

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**AAA AUTO TRANSPORT,
INC.,
U.S. DOT No. 2870355**

**L3 TRUCKING, LLC,
U.S. DOT No. 2850030**

and

**L3 TRANSPORTATION, LLC,
U.S. DOT No. 3491647**

Petitioners.

**Docket No. FMCSA-2022-0138
(Southern Service Center)**

**FINAL ORDER ON PETITION FOR ADMINISTRATIVE REVIEW
OF OPERATIONS OUT-OF-SERVICE AND RECORD CONSOLIDATION ORDER**

I. Background

On May 24, 2022, the Field Administrator for the Southern Service Center (FA), Federal Motor Carrier Safety Administration (FMCSA or Agency), issued an Operations Out-of-Service and Record Consolidation Order (Order) to the following entities: AAA Auto Transport, Inc. (AAA); L3 Trucking, LLC (L3); and L3 Transportation, LLC (L3 Trans) (hereinafter collectively referred to as Petitioners).¹ The Order alleged that:

¹ The Order number is GA-2022-9004-RCO.

- (1) L3 affiliated with and reincarnated as AAA to avoid L3's negative safety, performance, and compliance history, which included a proposed Unsatisfactory safety rating, a Conditional safety rating, and negative Safety Management System (SMS) scores; and
- (2) L3 affiliated with and/or reincarnated as L3 Trans by attempting to operate as a motor carrier to avoid L3's negative SMS scores and to avoid possible FMCSA actions and oversight.

On June 7, 2022, all three Petitioners filed a joint petition for administrative review of the Order (Petition). On June 30, 2022, the FA served his Submission of Evidence and Argument in Support of Record Consolidation Order Under 49 CFR 386.73 (FA's Response).

II. Burden of Proof

The Field Administrator has the burden of demonstrating by a preponderance of the evidence² that a carrier's purpose in operating under a new identity or as an affiliated carrier as set forth in 49 CFR 386.73(a) (out-of-service order) and 386.73(b) (record consolidation order) was improper. A carrier operates with an improper purpose if it creates a new identity or operates through an affiliate to: "(1) Avoid complying with an FMCSA order; (2) Avoid complying with a statutory or regulatory requirement; (3) Avoid paying a civil penalty; (4) Avoid responding to an enforcement action; or (5) Avoid being linked with a negative compliance history." To demonstrate reincarnation or affiliation, the Field Administrator must prove that at least one of these five purposes occurred.

Section 386.73(c) of 49 CFR provides that the Field Administrator may determine that a

² To establish by a preponderance of the evidence means that something is more likely so than not. *See Commodity Carriers, Inc.*, FMCSA-2001-8676-0007, at 11, n.3, Final Order: Decision on Petition for Safety Rating Review (June 30, 2004) (citing *Blossom v. CSX Transp. Inc.*, 13 F.3d 1477, 1482 (11th Cir. 1994)).

carrier is a reincarnation of another carrier if there is substantial continuity between the entities such that one is a mere continuation of the other. It also provides that the Field Administrator may determine that a carrier is an affiliate if the business operations are under common ownership and/or control.³

Section 386.73(c)(2) - (13) of 49 CFR identifies a number of factors the Field Administrator may consider to determine whether a carrier is a reincarnation or affiliate of another carrier. These factors include, but are not limited to, the previous entity's safety performance history, consideration exchanged for assets purchased or transferred, dates of company creation and dissolution or cessation of operations, commonality of ownership between the current and former company, commonality of officers and management personnel, identity of physical or mailing addresses, telephone, facsimile (fax) numbers, or e-mail addresses, identity of motor vehicle equipment, continuity of liability insurance policies or commonality of coverage under such policies, commonality of drivers and employees, continuation of carrier facilities and other physical assets, and continuity or commonality of nature and scope of operations, advertising, corporate name, or other acts through which the company holds itself out to the public.

These factors, however, are merely a guide and no single factor is dispositive.⁴

Moreover, while the Field Administrator may consider these factors, similarities based upon the

³ To be affiliated with each other, carriers "shift customers, vehicles, drivers, and other operational activities to [an] affiliated company when FMCSA places one of the commonly controlled companies out of service." *See* 77 Fed. Reg. 24863, at 24865 (Apr. 26, 2012). Therefore, affiliation involves more than common ownership or control.

⁴ *See Transporters, LLC, and Nalar Leasing, Inc.*, FMCSA-2014-0318-0003, at 3, Final Order on Petition for Administrative Review of Operations Out-of-Service and Record Consolidation Order (Sept. 11, 2014).

factors in 49 CFR 386.73(c)(2) through (c)(13) do not necessarily lead to the conclusion that one carrier is the reincarnation or an affiliate of the other.⁵ Even if the carriers are substantially the same, the Field Administrator must still demonstrate that the carriers had an improper purpose for the reincarnation or affiliation.

III. Discussion

A. The Order

The Order alleged:

- (1) On December 4, 2015, L3 filed Articles of Organization with the Georgia Secretary of State and filed annual registrations thereafter. The documents identified Rafid D. Al Zubaidi as the organizer, member, and manager.
- (2) L3 filed Forms MCS-150 with FMCSA, which identified Mr. Al Zubaidi as the owner.
- (3) On December 16, 2016, FMCSA issued a warning letter to L3, notifying the carrier of significant non-compliance in the area of hours-of-service compliance.
- (4) On June 6, 2017, FMCSA completed a new entrant safety audit of L3, with a Fail result.
- (5) On June 30, 2017, the FA issued L3 an acceptance of corrective action letter.
- (6) On November 13, 2017, FMCSA issued a warning letter to L3, notifying the carrier of significant non-compliance in the areas of hours-of-service compliance and vehicle maintenance.

