

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4267

IN THE MATTER OF:

Served March 28, 1994

Application of PETER PAN BUS LINES,
INC., to Self Insure)

Case No. AP-94-09

By application filed March 18, 1994, Peter Pan Bus Lines, Inc. (Peter Pan or applicant), requests authorization to self insure against the first \$250,000 of bodily-injury and property-damage (BI&PD) claims arising out of each accident resulting from operations conducted under Certificate of Authority No. 232.

Peter Pan is required to maintain \$5 million in BI&PD insurance covering its WMATC operations. A certificate of insurance in that amount is currently on file with the Commission. Peter Pan proposes to replace that certificate with a \$250,000 self-insurance authorization and a \$4.75 million certificate of insurance.

DISCUSSION AND CONCLUSION

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

Peter Pan's application is supported by a certified copy of the Interstate Commerce Commission (ICC) order granting Peter Pan's application for self-insurance authority under the Interstate Commerce Act covering the first \$250,000 of BI&PD claims arising out of a

single accident.¹ The application also is supported by the affidavit of Peter Pan's president, in which he avers that "the ICC order is still in force and effect" and that "Peter Pan is in full compliance with all conditions imposed" therein.

Based on the evidence in this record, the Commission finds that Peter Pan 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 of Peter Pan's application is subject to the same conditions imposed on Peter Pan by the ICC.²

THEREFORE, IT IS ORDERED that the self-insurance application of Peter Pan Bus Lines, Inc., is hereby approved, subject to the following conditions:

(1) Applicant must maintain an irrevocable \$250,000, letter of credit or trust fund for BI&PD liability. Applicant must 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 must 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 must be replenished within 30 days, and any failure to replenish the amount of a drawdown within 30 days also must be reported immediately to the Commission.

To ensure the protection of the public, we will further require that the trust fund agreement contain the following provisions.

A. The trustees must be identified by name and address, and a statement must be given of their relationship to applicant.

B. The beneficiaries of the trust fund must be designated clearly as BI&PD liability claimants of applicant. No other parties may have rights of recovery against the trust fund.

¹ Peter Pan Bus Lines, Inc. (Springfield, MA), 1991 Fed. Carr. Cas. (CCH) ¶ 37,914 (1991).

² In re Rules of Practice and Procedure and Regulations, Regulation No. 58-13, No. MP-93-59, Order No. 4250 at 5 (Feb. 23, 1994).

C. The trust fund agreement must be established so that it may not be revoked until all cognizable claims arising during the time applicant holds WMATC authority to self-insure have been settled.

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

(2) Applicant must have continuously in place from the inception of its self-insurance program BI&PD insurance coverage of \$4.75 million in excess of the underlying self-insurance amount. A certificate of insurance must be received and accepted before applicant may commence operations under its self-insurance authorization.

(3) Applicant must maintain a tangible net worth of at least \$500,000 and must notify the Commission at any time, during the effectiveness of the self-insurance authorization, if its net worth balance falls below the \$500,000 level. If this occurs, applicant will then have 30 days to correct the situation or face termination of the authority to self-insure.

(4) Applicant must 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 must include a certification by an appropriate company official verifying the accuracy of the information provided.

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

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

(8) Applicant must 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 could be cause for termination of self-insurance authority.

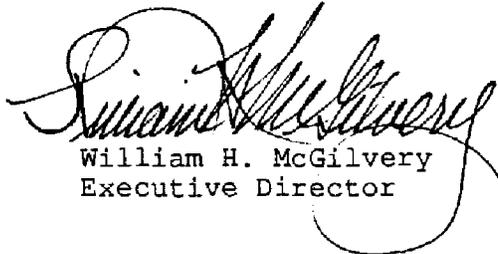
(9) The Commission retains the authority to terminate applicant's self-insurance authorization at any time if it appears to the Commission that applicant's financial

arrangements fail to provide satisfactory protection for the public, or applicant fails to file timely 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 must also notify the Commission of the date it will activate its self-insurance authority.

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



William H. McGilvery
Executive Director