

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,101

IN THE MATTER OF:

Served July 24, 2009

SKYHAWK LOGISTICS, INC., Suspension )  
and Investigation of Revocation of )  
Certificate No. 406 )

Case No. MP-2009-044

This matter is before the Commission on respondent's response to Order No. 12,042, served June 10, 2009, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 406.

**I. BACKGROUND**

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 406 for a minimum of \$5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 406 was rendered invalid on March 17, 2009, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,895, served March 17, 2009, noted the automatic suspension of Certificate No. 406 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 406, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 406.

The excess endorsement subsequently expired on March 20, 2009 without replacement. Order No. 11,895 anticipated this by stating that in the event respondent failed to satisfy the requirements of Order No. 11,895 prior to March 20, respondent would have the remainder of the thirty days for replacing the primary coverage to replace the excess coverage.

---

<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

Respondent subsequently submitted acceptable \$1 million primary and \$4 million excess WMATC Insurance Endorsements and paid the \$50 late fee, and the suspension was lifted in Order No. 11,953, served April 28, 2009, but the effective dates of the replacement endorsements are March 27, 2009 for the primary instead of March 17, 2009, and March 26, 2009 for the excess instead of March 20, 2009. Under Regulation No. 58-14:

If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

Order No. 11,953 noted that respondent's Director of Contract Operations, Kevin Madden, Sr., had filed a statement verifying cessation of operations but only from March 17, 2009 through March 26, 2009. In addition, the statement was not under oath as required by Rule No. 4. Order No. 11,953 gave respondent thirty days to file a statement under oath addressing whether any operations were conducted during the entire suspension period of March 17, 2009, to April 28, 2009. The order further directed respondent to corroborate its statement with a statement from respondent's sole client of record, the Defense Intelligence Agency (DIA). The order also directed respondent to file an effective amendment letter updating its DIA contract tariff for the current option year.

Respondent did not respond.

The Commission then issued Order No. 12,042 giving respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 406, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed. The order also gave respondent fifteen days to request a hearing, specifying the grounds for the request, describing the evidence to be adduced, and explaining why such evidence cannot be adduced without an oral hearing

## **II. RESPONSE TO ORDER NO. 12,042**

Respondent updated its DIA contract tariff on June 18, 2009, for the second option year, March 1, 2009, through February 28, 2010.

In a response filed July 9, 2009, respondent admits operating "between March 17, 2009 and March 26, 2009". Respondent is silent with regard to whether operations continued or not from March 26 to April 28. No statement has been submitted from DIA.

The July 9 response includes a request for oral hearing. Respondent says it would present the testimony of Mr. Madden and Mr. Jimmy Ogunniyi, respondent's president, but respondent does not say what their testimony would cover and does not say why their testimony cannot be adduced without an oral hearing. Respondent states that it would also present evidence from its insurance company regarding the retiring insurance company's decision not to reinstate coverage and the process other companies employ to write the coverage our regulations require, but respondent does not state that any witnesses would appear from said insurance companies, and respondent does not state why such additional evidence cannot be adduced without an oral hearing.

### **III. DENIAL OF ORAL HEARING**

Respondent's request for oral hearing was filed out of time. Under Order No. 12,042 the request was due no later than June 25, but respondent did not file the request until July 9. Furthermore, we do not see the relevance of decisions and processes internal to the insurance companies respondent may have contacted - or not. Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after March 17.

The request for hearing shall therefore be denied.

### **IV. ASSESSMENT OF FORFEITURE**

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>3</sup> Each day of the violation constitutes a separate violation.<sup>4</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> The terms "willful"

---

<sup>3</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>4</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>5</sup> *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Handi-Pro Transp., Inc.*, No. MP-07-060,

and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.<sup>6</sup>

If any carrier had reason to be vigilant of its insurance status, and therefore right to operate,<sup>7</sup> it is respondent. Respondent has a long history of insurance violations and operating without authority - and being sanctioned for such.

Applicant held WMATC Certificate of Authority No. 406 from February 26, 1998, until July 19, 2001, when the Commission revoked Certificate No. 406 in pertinent part for applicant's willful failure to comply with Commission Regulation No. 58 governing insurance.<sup>8</sup>

Applicant reapplied for operating authority later in 2001, and the application was approved in early 2002 in substantial part on the basis of applicant's representation that it had access to, was familiar with, and would comply with the Compact and the Commission's rules and regulations thereunder.<sup>9</sup> Certificate No. 406 was reissued to applicant on February 22, 2002, and suspended four times over the next five and one-quarter years for willful failure to comply with Regulation No. 58.<sup>10</sup> The Commission lifted the suspension the first three times<sup>11</sup> and revoked Certificate No. 406 in August 2007 the fourth time.<sup>12</sup>

Applicant reapplied for operating authority later in 2007.<sup>13</sup> The record in that proceeding showed that respondent continued operating after receiving a copy of the fourth suspension order, Order No. 10,406, served April 16, 2007. The record also showed that respondent experienced a lapse of insurance coverage for seventeen

---

Order No. 10,817 (Oct. 10, 2007); *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007).

