



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Midwestern Service Center

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July 11, 2011

Goran Petkovich, President
Gemini Transport, LLC
dba Gemini Transport
2154 Milverton Dr
Troy, MI 48083

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 382.305(b)(1); 382.305(b)(2); 395.8(e).

CIVIL PENALTY: \$81,050

Case Number: MI-2011-0273-US1244

US DOT Number: 1035057

Dear Mr. Petkovich:

A compliance review was conducted at Gemini Transport, LLC (dba: Gemini Transport) in Dearborn, Michigan on June 3, 2011. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Gemini Transport for the amount of \$81,050.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Gemini Transport from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

Your company is charged with:

1. Two (2) violations of 49 CFR § 382.305(b)(1)- Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
2. Six (6) violations of 49 CFR § 382.305(b)(2)- Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
3. Fifty three (53) violations of 49 CFR § 395.8(e)- False reports of records of duty status.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Ensure the number of random alcohol tests conducted annually equals or exceeds 10 percent of the average number of driver positions, in accordance with 49 CFR Part 382.
2. Ensure the number of random controlled substances tests conducted annually equals or exceeds 50 percent of the average number of driver positions, in accordance with 49 CFR Part 382.
3. Ensure all drivers' records of duty status are accurate. Compare the drivers' records of duty status with other business records in your possession including, but not limited to, toll, fuel, repair, and other on the road expense receipts, as well as invoices, bills of lading, dispatch records, trip reports, and any other document generated by the trip, and driver earnings records, to verify accuracy of duty status record entries. Prohibit falsification of duty status records by any of your drivers.

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

PENALTY

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the

violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

History of Prior Violations

Your history of prior violations of the FMCSRs, HMRs and/or FMCCRs, where applicable, also may have increased the civil penalty beyond that which would have otherwise been proposed in this Notice of Claim. [The following enforcement actions have been considered in the calculation of the civil penalty proposed herein:]

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Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a checkmark in the “§ 222 Applied” column in the penalty table below are subject to the “Section 222” provision and maximum penalties have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

A listing of the statutes governing maximum and minimum penalties for violations of specific

TABLE 1: VIOLATIONS DISCOVERED DURING REVIEW/INSPECTION

NUMBER	VIOLATION	IDENTIFYING INFORMATION: DRIVER EQUIPMENT COMMODITY	DATE OF VIOLATION

NOT APPLICABLE

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regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>\$222 APPLIED</u>	<u>TOTAL</u>
382.305(b)(1)	NR	2	\$4,500.00		\$9,000.00
382.305(b)(2)	NR	6	\$4,500.00		\$27,000.00
395.8(e)	R	53	\$850.00		\$45,050.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$81,050.

HOW TO REPLY TO THE NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (708) 283-3577. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation
Federal Motor Carrier Safety Administration
Midwestern Service Center
4749 Lincoln Mall Drive
Suite 300A
Matteson, IL 60443

Personal or company checks will not be accepted and will be returned.

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commerical Regulations; E=Employee.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) **REQUEST FOR ADMINISTRATIVE ADJUDICATION:** You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) **REQUEST FOR BINDING ARBITRATION:** If you dispute **only** the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY

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ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



Patrick B. Muinch
Division Administrator
Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.) (except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 USC § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)).

Section 5123(a) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 shall be liable for a civil penalty in an amount not to exceed \$50,000 (71 FR 8487; February 17, 2006) 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 (72 FR 55102; September 28, 2007).

Section 521(b)(2)(B)(ii) of 49 USC provides for a maximum civil penalty of \$10,000 for anyone who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in a record about an operation or business fact or transaction, or knowingly makes, prepares or preserves a record in violation of a regulation or order of the Secretary, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation. (49 USC § 521(b)(2)(B)(ii); August 10, 2005).

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

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Violation 1 --- 49 CFR 382.305(b)(1) - Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.

CHARGE #1:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for alcohol 7 drivers. The carrier tested 1 driver.

CHARGE #2:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for alcohol 7 drivers. The carrier tested 1 driver(s).

Violation 2 --- 49 CFR 382.305(b)(2) - Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.

CHARGE #1:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for controlled substances 31 drivers. The carrier tested 6 drivers.

