

Decision 90 08 038

AUG 8 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE BEKINS COMPANY)
authorizing the encumbrance of)
property and operating authority.)

Application 90-05-044
(Filed May 31, 1990)

O P I N I O N

Summary of Decision

This decision grants to The Bekins Company (BC) the authority requested in the application. BC requests authorization from this Commission under Public Utilities (PU) Code § 851 for the following:

1. To encumber the property and operating authority of BC's wholly owned subsidiary Data Air Distribution System Co., Inc. (Data Air), which holds a certificate to operate as a freight forwarder in California, to the extent such authorization may be required, in connection with the restructuring of a Commission-approved refinancing arrangement;
2. For Data Air to do all things necessary to carry out the restructured refinancing program set forth in the application; and
3. Such further relief as the Commission may deem appropriate.

Introduction

BC, a California corporation, is a holding company which controls Data Air (Freight Forwarder Certificate No. T-112485) through ownership of all issued and outstanding shares of its stock. BC is not itself a common carrier.

Decision (D.) 87-04-040 of April 8, 1987 authorized BC and its subsidiaries to pledge their assets, including operating

authority, to the extent such authorization would be required to carry out the terms of a Financing Agreement set forth in Application (A.) 87-03-010. The present application recites that the Financing Agreement was finalized on May 1, 1987, a short time after the release of D.87-04-040.

D.89-06-057 of June 21, 1989 granted BC's request for authority to enter into the following refinancing arrangement set forth in A.89-05-070:

1. To enter into a Loan Agreement with Security Pacific National Bank (SPNB) and other participating banks for which SPNB would act as agent;
2. To enter into a Senior Subordinated Note Agreement with SPNB and, pursuant to its terms, to execute a Senior Subordinated Note (Subordinated Note) with SPNB in the amount of \$5,000,000, contemplating that SPNB would receive from Bekins Holding Company (BHC), the parent of BC, a warrant to acquire up to 10% of the stock of BHC, in consideration of the extension of credit to BC;
3. To borrow from SPNB and other banks an aggregate principal amount not to exceed \$47,500,000 (\$42,500,000 for the Loan, and \$5,000,000 for the Subordinated Note), and to issue notes evidencing the loans; and
4. To encumber or pledge as security for the Loan all of BC's assets and capital stock of each of its operating subsidiaries, each of the operating subsidiaries' total assets, both real and personal, including operating rights, and the stock of BC itself to be given by the holder BHC.

The present application states that the Commission concluded in D.89-06-057 that A.89-05-070 reflected a continuation of the efforts first reflected in A.87-03-010 and D.87-04-040 to obtain necessary financing to maintain viable operations.

D.89-06-057 authorized BC and its subsidiaries (and BHC to the extent authorization might be required) to enter into the financing arrangements described in A.89-05-070; to issue evidences of indebtedness and to pledge assets, including operating authority, to the extent such authorization may be required; to enter into such supplemental agreements as the parties might agree to from time to time that would not substantially alter the obligations incurred; and to do all things necessary or appropriate to carry out the financing program set forth in A.89-05-070. The present application recites that the refinancing arrangements were finalized on June 28, 1989, a short time after the release of the decision.

The present application also states that on April 24, 1990, BC and SPNB entered into an agreement effective as of April 1, 1990, restructuring the refinancing arrangements previously approved by the Commission in D.89-06-057. An Amended and Restated Loan Agreement (Amended Loan) between BC and SPNB reduced BC's indebtedness from \$42,500,000 under the Loan to \$37,000,000 under the Amended Loan and adjusted the scheduled dates for BC's repayment of its indebtedness.

The present application further recites that the previously unsecured \$5,000,000 Subordinated Note has been restructured into a secured Amended and Restated Senior Subordinated Note (Amended Subordinated Note), also in the amount of \$5,000,000, pursuant to the terms of the Amended and Restated Senior Subordinated Note Agreement between BC and SPNB. Copies of the Amended Loan, Amended Subordinated Note, and Amended Subordinated Note Agreement are attached to the present application.

According to the application, the Amended Subordinated Note is to be secured with assets of BC and its subsidiaries, which constitute part of the collateral which secured the Loan (as authorized by D.89-06-057) and presently secures the Amended Loan

Indebtedness. However, the operating permits of BC's subsidiaries other than Data Air are not to be included in the collateral securing the Amended Subordinated Note. As the operating authority of BC's other subsidiaries will not be further encumbered in connection with the restructuring of BC's refinancing arrangement, no additional Commission authorization is required or requested except as to the proposed encumbrancing of Data Air.

D.87-04-040 found that PU Code § 816.5(b) does not specifically exempt freight forwarders from the requirement of securing Commission authorization prior to the encumbrancing of utility property or operating authority, pursuant to PU Code § 851. Accordingly, pursuant to Schedule 5.3 of the Amended Loan, attached to the present application, Data Air has not executed the Amended Subordinated Note documents, and Data Air's property and operating authority have not been encumbered in connection with the restructured refinancing arrangements (specifically, to secure the Amended Subordinated Note) pending Commission approval of the present application for such authority.

Discussion

The present application reflects a continuation of the efforts first reflected in A.87-03-010 (leading to D.87-04-040) and A.89-05-070 (leading to D.89-06-057) to obtain necessary financing to maintain viable operations. The Commission Advisory and Compliance Division's Finance Branch has examined the proposed restructured refinancing arrangements and concludes that they are reasonable. That Branch has no objection to the proposed encumbrance of property and operating authority, and recommends that the authority requested in the application be granted. Notice of filing of the application appeared in the Commission's Daily Transportation Calendar. No objections have been received.

Findings of Fact

1. Data Air is a wholly owned subsidiary of BC.

2. Data Air holds Freight Forwarder Certificate No. T-112485.

3. The restructured refinancing arrangements described in the present application are reasonable.

4. It is reasonable for BC to encumber the property, including operating authority, of Data Air in connection with the restructured refinancing arrangements referred to in the present application.

5. No protests have been received with respect to the present application.

Conclusions of Law

1. The requested restructured refinancing arrangements set forth in the application should be authorized.

2. The requested authority to encumber property, including operating authority, of BC subsidiary Data Air should be granted.

3. A public hearing is not necessary in this matter.

4. The following order should be effective on the date of issuance in order that the proposed restructured refinancing arrangements can be carried out promptly.

O R D E R

IT IS ORDERED that:

1. The Bekins Company is authorized to encumber the property and operating authority of its wholly owned subsidiary Data Air Distribution System Co., Inc., as described in the application, to the extent such authorization may be required.

2. The Bekins Company and Data Air Distribution System Co., Inc. are authorized to do all things necessary to carry out the restructured refinancing program set forth in the application.

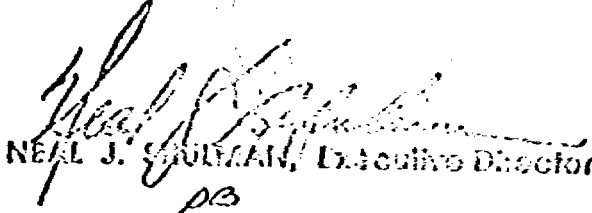
3. The Bekins Company and its subsidiaries (and Bekins Holding Company to the extent authorization may be required) are authorized to do all things necessary or appropriate to carry out the restructured refinancing program set forth in the application.

This order is effective today.

Dated AUG 8 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. SULLIVAN, Executive Director
PB