

BEFORE THE  
SURFACE TRANSPORTATION BOARD

IN THE MATTER OF

HOLLAND AMERICA LINE INC.

-- CONTROL --

WESTOURS MOTORCOACHES, INC.  
EVERGREEN TRAILS, INC.  
WESTMARK HOTELS OF CANADA, LTD.  
HORIZON COACH LINES, LTD.  
DISCOVER ALASKA TOURS, INC.  
and  
ROYAL HYWAY TOURS, INC.



**FILED**

MAR 05 2009

SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**

FEB 05 2009

SURFACE  
TRANSPORTATION BOARD

STB DOCKET NO. MC-F-  
MC F 21033

224625

APPLICATION UNDER 49 U.S.C. §14303(a)  
FOR APPROVAL OF THE ACQUISITION OF CONTROL  
BY HOLLAND AMERICA LINE INC.  
OF ROYAL HYWAY TOURS, INC.  
AND CONTINUANCE IN CONTROL OF  
FIVE OTHER MOTOR PASSENGER CARRIERS

and

ENTERED  
Office of Proceedings

MAR 05 2008

Part of  
Public Record

REQUEST UNDER 49 U.S.C. §14303(i)  
FOR INTERIM APPROVAL  
NO LATER THAN APRIL 1, 2009  
PENDING DETERMINATION OF THE APPLICATION

MC F 21033 TA

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COME NOW, the parties named herein and respectfully submit this, their  
Application under 49 U.S.C. §14303(a) and STB Regulations at 49 CFR §1182 for  
approval of a corporate transaction, described, *infra*, the result of which will be the  
control by non-carrier Holland America Line Inc. of a sixth motor passenger carrier,

Royal Hyway Tours, Inc., in addition to the five passenger carriers which it already controls, all as more fully described. Included as a part of this application (*see* pages 12 - 15, *infra*) is a request under 49 U.S.C. §14303(i) and STB regulations at 49 CFR §1182.7 for interim approval of control, NOT LATER THAN APRIL 1, 2009, pending final determination of the application.

### **Parties to This "Transaction"**

#### **Identity of the Parties**

The parties to the proposed corporate transaction are as follows.

Holland America Line Inc. ("HAL"), a non-carrier, is a Washington Corporation, which with previous STB authorization now controls five Federal Motor Carrier Safety Administration ("FMCSA") registered motor passenger carriers, and which, upon approval of this application, will control a sixth FMCSA registered motor passenger carrier.

The five FMCSA registered passenger carriers already controlled by HAL are:

Evergreen Trails, Inc., d/b/a Gray Line of Seattle ("EVERGREEN"), which is a Washington corporation, registered with FMCSA in its Docket MC-107638.

Westours Motor Coaches, Inc. ("WESTOURS"), which is a Washington corporation, registered with FMCSA in its Docket MC-118832.

Westmark Hotels of Canada Ltd. ("WESTMARK") which is a corporation formed under the laws of the Province of British Columbia, Canada, registered with FMCSA in its Docket MC-405618.

Horizon Coach Lines, Ltd. ("HORIZON") which is a corporation formed under

the laws of the Province of British Columbia, Canada, registered with FMCSA in its Docket MC-144339.

Discover Alaska Tours, Inc. ("DAT"), which is an Alaska corporation, registered with FMCSA in its Docket MC-636105.

The FMCSA registered motor passenger carrier which is to come under HAL's control is Royal Hyway Tours, Inc. ("RHT"), which is an Alaska corporation, registered with FMCSA in its Docket MC-182214.

Essential Information About the Parties

EVERGREEN, doing business as Gray Line of Seattle, is a Corporation whose principal office is located at 4500 Marginal Way, S.W. Seattle, WA 98106.

EVERGREEN is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-107638 (USDOT No. 12016).

EVERGREEN is also engaged in intrastate operations in Washington, pursuant to appropriate state authorization.

