



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 12th day of June, 2006.

**Platinum Jet Management, LLC,
Michael F. Brassington,
Andre Budhan, and
Paul Brassington**

**Violations of 49 U.S.C. §§ 41301, 41703,
and 41712**

Docket OST 2006-23528

Served June 12, 2006

CONSENT ORDER

This consent order concerns Platinum Jet Management, LLC, (Platinum) and its owners and officers, Michael F. Brassington, Andre Budhan, and Paul Brassington (hereinafter, along with Platinum, collectively referred to as "Respondents"), who engaged in air transportation without requisite Departmental economic authority in violation of 49 U.S.C. §§ 41301, 41703, and 41712. This order directs Platinum to cease and desist from further violations of these statutory provisions and assesses Platinum a \$150,000 civil penalty in compromise of penalties otherwise due and payable for the violations at issue. It also separately directs Messrs. Brassington, Budhan, and Brassington in their individual capacities to cease and desist from further violations of these statutory and regulatory provisions and jointly and severally assesses them a \$25,000 civil penalty in compromise of penalties otherwise due and payable for the violations at issue.

According to the Office of Aviation Enforcement and Proceedings (Enforcement Office), on February 2, 2005, a Bombardier Challenger CL-600, registered as N370V and operated by Platinum, overran the departure end of Runway 6 at the Teterboro Airport, in Teterboro, New Jersey. A post-accident investigation by the Enforcement Office revealed that for a period of at least one year prior to the accident Platinum offered to the public and operated charter air transportation without holding economic authority to do so. The investigation also revealed that, during this time, ownership of Platinum resided entirely with three individuals: Michael F. Brassington, who also served as the Platinum's president and chief executive officer, Andre Budhan, who served as its vice president, and Paul Brassington, who served as its treasurer. As holders of 100 percent of its ownership stake and as its executive officers, these individuals were in control of and the animating force behind Platinum's operations. Moreover, at all times relevant to this

order, Michael Brassington, was not a citizen of the United States. As a consequence, Platinum was not a citizen of the United States.¹

Non-United States citizens that, directly or indirectly, engage in air transportation by holding out and/or providing to the public transportation by air for compensation or hire, must have economic authority to do so from the Department.² Such authority may be either in the form of a foreign air carrier permit issued pursuant to 49 U.S.C. §§ 41301 and 41302, or in the form of an exemption from those provisions pursuant to 49 U.S.C. § 40109, such as those applicable to direct air carriers operating as Canadian charter air taxis registered under 14 CFR Part 294 or to indirect air carriers functioning as public charter operators pursuant to 14 CFR Part 380. Common carriage air service by a non-U.S. citizen carrier that is provided into or out of the United States without the requisite economic authority violates section 41301 and constitutes an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In the absence of express Departmental authorization, the carriage of local traffic for compensation or hire by non-U.S. citizen carriers between two points in the U.S., a practice commonly referred to as cabotage, violates 49 U.S.C. § 41703.³ Moreover, a non-U.S. citizen carrier that without authorization holds out to the public, either expressly or by course of conduct, that it provides cabotage commits a separate and distinct violation of 49 U.S.C. §§ 41301 and 41712 from that described in the preceding paragraph.

While Platinum asserts that it provided nothing more than aircraft management services, which do not require economic authority from the Department, Platinum's conduct, as viewed by the Enforcement Office, was, in fact, that of a direct air carrier. The circumstances leading to Platinum's unlawful conduct began as early as November 2003, when Platinum entered into three separate charter management agreements (CMAs) with Darby Aviation d/b/a Alphajet (Darby), an air taxi that held valid economic authority to engage in air transportation as an air taxi registered with the Department under 14 CFR Part 298.⁴ Under the CMAs, in return for "monthly certificate fees" of several thousand

¹ Under 49 U.S.C. § 40102(a)(15), in order for a corporation to be a "citizen of the United States" for aviation licensing purposes, among other requirements, its president must be a citizen of the United States.

² Such entities must also hold "safety" authority in the form of operations specifications issued by the Federal Aviation Administration (FAA) under 14 CFR Part 129.

³ The pertinent language of 49 U.S.C. § 41703 states that foreign civil aircraft may "take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if - (1) specifically authorized under section 40109(g) of this title... ." As defined in 14 CFR 375.1, a foreign civil aircraft is "(a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States."

⁴ Darby's complicity in this matter was the subject of a separate consent order that has since become a final order of the Department. *Darby Aviation, Inc., d/b/a Alphajet International, Violations of 49 U.S.C. § 41712*, Order 2005-12-1 (Dec. 1, 2005). In addition, on May 26, 2005, the National Transportation Safety Board (NTSB) affirmed a March 23, 2005, FAA emergency order suspending Darby's Part 135 air

dollars from Platinum, Darby placed Platinum's three Challenger aircraft, including N370V, on its FAA Part 135 operations specifications.

