

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,616

IN THE MATTER OF:

Served May 17, 2018

CEEPCO CONTRACTING, LLC, Suspension )  
and Investigation of Revocation of )  
Certificate No. 1632 )

Case No. MP-2017-136

This matter is before the Commission on respondent's response to Order No. 17,381, served December 28, 2017.

**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. 1632 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. 1632 was rendered invalid on October 1, 2017, when the \$1 million primary and \$4 million excess WMATC Insurance Endorsements on file for respondent terminated without replacement. Order No. 17,234, served October 2, 2017, noted the automatic suspension of Certificate No. 1632 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1632, 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. 1632.

Respondent paid the late fee and submitted \$1 million primary and \$4 million excess WMATC Insurance Endorsements, and the suspension was lifted in Order No. 17,320 on November 27, 2017. However, because the effective date of the new excess endorsement is November 22, 2017, instead of October 1, 2017 - thereby creating a 52-day coverage gap - the order gave respondent until December 27, 2017, in accordance with Regulation No. 58-14(a), to: (1) verify cessation of operations as of October 1, 2017; and (2) produce copies of respondent's

---

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

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

pertinent business records from August 1, 2017, to November 27, 2017. Respondent did not respond.

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."

In accordance with Regulation No. 58-14(b), Order No. 17,381 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1632.

## **II. RESPONSE TO ORDER NO. 17,381**

Respondent admits transporting passengers for hire in a 15-passenger van under a contract with the Naval Surface Warfare Center in Bethesda, Maryland, on 36 days during the lapse in excess coverage.

Respondent says that it did not renew the \$4 million excess policy on October 1, 2017, because it was "unaware WMATC required CEEPSCO to carry \$1 million primary and \$4 million excess coverage." Respondent further explains that it was respondent's understanding that the \$5 million insurance requirement was mandated by a passenger transportation contract with the Environmental Protection Agency that ended September 30, 2017.

## **III. ASSESSMENT OF CIVIL FORFEITURE AND PROBATION**

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" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.<sup>6</sup> Employee negligence is no defense.<sup>7</sup> "To hold carriers not liable for penalties where the

---

<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 Jonathan Lee Gerity Sr, t/a Riverside Transp.*, No. MP-16-036, Order No. 16,574 at 5 (Sept. 15, 2016), recon. denied, Order No. 16,710 (Nov. 30, 2016).

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 5.

violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>8</sup>

Under Regulation No. 58-12: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission." 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.

Respondent was careless in not checking with the Commission before operating on and after October 1, 2017. We therefore find that respondent knowingly and willfully transported passengers for hire while Certificate No. 1632 was suspended, including while respondent was underinsured.

Respondent points out that it ceased operating vehicles seating more than 15 as of September 30, 2017. But that did not lower the \$5 million insurance requirement under WMATC Regulation No. 58-02(c):

Prior to 1991, WMATC carriers with mixed-size fleets - fleets comprised both of vehicles seating 16 persons or more (large) and of vehicles seating 15 persons or less (small) - were required to maintain \$5 million in liability insurance for their large vehicles but only \$1.5 million in liability insurance for their small vehicles. That practice was abandoned in 1991 in favor of the current requirement that WMATC carriers with mixed-size fleets shall insure all of their WMATC vehicles for \$5 million, even their small vehicles. Only carriers with authority restricted to operations in small vehicles may insure such vehicles for only \$1.5 million.

*In re Rulemaking to Amend Reg. No. 58*, No. MP-08-017, Order No. 11,077 at 6 (Jan. 14, 2008) (citations omitted). And even if shedding the larger vehicles had reduced the minimum insurance requirement to \$1.5 million, respondent would still have been a half million short.

---

<sup>8</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

In most cases, operating while suspended and underinsured draws a civil forfeiture and revocation of operating authority.<sup>9</sup> Commission precedent, however, recognizes an exception for carriers who, like respondent, maintain their primary insurance coverage under a WMATC Endorsement throughout the suspension period. In the case of *Junior's Enterprises, Inc.*, the carrier was found to have operated while suspended and underinsured.<sup>10</sup> The carrier's operations were covered by a \$1 million primary WMATC Insurance Endorsement throughout the suspension period, but excess coverage was missing for a period of time.<sup>11</sup> In that case, the Commission assessed a civil forfeiture and placed the carrier on probation but did not revoke the carrier's authority.<sup>12</sup> We shall follow that course of action here.

"In setting the daily forfeiture amount, we . . . take[] into consideration Commission precedent that distinguishes carriers operating without authority and without adequate insurance, on the one hand, from carriers operating without authority but with adequate insurance, on the other - assessing a larger amount against those without adequate insurance."<sup>13</sup> For operating while suspended but adequately insured, the Commission assesses a civil forfeiture of \$250 per day.<sup>14</sup> For operating while suspended and inadequately insured, the forfeiture increases to \$500 per day.<sup>15</sup>

Respondent's contract with the Naval Surface Warfare Center calls for service five days a week, Monday through Friday, excluding federal holidays. It thus appears that respondent operated for 35 days during the lapse in excess coverage (October 1, 2017, through November 21, 2017), plus another two days (November 22 and 24) while still suspended but adequately insured.

We therefore assess a forfeiture against respondent in the amount of \$500 per day for 35 days, or \$17,500, and \$250 per day for two days, or \$500, for a total forfeiture of \$18,000.

---

<sup>9</sup> See e.g., *In re Exquisite Limo. Serv. LLC*, No. MP-15-152, Order No. 16,153 (Jan. 22, 2016) (operating authority revoked where carrier continued operating after primary WMATC Endorsement terminated without replacement).

<sup>10</sup> *In re Junior's Enters., Inc.*, No. MP-03-165, Order No. 7878 (Mar. 19, 2004).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* But see *VGA Inc.*, No. MP-09-108, Order No. 12,439 (June 11, 2010) (revoking restricted authority in part for operating vehicles seating more than 15 persons with only \$1.5 million Endorsement on file), *aff'd*, Order No. 12,664 (Dec. 17, 2010).

<sup>13</sup> Order No. 16,574 at 5.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 5.

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 \$18,000 for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Regulation No. 58.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by money order, certified check, or cashier's check, the sum of eighteen thousand dollars (\$18,000).

3. That respondent is hereby placed on probation for a period of one year, such that a willful violation of the Compact, or of the Commission's rules, regulations, or orders thereunder, by respondent during the period of probation shall constitute grounds for immediate suspension and/or revocation of respondent's operating authority regardless of the nature and severity of the violation.

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



William S. Morrow, Jr.  
Executive Director