WESTOURS is a Corporation whose principal office is located at 300 Elliot Avenue West, Seattle, WA 98119. WESTOURS is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-118832 (USDOT No. 80587). WESTOURS is also engaged in intrastate operations in Alaska.

WESTMARK is a Corporation whose principal office is located at 999 Canada Place, World Trade Center, Vancouver, British Columbia, V6C 3C1 Canada.

WESTMARK is engaged in foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-495618 (USDOT No. 944769). WESTMARK is also engaged in domestic transportation within Canada pursuant to appropriate Provincial

authority.

IIORIZON is a Corporation whose principal office is located at 326 B Industrial Avenue, Vancouver, British Columbia, V6A 2P3 Canada. IIORIZON is engaged in foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-144339 (USDOT No. 175764). HORIZON is also engaged in domestic transportation within Canada pursuant to appropriate Provincial authority.

DAT is a Corporation whose principal office is located at 300 Elliott Avenue West, Seattle, Washington 98119. DAT is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-636105 (USDOT No. 1736644). DAT is also engaged in intrastate operations in Alaska.

The carrier, control of which is to be acquired, is RHT. RHT is a Corporation whose principal office is located at 601 West Fifth Avenue, Suite 501 Anchorage, Alaska 99501. RHT is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-182214 (USDOT No. 259971). RHT is also engaged in intrastate operations in Alaska.

All of the “common control” relationships involving the HAL corporate family and the five motor passenger carriers already under common control have been previously approved by the STB (or its predecessor, Interstate Commerce Commission) The most recent STB approval of control by HAL of EVERGREEN, WESTOURS, WESTMARK, HORIZON, and DAT is evidenced by its decision in *Holland America Line Inc – Control – Westours Motorcoaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada Ltd , Horizon Coach Lines Ltd , and Discover Alaska Tours, Inc.*, STB Docket No. MC-F-21026 (served March 21, 2008).

### **Pertinent Operating Authorities**

The FMCSA interstate operating authority held by each of the five motor carriers already under HAL control permits generally the transportation of passengers in charter and special operations service throughout the United States; that held by the two Canadian domiciled carriers, WESTMARK and HORIZON, is limited to transportation in foreign commerce, as is common for Canadian domiciled carriers.

RHT, the entity to be controlled, holds authority to transport passengers in charter and special operations throughout the United States.

More particularly, the FMCSA operating authorities of the parties are as follows:

EVERGREEN's essential authority is that in its Certificate in MC-107638 (Sub 11-C), which authorizes, in part, charter and special operations services between points in the United States. <sup>1</sup>

WESTOURS' essential authority is that in its Certificate in MC-118832 (Sub 11-C), which authorizes charter and special operations services between points in the United States. <sup>2</sup>

WESTMARK's essential authority is its Certificate in MC-405618, which authorizes charter and special operations services between points in the United States.

HORIZON's essential authority is its Certificate in MC-144339, which authorizes charter and special operations services between points in the United States.

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<sup>1</sup> EVERGREEN also holds contract authority in MC-107638 (Sub 11-P), authorizing transportation of passengers between points in the U.S., under contract with persons requiring passenger transportation, although the ICC Termination Act of 1995 eliminated the distinction between common and contract authority.

<sup>2</sup> WESTOURS' Sub 11-P permit corresponds to EVERGREEN's Sub 11-P Permit.

DAT's authority in its Certificate in MC-636105 authorizes charter and special operations services between points in the United States.

RHT's authority in its Certificate MC-182214 authorizes charter and special operations services between points in the United States

### **Description of the Proposed Transaction**

The event triggering STB jurisdiction is the acquisition of control by HAL of RHT, the effect of which will be to place a sixth motor passenger carrier under HAL's control. Today, with STB approval in STB Docket No. MC-F-21026, *supra*, HAL, a non-carrier, already controls five motor passenger carriers, EVERGREEN, WESTOURS, WESTMARK, HORIZON, and DAT. With approval of this request, HAL will then control a sixth motor passenger carrier, RHT. All these carriers operate predominantly in the Pacific Northwest, including Southeast Alaska and adjoining Canadian Provinces.