⁵ See *MCW Trucking, Inc. and WBB Investments LLC dba Ward Brothers Trucking*, FMCSA-2012-0476-0003, at 9, Final Decision on Petition for Administrative Review of Operations Out-Of-Service and Record Consolidation Order (Mar. 21, 2013).

- (7) On August 27, 2020, L3 Trans filed Articles of Organization with the Georgia Secretary of State. Mr. Al Zubaidi was identified as the organizer and registered agent, and his address was listed as 889 Creekdale Drive, Clarkston, Georgia.
- (8) On September 22, 2020, L3 Trans filed an application for operating authority registration (Form MCSA-1) with FMCSA. The document identified Mr. Al Zubaidi as the owner and L3.major@yahoo.com as the carrier's e-mail address. The document further identified a relationship with L3 and stated that L3 had a Satisfactory rating.
- (9) On October 26, 2020, FMCSA contacted L3 to initiate a compliance investigation of the carrier due to its status as a high-risk carrier.
- (10) On October 29, 2020, FMCSA dismissed L3 Trans's operating authority registration (operating authority).
- (11) On May 6, 2021, FMCSA completed the compliance investigation of L3, and the carrier received a proposed Unsatisfactory safety rating.
- (12) On June 28, 2021, FMCSA issued an Order to Cease All Transportation in Interstate Commerce and Revocation of Registration, effective July 10, 2021, to L3.
- (13) On July 22, 2021, L3 submitted a request to upgrade its safety rating based on corrective action.
- (14) On August 10, 2021, Yousef Seha, President of AAA, entered into an agreement with Fawwaz H. Al Khafaji. Under the agreement, Mr. Seha conveyed his right, title, interest in, and ownership of, the corporation and its U.S. DOT and Motor Carrier numbers to Mr. Al Khafaji.

- (15) On August 11, 2021, AAA filed an Amended Annual Registration with the Georgia Secretary of State, which listed Mr. Al Khafaji as the chief executive officer (CEO) and chief financial officer (CFO), and Mr. Al Zubaidi as secretary.
- (16) On August 12, 2021, AAA filed a Form MCS-150 with FMCSA, with Mr. Al Khafaji listed as owner and Mr. Al Zubaidi as general manager (GM). Mr. Seha completed the certification statement.
- (17) On August 19, 2021, AAA filed a Form MCS-150 with FMCSA. Mr. Al Khafaji was identified as the carrier's owner, and Mr. Al Zubaidi was identified as its GM. Robert Walde completed the certification statement as the carrier's agent.
- (18) On August 19, 2021, the FA upgraded L3's Unsatisfactory safety rating to Conditional based on the carrier's request; however, on that same day, L3's operating authority was revoked because of cancelled insurance.
- (19) On September 28, 2021, L3's operating authority was reinstated.
- (20) On November 1, 2021, L3's operating authority was revoked again due to cancelled insurance. It currently remains revoked.
- (21) Also on November 1, 2021, L3 submitted another request to upgrade its safety rating to Satisfactory based on corrective action.
- (22) On December 1, 2021, the FA denied L3's safety rating upgrade request.
- (23) On January 12, 2022, AAA filed an Annual Registration with the Georgia Secretary of State. Mr. Al Khafaji was identified as CEO and CFO, Mr. Al Zubaidi was identified as secretary, and the document was signed by Mr. Al Zubaidi as the carrier's officer.

- (24) On March 7, 2022, AAA filed a Form MCS-150 with FMCSA. Mr. Al Khafaji was identified as the owner and Mr. Al Zubaidi was identified as GM.
- (25) On May 9, 2022, FMCSA completed an unrated off-site investigation of AAA. Mr. Al Zubaidi was present as the carrier's representative during the compliance investigation. The carrier was operating out of Mr. Al Zubaidi's residence at 3884 Cedar Circle in Tucker, Georgia.
- (26) Commonalities of ownership and management:
- (i) Mr. Al Zubaidi is the owner of L3 and L3 Trans, and the secretary and GM of AAA.
 - (ii) Mr. Al Zubaidi is in charge of all administrative functions for AAA, including daily operations, talking to drivers about load-related matters, safety administration, maintenance of company documents, and managing driver performance and contracts.
 - (iii) Mr. Al Khafaji is a friend of Mr. Al Zubaidi and resides at 3884 Cedar Circle, Tucker, Georgia; however, he is not involved in the operations of AAA.
- (27) Commonalities of Addresses:
- (i) AAA and L3 use the same business address of 3884 Cedar Circle, Tucker, Georgia.
 - (ii) L3 and L3 Trans also share a common business address and email address.

(28) Commonalities of drivers, equipment, and operations:

- (i) AAA and L3 used six common drivers.⁶
- (ii) AAA and L3 used seven common commercial motor vehicles (CMVs).
- (iii) AAA and L3 are for-hire property carriers and transport general freight, including auto parts. Both carriers acquire loads from websites.
- (iv) L3 and L3 Trans share a similar name and have similar operations as interstate property carriers.

