



interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom adjudication may be granted.<sup>3</sup>

**B. Whether MCM Provided Services Only to RBG**

MCM's argument is simply that RBG was the owner of the planes and the provider of any transportation in the planes. Just as the fuel company who sold fuel for the flights provided fuel to RBG, not to the candidates, MCM contends that it merely provided pilots to RBG, and that it should not be deemed to have provided piloting services to the individual passengers on the plane. MCM has established by uncontroverted affidavit that it supplies pilots to RBG as part of a barter arrangement.<sup>4</sup>

The administrative law judge initially recommended denial of MCM's motion because the written record contained evidence that MCM pays all costs for RBG planes, including maintenance, insurance, and hangar costs.<sup>5</sup> From that evidence, one could infer that the planes are essentially operated by MCM, and that it was MCM that provided the transportation to the candidates. At oral argument before the Commission, however, all counsel conceded that there is a true-up of expenses between RBG and MCM, so that RBG ultimately bears the operating costs for the aircraft even if MCM initially pays some of those expenses.

Moreover, counsel for RBG, Gillam, and MCM stipulated that RBG, and not MCM, provided all of the transportation services at issue in this case. Although RBG contends that the value of pilot services and other non-fuel costs should not be considered in valuing the transportation, RBG concedes that if these were components of the transportation they were furnished by RBG and were not separately provided by MCM.

Because the record is now clear that the transportation provided to respondents Kalmakoff and Ravenmoon was provided entirely, and solely, by RBG as the entity that owned, operated, and controlled the aircraft, MCM is entitled to dismissal.

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<sup>3</sup> *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000).

<sup>4</sup> Second Affidavit of Diane Wilke, ¶ 2.

<sup>5</sup> Exhibit 6 to staff opposition (excerpt from Deposition of Diane Wilke).

**C. Conclusion**

The motion for summary adjudication is granted. McKinley Capital Management, LLC is dismissed as a respondent in this matter.

DATED this \_\_\_\_<sup>th</sup> day of September, 2011.

BY ORDER OF THE COMMISSION

By: \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

The undersigned certifies that on September 19, 2011, this order was distributed by **e-mail attachment** to the following: Timothy McKeever and Scott Kendall , counsel for Gillam and RBG; John Ptacin, Assistant Attorney General), counsel for the APOC staff; J.L. McCarrey , counsel for McKinley Capital; William Ingaldson and Peter Maasen, counsel for Ravenmoon and Kalmakoff. Courtesy copies of this order were provided to Paul Dauphinais, APOC Executive Director, and Elizabeth Hickerson, APOC Chair.

Signed \_\_\_\_\_  
Kimberly DeMoss

[This document has been modified to conform to the technical standards for publication.]

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALASKA PUBLIC OFFICES COMMISSION**

ALASKA PUBLIC OFFICES COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ROBERT BYRON GILLAM, McKINLEY	)	
CAPITAL MANAGEMENT, LLC, RBG BUSH	)	
PLANES LLC, NANA KALMAKOFF, and	)	
MICHELLE RAVENMOON,	)	
	)	
Respondents.	)	OAH No. 11-0328-APO
_____	)	Agency No. 11-09-CD

**ORDER DENYING RECONSIDERATION**

The APOC staff moved on September 28, 2011 for reconsideration of the commission’s order granting summary adjudication and dismissal to respondent McKinley Capital Management, LLC (MCM). Commissioners Hickerson, Kirk, and King have deliberated the motion.

The commission determines that is has authority to grant reconsideration of the challenged order.

The commission granted summary adjudication to MCM on the basis that the evidence in the record showed that MCM bartered pilot services, in bulk, to RBG Bush Planes LLC (RBG), rather than furnishing pilots to the individual passengers who traveled on the various flights directed by RBG. Hence, the evidence showed that MCM supplied no services to—and therefore can have made no in-kind contribution to—passengers Kalmakoff and Ravenmoon. Instead, it was RBG that furnished transportation (including seats on the plane, piloting, and all other components) to the two passengers.

In seeking reconsideration, the staff has supplied no affidavits, testimony, or other evidence that the arrangement between RBG and MCM was a sham.<sup>6</sup> The staff has not

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<sup>6</sup> In key respects, the staff has relied on argument and briefing for evidentiary support. *See, e.g.*, footnote 6 to Motion for Reconsideration. Elsewhere, the staff’s evidentiary citations are not on point.

contended that it requires further discovery, and has sought no continuance to develop additional evidence.<sup>7</sup> As the record stands, MCM is entitled to dismissal.

In reaching this conclusion, the commission acts on the specific factual record before it. The commission does not rule out that, on a different record, a supplier of a component of a service might be deemed to have made a contribution directly “to” the consumer of that service.

DATED this 19<sup>th</sup> day of October, 2011.

BY ORDER OF THE COMMISSION

By: Signed  
Christopher Kennedy  
Administrative Law Judge

The undersigned certifies that on October 19, 2011, this order was distributed by **e-mail attachment** to the following: Timothy McKeever and Scott Kendall , counsel for Gillam and RBG; John Ptacin, Assistant Attorney General, counsel for the APOC staff; J.L. McCarrey, counsel for McKinley Capital; William Ingaldson and Peter Maasen, counsel for Ravenmoon and Kalmakoff. Courtesy copies of this order were provided to Paul Dauphinais, APOC Executive Director, and Elizabeth Hickerson, APOC Chair.

Signed  
Jessica Ezzell

[This document has been modified to conform to the technical standards for publication.]

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<sup>7</sup> Cf. Alaska R. Civ. P. 56(f).