

JUL 25 1988

Decision 88 07 068 JUL 22 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Victory Express, Incorporated for)
interim and permanent authority to)
self-insure bodily injury and)
property damage liability require-)
ments under General Order 100-L(7))
subject to certain conditions.)

Application 87-10-026
(Filed October 20, 1987)

INTERIM OPINION

Victory Express, Incorporated (Victory), an Ohio-based motor carrier of property, requests authority pursuant to General Order (GO) 100-L to act as a self-insurer in complying with that GO's requirement to provide accident liability protection. The authority is granted on an interim basis, with conditions, pending disposition of our investigation of related insurance issues in I.85-12-033.

GO 100-L

GO 100-L requires highway carriers of property and related entities to provide adequate protection against liability resulting from any one accident of at least \$250,000 due to bodily injuries to or death of one person, at least \$500,000 due to injuries to or death of more than one person, and at least \$100,000 due to damage to or destruction of property other than the cargo being transported. In the alternative, a combined single limit of at least \$600,000 is prescribed. Significantly higher liability limits apply to carriers of bulk petroleum products in tank vehicles and carriers of hazardous materials.

Established to implement various provisions of the Public Utilities (PU) Code that require liability protection, the GO applies to carriers engaged in intrastate transportation (PU Code §§ 3631-3635 and §§ 5161-5165). Pursuant to PU Code § 3920, it

also governs carriers engaged in interstate (or foreign) transportation for compensation in or through California which is exempt from regulation by the Interstate Commerce Commission (ICC). Carriers whose operations require ICC authority are required to register such authority with the Commission (PU Code § 3910(a)(1)) but are not required to furnish evidence of insurance or other forms of liability protection in connection with those operations.

Although the detailed requirements vary somewhat, both intrastate carriers and ICC-exempt interstate carriers are required to show evidence of the required protection by filing a certificate of insurance or a surety bond with the Commission. In lieu of making such a filing, a carrier may apply for authority to furnish equivalent protection by qualifying as a self-insurer.

To ensure continuity of the required protection, the GO provides in Section (6) that insurance certificates and surety bonds shall not be cancelable on less than thirty days written notice to the Commission. Section (8) requires further that:

"Every insurance certificate, surety bond or equivalent protection to the public shall contain a provision that such certificate, surety bond or equivalent protection shall remain in full force and effect until canceled in the manner provided in Section (6) of this General Order." (Emphasis added.)

Operating authority of intrastate carriers and registration of ICC-exempt interstate carriers is suspended immediately upon such cancellation of a certificate, bond or equivalent protection. Carriers are prohibited from operating on any public highway during a suspension period.

Justification

Victory states that it holds nationwide ICC authority to operate as a contract and irregular route common carrier of general commodities, with most of its operations conducted east of the Mississippi River. Victory asks that we take official notice of the ICC's order in Victory Express, Inc., decided on April 13, 1987

and served on April 22, 1987 in Docket No. MC-144672. In that order the ICC granted Victory authority to self-insure its bodily injury and property damage (BI&PD) liability and its cargo liability.

In its decision the ICC reviewed Victory's facilities and operations, financial condition, safety programs, and claims handling capability. Victory operates 160 tractors, 280 van trailers and 20 refrigerated trailers, transporting general commodities throughout the continental United States. Operations are primarily in the midwest and eastern United States, and the principal commodities handled are dry freight items such as paper and paper products, foodstuffs and plastic materials in truckload lots. All equipment is company-owned except for eight tractors leased from its majority stockholders. Only employees of Victory operate this equipment. Under federal statutes and regulations (49 U.S.C. 10927 and 49 C.F.R. 1043) and based on the commodities it transports, Victory is required to maintain security for the protection of the public in the amount of \$1 million per occurrence for BI&PD liability. Victory has a "satisfactory" safety rating from the United States Department of Transportation (DOT).

Based on its review, the ICC stated it was convinced that approval of the self-insurance proposal was warranted. It found that Victory had a strong financial position that should enable it to handle both predictable and unpredictable BI&PD and cargo losses. The ICC was satisfied that, with its monitoring, all claims will be competently processed by Victory. It found that Victory presented strong evidence of its dedication to safety.

