

ALJ/MSW/vdl

Decision ~~90 06 023~~ JUN 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Victory Express, Inc. for permanent authority to self-insure bodily injury and property damage liability requirements under General Order 100-L(7).

ORIGINAL
Application 90-03-032
(Filed March 23, 1990)

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

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

INTERIM OPINION

Summary

Victory Express, Inc. (Victory) 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 for its operations as a highway common carrier. The authority is granted on an interim basis, with conditions, pending disposition of our investigation of related insurance issues in Order Instituting Investigation (I.) 85-12-033.

By Decision (D.) 88-07-068 in Application (A.) 87-10-026 the Commission authorized Victory to self-insure interstate transportation operations conducted in California which are exempt from regulation by the Interstate Commerce Commission (ICC). That authority is continued, with modifications, and consolidated with the intrastate self-insurance authority granted by today's order to ensure uniformity of conditions for all of Victory's operations under the Commission's jurisdiction.

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 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 30 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.

A.90-03-032

Victory seeks authority to conduct California intrastate freight carrier operations as a self-insurer in lieu of maintaining and filing evidence of liability insurance. Victory bases its request on the following facts:

1. Victory has held ICC operating authority for many years, and in 1989 its gross revenue was in excess of \$30 million.
2. Victory was authorized by the ICC to self-insure its bodily injury and property damage (BI&PD) liability and cargo liability for its interstate operations by order in Victory Express, Inc., served April 22, 1987 in Docket No. MC-144672.
3. Victory was authorized by the Commission to self-insure its ICC-exempt operations in California by D.88-07-068 dated July 22, 1988 in A.87-10-026, subject to conditions.
4. Victory obtained authority from the Commission to conduct operations as a highway common carrier on August 3, 1989. Victory obtained insurance to activate that authority but has since encountered difficulties in maintaining insurance. Victory states that in late 1989 its insurance carrier ceased operations in California, and that the "current instability of California Insurance laws"

makes it difficult to secure appropriate insurance coverage.

A copy of the ICC's order in Victory Express, Inc. was included with A.90-03-032. In determining whether Victory was qualified to self-insure its BI&PD liability, the ICC reviewed its facilities and operations, financial condition, safety programs, and claims handling capability. At the time of the ICC's review, Victory operated 160 tractors, 280 van trailers, and 20 refrigerated trailers, transporting general commodities throughout the continental United States. All equipment is company-owned except for eight tractors leased from its majority stockholders. Only employees of Victory operate this equipment. The ICC found that 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. The ICC also noted that 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."

Victory alleges that it is a financially viable carrier, and notes that its request is simply for authority to conduct intrastate operations in California as a self-insurer in the same manner as it does in California and all other states when it transports interstate traffic. Victory requests that the application be handled on an ex parte basis, alleging that there will be no significant impact on any other highway common carrier within California.

Transportation Division

The Tariff & License Branch of the Transportation Division believes that in the absence of protest the application may be granted by ex parte order. Notice of the filing of A.90-03-032 appeared in the Commission's Daily Transportation Calendar dated March 28, 1990. No protests have been received.

Discussion

We have on other occasions authorized highway carriers (including Victory) to self-insure the liability protection requirements of GO 100-L when they are already authorized by the ICC to self-insure interstate operations.¹ 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

¹ May Trucking Company, D.87-04-073 in A.87-03-025; Victory Express, Incorporated, D.88-07-068 in A.87-10-026; and DonCo Carriers, Inc., D.90-02-017 in A.89-07-056.

4. Any additional information that the ICC may require.

Based on the ICC's grant of self-insurance authority to Victory, including such required conditions as maintenance of an irrevocable \$1 million letter of credit for BI&PD liability and at least \$2 million tangible net worth as well as ongoing and contingency reporting requirements, we believe that Victory should be authorized to act as a self-insurer for all of its 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 Victory's operations in accordance with that program, and has further provided a monitoring mechanism to assure Victory's continuing qualification as a self-insurer.

In granting self-insurance authority to Victory which is based on the ICC authority, our primary concerns are to ensure that the transportation operations conducted by Victory in California are consistent with those evaluated by the ICC and to ensure that Victory remains qualified as a self-insurer for as long as it conducts such operations in California. In this case, we are also concerned with resolving any inconsistencies between the intrastate self-insurance authority granted by this decision and the authority previously granted to Victory by D.88-07-068.

The ICC stated that Victory is required to maintain BI&PD liability protection in the amount of \$1 million, and there is no indication that the ICC 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 Series 100 requires a combined single limit coverage of \$1 million or less. This will effectively prohibit Victory from transporting, as a self-insurer, certain commodities such as specified 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 operations of Victory, including its safety programs, that were considered by the ICC.

GO 100-L provides that insurance certificates may be canceled only on 30 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 ICC self-insurance authority may be amended or terminated at any time by further order of the ICC. We believe that a requirement that Victory declare each quarter that the ICC self-insurance authority is in effect, along with additional safeguards, is necessary accomplish our intent to ensure that the carrier remains qualified as a self-insurer. We recently imposed such a requirement in granting self-insurance authority to DonCo Carriers, Inc. (D.90-02-017 in A.89-07-056.) This order adopts the requirement as a condition of our grant of self-insurance authority.