<sup>6</sup> Order Nos. 10,882; 10,817; 10,792.

<sup>7</sup> See Compact, tit. II, art. XI, § 7(g) (certificate of authority not valid unless holder in compliance with Commission insurance requirements).

<sup>8</sup> *In re Skyhawk Logistics, Inc.*, No. MP-01-042, Order No. 6291 (July 19, 2001).

<sup>9</sup> *In re Skyhawk Logistics, Inc.*, No. AP-01-100, Order No. 6503 (Jan. 29, 2002).

<sup>10</sup> *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,406 (Apr. 16, 2007); *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 8653 (Apr. 19, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8607 (Mar. 22, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 7887 (Mar. 22, 2004).

<sup>11</sup> *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 9653 (June 15, 2006); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8619 (Mar. 30, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 8059 (June 3, 2004).

<sup>12</sup> *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007).

<sup>13</sup> *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 (Nov. 19, 2008).

days from July 14 through July 30, 2007.<sup>14</sup> There was nothing in the record to indicate that respondent discontinued operating during that period, and respondent later admitted it had operated during that period.<sup>15</sup>

The 2007 application nevertheless was approved on November 19, 2008, on the basis of evidence showing that respondent had subcontracted its government contracts to a WMATC carrier in good standing while respondent's application was pending and on the condition that respondent pay a civil forfeiture and serve a one year period of probation for operating while suspended and uninsured.<sup>16</sup> Certificate No. 406 was reissued on January 27, 2009, and suspended not two months later for the same violations.<sup>17</sup>

We view the current violations as a knowing and willful continuation of an ongoing pattern of behavior that respondent has yet to completely correct and therefore find that respondent has failed to show cause why the Commission should not assess a civil forfeiture for operating while suspended and uninsured.

We shall assess a forfeiture of \$500 per day for 42 days of operations while suspended, or \$21,000. We will assess an additional \$500 per day for the 10 days applicant operated while uninsured/underinsured, or \$5,000, for a total forfeiture of \$26,000.

In calculating the amount of the forfeiture we have taken into account a number of factors, first of which is that the civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.<sup>18</sup> We have doubled the amount of forfeiture from the \$250 per day we assessed against respondent in 2008<sup>19</sup> because apparently \$250 per day is not enough of a deterrent to dissuade respondent from committing such violations.

We have also taken into consideration: (1) that respondent had advance notice of the cancellation of its WMATC Insurance Endorsements; (2) that respondent has admitted it did not stop operating on March 17, 2009, as originally claimed; (3) that respondent failed to contact the Commission in compliance with Regulation No. 58-11 to ascertain whether the necessary WMATC Insurance Endorsement had been filed before continuing to operate on and after March 17, 2009; (4) that respondent's DIA contract was in place and active during the entire suspension period from March 17,

---

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4-6.

<sup>17</sup> Order No. 11,895.

<sup>18</sup> *In re Phoenix Limo. & Tour Co.*, No. AP-98-10, Order No. 5304 (Apr. 6, 1998).

<sup>19</sup> See Order No. 11,693 at 4.

2009, to April 28, 2009; (5) that respondent does not deny operating on and after March 26, 2009, when its insurance was partially reactivated;<sup>20</sup> (6) that respondent signed for a copy of the Commission's cease and desist order, Order No. 11,895, on April 2, 2009; (7) that respondent has not produced any evidence that the DIA contract was subcontracted to any other WMATC carrier during the suspension period; (8) that respondent has failed to produce any statement from DIA that would indicate that respondent abandoned the contract during the suspension period or assigned it to some other carrier; and (9) that the current violations fit an established pattern of behavior.

#### V. REVOCATION

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.<sup>21</sup>

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority.<sup>22</sup> They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.<sup>23</sup> Further, respondent was on probation at the time of the violations for precisely the same unlawful conduct. Order No. 11,693, served November 19, 2008, approved respondent's application for reissuance of Certificate No 406 on the condition:

That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 406 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.<sup>24</sup>

---

<sup>20</sup> It does not make sense that respondent would continue operating while uninsured and then stop operating once insurance had been reacquired.

<sup>21</sup> Compact, tit. II, art. XI, § 10(c).

<sup>22</sup> Compact, tit. II, art. XI, § 7(g).

<sup>23</sup> Order Nos. 10,882; 10,817; *In re Yai Med. Transp., L.L.C.*, No. MP-05-09; Order No. 8845 (July 22, 2005).

<sup>24</sup> Order No. 11,693 at 6.

Against this backdrop, and considering that respondent operated not only while suspended but while uninsured/underinsured, we shall revoke Certificate No. 406.<sup>25</sup>

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$26,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,895.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of twenty-six thousand dollars (\$26,000).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 406 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,895.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 406 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.  
Executive Director

---

<sup>25</sup> See Order No. 10,882 (revoked for operating while underinsured); Order No. 10,817 (revoked for operating while uninsured); Order No. 8845 (revoked for operating while uninsured).