STB's jurisdiction is invoked pursuant to 49 U.S.C. §14303(a)(5), since the transaction involves "the acquisition of control of a carrier [i.e., RHT] by a person that is not a carrier [i.e., HAL] but that controls any number of carriers [i.e., EVERGREEN, WESTOURS, WESTMARK, HORIZON, and DAT]."

HAL's acquisition of control through stock ownership of RHT is one step of a multi-step internal corporate restructuring including HAL and several non-carrier subsidiaries and affiliates, all related to the organization's primary focus on the provision of various travel and tour services throughout the Pacific Northwest/Southeast Alaska.

As described in the most recent HAL "control" application in MC-F-21026, *supra*, RHT holds a minority, non-controlling interest in DAT. Following certain steps in

the planned restructuring, once HAL assumes 100% control of RHT through stock ownership, it is likely - though not certain - that DAT may be merged into RHT, with RHT being the surviving entity. There could be other corporate structural changes in other of the motor carriers (i.e., converting from corporation to limited liability company). It is certain HAL shall acquire control of RHT, but all the details of the subsequent restructuring within the corporate family are not finalized as of the date of this submission. The parties advise the STB of these possible changes, but at the same time note that changes other than HAL's acquisition of control of RHT are all only corporate modifications within "a single established system," and so, under the "single system doctrine," *Transcontinental Bus System, Inc., - Control - American Buslines, Inc.*, 87 M.C.C 795, 798 (1961), such further corporate modifications would not be subject to STB jurisdiction under §14303.<sup>3</sup>

#### **Federally Regulated Carrier Affiliates**

There are no other affiliated carriers involved in this application.

#### **Jurisdictional Statement – Revenues**

The Surface Transportation Board has jurisdiction over this matter under 49 U.S.C. §14303(g), because the annual aggregate gross operating revenues of the five carriers already under HAL control and RHT significantly exceed \$2 million.

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<sup>3</sup> In the event of any such corporate changes affecting the carriers' FMCSA registration, the carriers will make the appropriate filings with FMCSA.

### **Environmental Impact**

The parties assert approval of this application will not constitute a Federal action having a significant effect on the quality of the human environment and the conservation of energy resources.

### **Public Interest Considerations**

#### **a. Adequacy of Transportation Services**

The proposed transaction will not have an impact on the adequacy of transportation services available for the public. RHT, the carrier to be controlled by HAL, has been a part of the Pacific Northwest/Southeast Alaska bus community for nearly twenty-five years. It shall continue to operate, but going forward, it will be operating within the HAL corporate family, an organization already thoroughly experienced in performing charter and tour services throughout the Pacific Northwest/Southeast Alaska.

The addition of a sixth motor carrier to the HAL group is consistent with the practice throughout the bus industry of strong, well managed transportation organizations adapting their corporate structure to operate several different charter carriers to better serve each individual market niche in their service area. As a part of a corporate restructuring, HAL, which has decades of experience in operating tour-based services throughout the area, is bringing under its control another carrier which is itself experienced in this market, which has its own specialized service characteristics. This helps to assure the provision of adequate service for the public.

Bringing RHT within the HAL family will serve to enhance the viability of the

overall HAL organization and the bus operations of its existing carriers EVERGREEN, WESTOURS, WESTMARK, HORIZON, and DAT; the continued viability of all the carriers assures the continued availability of adequate bus service for the public.

**b. Fixed Charges**

There are no fixed charges associated with the proposed acquisition of control.

**c. Employee Interests**

No carrier operations employees will be adversely affected by the change, except, possibly a small number of administrative employees affected by administrative efficiencies. RHT shall remain as a carrier following the acquisition of control.

