

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3955

IN THE MATTER OF:

Served June 15, 1992

Investigation of Compliance with)
the Compact by AIR COURIERS)
INTERNATIONAL GROUND TRANSPORTATION)
SERVICES, INC., Trading as)
PASSENGER EXPRESS, and UNITED)
MANAGEMENT CORPORATION, Trading as)
PASSENGER EXPRESS)

Case No. MP-92-05

This investigation was initiated on March 17, 1992,¹ in response to a formal complaint filed by Madison Limousine Service, Inc. (Madison), against Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express (Air Couriers), and United Management Corporation, trading as Passenger Express (UMC).² We dismissed the complaint for Madison's lack of standing but noted probable grounds for an investigation.

Allegations in the affidavits supporting the complaint and information in other documents on file with the Commission, which were pertinent to the allegations, raised questions about whether either or both carriers had been operating vehicles of a size exceeding the 15-person seating capacity restriction in their certificates, whether such vehicles were underinsured and misidentified, and whether the two carriers had been sharing operating authority -- which, in turn, raised the issue of whether there were tariff violations.³ This order resolves those issues.

I. THE INVESTIGATORY RECORD

Air Couriers and UMC (Respondents) were directed to make their current vehicles available for inspection by the Commission's Staff and to each file an affidavit identifying all vehicles owned or leased during the period January 1, 1990, to March 17, 1992, indicating for each such vehicle the seating capacity, WMATC number(s) displayed and extent of use in WMATC operations. Staff, in turn, was directed to

¹ In re Investigation of Compliance with the Compact by Air Couriers Int'l Ground Trans. Servs., No. MP-92-05, Order No. 3904 (Mar. 17, 1992).

² Madison Limo. Serv. v. Air Couriers Int'l Ground Trans. Servs., No. FC-92-01, Order No. 3903 (Mar. 17, 1992).

³ See Order No. 3904 at 4-5 & n.10. While this investigation was pending, UMC increased the insurance coverage on its vehicles from \$1.5 million to \$5 million, and the Commission removed the seating capacity restriction from UMC's certificate. See Application of United Mgmt. Corp., No. AP-91-40, Order No. 3875 (Jan. 6, 1992) (conditional grant of amendment).

conduct an investigation of whether the aforementioned violations occurred and to file a report. The affidavits, Staff's report and a reply to Staff's report were timely filed.

A. Air Couriers' and UMC's Affidavits

Respondents each filed an affidavit on April 7, 1992. The affidavits state in pertinent part that four vehicles, identified as nos. B1, B2, 99, and 100, are 19-passenger vehicles, and that two others, nos. 50 and 51, seat less than 12. The affidavits further state that vehicles 99 and 100 had their seating capacity reduced sometime after they were acquired, but there is no mention of how many seats were removed or precisely when this occurred.

The affidavits say all vehicles in use prior to September 30, 1990, displayed the markings: "Passenger Express" and "WMATC No. 55." Thereafter, and until Order No. 3904 was issued, most, perhaps all, were marked: "Passenger Express" and "WMATC No. 55 and WMATC No. 172." The affidavits further state that "no conscious effort was made to distinguish between the vehicles operated by one company as opposed to the other."

The affidavits explain that vehicles B1 and B2 were used "on field" at Washington Dulles International Airport (Dulles), but no dates are provided. Similarly, the affidavits state that vehicle no. 100 was placed in the fleet on or about April 10, 1990, and originally used at Dulles as an "on-field shuttle," but there is no indication of when the on-field use ended. No other details are provided concerning when vehicles were used in jurisdictional operations and when they were not, except that vehicle no. 100 apparently was moved to airline crew transportation in October, 1991, and the vehicle lists attached to the affidavits indicate that vehicle no. 99 was placed in the fleet on or about October 28, 1991.

