/12	H000530667	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	03/14/13	PAID	
04/10/12	H000531353	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	07/18/12	DELINQUENT	*** Delinquent Invoice at HARRIS-HARRIS is uncollected for over a year.
05/22/12	H000532457	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	450.00	09/17/12	DELINQUENT	*** HARRIS-HARRIS collecting delinquent invoice.
10/04/12	H000535854	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	150.00	10/30/12	PAID	
12/27/12	H000537468	AUTO TRANSPORT D/B/A AUTO TRANSPORT (MCI 160096)	250.00	01/15/13	PAID	
04/02/13	H000539334	MARK BUSS D/B/A AUTO TRANSPORT (MCID: 160096)	150.00	05/20/13	HEARING DATE	13-GIMM-702-KHP 08/08/13 at 9:00 AM Third Floor Conf. Room
Count: 20		Invoice Total:	5,250.00			

**HOEME  
ATTACHMENT "C"**



1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

March 29, 2013

Kansas Highway Patrol, Motor Carrier Unit  
Attn: Captain Christopher Turner  
700 SW Jackson  
Suite 704  
Topeka, KS 66603

**Re: Impound – Mark Buss d/b/a Auto Transport – USDOT 1136740**

Dear Captain Turner:

I have reviewed the motor carrier records relating to the March 27, 2013, motor carrier stop and inspection of a commercial motor vehicle operated by Kelly Vanek of Mark Buss d/b/a Auto Transport (Auto Transport).

According to state records, Ms. Vanek was found operating a commercial motor vehicle identified as a 1996 Ford truck with license plate [REDACTED], bearing vehicle identification number (VIN) [REDACTED] hauling a 1991 homemade trailer with license plate [REDACTED] bearing VIN [REDACTED]. The motor carrier records indicate the pick-up truck had a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds and the trailer had a GVWR of 6,000 pounds. The cargo being hauled was a pick-up truck.

Based on my review of the available motor carrier records and information, I am authorizing the commercial motor vehicle described above to be impounded. This request is based on the following facts:

1. On October 25, 2011, the Commission issued a Penalty Order in docket 12-TRAM-165-PEN against Auto Transport for violations found during a compliance review conducted on June 28, 2011, by Kansas Corporation Commission Special Investigator Doug Handy. The Penalty Order identified five (5) violations of Kansas Motor Carrier Safety Regulations and assessed a \$5,400 fine. Additionally, this Penalty Order ordered Auto Transport to attend a Commission-sponsored safety educational meeting and submit to a follow-up compliance review.
2. The violations noted in the June 28, 2011, compliance review were serious in nature and raised concerns relevant to the safety of Auto Transport's motor carrier operations. The violations identified were:
  - a. Failure to require drivers to submit to a controlled substance test that complies with 49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b, in violation of 49 C.F.R. 382.301 as adopted by K.A.R. 82-4-3c.
  - b. Failure to ensure that each driver selected for random alcohol and controlled substance testing has an equal chance of being selected each



time selections are made, in violation of 49 C.F.R. 382.305(i)(2) as adopted by K.A.R. 82-4-3c.

- c. Failure to obtain Motor Vehicle Reports (MVRs) on each driver within 30 days of employment and maintain the MVRs in the driver qualification files pursuant to 49 C.F.R. 391.51, in violation of 49 C.F.R. 391.23(a)(1) as adopted by K.A.R. 82-4-3g.
  - d. Failure to obtain proper Commission authority to operate prior to the commercial operation of motor vehicles by failing to maintain proper International Registration Plan (IRP) registration in violation of K.S.A. 2010 Supp. 66-1,111, K.S.A. 8-142 *First*, and 49 C.F.R. 392.2 as adopted by K.A.R. 82-4-3h.
  - e. Failure to ensure proper operating authority prior to operating a commercial motor vehicle in Kansas in violation of K.S.A. 2010 Supp. 66-1,111 and 49 C.F.R. 392.2 as adopted by K.A.R. 82-4-3h.
3. The penalty in docket number 12-TRAM-165-PEN went unpaid and was sent to collections on March 15, 2012.
  4. On June 21, 2012, in docket 12-TRAM-876-OOS, the Commission issued an Emergency Order Suspending All Intrastate Motor Carrier Operations against Auto Transport based on repeated failures to comply with Kansas Motor Carrier Safety Rules and Regulations. This order found Auto Transport's repeated failures to comply with Kansas Motor Carrier Safety Rules and Regulations to evidence unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.
  5. Pursuant to the Commission directive in the Penalty Order in docket 12-TRAM-165-PEN, Staff conducted a follow-up compliance review on December 5, 2012, by Commission Special Investigators Gary Goeller and Doug Handy. This compliance review identified eight (8) violations of Kansas Motor Carrier Safety Rules and Regulations. As a result of this compliance review, a Penalty Order was issued in docket 13-TRAM-436-PEN on January 23, 2013.
  6. The violations noted in the December 5, 2012, compliance review were serious in nature and raised concerns relevant to the safety of Auto Transport's motor carrier operations. The violations identified were:
    - a. Failure to establish an alcohol and/or controlled substances program for its drivers that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c, in violation of 49 C.F.R. 382.115(a) as adopted by K.A.R. 82-4-3c.
    - b. Reproduction of fraudulent records in violation of 49 C.F.R. 390.35 as adopted by K.A.R. 82-4-3f.
    - c. Failure to confirm that each of its drivers are medically examined and certified prior to requiring or permitting the operation of a commercial motor vehicle and maintaining documentation of the medical certificate in the driver qualification file in violation of 49 C.F.R. 391.45(b)(1) and 49 C.F.R. 391.51(b)(7)(i) as adopted by K.A.R. 82-4-3g.
    - d. Falsification of records of duty status in violation of 49 C.F.R. 395.8(e) as adopted by K.A.R. 82-4-3a.

- e. Failure to retain driver supporting documents for the record of duty status for a period of six (6) months in violation of 49 C.F.R. 395.8(k)(1) as adopted by K.A.R. 82-4-3a.
  - f. Failure to obtain and maintain the proper Commission authority prior to commercially operating motor vehicles in violation of K.S.A. 2011 Supp. 66-1,111 and 40 C.F.R. 392.2 as adopted by K.A.R. 82-4-3h.
  - g. Failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file in violation of 49 C.F.R. 391.25(a) and (c) as adopted by K.A.R. 82-4-3g.
  - h. Failure to conduct periodic (annual) inspections on commercial motor vehicles in violation of 49 C.F.R. 396.17(a) as adopted by K.A.R. 82-4-3j.
7. On February 15, 2013, the Federal Motor Carrier Safety Administration (FMCSA) served formal notice on Mark Buss, Owner of Mark Buss d/b/a Auto Transport of Hutchinson, Kansas, that the motor carrier was subject to an Order To Cease All Transportation In Interstate and Intrastate Commerce and Revocation of Registration, effective February 27, 2013.
8. On March 27, 2013, at approximately 9:10 p.m., Kansas Highway Patrol (KHP) Lieutenant J.A. Hoffman conducted a motor carrier stop and inspection on a commercial motor vehicle operated by Kelly Vanek of Auto Transport. At the time of the stop, Ms. Vanek possessed a Kansas driver's license no. [REDACTED]. This stop is documented in Kansas Highway Patrol Driver/Vehicle Examination Report Number KS00QB000288. This inspection occurred at 30<sup>th</sup> and Lorraine in Hutchison, Reno County, Kansas. The Level II – Walk Around inspection identified three (3) out-of-service issue(s) and three (3) other violations of the Kansas Motor Carrier Rules and Regulations. The out-of-service issues are as follows:
- a. Driver did not have a valid operator's license for the commercial motor vehicle being operated. Driver's Kansas Driver's License was suspended. (49 C.F.R. 391.11(b)(5) as adopted by K.A.R. 82-4-3g.)
  - b. Operating a commercial motor vehicle after the effective date of an Unsatisfactory Rating. (49 C.F.R. 385.13(a)(2) as adopted by K.A.R. 82-4-3d.)
  - c. No or improper load securement. (49 C.F.R. 393.100(a) as adopted by K.A.R. 82-4-3i.)
9. According to the information and records examined at the time of the stop, the commercial motor vehicle originated in Hutchison, Kansas and was destined for Wichita, Kansas.

Pursuant to the authority granted under K.S.A. 66-1,129a (b), and as the Director of the Kansas Corporation Commission's Transportation Division, I am instructing the KHP to impound any and all vehicles found operating in the State of Kansas which are owned and/or operated by Auto Transport. K.S.A. 66-1,129a (b) provides that:

[t]he director of the [Kansas Corporation] commission's transportation division, at any time for good cause shown, may request the Kansas Highway Patrol to impound a motor carrier's vehicle or vehicles when the motor carrier has:

- (1) Failed to comply with an out-of-service order;
- (2) failed to comply with a cease or desist order;
- (3) failed to obtain commission authority to operate;
- (4) failed to pay a commission-assessed civil penalty; or

(5) has otherwise failed to comply with a commission order. Any motor carrier whose vehicle is impounded prior to a hearing must be afforded the opportunity of a hearing on the matter. If such hearing is requested, the hearing shall be held within 10 days of the request.

