

Decision 90-02-017 February 7, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of DonCo Carriers, Inc. (T-144671))	
for authority to self-insure bodily)	Application 89-07-056
injury and property damage liability)	(Filed July 31, 1989)
requirements under General Order)	
100-L subject to certain conditions.)	

INTERIM OPINION

Summary

DonCo Carriers, Inc. (DonCo), a highway common carrier, is authorized to act as a self-insurer in complying with the requirement imposed by General Order (GO) 100-L 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.

The GO implements various provisions of the Public Utilities (PU) Code that require carriers engaged in intrastate transportation, and carriers engaged in interstate or foreign transportation for compensation in or through California which is exempt from regulation by the Interstate Commerce Commission (ICC),

to maintain liability protection. (PU Code §§ 3631-3635, § 3920, and §§ 5161-5165.) Carriers whose operations in California require ICC authority are required to file evidence of liability protection with the ICC and to register such authority with the Commission (49 U.S.C. 10927 and PU Code § 3910(a)(1)), but are not required to directly furnish evidence of liability protection to this Commission in connection with those operations.

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.

Application

DonCo is a Nevada corporation with its principal place of business at Oklahoma City, Oklahoma. DonCo conducts extensive interstate operations under the jurisdiction of the ICC and conducts California intrastate operations as a highway common carrier. By this application, DonCo seeks authority to self-insure

the bodily injury and property damage (BI&PD) liability requirements of GO 100-L.

DonCo states that the ICC authorized it to self-insure interstate operations by decision served April 20, 1988 in Docket No. MC-138469. A copy of the ICC's order is attached to the application. In its decision, the ICC reviewed DonCo's financial condition, safety program, and claims handling capability. The ICC noted, among other things, that DonCo has a "satisfactory" safety rating from the United States Department of Transportation (DOT). The ICC found that DonCo's self-insurance of its BI&PD 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 maintain an irrevocable \$1 million letter of credit or trust fund for BI&PD liability. Applicant must submit, within 60 days of the service date of this decision, a copy of the agreement with the financial institution establishing the letter of credit or trust fund. The Commission must approve the terms of the letter of credit or trust fund prior to any effective date for activation of the letter of credit or trust fund. Any changes in their terms must be given prior approval by the Commission. Furthermore, applicant must have unrestricted access to the letter of credit or trust fund and drawdowns may only be made to satisfy claims for BI&PD liability. Any drawdown from the letter of credit or trust fund must be reported immediately to the Commission, along with an explanation as to how applicant proposes to respond to additional liability claims. Any drawdown from the letter of credit or trust fund must be replenished within 30 days, and any failure to replenish the amount of a drawdown within 30 days must also be reported immediately to the Commission.

"To ensure the protection of the public, we will require that the trust agreement contain the following provisions:

- "o The trustees must be identified, and a statement must be given of their relationship to the applicant. We must also have the addresses of the trustees.
 - "o The beneficiaries of the trust agreement must be clearly designated as the BI&PD liability claimants, of DonCo Carriers, Inc. No other parties may have rights of recovery against the fund.
 - "o Payments under the trust agreement must be made directly to BI&PD claimants.
 - "o The trust agreement must be established so it may not be revoked until all cognizable claims arising during the time the carrier holds ICC authority to self-insure have been settled.
- "(2) Applicant must maintain a tangible net worth of at least \$2 million and must notify the Commission at any time, during the effectiveness of the self-insurance authorization, if the applicant's net worth balance falls below the \$2 million minimum. The applicant will then have 30 days to correct the situation or face termination of the authority to self insure.
- "(3) 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 during the time the self-insurance authorization is in effect. The financial statements must include a certification by an appropriate company official verifying the accuracy of the information provided.
- "(4) 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 its claims experience. Appropriate carrier officials must certify the accuracy of these reports.

- "(5) Applicant must notify the Commission immediately of any pending or contingent BI&PD liability claim(s) which individually exceeds \$50,000 or collectively exceeds \$250,000.
- "(6) The applicant must notify the Commission no later than 90 days prior to the effective date of any change in the terms or cancellation of the letter of credit or trust fund agreement, and must notify the Commission of the renewal of the letter of credit or trust fund no later than 6 months prior to its expiration date.
- "(7) The Commission retains the authority to terminate its 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 file timely any of the information required by the Commission.
- "(8) The Commission reserves the right to require applicant to submit any additional information the Commission deems necessary.
- "(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 letter of credit or trust fund has been established. Applicant must also notify the Commission of the date it will activate its self-insurance authority."

By a decision served on November 23, 1988, the ICC granted a request by DonCo to suspend the self-insurance authority and certain related conditions until the January 1, 1989 expiration of its then-current insurance policy. DonCo subsequently advised

the ICC's Insurance Branch that it had successfully secured a policy of insurance for the 1989 policy year, and again asked that the self-insurance authority be held in abeyance. DonCo states that it will reactivate its ICC self-insurance authority by updating its financial statements and loss history when such activation is desired.

DonCo requests that the California intrastate self-insurance authority be granted under the same conditions imposed by the ICC, and that it be allowed to activate the authority by submitting the same updated financial information and loss history required by the ICC for activation of its interstate self-insurance authority. DonCo requests that the application be handled ex parte.

Transportation Division

The Tariff & License Branch (Branch) of the Transportation Division believes the application may be granted by ex parte order subject to the conditions in the following recommended ordering paragraph:

"As a condition of the authority granted by this decision, DonCo Carriers, Inc. 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 DonCo Carriers, Inc. that the authority granted by the Interstate Commerce Commission allowing DonCo Carriers, Inc. 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. If any quarterly declaration is not timely received, the License Section shall take immediate steps to suspend the operating authorities held by DonCo Carriers, Inc."

Discussion

We note that the ICC has established regulations (at 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 GO 100-L and the California 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 tangible 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.

Based on the ICC's grant of self-insurance authority, including such required conditions as maintenance of a \$1 million letter of credit and at least \$2 million tangible net worth as well as extensive reporting requirements, we believe that DonCo should be authorized to act as a self-insurer for operations in California, subject to the additional conditions discussed below.

It is clear that the ICC has established a comprehensive program for evaluating self-insurance applications. It is also clear that the ICC has carefully evaluated and approved DonCo's operations in accordance with that program, and has further provided a monitoring mechanism to assure DonCo's continuing qualification as a self-insurer.

Our remaining concerns are to ensure that the intrastate transportation operations conducted by DonCo in California are consistent with those evaluated by the ICC, and to ensure that DonCo remains qualified as a self-insurer for as long as it conducts such operations in California.

The ICC stated that DonCo is required to maintain liability protection in the amount of \$1 million, and there is no indication that the ICC intended to allow DonCo to qualify as a self-insurer for a larger amount. We will therefore provide that DonCo is qualified to self-insure only for transportation of commodities for which GO Series 100 requires a combined single limit coverage of \$1 million or less. This will effectively prohibit DonCo from transporting, as a self-insurer, certain commodities such as specified hazardous materials.

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, DonCo's ICC self-insurance authority may be amended or terminated at any time by further order of the ICC. We believe Branch's proposed requirement that DonCo declare each quarter that the ICC self-insurance authority is in effect will, along with additional safeguards, accomplish our intent to ensure that the carrier remains qualified as a self-insurer. This order adopts, with minor wording changes, Branch's recommendation by incorporating the proposed language as a condition of our grant of self-insurance authority. In order to accomplish as nearly as

possible the intent of GO 100-L to provide continuity of liability protection, we will also require DonCo to notify the Commission of any prospective or actual change in the ICC self-insurance authority.

Since the self-insurance authority we are granting to DonCo is based on the ICC authority and continued monitoring by the ICC, and we are providing for periodic status reports on the ICC authority, we will not require financial information or loss history information submitted to the ICC to be routinely or automatically filed with us. However, we will provide that DonCo shall respond to requests from our staff for information related to its continuing qualification as a self-insurer. We will also require immediate notification of the assignment by the DOT of a less than "satisfactory" safety rating, and provide that such a rating will result in the suspension of the self-insurance authority.

