

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

LC UNITED PAINTING CO., INC.,

Respondent.

**Docket No. FMCSA-2014-0050¹
(Midwestern Service Center)**

ORDER GRANTING MOTION FOR MORE DEFINITE STATEMENT

On October 31, 2013, the Michigan Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, LC United Painting Co., Inc. for \$8,290² for alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which stated that it was based on an October 13 2013 compliance review, charged Respondent with: (a) one violation of 49 CFR 382.305, with a proposed civil penalty of \$6,424, for failing to implement a controlled substance and/or alcohol testing program; and (b) three violations of 49 CFR 395.8(a), with a proposed civil penalty of \$624 per count, for failing to require driver to make a record of duty status.³

On November 26, 2013, Respondent replied to the Notice of Claim, denying the allegations and requesting administrative adjudication. For the first charge, Respondent

¹ The prior case number in this matter was MI-2014-0006-US1428.

² Although the Notice of Claim proposed a civil penalty of \$8290, adding the proposed penalties for each alleged violation (\$6,424 plus \$624 for each of three counts) results in a proposed civil penalty of \$8,296, not \$8,290. The Notice of Claim states that \$8,290 is the rounded assessment; there is no explanation, however, as to how \$8,290 was rounded from \$8,296 or why rounding was necessary. Claimant should clarify the total proposed civil penalty.

³ See Exhibit A to Field Administrator's Motion for a More Definite Statement.

contended that it believed that it was in compliance with 49 CFR 382.305. For each of the three record-of-duty-status charges, Respondent contended that it did require the driver to prepare and forward the original of the record of duty status. Respondent further stated that it reserved its “Affirmative Defenses pending the receipt of written evidence and argument of Agency Counsel, pursuant to 49 CFR 386.16(i).”⁴

On January 27, 2014, Claimant, FMCSA’s Midwestern Field Administrator, pointed out that 49 CFR 386.16(i) did not exist. He surmised that Respondent could have been referring to submitting evidence without a hearing or requesting a hearing and responding to Claimant’s Motion for Final Order. Because of the ambiguity of the Reply, Claimant moved for a more definite statement from Respondent.

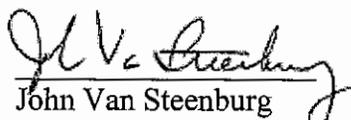
Claimant is correct that the Reply is ambiguous. As a result, Claimant does not know whether he will be submitting written evidence and argument without a hearing in accordance with 49 CFR 386.16(a)(1) or a consent or objection to a formal hearing request, and motion for final order if he objects, in accordance with 49 CFR 386.16(b)(2) and (b)(3). Accordingly, Claimant’s Motion for a More Definite Statement is granted. Within 15 days of the service date of this Order, Respondent must place in the record the administrative adjudication option it is requesting: either (a) written evidence without a hearing, as set forth at 49 CFR 386.14(d)(1)(iii)(A); or (b) a formal hearing, as set forth at 49 CFR 386.14(d)(1)(iii)(C).⁵ The Reply is not considered complete until Respondent

⁴ See Exhibit B to Field Administrator’s Motion for a More Definite Statement.

⁵ The informal hearing option in 49 CFR 386.14(d)(1)(iii)(B) has been suspended. See 75 Fed. Reg. 32242 (June 7, 2010).

serves the requested pleading.

It Is So Ordered.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/18/14
Date

CERTIFICATE OF SERVICE

This is to certify that on this 19 day of February, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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