By copy of this document, I am formally notifying Mark Buss d/b/a Auto Transport of this impoundment via the United States Postal Service, certified mail, receipt number: 7009 0080 0001 1368 7590. Pursuant to K.S.A. 77-537 and K.S.A. 77-542, and amendments thereto, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Executive Director, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Notice. Additionally, I strongly recommend the carrier contact the Kansas Corporation Commission Transportation Division at: 785-271-3145, to determine what steps must be taken to resolve Auto Transport's non-compliance with Kansas Motor Carrier Safety Rules and Regulations, and permit the release of the impounded vehicles.

Likewise, by copy of this document, Mark Buss, Owner of Mark Buss d/b/a Auto Transport is hereby placed on notice that the carrier is responsible for all towing and storage fees associated with the impoundment of the carrier's vehicles.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,



Mike Hoeme, Director  
Transportation Division  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604-4027

Enclosures:

- o October 25, 2011 Penalty Order in docket 12-TRAM-165-PEN;
- o June 21, 2012 Emergency Order Suspending All Intrastate Motor Carrier Operations in docket 12-TRAM-876-OOS;
- o January 23, 2012 Penalty Order in docket 13-TRAM-436-PEN;
- o February 15, 2013 FMCSA Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration – USDOT 1136740;
- o Kansas Highway Patrol Driver/Vehicle Examination Report no. KS00QB000288.

cc: Mark Buss, Owner  
Auto Transport  
620 East 9<sup>th</sup> Street  
Newton, Kansas 67114



U.S. DEPARTMENT OF  
TRANSPORTATION

FEDERAL MOTOR CARRIER  
SAFETY ADMINISTRATION

MIDWESTERN SERVICE CENTER

UPS 1ZA476X80392459071

February 15, 2013

Mark Buss, Owner  
MARK BUSS dba AUTO TRANSPORT  
2515 E. 44<sup>th</sup> Street  
Hutchinson, KS 67501

4749 Lincoln Mall Drive, Suite 300A  
Matteson, IL 60443

Phone: (708) 283-3577  
Fax: (708) 283-3565

**ORDER TO CEASE ALL TRANSPORTATION IN INTERSTATE AND  
INTRASTATE COMMERCE AND REVOCATION OF REGISTRATION**

**EFFECTIVE Wednesday, February 27, 2013 at 12:01 am**

**USDOT# 1136740**

**MC # 460210**

This Order to Cease All Transportation in Interstate and Intrastate Commerce (Order) and Revocation of Registration is issued pursuant to 49 USC §§ 13905(f)(1)(B) and 31144, and 49 CFR § 385.13.

This Order is the result of a compliance review of Mark Buss dba Auto Transport's operations completed on December 28, 2012. The review disclosed serious violations of the Federal Motor Carrier Safety Regulations and/or the Hazardous Materials Regulations.

Mark Buss dba Auto Transport, U.S. DOT# 1136740, was issued a proposed "UNSATISFACTORY" safety rating on December 28, 2012. Mark Buss dba Auto Transport was notified to take certain actions within 60 days from the date of that proposed rating to improve its safety rating to "conditional" or "satisfactory". Mark Buss dba Auto Transport was further advised that it would be ordered to cease any and all operation of any commercial motor vehicle(s) in interstate and intrastate commerce and its registration would be revoked unless its safety rating was improved to "conditional" or "satisfactory".

Mark Buss dba Auto Transport has failed to take the necessary steps required to improve its safety rating to "conditional" or "satisfactory" within the required timeframe.

THEREFORE, **IT IS ORDERED** THAT MARK BUSS dba AUTO TRANSPORT SHALL CEASE ALL OPERATION OF ANY COMMERCIAL MOTOR VEHICLE(S) IN INTERSTATE AND INTRASTATE COMMERCE ON THE EFFECTIVE DATE AND TIME

OF THIS ORDER, AND THE REGISTRATION OF MARK BUSS dba AUTO TRANSPORT SHALL BE REVOKED UNLESS AND UNTIL SUCH TIME AS THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION DETERMINES MARK BUSS dba AUTO TRANSPORT IS FIT, AND CARRIER HAS REINSTATED ITS REGISTRATION.

