

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4204

IN THE MATTER OF:

Served November 16, 1993

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

Case No. AP-89-26

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

Case No. MP-90-12

In 1989, in Case No. AP-89-26, the Commission granted the application of Greyhound Lines, Inc. (GLI), for authorization to self insure against the first \$5 million in claims for bodily injury and property damage (BI&PD) arising out of a single accident.¹ The authorization was subject to several conditions, including maintenance of at least \$10 million tangible net worth, establishment of an insurance claims trust fund, acquisition of one or more insurance policies covering BI&PD liability in excess of the self-insured amount up to \$100 million, and submission of quarterly and annual reports.²

GLI's authorization was lowered to \$1.5 million in Case No. MP-90-12 upon GLI entering bankruptcy in 1990.³ In addition, GLI was ordered to submit further reports on a weekly and monthly basis and establish a second trust fund, which was reserved for satisfying BI&PD claims filed after GLI's petition for bankruptcy and was to be funded by GLI making quarterly contributions of \$1.5 million until the balance reached \$15 million.⁴ The net worth requirement was waived pending the outcome of the bankruptcy proceeding.⁵ After emerging from bankruptcy, GLI was granted an extension of the net worth waiver until September 1993 but was required to continue making quarterly deposits into the post-petition fund beyond the \$15 million level.⁶

GLI has filed a motion requesting restoration of the full \$5 million authorization originally granted, plus modification of the current conditions. The above captioned proceedings are hereby reopened and consolidated for consideration of GLI's motion.

¹ In re Greyhound Lines, Inc., No. AP-89-26, Order No. 3418 (Oct. 4, 1989).

² Id.

³ In re Greyhound Lines, Inc., No. MP-90-12, Order No. 3529 (July 23, 1990).

⁴ Id. The first trust fund was reserved for pre-petition claims.

⁵ Id.

⁶ In re Greyhound Lines, Inc., No. MP-90-12, Order No. 4009 (Oct. 14, 1992).

DISCUSSION AND CONCLUSION

GLI seeks here relief it has already obtained from the Interstate Commerce Commission (ICC): (1) restoration of the self-insurance authorization from \$1.5 million to \$5 million; (2) termination of the quarterly deposit requirement;⁷ (3) reduction of the post-petition trust fund from \$19.5 million to \$15 million; (4) reversion of surplus funds from the post-petition and pre-petition trust funds to GLI; and (5) elimination of the weekly and monthly reporting requirements. Under the ICC's order, GLI must continue to carry one or more policies insuring against BI&PD liability in excess of the self-insured amount up to \$100 million and, once again, maintain a tangible net worth of \$10 million.

In Greyhound Lines, Inc., No. MC-1515, 1993 WL 385604 (I.C.C. Sept. 30, 1993), the ICC granted GLI's request for increased self-insurance authority on the ground that GLI's liquidity and earnings had shown substantial improvement in the period following bankruptcy and that GLI had demonstrated an ability to pay self-insurance claims from earnings. The following findings are central to those conclusions:

After incurring losses in both 1990 and 1991, GLI reported net carrier operating incomes of \$55.4 million and \$13 million, respectively, for the year 1992 and the first 6 months of 1993. Also, net incomes of \$10.9 million and \$0.5 million, respectively, were achieved for these same periods

Cash flow generated from operations of \$44.4 million for the year 1992 substantially exceeded maturing long-term debt of \$12.6 million as of December 31, 1992, by a margin of 3.5 times (cash throw-off-to-debt ratio). The cash throw-off-to-debt ratio for the first 6 months of 1993 was 2.1 times and annualized for the year 1993 was a highly favorable 4.2 times.

The sale of 4.7 million shares of common stock to the public in May 1993 substantially increased GLI's liquidity and equity [B]etween December 31, 1992 and June 30, 1993, cash increased from \$2.1 million to \$56 million and working capital improved from a deficit \$55.6 million to a positive \$10.8 million. Tangible equity also improved from a deficit \$2.9 million to a positive \$103.9 million

GLI's self-insurance program has continually afforded security for the protection of the public The carrier has paid BI&PD liability claims from operating revenue GLI has deposited \$19.5 million, as of June 30, 1993, into the post-petition trust fund, and no funds have been withdrawn from this trust fund for payment of claims since its inception.

Id. at *2-3.

⁷ While not expressly requested here, such relief was granted by the ICC and appears necessary if we are to approve GLI's request to draw down the post-petition fund to \$15 million.

With respect to termination of the quarterly deposits, reduction of the post-petition trust fund balance, and reversion of surplus trust fund deposits, the ICC held as follows:

The Greyhound I, self-insurance authorization was premised upon an offer by GLI to establish and maintain a combined letter of credit and trust fund of \$15 million, and if necessary to increase the security to 150% of the loss reserves established by the carrier for BI&PD claims. We will continue to require a \$15 million trust fund, even though this is less than 150% of its present BI&PD reserves of \$12.3 million

. . . Concurrent with the requirement that GLI maintain a \$15 million trust fund, we will authorize GLI to withdraw the approximately \$4.5 million in excess funds currently in the fund and discontinue quarterly deposits of \$1.5 million.

