

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,550

IN THE MATTER OF:

Served September 4, 2008

Application of CHALLENGER)
TRANSPORTATION, INC., WMATC)
No. 568, for Authorization to Self-)
Insure)

Case No. AP-2008-129

Commission Regulation No. 58 requires applicant to insure the revenue vehicles operated under Certificate No. 568 for a minimum of \$1.5 million in combined-single-limit liability coverage. Applicant currently has in place a \$2 million motor vehicle liability policy.

By application filed July 24, 2008, applicant requests authorization to self insure against the first \$250,000 of bodily-injury and property-damage (BI&PD) claims under Certificate No. 568.

The Compact, Title II, Article XI, Section 7(f), provides that:

A person applying for or holding a Certificate of Authority shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, *self-insurance qualification*, or other security or agreement in an amount that the Commission may require to pay any final judgment against a carrier for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation subject to this Act. (Emphasis added).

Regulation No. 58-17 provides in pertinent part that:

The Commission will consider the application of a carrier to provide other forms of security for the protection of the public. Applicant must furnish evidence establishing to the satisfaction of the Commission the carrier's ability to satisfy its obligations for bodily injury, death, and property damage liability without adversely affecting the stability of the carrier or the public interest. . . .

The application is supported by evidence that the Maryland Motor Vehicle Administration has authorized applicant to self insure against BI&PD claims up to the limits of the minimum coverages mandated by the State of Maryland and the political subdivisions in which applicant operates.

The application is also supported by the three years of financial statements, showing robust earnings and substantial net worth, and claims history data, showing adequate coverage of claims under applicant's insurance policies, that applicant submitted to the Maryland MVA as part of the self insurance application filed with that agency.

Based on the evidence in this record, the Commission finds that applicant is qualified to self-insure the first \$250,000 of BI&PD claims arising out of each accident resulting from the operation, maintenance, or use of a motor vehicle in performing transportation subject to the Compact. To protect the public interest, our approval shall be subject to the conditions stated below.¹

THEREFORE, IT IS ORDERED that the self-insurance application of Challenger Transportation, Inc., is hereby approved, subject to the following conditions:

(1) Applicant shall maintain an irrevocable \$250,000, letter of credit or trust fund for bodily injury and property damage (BI&PD) liability. Applicant shall 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 thereof. Any changes in the 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 shall 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 shall be replenished within 30 days. Any failure to replenish the amount of a drawdown within 30 days shall be reported immediately to the Commission.

To ensure the protection of the public, we will further require that in the event applicant chooses to establish a trust fund, the trust fund agreement shall contain the following provisions.

- A. The trustees shall be identified by name and address, and a statement shall be given of their relationship to applicant.
- B. The beneficiaries of the trust fund shall be designated clearly as BI&PD liability claimants of applicant. No other parties may have rights of recovery against the trust fund.
- C. The trust fund agreement shall be established so that it may not be revoked until all cognizable claims arising during the

¹ See *In re Peter Pan Bus Lines, Inc.*, No. AP-94-09, Order No. 4267 (Mar. 28, 1994) (approving application for \$250,000 self insurance authorization).

time applicant holds WMATC authority to self-insure have been settled.

D. Payments under the trust agreement shall be made directly to BI&PD claimants.

(2) In compliance with Regulation No. 58, applicant shall continuously insure the vehicles operated under Certificate No. 568 for a minimum of \$1.25 million in combined-single-limit liability coverage in excess of the underlying self insurance amount of \$250,000 and maintain on file with the Commission at all times proof of such coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement for each policy comprising the required minimum coverage.

(3) Applicant shall maintain a tangible net worth of at least \$500,000 at all times during the effectiveness of the self-insurance authorization. In the event applicant's tangible net worth falls below \$500,000 during the effectiveness of the self-insurance authorization, applicant shall immediately notify the Commission, and applicant shall have 30 days to reestablish a minimum tangible net worth of \$500,000 or face termination of its authority to self-insure.

(4) Applicant shall submit 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 shall include a certification by an appropriate company official verifying the accuracy of the information provided. The annual financial statements shall be reviewed by a Certified Public Accountant before filing with the Commission. Applicant also shall submit copies of its federal income tax returns within 30 days of filing with the IRS. All financial information so submitted shall remain confidential unless and until otherwise ordered by the Commission.

(5) Applicant shall file with the Commission quarterly claims reports detailing the number, the 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 officials of applicant shall certify the accuracy of these reports.

(6) Applicant shall notify the Commission immediately of any pending or contingent BI&PD liability claim(s) which individually exceeds \$50,000 or collectively exceeds \$250,000.

(7) Applicant shall 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 and/or trust fund agreement, and shall notify the Commission of the renewal of the letter of credit and/or trust fund agreement no later than 6 months prior to expiration.

(8) Applicant shall notify the Commission within 5 days upon default of any terms of any loan agreements that exist with financial institutions. Full disclosure should be provided about the consequences, actual or potential, of such default. Any default may be cause for termination of self-insurance authority.

(9) The Commission retains the authority to terminate applicant's 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.

(10) The Commission reserves the right to require applicant to submit any additional information that the Commission deems necessary.

(11) This decision is effective on the date of service. 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 shall also notify the Commission of the date it will activate its self-insurance authority.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director