B. The Petition

Petitioners accepted the Order's allegations regarding L3 and L3 Trans. Regarding the relationship between L3 and AAA, Petitioners stated that Mr. Al Khafaji purchased AAA from Mr. Seha on August 10, 2021, for \$35,000, and submitted copies of the Bill of Sale and the Purchaser's Acknowledgement of Non-Operation Purchase, Sale, and Transfer Agreement (Agreement).⁷

Petitioners acknowledged that Mr. Al Khafaji was listed as the registered agent, CEO, and CFO in an August 11, 2021 filing with the Georgia Secretary of State, with that filing also showing Mr. Zubaidi was the company's secretary. Petitioners also acknowledged that Mr. Al Khafaji and Mr. Al Zubaidi resided at the same address at the time of the August 2021 filing, but argued that Mr. Al Zubaidi has been removed as an employee of AAA. Petitioners submitted a copy of the Amended Annual Registration, dated August 11, 2021, filed with the State of Georgia, which showed a transfer of AAA's ownership from Mr. Seha to Mr. Al Khafaji, and

⁶ In his Response, the FA stated that the Order contained a typographical error in listing six, rather than five, common drivers.

⁷ See Petition, at 15-19; see also FA's Response, Exhibit O.

that Mr. Al Khafaji was the carrier's CEO and CFO and Mr. Al Zubaidi was the secretary.⁸

Petitioners also submitted an Amendment to the Article of Incorporation for AAA, which listed the carrier's sole owner as Mr. Al Khafaji, principal address as 3884 Cedar Circle, Tucker, Georgia, and registered agent as Ashwaq Sabri, with the same address. In addition, Petitioners submitted both Mr. Al Khafaji's and Mr. Al Zubaidi driver's licenses.⁹ Mr. Al Zubaidi's license is a commercial driver's license (CDL), and his address is 3884 Cedar Circle, Tucker, Georgia. Mr. Al Khafaji's address is listed as the same.

C. FA's Response and Evidence

The FA averred that Petitioners admitted the allegations in the Order regarding L3 and L3 Trans, and therefore, the two carriers' records are merged.¹⁰ Regarding L3 and AAA, the FA argued that the allegations in the Order should be upheld because AAA is a reincarnation of L3, and that the reincarnation was for improper purposes.¹¹

Specifically, the FA emphasized that the timing of L3's cessation and AAA's creation was particularly significant in the case. The FA averred that L3 was placed out of service for an Unsatisfactory safety rating on July 10, 2021, and one month later, on August 10, 2021, AAA was purchased and under the control of Mr. Al Zubaidi. Although L3's safety rating was upgraded to Conditional on August 19, 2021, the FA averred that its operating authority was revoked on the same day. While there was a five-week period from September to November

⁸ See Petition, at 20.

⁹ See *id.*, at 20-24.

¹⁰ The FA, however, also submitted some evidence to support the Order's allegations regarding L3 Trans. See FA's Response, Exhibits AA-CC.

¹¹ The FA noted that the Order asserted that AAA was a reincarnation or an affiliate of L3, but averred that the facts are more consistent with a reincarnation rather than an affiliation. See *id.*, at 6 n.6.

2021 when L3's operating authority was reinstated, the FA averred that there was no evidence that L3 actually operated after July 10, 2021, and L3's subsequent upgrade request to Satisfactory was denied.

Moreover, the FA argued that the day after the August 10, 2021 sale of AAA, AAA filed an Amended Annual Registration with the Georgia Secretary of State which, while listing Mr. Al Khafaji as CEO and CFO, listed Mr. Al Zubaidi as the carrier's secretary. On August 12, 2021, Mr. Al Khafaji was identified in a Form MCS-150 as the owner of AAA, but Mr. Al Zubaidi was identified as the GM. The FA averred that Mr. Al Zubaidi also represented AAA during its compliance investigation and was in charge of all administrative functions as alleged in the Order rather than Mr. Al Khafaji, who was a friend and lived at the same address. The FA argued that the one-month timing between L3's cessation and AAA's creation, with both carriers under the control of Mr. Al Zubaidi, supported a finding that L3 reincarnated as AAA.

Regarding additional commonalities supportive of reincarnation, the FA reiterated that L3 and AAA shared the same address (3884 Cedar Circle, Tucker, Georgia) and had similar operations (for-hire property carriers that transported general freight, including auto parts, and acquired loads from websites), drivers, and vehicles. The FA provided the names of the five drivers: (1) Moshtak Mreay; (2) Emad Abusamhadana; (3) Bilal Al Nejar; (4) Algburi Abdullah; and (5) Mohammed H. Abu Atwa. The FA also identified the seven common vehicles, with vehicle identification numbers (VINs) ending in 0079, 6443, 6452, 3881, 2512, 3704, and 1144.

The FA further argued that L3's reincarnation as AAA was for an improper purpose. Specifically, the FA argued that L3 reincarnated into AAA to avoid an Unsatisfactory safety rating and resulting Out-of-Service order, a Conditional safety rating, and negative SMS scores in unsafe driving, hours-of-service compliance, and vehicle maintenance categories from May

28, 2021, through August 27, 2021, as well as alerts in hours-of-service and vehicle maintenance from September 24, 2021, through October 29, 2021. Furthermore, the FA alleged that L3 was not content with a Conditional safety rating, and that it requested an upgrade to a Satisfactory rating, which FMCSA denied. The FA reported that Mr. Zubaidi had admitted to an FMCSA investigator that his insurance premiums had doubled and that brokers would not use his company because of its negative safety rating, and the FA averred that this admission supported a finding that AAA was created for an improper purpose.¹²

Regarding Petitioners' arguments, the FA stated that the bill of sale between Mr. Al Khafaji and Mr. Seha did not act as a shield to 49 CFR 386.73 actions, and that the evidence overwhelmingly indicated that L3 and AAA operated under the common control and/or ownership of Mr. Al Zubaidi.¹³ The FA also asserted that the removal of Mr. Al Zubaidi as an employee of AAA was not relevant to whether the carrier is a reincarnation of L3.¹⁴

In support of the contentions regarding the relationship between L3 and AAA as alleged in the Order, the FA submitted:

- (1) L3's Articles of Incorporation, dated December 4, 2015, which listed Mr. Al Zubaidi as Organizer and Member;¹⁵
- (2) L3's Annual Registrations filed in 2016-2022 with the State of Georgia, which described Mr. Al Zubaidi as Authorized Person, Organizer, or Manager for the

¹² *See id.* at 11.