The ICC stated in a separate finding that Victory's self-insurance of its BI&PD and cargo liability will, subject to the following conditions, afford the security for the protection of the public contemplated by 49 U.S.C. 10927:

- "1. Applicant must submit carrier quarterly and annual financial statements to the Commission, within 60 and 90 days, respectively, after the end of each quarterly or annual period. The statements must include a certification by an appropriate carrier official verifying the accuracy of the information provided.
- "2. Applicant must file with the Commission quarterly claims reports detailing the number, aggregate dollar amount, and the nature of its claims experience and quarterly reports detailing pending court cases or other actions which relate to or arise from their claims experience. These reports must be certified as to their accuracy by an appropriate carrier official.
- "3. Applicant must notify the Commission immediately of any pending or contingent BI&PD liability claim(s) which individually exceeds \$50,000 or collectively exceed \$250,000, or any cargo liability claims which exceeds \$2,500 individually or \$5,000 collectively.
- "4. Applicant must maintain an irrevocable \$1 million letter of credit for BI&PD liability and an irrevocable \$10,000 letter of credit for cargo liability and must submit, before beginning operations as a self-insurer, and in any event not later than 60 days after the service date of this decision, copies of the agreements with the financial institution covering the letters of credit. The carrier must notify the Commission immediately upon any drawdown on the letters of credit; and the carrier must have unrestricted access to the letter of credit, and drawdowns from it may only be made to satisfy BI&PD or cargo liability claims. Any drawdown from the letters of credit must be replenished within 30 days.
- "5. At the time of any notification of any drawdown, the applicant will also provide the Commission with a plan detailing how it

proposes to respond to further liability claims.

- "6. Applicant must notify the Commission no later than 180 days prior to the effective date of any change or cancellation of the letters of credit and must notify the Commission of the renewal of the letters of credit no later than 6 months prior to its expiration date.
- "7. Applicant must maintain tangible net worth of at least \$2 million and must notify the Commission at any time the net worth falls below \$2 million. The applicant will then have 30 days to correct the situation or face termination of the authority to self-insure.
- "8. The Commission retains the authority to terminate any portion or all of this self-insurance authorization at any time if it appears to the Commission that applicant's financial arrangements fail to provide satisfactory protection for the public or applicant fails to timely file any of the information required by the Commission.
- "9. This decision is effective on the service date. Applicant, however, may not activate its self-insurance authorization less than 30 days after submitting documents to the Commission demonstrating that the required letters of credit have been established. Applicant must also notify the Commission of the date it will activate its self-insurance authority."

Copies of Victory's application to the ICC and of the ensuing decision were included with the application. Also included was a copy of a letter from the ICC's Deputy Director of Operations confirming that as of August 10, 1987, Victory was in current compliance with all the conditions of the April 13, 1987 decision.

The letter also confirmed that Victory has continuing authority to self-insure until and unless the ICC, by further order, revokes that authority.

Staff

The Transportation Division (staff) advises that Victory currently holds no intrastate operating authority from this Commission. At one time Victory registered ICC-exempt interstate operations in California but that registration was subsequently canceled. Staff understands that Victory intends to again register exempt interstate transportation of property operations in California.

Staff has no objections to granting the application in a similar fashion to D.87-04-073, dated April 22, 1987, in A.87-03-025, and subject to the same additional conditions set forth in the ICC order authorizing Victory to act as a self-insurer for its regulated interstate operations. Staff caused notice of the filing of the application to be published in the Daily Transportation Calendar. No protests to the application or other communications as to its merits have been received

Discussion

We are convinced that based on Victory's authorization from the ICC to self-insure its regulated interstate operations, it should also be authorized to be a self-insurer for the purpose of registering ICC-exempt interstate transportation operations in California, subject to the conditions discussed below. It is clear that the ICC has established a comprehensive program for evaluating self-insurance authority applications. It is also clear that it has carefully evaluated and approved Victory's operation in accordance with that program, and further provided a monitoring mechanism to assure its continuing qualification as a self-insurer. We are therefore provided with a basis for finding that Victory's self-insurance program provides adequate protection against liability in accordance with PU Code § 3920 and GO 100-L.

We note that the ICC has established and updated regulations (49 C.F.R. 1043.5 (a)) governing qualifications of motor carriers as self-insurers in satisfaction of the requirement of 49 U.S.C. 10927. That statute requires interstate motor carriers to maintain public liability protection and is somewhat comparable to our GO 100-L and the statutes it implements. The ICC's regulations require motor carriers applying for self-insurance authority to furnish true and accurate financial information and other evidence establishing that they will be able to satisfy their liability obligations. They include guidelines providing that an applicant should demonstrate:

1. Adequate net worth;
2. The existence of a self-insurance program consisting of such elements as irrevocable letters of credit, irrevocable trust funds, reserves, sinking funds, third party financial guarantees, parent company or affiliate sureties, excess insurance coverage, or similar arrangements;
3. The existence of an adequate safety program and that either it has a current "satisfactory" safety rating by the DOT or it has not been rated (the rule provides that any self-insurance authority granted by the ICC automatically expires 30 days after a carrier receives a less than "satisfactory" rating from the DOT); and
4. Any additional information that the ICC may require.

In the case of Victory, the ICC reviewed the application in accordance with these regulations and guidelines. Based on its review and analysis, it imposed special conditions such as maintenance of an irrevocable \$1 million letter of credit for BI&PD liability and maintenance of at least \$2 million tangible net worth. It also imposed several ongoing and contingency reporting

requirements which allow continuous monitoring of Victory's ability to meet its liability obligations.

It is clear that Victory was qualified to self-insure its ICC-regulated operations at the time of the ICC's order. Our primary concerns then are to ensure that the ICC-exempt interstate operations which Victory will conduct in California are consistent with with the regulated operations evaluated by the ICC, and to ensure that Victory remains qualified as a self-insurer for as long as it conducts operations in California.

The ICC found that Victory is required by federal regulations to maintain liability protection in the amount of \$1 million per occurrence. There is no indication that it intended to allow Victory to qualify as a self-insurer for a larger amount. We will therefore provide that Victory is qualified to self-insure only for transportation of commodities for which GO 100-L requires a combined single limit coverage of \$1 million or less. This will effectively prohibit Victory from transporting bulk petroleum products in tank vehicles and certain hazardous materials. Similarly, we will limit the authorization to transportation performed by employees of Victory in vehicles owned by it or its majority stockholders. This requirement is reflective of the regulated operation of Victory, including its safety programs, as considered by the ICC.

GO 100-L provides that insurance certificates may be canceled only on thirty days notice. It also requires that equivalent protection such as self-insurance shall remain in full force and effect in the same manner as insurance certificates. However, Victory's federal self-insurance authority may be amended or terminated at any time by further order of the ICC. In order to accomplish as nearly as possible the intent of these rules, we will require Victory to notify the Commission of any change in the ICC authority. We will also direct our staff to monitor the status of

the authority. Similarly, we will require such reporting and staff monitoring of Victory's DOT safety rating.

Staff recommended that this application be granted in similar fashion to our grant of self-insurance authority to May Trucking Company (May) in D.87-04-073. In that proceeding we authorized May, an interstate carrier with ICC self-insurance authority, to self-insure California intrastate operations as a highway contract carrier. That authority was made subject to several conditions and reporting requirements which mirrored those of the ICC's grant to May in May Trucking Company, served April 22, 1986 in Docket No. MC-128527. Our grant of authority to May was made interim pending our disposition of I.85-12-033, an ongoing investigation of insurance issues in which we will consider adoption of rules and/or guidelines for self-insurance applications by transportation companies.

This order incorporates the staff recommendation in most respects. However, we will not at this time burden Victory as well as our Transportation and Commission Advisory and Compliance Divisions with a requirement that copies of financial statements and claims reports automatically be furnished to the Commission. We will instead require, as a condition of the authority granted, that Victory respond to data requests made by our staff. This will preserve the availability of any needed information and at the same time reduce paperwork requirements.

