

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

Received  
on  
**JAN 31 2012**  
by  
State Corporation Commission  
of Kansas

In the Matter of the Investigation of **Carry Yours A** )  
**Division of CFSI, Inc. of Marietta, Georgia,** )  
Pursuant to the Kansas Highway Patrol Issuance of a ) Docket No. 12-GIMM-423-KHP  
Notice of Violation for Violations of the Kansas )  
Motor Carrier Safety Statutes, Rules and Regulations. )

**DIRECT TESTIMONY**

**OF**

**MIKE HOEME**

**ON BEHALF OF**

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

January 30, 2012

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 National  
18          Conference of State Transportation Specialists. Overall, I have more than twenty  
19          years experience in the transportation industry.

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

21    A.    Yes.

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

1 A. The main purpose of my testimony is to address the jurisdiction of the  
2 Commission, as well as concerns raised by Richard Carruthers on behalf of Carry  
3 Yours A Division of CFSI (Carry Yours), Inc. in his request for hearing  
4 challenging the September 21, 2011, Invoice, number H000526561, issued  
5 against Carry Yours. A true and correct copy of this request for hearing is  
6 attached hereto as "Hoeme Exhibit A".

7 **Q. What is your understanding of Mr. Carruthers' reasons for requesting this**  
8 **hearing?**

9 A. It appears from Mr. Carruthers' request that he seeks the dismissal of the civil  
10 penalties based on his assertion that the rules for the violations identified do not  
11 apply to operations below 10,001 pounds.

12 **Q. Was Mr. Carruthers' vehicle below 10,001 pounds?**

13 A. Yes.

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

15 A. K.S.A. 2010 Supp. 66-1,111, provides that "no public motor carrier of property or  
16 passengers or private motor carrier of property or local cartage carrier shall  
17 operate any motor vehicle for the transportation of either persons or property on  
18 any public highway in this state except in accordance with the provisions of this  
19 act, and amendments thereto, and other applicable laws." K.S.A. 2010 Supp. 66-  
20 1,108(g) defines a "motor vehicle" as any automobile, truck, trailer, semitrailer,  
21 tractor, motor bus or any other self-propelled or motor-driven vehicle used upon  
22 any of the public highways of the state for the purpose of transporting persons or  
23 property. Furthermore, K.S.A. 66-1,108(i) defines "private motor carrier" as a

1 person who provides transportation of property or passengers, by commercial  
2 motor vehicle and is not a for-hire motor carrier.

3 **Q. Mr. Hoeme, based on the information in this docket, do you believe Carry**  
4 **Yours is a motor carrier subject to Commission authority?**

5 A. Yes. Carry Yours operated a commercial motor vehicle as a private motor carrier  
6 upon the highways of the State of Kansas for the purpose of transporting property,  
7 specifically a hazardous material. Although the weight of the vehicle was under  
8 10,001 pounds, the trailer carried a 350-gallon tank containing an identifiable  
9 quantity of a hazardous material required to be placarded under 49 C.F.R. Part  
10 172 as adopted in K.A.R. 82-4-20, which made this combination vehicle a  
11 commercial motor vehicle under K.A.R. 82-4-1(d)(4). Therefore, Carry Yours  
12 operates as a motor carrier subject to the Commission's jurisdiction and  
13 regulations.

14 **Q. Please explain why Mr. Carruthers was considered to be transporting a**  
15 **placardable amount of hazardous material.**

16 A. In short, the fuel trailer Mr. Carruthers was pulling contained an identifiable  
17 quantity of gasoline, therefore both the driver and motor vehicle are subject to all  
18 applicable safety and hazardous material regulations. A hazardous material, as  
19 defined in K.A.R. 82-4-1(q) means "a substance or material that the U.S.  
20 secretary of transportation has determined is capable of posing an unreasonable  
21 risk to health, safety, and property when transported in commerce and has  
22 designated as hazardous under section 5103 of the federal hazardous materials  
23 transportation law, 49 U.S.C. 5013." Accordingly, gasoline is designated as a

1 hazardous material under 49 C.F.R.172.101 as adopted by K.A.R. 82-4-3k. With  
2 regard to empty packaging, "an empty packaging containing only the residue of a  
3 hazardous material shall be offered for transportation and transported in the same  
4 manner as when it previously contained a greater quantity of that hazardous  
5 material," pursuant to 49 C.F.R. 173.29 as adopted by K.A.R. 82-4-20. Motor  
6 Carrier Inspector Thederahn's testimony states that the driver indicated the tank  
7 was used for pumping the fuel out of rental cars, indicating that it has before, and  
8 will again, contain a greater quantity of gasoline—a hazardous material.

