

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: March 22, 1995

Resolution No. L-247

R E S O L U T I O N

BACKGROUND

By letter dated March 9, 1995, the law firm of Taylor, Scott, Nichols and Matteuci (Taylor & Scott), on behalf of Hilltop Ford, formally requested release of records pursuant to Section 3.4 of General Order 66-C. Taylor & Scott seek the investigative report prepared in connection with I.94-11-031 issued pursuant to the Commission's Enforcement Section's investigation of U.S.A. Airporter and Angelo Abed. Taylor & Scott subpoenaed these records on February 10, 1995. By letter dated February 17, 1995, staff responded that the report was privileged and would not be produced, in accordance with General Order 66-C. Taylor & Scott's appeal of the staff's determination was properly filed with the Executive Director.

DISCUSSION

Although General Order 66-C prohibits staff disclosure of confidential information contained in the Transportation Division's investigative report until such time as it has been formally introduced into evidence, neither the general order nor the underlying statutes create for the carrier an absolute privilege of nondisclosure. For good cause shown, the Commission may authorize or direct the disclosure of such information.

According to the appeal filed by Taylor & Scott, the Transportation Division's investigative report prepared in 1994 regarding U.S.A. Airporter and Angelo Abed would shed light on Mr. Abed's personal injury claim against Hilltop Ford. Mr. Abed claims that due to his absence from his business as a result of the injuries he sustained in the subject accident, his business deteriorated to the extent that he ultimately went out of business when his operating authority was suspended/revoked by the Commission in early December, 1994.

On November 22, 1994, the Commission issued Order Instituting Investigation No. 94-11-031. The OII was based on a declaration by Richard Molzner, staff investigator, that he had investigated the business practices of Angelo Abed, and that the investigation revealed that the respondent may have violated numerous provisions of the PU Code, including operation during a period of suspension or revocation and failure to obtain and file evidence of insurance coverage. The declarations supporting issuance of the OII were based on the investigative report.

Mr. Abed failed to request a hearing and thus an ex parte order is expected to issue, permanently revoking Mr. Abed's operating authority. Thus, the investigative report referenced

in the OII will not be introduced into evidence, and can only be released by the full Commission.

According to Taylor & Scott, Mr. Abed's personal injury claim alleges that the sole reason he lost his business was due to the injuries he sustained in the accident. Taylor & Scott believes that the staff investigative report is relevant and critical to allow the defense a full opportunity to determine whether there were other circumstances unrelated to the subject accident which led to the loss of Mr. Abed's operating authority.

Taylor & Scott has subpoenaed Richard Mólzner, staff investigator who prepared the report, to appear at a deposition in San Francisco as an expert witness regarding Commission insurance requirements as well as the staff's investigation of Angelo Abed and U.S.A. Airporter. Unless the report is released, it will be difficult to ensure that Mr. Mólzner does not inadvertently refer to any privileged material contained in the report which is not otherwise available in public documents.

Because this information is relevant to a major issue in a personal injury action and the disclosure of the information would not compromise an investigation by the Commission's Transportation Division, good cause has been established for releasing the investigative report concerning U.S.A. Airporter and Angelo Abed. We also note that according to Taylor & Scott's March 9, 1995 letter, a copy of their appeal was sent to the attorney for Angelo Abed. However, the Commission has not received any opposition to Taylor & Scott's appeal. In view of the above, the request for disclosure of the investigative report concerning U.S.A. Airporter and Angelo Abed is granted. This resolution shall be made effective twenty days from today.

#### FINDINGS OF FACT

1. A request for the investigative report of the Enforcement Section in the Transportation Division concerning U.S.A. Airporter and Angelo Abed was denied by staff on February 17, 1995, in accordance with General Order 66-C.
2. An appeal of the staff denial to the full Commission has been properly filed.
3. The information in the investigative report appears relevant to an issue in a personal injury action.
4. Disclosure of the investigative report will not compromise the investigation, which is complete.
5. Due the respondent's failure to request a hearing, an ex parte order is expected to issue permanently revoking the carrier's operating authority.
6. Under these circumstances, the public interest in disclosure clearly outweighs the public interest in confidentiality.

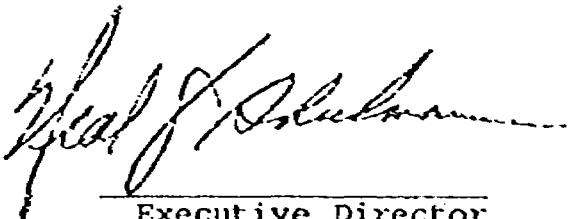
### CONCLUSIONS OF LAW

1. The Commission staff properly denied the release of the Transportation Division's investigation files in accordance with General Order 66-C.
2. General Order 66-C prohibits the disclosure of this report, unless ordered by the Commission or to the extent disclosed at a formal hearing.
3. There will be no formal hearing since an ex parte order is expected to issue, permanently revoking the carrier's authority.
4. General Order 66-C does not create for a utility or a carrier an absolute privilege of nondisclosure.
5. Under the specific facts of this case, the public interest in disclosing the Transportation Division's investigative report concerning U.S.A. Airporter and Angelo Abed clearly outweighs the public interest served by confidentiality.

### ORDER

1. The appeal and formal request of Taylor & Scott for the Transportation Division's investigative report concerning U.S.A. Airporter and Angelo Abed concerning the investigation which led to the issuance of I.94-11-031 is granted.
2. The effective date of this order is 20 days from today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 22, 1995. The following Commissioners approved it:



Executive Director

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners