

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2823

IN THE MATTER OF:

Served February 7, 1986

Investigation of Compliance and Order to Show Cause Directed to:)	
)	
McMICHAEL SCHOOL BUS SERVICE, INC., Certificate No. 24)	Case No. MP-85-23
)	
IRONSIDES MEDICAL TRANSPORTATION CORPORATION, Certificate No. 31)	Case No. MP-85-26
)	
NIPPON TRAVEL, LTD., Certificate No. 77)	Case No. MP-85-31
)	
FREEWAY ENTERPRISES, INC., Certificate No. 78)	Case No. MP-85-32
)	
CONGRESSIONAL TOURS, INC., Certificate No. 94)	Case No. MP-85-33
)	
PHOENIX TOURS, INC., Certificate No. 110)	Case No. MP-85-37
)	
CLARENCE B. NELSON T/A MINI-BUS LIMOUSINE AND SCHOOL BUS SERVICE, Certificate No. 120)	Case No. MP-85-38
)	

By Order No. 2791, served November 19, 1985, and incorporated herein by reference, each of the carriers named in the above-captioned cases ("respondents") was directed to comply fully with Title II, Article XII, Section 9(a) of the Compact and Commission Regulation No. 62 as revised effective November 19, 1985, or show good cause why its certificate of public convenience and necessity should not be revoked. The cases were consolidated for hearing which was held December 20, 1985. Appearances were made on behalf of all respondents except Freeway Enterprises, Inc. The record remained open until January 21, 1986, for the limited purpose of receiving into evidence certificates of insurance issued after the date of hearing but on or before the date for filing briefs.

SUMMARY OF EVIDENCE

William H. McGilvery testified on behalf of the Commission. Mr. McGilvery is the Commission's Executive Director and in that

position is responsible for serving Commission orders, handling official correspondence and maintaining the Commission's official records including those pertaining to insurance. On June 19, 1985, Mr. McGilvery served Order No. 2721 on all respondents except Clarence B. Nelson who did not hold a certificate of public convenience and necessity on that date. Order No. 2721 increased the minimum liability insurance requirements for WMATC certificated carriers effective November 19, 1985, as follows:

EFFECTIVE NOVEMBER 19, 1985:

TYPE OF AUTHORITY	VEHICLES SEATING 16 PERSONS OR MORE	VEHICLES SEATING 15 PERSONS OR LESS
REGULAR ROUTE	\$5,000,000 CSL	\$750,000 CSL or \$750,000/\$50,000
CHARTER	\$5,000,000 CSL	\$750,000 CSL or \$750,000/\$50,000
SPECIAL	\$5,000,000 CSL	\$750,000 CSL or \$750,000/\$50,000

NOTES:

1. CSL = Combined Single Limit for all personal injuries, deaths, and property damage resulting from one occurrence.
2. \$750,000/\$50,000 = \$750,000 for all personal injuries and deaths, and \$50,000 for all property damage, resulting from one occurrence.
3. For carriers holding more than one type of authority, the higher limit applies.
4. "Persons" includes the driver.

On July 22, 1985, the period for reconsideration of Order No. 2721 having run and no person having sought reconsideration, Mr. McGilvery sent a memorandum to WMATC authorized carriers, including all respondents, reminding them that Order No. 2721 was administratively final and that increased minimum insurance requirements would become effective November 19, 1985. The memorandum detailed the specifics of those requirements. On October 18, 1985, Mr. McGilvery sent a second memorandum to all WMATC authorized carriers including the seven respondents named in the above-captioned cases. The purpose of this memorandum was to remind carriers that minimum liability insurance required by the Commission would increase in 30 days. The memorandum listed the specific insurance requirements which

