SERVICE DATE - AUGUST 20, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20980

HOLLAND AMERICA LINE-WESTOURS, INC.–CONTINUANCE IN CONTROL–WESTOURS MOTOR COACHES, INC., EVERGREEN TRAILS, INC., AND WESTMARK HOTELS OF CANADA LTD.

Decided: August 14, 2001

On April 12, 2001, Holland America Line-Westours, Inc. (HAL), a noncarrier that controls two motor passenger carriers, filed an appeal of the April 4, 2001 decision by the Director of the Office of Proceedings that rejected HAL's notice of exemption filed under the Board's class exemption procedure at 49 CFR 1182.9 (which provides an exemption for transactions within a motor passenger corporate family). The stated reason for the rejection was that the transaction that was the subject of the notice was not one within a corporate family and therefore it did not qualify for the class exemption under which it was filed. For the reasons given below, we will deny the appeal.

The class exemption procedure at 49 CFR 1182.9 was adopted in Class Exemption for Motor Passenger Intra-Corporate Family Transactions, STB Finance Docket No. 33685 (STB served Feb. 18, 2000) (Intra-Corporate Family). In that decision, we exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family. The transaction at issue involves the continuance in control of HAL's subsidiary, Westmark Hotels of Canada Ltd. (Westmark), upon Westmark's becoming a regulated motor passenger carrier,[1] and requires our approval under 49 U.S.C. 14303(a)(5).

In its appeal, HAL asserts that its notice should not have been rejected, arguing that the described transaction is one wholly within the HAL bus corporate family because HAL already controlled Westmark before Westmark applied for motor passenger carrier operating authority in the United States.[2] In addition, HAL points out that, in adopting the class exemption, we stated that it "is not limited to intra-corporate mergers and consolidations – it applies to transactions within a bus passenger corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the

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[1] Westmark's application for motor passenger carrier operating authority was filed with the Federal Motor Carrier Safety Administration (FMCSA) on March 29, 2001.

[2] Westmark already held motor passenger carrier operating authority in Canada.

corporate family." Intra-Corporate Family, slip op. at 10 (emphasis added).[3] Furthermore, HAL submits that the regulation at 49 CFR 1182.9 makes explicit reference to 49 U.S.C. 14303 in its entirety, and does not single out any particular transaction described in any subsection of that statutory provision as being excluded from the class exemption. These arguments miss the point. The class exemption at 49 CFR 1182.9, although not limited to intra-corporate family mergers or consolidations, is limited to intra-corporate family transactions. The transaction at issue is simply not an intra-corporate family transaction.

The transaction described by HAL is the issuance of motor passenger carrier authority by the FMCSA to HAL's subsidiary, Westmark, and the indirect acquisition of control over new operating authority by HAL upon Westmark's becoming a carrier. Such a transaction (the continuance in control by a person that is not a carrier, but that controls any number of carriers, of an entity that acquires operating authority, thereby becoming a carrier) requires our approval under 49 U.S.C. 14303(a)(5). This is not something occurring wholly within the corporate family. Westmark's new operating authority did not previously exist within the corporate family; it is not a mere adjustment of ownership interests in rights that existed within the corporate family prior to the proposed transaction for which approval is sought. HAL's indirect control of these new rights through Westmark requires our approval, but it cannot be accomplished through the 49 CFR 1182.9 class exemption.

Finally, HAL questions why the class exemption has been found appropriate for the bus industry leaders, but not for the smaller, regional carriers. The class exemption is available to all motor passenger carriers, regardless of size. It applies, however, only to transactions within their corporate families (large or small), not to the acquisition of new operating authority or other rights existing outside the corporate family prior to the transaction at issue. Thus, we will deny the appeal.

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[3] This statement was made in response to a request by Global Passenger Services, L.L.C. (Global), that we not limit the class exemption to consolidations and mergers within a corporate family. Although we declined to rule definitively, without more information, on whether the examples presented by Global were within the class exemption, we stated that, under section 204(a) of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), ICC precedent in effect on the date of enactment of the ICCTA continues in effect until modified or revoked in accordance with law by the Board, any other authorized official, a court of competent jurisdiction, or by operation of law. We observed that the voluntary surrender of authority by an entity being brought under common control would not appear to be within the corporate family exemption because it seems to involve a situation concerning an entity prior to its becoming part of the corporate family. It does not follow, however, that all transactions by entities that are already within the corporate family are necessarily within the class exemption.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

<u>It is ordered</u>:

1. HAL's appeal of the April 4, 2001 decision of the Director of the Office of Proceedings is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary