

IB/ltc

Decision No. 84224

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
WARN BROS., INC., a California cor-
poration, doing business as CRESCENT
TRUCK LINES, for authority to acquire
a certificate of public convenience
and necessity as a highway common
carrier from BLINCOE TRUCKING COMPANY,
a California corporation, and for
authority to issue securities and for
an in-lieu certificate.

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)
) Application No. 55154
) (Filed September 6, 1974;
) amended November 19, 22, 26,
) and December 6, 1974)

O P I N I O N

This is a joint application of the parties seeking an order authorizing the sale and transfer by Blincoe Trucking Company, (Blincoe), a California corporation, of certain of its operating authority (as set forth in Appendices A and B of Exhibit F of the application) and goodwill to Warn Bros., Inc., (Warn), a California corporation.

Blincoe is a highway common carrier operating under a certificate granted in Decision No. 60184 dated May 25, 1960 in Application No. 41699, amended in Decision No. 61558 dated February 21, 1961 and transferred to Blincoe pursuant to authority granted by Decision No. 71169 dated August 23, 1966 in Application No. 48665.

Warn does business as Crescent Truck Lines, and is operating as a highway common carrier under a certificate granted in Decision No. 78246 dated February 2, 1971 in Application No. 52143, and modified by Decision No. 78408 dated March 9, 1971.

Both applicants have concurrent interstate and foreign commerce authority. Warn published notice in the Federal Register on October 2, 1974 seeking concurrent interstate authority within the limits of the intrastate authority sought.

Blincoe proposes to retain that portion of its certificated authority described in Appendix C of Exhibit F of the application. This authority duplicates operating rights already held by Warn.

Warn is seeking an in-lieu certificate (attached as Exhibit A to the Fourth Amendment to application) consolidating the combined authorities and extending the authority to include the following:

- a. Between all points in the Los Angeles Basin in connection with service to and from San Diego;
- b. To and from points within ten miles of San Diego;
- c. Transportation of all commodities requiring refrigeration between all points and places within the service area;
- d. Transportation of all commodities which require the use of special equipment because of their size or weight.

The proposed consideration and terms of transfer are as follows:

1. Blincoe will sell and transfer its intrastate and interstate operating rights (except those described in Appendix C of Exhibit F of the application) and goodwill to Warn, subject to prior approval of the Interstate Commerce Commission (ICC) and this Commission (PUC).

2. Warn will pay to Blincoe the sum of \$142,000 which shall be paid as follows:

- a. The sum of \$41,000 upon the date of completion of the sale, which date shall be 15 days subsequent to the effective date of the last of the final approving orders of the ICC and PUC.
- b. The balance shall be paid at any time after January 1 of the next year after the completion date, but in no event later than 12 months after the completion date as described in paragraph 2a.

- c. Interest at the rate of 8% per annum shall be paid on the unpaid balance.
- d. On the date of completion of this transaction, Warn shall execute and deliver a promissory note for the unpaid balance substantially in the form of Appendix D of Exhibit F of the application.
- e. On the date of completion of this transaction, Warn and Blincoe shall execute a security agreement, substantially in the form of Appendix E of Exhibit F of the application, to provide Blincoe with a lien and security interest in the assets transferred.

Applicants aver as follows:

- a. Warn has the physical and financial resources to purchase the described assets, as well as the experience necessary to provide the necessary and foreseeable service to the shipping public.
- b. Warn is continually expanding its operational volume to meet the requirements of its shippers.
- c. Warn's present operating authority restricts the services it can provide.
- d. The granting of the application will allow Warn to meet the demands of its shippers, and will also permit a more convenient and economical service because of the consolidation and efficient utilization of its equipment.
- e. The proposed transfer will not adversely affect competitive carriers.
- f. The proposed transfer of the interstate as well as the intrastate authority is required by the public convenience and necessity.
- g. The inclusion of the ten mile radius of San Diego will serve the need of the shipping public for split pick up and split delivery service.
- h. The additional authority requested by Warn will allow a more unified and complete service to the shipping public.

Findings

1. Blincoe should be authorized to sell, and Warn should be authorized to purchase that portion of Blincoe's certificate of public convenience and necessity as described in the application, under the terms and conditions set out above.

2. The transfer and encumbrance of the certificate is not adverse to the public interest.

3. Warn has the financial resources, the equipment and the experience necessary to purchase and properly operate the proposed system, and to continue its own authorized operations.

4. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

5. Public convenience and necessity warrant the issuance to Warn of the additional authority requested in the Fourth Amendment to application, as set out above.

6. The transfer will have no adverse effect upon competitive carriers.

7. Public convenience and necessity require that Warn be authorized to engage in operations in intrastate commerce as proposed in the application and also require that Warn be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

8. There are no protests.

9. A public hearing is unnecessary.

Conclusions

1. The application should be granted in accordance with the findings.

2. In the event the transfer is completed, a new certificate in the form of Appendix A^{1/} should be issued to Warn, which new certificate will not exceed in scope the authority transferred by Blincoe together with the additional authority granted herein, nor will be broaden or change the interstate or foreign commerce rights held by Warn.

3. In the event the transfer is completed, the certificate of public convenience and necessity presently held by Blincoe (Decisions Nos. 60184, 61558, and 71169) should be revoked, and a new certificate should be issued to Blincoe containing the authority set out in Appendix B of this decision.^{2/}

The authorization granted shall not be construed as a finding of the value of the rights and goodwill authorized to be transferred.