**d. Competition and the Public Interest**

The law requires the STB to assess competition in the market and the impact on the public interest as affected by approving an arrangement in which multiple passenger carriers are under control of a single economic entity. In making its analysis, the Board (as did its predecessor, Interstate Commerce Commission) has without exception found that proposed “common control” arrangements (however accomplished) are inherently not anti-competitive. In large measure, that conclusion rests on the finding that as a result of ease of entry into the market, the bus industry is characterized by healthy intra-modal competition as well as healthy competition between bus service, on the one hand, and on the other, other modes of transportation, all of which constitute the “relevant market.” *GLI Acquisition Co – Purchase – Trailways Lines, Inc* , 4 I.C.C. 2d 591, 598-602 (1988)

The Greyhound – Trailways merger dealt with the only two nationwide, scheduled service carriers; scheduled service is a segment of the industry in which there

exist potential barriers to entry (i.e., terminal access) and a lessening of competition might be thought to at least be a potential issue for concern, but even there, the competitive nature of that bus business allayed any anti-competition concerns that might otherwise have arisen.

This HAL application, however, involves carriers engaged in the charter and tour segment of the industry, which is vastly more competitive than the scheduled service sector. Indeed, in recent years, the Board has been called upon to consider numerous "control" applications as consolidation within the charter bus industry has led to a handful of larger entities acquiring many, many smaller charter and tour carriers and operating them under common control. *In each and every instance*, the Board approved these applications without any concern for competition considerations and found them to be in the public interest.

All the HAL motor carriers are a part of a coordinated group; they are not in direct competition with one another, so the common control by HAL of one more carrier will have no impact on competition within the market. As stated above, to the parties' best knowledge, in treating applications under §14303, the STB has consistently and without exception found the passenger transportation business so inherently competitive due to the low barriers to entry by new competitors, especially for a new charter carrier. The Interstate Commerce Commission's findings on this issue remain true today for this segment of the transportation business. *GLI Acquisition Co – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598-602 (1988).

In very recent years, on the rare occasions in which the STB has been called upon to assess the "public interest" and "competition" issues inherent in the practice of the

acquisition of ownership of numerous bus carriers by non-carrier entities, it has consistently and without exception approved each and every application of this sort, finding that acquisitions that contemplate the single control of numerous passenger carriers can result in better overall service for the public without any lessening of the benefits of healthy competition.

Since the previous HAL "control" application was approved in March, 2008, the STB has continued to approve all "control" applications under the same rationale. Its decisions include, *Stagecoach Group PLC and Coach USA, Inc., et al., - Acquisition of Control - New Today Bus Corp., et al.*, STB Docket No. MC-F-21030 (served January 30, 2009), *Stagecoach Group PLC and Coach USA, Inc., et al., - Acquisition of Control - Eastern Travel and Tour, Inc.*, STB Docket No. MC-F-21029 (served September 18, 2008); *Delivery Acquisition, Inc - Purchase - Transportation Management Systems, LLC and East West Resort Transportation, LLC*, STB Docket No. MC-F-21028, (served July 18, 2008); and *Stagecoach Group PLC and Coach USA, Inc., et al., - Control - Megabus Northeast, LLC*, STB Docket No. MC-F-21027 (served April 11, 2008).

In each decision in recent years – if not uniformly since the Board assumed jurisdiction over such transactions in 1996 – the Board has found that such common control arrangements are consistent with the public interest and it has approved them. The same finding is warranted here.

### **U.S. DOT Safety Fitness Rating**

The U.S. Department of Transportation Safety Rating for each of EVERGREEN, WESTOURS, WESTMARK, HORIZON and RHT is "satisfactory." DAT, as a recently

(2008) registered carrier, has not yet been assigned a safety rating.