B. The Staff Report

Staff filed its report on April 16, 1992. It shows the following pertinent vehicle seating capacities:⁴

<u>Vehicle Number</u>	<u>Serial Number</u>	<u>Seating Capacity</u>
B1	1FDKE30M9LHA00210	25
B2	1FDKE30M9LHA00211	25
50	1FDKE30L7BHA51341	17
51	1FDKE30L3BHA58187	17
98	1FDKE30M5KHC41177	24
99	1FDKE30M2MHA80550	23
100	1FDKE30G2KHB35795	20

Staff has concluded that vehicles 99 and 100 are the vehicles identified by Madison in its complaint.

⁴ For vehicle nos. B1, B2, 50 and 51, see page 5 of the report. For vehicle no. 98, see Staff's Exhibit C13A. For vehicle nos. 99 & 100, see Staff's Exhibit A1.

The Staff Report recounts the Commission's issuance of Special Authorization No. SP-172-01 to UMC on September 5, 1990, permitting UMC to perform a contract with the National Park Service. UMC first informed the Commission that it would operate the contract using vehicles 50 and 100, then later stated it would substitute B2 for 50.⁵

The Staff Report reveals that from January 1, 1990, until at least April 8, 1992, the date of Staff's report, Air Couriers' operations were restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver, and its insurance coverage was maintained at the \$1.5 million level. The Staff Report further reveals that UMC's operating authority was similarly restricted from May 6, 1991, through April 1, 1992, and that all of UMC's vehicles were insured for \$1.5 million from September 17, 1990, through February 17, 1992, and for \$5 million thereafter.

The Staff Report indicates that all of the vehicles inspected by Staff on March 26 and 27, 1992, were identified on their exteriors as being operated by UMC under WMATC No. 172. The report further explains that Mr. Radcliff Taylor, vice president of Air Couriers and UMC, confirmed during the inspection that no vehicles are currently being operated by Air Couriers under WMATC No. 55.

Finally, the Staff Report shows that vehicle no. 100 was insured by Air Couriers as early as December 12, 1989.⁶

C. Respondents' Reply to Staff Report

Air Couriers and UMC filed a joint reply to the Staff Report on May 1, 1992. It states that vehicles B1, 50, and 51 were used exclusively "on the field" at Dulles Airport. Vehicles B2, 99, and 100 also were used "on the field" at Dulles -- but not exclusively. No mention is made of vehicle no. 98. The joint reply confirms that vehicle no. 99 was placed in the fleet on or about October 28, 1991.

The joint reply acknowledges that "vehicle #100 was the primary vehicle used in serving the National Park Service," from "on or about" September 30, 1990, through September 30, 1991, and that vehicle no. B2 was used as a "backup." The joint reply also acknowledges that vehicles 99 and 100 were used in airline crew transportation during the period beginning October 28, 1991, and ending April 1, 1992.

II. FINDINGS

The Commission makes the following findings, as supported by the Staff Report and Respondents' affidavits and Reply to Staff Report:

1. Vehicle no. 100 was used to perform UMC's National Park Service contract from October 1, 1990, through September 30, 1991.

⁵ See Staff's Exhibits C2 & C3.

⁶ See Staff's Exhibit B3.

2. Vehicle no. B2 was used to perform UMC's National Park Service contract during the period beginning October 1, 1990, and ending February 26, 1991.

3. Vehicle no. 100 was used to transport airline personnel in interstate operations between points in the Metropolitan District during the period beginning October 4, 1991, and ending April 1, 1992. This finding is further supported by the affidavits of Madison employees M. Hajoun, J. Croston and J. Idlbi in Case No. FC-92-01.

4. Vehicle no. 99 was used to transport airline personnel in interstate operations between points in the Metropolitan District during the period beginning October 28, 1991, and ending April 1, 1992. This finding is further supported by the affidavits of Madison employees M. Hajoun, J. Croston and J. Idlbi in Case No. FC-92-01.

5. During the periods relevant to Findings 1 and 3 above, vehicle no. 100 had a manufacturer's designed seating capacity of at least 19 persons, including the driver.