¹³ *See id.* at 11-12.

¹⁴ *See id.*

¹⁵ *See id.*, Exhibit A.

company;¹⁶ L3's March 30, 2022 Annual Registration listed the carrier's principal address as 3884 Cedar Circle, Tucker, Georgia;¹⁷

- (3) L3's 2016-2021 Forms MCS-150 signed by Mr. Al Zubaidi as owner, with email address L3.Major@yahoo.com and listed business addresses of 889 Creekdale Drive, Clarkston, Georgia; 370 Aldridge Avenue, Scottdale, Georgia; and 1137 McLendon Drive, Apt. A, Decatur, Georgia.¹⁸ L3's March 2016 Form MCS-150 indicated that it transported various goods, including general freight, building materials, coal/coke, U.S. mail, beverages, paper products, and utility cargo; L3's July 2016-June 2021 Forms MCS-150 indicated that it transported general freight and auto parts.¹⁹
- (4) A December 16, 2016 FMCSA warning letter to L3 stating that the Agency had noticed a trend with violations observed during roadside inspections in the area of hours-of-service compliance;²⁰
- (5) A June 6, 2017 FMCSA new entrant safety audit report for L3, with Mr. Al Zubaidi described as Owner, and for which the carrier received a Fail result;²¹
- (6) A June 30, 2017 letter from FMCSA stating that the Agency accepted L3's Corrective Action Plan following its failed safety audit;²²

¹⁶ See *id.*, Exhibit B (L3's Annual Registrations dated February 18, 2016; January 21, 2017; January 2, 2018; January 9, 2019; January 1, 2020; January 4, 2021; and March 30, 2022).

¹⁷ See *id.*

¹⁸ See *id.*, Exhibit C; Forms MCS-150 dated March 29, 2016; July 13, 2016; August 24, 2017; February 7, 2018; September 18, 2019; and June 25, 2021.

¹⁹ See *id.*

²⁰ See *id.*, Exhibit D.

²¹ See *id.*, Exhibit E.

²² See *id.*, Exhibit F.

- (7) A November 13, 2017 FMCSA warning letter to L3, in which the Agency stated that it had noticed a trend with violations observed during roadside inspections in the areas of hours-of-service compliance and vehicle maintenance;²³
- (8) A June 28, 2022 report showing L3's SMS scores, indicating alerts in crash indicator, hours-of-service compliance, vehicle maintenance, and/or unsafe driving in 2020-2021;²⁴
- (9) A May 6, 2021 FMCSA compliance investigation report for L3, with Mr. Al Zubaidi as the carrier's listed contact, and resulting in a proposed Unsatisfactory safety rating;²⁵
- (10) A June 28, 2021 FMCSA Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration (Order to Cease), addressed to L3, and effective July 10, 2021. The Order to Cease was issued because L3 had failed to take necessary steps to improve its proposed Unsatisfactory safety rating within the required timeframe;²⁶
- (11) An August 19, 2021 FMCSA letter granting L3's July 22, 2021 upgrade request of the carrier's safety rating to Conditional based on corrective action;²⁷

²³ *See id.*, Exhibit G.

²⁴ *See id.*, Exhibit H.

²⁵ *See id.*, Exhibit J; A sample taken of L3's drivers during the compliance investigation was included in the report: Demelash Tamire, Emad Abusamhadana, Billal Al Nejar, Mohamad Abazeed, Rafid Al Zubaidi, Mreay Moshtak, Ahmad Khatatbeh, and Mohammed Abu Atwa. L3's vehicles included in the report were those with VINs ending in 3704, 3881, 6141, 9252, 6843, and 2983.

²⁶ *See id.*, Exhibit K.

²⁷ *See id.*, Exhibit L.

- (12) A copy of L3's Public Licensing and Insurance Record and Authority History, dated June 16, 2022, showing that L3's operating authority registration was revoked on August 19, 2021, reinstated on September 28, 2021, and revoked again on November 1, 2021;²⁸
- (13) A December 1, 2021 FMCSA letter to Mr. Al Zubaidi as Owner of L3, denying the carrier's request to upgrade its Conditional safety rating;²⁹
- (14) An August 11, 2021 Amended Annual Registration for AAA, listing Mr. Al Khafaji as CEO And CFO, Mr. Al Zubaidi as Secretary, and the address of 3883 Cedar Cir., Tucker, Georgia, as the carrier's address as well as the address for both individuals;³⁰
- (15) An FMCSA Form MCS-150 for AAA, dated August 12, 2021, in which Mr. Al Khafaji is listed as owner, and Mr. Al Zubaidi listed as GM. The form indicated that the carrier transported general freight, household goods, building materials, machinery and large objects, fresh produce, coal/coke, U.S. mail, beverages, paper products, utility, and farm supplies; and had five truck tractors and five trailers in its inventory;³¹
- (16) An August 19, 2021 FMCSA Form MCS-150 in which Mr. Al Khafaji was again listed as AAA's owner and Mr. Al Zubaidi as GM of AAA. The form indicated that the carrier transported general construction freight, building materials,

²⁸ See *id.*, Exhibit M.

²⁹ See *id.*, Exhibit N.

³⁰ See *id.*, Exhibit P. Mr. Al Khafaji and Mr. Al Zubaidi were listed as officers, replacing Mr. Yousef Seha in those roles.