We note staff's advice that Victory has no California intrastate operating authority; however, it has current registration of regulated interstate operations.

Findings of Fact

1. Victory intends to engage in ICC-exempt interstate or foreign property transportation, for compensation, by motor vehicle, on public highways in this state.
2. Registration of such operations cannot be granted until Victory satisfies the liability protection requirements of CO 100-L

by submitting a certificate of insurance or evidence of qualification as a self-insurer.

3. The ICC has established and maintained regulations governing applications of interstate motor carriers to qualify as self-insurers.

4. Victory has nationwide authority from the ICC to provide regulated interstate transportation.

5. The ICC has authorized Victory to self-insure its BI&PD liability in connection with its regulated interstate transportation, in lieu of filing an insurance policy or a bond in the amount of \$1 million per occurrence.

6. Subject to the conditions contained in the order, the self-insurance authority granted to Victory by the ICC in Victory Express, Inc., served April 22, 1987 in Docket No. MC-144672, constitutes adequate protection against liability as required by GO 100-L.

7. Victory is qualified as a self-insurer to the extent provided in the order.

Conclusions of Law

1. Victory should be authorized to be a self-insurer for the purpose of registering ICC-exempt operations as provided in the order and subject to the conditions therein.

2. The authority should be made interim pending disposition of I.85-12-033.

INTERIM ORDER

IT IS ORDERED that:

1. Victory Express, Incorporated (Victory) is authorized, on an interim basis, to act as a self-insurer for the purpose of applying for registration of interstate or foreign transportation for compensation in or through California which is exempt from

regulation by the Interstate Commerce Commission (ICC), subject to the conditions named in Appendix A.

2. The authority granted in this decision is effective only so long as the self-insurance authority contained in the ICC's order in Victory Express, Inc., served on April 22, 1987 in Docket No. MC-144672, remains in effect.

3. The Transportation Division shall regularly monitor, not less frequently than once every 120 days:

- a. The status of the self-insurance authority granted to Victory by the ICC by inquiry to the ICC or otherwise; and
- b. The current safety rating of Victory by inquiry to the United States Department of Transportation (DOT) or otherwise.

4. Victory shall notify this Commission, in writing, by letter to the Director of Transportation, within 5 days of any revocation, reduction or suspension of the self-insurance authority granted by the ICC; or within 5 days of assignment of a less than "satisfactory" safety rating by the DOT. The letter shall refer to this application and decision number. Victory shall further notify the Commission, in the same manner, of the initiation of any ICC proceeding which could result in an order modifying, suspending or revoking its self-insurance authority.

5. The application is granted, subject to conditions.
This order becomes effective 30 days from today.
Dated JUL 22 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weisser, Executive Director

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APPENDIX A

The authority of Victory Express, Incorporated to self-insure operations within California as an ICC-exempt carrier is subject to the following conditions:

1. Victory shall not transport commodities within California for which GO 100-L or any succeeding general order requires combined single limit liability protection in an amount greater than \$1 million.
2. Victory shall operate within California only vehicles which are owned by it or its majority stockholders and which are driven by its employees.
3. Victory shall timely and positively respond to any data request made by the Commission staff in furtherance of any analysis or investigation to determine Victory's continuing qualification as a self-insurer. Such data shall include, but not be limited to, copies of statements, reports and/or notifications required to be filed with the ICC.
4. This authority is contingent upon continued authorization from the ICC for Victory to act as a self-insurer as provided in Victory Express, Inc., served April 22, 1987 in Docket No. MC-144672, and upon continued compliance by Victory with all of the terms and conditions of that order.
5. This authority is contingent upon continued maintenance by Victory of a "satisfactory" safety rating from the DOT.
6. The Commission retains the authority to modify or terminate Victory's self-insurance authorization if, at any time, it appears to the Commission that Victory fails to provide adequate accident liability protection to the public.

(END OF APPENDIX A)