

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,266

IN THE MATTER OF:

Served February 1, 2007

LEAN & HERNY TRANSPORTATION LLC, )  
Trading as L. A. & H TRANSIT, )  
WMATC No. 758, and SANAGA SERVICES )  
& CARE LLC, WMATC NO. 1120, )  
Investigation of Unauthorized )  
Consolidation of Operations )

Case No. MP-2006-161

This investigation was initiated on October 11, 2006, in Order No. 9984 to determine whether respondents violated Article XII, Section 3(a), of the Compact and Commission Order No. 9034 by consolidating their assets, books, finances or operations.

Article XII, Section 3(a), of the Compact provides that:

A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to: (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District; . . . or (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

Respondents are commonly controlled by Anatole D. Nyemeck. The Commission approved Mr. Nyemeck's common control of respondents in Order No. 9034, served October 13, 2005, subject to the condition that each respondent "keep its assets, books, finances and operations completely separate from the other's."

Respondents currently have on file with the Commission separate WMATC Insurance Endorsements in their respective names, as required by Commission Regulation No. 58. The endorsements, however, cite the same underlying insurance policy number. Upon discovery of this consolidated motor vehicle liability insurance coverage, the Commission initiated this investigation to determine whether respondents have unlawfully consolidated their operations.

Respondents were directed to produce their revenue vehicles for inspection and records relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning July 1, 2006, and ending October 11, 2006.

Both respondents have complied with Order No. 9984. The vehicles and records produced by respondents demonstrate that they maintain separate bank accounts and operate separate vehicles registered in the name of the respective carriers. Respondents also transport two distinct groups of passengers on behalf of their sole client, the District of Columbia Medicaid program, and submit separate invoices for their work.

Aside from the shared motor vehicle liability insurance policy, there is little question that respondents maintain separate operations.

Respondents have obtained insurance coverage through the District of Columbia "assigned risk program," designed to ensure that certain high-risk persons or entities have access to insurance required by law, which might otherwise be unavailable to them. Under the program, respondents' insurance provider agrees to comply with the requirements of the District of Columbia Automobile Insurance Plan in exchange for the right to offer other, presumably more profitable, insurance policies within the District of Columbia.

Respondents refer to Section 631.1 of the District of Columbia Automobile Insurance Plan, which requires that all exposures of commonly owned entities be written on the same policy. Under this rule, respondents are required to obtain a single policy if they wish to participate in the District of Columbia assigned risk plan.

Given that respondents both maintain on file with the Commission \$1.5 million in combined single limit liability coverage, as required by Commission Regulation No. 58, it is difficult to see what benefit would be obtained by compelling respondents to obtain identical insurance outside of the District's assigned risk plan. It is also notable that the Commission has previously accepted WMATC Insurance Endorsements from commonly controlled carriers based on a single underlying motor vehicle insurance policy.<sup>1</sup>

Furthermore, respondents state that while one carrier pays the insurance premiums for respondents' common policy, the second carrier reimburses the paying carrier half of the paid premium. Under these circumstances, we find that respondents have adequately maintained separate assets, books, finances and operations.

Accordingly, this investigation is terminated.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director

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<sup>1</sup> See *In re Errands Plus, Inc., trading as Chauffeured Transportation Service*, No. MP-06-057, Order No. 9533 (May 4, 2006) & *In re RMA Coach, LLC*, No. MP-2006-058, Order No. 9534 (May 4, 2006) (lifting suspensions of both carriers upon filing of WMATC Insurance Endorsements with the same underlying policy number).