#### **Insurance Certification**

Each of the six motor carriers involved in this application now satisfies and after STB approval will continue to satisfy FMCSA requirements relating to adequate security for the public. 49 U.S.C. §13906. Among the five existing, controlled carriers, EVERGREEN and WESTOURS are each authorized by FMCSA to self-insure the first \$1 million layer of their required \$5 million BI&PD insurance, each maintains commercial insurance in excess of the self-insured limits, and each has filed appropriate evidence of such insurance with FMCSA. WESTMARK, HORIZON, DAT, and RHT each have appropriate evidence of required \$5 million insurance coverage on file with FMCSA.

#### **Mexico Certification**

The parties certify that none of the companies named in this application is domiciled in Mexico, nor are they owned or controlled by persons of that country.

#### **REQUEST FOR INTERIM APPROVAL**

While the STB is considering the request for approval, **THE PARTIES REQUEST THE STB TO GRANT INTERIM APPROVAL FOR HAL TO ASSUME TEMPORARY CONTROL OF RHT NO LATER THAN APRIL 1, 2009,** because failure to grant such approval will likely result in injury to the motor carrier properties of which control is to be acquired and/or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

As explained above, the contemplated change is a part of a business driven corporate restructuring relating to the provision of travel and tour services throughout the Pacific Northwest/Southeast Alaska, one aspect of which is motor transportation performed by FMCSA regulated carriers and subject to STB jurisdiction, but other aspects of which include the provision of water transportation cruise services, and the provision of non-transportation-related ground and hospitality services. The public expects - and the HAL organization and affiliates have for years provided - a "seamless" travel experience, even though for business and in some cases regulatory purposes, the single "tour" experience for the passenger actually consists of a wide array of different services and products, each performed by a separate and distinct legal entity, with the various entities under a single corporate umbrella.

Thus, the contemplated change giving rise to this application to the STB is not one which affects the availability or quality of motor transportation for the public, but rather one which modifies the structure and ownership of many of the distinct corporate entities in the HAL family to take advantage of the most current business organization and tax strategies.

As a business and tax driven change, for the contemplated acquisition of control to achieve its desired purposes, the parties need to be able to proceed by April 1. As is true of all business restructurings - and certainly so in the current economic climate - decisions as to precisely those corporate changes to be made require much deliberation, but once a decision has been made, they need to be implemented promptly to achieve all their goals. That is the explanation for the filing of this application at the beginning of March (only after the plans have been finalized) with a request for interim approval by

April 1.

There is another significant component of the need for urgency. RHT, like the other motor carriers involved, is focused primarily on providing transportation during the summer season for the Alaska cruise tour business. As a highly seasonal operation, RHT, like the other carriers, hires primarily a seasonal workforce. The hiring process includes substantial training in safety and customer service (as pertinent here, reflected in the outstanding FMCSA safety performance of all these carriers) in advance of the summer season. With HAL's new control of RHT, it is imperative that HAL be in a position to train new seasonal drivers under its safety/customer service programs. If HAL is not allowed to take interim control by April 1, the lack of time to undergo the training process would likely adversely affect training, with a possible adverse impact on safety.

For both business reasons and operational reasons arising from the highly seasonal nature of the business, HAL believes it must be allowed to assume interim control of RHT immediately in order to bring RHT within the HAL system in anticipation of the quickly approaching summer tour season.

The STB (and previously ICC) have long recognized such business considerations as exist here as a driving force to warrant interim approval in "control" situations. As but one example, STB approved interim control under similar circumstances and for similar reasons, including the impact of the approaching summer tour season, in *Holland America Line- Westours, Inc – Control – Westours Motorcoaches, Inc , Evergreen Trails, Inc , Westmark Hotels of Canada Ltd., and Horizon Coach Lines Ltd* , STB Docket No. MC-F-20988 TA (served February 1, 2002).

