

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,184

IN THE MATTER OF:

Served September 1, 2017

BUTLER MEDICAL TRANSPORT, LLC,            )  
Trading as BUTLER MOBILITY,                )  
Suspension and Investigation of            )  
Revocation of Certificate No. 1748        )

Case No. MP-2017-037

This matter is before the Commission upon review of Order No. 17,004, served May 16, 2017.

Order No. 17,004 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1748 for failing to comply with the Commission's insurance requirements, in particular Regulation No. 58-14(a), which stipulates that WMATC carriers who experience temporary gaps in insurance coverage shall verify timely cessation of operations.

Order No. 16,924, served April 6, 2017, found that respondent had experienced such a gap in 2016. In reaching that conclusion, Order No. 16,924 relied on an interpretation of Regulation No. 58-07(e) that was applied in *In re Challenger Transportation, Inc.*, No. MP-14-139, Order No. 15,293 (Jan. 6, 2015). Regulation No. 58-07(e) governs when and to what extent the filing of one WMATC Insurance Endorsement terminates another WMATC Insurance Endorsement, a process known as termination by replacement.

The Commission held in the *Challenger* case that termination by replacement can cause an entire pre-existing Endorsement to stand terminated even if the dollar amount of coverage available under the later-executed replacement Endorsement is less than the dollar amount of coverage available under the pre-existing Endorsement.

For the reasons explained below, we adopt a new interpretation of Regulation No. 58-07(e) that is more consistent with the continuous-insurance-coverage objective of Regulation No. 58-02 and that in this case eliminates the applicability of Regulation No. 58-14.

**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. 1748 for a minimum of \$1.5 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.

On April 5, 2016, RLI Insurance Company filed on respondent's behalf a \$3 million primary WMATC Insurance Endorsement with an effective date of April 1, 2016, and an expiration date of April 1, 2017. On March 31, 2017, Old Republic Insurance Company filed on respondent's behalf a \$1 million primary WMATC Insurance Endorsement with an effective date of September 1, 2016, and an expiration date of June 1, 2017.

Under the *Challenger* interpretation of Regulation No. 58-07(e), the filing of the \$1 million Old Republic Endorsement on March 31 caused the entire \$3 million RLI Endorsement to stand terminated as of September 1, 2016, leaving respondent \$500,000 short of the WMATC minimum insurance requirement as of September 1, 2016, and causing Certificate No. 1748 to become automatically suspended under Regulation No. 58-12 as of that date.

Relying on the *Challenger* interpretation, Order No. 16,920, issued in this case on April 4, 2017, noted the automatic suspension of Certificate No. 1748 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1748, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1748.

On April 6, 2017, respondent paid the late fee, and Rockhill Insurance Company submitted on respondent's behalf a \$5 million, excess of \$1 million, WMATC Insurance Endorsement, and the suspension was lifted in Order No. 16,924. But because the effective date of the new excess endorsement was December 1, 2016, instead of September 1, 2016, thereby creating a 91-day gap in required coverage, Order No. 16,924 gave respondent 30 days, in accordance with Regulation No. 58-14(a), to submit a statement verifying cessation of WMATC operations as of September 1, 2016, and to produce copies of respondent's business records for the period beginning July 1, 2016, and ending April 6, 2017.

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

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

Respondent later submitted a \$2 million, excess of \$1 million, WMATC Endorsement on April 18, 2017, for the period beginning September 1, 2016, and ending December 1, 2016. This had the effect of closing the 91-day coverage gap. But closing an insurance gap does not relieve a carrier of the requirements of Regulation No. 58-14(a),<sup>3</sup> and as of May 16, 2017, respondent had yet to produce the statement and business records required by Regulation No. 58-14(a), as set forth in Order No. 16,924.

Regulation No. 58-14(b) states that upon the failure of a carrier to comply timely with the requirements of Regulation No. 58-14(a), "the Executive Director shall issue an order directing the carrier to show cause why a civil forfeiture should not be assessed against the carrier and/or why the carrier's operating authority should not be suspended or revoked." Accordingly, Order No. 17,004 gave respondent until June 15, 2017, to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1748.

Although respondent has yet to respond, our review of the grounds for invoking Regulation No. 58-14 leads us to question the interpretation of Regulation No. 58-07(e) applied in the *Challenger* case, the interpretation upon which the orders issued in this proceeding rest.

## II. REGULATION NO. 58-07(e)

Regulation No. 58-07 provides as follows:

58-07. Endorsement Commencement and Termination. Coverage under a WMATC Insurance Endorsement shall commence on the specified effective date and continue until the earliest of:

- (a) the specified expiration date;
- (b) the effective date specified in a notice of cancellation or thirty (30) days after the notice is received by the Commission, whichever is later;
- (c) thirty (30) days after receipt by the Commission of an acceptable application from the insured for voluntary termination of WMATC operating authority;
- (d) thirty (30) days after revocation by the Commission; or
- (e) the effective date of a later-executed replacement Endorsement.