CHARGE #2:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for controlled substances 31 drivers. The carrier tested 6 drivers.

CHARGE #3:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for controlled substances 31 drivers. The carrier tested 6 drivers.

CHARGE #4:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly

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test for controlled substances 31 drivers. The carrier tested 6 drivers.

CHARGE #5:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for controlled substances 31 drivers. The carrier tested 6 drivers.

CHARGE #6:

In calendar year 2010, Gemini Transport, LLC, DBA: Gemini Transport, operated commercial motor vehicles in commerce and had an average of 62 driver positions. The carrier was required to randomly test for controlled substances 31 drivers. The carrier tested 6 drivers.

Violation 3 --- 49 CFR 395.8(e) - False reports of records of duty status.

CHARGE #1:

On or about March 2, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #2:

On or about March 2, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Detroit, MI and Elizabethtown, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #3:

On or about March 3, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #4:

On or about March 3, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Louisville, KY, and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date.

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The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #5:

On or about March 5, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #6:

On or about March 5, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Romulus, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #7:

On or about March 7, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #8:

On or about March 7, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Romeo, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #9:

On or about March 9, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #10:

On or about March 9, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Romulus, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the

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corresponding T-Chek fuel report.

CHARGE #11:

On or about March 10, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Romulus, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #12:

On or about March 11, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Brownstown Township, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #13:

On or about March 13, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #14:

On or about March 14, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C), to drive a commercial motor vehicle in interstate commerce between Tulsa, OK, and Brownstown, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #15:

On or about March 14, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Romulus, MI and Walton Hills, OH. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #16:

On or about March 15, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Romulus, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

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CHARGE #17:

On or about March 16, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C) to drive a commercial motor vehicle in interstate commerce between Dearborn, MI, and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #18:

On or about March 17, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Detroit, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #19:

On or about March 19, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C), to drive a commercial motor vehicle in interstate commerce between Laredo, TX, and Redford, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #20:

On or about March 21, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Brownstown Township, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #21:

On or about March 23, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, D'Shawn Scott, to drive a commercial motor vehicle in interstate commerce between Detroit, MI to Elizabethtown, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #22:

On or about March 30, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #23:

On or about April 1, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar,

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to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #24:

On or about April 1, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Detroit, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #25:

On or about April 4, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Redford, MI and Brownsville, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #26:

On or about April 5, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Dearborn, MI and Louisville, KY. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #27:

On or about April 6, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Ft. Mill, SC and Warren, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #28:

On or about April 6, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Jeffery Taylor, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Detroit, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding bill of lading.

CHARGE #29:

On or about April 7, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Dearborn, MI and Laredo, TX. The driver made a false report of duty activities on the record of duty status for that date.

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The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #30:

On or about April 7, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #31:

On or about April 9, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #32:

On or about April 9, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Chesterfield, MI and Laredo, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #33:

On or about April 9, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C), to drive a commercial motor vehicle in interstate commerce between Sterling Heights, MI, and Del Rio, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #34:

On or about April 10, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Brownstown Twp., MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #35:

On or about April 12, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Dearborn, MI and Del Rio, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the

STATEMENT OF CHARGES

corresponding T-Chek fuel report.

CHARGE #36:

On or about April 12, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #37:

On or about April 12, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Carey, OH, and Laredo, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #38:

On or about April 13, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #39:

On or about April 14, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #40:

On or about April 15, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #41:

On or about April 16, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Louisville, KY, and Brownstown Twp., MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

STATEMENT OF CHARGES

CHARGE #42:

On or about April 17, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #43:

On or about April 18, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Alen Besar, to drive a commercial motor vehicle in interstate commerce between Louisville, KY and Romeo, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #44:

On or about April 18, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C), to drive a commercial motor vehicle in interstate commerce between Del Rio, TX, and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #45:

On or about April 20, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Dearborn, MI and Del Rio, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #46:

On or about April 20, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C), to drive a commercial motor vehicle in interstate commerce between Whitmore Lake, MI and Laredo, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #47:

On or about April 20, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX, and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #48:

On or about April 23, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan

STATEMENT OF CHARGES

Mujakic, to drive a commercial motor vehicle in interstate commerce between Laporte, IN and Crystal City, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #49:

On or about April 26, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Whitmore Lake, MI and Laredo, TX. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #50:

On or about April 26, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Adnan Mujakic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #51:

On or about April 27, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) to drive a commercial motor vehicle in interstate commerce between Oklahoma City, OK, and Pontiac, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #52:

On or about April 27, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Ljubo Radovanovic, to drive a commercial motor vehicle in interstate commerce between Louisville, KY, and Detroit, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

CHARGE #53:

On or about April 29, 2011, Gemini Transport, LLC, DBA: Gemini Transport, used driver, Mumin Halilovic, to drive a commercial motor vehicle in interstate commerce between Del Rio, TX and Sterling Heights, MI. The driver made a false report of duty activities on the record of duty status for that date. The falsification was determined by comparing the driver's records of duty status with the corresponding T-Chek fuel report.

SERVICE LIST

This is to certify that on July 11, 2011, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim 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.

Goran Petkovich, President
Gemini Transport, LLC
dba Gemini Transport
2154 Milverton Dr
Troy, MI 48083

Original
UPS

Patrick B. Muinch, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
315 W. Allegan St.
Room 219
Lansing, MI 48933

One Copy
Personal Delivery

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
U.S. Mail or Electronic Mail

Continuation Sheet

DESCRIPTION OF SUBJECT:

Carrier's legal name is Gemini Transport LLC, DBA: Gemini Transport, and is owned by Goran Petkovich who is also the President. The primary contact during this review was Goran Petkovich. Throughout this review, he served as the principle source of all requested documents and information. This review was conducted at the carrier's office in Dearborn, MI on May 23 to June 3, 2011. The closing interview was initially scheduled with Goran Petkovich for June 3, 2011. Upon arrival, the investigators were informed that Mr. Petkovich had been hospitalized, and Alivin Alston (Director of Business Development) was authorized to sign on Mr. Petkovich's behalf.

Carrier currently operates with 77 drivers, utilizing 80 tractor-trailers (combination of company owned and owner operators) and 229 trailers. Carrier is authorized for hire carrier primarily transporting auto parts and racks for Ford Motor Company throughout the United States.

REASON FOR CONTACT:

This comprehensive review was initiated due to the carrier's placement on the Motor Carrier Safety Measurement System's mandatory assignment list. Prior to the review, a current carrier profile dated 5/23/2011 was obtained and evaluated. Since the review took 2 weeks, a second profile was obtained and evaluated on 6/02/11.

The carrier has the following BASIC's: Unsafe Driving (86.4); Fatigued Driving (81.3); Driver Fitness (84); Drugs and Alcohol (0); Vehicle Maintenance (86.4); Improper Loading/Cargo Insurance/Other (0).

ENFORCEMENT REASON:

A review of the carrier's drug and alcohol testing program found two critical violations. The carrier failed to meet he required 10% testing rate for random alcohol testing, and 50% testing rate for controlled substance testing for 2010. In calendar year 2010 the carrier had an average of 62 drivers and was required to test at least 7 drivers for alcohol and 31 drivers for controlled substances. In 2010 the carrier only tested 1 driver for alcohol 6 drivers for controlled substances.

The carrier had contracted with third party ASTS (Grandville, MI) in 2003. ASTS was contacted during this review about the carrier's program. Sarah Wilson, ASTS Random Program Administrator, informed the investigators that Gemini Transport has not been an active account since 2008. ASTS made the last random selection notice in January 2008 because Gemini Transport had unpaid notices on their account. Unpaid invoices were paid by Gemini Transport in August 2008, and then the account was closed. Gemini Transport continued to send drivers in for pre-employment, random, and post accident drug and alcohol tests. Those tests were being reported to ASTS because that is who the testing facility had on file to report them too. ASTS did not make any random selections and January 2009. Enforcement is warranted for not meeting the applicable testing rates for random drug and alcohol tests for 2010 given the carrier's history of compliance reviews and knowledge of the regulations (EXHIBIT I).

An accuracy check was performed against the drivers RDS (records of duty status). Out of the 330 days checked, and 11 drivers, 110 critical false RDS were discovered and 15 nominal false RDS were discovered. This represents a 33% violation rate and also exceeds the critical level.