Consistent with our grants of self-insurance authority to May Trucking Company (Decision (D.) 87-04-073) and Victory Express, Incorporated (D.88-07-068), we will make today's grant of authority interim pending our disposition of I.85-12-033, an ongoing investigation of insurance issues in which we may consider adoption of rules and/or guidelines for self-insurance applications by transportation companies. DonCo is placed on notice that the self-insurance authority granted today may be amended or terminated as a result of future action in I.85-12-033 or any future action to revise GO 100-L or replace it with a superseding general order.

Findings of Fact

1. As a highway common carrier, DonCo is required by GO 100-L to provide accident liability protection by filing a certificate of insurance or surety bond or by approval of an application for qualification as a self-insurer.

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

3. The ICC has authorized DonCo 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. At DonCo's request, the authority has been held in abeyance.

4. Subject to the conditions contained in the order, the self-insurance authority granted to DonCo by the ICC in DonCo Carriers, Inc., served April 20, 1988 in Docket No. MC-138469, constitutes adequate protection against liability as required by GO 100-L.

5. Upon reactivation of the ICC self-insurance authority, DonCo is qualified as a self-insurer to the extent provided in the order.

6. No protests to the application or other communications as to its merits have been received

Conclusions of Law

1. DonCo should be authorized to act as a self-insurer as provided in the order, 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. Upon reactivation of the self-insurance authority granted by the ICC in DonCo Carriers, Inc., served April 20, 1988 in Docket No. MC-138469, DonCo Carriers, Inc. (DonCo) is authorized to act as a self-insurer for the purpose of providing the liability protection required by General Order 100-L, subject to the conditions set forth in Appendix A.

2. The License Section of this Commission's Transportation Division is authorized and directed to immediately suspend the operating authorities held by DonCo if any one or more of the following occurs and if a certificate of insurance is not on file with the Commission:

- a. The self-insurance authority granted to DonCo by the ICC is revoked, reduced, or suspended by the ICC or in any other way rendered inactive.
- b. The United States Department of Transportation assigns a less than "satisfactory" safety rating to DonCo.
- c. DonCo fails to timely furnish and/or the License Section does not timely receive written quarterly declarations that the ICC self-insurance authority remains in effect as required by Paragraph 2 of Appendix A.

3. The application is granted, subject to conditions.

This order becomes effective 30 days from today.

Dated FEB 7 1990, at San Francisco, California.

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

APPENDIX A
Page 1

The authority of DonCo Carriers, Inc. (DonCo) to self-insure operations within California is subject to the following conditions:

1. The authority granted in this decision is effective only so long as the self-insurance authority contained in the Interstate Commerce Commission's (ICC) order in DonCo Carriers, Inc., served April 20, 1988 in Docket No. MC-138469, remains in effect.
2. DonCo 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 DonCo that the authority granted by the ICC allowing DonCo to be self-insured remains 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. DonCo shall notify this Commission, in writing, by letter to the License Section of this Commission's Transportation Division, 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. DonCo shall also 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.
4. DonCo 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.
5. DonCo shall timely and positively respond to any data request made by the Commission staff in furtherance of any analysis or

APPENDIX A

Page 2

investigation to determine DonCo'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.

6. This authority is contingent upon continued maintenance by DonCo of a "satisfactory" safety rating from the DOT. In the event a less than "satisfactory" rating is assigned by the DOT, this authority will be suspended until DonCo notifies the Commission that it has regained a "satisfactory" rating.
7. The Commission retains the authority to modify or terminate DonCo's self-insurance authorization if, at any time, it appears to the Commission that DonCo fails to provide adequate accident liability protection to the public, or if greater liability protection is required in the future as a result of any revisions to General Order Series 100.

(END OF APPENDIX A)