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<sup>3</sup> *In re J T E Inc.*, No. MP-16-047, Order No. 16,621 (Oct. 17, 2016).

Commencement and termination shall occur at 12:01 a.m. Eastern Standard Time or Eastern Daylight Time, as applicable.

It appears from a review of Commission precedent that the interpretation of Regulation No. 58-07(e) applied in the *Challenger* case was first announced in *In re Car Plus Transportation LLC*, No. MP-14-099, Order No. 15,108 (Oct. 8, 2014). In that proceeding, the Commission determined that under Regulation No. 58-07(e), a \$2 million primary WMATC Endorsement stood terminated in its entirety by a later-executed \$1.5 million primary WMATC Endorsement.<sup>4</sup> Later, in the *Challenger* case, the Commission determined that under Regulation No. 58-07(e), a \$1.5 million primary WMATC Endorsement stood terminated in its entirety by a later-executed \$1 million primary WMATC Endorsement.<sup>5</sup> These holdings proceeded from a permissible, if simplistic, interpretation of Regulation No. 58-07(e). We believe, however, that Regulation No. 58-07(e) is amenable to an alternative interpretation, one that better fulfills the continuous-coverage objective of Regulation No. 58-02, unlike the interpretation applied in the *Car Plus* and *Challenger* cases.

First, we observe that what Regulation No. 58-07 governs is not the commencement and termination of "a WMATC Insurance Endorsement" but, rather, commencement and termination of "Coverage under a WMATC Insurance Endorsement". The interpretation of Regulation No. 58-07(e) applied in the *Car Plus* and *Challenger* cases renders the first two words of Regulation No. 58-07 superfluous in the context of termination by replacement. Constructions that create surplusage generally are disfavored.<sup>6</sup>

We can restore meaning to the first two words of Regulation No. 58-07 by considering the coverage that is being replaced, not merely the legal instrument underlying it. This can be accomplished by moving to a construction of Regulation No. 58-07(e) that deems a later-executed WMATC Endorsement to be a "replacement Endorsement" only to the extent that it replaces existing coverage.

Under such an alternative construction, the filing of the \$1 million Old Republic Endorsement on March 31 would be seen to have replaced only the first \$1 million of coverage under the \$3 million RLI Endorsement, leaving the other \$2 million of coverage in place for claim amounts in excess of \$1 million and respondent in full compliance with the minimum insurance requirement

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<sup>4</sup> Order No. 15,108 at 2.

<sup>5</sup> Order No. 15,293 at 2-3.

<sup>6</sup> See, e.g., *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 668-69 (2007) (citing statutory surplusage canon). See also *Fabi Constr. Co. v. Sec'y of Labor*, 508 F.3d 1077, 1087 (D.C. Cir. 2007) (using canon of statutory construction to interpret ambiguous word in agency regulation).

under Regulation No. 58-02(c), an outcome more consistent with the continuous-coverage objective of Regulation No. 58-02 than the insurance-gap outcome dictated by the construction of Regulation No. 58-07(e) adopted in *Car Plus* and followed in *Challenger*.

This alternative outcome also is consistent with the provision of Regulation No. 58-02 that permits a WMATC carrier to obtain tiered or layered insurance coverage "provided that not more than one policy may be obtained for any one tier or layer."

Accordingly, henceforth, if the dollar amount of coverage available under a later-executed replacement Endorsement is less than the dollar amount of coverage available under the pre-existing Endorsement, coverage under the pre-existing Endorsement shall stand terminated under Regulation No. 58-07(e) only to the extent that coverage is available under the replacement Endorsement.

### III. CONCLUSION

Applying to the facts of this case the interpretation of Regulation No. 58-07(e) adopted herein, we conclude that the filing of the \$1 million Old Republic Endorsement on March 31, 2017, terminated the \$3 million RLI Endorsement only to the extent of the first \$1 million in claims for each covered incident. Thus, it was not until April 1, 2017, when the RLI Endorsement expired, that respondent stood \$500,000 short of the WMATC minimum insurance requirement, and Certificate No. 1748 stood automatically suspended under Regulation No. 58-12. In that posture, the filing of the \$5 million excess Endorsement by Rockhill on April 6, 2017, had the effect of restoring respondent's coverage to the minimum required under Regulation No. 58 without creating any gap in required coverage. Absent a gap in required coverage, the requirements of Regulation No. 58-14 do not apply. We therefore find that good cause exists for not assessing a forfeiture against respondent and for not revoking Certificate No. 1748.

THEREFORE, IT IS ORDERED:

1. That the interpretation of Regulation No. 58-07(e) announced herein is hereby adopted.
2. That this proceeding is hereby terminated.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND MAROOTIAN:



William S. Morrow, Jr.  
Executive Director