³¹ See *id.*, Exhibit Q.

coal/coke, mail, beverages, paper products, utility, and farm supplies; and had six truck tractors and six trailers in its inventory;³²

- (17) A January 12, 2022 State of Georgia Annual Registration for AAA, which listed Mr. Al Khafaji as CEO and CFO, and Mr. Al Zubaidi as Secretary, with a principal address of 3883 Cedar Circle, Tucker, Georgia, and the two individuals using the same address. The document was signed by Mr. Al Zubaidi as an officer of AAA;³³
- (18) A March 7, 2022 FMCSA Form MCS-150 for AAA, listing Mr. Al Khafaji as owner and Mr. Al Zubaidi as GM. The form indicated that the carrier transported general construction freight, building materials, coal/coke, U.S. mail, beverages, paper products, utility, and farm supplies; and had six truck tractors and six trailers in its inventory;³⁴
- (19) A May 9, 2022 FMCSA compliance investigation report for AAA, listing Mr. Al Zubaidi—a friend of owner Mr. Al Khafaji—as the carrier’s contact and responsible for its safety and management functions, including managing all administrative functions (including daily operations), talking to drivers about load-related matters, safety administration, maintenance of company documents, managing driver performance, and managing contracts.³⁵ The carrier had six drivers and leased six truck tractors and eight trailers, and the report indicated that AAA and L3 were using four of the same drivers and two of the same CMVs.

³² See *id.*, Exhibit R.

³³ See *id.*, Exhibit S.

³⁴ See *id.*, Exhibit T.

³⁵ See *id.*, Exhibit U.

The Safety Investigator Narrative section of the report stated that Mr. Zubaidi spoke to Mr. Al Khafaji once per week to discuss the business, but that the owner was not involved in the daily operations of the business.³⁶ The FMCSA safety investigator noted that he spoke to Mr. Zubaidi about voluntary records consolidation between L3 and AAA, and that Mr. Zubaidi did not wish to accept that due to not wanting to disappoint Mr. Al Khafaji. Mr. Zubaidi proposed to the inspector that he would quit AAA and be a driver, and also offered to go back to driving as owner-operator of L3 and work to resolve the negative safety rating of that carrier with the help of a safety consultant.³⁷

- (20) L3's driver list, which the Declaration of FMCSA Enforcement Programs Specialist Bennie Cheatham attested was obtained during the May 6, 2021 compliance investigation from the carrier; a Driver/Vehicle Examination (DVER) Report for L3, dated February 11, 2021; and a Motor Carrier Information System (MCIS) Inspection Report for a January 27, 2020 inspection of the carrier;³⁸
- (21) AAA's driver list, which the Declaration of FMCSA Enforcement Programs Specialist Bennie Cheatham attested was obtained during its May 9, 2022

³⁶ *See id.*, Exhibit U, at 9.

³⁷ *See id.*, Exhibit U, at 12-13; The report contained a sample of AAA's previous and/or then-current drivers, who were described as: Emad Abusamhadana, Bilal Al Nejar, Abdullah Algburi, Ali Awad, and Moshtak Mreay. A sample of previous and/or then-current CMVs were also listed, with VINs ending in 1144, 2512, and 1936 specifically described.

³⁸ *See id.*, Declaration of Bennie Cheatham, at 8, Exhibit V. The driver list for the carrier included Rafid Al Zubaidi, Moshtak Mreay, Emad Abusamhadana, Bilal Al Nejar, and Ahmed Khatabeh. The DVER described driver Mohammed Abu Atwa, with truck tractor with VIN ending in 3881, and trailer with VIN ending in 6415 as being inspected (the semi-trailer was misidentified as a truck tractor in the DVER, with the MCIS identifying it as a semi-trailer).

compliance investigation from the carrier, with dates of hire shown as August 18, 2021;³⁹

- (22) DVERs for L3, dated August 18, 2020, August 27, 2020, February 2, 2021, February 11, 2021, and May 26, 2021;⁴⁰
- (23) AAA's vehicle list, which the Declaration of FMCSA Enforcement Programs Specialist Bennie Cheatham attested was obtained during a May 9, 2022 compliance investigation from the carrier, showing the carrier has eight trailers and six truck tractors (CMVs);⁴¹
- (24) Copies of Mr. Al Zubaidi's CDL and Mr. Al Khafaji's driver's license;⁴²
- (25) A June 30, 2022 Declaration of FMCSA Enforcement Programs Specialist, Bennie Cheatham, who conducted the May 9, 2022 compliance investigation of AAA and gathered evidence for this record consolidation case.⁴³

³⁹ See *id.*, Declaration of Bennie Cheatham, at 9, Exhibit W; Drivers listed were Abdullah Algburi, Ali Awad, Bilal Al Nejar, Emad Abusamhadana, Mohammed Abu Atwa, and Moshtak Mreay.

⁴⁰ See *id.*, Exhibit X. On August 18, 2020, the DVER listed driver Mrey, with a truck tractor with VIN ending in 2512 and a semi-trailer with VIN ending in 6452; on August 27, 2020, the DVER listed driver Abusamhadana, with a truck tractor with VIN ending in 1144 and a semi-trailer with VIN ending in 8155; on February 2, 2021, the DVER listed driver Al Nejar, with a truck tractor with VIN ending in 3704 and semi-trailer with VIN ending in 6443; on February 11, 2022, the DVER listed driver Abu Atwa, with a truck tractor with VIN ending in 3881 and a semi-trailer (described as truck tractor) with VIN ending in 6415; and on May 26, 2021, the DVER listed driver Ahmed Mohaisen, with a truck tractor with VIN ending in 2365, and a semi-trailer with VIN ending in 0079.

⁴¹ See *id.*, Exhibit Y. The trailers had VINs ending in 0079, 6443, 6452, 5176; 2095, 1105, 8177, 8175; the truck tractors had VINs ending in 3881, 2512, 3704, 1144, 6346, 1936.

⁴² See *id.*, Exhibit Z.

⁴³ See *id.*, Declaration of Bennie Cheatham.

D. Analysis

Petitioners admitted the allegations in the Order with respect to L3 and L3 Trans. Therefore, to the extent that the Order alleged that L3 Trans is a reincarnation or affiliate of L3 for improper purposes, the Order is upheld, and the two carriers' records are merged and consolidated.

Regarding the issue of whether AAA is a reincarnation or an affiliate of L3, a carrier is a reincarnation of another carrier if there is a substantial continuation between the entities such that one is a mere continuation of the other. One carrier is newly created or organized to evade an FMCSA requirement.⁴⁴ Thus, the timing of one carrier's creation and the dissolution or cessation of operations of the other carrier is typically significant.

Generally, "affiliation" anticipates something different from a "continuation;" instead of organizing a new carrier to evade an FMCSA requirement, the "new" carrier is already in existence. While the affiliate may not be active, it is usually available to become so because the steps necessary to create a legal identity for the company have already occurred.⁴⁵

I find that the timing of AAA's purchase and the actual cessation of L3 is significant and supports a reincarnation. AAA was in existence at the time of L3's cessation and had a history of doing business as an interstate motor carrier separate from L3; however, there is no evidence in the record that the two carriers were affiliated prior to the sale of AAA to Mr. Al Zubaidi's

⁴⁴ See *Transporters LLC, and Nalar Leasing, Inc.*, FMCSA-2014-0318-0003, at 13, Final Order on Petition for Administrator Review of Operations Out-of-Service and Record Consolidation Order (Sept. 11, 2014).

⁴⁵ See *Herman Gaston, Herman Gaston dba Farmers Transport, HL Gaston Trucking, LLC, and THL Trucking, LLC*, FMCSA-2014-0188-0004, at 23-24, Final Order on Petition for Administrative Review of Operations Out-Of-Service and Record Consolidation Order (July 23, 2014).

friend, Mr. Al Khafaji, which occurred after L3's Unsatisfactory safety rating became effective.⁴⁶ Rather, after L3 received an Unsatisfactory safety rating and Order to Cease (both effective July 10, 2021), AAA was purchased a mere month later on August 10, 2021, and Mr. Zubaidi began operating AAA as its officer and GM.⁴⁷ Although L3 was upgraded to a Conditional safety rating based upon corrective action after AAA was purchased, its operating authority registration was revoked on the same day as the upgrade (August 19, 2021).⁴⁸ While its operating authority registration was later reinstated for approximately five weeks before being revoked again in November 2021, the evidence indicates that the carrier ceased operating on July 10, 2021, when it was first placed out of service, and there is no evidence that it ever resumed operations.⁴⁹ Thus, the facts are consistent with a reincarnation rather than an affiliation.⁵⁰ I

⁴⁶ See *North Plus West, Inc.*, FMCSA-2017-0083-0004, at 31-32, 35, Final Order on Petition for Administrative Review of Operations Out-of-Service and Record Consolidation Order (May 9, 2017). In *North Plus West, Inc.*, the Assistant Administrator found an affiliation between three carriers because one carrier, which had been in existence, came under the control of the other two carriers' owner and began expanding its operations to encompass the other two carriers' operations once they received notices of their proposed Unsatisfactory safety ratings. The instant matter is distinguishable because Mr. Zubaidi did not begin operating AAA until after L3's Unsatisfactory safety rating became effective. See also *3RJ Trucking, LLC*, FMCSA-2014-0172-0004, Final Order on Petition for Administrator Review of Operations Out-of-Service and Record Consolidation Order (Jul. 1, 2014) (holding that the carrier Southern Lights was a reincarnation of the petitioner even though Southern Lights existed prior to the reincarnation).

⁴⁷ See FA's Response, Exhibit A; Petition at 17-19.

⁴⁸ I note that the record also indicates that during the May 9, 2022 compliance investigation of AAA, Mr. Al Zubaidi stated that insurance premiums for L3 had doubled, and brokers would not use his company because of the negative safety rating. See FA's Response, Exhibit U at 12.

⁴⁹ Despite the upgrade to a Conditional safety rating to L3 in September 2021, there appears to be no evidence of roadside activities or other operations for that carrier after July 2021 when it was first placed out of service. In the Agency's denial of L3's November 1, 2021 upgrade request to Satisfactory, the Agency found that L3's documents submitted to demonstrate corrective action were dated prior to the May 6, 2021 compliance investigation. See *id.*, Exhibit N.

⁵⁰ See *Dex Logistics, Inc.*, FMCSA-2013-0345-0006, at 14-16, Final Order for Administrative Review of Operations Out-of-Service Order and Record Consolidation Order (Mar. 7, 2014) (finding that, distinct from this case, there was evidence of an affiliation as well as a

note, however, that “[w]hether the companies were related as affiliates or were reincarnations makes little difference as long as [one or the other relationship existed and such relationship was created for] an improper purpose, which is the heart of the regulation”⁵¹

The evidence also demonstrates that a substantial portion of L3’s operations and assets were transferred to AAA after August 10, 2021, and there is a significant overlap in commonalities which support a finding of reincarnation. Indeed, while AAA and L3 have different owners, the evidence is overwhelming in demonstrating that Mr. Al Zubaidi was the controlling managerial interest in both carriers. There is no dispute that Mr. Al Zubaidi owned and operated L3. He also managed and operated AAA. Although Mr. Al Khafaji purchased and owned AAA (after August 10, 2021), Mr. Al Zubaidi, Mr. Khafaji’s friend and roommate, was exclusively involved in the operations of AAA after the sale.