would become effective November 19, 1985. On November 19, 1985, Mr. McGilvery served Order No. 2791 on all respondents. As indicated earlier, that order directed respondents to comply with the Commission's new insurance requirements or show cause at the hearing scheduled for December 20, 1985, why their certificates should not be revoked. Each respondent was assessed \$100 pursuant to the Compact, Title II, Article XII, Section 19. Because no respondent had insurance in a sufficient amount to meet the new requirements, each respondent's operating authority was suspended pursuant to the Compact, Title II, Article XII, Section 9(a). As of the date of hearing none of the above-named respondents had produced evidence of compliance with Commission Regulation No. 62 as amended effective November 19, 1985. As of the date of this order, hearing assessments have been paid by McMichael School Bus Service, Inc.; Ironsides Medical Transportation Corporation; Nippon Travel, Ltd.; Congressional Tours, Inc.; Phoenix Tours, Inc.; and Clarence B. Nelson.

McMICHAEL SCHOOL BUS SERVICE, INC.

McMichael School Bus Service, Inc. ("McMichael"), holds WMATC Certificate No. 24 which authorizes charter transportation between points in the Metropolitan District in school buses. McMichael has on file with the Commission a certificate of insurance indicating combined single limit liability insurance in the amount of \$550,000. This is the same certificate of insurance on file on November 18, 1985. Commission Regulation No. 62 requires McMichael to hold minimum liability coverage of \$5,000,000 combined single limit. As of the date of hearing, the Commission had not received a revised certificate of insurance nor any correspondence from McMichael.

Warren D. McMichael, McMichael's president, testified on behalf of that carrier. McMichael's operations are conducted in vehicles which seat 43 persons. According to Mr. McMichael those buses are currently insured in the amount of \$1,000,000; however, he is aware that the Commission's regulations require that he hold \$5,000,000 insurance. In July or August 1985, Mr. McMichael made written application to Bus Owners of America for the requisite coverage. On December 15, 1985, Mr. McMichael was informed that Bus Owners of America would be contacting him regarding the results of that application "any day."

IRONSIDES MEDICAL TRANSPORTATION CORPORATION

Ironsides holds WMATC Certificate No. 31 authorizing it to conduct special operations in vehicles with a manufacturer's designed seating capacity of 15 passengers or less. On the day of the hearing Ironsides had a certificate of insurance on file with the Commission indicating combined single limit liability insurance in the amount of \$500,000. Regulation No. 62 requires Ironsides to carry \$750,000 coverage. On January 21, 1986, a certificate of insurance indicating

combined single limit coverage of \$750,000 was accepted for filing by the Commission's Executive Director.

NIPPON TRAVEL, LTD.

Nippon Travel, Ltd. ("Nippon"), holds WMATC Certificate No. 77 which authorizes it to transport passengers in charter operations in 16 to 21-passenger vehicles. On the day of hearing, Nippon had on file with the Commission a certificate of insurance indicating liability insurance of \$750,000. On February 4, 1986, the Commission's Executive Director accepted for filing an insurance certificate indicating combined single limit liability coverage for Nippon of \$5,000,000. Staff counsel by petition filed February 5, 1986, requested that Case No. MP-85-31 be reopened pursuant to Rule No. 27-01 for the limited purpose of receiving that certificate into evidence. Staff's petition is hereby granted for the reasons stated therein and because the evidence at issue is essential to a proper determination of Nippon's compliance with the Compact and Regulation No. 62.

FREEWAY ENTERPRISES, INC.

Freeway Enterprises, Inc. ("Freeway"), holds WMATC Certificate No. 78 which authorizes it to conduct regular route operations. The Commission's records indicate that it conducts these operations in vehicles seating more than 15 persons. Freeway has on file with the Commission a certificate of insurance indicating liability coverage of \$2,500,000. Under the Commission's revised regulations, Freeway is required to carry \$5,000,000 of insurance. Prior to the hearing Mr. McGilvery received no correspondence relating to this case and no insurance filings from Freeway since Order No. 2791 was issued. Since Order No. 2791 was issued Mr. McGilvery has attempted to reach Freeway by letter and by telephone. On the date of the hearing his letter remained unanswered. No one had been answering Freeway's phone. No representative of Freeway appeared at the hearing, and Freeway has not paid its hearing assessment.

