

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4250

IN THE MATTER OF:

Served February 23, 1994

Proposed Rulemaking Amending RULES)
OF PRACTICE AND PROCEDURE AND)
REGULATIONS, REGULATION NO. 58-13)
and Reduction of Filing Fee)

Case No. MP-93-59

Peter Pan Bus Lines, Inc. (Peter Pan), has proposed that the Commission adopt a regulation permitting carriers to file evidence of bodily-injury and property-damage (BI&PD) self-insurance authority under the Interstate Commerce Act as proof of their qualification for self-insurance authority under the Compact.

A notice of proposed rulemaking was issued on December 7, 1993, in Order No. 4220, and published in a newspaper of general circulation in the Metropolitan District on December 10, 1993. Copies of Order No. 4220 were served on all WMATC carriers and various other persons. Comments were due no later than January 6, 1994. Peter Pan was the sole commenter.

DISCUSSION

The Compact, Title II, Article XI, Section 7(f), mandates in pertinent part 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" (emphasis added). Commission Regulation Nos. 58-01 through 58-12 set forth the Commission's requirements regarding insurance policies and certificates of insurance. Regulation No. 58-13 establishes the standard for approval of other forms of security such as self-insurance:

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 Commission has a history of prescribing insurance regulations which are in the main consistent with those of the Interstate Commerce Commission (ICC). In 1985, we noted that "[i]t has been the Commission's general practice over more than two decades to establish insurance requirements for WMATC certificated carriers at

the same level as such requirements for ICC certificated carriers."¹ An exception carved out for carriers exclusively conducting special operations in vehicles seating 15 persons or less was eliminated in 1991 upon amendment of the Compact.² We explained that such action made "the minimum insurance requirements for WMATC carriers consistent with the requirements of . . . the Interstate Commerce Commission."³ Shortly thereafter, we redesigned our certificate of insurance to permit so-called "layered" coverage, which we noted was consistent with ICC practice.⁴ In 1992, we declined to reinstate "vehicle specific" coverage, discontinued in 1991, observing that such coverage was not consistent with insurance requirements "imposed by the ICC."⁵ Finally, in 1993, we promulgated a new certificate of insurance which is now "more consistent with its ICC counterparts."⁶ We thus turn our attention to the ICC's insurance regulations.

A. ICC SELF-INSURANCE REGULATIONS

The ICC's self-insurance regulations are contained in 49 C.F.R. § 1043.5(a). Originally, that section provided as follows:

The Commission will give consideration to and will approve the application of a motor carrier to qualify as a self-insurer if such carrier furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such motor carrier to satisfy its obligations for bodily injury liability, property damage liability, or cargo liability without affecting the stability or permanency of the business of such motor carrier.

49 C.F.R. § 1043.5(a) (1985). The similarities between the original rule and Regulation No. 58-13 are apparent.

The ICC adopted new rules in 1986, when a precipitous increase in carrier insurance premiums began stimulating interest in self-

¹ In re Security for the Protection of the Public, No. MP-85-02, Order No. 2721 (June 19, 1985).

² In re Rules of Prac. & Proc. & Regs., No. MP-91-05, Order No. 3600 (Jan 17, 1991).

³ Id.

⁴ In re Rules of Prac. & Proc. & Regs., No. MP-91-05, Order No. 3623 (Mar. 8, 1991).

⁵ In re United Mgmt. Corp., No. MP-92-31, Order No. 3995 (Sept. 3, 1992).

⁶ In re Appendix to Rules of Prac. & Proc. & Regs., Cert. of Ins., No. MP-93-41, Order No. 4203 (Nov. 15, 1993).

insurance.⁷ The new rules deleted the phrase "without affecting the stability or permanency of the business of such motor carrier" to shift the focus from maintaining the stability of individual carriers to ensuring that all applicants meet their statutory obligations.⁸ As the ICC explained,

this language reflects an era when the Commission exhibited a proprietary concern for the success or failure of individual . . . passenger carriers. Although our concern for the overall health of the motor carrier industry continues, such an approach is inappropriate for decision-making in the present regulatory environment, which relies on competition and market forces to correct individual operational problems. . . . Accordingly, we deem it advisable to delete this language to clarify that our primary concern is not individual carriers' operational health. Our concern is twofold: to ensure that carriers have an opportunity to pursue the self-insurance option; and to ensure that this approach adequately protects the public.

1986 Fed. Carr. Cas. at 47,134. Likewise, in the wake of competition-enhancing amendments to the Compact, effective 1991, we believe that when applying Regulation No. 58-13, the fundamental emphasis should be on ensuring protection of the public, not individual carriers.