6. During the period relevant to Finding 2 above, vehicle no. B2 had a manufacturer's designed seating capacity of at least 19 persons, including the driver.

7. During the period relevant to Finding 4 above, vehicle no. 99 had a manufacturer's designed seating capacity of at least 19 persons including the driver.

8. UMC's vehicles were subject to a 15-person seating capacity restriction from May 6, 1991, through April 1, 1992.

9. All of UMC's vehicles were insured for \$1.5 million from September 30, 1990, through February 17, 1992, and for \$5 million thereafter.

10. Air Couriers' vehicles have been subject to a 15-person seating capacity restriction and insured for \$1.5 million at all times pertinent to this investigation.

III. DETERMINATION OF VIOLATIONS

The Commission has determined that Air Couriers and UMC violated the Compact and the Commission's regulations by sharing revenue vehicles and by operating vehicles which seat more than fifteen persons.

A. Shared Operating Authority and Misidentification of Vehicles

Respondents freely admit to sharing revenue vehicles in the past. The Staff Report shows, however, that once Air Couriers and UMC were informed through Order No. 3904, served March 17, 1992, that this was a violation of the Compact and the Commission's regulations, they

moved quickly to correct the situation entirely by March 27. The Commission is satisfied that the situation has been properly remedied and that no further action is necessary at this time.⁷

B. Certificate and Insurance Violations under the National Park Service Contract

Vehicle no. 100 was the primary Park Service vehicle. The contract was UMC's. UMC obtained authority to perform it. On the other hand, Air Couriers insured vehicle no. 100 as early as December, 1989, and told the Commission in August, 1991, that this vehicle was a part of its fleet as of December 31, 1990. Respondents' affidavits state that after September 30, 1990, the two carriers were operated as a single company and most vehicles displayed both certificate numbers. Vehicle no. 100 was observed to display both certificate numbers on October 4, 1991, just four days after the contract expired. It is reasonable to conclude, therefore, that any violations relating to the Park Service contract were committed jointly.

During the term of the Park Service contract, neither Air Couriers nor UMC had on file with the Commission evidence of insurance sufficient to operate vehicles B2 and 100. Indeed, Air Couriers and UMC concede that such coverage did not exist. Neither carrier had authority at the time to operate those vehicles, except that UMC did have sufficient authority from October 1, 1990, through May 5, 1991.

The Commission concludes that Air Couriers exceeded its authority and was in violation of the Commission's insurance requirements from October 1, 1990, through September 30, 1991. The Commission further concludes that UMC exceeded its authority from May 6, 1991, through September 30, 1991, and violated the Commission's insurance requirements from October 1, 1990, through September 30, 1991.

Ordinarily, we would issue a cease-and-desist order at this juncture to bring these carriers into compliance with their certificates and our minimum insurance requirements. Because the evidence in this record establishes that UMC now possesses sufficient operating authority and insurance to operate the larger vehicles and that Air Couriers has suspended operations, corrective action is unnecessary at this time.

This is the first time Respondents have been found to violate the vehicle capacity restrictions in their certificates and the Commission's insurance requirements. The Commission normally does not impose sanctions for initial violations but simply directs future compliance, sterner measures being reserved for repeat offenses.⁸ The

⁷ This decision encompasses any past tariff violations associated with shared operating authority.

⁸ See In re Application of Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (cease-and-desist order after 1st violation; revocation and forfeiture after 2d & 3d).

Commission sees no reason in the specific circumstances of this case to depart from its normal practice. Accordingly, sanctions will not be assessed for these violations.

C. Certificate and Insurance Violations while Transporting Airline Personnel

The Commission concludes from findings 3-5 and 7-10 that Air Couriers violated the terms of its certificate of authority and the Commission's insurance requirements by transporting airline personnel in interstate operations in the Metropolitan District in vehicles 99 and 100 during the period October 4, 1991, through March 26, 1992, and that, similarly, UMC violated the terms of its certificate of authority from October 4, 1991, through April 1, 1992, and the Commission's insurance requirements from October 4, 1991, through February 17, 1992.