CONGRESSIONAL TOURS, INC.

Congressional Tours, Inc. ("Congressional"), holds WMATC Certificate No. 94 which authorizes it to conduct special operations in vehicles seating more than 15 persons. Congressional has on file with the Commission a certificate of insurance indicating coverage of \$750,000 combined single limit. The current requirement for Congressional is \$5,000,000.

James F. Turner, president of Congressional, testified that the company conducts special operations in 21-passenger vehicles. Congressional currently has \$750,000 of insurance, but Mr. Turner is aware that the Commission requires his company to carry \$5,000,000 of liability insurance. Mr. Turner had been under the impression that Congressional's insurance had been brought into compliance with the

revised regulations. However, Congressional's insurance agent had mistakenly increased its coverage to \$750,000 thinking that it operated 14-passenger vehicles. Congressional's current insurer is willing to write it \$1,000,000 of coverage, and its insurance agent is attempting to place the remaining \$4,000,000 with another local company. If for some reason Mr. Turner's agent is unable to secure the total \$5,000,000 required under his current operating authority, Mr. Turner plans to apply to have his certificate restrictively amended to authorize transportation of passengers in vehicles seating less than 16 persons. His intent would be to conduct the same operations he is currently performing but in a smaller vehicle. Mr. Turner would take this step only after every avenue is exhausted.

PHOENIX TOURS, INC.

Phoenix Tours, Inc. ("Phoenix"), holds WMATC Certificate No. 110 which authorizes it to conduct charter operations in vehicles seating more than 15 persons. Phoenix has a certificate of insurance on file with the Commission in the amount of \$550,000. On December 18, 1985, Mr. McGilvery received a letter from Stump, Harvey & Cook insurance brokers dated December 17, 1985, indicating that \$5,000,000 liability insurance coverage had been bound for Phoenix effective December 13, 1985. On December 19, 1985, Mr. McGilvery received an insurance certificate indicating the requisite \$5,000,000 insurance coverage. Mr. McGilvery was unable to approve the insurance certificate, however, because the named insured was Phoenix Tours rather than the corporate entity and certificate holder Phoenix Tours, Inc., and because it lacked a firm 30-day cancellation clause as required by the Commission. An acceptable insurance certificate was filed with the Commission on January 21, 1986.

CLARENCE NELSON

Clarence Nelson trading as Mini-Bus Limousine and School Bus Service holds WMATC Certificate No. 120 which authorizes charter operations in vehicles seating 29 persons or less. Mr. Nelson conducts these operations in 14- and 29-passenger vehicles. On the date of the hearing Mr. Nelson had three insurance certificates on file with the Commission. One certificate indicated coverage of \$750,000 on a 14-passenger van. The remaining two certificates applied to a single 29-passenger van and indicated \$2,500,000 primary coverage. On January 22, 1986, a certificate of insurance for the remaining \$2,500,000 was filed with the Commission, bringing Mr. Nelson's insurance into compliance.

DISCUSSION AND CONCLUSIONS

This case is governed by Title II, Article XII, Section 9(a) of the Compact which mandates that no certificate of public convenience and necessity shall remain in force unless the holder of that certificate complies with such reasonable regulations as the Commission

shall prescribe governing the filing and approval of policies of insurance in such reasonable amount as the Commission may require. Thus, when a carrier ceases compliance with the Commission's minimum insurance requirements, that carrier's operating authority is no longer in force by action of law. Failure to comply has led to these revocation proceedings. A review of the record in this case indicates that, with the exception of Mr. Nelson, all respondents had five months' notice that Commission Regulation No. 62 required their insurance coverage to be increased. Mr. Nelson had four months' notice. An additional 60 days have elapsed since respondents' operating authorities were suspended. The record indicates that Ironsides and Phoenix have complied fully with Section 9(a). Mr. Nelson filed a certificate of insurance acceptable in all respects one day after the record in Case No. MP-85-38 closed. Taking official notice of that certificate, we find that Mr. Nelson to be in full compliance with Section 9(a) and to have substantially complied with Order No. 2791 and the instructions of the Administrative Law Judge at the hearing held December 20, 1985. Our grant of staff's Petition to Reopen allows us to consider Nippon's recently filed certificate of insurance. Based on that certificate we find Nippon to be in full compliance with Commission Regulation No. 62. Accordingly, the investigations against these four carriers shall be dismissed, and the suspensions of their respective operating authorities shall be lifted.

