

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3418

IN THE MATTER OF:

Served October 4, 1989

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

Case No. AP-89-26

By application filed May 9, 1989, Greyhound Lines, Inc. (Greyhound), seeks authorization by this Commission to self-insure certain bodily injury and property damage liability, based upon the same terms and conditions attached to similar authorization granted Greyhound by the Interstate Commerce Commission (ICC) in its Docket No. MC-1515, Greyhound Lines, Inc., and GLI Acquisition Company -- Application to be a Self-Insurer, decided February 9, 1989.

Our jurisdiction over this matter comes from the Compact, Title II, Article XII, Section 9(a):

No certificate of public convenience and necessity shall be issued under Section 4, and no certificate issued under such section shall remain in force, unless the person applying for or holding such certificate complies with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such carrier for bodily injuries to or the death of any person, or for loss or damage to property of others, resulting from the operation, maintenance, or use of motor vehicles, street cars, or other equipment or facilities utilized in furnishing transportation subject to this Act.
[Emphasis supplied.]

Greyhound holds Certificate of Public Convenience and Necessity No. 139 issued by this Commission and is, therefore, subject to the above-cited Compact requirement and Commission Regulation No. 62 governing security for the protection of the public. Regulation No. 62-05 provides:

Qualifications as a Self-Insurer. The Commission will give consideration to, and will approve the application of, a 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 carrier to satisfy its obligations for bodily injury liability and property damage liability without affecting the stability or permanency of the business of such carrier.

It is clear that the Compact and Regulation No. 62 both provide that it is within the ambit of the Commission to approve a request to self-insure.

As part of its application Greyhound has provided ICC's decision of February 9, 1989, and a letter by ICC's Deputy Director of Operations indicating that Greyhound is in compliance with the conditions of that decision and has continuing authority to self-insure its bodily injury and property damage (BI&PD) liability, effective April 30, 1989. We take official notice of the above-described ICC decision and letter.

We have carefully reviewed ICC's decision. ICC considered Greyhound's inter-corporate structure; the savings projected to be realized by a combination of self-insurance retention and a spread loss program or reinsurance; Greyhound's profitability, cash flow, interest coverage, liquidity, and debt structure; Greyhound's safety, training, maintenance, and risk management programs; and Greyhound's BI&PD liability limits, deductibles, premiums, and claims experience over a recent five-year period. Greyhound asks this Commission to grant it authority to self-insure under the same terms and conditions granted by ICC. For the sake of clarity and completeness, we here repeat ICC's directives:

It is ordered:

The self-insurance application of Greyhound Lines, Inc., and GLI Acquisition Company, is granted, subject to the following conditions:

- (1) The merger of Greyhound Lines, Inc., and GLI Acquisition Company must be consummated on or before the institution of the approved self-insurance proposal and the Commission properly notified of such merger.
- (2) Applicant must maintain a \$5 million irrevocable letter of credit and/or trust fund upon approval of self-insurance, which will be increased \$1.5 million each calendar quarter until the letter of credit

and/or trust fund reaches a maximum of \$15 million for BI&PD liability. Applicant must submit, within 60 days of the service date of this decision, copies of the agreements with the financial institution establishing the letters of credit and/or trust funds. The Commission must approve the terms of the letters of credit and/or trust funds prior to any effective date for activation of the letters of credit and/or trust funds. Any changes in their terms must be given prior approval by the Commission. Furthermore, applicant must have unrestricted access to the letter of credit and/or trust fund and drawdowns from them may only be made to satisfy BI&PD liability claims. Applicant must notify the Commission immediately upon any drawdown on the letter of credit and/or trust fund, along with an explanation as to how applicant proposes to respond to additional liability claims. Any drawdown from the letter of credit and/or trust fund must be replenished within 30 days, and any failure to replenish the amount of the drawdown within 30 days must also be reported immediately to the Commission.

To insure the protection of the public, we will require that the trust agreements contain the following provisions:

- ° The trustees must be identified, and a statement must be given of their relationship to the applicants. We must also have the addresses of the trustees.
- ° The beneficiaries of the trust agreements must be clearly designated as the BI&PD liability claimants of the merged carrier applicant. No other parties may have rights of recovery against these funds.
- ° Payments under the trust agreements must be made directly to BI&PD claimants.
- ° The trust agreements must be established so they may not be revoked until all cognizable claims arising during the time the carriers hold ICC authority to self-insure have been settled.

(3) Applicant must notify the Commission no later than 90 days prior to the effective date of any change or cancellation of the excess insurance, letters of credit and/or trust funds and must notify the Commission of the renewal of the letters of credit and excess insurance coverage no later than 6 months prior to their respective expiration dates.

(4) Applicant must have continuously in place from the inception of its self-insurance program excess insurance coverage for BI&PD claims covering between \$5 million and \$100 million.

(5) Applicant must maintain a tangible net worth of at least \$10 million and must notify the Commission at any time the net worth falls below \$10 million. Net worth for this requirement excludes intangible property. Applicant will then have 30 days to correct the situation or face termination of the authority to self-insure. Applicant must also notify the Commission within five (5) days upon default of any terms of its Senior Credit Agreement.

(6) Applicant must subordinate any intercompany indebtedness to any outstanding self-insurance obligations and must submit a quarterly accounting of the activity in intercompany payable accounts.

(7) Applicant must submit carrier quarterly and annual financial statements to the Commission, within 60 and 90 days, respectively, after the end of each quarterly or annual period. The statements must include a certification of an appropriate carrier official verifying the accuracy of the information provided.

(8) 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 applicant's claims experience. An appropriate carrier official must certify these reports as to their accuracy.

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

(10) The Commission retains the authority to terminate any portion or all of this 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.

(11) This decision is effective on the service date. Applicant, however, may not activate the self-insurance authorization less than 30 days after submitting documents to the Commission demonstrating

that the required letters of credit and/or trust funds have been established. Applicant must also notify the Commission of the date applicant will activate this self-insurance authority.

We concur in ICC's disposition of Greyhound's proposal, including the modifications made by ICC to that proposal. The work done by ICC is current and well considered. Therefore, we believe it would be unnecessary and wasteful of Greyhound's and this Commission's resources to plow the same field again so soon.

We shall adopt the directives of ICC as our own and we shall require Greyhound to file with this Commission any written communications between Greyhound and ICC on this subject. For purposes of this order, references in the ICC directives to "the Commission" and "ICC" shall mean Washington Metropolitan Area Transit Commission.

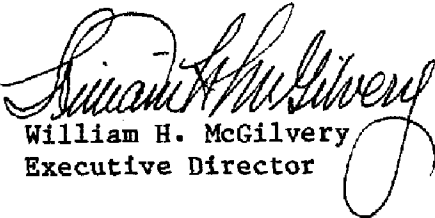
THEREFORE, IT IS ORDERED:

1. That the directives of the Interstate Commerce Commission in its Docket No. MC-1515, Greyhound Lines, Inc., and GLI Acquisition Company -- Application to be a Self-Insurer, decided February 9, 1989, are hereby adopted as if directed by this Commission in this order.

2. That Greyhound Lines, Inc., shall file with this Commission, simultaneously with filing with the Interstate Commerce Commission, any written communication relating to these directives or the subject of self-insurance.

3. That Greyhound Lines, Inc., shall file with this Commission, any written communication it receives from the Interstate Commerce Commission relating to these directives or the subject of self-insurance, within 10 days of receipt of any such written communication by Greyhound Lines, Inc.

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


William H. McGilvery
Executive Director