These violations were knowing and willful. The record amply demonstrates that Respondents were aware of the vehicle seating capacity restrictions in their certificates, the Commission's insurance requirements, and the manufacturer's designed seating capacity of vehicles 99 and 100, while those vehicles were being used to transport airline personnel in interstate operations in the Metropolitan District. Respondents claim these violations were not made in any intentional effort to evade or avoid regulation. A finding of intent to evade or avoid regulation is not a prerequisite to a determination of willfulness, and the willfulness of Respondents' conduct is not made less so merely because it was the product of employee negligence.⁹

The Commission believes that sanctions are in order for violations occurring after January 29, 1992, the date counsel for Respondents received the Madison complaint as served by the Commission. At that point, Respondents were on notice to discontinue any noncomplying operations, particularly those identified in the complaint. Respondents' continued jurisdictional use of vehicles 99 and 100 after that date and prior to the effective dates of UMC's added insurance coverage and expanded authority cannot be excused.

The Compact, Title II, Article XIII, Section 6(f) provides that a person who knowingly and willfully violates a term of a certificate or a Commission regulation or requirement, shall be subject to a civil forfeiture not to exceed \$1,000 for the first violation and \$5,000 for any subsequent violation. Each day of the violation constitutes a separate violation.

Respondents were knowingly and willfully without sufficient insurance from January 30, 1992, through February 9, 1992. The Commission assesses a forfeiture of \$500 for each of the eleven days during this period, or \$5,500. Respondents had additional coverage but no certificate of insurance on file from February 10, 1992,

⁹ United States v. Illinois Cent. R.R., 303 U.S. 239, 242-43 (1938).

through February 17, 1992.¹⁰ The Commission assesses a forfeiture of \$250 for each of the eight days during this period, or \$2,000. Respondents did not have authority to operate vehicles 99 and 100 from January 30, 1992, through April 1, 1992. The Commission assesses a forfeiture of \$125 for each of the sixty-three days during this period, or \$7,875. The aggregate assessment is \$15,375. All but \$2,000 is suspended.

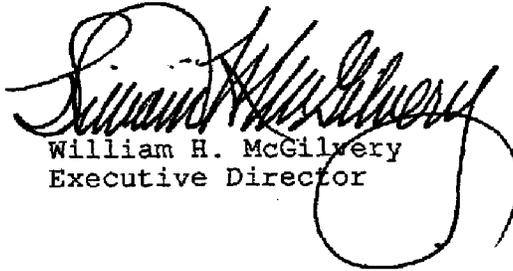
The different levels of assessment reflect the Commission's appraisal of the relative seriousness of each offense during the periods in question. The suspension of all but \$2,000 of the aggregate forfeiture reflects the Commission's recognition of the cumulative effect of assessments for both certificate and insurance violations during the period January 30, 1992, through February 17, 1992, and of Respondents' otherwise good record. The suspension also recognizes UMC's having filed for expanded authority in November 1991, of its own volition and not in response to a complaint or Commission investigation.

IV. CONCLUSION

Respondents shall pay to the Commission a \$2,000 civil forfeiture for knowingly and willfully violating the Compact and the Commission's regulations.

THEREFORE, IT IS ORDERED that Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, are hereby directed to pay to the Commission within thirty (30) days, or such additional time as the Commission may direct or allow, by money order, certified check or cashier's check, the sum of two thousand dollars (\$2,000).

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



William H. McGilvery
Executive Director

¹⁰ Because of Respondents' unification of operations and sharing of revenue vehicles, the Commission is confident that any person injured on or by one of Respondents' vehicles after February 17, 1992, could have recovered against both carriers. Hence, the Commission will not impose sanctions for joint operations after February 17, 1992, despite Air Couriers' separate insurance coverage at the lower level.