

**EMPLOYER STATUS DETERMINATION****ShipCarsNow, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of ShipCarsNow, Inc. (SCN) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). Information about SCN was furnished by Bryan L. Clark, Assistant Vice President for Union Pacific Railroad.

Mr. Clark reported that SCN was incorporated on March 22, 2006. SCN began operations on May 1, 2006. The current owner of SCN is Insight Network Logistics, LLC., a wholly owned subsidiary of Union Pacific Corporation. The expected owner as of January 1, 2011 will be Union Pacific Railroad Co. (BA #1713). SCN will be a wholly owned operating subsidiary of Union Pacific Railroad Company (UPRR). Effective with the corporate reorganization, the UPRR Marketing & Sales Auto Group will oversee SCN's operations. UPRR will continue marketing transportation services for new automobiles while SCN will focus on the marketing of transportation services for used automobiles. SCN will be moving its headquarters and operations from Auburn Hills, Michigan to Omaha, Nebraska in order to integrate its business with UPRR. Approximately 6 of SCN's current 16 employees are expected to relocate to Omaha.

SCN's business consists of brokering transportation services which provide business-to-business automobile shipping services. SCN's customers receive door-to-door shipping services from SCN versus dealing with multiple motor carriers and railroads. As SCN's business has developed, major auto manufacturers have become customers of both SCN and UPRR. In order to improve marketing efficiencies, Union Pacific Corporation decided it made business sense for SCN to be a railroad subsidiary and integrate its business with UPRR's automotive commodity group.

Mr. Clark reports that SCN derives no revenue from railroads. It purchases approximately 65% of its transportation services from UPRR, about 8% from other railroads, and about 27% from motor carriers. Transportation brokerage purchases for 2009 were \$12.2 million (\$7.5 million from UPRR), and expected purchases for 2010 are \$17.1 million (\$11.3 million from UPRR). SCN will coordinate marketing efforts with UPRR beginning January 1, 2011.

The Surface Transportation Board has not made any rulings regarding SCN's status and the IRS has not ruled on the applicability of the Railroad Retirement Tax Act (RRTA) to SCN. SCN does have a DOT (Department of Transportation) broker's license.

Section 1(a)(1) of the RRA defines the term "employer" to include:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Section 1 of the RUIA contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act.

The record in this case shows that SCN is not a rail carrier employer under section 1(a)(1)(i) of the RRA and section 1 of the RUIA. Turning to the definition in subparagraph 1(a)(1)(ii), effective January 1, 2011, SCN will be directly owned by UPRR, an employer as defined by paragraph (i). Additionally, it is clear that leadership, strategy and operations of UPRR and SCN will be fully intermingled. Further, Mr. Clark indicated that the reorganization is being done for the purpose of improving marketing efficiencies between SCN and UPRR.

Based on the evidence of record, we find that SCN will be providing service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA.

In accordance with the above discussion we find that ShipCarsNow, Inc., will be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 2011, the effective date of the corporate reorganization described in this decision.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever