

Decision S9 09 036 SEP 7 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Greyhound Lines, Inc., a Corporation,)
for acceptance of ICC order)
authorizing self-insurance pursuant)
to Public Utilities Commission)
General Order Nos. 101-E and 115-D.)

Application 89-05-051
(Filed May 22, 1989)

OPINION

By this application Greyhound Lines, Inc. (Greyhound) seeks to have an order, issued by the Interstate Commerce Commission (ICC), allowing it and each of its regional subsidiaries, including Western Greyhound Lines, Co. (Western), to be a self-insurer, accepted by this Commission. Such an order would exempt Greyhound from those provisions of General Orders (GO) 101-E and 115-D which require the furnishing of a certificate of insurance or bond by passenger stage corporations and charter-party carriers of passengers.

Paragraph (6) of GO 115-D, pertaining to charter-party carriers, provides that proof of the existence and continuation of exempt status must be filed with the Commission annually in such form and at such times as the Commission may require. The parallel section of GO 101-E, regarding passenger stage corporations, requires proof of the existence and continuation of the ICC authorized self-insurance to be in the form of an affidavit, and also provides that "additional affidavits or other proof of such qualifications shall be filed in such form and at such times as the Commission may require." Paragraph (7) of both GOs requires carriers to make application to have ICC orders authorizing self-insurance accepted by this Commission. Upon approval by the Commission, the carrier is exempt from the provisions of the GOs.

which require the furnishing of the certificate of insurance or bond.

In its application Greyhound asserts that Western operates as a passenger stage corporation pursuant to authority issued by this Commission under PSC-1, and that Greyhound operates as a charter-party carrier within California pursuant to a permit issued under TCP 12-A. Greyhound also states that it operates as a common carrier of passengers, as well as in charter-party services, pursuant to authorities issued by the ICC, and that Western is a wholly owned subsidiary of Greyhound.

Counsel for Greyhound has furnished the administrative law judge with ICC Decision No. MC-F-18655, dated December 8, 1987 by which the ICC exempted from its prior review and approval the purchase by Greyhound of all interstate and intrastate operating authorities of its regional subsidiaries, including Western. This decision is referred to in ICC Decision No. MC-1515, dated February 9, 1989, attached to the application as Appendix A to Exhibit 2. This ICC action with respect to state held operating rights was exercised pursuant to Title 49, U.S.C. Sections 11341(a) and 11343(c). By reason of the vesting in it of all of the interstate and intrastate authorities of Greyhound's subsidiaries, Greyhound has emerged as the sole remaining operating entity. Thus, Western no longer possesses either interstate or intrastate operating authority, and is not subject to the insurance requirements of either the ICC or this Commission. The certificate issued by this Commission and held in Western's name should be amended to reflect this change in ownership.

The application contains the affidavit of Ernest H. Bigsby, Greyhound's Vice President of Risk Management, declaring that the ICC has granted Greyhound's application for self-insurance of its bodily injury and property damage liability. The affidavit includes a copy of the ICC decision dated February 9, 1989 in Docket No. MC-1515, granting Greyhound continuing authority to

self-insure its bodily injury and property damage liability until the ICC revokes that authority, either upon Greyhound's request or the ICC's own motion, if the company fails to comply with the terms and conditions of the decision. The Bigsby affidavit also declares that the conditions for institution of the approved self-insurance plan have been met, and include a copy of the ICC notification verifying satisfaction of the conditions. Greyhound has also procured excess insurance from Insurance Company of North America. A copy of the certificate evidencing such excess coverage is attached to the affidavit as Appendix C.

Greyhound has satisfied the requirements set forth in GOs 101-E and 115-D necessary to obtain approval of this application, thus allowing it to be exempt from the provisions requiring the furnishing of a certificate of insurance or bond. If the application is granted, Greyhound states it will file annually the affidavit required by Paragraph (6) of GO 101-E, as well as the proof of existence and continuation of exemption in such form as this Commission may deem required by Paragraph (6) of GO 115-D, so long as the ICC approved exemption shall remain in effect.

The ICC authority to self-insure is conditioned upon the maintenance of several financial conditions, e.g.:

- a. An irrevocable letter of credit and/or trust fund upon approval of self-insurance in the amount of \$5 million, to be increased by \$1.5 million each calendar quarter until the letter of credit and/or trust fund reaches a maximum of \$15 million.
- b. Excess insurance coverage for bodily injury and property damage claims covering between \$5 million and \$100 million.
- c. A tangible net worth of at least \$10 million.