IN ADDITION, EACH AND EVERY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT IS PROHIBITED FROM USING MARK BUSS dba AUTO TRANSPORT FOR ANY TRANSPORTATION IN INTERSTATE AND INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. (49 USC § 31144)

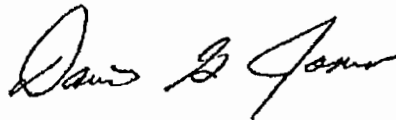
Mark Buss dba Auto Transport's continued operation of commercial motor vehicles in interstate and/or intrastate commerce after the effective date and time of this Order and/or Revocation of Registration will be considered a serious safety violation. Each day the transportation continues constitutes a separate offense.

Violation(s) of this Order may result in penalties of not more than \$11,000 for each separate violation and may result in criminal prosecution leading to imprisonment for up to one (1) year or a fine of up to \$25,000, or both, and other actions as deemed necessary by the United States Department of Justice. (49 USC § 521(b)). Violation(s) of registration requirements, including providing transportation requiring registration during any period of revocation, may result in penalties of not less than \$650 for each separate violation. If the registration violation involves providing transportation of passengers, the penalty shall be not less than \$2,200 for each separate violation, if the registration violation involves the transportation of household goods, the penalty shall not be less than \$25,000 for each separate violation. (49 USC § 14901).

Operation, after the effective date and time of this Order and/or Revocation of Registration, of a commercial motor vehicle designed or used to transport hazardous materials for which placarding of the vehicle is required is subject to a civil penalty of not less than \$275 and not more than \$50,000 for each offense. If the violation results in death, serious illness, or severe injury to any person, or in substantial destruction of property, the civil penalty may be increased to not more than \$105,000 for each offense. Operating a commercial motor vehicle designed or used to transport placardable amounts of hazardous materials after the effective date of this Order and/or Revocation of Registration may also result in criminal prosecution leading to fines and imprisonment up to five (5) years, or fines and imprisonment up to ten (10) years if the violation involves a release of hazardous material that results in death or bodily injury to a person. (49 USC § 31144, 5123, 5124).

Please be aware, this Order and Revocation of Registration may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a final "unsatisfactory" safety rating.

Sincerely,



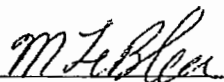
Darin G. Jones  
Field Administrator  
Midwestern Service Center

### CERTIFICATE OF SERVICE

This is to certify that on February 15, 2013, the undersigned mailed or delivered, as specified, the designated number of copies of the Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

MARK BUSS dba AUTO TRANSPORT 2515 E 44TH STREET HUTCHINSON, KS, 67501  Case # KS-2013-5004-UNFIT U.S. DOT # 1136740	One Copy by:  UPS Tracking Number: 1ZA476X80392459071
Max Strathman, Division Administrator Kansas Division U.S. Department of Transportation Federal Motor Carrier Safety Administration 1303 SW First American Place, Suite 200 Topeka, KS 66604-4040	One Copy Internal Mail
Trial Attorney Federal Motor Carrier Safety Administration Midwestern Service Center 4749 Lincoln Mall Drive, Suite 300A Matteson, IL 60443	One Copy Internal Mail
U.S. Department of Transportation Federal Motor Carrier Safety Administration FMCSA Docket Clerk Midwestern Service Center 4749 Lincoln Mall Drive, Suite 300A Matteson, IL 60443	One Copy Internal Mail

  
\_\_\_\_\_

**UPS CampusShip: View/Print Label**

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**  
UPS locations include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.

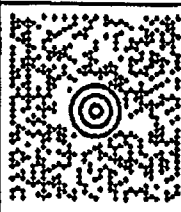



Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

**Customers with a Daily Pickup**

Your driver will pickup your shipment(s) as usual.

FOLD HERE

1 OF 1		1 LBS	
SHIP TO: MARK BUSS 620-727-7992 AUTO TRANSPORT 2515 E. 44TH STREET HUTCHINSON KS 67502-1613		KS 675 1-01	
			
UPS GROUND		TRACKING #: 1Z A47 6X8 03 9245 9071	
			
BILLING: P/P		Case #: KS-2013-5004-UNFIT DOT #: U.S. DOT# 1136740 CS 15.0.26 WNTZSH 13.04 10/2012	

# DRIVER/VEHICLE EXAMINATION REPORT

Aspen 2.14.0.10



**Kansas Highway Patrol**  
**MOTOR CARRIER SAFETY ASSISTANCE**  
 700 SW Jackson, Ste 704  
 Topeka, KS 66603  
 Phone: (785)296-7189 Fax: (785)296-2858