Furthermore, Mr. Al Zubaidi was reported as the GM of AAA in filings with FMCSA after the August 10, 2021 purchase.⁵² While listed as the owner, Mr. Al Khafaji was not present during the FMCSA compliance investigation of the carrier, with the point of contact instead being Mr. Al Zubaidi.⁵³ Mr. Al Zubaidi informed an FMCSA investigator that Mr. Al Khafaji did not have managerial or operational responsibilities over AAA, and expressed that all such duties fell to him.⁵⁴ In discussions with the FMCSA inspector, Mr. Al Zubaidi noted that he

reincarnation because the former carrier continued to exist and operate for a period of time after the latter carrier was created as evidenced by the existence of roadside inspections).

⁵¹ See *Duane Gabel dba D Gabel Farms, Dirty Diesel Trucking and Repair LLC dba Dirty Diesel Trucking, and Gabel Farm Trucking, Inc.*, FMCSA-2017-0170-0005, at 16, Final Order on Petition for Administrative Review of Operations Out-of-Service and Record Consolidation Order (Aug. 1, 2017) (internal citations omitted).

⁵² See FA’s Response, Exhibits P-T.

⁵³ See *id.*, Exhibit U.

⁵⁴ See *id.* at 12. Mr. Zubaidi, as GM of AAA, described that he managed all of the company’s administrative functions, including daily operations, talking to drivers about load matters, safety

would inform Mr. Al Khafaji of the operations of the business only about once per week.⁵⁵

Moreover, Mr. Al Zubaidi consistently represented himself as the one operating and having managerial control of both carriers to the State of Georgia and FMCSA; in his filings for Petitioners, he was described as owner of L3 and as a corporate officer of AAA.⁵⁶ Therefore, the evidence demonstrates commonality of officers and management control.

The FA's evidence demonstrates that there were also other commonalities between these two carriers supporting a reincarnation. Both carriers had fewer than 10 drivers working for them at any one time, and they both shared five common drivers in their employ, which supports a finding that AAA is a continuation of L3.⁵⁷ In addition, both carriers used four common truck tractors (VINs ending in 3704, 2512, 3881, and 1144) and three common semi-trailers (VINs ending in 0079, 6443, and 6452).⁵⁸ According to its May 2021 compliance investigation and 2020-2021 DVER reports following roadside inspections, L3 used a total of 14 truck tractors or semi-trailers.⁵⁹ AAA reported six truck tractors and eight semi-trailers to FMCSA, which makes the overlap in common equipment significant and supportive of a finding of reincarnation.⁶⁰ Both carriers were involved in the same business of hauling the same types of goods, including

administration, maintenance of company documents, and managed driver performance and contracts. Mr. Zubaidi stated that while he spoke to Mr. Al Khafaji "maybe" once per week about the business, the owner was not involved in the daily operation of the business.

⁵⁵ *See id.*

⁵⁶ *See id.*, Exhibits A-C, P-T.

⁵⁷ *See id.*, Exhibits B, C, E, J, Q-X.

⁵⁸ *See id.*, Exhibits J, U-Y.

⁵⁹ *See id.*, Exhibits J, V, and X. The record indicates that L3 used a total of 14 truck tractors and semi-trailers in 2020 and 2021, but at the time of the May 2021 compliance investigation, the carrier reported using a total of 6 truck tractors and semi-trailers. *See id.*, Exhibit J. The FA reported that a vehicle list for L3 could not be obtained during the May 6, 2021 compliance investigation of that carrier.

⁶⁰ *See id.*, Exhibits Y and T.

general freight.⁶¹ There is also evidence of a common address between L3 and AAA, with a March 30, 2022 State of Georgia Annual Registration for L3 listing the same principal office address, 3884 Cedar Circle, Tucker, Georgia, as AAA listed in its filings with the Georgia Secretary of State and FMCSA.⁶²

Petitioners' arguments against a finding of reincarnation are unpersuasive. There is no dispute that consideration of \$35,000 was paid by Mr. Al Khafaji to Mr. Seha on August 10, 2021 to acquire AAA. It is also undisputed that documents filed with the Georgia Secretary of State and FMCSA describe Mr. Al Khafaji as owner, CFO, and/or CEO of AAA as of August 2021.

These facts, however, do not rebut the significant amount of evidence that AAA is a continuation of L3. Petitioners did not address the commonalities in officers and management, drivers, equipment, and address, and made no argument as to the significance of the timing of AAA's acquisition and L3's cessation. I also note that during AAA's May 2022 compliance investigation, the FMCSA safety investigator noted the overlap between L3 and AAA to Mr. Al Zubaidi.⁶³ In response, it appears Mr. Al Zubaidi told the FMCSA investigator that his

⁶¹ See *id.*, Exhibits C, Q, R. General freight, on its own, is too broad to support a finding of reincarnation or affiliation. See *Kahkashan Transportation Inc.*, FMCSA-2018-0253-0004, at 17, Final Order on Petition for Administrative Review of Operations Out-of-Service and Record Consolidation Order (Sept. 6, 2018). However, I note that L3 also indicated that it transported building materials, coal/coke, U.S. mail, beverages, paper products, and utility cargo in its March 29, 2016 Form MCS-150, which AAA also transported. See *id.* Moreover, the totality of the evidence regarding the other factors under 49 CFR 386.73 support a finding of a reincarnation.