Further, Greyhound must submit quarterly and annual financial statements to the ICC, and must file with the ICC quarterly claims

reports showing the number, aggregate dollar amount, and nature of claims experience, as well as quarterly reports detailing pending court cases or other actions relating to or arising from its claims experience.

Rather than requiring Greyhound to furnish this Commission with copies of its reports and other information sent to the ICC, our purposes will be served if, in addition to the required affidavit, Greyhound is required to furnish quarterly a written declaration that the authority granted by the ICC allowing Greyhound to be self-insured is in effect.

Greyhound requests ex parte action on this application, asserting that the sought relief will not adversely affect the competitive relationship of Greyhound with other carriers.

Greyhound also requests expedited handling of this application, asserting that it will suffer financial hardship if the request is delayed. This is because at the present time the carrier is self-insured for all operations. In order to become self-insured, it committed collateral worth \$5,000,000, which collateral is unavailable for operations and dedicated solely as a reserve for liability claims. Greyhound will also have to commit additional collateral of between \$1,000,000 and \$3,000,000 to its California insurance carrier in order to continue duplicate coverage in California during the pendency of this application. This additional collateral is required by the insurance company to secure Greyhound's payment of the deductibles under the duplicate policy. The use of such collateral, Greyhound maintains, reduces the overall cost of such duplicate coverage, but at significant expense to Greyhound. Greyhound must pay insurance premiums for such coverage.

Greyhound stresses that because of the conditions set forth in Paragraph (6) of the applicable GO, it is exempt from the insurance filings otherwise required, and states that the purpose of this application is to develop competent proof for the

Commission that such ICC self-insurance order has been issued, and the liability reserves and other requirements of such order satisfied.

Findings of Fact

1. Western has been issued a certificate of public convenience and necessity authorizing it to operate as a passenger stage corporation.

2. Greyhound operates as a charter-party carrier within California pursuant to authority issued by this Commission.

3. By Decision No. MC-F-18655, dated December 8, 1987, the ICC exempted from its prior review and approval the purchase by Greyhound of all interstate and intrastate operating authorities of its regional subsidiaries, including Western. By that decision, Greyhound has emerged as the sole remaining operating entity in the Greyhound family.

4. Paragraph (6) of GOs 101-E and 115-D exempts passenger stage corporations and charter-party carriers, respectively, from otherwise applicable rules pertaining to insurance coverage required by this Commission when such carriers become qualified as self-insurers with the ICC in accordance with the laws of the United States applicable to self-insurance by motor carriers and the rules of the ICC promulgated thereunder, so long as such qualification remains effective. Proof of the existence and continuation of such exempt status must be filed with this Commission annually.

5. The ICC has granted Greyhound's application for self-insurance of its bodily injury and property damage liability by its decision dated February 9, 1989 in Docket No. MC-1515.

6. The provisions of Paragraph (6) of GOs 101-E and 115-D relating to exemption from otherwise applicable rules pertaining to insurance coverage have been satisfied by Greyhound.

Conclusions of Law

1. The application should be granted.
2. In addition to the affidavit required by GO 101 series, Greyhound should be required to submit to this Commission each calendar quarter a written declaration, under penalty of perjury, affirming Greyhound's continued authority to be self-insured. Because of the need for prompt action in order to minimize potential financial hardship, this order should be effective today.

ORDER

IT IS ORDERED that:

1. The self-insurance application of Greyhound Lines, Inc. (Greyhound) is granted.
2. As a condition of the authority granted by this decision and in addition to the affidavit required annually by General Order 101 series, Greyhound shall furnish the License Section of this Commission's Transportation Division each calendar quarter with a written declaration, under penalty of perjury and signed by an authorized officer of Greyhound, that the authority granted by the Interstate Commerce Commission (ICC) allowing Greyhound to be self-insured is in effect. Quarterly declarations shall be submitted no later than the 15th day of each April, July, October, and January during the period this authority is in effect.
3. Greyhound shall inform this Commission's License Section immediately if it is not in full compliance with all conditions required by the ICC to be self-insured, or if the ICC has revoked or suspended, or initiated any proceeding to revoke or suspend, Greyhound's authority to be self-insured.
4. If any quarterly declaration is not timely received, or if the Commission is informed that Greyhound's ICC authority to self-insure has been suspended or revoked, the License Section shall take immediate steps to suspend the operating authorities

held by Greyhound to transport passengers, until Greyhound files adequate proof of liability coverage as required by the Commission's General Orders.

5. The authority granted by this decision shall remain in effect until further order of this Commission, so long as Greyhound's ICC authority to self-insure remains in effect.

This order is effective today.

Dated September 7, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OGANIAN
PATRICIA M. ECKERT
Commissioners

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

- 7 -

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director
WB

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