McMichael and Congressional have failed to obtain insurance in the required amount. Each of these respondents appeared at the hearing and testified regarding attempts to secure additional insurance. However, despite repeated reminders of the necessity of that insurance over a period of almost six months, and the passage of an additional six weeks since the hearing date, the Commission has received neither correspondence on this matter nor any revised certificates of insurance from these carriers. Accordingly, the certificates of insurance of these respondents shall be revoked. In the event that the efforts of either carrier bears fruit within the 30-day reconsideration period provided for by the Compact, Title II, Article XII, Section 16, we shall treat a petition for reconsideration based on a certificate of insurance approved for filing by the Executive Director as grounds for reopening the affected case on our initiative pursuant to Rule No. 27-02. We note also that Mr. Turner of Congressional has provided on the record for the possibility that his company may not be sufficiently insured by the time this order is served. Consequently, we shall also treat a completed application to amend a certificate of public convenience and necessity to conform to insurance currently on file with the Commission as grounds for reopening that case on our own initiative pursuant to Rule No. 27-02.

This brings us to the matter of Freeway. The record indicates that Freeway has failed even to attempt to show cause why its certificate of public convenience and necessity should not be revoked. Freeway neither paid its hearing assessment as required by that order,

nor appeared at the hearing as also directed in that order. Its insurance was inadequate when Order No. 2791 issued and, taking official notice of the Commission's records, we find that the insurance remains inadequate today. Accordingly, we find that Freeway has willfully failed to comply with the Compact, a Commission order, and a Commission regulation. Freeway's certificate of public convenience and necessity shall be revoked.

THEREFORE, IT IS ORDERED:

1. That Certificate No. 24 of McMichael School Bus Service, Inc., is hereby revoked.

2. That Certificate No. 78 of Freeway Enterprises, Inc., is hereby revoked.

3. That Certificate No. 94 of Congressional Tours, Inc., is hereby revoked.

4. That Freeway Enterprises, Inc., is hereby ordered to pay \$14.58 pursuant to the Compact, Title II, Article XII, Section 19, within 30 days of the date of service of this order.

5. That any petition for reconsideration of this order filed by McMichael School Bus Service, Inc., or Congressional Tours, Inc., and based upon a certificate of insurance approved for filing by the Commission's Executive Director shall be considered grounds for reopening the case(s) affected by such certificate(s) of insurance pursuant to Rule No. 27-02.

6. That any petition for reconsideration filed by Congressional Tours, Inc., and based upon a completed application to amend Certificate No. 94 restrictively to transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 persons or less shall be considered grounds for reopening Case No. MP-85-33.

7. That Ironsides Medical Transportation having shown good cause why its operating authority should not be revoked, Case No. MP-85-26 is hereby dismissed, and the suspension of Certificate No. 31 is hereby lifted.

8. That Nippon Travel, Ltd., having shown good cause why its operating authority should not be revoked, Case No. MP-85-31 is hereby dismissed, and the suspension of Certificate No. 77 is hereby lifted.

9. That Phoenix Tours, Inc., having shown good cause why its operating authority should not be revoked, Case No. MP-85-37 is hereby dismissed, and the suspension of Certificate No. 110 is hereby lifted.

10. That Clarence B. Nelson trading as MiniBus Limousine and School Bus Service having shown good cause why his operating authority should not be revoked, Case No. MP-85-38 is hereby dismissed, and the suspension of Certificate No. 120 is hereby lifted.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director