Given the severity of the false RDS percentage and the high Unsafe driving and Fatigued driving

Continuation Sheet

BASIC, enforcement action is warranted for the false log violations. Gemini Transport, LLC was also penalized for false RDS in June 2005.

When Mr. Petkovich was informed of the critical false RDS on June 2, 2011, he seemed a little surprised at the severity of the false RDS. He stated that their dispatch system checks for the 11, 14, and 70 hour rules, but after thinking about it wouldn't catch any false RDS. He admitted to not having any formal accuracy checks conducted. His surprise reaction was due to the fact that his driver's complete pretty regular runs in which they have plenty of time to complete. This all suggests a lack of safety management.

KNOWLEDGE AND WILLFULNESS:

Profile history shows that the carrier has had 3 compliance reviews since 2003 where the carrier was cited for violations in both Parts 382 and 395. The carrier also had 1 enforcement case stemming from the 2005 compliance review, for false logs (EXHIBITS I, J, & K)

DEFENSES:

Mr. Goran Petkovich, owner of Gemini Express LLC, did not offer any defenses written or oral.

ADDITIONAL INFORMATION:

This review resulted in an unsatisfactory rating with enforcement for the critical 382 violations and the false RDS. As previously stated, Mr. Petkovich was hospitalized the day of the closing interview; however Gemini Transport's Director of Business Development, Alvin Alston, was authorized to sign on Mr. Petkovich's behalf. Mr. Alston was made aware of all violations found during this review and was offered suggestions for improving future compliance. Mr. Alston seemed eager to correct all violations discovered during the review. In addition to the carrier enforcement case, six driver cases will be pursued for false RDS.

Documentation provided by the carrier and used for determining accuracy of the RDS consisted of T-Chek fuel summaries (times in Central Standard Time), driver trip records, carrier invoices, bill of lading, and Driver Settlement sheets. Most of this information was printed from Gemini Transport's dispatch system called Prophecy. Mr. Petkovich said that the driver's do not share fuel cards, and that the card is assigned to the driver.

Mr. Alston received a complete copy of the review and statements for the 382 and 395 critical violations. Mr. Alston was also provided a copy of the Safety Management Plan. Mr. Goran Petkovich was emailed a complete copy of the review and statements. It was e-mailed on June 3, 2011 to goran@geminitrans.com <<mailto:goran@geminitrans.com>>. He responded later on June 3, 2011 stating he received the review and statements.

Carrier was penalized in a 2005 Compliance Review for false records of duty status. This enforcement case, MI-2005-0182-US0868, is included in carrier history for this enforcement case.

REVIEWER NOTES

Case Number: MI-2011-0273-US1244

Enforcement is recommended because is:

- 1) The carrier had a critical amount of false logs discovered, and failed to test at the applicable annual rates for controlled substances and alcohol.
- 2). Out of 330 days checked, 110 false logs were discovered, which is a 33% false log rate and the false logs involved 9 of the 11 drivers looked at. This suggests a company wide compliance problem. In calendar year 2010 the carrier had an average of 62 drivers and was required to test at least 7 drivers for alcohol and 31 drivers for controlled substances. In 2010 the carrier only tested 1 driver for alcohol 6 drivers for controlled substances. The carrier did not even come close to meeting their required random testing numbers.
- 3) Motor carriers that do not comply with the hours of service and/or drug and alcohol testing regulations pose a threat to safety.
- 4) This marked the carrier's 4th compliance review since 2003 and the carrier has been cited and/or received enforcement for Part 382 and Part 395 violations and should have provided plenty of knowledge of the Federal Motor Carrier Safety Regulations. Furthermore, the carrier's owner, Mr. Goran Petkovich admitted that they were not checking the driver's logs for accuracy. That, in addition to the carrier receiving enforcement and signing a settlement agreement for false logs in 2005, and now having a 33% false log rate on this compliance review, all indicates a lack of safety management.

UFA Fine Note:

Since the carrier signed a settlement agreement on July 13, 2005 and this compliance review closed on June 3, 2011, previous enforcement history was used on the was assessing the fine in UFA. Therefore the fine amount was raised.

INVESTIGATOR NOTES

Case Number: MI-2011-0273-US1244