Although the CMAs gave Darby the power to market and operate Platinum's aircraft for third-party charters, in practice, according to the Enforcement Office, Platinum performed these functions for itself independently of Darby, whose activities chiefly comprised the collection of the monthly certificate fees. Using Darby's certificate number, the Enforcement Office believes that Platinum held *itself* out as a licensed operator of charter air transportation aboard the Challenger aircraft and, as a principal in its own right, entered into contracts with charterers to provide that transportation.⁵ Moreover, a review of Platinum's conduct in fulfilling those contracts convinces the Enforcement Office that Platinum, rather than Darby, acted as the direct air carrier operating the flights. For example, among other things, Platinum hired, employed, trained, and dispatched all of the pilots and flight attendants used aboard the flights that it sold aboard the Challenger aircraft, Platinum performed or arranged and paid for the maintenance of the aircraft, Platinum kept the maintenance records on the aircraft, Platinum provided flight scheduling and following for the aircraft, and Platinum held itself out to the public as the direct air carrier. By engaging in the conduct described above, i.e., holding out, selling, and operating charter air transportation in its own right without Departmental economic authority, Platinum violated 49 U.S.C. §§ 41301 and 41712.

The Enforcement Office emphasizes that the unauthorized air transportation provided by Platinum was not the product of the CMAs *per se*. Rather, it was the product of how the CMAs were executed and the manner in which the Enforcement Office believes that Platinum marketed and performed its charter services generally. A properly conceived and executed CMA would have limited the manner in which charter services could be marketed and provided, such that consumers would have no doubt that they were dealing with the entity that holds the requisite economic authority.⁶ Thus, marketing and sales should have been done only in Darby's name, either by Darby itself or by a *bona fide* agent acting on Darby's behalf, which could include the owner or manager of an aircraft placed on Darby's operations specifications. In the instant case, however, the placement of the aircraft on Darby's operations specifications appears to the Enforcement Office to have been an artifice used by Platinum to deceive consumers into thinking that it was a

carrier certificate on the grounds that Darby failed to maintain operational control of the aircraft that it ostensibly managed for Platinum. *Administrator v. Darby Aviation d/b/a AlphaJet* NTSB Order EA-5159. As of this date, Darby's suspension has been lifted for air taxi operations with aircraft located at its principal base of operations.

⁵ Between November, 2003, and February, 2005, Platinum offered and provided to multiple entities air transportation between points in the United States and other points in the United States, and between points in the United States and points outside the United States, namely Canada and the Caribbean.

⁶ Moreover, a properly conceived and executed CMA would require that Darby maintain operational control over the aircraft to the satisfaction of the FAA.

licensed direct air carrier.⁷ The result deprived consumers of the protections afforded them on licensed common carriers.

As noted above, Platinum was not a United States citizen for Departmental aviation licensing purposes during the course of its unauthorized operations. Therefore, Platinum's aircraft, though U.S. registered, are "foreign civil aircraft"⁸ and thus unable to carry local traffic for compensation or hire between points in the United States. During the course of the Enforcement Office's investigation, it became apparent that a substantial number of the otherwise unauthorized charter flights that Platinum operated also involved the carriage of such traffic in violation of the prohibition against cabotage, 49 U.S.C. § 41703.

In mitigation, Respondents state that Platinum entered into a valid CMA with Darby that was approved by the local FAA Flight Standards District Office (FSDO). Platinum contends that, because 1) all of its operations were conducted under the supervision of that FSDO and 2) Darby had the requisite economic authority required by the Department, Platinum reasonably believed that it did not need economic authority in its own right. Further, Platinum submits that, had it known that it was required to obtain such authority, it easily could have done so based on the facts and circumstances of this case.⁹ For example, according to Platinum, it had more than the required liability insurance in place to meet the requirements of the Department. Further, under the CMAs with Darby, Darby was to maintain operational control of all Part 135 flights. Platinum asserts that it relied on Darby's purported expertise as a registered air taxi to ensure compliance with all Departmental requirements, including that relating to economic authority. Accordingly, Platinum states that it specifically negotiated and contracted in a manner which required Darby to maintain operational control of the resources that Platinum provided under the CMAs. Platinum believes that Darby held itself out as having proper economic authority, a proper Part 135 certificate, and as an expert to assure proper operation of aircraft in compliance with all Departmental and FAA regulations. Platinum asserts that all aircraft were listed on Darby's operations specifications and all of the pilots on flights using those aircraft were listed with Darby, thereby, in Platinum's view, ensuring that the flights were undertaken pursuant to Darby's operational authority and control. Hence, in Platinum's view, the alleged violations of the Department's regulations at issue herein were the result of Darby's failure to maintain operational control, rather than any conduct by Platinum. In addition, Platinum submits that none of the alleged violations set forth in this consent order are in any way related to the cause of

⁷ Even if agency relationships are properly established, the Department considers it to be an unfair and deceptive practice and an unfair method of competition for an agent to permit its name or logo to be used in a manner that would induce members of the public to believe that the agent is an air carrier. 14 CFR 399.80(a).

⁸ See Note 3, *supra*.

