

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**TRANSPORTES CRUZ CORDOVA  
USDOT # 2139675**

**Respondent**

**Docket No. FMCSA-2013-0454<sup>1</sup>  
(Western Service Center)**

**INTERIM ORDER**

**1. Background**

On August 23, 2013, the Arizona Division of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Transportes Cruz Cordova (Respondent). The NOC charged Respondent with one count of violating 49 CFR 385.308(d) – operating in violation of an FMCSA out-of-service order for failure to respond to an expedited action notification. The NOC proposed a total civil penalty of \$1,000.<sup>2</sup>

On or about September 26, 2013, Respondent served a timely reply to the NOC requesting a payment plan.<sup>3</sup> In its reply Respondent did not deny the violation, did not request administrative adjudication, and did not specifically request binding arbitration.<sup>4</sup> On November

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<sup>1</sup> The prior case number of this matter was AZ-2013-0515-US1147.

<sup>2</sup> Field Administrator's Consent to Binding Arbitration or Alternatively Motion for Final Order of Default (FA Consent), Attachments A. B.

<sup>3</sup> FA Consent, Attachment C.

<sup>4</sup> *Id.*

18, 2013, the Field Administrator<sup>5</sup> (Claimant) served his consent to what he interpreted as a request for binding arbitration or alternatively moved for a final order of default.

## 2. Decision

Under 49 CFR 386.14(b), a respondent must reply to a notice of claim by electing one of three options: (1) paying the full amount of the proposed penalty; (2) contesting the claim by requesting administrative adjudication pursuant to 49 CFR 386.14(d)(1)(iii); or (3) requesting binding arbitration.<sup>6</sup> Respondent did not elect any of these options. Respondent's failure to deny the violation is an admission of the violation.<sup>7</sup> Because Respondent admitted the violation, the only possible remaining issue is the amount of the civil penalty and the amount of time to pay the civil penalty. Because Respondent requested a payment plan but did not otherwise indicate its intended course of action in response to the NOC, Respondent may have intended to request binding arbitration.<sup>8</sup>

Although the Agency's binding arbitration guidance provides that a case may be designated for binding arbitration when appropriate, referral to binding arbitration requires the consent of both parties.<sup>9</sup> Inasmuch as Respondent has not specifically requested binding

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<sup>5</sup> FMCSA's Field Administrator for the Western Service Center.

<sup>6</sup> The options for administrative adjudication are: (A) submission of written evidence without a hearing; (B) an informal hearing; or (C) a formal hearing. However, informal hearings are not currently available to respondents. 75 Fed. Reg. 32242 (June 7, 2010).

<sup>7</sup> 49 CFR 386.14(d)(1)(i).

<sup>8</sup> *Cool Line, Inc.*, FMCSA-2009-0092 (Order on Binding Arbitration, Nov. 13, 2009).

<sup>9</sup> See *Notice of Final Revision to Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 77 Fed. Reg. 34249 (June 11, 2012).

arbitration, it has not yet consented to the binding arbitration process. While it is not necessary for Respondent to use the words “binding arbitration” to request binding arbitration, it is necessary to assure participation in the binding arbitration process. Such assurance will be provided by requiring Respondent to specifically consent to binding arbitration.

Accordingly, it is ORDERED Respondent must serve its consent to binding arbitration within 15 days from the service date of this Order to each person and entity identified on the Certificate of Service. **A sample binding arbitration consent is attached to this Order.** Because Claimant has already consented to binding arbitration, if Respondent consents to binding arbitration, no additional consent from Claimant is necessary. I will thereafter issue an order setting forth the binding arbitration procedures.

**Because Respondent admitted the violation and did not request administrative adjudication, it will be deemed in default if it fails to serve its consent to binding arbitration in accordance with this Order.<sup>10</sup> Therefore, if Respondent does not serve its consent to binding arbitration in accordance with this Order, it will be in default and the Notice of Claim will become the final agency order in these proceedings on the 20<sup>th</sup> day following the service date of this Order.<sup>11</sup>**

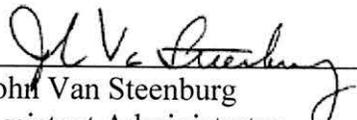
**If Respondent does not serve its consent in accordance with this Order, Respondent must therefore pay a total civil penalty of \$1,000 within 25 days of the service date of this Order. Payment may be made electronically through FMCSA’s registration site at <http://safer.fmcsa.dot.gov> by selecting “Online Fine Payment” under the “FMCSA Services” category. In the alternative, payment by cashier’s check, certified check, or**

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<sup>10</sup> *Cool Line* at Page 4. 49 CFR 386.14(c).

<sup>11</sup> *Id.*

**money order payable to FMCSA should be sent to the Western Service Center at the address shown in the Certificate of Service.**

  
\_\_\_\_\_  
John Van Steenburg  
Assistant Administrator  
Federal Motor Carrier Safety Administration

12/30/13  
Date

## CERTIFICATE OF SERVICE

This is to certify that on this 31 day of December, 2013, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Blanca Cruz, Manager Transportes Cruz Cordova 712 E. 1 <sup>st</sup> Street Douglas, AZ 85607 <i>Respondent</i>	One Copy U.S. Mail
Nancy Jackson Office of Chief Counsel Enforcement and Litigation Division Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, Colorado 80215 <i>Claimant's Attorney</i>	One Copy U.S. Mail
U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor Room W12-140 1200 New Jersey Avenue, S.E. Washington, D.C. 20590	Original Personal Delivery



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**CONSENT TO BINDING ARBITRATION**

Respondent, having admitted the violations alleged in the Notice of Claim, consents to binding arbitration as to the amount of the civil penalty and length of time to pay the proposed civil penalty.

By: \_\_\_\_\_

Signature of Authorized Officer, Agent, or Representative

\_\_\_\_\_  
Printed Name and Title

**YOU MUST SEND THE ORIGINAL OF THE SIGNED CONSENT AND SIGNED  
CERTIFICATE OF SERVICE TO THE DEPARTMENT OF TRANSPORTATION DOCKET  
OPERATIONS AND SEND A COPY TO THE ATTORNEY FOR THE SERVICE CENTER  
IDENTIFIED ON THE CERTIFICATE OF SERVICE ATTACHED TO THIS CONSENT.**

<sup>1</sup> The prior case number of this matter was AZ-2013-0515-US1147.

## CERTIFICATE OF SERVICE

This is to certify that on this \_\_\_\_ day of \_\_\_\_\_, 2013, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Nancy Jackson Office of Chief Counsel Enforcement and Litigation Division Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, Colorado 80215 <i>Claimant's Attorney</i>	One Copy U.S. Mail
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Signature of Person Serving Consent