Warn Bros., Inc., a California corporation, is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

1/ See Exhibit A of the Fourth Amendment to application.

2/ See Appendix C of Exhibit F of the application.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1975, Blincoe Trucking Company, a California corporation, may sell and transfer the operative rights and goodwill referred to in the application to Warn Bros., Inc., a California corporation, doing business as Crescent Truck Lines.

2. Within thirty days after the transfer applicants shall file with the Commission written acceptance of the certificates and the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.

3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this decision to show that they have adopted or established, as their own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings shall comply with the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3 certificates of public convenience and necessity are granted to Warn Bros., Inc., a California corporation, doing business as Crescent Truck Lines, and Blincoe Trucking Company, a California corporation, authorizing them to operate as highway common carriers, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendices A and B, respectively, of this decision.

5. The certificates of public convenience and necessity granted by Decisions Nos. 60184 and 61558 and transferred pursuant to authority granted by Decision No. 71169 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Applicants are placed on notice that if they accept the certificates they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

8. Purchaser's certificate will be restated, but such restatement will not change or broaden the authority transferred together with the additional authority herein granted.

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9. On or after the effective date of this order and on or before September 30, 1975, purchaser may execute and deliver an encumbering document, which document shall be in substantially the same form as Appendix E of Exhibit F attached to the application.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th
day of MARCH, 1975.

Veran L. Stinson
President
William Symons, Jr.
[Signature]
Leonard Ross
Commissioners

WARN BROS., INC.
(a California corporation)
doing business as
Crescent Truck Lines

Warn Bros., Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the following transportation:

A. General commodities:

1. Between points in the Los Angeles Area, as described in Note A;
2. Between points in the San Francisco Territory, as described in Note B, and points within ten miles thereof;
3. Between points in Tulare, Contra Costa, Alameda, Marin, San Joaquin and Stanislaus counties;
4. Between San Diego, the Los Angeles Basin Territory as described in Note C, Sacramento, Citrus Heights, Oakdale, Rancho Cordova, the San Francisco Territory, and all intermediate points on or within 25 miles laterally of the following highways:

Interstate Highways 5, 80, 205, 580, 680 and 880; U.S. Highway 101; and State Highways 33, 99, 120 and 152.

Restriction: Service to or from points in San Diego County is restricted to the City of San Diego and points within ten miles of the city limits thereof.

B. Sugar, except liquid sugar:

1. Between Carlton, Betteravia, and Spreckels, on the one hand, and the San Francisco Territory, on the other hand.

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WARN BROS., INC.
(a California corporation)
doing business as
Crescent Truck Lines

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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NOTE A

LOS ANGELES AREA

The Los Angeles Area includes that area embraced by the following boundary: Beginning at (and including) the City of Santa Barbara; thence along U.S. Highway 101 to the intersection thereof with State Highway 126 to its intersection with Interstate Highway 5; thence along said highway to its first intersection with the corporate limits of the City of San Fernando; thence northerly along said boundary to Maclay Avenue; north-easterly along Maclay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to the City of Redlands; westerly along Interstate Highway 10 to U.S. Highway 395; southerly along U.S. Highway 395 (Interstate Highway 15) to State Highway 91; westerly along State Highway 91 to State Highway 55; southerly on State Highway 55 to the City of Santa Ana; thence via Interstate Highway 5 to San Clemente (including the off-route point of El Toro Marine Base); thence southwesterly to the shoreline of the Pacific Ocean; then northwesterly along the shoreline of the Pacific Ocean to the point of beginning.

NOTE B

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern

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Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

NOTE C

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean;

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thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

(END OF APPENDIX A)

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Blincoe Trucking Company, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities between all points and places and over the routes specified, including all off-route points located within 25 miles laterally of the named highways:

1. Between and including the San Francisco Territory, as described in Note A, and
 - a. all intermediate points on Interstate Highway 80 within Contra Costa County.
 - b. Stockton.
2. All points in Contra Costa County.
3. Pinole, Rodeo, Crockett, Martinez, Port Chicago, Pittsburg, Antioch, Oakley, Brentwood, Byron, and all points on State Highway 4 within Contra Costa County, on the one hand, and Stockton, on the other hand.

Mechanical duplications and overlaps which occur in describing the operating authority granted herein shall not be construed as conferring more than one operating right to transport the same commodities between the same points.

Restrictions: The authority described in paragraph 1 is subject to the following:

1. No local service is authorized in the San Francisco Territory.

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2. No transportation of fresh or green fruits or vegetables, not cold packed or frozen, is authorized when:

(a) The point of destination is a cannery, accumulation station, cold storage plant, precooling plant, winery or

(b) When transported from the field or point of growth to a packing plant, or a packing shed (see exception).

EXCEPTION: Except for the transportation of citrus fruits in field boxes or in bulk, or avocados, the provisions of paragraph (b) will not apply when the distance between point of origin and point of destination exceeds 50 constructive miles.

(c) Sugar beets, when the point of destination of the shipment is a beet sugar factory or a railroad loading dump.

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.

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3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
6. Logs.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
8. Liquid fertilizer and liquid sugar in bulk in tank trucks, tank trailers, tank semitrailers, or a combination of such highway vehicles.

NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue;

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easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX B)

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