Regarding the pre-petition trust fund, GLI states that there are only 26 unresolved self-insured BI&PD claims against the trust fund established by the Commission and the Bankruptcy Court and that even allowing for these claims and the 25% of the settlements or awards which have been held back under the plan, there will be nearly \$2 million left over in the pre-petition fund. GLI requests that any surplus funds be released to it for its general use upon resolution of all claims. We agree, given the fact that GLI's post-petition fund contains more than \$15 million.

Id. at *3-4.

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 . . . self-insurance." Under Commission Regulation No. 58-13 a carrier seeking self-insurance authority "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."

GLI has presented evidence here consistent with the ICC findings quoted above. The Commission is satisfied that this evidence establishes GLI's present ability to self-insure against the first \$5 million in BI&PD claims arising out of a single accident without adversely affecting its stability or the public interest. We were satisfied with GLI's similar showing in 1989 when we initially set GLI's self-insurance authorization at the \$5 million level. The intervening bankruptcy compelled us to reduce that authorization to \$1.5 million. The debt reorganization in bankruptcy, subsequent turnaround in profitability of operations, and issuance of new securities has put GLI back in the black. Its ability and demonstrated commitment to paying self-insured claims out of earnings, its improved liquidity and cash flow, and marked improvement in tangible net worth warrant restoration of the full \$5 million authorization originally granted.

In granting the requested relief, and in keeping with prior practice, we believe that our approval should be subject to the same conditions imposed on GLI by the ICC.

THEREFORE, IT IS ORDERED:

1. That the requirement to submit monthly financial statements and weekly cash reports imposed on Greyhound Lines, Inc., in Commission Order No. 3529 is hereby terminated.

2. That the requirement to continue making quarterly deposits of \$1.5 million into the post-petition trust fund imposed on Greyhound Lines, Inc., in Commission Order No. 4009 is hereby terminated.

3. That the self-insurance authorization of Greyhound Lines, Inc., is hereby increased to \$5 million, subject to the following conditions:

(a) Greyhound Lines, Inc. (GLI), must maintain a \$15 million letter of credit or trust fund for BI&PD liability. GLI 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 agreements prior to their effective date. Any changes in their terms must be given prior approval by the Commission. Furthermore, GLI must have unrestricted access to the letter of credit or trust fund, and drawdowns may be made only to satisfy claims for BI&PD liability, respectively. Any drawdown from the letter of credit or trust fund must be reported immediately to the Commission, along with an explanation as to how GLI proposes to respond to additional liability claims. Any drawdown from the letters of credit or trust funds 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 agreements contain the following provisions.

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

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

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

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

(b) GLI must maintain a tangible net worth of at least \$10 million and must notify the Commission at any time, during the effectiveness of the self-insurance authorization, if its net worth balance falls below the \$10 million minimum. If this

occurs, GLI will then have 30 days to correct the situation or face termination of the authority to self-insure.

(c) GLI 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. However, so long as it remains a publicly held company, in lieu thereof, GLI may file copies of its quarterly Form 10-Q and annual Form 10-K financial statements filed with the SEC concurrently with their filing with the SEC. The financial statements must include a certification by an appropriate company official verifying the accuracy of the information provided.

(d) GLI 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 GLI must certify the accuracy of these reports.

(e) GLI 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.

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

(g) GLI 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.

(h) GLI must have continually in place, from the date it self-insures up to the first \$5 million per occurrence of BI&PD liability, excess insurance coverage for BI&PD claims covering the difference between the self-insured BI&PD liability and \$100 million. GLI must have the excess liability insurance company certify to the Commission that the insurer will give the Commission 90 days advance notice of cancellation.

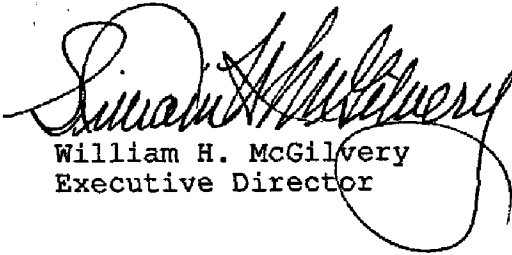
(i) The Commission retains the authority to terminate its self-insurance authorization at any time if it appears to the Commission that GLI's financial arrangements fail to provide satisfactory protection for the public, or GLI fails to file timely any of the information required by the Commission.

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

(k) This decision is effective on the date of service. GLI must also notify the Commission of the date it will increase its self-insurance authority to the \$5 million level.

4. Greyhound Lines, Inc., is authorized to withdraw any amount in excess of \$15 million from the post-petition trust fund. Upon resolution and satisfaction of all claims under the pre-petition trust fund, GLI is authorized to withdraw those funds and use them for general corporate purposes.

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



William H. McGilvery
Executive Director