The quarterly reporting requirement was not made a condition of our previous grant of self-insurance authority to Victory (D.88-07-068). Instead, we required the Transportation Division to regularly monitor the status of the ICC authority. To ensure consistency with our more recent practice, we will make the reporting requirement applicable to the authority granted by D.88-07-068 as well. For ease of administration and clarity of our requirements, we will consolidate the authority granted by D.88-07-068 with that granted by today's order. We will also delete the Transportation Division monitoring requirement set forth in the earlier order.

These revisions require minor modification of our earlier order granting Victory its ICC-exempt self-insurance authority. In doing so we note that the authority specifically included a

condition that the Commission retained the authority to modify the self-insurance authority. We conclude it is necessary to do so for the reasons set forth above.

Additionally, in order to accomplish as nearly as possible the intent of GO 100-L to provide continuity of liability protection, we will also require Victory to immediately notify the Commission of any prospective or actual change in the ICC self-insurance authority.

Since the self-insurance authority we are granting to Victory 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 also require financial information or loss history information submitted to the ICC to be routinely or automatically filed with us. However, we will provide that Victory 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. Transportation Division will be authorized and directed to suspend Victory's operating authority and registration in the event that the ICC authority is terminated, the DOT "satisfactory" rating is lost, or Victory fails to furnish the required declarations.

Consistent with our previous grants of self-insurance authority, we will make today's order 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. Victory 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, Victory 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 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.

4. 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.

5. Victory was authorized by D.88-07-068 to act as a self-insurer for ICC-exempt interstate operations in California.

6. On August 3, 1989 Victory received authority to operate as a highway common carrier within California.

7. Victory is qualified as a self-insurer for both ICC-exempt operations and intrastate highway common carrier operations to the extent provided in the order.

8. Consolidation of the authority granted by D.88-07-068 with the authority granted by this order will provide for consistency of conditions and will also facilitate ease of administration and clarity of our requirements.

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

Conclusions of Law

1. Victory should be authorized to act as a self-insurer as provided in the order, subject to the conditions therein.

2. The authority granted by D.88-07-068 should be modified to provide that the quarterly submission of declarations required by this order be made a requirement of that authority as well.

3. Transportation Division should be authorized and directed to suspend Victory's operating authority and registration in the event that the ICC authority is terminated, the DOT "satisfactory" rating is lost, or Victory fails to furnish the required declarations.

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

INTERIM ORDER

IT IS ORDERED that:

1. Victory Express, Inc. (Victory) is authorized to act as a self-insurer for the purpose of providing the liability protection required by General Order 100-L for its operations as a highway common carrier, subject to the conditions set forth in Appendix A.

2. The authority granted to Victory by Decision (D.) 88-07-068 to act as a self-insurer for the purpose of providing the liability protection required by General Order 100-L for its ICC-exempt interstate operations is continued, subject to the conditions set forth in Appendix A, which supersede the conditions set forth in D.88-07-068.

3. The requirement set forth in Ordering Paragraph 3 of D.88-07-068 that the Transportation Division regularly monitor the status of the ICC self-insurance authority and the safety rating of Victory is deleted.

4. The License Section of this Commission's Transportation Division is authorized and directed to immediately suspend the operating authority held by Victory and the registration of its ICC-exempt interstate operations if any one or more of the

following occurs and if a certificate of insurance is not on file with the Commission:

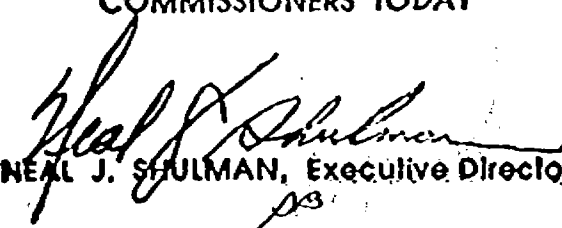
- a. The self-insurance authority granted to Victory by the ICC is revoked, reduced, or suspended by the ICC or in any other way rendered inactive.
 - b. The United States Department of Transportation assigns a less than "satisfactory" safety rating to Victory.
 - c. Victory fails to timely furnish and/or 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.
5. The application is granted, subject to conditions.

This order is effective today.

Dated JUN 06 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


NEAL J. SHULMAN, Executive Director

APPENDIX A
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The authority of Victory Express, Inc. (Victory) 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 Victory Express, Inc., served April 22, 1987 in Docket No. MC-144672, is, and remains, in effect.
2. Victory 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 Victory that the authority granted by the ICC allowing Victory 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. Victory 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. Victory 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. 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.

APPENDIX A

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5. Victory shall operate within California only vehicles which are owned by it or its majority stockholders and which are driven by its employees.
6. 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.
6. This authority is contingent upon continued maintenance by Victory 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 Victory notifies the Commission that it has regained a "satisfactory" rating.
7. 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, 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)