The new rules, which were adopted in final form in 1987,⁹ also supplement the original rule with additional provisions clarifying the showing an applicant must make to establish that its self-insurance program will ensure a level of public protection in conformance with statutory standards. An applicant now must submit evidence of the adequacy of its tangible net worth in relation to the size of its operations and the extent of its request for self-insurance authority and its ability to maintain that net worth so as to meet its statutory obligations.¹⁰ Second, an applicant must demonstrate that it has established, and will maintain, an insurance program which comports with the applicant's statutory security obligations, including: maintenance of irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third-party financial guarantees; parent company or affiliate sureties; excess insurance coverage; or

⁷ Investigation into Motor Carrier Insurance Rates, 1986 Fed. Carr. Cas. (CCH) ¶ 37,231 at 47,133 (1986); 51 Fed. Reg. 15008 (Apr. 22, 1986). We acknowledged the existence of such pressures in Order No. 2721 in 1985. They were a significant factor in our decision to except certain small vehicle operators from the full increase in minimum insurance levels adopted at that time.

⁸ 1986 Fed. Carr. Cas. at 47,133-34.

⁹ 52 Fed. Reg. 3814 (Feb. 6, 1987).

¹⁰ 49 C.F.R. § 1043.5(a)(1).

other similar arrangements.¹¹ Third, an applicant must submit evidence of a current "satisfactory" safety rating by the United States Department of Transportation (DOT) or certify that it has not been rated.¹² Applications by carriers with a less than satisfactory rating will be summarily denied, and any self-insurance authority granted by the ICC will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.¹³ Fourth, an applicant must provide a three-year history of insurance premiums and claims experience and a detailed description of its safety program.¹⁴ Finally, an applicant must submit such additional information to support its application as the ICC may require.¹⁵

The focus on protecting the public is evident in the following decisions granting self-insurance authority to passenger carriers subject to a minimum BI&PD financial responsibility level of \$5 million per occurrence. These decisions exemplify the stringent qualifying conditions self-insurance applicants must accept upon approval. In each of these cases, the ICC also attached mandatory monitoring provisions, such as periodic reporting requirements, notification of credit line draw-downs and prior notification of letter of credit termination.

In Connecticut Limo. Serv., Inc., App. to be a Self-Insurer, 1986 Fed. Carr. Cas. (CCH) ¶ 37,275 (1986), the ICC approved self-insurance of \$1 million, subject to applicant maintaining excess insurance of \$4 million, and subject to applicant's parent executing a surety bond in behalf of applicant and maintaining a tangible net worth of \$3.9 million, an irrevocable escrow fund of \$1.6 million and an irrevocable letter of credit for \$3 million.

In Westours Motor Coaches, Inc., 1987 Fed. Carr. Cas. (CCH) ¶ 37,402 (1987), the ICC approved self-insurance of \$1 million, subject to applicants maintaining a tangible net worth of \$2 million each and irrevocable letters of credit for \$1 million and \$3 million, respectively, and subject to applicants' parent executing a surety bond in behalf of applicants and maintaining a net worth of \$20.1 million.

In Greyhound Lines, Inc., & GLI Acquisition Co. (Dallas, TX), 1989 Fed. Carr. Cas. (CCH) ¶ 37,658 (1989), the ICC approved self-insurance of \$5 million, subject to applicant maintaining a tangible net worth of \$10 million, an irrevocable letter of credit and/or trust fund of \$15 million and insurance covering any excess claims over the self-insured amount up to \$100 million.

¹¹ 49 C.F.R. § 1043.5(a)(2); see Investigation into Motor Carrier Insurance Rates, 1987 Fed. Carr. Cas. (CCH) ¶ 37,314 at 47,444 (1987) (discussing same).

¹² 49 C.F.R. § 1043.5(a)(3).

¹³ Id.

¹⁴ Form B.M.C. 40, reprinted in 2A Fed. Carr. Rep. ¶ 24,240 at 24,743-44 (May, 1993).

¹⁵ 49 C.F.R. § 1043.5(a)(4).

In Peter Pan Bus Lines, Inc. (Springfield, MA), 1991 Fed. Carr. Cas. (CCH) ¶ 37,914 (1991), the ICC approved self-insurance of \$250,000, subject to applicant maintaining a tangible net worth of \$500,000, an irrevocable letter of credit and/or trust fund of \$250,000, and insurance covering any excess claims over the self-insured amount up to \$5 million.

We find that the proffer of evidence required under 49 C.F.R. § 1043.5(a) if tendered here would satisfy a self-insurance applicant's burden of production under Commission Regulation No. 58-13. Compelling a carrier to make such an extensive showing a second time, however, would create an unnecessary burden on the carrier and hinder conservation of Commission resources. Moreover, in most instances the public will be adequately protected if we subject each self-insurance applicant to the same conditions imposed on it by the ICC. Consequently, we find Peter Pan's proposal in the public interest and in accordance with our practice of promulgating insurance regulations paralleling those of the ICC.