**Report Number:** KS00QB000288  
**Inspection Date:** 03/27/2013  
**Start:** 9:10:00 PM CT **End:** 10:28:00 PM CT  
**Inspection Level:** II - Walk-Around  
**HM Inspection Type:** None

**MARK BUSS DBA AUTO TRANSPORT**  
 620 E 9TH ST  
 NEWTON, KS 67114  
**USDOT#:** 01136740  
**MC/MX#:**  
**State#:**

**Phone#:** [REDACTED]  
**Fax#:**

**Driver:** VANEK, KELLY J  
 [REDACTED] **State:** KS  
**CoDriver:**  
**License#:** **State:**  
**Date of Birth:**

**Location:** RENO COUNTY - 155  
**Highway:** 30TH AND LORRAINE  
**County:** RENO, KS

**MilePost:** **Shipper:** STEVE AHYSE  
**Origin:** HUTCHINSON, KS **Bill of Lading:** N/A  
**Destination:** WICHITA, KS **Cargo:** GMC PICK UP

## VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	CVSA Issued #	OOS Sticker
1	TR	FORD	1996	KS	[REDACTED]		[REDACTED]	10,000			
2	ST	HMDE	1991	KS	[REDACTED]		[REDACTED]	6,000			

**BRAKE ADJUSTMENTS:** No Brake Measurements Required For Level 2

## VIOLATIONS

Vio Code	Section	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
391.41A	391.41(a)	D	N		N	N	No medical certificate in driver's possession
391.11B5-DNL	391.11(b)(5)	D	Y	E000026664	N	N	Driver does not have a valid operator's license for the CMV being operated. Driver's KS DL Suspended.
385.13A2	385.13(a)(2)	1	Y		U	N	Operating a commercial motor vehicle after the effective date of an Unsatisfactory rating - all other carrier types
393.100A	393.100(a)	2	Y		U	N	No or improper load securement. Two ramps laying on bed of trailer, no tie down securing ramps to trailer bed.
392.2RG	392.2	2	N		N	N	State vehicle registration or License Plate violation: K.S.A. 8-133 fail to display trailer tag on rear of vehicle.
390.21B	390.21(b)	1	N		N	N	Carrier name and USDOT Number not displayed as required

**HazMat:** No HM Transported.

**Placard:** No **Cargo Tank:**

**Special Checks:** No Data for Special Checks.

\* Pursuant to the authority contained in Title 49, CFR; K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare KELLY VANEK "OUT OF SERVICE". No person and/or carrier shall permit and/or require this driver to operate any commercial vehicle until: Has Valid Driver's License. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials \_\_\_\_\_

\* Pursuant to the authority contained in Title 49, CFR; K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials \_\_\_\_\_

\* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature Of Repairer X: \_\_\_\_\_ Facility: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\* DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. \*\*\* \*\* CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature Of Motor Carrier X: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Report Prepared By:**  
 J.A. HOFFMAN

**Badge #:**  
 0427

**Copy Received By:**  
 KELLY VANEK

Page 1 of 1



X \_\_\_\_\_

X \_\_\_\_\_

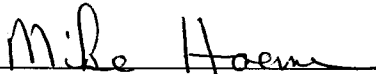
01136740 KS KS00QB000288




STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )

**VERIFICATION**

Mike Hoeme, being duly sworn upon his oath deposes and says that he is the Director of the Transportation Division of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Direct Testimony*, and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Mike Hoeme  
Director  
Transportation Division  
State Corporation Commission of  
The State of Kansas

Subscribed and sworn to before me this 26 day of July, 2013.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires: June 30, 2014



## CERTIFICATE OF SERVICE

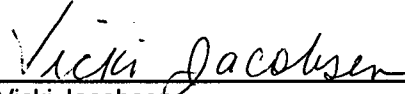
13-GIMM-702-KHP

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Direct Testimony of Mike Hoeme was placed in the United States mail, postage prepaid, or hand-delivered this 29th day of July, 2013, to the following:

M. LEVI MORRIS, ATTORNEY AT LAW  
CORNERSTONE LAW, LLC  
725 N MAIN  
NEWTON, KS 67114  
Fax: 316-283-9595

AMBER SMITH, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
a.smith@kcc.ks.gov

JAY VAN BLARICUM, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
j.vanblaricum@kcc.ks.gov

  
\_\_\_\_\_  
Vicki Jacobsen