⁶² See *id.*, Exhibits B, P-T.

⁶³ See *id.*, Exhibit U at 12.

opposition to such a consolidation was that he simply did not want to disappoint his friend, Mr. Al Khafaji.⁶⁴

Furthermore, Petitioners expressly acknowledge some overlap between the two carriers, and admitted that Mr. Al Zubaidi served as an officer with AAA, and that he shared the same address as Mr. Al Khafaji. Therefore, I find Petitioners' arguments without merit and that a preponderance of the evidence supports a finding that AAA is a reincarnation of L3.

Moreover, I find there were improper purposes for the reincarnation. L3 was placed out-of-service due to an Unsatisfactory safety rating, effective July 10, 2021, and it acquired AAA a month later.⁶⁵ AAA thus began operations under Petitioners' control at a time when L3 was not operating due to its negative safety history.

I do note that on July 22, 2021, prior to the acquisition of AAA, L3 submitted a request to upgrade its safety rating, resulting in a Conditional safety rating effective August 19, 2021.⁶⁶ The request for an upgrade may be evidence that a carrier is not trying to avoid a negative compliance history.⁶⁷ However, I find that L3 was attempting to avoid its negative compliance history, including its Unsatisfactory safety rating. AAA was acquired after the request for a safety rating upgrade was submitted, at a time when the result of the upgrade request was unknown to Petitioners. Furthermore, despite the upgrade in safety rating to Conditional in

⁶⁴ *See id.*

⁶⁵ *See id.*, Exhibits J, K.

⁶⁶ *See id.*, Exhibit N.

⁶⁷ *See USA Freight One, Inc.*, Final Order on Petition for Administrative Review of Record Consolidation Order, FMCSA-2017-0338-0005, at 23-34 (Jan. 23, 2018) ("Petitioner continues and continued to operate even with its negative compliance history. In fact, it took actions to continue operations, including...requesting an upgrade of its Conditional safety rating based on its corrective actions. Petitioner did not become Freight Solutions because Petitioner continues to exist and operate").

August 2021, there is no evidence of roadside activity or sufficient corrective actions taken by L3 at any time after AAA was acquired. Moreover, L3 cancelled its insurance and had its operating authority revoked on the same date of the upgrade to a Conditional safety rating.⁶⁸ This is especially significant, as during AAA's May 2022 compliance inspection, Mr. Al Zubaidi stated to the FMCSA investigator that his insurance rates for L3 had doubled in price and that he could not obtain business for L3 due to its negative safety rating history.⁶⁹ As AAA was acquired after L3's Unsatisfactory safety rating and nine days prior to the award of the Conditional safety rating, the evidence supports a conclusion that Petitioners began operating AAA to avoid L3's Unsatisfactory safety rating, as well as the subsequent Conditional safety rating.

L3 briefly regained operating authority on September 28, 2021, which was followed by another attempt to upgrade its Conditional safety rating to Satisfactory.⁷⁰ However, as I mentioned above, the upgrade request was denied on December 1, 2021, and the carrier's operating authority was again revoked on November 1, 2021.⁷¹ There is no evidence in the record that L3 was, in fact, operating during the few weeks when it had authority to do so. Thus, I find that Petitioners continued to operate AAA to avoid L3's negative compliance history during this time.

In addition to the above, when AAA was acquired by Petitioners, L3's SMS had alerts for unsafe driving, hours-of-service compliance, and vehicle maintenance.⁷² L3 continued to have

⁶⁸ See FA's Response, Exhibits L, M.

⁶⁹ See *id.*, Exhibit U at 12.

⁷⁰ See *id.*, Exhibits M, N.

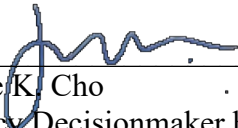
⁷¹ See *id.*

⁷² See *id.*, Exhibit H.

SMS alerts in hours-of-service and vehicle maintenance in September and October 2021.⁷³ High SMS scores are considered to be negative compliance history, and their existence would have had a significant impact in L3's ability to do business.⁷⁴ Rather than correct L3's negative safety issues associated with these scores, the evidence demonstrates that Petitioners acquired AAA to continue operations and avoid being associated with such negative compliance history. Therefore, I find that the preponderance of the evidence shows that L3 reincarnated into AAA to avoid L3's negative compliance history, including Unsatisfactory and Conditional safety ratings, and to avoid being associated with negative SMS scores.

Accordingly, the Petition is denied.

It is so ordered.



Jackie K. Cho
Agency Decisionmaker by Delegation
Federal Motor Carrier Safety Administration

7/21/22
Date

⁷³ See *id.* Although the evidence indicates that L3 was not operating during these months, these SMS scores appear to be evaluated based on data gathered during the past 24 months. See Safety Measurement System (SMS) Methodology: Behavior Analysis and Safety Improvement Category (BASIC) Prioritization Status, at 3-1, 3-10, available at <https://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf>.

⁷⁴ Avoidance of a high SMS scores can be considered in determining if a reincarnation is for an improper purpose. *Dex Logistics, Inc.*, FMCSA-2013-0345-0006, at 12 (“SMS BASIC scores at or above the intervention threshold are considered negative compliance history”) (citing *Royal Transport, Inc., and Nationwide, Inc., and Freight, Inc., and Midwest A. Inc.*, FMCSA-2013-0079-0005, at 12, Final Decision on Petition for Administrative Review of Operations Out-of-Service and Record Consolidation Order (Apr. 14, 2013)).

CERTIFICATE OF SERVICE

This is to certify that on this 21st day of July, 2022, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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A handwritten signature in blue ink, reading "Sharon K. Hecklander", is written over a horizontal line.