⁹ Assuming that the carrier could otherwise be found fit or exempted from the fitness requirement by the Department, the Enforcement Office notes that Platinum could not have received economic authority to engage in interstate air transportation unless the Department determined that it was a U.S. citizen corporation as defined in 49 U.S.C. § 40102(a)(15).

the accident on February 2, 2005, in Teterboro, New Jersey. Further, Platinum and its principals are entering into this consent order for the sole purpose of avoiding the costs of litigation for both Platinum and the taxpayers should the Enforcement Office institute a formal enforcement proceeding against Platinum and/or its principals. Platinum and its principals submit that they do not have the financial resources to defend themselves in such a proceeding.¹⁰ Thus, Platinum and its principals feel that the best resolution of this matter is to agree to this consent order. Lastly, by entering into this consent order, Platinum and its principals neither admit nor deny any violation of statute, rule, regulation, or ordinance, and payment of any penalty is without admission of fact, fault, liability, or obligation.

The Enforcement Office views seriously attempts by individuals and companies to circumvent Departmental licensing requirements by engaging, as Respondents have, in what is, in effect, a "rent-a-certificate" arrangement with an authorized carrier. We have carefully considered the facts of this case, including Respondents' explanation for their actions, and continue to believe that enforcement action is necessary. Accordingly, Platinum Jet Management, LLC, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712 and to the assessment of \$150,000 in compromise of potential civil penalties. Of this total amount, \$75,000 shall be paid under the terms described below. The remaining \$75,000 shall be suspended for two years following the date of issuance of this order and then forgiven, unless Platinum Jet Management, LLC, violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Platinum Jet Management, LLC, may be subject to further enforcement action.

In addition, in their personal capacities, Michael F. Brassington, Andre Budhan, and Paul Brassington, in order to avoid litigation and without admitting or denying the alleged violations, agree to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712 and to the assessment jointly and severally of \$25,000 in compromise of potential civil penalties. Of this total amount, \$12,500 shall be paid under the terms described below. The remaining \$12,500 shall be suspended for two years following the date of issuance of this order and then forgiven, unless Michael F. Brassington, Andre Budhan, or Paul Brassington violate this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and these individuals may be subject to further enforcement action.

The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest and establishes a deterrent against similar unlawful operations by Platinum Jet Management, LLC, as well as by other similarly situated companies.

¹⁰ Platinum asserts that currently it has no assets and is unable to pay any civil penalty. However, Platinum advises us that it is involved in litigation that arises from the same set of circumstances that give rise to this consent order. Should Platinum prevail, it expects that a portion of the proceeds from this lawsuit will be available to satisfy the civil penalty payable under this consent order.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest.
2. We find that Platinum Jet Management, LLC, Michael F. Brassington, Andre Budhan, and Paul Brassington violated 49 U.S.C. § 41301, as described above, by engaging in air transportation without appropriate economic authority.
3. We find that Platinum Jet Management, LLC, Michael F. Brassington, Andre Budhan, and Paul Brassington violated 49 U.S.C. §§ 41301 and 41703 by holding out and performing air transportation for compensation or hire between points in the United States.
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Platinum Jet Management, LLC, Michael F. Brassington, Andre Budhan, and Paul Brassington engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
5. We order Platinum Jet Management, LLC, and all other entities owned and controlled by or under common ownership and control with Platinum Jet Management, LLC, and their successors and assignees to cease and desist from further similar violations of 49 U.S.C. §§ 41301, 41703, and 41712.
6. We order Michael F. Brassington, Andre Budhan, and Paul Brassington to cease and desist from further similar violations of 49 U.S.C. §§ 41301, 41703, and 41712.
7. We assess Platinum Jet Management, LLC, a compromise civil penalty of \$150,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$25,000 shall be due and payable on April 30, 2007, \$25,000 shall be due and payable on July 30, 2007, and \$25,000 shall be due and payable on October 30, 2007. The remaining \$75,000 shall be suspended for 24 months after the service date of this order, and then forgiven unless Platinum Jet Management, LLC, violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Platinum Jet Management, LLC, may be subject to further enforcement action. Failure to pay this penalty as ordered shall subject Platinum Jet Management, LLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.
8. We jointly and severally assess Michael F. Brassington, Andre Budhan, and Paul Brassington a compromise civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$4,500 shall be due and payable on June 30, 2006, \$4,000 shall be due and payable on October 30, 2006, and \$4,000 shall be due and payable on April 30, 2007. The remaining \$12,500 shall be suspended for 24 months after the

service date of this order and then forgiven unless Michael F. Brassington, Andre Budhan, or Paul Brassington violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and the violator may be subject to further enforcement action. Failure to pay this penalty as ordered shall subject Michael F. Brassington, Andre Budhan, and Paul Brassington to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.

9. We order Platinum Jet Management, LLC, and Michael F. Brassington, Andre Budhan, and Paul Brassington to make the payments set forth in ordering paragraphs 7 and 8, respectively, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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