

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3529

IN THE MATTER OF:

Served July 23, 1990

Revocation of Authorization of)
GREYHOUND LINES, INC., to)
Self-Insure)

Case No. MP-90-12

By Order No. 3418, served October 4, 1989, in Case No. AP-89-26, the Commission granted the self-insurance application of Greyhound Lines, Inc. (GLI), subject to a number of conditions. Order No. 3418 is included herein by reference.

By Order No. 3507, served May 25, 1990, the Commission determined that GLI was no longer in compliance with the requirements of Condition 5 relating to minimum tangible net worth and that GLI was in default of the terms of its Senior Credit Agreement. The Commission revoked its acceptance of the qualifications of GLI to self-insure, effective 12:01 a.m. June 26, 1990. Order No. 3418 is included herein by reference.

On June 22, 1990, GLI timely filed a petition for reconsideration of Order No. 3507, pursuant to the provisions of the Compact, Title II, Article XII, Section 16. By action of law, the filing of a written request for reconsideration acts as a temporary stay upon the execution of Order No. 3507.

During the course of this proceeding, GLI also was involved in a proceeding before the Interstate Commerce Commission (ICC) concerning ICC's approval for GLI to self-insure. That proceeding was initiated by ICC's order of June 6, 1990, in Docket No. MC-1515, directing GLI to show cause why ICC should continue to authorize GLI to self-insure beyond June 28, 1990, the expiration date of a portion of GLI's excess insurance coverage. */ The conditions for approval to self-insure imposed upon GLI by the ICC decision of February 16, 1989, were repeated and adopted by WMATC in Order No. 3418. Accordingly, the conditions and requirements imposed on GLI by both agencies were identical.

On June 21, 1990, GLI filed with ICC a response to the show cause order, which response was also filed with WMATC on June 26, 1990. On June 27, 1990, ICC issued its decision in Docket No. MC-1515. We take official notice of the ICC decision, a copy of which is attached as an appendix to this order. That decision summarizes the assertions of GLI that were set forth in GLI's response to ICC's show

*/ That coverage was renewed through June 28, 1991, and a certificate of insurance has been filed.

cause order which are essentially the same as those set forth in GLI's petition to WMATC for reconsideration; we see no need to duplicate that effort, as it is attached.

The ICC's decision authorizes GLI to continue to self-insure, but for a maximum of \$1.5 million rather than \$5 million. The authorization is subject to certain modifications of the conditions of ICC's order of February 16, 1989, as set forth in the appendix to this order. We have carefully examined GLI's arguments. We now have the benefit of knowing ICC's disposition and the reasons for it, and we concur.

Nevertheless, there are notable differences. According to GLI, the cost of first-dollar insurance coverage and the difficulty in making timely arrangements could help precipitate liquidation of GLI. These factors appear to relate to nationwide insurance requirements. GLI advances no figures relating specifically to the insurance coverage that would be required for the Washington Metropolitan Area Transit District. Such local coverage would appear to be more closely related to the intrastate bodily injury and property damage (BI&PD) coverage already in place in the ten states where GLI is not self-insured. Further, GLI advances the argument that failure of this Commission to approve self-insurance could jeopardize the only nationwide regular-route network. In addition to the local nature of this Commission's jurisdiction noted above, the Commission also notes that GLI's authority from this Commission is limited to irregular route services.

Notwithstanding these differences, the Commission concurs with ICC that it is in the public interest to permit GLI to continue first-dollar self-insurance, albeit at the lower \$1.5 million level, at least for the time being. This approval will keep in place the high levels of excess insurance coverage (20 times the level that would be required in the absence of self-insurance approval). In addition, the Commission will adopt modifications consistent with those directed by ICC, because the Commission (a) finds such modifications to be appropriate, and (b) does not want to complicate GLI's compliance requirements.

Pursuant to the Compact, Title II, Article XII, Section 16, GLI's petition for reconsideration is granted. Upon reconsideration we rescind the directives contained in Order No. 3507 and modify the terms of Order No. 3418.

THEREFORE, IT IS ORDERED that Greyhound Lines, Inc., is authorized to self-insure up to the \$1.5 million level, subject to the following modifications to Order No. 3418, served October 4, 1989:

1. Condition 2 is modified to provide that on or about June 30, 1990, Greyhound Lines, Inc., is to establish and make a contribution of \$1.5 million to a second trust fund for post-bankruptcy petition claimants, and subsequently make contributions of \$1.5 million during each calendar quarter thereafter until the second fund totals \$15 million of BI&PD liability; all other terms of condition 2 are to apply to this second trust fund.

2. Condition 2 is further modified so that the existing trust fund of approximately \$9.5 million is to be preserved to pay only pre-bankruptcy petition claims and any surplus is to be deposited to the second trust fund in item 1 above for payment of post-petition claims.

3. Greyhound Lines, Inc., must submit monthly, quarterly and annual financial statements to the Commission, within 30, 60 and 90 days, respectively, after the end of each monthly, quarterly and annual period. The statements must include a certification of an appropriate carrier official verifying the accuracy of the information provided.

4. Greyhound Lines, Inc., must submit weekly cash reports, within 5 days after the end of each weekly period. The statements must include a certification of an appropriate carrier official verifying the accuracy of the information provided.

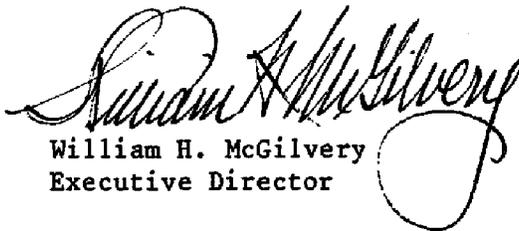
5. Condition 4 is modified so that Greyhound Lines, Inc., must have continuously in place from June 28, 1990, excess insurance coverage for BI&PD claims covering between \$1.5 million and \$100 million.

6. The \$10 million tangible net worth condition (Condition 5) is waived until further ordered. In the event the Bankruptcy Court approves a Plan of Reorganization, Greyhound Lines, Inc., has thirty (30) days thereafter to show cause why the Commission should not revoke the waiver of the \$10 million tangible net worth condition.

7. Condition 11 is modified so that Greyhound Lines, Inc., may continue to self-insure the first \$1.5 million of its required BI&PD liability upon the effective date of this order.

8. All requirements of Order No. 3418 remain in effect, unless specifically waived or modified herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

EC

JUN 27 1990

Appendix
Order No. 3529

INTERSTATE COMMERCE COMMISSION

DECISION

DOCKET NO. MC-1515

GREYHOUND LINES, INC.
(Dallas, Texas)

AUTHORIZATION TO BE A SELF-INSURER - SHOW CAUSE ORDER

Decided: June 27, 1990

By decision in Docket No. MC-1515, Greyhound Lines, Inc. and GLI Acquisition Company Application to be a Self-Insurer, (served February 16, 1989), the Commission authorized Greyhound to self-insure the first \$5 million per occurrence of its bodily injury and property damage liability (BI&PD), subject to certain conditions, under 49 U.S.C. 10927 and 49 C.F.R. 1043.

Greyhound's self-insurance authority was activated on April 30, 1989, and since that time, Greyhound has maintained excess insurance for the \$1.5 through \$5 million level, as well as the \$5 million through \$100 million level required by our February 1989 self-insurance authorization.

On June 4, 1990, Greyhound filed for protection under Chapter 11 of the Federal Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas in Brownsville, Texas. In view of Greyhound's filing for protection under Chapter 11, and the fact that its various insurance policies, which provide BI&PD coverage above \$1.5 million, will expire on June 28, 1990, the Commission, by decision served June 6, 1990, ordered Greyhound to show cause why the Commission should continue to authorize its self-insurance beyond June 28, 1990.

Greyhound filed a response to the show cause order on June 21, 1990. In its response Greyhound proposes that it be permitted to self-insure the first \$1.5 million of its statutory BI&PD liability and that the existing self-insurance trust fund of over \$9.5 million be kept intact for the benefit of both pre-petition and post-petition claimants; that its quarterly contributions of \$1.5 million, presently made to the existing fund, be made to a new trust fund for the sole benefit of the post-petition claimants; and that premiums on excess insurance policies be paid, subject to any necessary Bankruptcy Court approval.

Greyhound contends that if the Commission revokes Greyhound's self-insurance authorization, the carrier is not likely to be able to purchase commercial coverage with direct or contingent first-dollar coverage. Greyhound states that even if it had the financial capacity to procure such coverage when needed, the arrangements would likely require the Bankruptcy Court's approval and any delay or denial of such approval might be a factor in precipitating the liquidation of the company.

Greyhound also argues that, notwithstanding the bankruptcy filing, Greyhound will be able to satisfy self-insured BI&PD liabilities to post-petition claimants and protect the interests of pre-petition claimants. Regarding the protection of post-petition claimants, Greyhound emphasizes that the BI&PD claims arising from its normal business operations and incurred after the June 4, 1990 petition date are afforded first priority administrative expense treatment pursuant to 11 U.S.C. §§ 503(b) and 507(a)(1).

Greyhound explains further in its response that because it presently has approximately \$200 million of asset value in excess of secured claims and capital lease obligations, the favorable priority afforded by the Bankruptcy Code to post-petition BI&PD claims would provide an adequate protection for post-petition BI&PD claimants. Greyhound stresses that this would sufficiently protect post-petition claimants -- even if Greyhound failed to generate operating revenues from which post-petition claims could be paid, and even if Greyhound were not proposing the additional trust fund contributions.

In addition, Greyhound states that it can pay post-petition self-insured claims out of its current weekly revenues of approximately \$13 million. In this regard, Greyhound notes that (1) only 25 of 4,215 total claims since the inception of self-insurance have resulted in payments or reserved amounts exceeding \$50,000; (2) the vast majority of claims are under \$15,000; and (3) not a single claim has had to be paid by excess insurers during the current policy period.