B. ICC SINGLE-STATE REGISTRATION REGULATIONS

Reduction of compliance burdens was the chief purpose behind section 4005 of the Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 105 Stat. 1914 (1991) [hereinafter "ISTEA"].¹⁶ Section 4005 amended 49 U.S.C. § 11506, titled "Registration of Motor Carriers by a State." Subsection (b) thereof declares that a State in which a carrier operates under an ICC certificate or permit does not create an undue burden by requiring such a carrier to register its certificate or permit at the State level in accordance with ICC standards. Under subsection (c)(1), the ICC is required to amend those standards so that a carrier will be "required to register annually with only one State," which "shall be deemed to satisfy the registration requirements of all other States." Under subsection (c)(2)(A)(ii), only the registration state may require a carrier to "file satisfactory proof of required insurance or qualification as a self-insurer." According to the ICC "[t]he 'required insurance' to which section 11506 refers must be interpreted to mean that required by the Commission, both with respect to type and to levels."¹⁷

On May 10, 1993, the ICC adopted new regulations amending its state registration standards at 49 C.F.R. Part 1023.¹⁸ The new regulations were published at 58 Fed. Reg. 28932 (May 18, 1993). Section 1023.4(b) provides that each carrier certificated by the ICC and operating in one or more participating states must register

¹⁶ H.R. CONF. REP. NO. 102-404, 102nd Cong., 1st Sess. (1991), reprinted in 1991 U.S.C.C.A.N. 1679, and 1991 WL 257494, at 968-69.

¹⁷ Single-State Insurance Registration, 1993 WL 17833, at *15 (1993).

¹⁸ Single-State Insurance Registration, 9 I.C.C.2d 610 (1993), reprinted in, 1993 Fed. Carr. Cas. ¶ 38,046 (May 10, 1993).

annually with a single registration state.¹⁹ Section 1023.4(c)(2) states that such a carrier must file or caused to be filed with its registration state:

A copy of its proof of public liability security submitted to and accepted by the Commission under 49 C.F.R. part 1043 or a copy of an order of the Commission approving a public liability self-insurance application or other public liability security or agreement under the provisions of that part. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted, or caused to be submitted, a copy of its proof or order of the Commission, it may thereafter satisfy the filing requirement by certifying that it has done so and that its security, self-insurance, or agreement remains in effect.

(emphasis added). In other words, "carriers simply are to show that they are in compliance with the Commission's insurance requirements." 1993 Fed. Carr. Cas. at 47,102 (emphasis in original). The rule Peter Pan proposes is clearly consistent with the ICC's single-state registration regulations.²⁰

CONCLUSION

By this decision, we now make explicit that which was implicit in our approval of the self-insurance application of Greyhound Lines, Inc. (GLI), in 1989: WMATC carriers self-insured under the Interstate Commerce Act are prima facie qualified for self-insurance under the Compact.²¹ Accordingly, we will amend Commission Regulation No. 58-13 as ordered below. The self-insurance application fee under Order No. 3601 shall be reduced to \$100 for applications relying on ICC approval.

THEREFORE, IT IS ORDERED:

1. That Commission Regulation No. 58-13 is hereby amended by adding the following sentence:

Proof of qualification for self-insurance of bodily injury and property damage liability under the Interstate Commerce Act, as determined by the

¹⁹ States which did not charge or collect a registration fee under 49 C.F.R. Part 1023 as of January 1, 1991, are not eligible to participate.

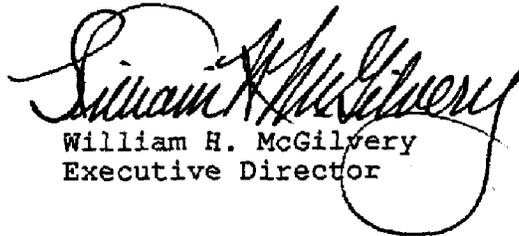
²⁰ Under Article XIV, Section 2(c), of the Compact, the ICC's single state registration standards do not apply to this Commission; therefore, carriers such as Peter Pan must file proof of ICC self-insurance authority directly with this Commission.

²¹ In re Greyhound Lines, Inc., No. AP-89-26, Order No. 3418 (Oct. 4, 1989). We noted in Order No. 4220 in this proceeding that our 1989 decision was based on GLI's proof of ICC approval.

Interstate Commerce Commission, together with proof that such qualification remains in effect, shall be deemed prima facie evidence of qualification for self-insurance under the Compact.

2. That the filing fee for self-insurance applications relying on Interstate Commerce Commission approval shall be \$100.

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



William H. McGilvery
Executive Director