9 **Q. Mr. Hoeme, can you explain what difference would be made in this situation**  
10 **if this gas tank were to have been purged prior to transportation?**

11 A. Yes. Under this scenario, the only reason the driver, motor vehicle and company  
12 were subject to the safety and hazardous material regulations was a direct result of  
13 the fuel residue left in the tank. Since the weight rating of the combination motor  
14 vehicle used in this scenario is less than 10,001 pounds, purging the tank would  
15 have removed the driver, motor vehicle and company from the purview of the  
16 safety and hazardous material regulations.

17 **Q. Mr. Hoeme, is this violation a safety concern?**

18 A. Yes, absolutely. Gasoline fumes are more combustible than liquid gasoline, and  
19 transporting a volatile substance like this puts the motor carrier as well as the  
20 motoring public at great risk in the event of an accident or crash.

21 **Q. For a commercial motor vehicle transporting a placardable amount of**  
22 **hazardous material, can you give us an overview of what Commission rules**  
23 **and regulations would apply?**

1 A. Yes. Federal Motor Carrier Safety Regulations of general applicability, driver  
2 qualification files regulation, hours of service regulations, inspection repair and  
3 maintenance regulations, hazardous materials regulations, commercial driver's  
4 license statutes and regulations, including the requirement for the applicable  
5 endorsements and finally, the requirement for enrollment in a substance and  
6 alcohol testing program.

7 **Q. Based on your experience with the Commission policies and practices as it**  
8 **applies to the issuance of civil penalties, do you believe the assessment of the**  
9 **recommended penalty is fair and consistent with Kansas law and**  
10 **Commission practices?**

11 A. Yes, I do.

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

13 A. Yes.

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 \_\_\_\_\_ day of January, 2012.

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

My Appointment Expires: June 30, 2014

**HOEME**

**ATTACHMENT "A"**



## KANSAS CORPORATION COMMISSION



Kansas Corporation Commission  
Transportation Division  
1500 SW Arrowhead Road  
Topeka, Kansas 66604-4027  
(785) 271-3145 option 1  
FEIN: [REDACTED]

Received  
on

## INVOICE

RECEIVED  
NOV 3 2011

BY: [Signature]

DEC 09 2011

CARRY YOURS A DIVISION OF CFSI, INC  
3595 CANTON RD, BLDG A9, RM 252  
MARIETTA, GA 30066

by  
State Corporation Commission  
of Kansas

Invoice Date: September 21, 2011

Invoice Number: H000526561

Due Date: October 21, 2011

## Power Unit Identification at Time of Inspection:

Unit #	Unit Make	Unit License	VIN	License Number	Company ID
			[REDACTED]	ACK6596	

Unit	Violation	Violation Description	Penalty
	383.23A2	Operating a CMV without a CDL <sup>09/20/2011</sup> - DISPUTED - R. Carruthers	150.00
	395.3A2/R	14 hour rule violation (Property)	0.00
	395.8A	No drivers record of duty status <sup>09/20/2011</sup> - DISPUTED - R. Carruthers	250.00
Total Due:			\$400.00

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.

09/20/2011

I REQUEST HEARING TO DISPUTE THESE CHARGES. THE OPERATION WAS BELOW 10,000 POUNDS GVWR. THESE RULES DO NOT APPLY BELOW 10,000. PLEASE DISMISS THESE CHARGES.

RESPECTFULLY,

Richard Carruthers FOR CARRY YOURS, A DIV. OF CFSI, INC



Mark Sievers, Chairman  
Ward Loyd, Commissioner  
Thomas E. Wright, Commissioner

Sam Brownback, Governor

## NOTICE OF VIOLATION

September 21, 2011

CARRY YOURS A DIVISION OF CFSI, INC  
3595 CANTON RD, BLDG A9, RM 252  
MARIETTA, GA 30066

Re: Roadside Driver/Vehicle Examination Report No. KS00SM001747.

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 S.J.M. THEDERAHN inspected vehicle [REDACTED] on September 13, 2011 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 a violation and/or hearing request to:

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

09/20/2011

I DISPUTE THE CHARGES. OPERATION  
WAS BELOW 10,000 GVWR.

R. Caruthers, Pay  
PLSS.  
CARRY YOURS, A DIV

2. Pay the fine amount as indicated in the enclosed invoice: H000526561
3. You have the right to an administrative hearing with the Kansas Corporation Commission by of CFSI, INC. 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.

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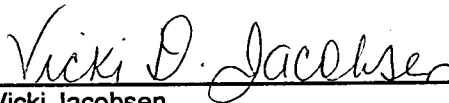
**CERTIFICATE OF SERVICE**

12-GIMM-423-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 31st day of January, 2012, to the following:

Richard Carruthers, PRESIDENT  
Carry Yours A Division Of CFSI, Inc.  
3595 Canton Rd Bldg A9 Rm 252  
Marietta, GA 30066

AMBER WHITLOCK, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
a.whitlock@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

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