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Taking On The MTA

By Kitty Merrill

Bill Schoolman is "absolutely outraged," and the owner of the Hampton Luxury Liner has put his attorneys where his ire is. Last week he filed a lawsuit against state lawmakers, including Governor David Paterson, Assembly Speaker Sheldon Silver, Acting Senate President Malcolm Smith, Comptroller Tom DiNapoli, and Taxation and Finance Commissioner Jamie Woodward, plus the Metropolitan Transportation Authority in protest of the new MTA payroll tax. He claims the tax is unconstitutional and wants the state to reim-

burse employers who've already shelled out an estimated \$1.35 billion.

Earlier this year, state officials voted to bail out the ever-in-the-red Metropolitan Transportation Authority. Over the protest of East End representatives Assemblyman Fred Thiele and Senator Ken LaValle, lawmakers approved a new payroll tax of 34 cents for every \$100 in payroll. The money is supposed to provide more than \$1.5 billion in revenue for the MTA. This, on top of subsidies the MTA already gets through sales and mortgages taxes.

And that irks the heck out of School-

man. "I just couldn't take it anymore... when I realized I was paying to subsidize my competition." Schoolman is especially angered because he feels the MTA's wasteful and inefficient operations contributed to the financial problem. "They brought this on themselves," he said this week. Schoolman is not alone in his dissatisfaction. Earlier this month Thiele blasted the authority when news of its "unconscious" \$343 million deficit for 2009 was reported.

Schoolman purchased the Hampton Luxury Liner about nine months ago. Also the owner of the Bohemia-based Classic Coach, he's been in the transportation business for years. According to the veteran entrepreneur industry standards call for spending about 35 percent of total overhead on personnel. The MTA spends 59 percent of its budget on personnel. "That's why we have to have a payroll tax, because they carry all this waste," Schoolman asserts.

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Filed in State Supreme Court on December 14, the lawsuit challenges the constitutionality of the new tax. According to court documents, the bailout "arises out of the MTA's extreme waste and inefficiency, which has been improperly condoned with repeated infusions of taxpayer money."

The statute that formed the MTA requires it to be self-sustaining. As such, it was given broad powers to collect fares and issue debt. Despite the self-sustaining requirement, the lawsuit states, the MTA has received taxpayer subsidies "while it continued to pay extravagant salaries, issue enormous amounts of debt and engage in financially questionable practices that continue to drain taxpayer dollars."

Schoolman's attorneys argue "the process and substance" of the legislation approving the bailout violate several state constitutional requirements. Among the requirements violated are the need for a Home Rule message, passage by a two-thirds vote, the self-sustaining mandate, failure to use separate bills for appropriations and unrelated purposes, and the state's guarantee of the debts of a public authority.

While Schoolman pointed to bloated staffing and extravagant salaries as a reason for the MTA's fiscal crunch, the justification section of legislation enacting the payroll tax notes "The MTA faces a 2009 operating budget shortfall of \$1.8 billion, a deficit rooted in years of reliance on self-supported debt to fund its capital needs." Schoolman's attorneys believe the self-supported debt includes variable rate bonds "which are highly susceptible to the risk that interest rates will fluctuate."

Indeed, the lawsuit alleges the MTA attempted to manage the risk by entering into several "volatile and risky interest rate swap contracts" with such "notorious" counterparties as Bear Sterns, Lehman Brothers, and AIG, three financial service firms subsequently devastated by the nation credit crisis. The terms of the swap contracts were "particularly risky," the lawsuit notes,

because they contained a provision that if one party became insolvent on its obligations it could trigger the acceleration of any amount owed to the defaulting party by the non defaulting party. In other words, when Lehman Brothers went bankrupt, the MTA owed the firm a payment of \$23.1 million, due right away. In all, the MTA's swap agreements totaled \$362.16 million.

Returning to the issue of exorbitant salaries, the lawsuit quotes a 2009 report from the Manhattan Institute for Policy Research. It reveals 10 percent of the MTA's workforce makes over \$100,000. The so-called "six figure club" includes 10 employees whose salaries exceed a quarter of a million dollars. Eleven of 654 employees who earned more than \$150,000 in 2008 were Long Island Railroad car repairmen who earned an average of \$206,000, a paycheck noted as \$143,000 higher than the average base pay for the position.

Rebuking the government's "disgusting" corporate culture, Schoolman said he is aware he's up against "tremendous odds" fighting the state on his own. He's hoping other firms and individuals will join the suit and plans to establish a not for profit organization to "go all the way with this."

For now, find additional information about the legal proceeding on his website www.mtataxpayerabuse.com.

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