Respecting pre-petition claims, Greyhound explains that, to the extent trust funds, not property of the estate, are available for tort claimants, the Bankruptcy Code protects the rights of the beneficiaries of such trust funds.

Greyhound also states it would continue to maintain substantial excess insurance coverage beyond the proposed \$1.5 million self-insured retention. As to excess insurance, Greyhound has already purchased excess coverage for the policy period subsequent to June 28, 1990, which covers losses within the layer of \$25 million to \$100 million per occurrence and remains in effect through April 30, 1991. Greyhound plans to finalize the purchase of the underlying \$1.5 million through \$25 million in excess coverage before June 29, 1990, and file with the Commission evidence of the coverage.

Greyhound represents that there would be enormous additional costs of first-dollar insurance coverage that would jeopardize continued Greyhound operations. In support, Greyhound explains that an inability now to self-insure the first \$1.5 million of BI&PD claims would require Greyhound either:

- (1) to go back to a high deductible program (with a \$1.5 million per occurrence deductible), which would require Greyhound to post a letter of credit for an additional \$35 million, or
- (2) to purchase guaranteed cost insurance with first-dollar coverage up to \$5 million per occurrence, at an annual premium of approximately \$50 million with \$10 million required up front.

As to the first option, Greyhound emphasizes that it currently has no letter of credit capacity and that to obtain the letter of credit necessary for a high deductible program, Greyhound would be required to enter into a new credit agreement with a lender. Greyhound represents further that such a lender would almost certainly require Greyhound to pledge collateral and pay up front fees. In addition, Greyhound emphasizes that such a credit agreement would require approval of the Bankruptcy Court; and that there is no guaranty of approval or that the Bankruptcy Court would give its approval before the current policies expire on June 28, 1990. Greyhound claims it would be equally difficult to make the \$10 million up-front premium payment required for guaranteed-cost coverage noted in the second option.

We have no reason to dispute Grayhound's position, that if its self-insurance authority is revoked, its annual premium for appropriate levels of commercial insurance coverage would substantially deplete the carrier's cash resources. Moreover, we believe that: (1) the second trust fund augmented by the unused balance from the first trust fund, (2) Grayhound's proposal to continue operations with insurance coverage in excess of \$1.5 million to \$100 million, and (3) the advantaged status of post-bankruptcy insurance claimants would provide sufficient protection to the public to waive the net worth requirement until the Bankruptcy Court approves a Plan of Reorganization, at which time we would reconsider this matter.

In sum, Grayhound has shown good cause why it should be permitted to continue as a self-insurer, subject to certain specified revisions and amendments to the current self-insurance authorization. We are convinced that Grayhound has demonstrated that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss. Moreover, we believe our decision also provides the best opportunity for continuation of intercity passenger service.

We find:

Grayhound has shown cause for continued authorization of its self-insurance BI&PD liability, subject to the conditions detailed below, and that such self-insurance will afford the security for the protection of the public contemplated by 49 U.S.C. 10927. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

Grayhound is authorized to continue to self-insure, but at \$1.5 million rather than the current \$5 million level, subject to the following modifications to our February 16, 1989 order:

1. Condition 2 is modified to provide that Grayhound is to establish and make a contribution of \$1.5 million on or about June 30, 1990, to a second trust fund for post-bankruptcy petition claimants, and subsequently make contributions of \$1.5 million during each calendar quarter thereafter until the second fund totals \$15 million for BI&PD liability; all other terms of Condition 2 are to apply to this second trust fund.
2. Condition 2 is further modified so that the existing trust fund of approximately \$9.5 million is to be preserved to pay only pre-bankruptcy petition claims and any surplus is to be deposited to the second trust fund in item 1 above for payment of post-petition claims.
3. Grayhound must submit monthly, quarterly and annual financial statements to the Commission, within 30, 60 and 90 days, respectively, after the end of each monthly, quarterly and annual period. The statements must include a certification of an appropriate carrier official verifying the accuracy of the information provided.
4. Grayhound must submit weekly cash reports, within 5 days after the end of each weekly period. The statements must include a certification of an appropriate carrier official verifying the accuracy of the information provided.

5. Condition 4 is modified so that Greyhound must have continuously in place from June 28, 1990, excess insurance coverage for BI&PD claims covering between \$1.5 million and \$100 million.

6. The \$10 million tangible net worth condition (Condition 5) is waived until further ordered. In the event the Bankruptcy Court approves a Plan of Reorganization, Greyhound has thirty (30) days thereafter to show cause why the Commission should not revoke the waiver of the \$10 million tangible net worth condition.

7. Condition 11 is modified so that Greyhound may immediately begin to self-insure the first \$1.5 million of its statutory BI&PD liability upon the effective date of this decision.

8. All other conditions of our February 16, 1989 order remain applicable to the self-insurance funds created pursuant to our February 16, 1989 order and this order, unless, specifically waived or modified herein.

9. This decision is effective on June 27, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lambley, and Emmett.

Moreta R. McGee
Secretary

(SEAL)