As pertinent to the motor carriers subject to STB jurisdiction (and certainly in

other areas, as well) HAL has demonstrated its commitment to providing safe and responsive travel and tour services throughout the Pacific Northwest/Southeast Alaska. Under today's economic conditions, once the organization has decided on a plan of restructuring, it needs to be able to move forward promptly with that plan. That is especially true with the time pressure imposed by the seasonal nature of RHT's operations. Holding RHT's status "in limbo," even for a few months, could have severe adverse consequences for the organization, and for RHT's continued ability to provide safe and responsive service for the public.

**The parties request interim approval to be effective not later than April 1, 2009, in order to meet the business needs of this transaction, and to avoid injury to the motor carrier properties involved and to assure their future usefulness in providing adequate and continuous service to the public.**

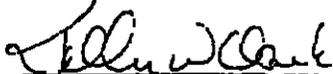
#### **Verification**

Each person signing this application verifies under penalty of perjury, under the laws of the United States of America, that all information supplied by such person on behalf of the company which he represents in connection with this application is true. Further, each person signing this application is qualified and authorized to file this application.

Each person signing further certifies under penalty of perjury under the laws of the United States, that he knows that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. §1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. §1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

ENTITY IN CONTROL

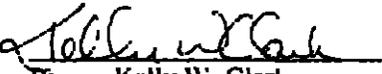
Holland America Line Inc.

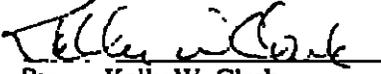
  
By Kelly W. Clark  
Vice President, Secretary

ENTITIES NOW UNDER HAL CONTROL

Evergreen Trails, Inc

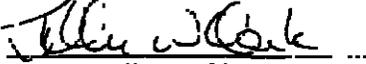
Westous Motorcoaches, Inc

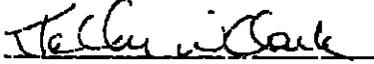
  
By Kelly W. Clark  
Vice President, Secretary

  
By Kelly W. Clark  
Vice President, Secretary

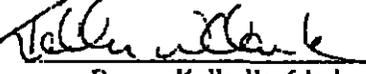
Westmark Hotels of Canada, Ltd

Horizon Coach Lines, Ltd

  
By: Kelly W. Clark  
Vice President, Assistant Secretary

  
By: Kelly W. Clark  
Vice President, Secretary

Discover Alaska Tours, Inc.

  
By Kelly W. Clark  
Secretary

**ENTITY TO BE CONTROLLED BY HAL**

Royal Hyway Tours, Inc.

  
By: **Charlie Ball**  
Vice President

**Applicants' Representative**

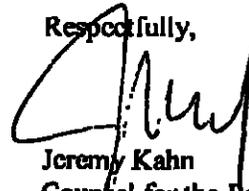
The parties' representative is

Jeremy Kahn, Esq.  
Kahn and Kahn  
1730 Rhode Island Ave., N W , Suite 810  
Washington, DC 20036  
Telephone (202) 887-0037  
Facsimile (202) 833-1219

**Conclusion**

As provided by 49 CFR §1182 and for the reasons set forth herein, the Surface Transportation Board is requested respectfully to approve this application and authorize the transaction and acquisition of control as described herein.

Respectfully,

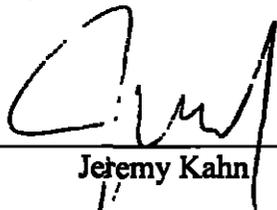
  
Jeremy Kahn  
Counsel for the Parties

Jeremy Kahn, Esq.  
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Washington, DC 20036  
Telephone (202) 887-0037  
Facsimile (202) 833-1219

**Certificate of Service**

I hereby certify that as required by 49 CFR §1182.3, I have served a copy of the foregoing Application by mailing a copy thereof, via First Class Mail, postage prepaid on (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590; and (4) the state regulatory agency for the state in which one or more of the involved carriers hold intrastate authority, namely the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250.

Dated at Washington, DC, this 5th day of March, 2009.

  
\_\_\_\_\_  
Jeremy Kahn