

Mailed

JUL 25 1991

Decision 91-07-050 July 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
KLLM, Inc. for permanent authority)
to self-insure bodily injury and) Application 91-05-029
property damage liability and cargo) (Filed May 15, 1991)
liability requirements under General)
Order 100-L(7).)

ORIGINAL

OPINION

1. Summary

KLLM, Inc. (KLLM) seeks authority to self-insure bodily injury and property damage liability for its intrastate operations in California. The carrier has been authorized by the Interstate Commerce Commission (ICC) to self-insure its interstate operations. Subject to the conditions set forth in this order, KLLM is authorized to act as a self-insurer in complying with the requirements of General Order (GO) 100-L.

2. Background

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

The GO implements provisions of the Public Utilities (PU) Code that require interstate carriers that are exempt from ICC regulation and intrastate carriers to maintain liability protection. (See PU Code §§ 3631-3635, 3920, and 5161-5165.)

Carriers operating in California under 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; PU Code § 3910(a)(1)). However, ICC-authorized carriers are not required to directly furnish evidence of liability protection to this Commission in connection with their interstate 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. (GO 100-L(5).) In lieu of such a filing, a carrier may apply for authority to furnish equivalent protection by qualifying as a self-insurer. (GO 100-L(7).)

The GO provides that the authority of intrastate carriers and the registration of ICC-exempt interstate carriers will be suspended immediately upon the cancellation of insurance, surety bond, or equivalent protection. Carriers are prohibited from operating on any public highway in the state during a suspension period.

3. KLLM's Application

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

1. KLLM has been a profitable carrier since 1987. In 1990, it had gross revenue of \$125 million and net earnings of \$2.8 million.
2. KLLM now conducts its interstate operations in California and elsewhere under a grant of self-insurance authority issued by the ICC on April 11, 1990, in Docket No. MC-138308.
3. KLLM is based in Jackson, Mississippi, and transports general commodities interstate. Intrastate operations in California account for less than 1 percent (\$43,926) of

company revenues, but these services permit KLLM to minimize empty miles and provide full interstate/intrastate service.

4. KLLM has established "a fully staffed and highly qualified, experienced claims department" that it believes responds to accident claims quickly and fairly.
5. The carrier has implemented a comprehensive safety program. It states that no safety-related disciplinary action or penalties are pending before any regulatory agency or court.
6. KLLM has a fleet of 927 tractors and 1,296 temperature-controlled trailers, all operated by the carrier's employees. It states that responsibility for its operations has not been delegated or otherwise diluted by sub-contract or sub-haul relationships.
7. KLLM anticipates savings of more than \$1 million annually because of the self-insurance authority granted by the ICC.

A copy of the ICC's order in KLLM, Inc. is included with Application (A.) 91-05-029. In determining that KLLM was qualified to self-insure, the ICC reviewed its facilities and operations, financial condition, safety programs, and claims handling capability. The ICC stated that the carrier has a "satisfactory" safety rating from the U.S. Department of Transportation.

Based on its review, the ICC stated that self-insurance "appears fully warranted in this case." It found that the carrier had a strong financial position that should enable it to handle both predictable and unpredictable bodily injury, property damage, and cargo losses. The ICC was satisfied that, with its monitoring, all claims will be competently processed by the company.

The ICC stated that KLLM's self-insurance will, subject to standard ICC conditions, afford the security for the protection of the public contemplated by 49 U.S.C. § 10927. The conditions attached to the ICC authorization are summarized as follows:

1. Applicant must maintain a \$1 million letter of credit or trust fund for bodily injury/property damage liability and an irrevocable \$10,000 letter of credit or trust fund for cargo liability. These agreements must be submitted to and approved by the ICC.
2. Applicant must maintain a tangible net worth of at least \$2 million and notify the ICC if its net worth falls below this minimum.
3. Applicant must file quarterly financial statements and claims reports with the ICC.
4. Applicant must notify the ICC of any contingent liability claims exceeding certain minimums, and it must notify the ICC 90 days prior to any change in its letters of credit or trust fund agreements.
5. The ICC retains the right to cancel applicant's self-insurance authorization at any time if it appears that protection of the public is compromised.

KLLM states that its application seeks authority to conduct intrastate operations in California as a self-insurer in the same manner that it does in California and other states when it transports interstate traffic.

4. Transportation Division

The Tariff & License Branch of the Transportation Division on June 5, 1991, filed an Advice of Participation stating that in the absence of protest it recommends that the application be granted by ex parte order. Notice of the filing of A.91-05-029 appeared in the Commission's Daily Transportation Calendar dated May 20, 1991. No protests have been received.

5. Ex Parte Authorization

KLLM asks that its application be handled on an ex parte basis, alleging that there will be no significant impact on any other highway common carrier in California. It also requests expedited approval, since its current contract of insurance applicable to California operations will expire on August 1, 1991, and would have to be renewed or replaced in the absence of Commission action on self-insurance. In that connection, KLLM states that it will abide by the conditions set forth in Appendix A of this decision. The conditions are similar to those imposed by this Commission in granting authority to self-insure to another highway carrier. (Victory Express, Inc., Decision (D.) 90-06-023 in A.90-03-032.)

The Tariff & License Branch notes that cargo liability insurance is not required for highway contract and agricultural carrier intrastate for-hire operations. To the extent that KLLM seeks authorization for self-insurance for cargo liability in this application, that request is not considered.

6. Discussion

We have on other occasions authorized highway carriers 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 CFR § 1043.5(a)) governing qualifications of motor carriers as self-insurers in satisfaction of the requirement of 49 U.S.C. § 10927. As demonstrated by the ICC conditions in this case, the regulations require motor carriers seeking self-insurance authority to show adequate net worth, letters of credit or other guarantees

¹ Victory Express, Inc., D.90-06-023 in A.90-03-032; May Trucking Company, D.87-04-073 in A.87-03-025; DonCo Carriers, Inc., D.90-02-017 in A.89-07-056.

supporting self-insurance, and a safety program ranked satisfactory by the United States Department of Transportation (DOT), or otherwise acceptable.

Based on the ICC's grant of self-insurance authority to KLLM, subject to ICC's financial and reporting requirements, we believe that KLLM should be authorized to act as a self-insurer for its operations in California, subject to the additional conditions discussed below. It is clear that the ICC has established a comprehensive program for evaluating carrier self-insurance. The ICC has evaluated and approved KLLM's operations in accordance with that program, and has established monitoring requirements to assure continuing qualification.

In granting self-insurance authority to KLLM based on the ICC authority, we must ensure that the transportation operations conducted by KLLM in California are consistent with those evaluated by the ICC.

The ICC stated that KLLM is required to maintain bodily injury/property damage liability protection in the amount of \$1 million. We will therefore provide that KLLM 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 prohibit KLLM from transporting, as a self-insurer, commodities such as specified hazardous materials. Similarly, we will limit the authorization to transportation performed by employees of KLLM in vehicles owned by the company or by majority shareholders. This reflects the operations of KLLM, including its safety program, that were considered by the ICC.

Additionally, we believe that a requirement that KLLM declare each quarter that the ICC self-insurance authority is in effect, along with additional safeguards, is necessary to accomplish the intent of GO 100-L that the carrier remains qualified as a self-insurer. We imposed such a requirement in the

cases of Victory Express, Inc. (D.90-06-023 in A.90-03-032) and DonCo Carriers, Inc. (D.90-02-017 in A.89-07-056).

Since the ICC requires regular financial reporting by KLLM, we will not require that duplicate information be filed with us except upon specific request. However, we will provide that KLLM shall respond to information requests from the Transportation Division. We will also require that KLLM immediately notify the Transportation Division of the assignment by the DOT of a less-than "satisfactory" rating, and we will provide that such a rating will result in the immediate suspension of the self-insurance authority. The Transportation Division is authorized and directed to suspend KLLM's operating authority and registration in the event that the ICC authority is terminated, the DOT "satisfactory" rating is lost, or KLLM fails to furnish required declarations.

Findings of Fact

1. As a highway common carrier, KLLM is required by GO 100-L to provide accident liability protection by filing a certificate or insurance or surety bond or by obtaining approval for qualification as a self-insurer.
2. The ICC has established and maintains regulations governing applications of interstate motor carriers to qualify as self-insurers.
3. The ICC has authorized KLLM to self-insure its bodily injury/property damage liability in connection with its regulated interstate transportation, in lieu of filing an insurance policy or bond in the amount of \$1 million per occurrence.
4. Subject to the conditions contained in the order, the self-insurance authority granted to KLLM by the ICC in KLLM, Inc., served April 11, 1990, in Docket No. MC-138308, constitutes adequate protection against liability as required by GO 100-L.
5. KLLM is qualified as a self-insurer for both ICC-exempt operations and intrastate highway common carrier operations 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. KLLM should be authorized to act as a self-insurer as provided in the order, subject to the conditions therein.

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

3. This order should be made effective immediately so that the carrier may deal with its existing insurance coverage.

ORDER

IT IS ORDERED that:

1. KLLM, Inc. (KLLM) 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 Tariff & License Branch of the Commission's Transportation Division is authorized and directed to immediately suspend the operating authority held by KLLM and the registration of its Interstate Commerce Commission (ICC) exempt interstate operations if any one or more of the following occurs at a time when a certificate of insurance is not on file with the Commission:

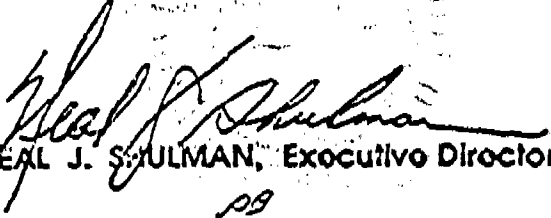
- a. The self-insurance authority granted to KLLM by the ICC is revoked, reduced, or suspended by the ICC or in any other way rendered inactive.
- b. The United States Department of Transportation assigns a safety rating of less than "satisfactory" to KLLM.
- c. KLLM fails to timely furnish, or the Tariff & License Branch 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.
4. This order is effective today.

Dated July 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SCHULMAN, Executive Director
28

APPENDIX A
Page 1

The authority of KLLM, Inc. (KLLM) 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 KLLM, Inc., served April 11, 1990, in Docket No. MC-138308, is, and remains, in effect.
2. KLLM shall furnish the Tariff & License Branch of this Commission's Transportation Division, each calendar quarter, with a written declaration under penalty of perjury and signed by an authorized officer of KLLM that the authority granted by the ICC allowing KLLM 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. KLLM shall notify this Commission, in writing, by letter to the Tariff & License Branch 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. KLLM 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. KLLM 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
Page 2

5. KLLM shall operate within California only vehicles which are owned by it or by its majority stockholders and which are driven by its employees.
6. KLLM shall timely and positively respond to any data request made by the Commission staff in furtherance of any analysis or investigation to determine KLLM'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 KLLM 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 KLLM notifies the Commission that it has regained a "satisfactory" rating.
7. The Commission retains the authority to modify or terminate KLLM's self-insurance authorization if, at any time, it appears to the Commission that KLLM 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)