



## Parents Against Tired Truckers and Citizens for Reliable and Safe Highways

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### Minimum Insurance Levels for Motor Carriers

#### Background

In 1980, as Congress deregulated the trucking industry, there was great concern regarding the imminent increase in the number of trucking companies that was sure to follow the removal of the barriers to entry into the industry. Congress believed it would be difficult for the federal regulators, alone, to provide effective oversight for safe operations for such a large number of companies. Congress intended the Secretary of Transportation to set insurance minimums at a level significant enough to provide an appropriate means of compensation to truck crash victims if crashes occurred and also to cause the insurance companies to provide effective, on site underwriting so that the insurance market would provide incentives for safe operations of motor carriers.

Congress set the absolute minimum level of insurance to be applied to motor carriers of property and of hazardous materials at \$750,000 and \$5,000,000, respectively, and gave the Secretary of Transportation authority to increase such amounts to appropriate levels that would achieve the intended purpose. Unfortunately, the minimum amounts set by Congress as the absolute floor were too low to provide the intended underwriting supervision and too low to provide protection for the public. Nonetheless, in spite of an exponential growth of the number of authorized motor carriers (approximately 27,000 prior to deregulation compared to more than 500,000 in existence today), the Secretary has never increased the bare minimums set by Congress, and the low original minimum amounts, over the past 35 years, have provided less and less of an incentive to operate safely and have become almost insignificant when compared to the damages caused by the huge trucks now allowed on public highways. Indeed, many “minimum” policies are already written at the \$1,000,000 level because the \$750,000 amount is so absurdly low.

#### Crash Costs

When the above numbers were set as part of the deregulation process, the amounts were considered to be the absolute minimums necessary for protection of the public. Since then, not only have all of the expenses associated with truck crashes increased dramatically, the sheer disparity in size between cars and trucks has increased resulting in more severe crashes. In that same time, trailers were allowed to expand first to 48’ in length, and then to 53’. Truck weight increases, both across the board and through exemptions, have also occurred. Combined with the increase in crash expenses and damages, such as lost income and medical expenses, the lack of any adjustment since 1980 has caused a greater disparity between the original amount and current costs.

The common approach by an insurance company for a trucking company with only the required minimums in liability coverage, when the trucking company causes a catastrophe with damages that far exceed the insurance, is to “interplead” the insurance limits. This is done by the insurance company suing all of the people injured and the families of those killed in one suit, with the insurance company offering to pay the ridiculously low limits of the policy into court and to require those injured and those who have lost loved ones to fight (or “interplead”) among themselves as to who should get what. The number of interpleader actions has risen dramatically as the required minimum insurance levels have fallen significantly short of the damages actually caused by truck crashes.

The effect of the lack of adequate insurance is that the damages caused by certain segments of the industry are not borne by those causing them. The damage caused by the underinsured are spread out among the innocent motorists who are killed and injured, who frequently have no effective recourse against the companies that caused their losses.

A common type of truck crash involves a fatigued truck driver who crashes into traffic that has stopped on the highway due to congestion, a prior crash or a construction zone. These crashes typically involve multiple vehicles, multiple deaths, and multiple injuries. The total damages caused in such cases can easily exceed \$20,000,000, but an insurance company with minimum limits will simply sue everyone involved in an interpleader action and the unprotected crash victims are left to do the best with what they have to try to put their lives back together. Frequently, the injured and disabled end up relying on Medicaid, Social Security or other government programs because smaller trucking companies do not have to pay for the cost of the damages they cause. This amounts to a taxpayer subsidy for the companies that don’t carry enough insurance to cover the damages they cause, while adequately insured companies bear such expenses as part of their business.

#### Unfair Competition

The low limits allowed by law are frequently carried by trucking companies that have minimal owned assets; companies that lease their terminals and equipment or otherwise leverage their operations. Even if an injured person obtains a legal judgment in excess of the low insurance limits, the companies have simply gone out of business and the owners have started up a new business under another name. This dangerous practice, referred to as reincarnating or chameleon carriers, was described in a July 2009 report by the GAO.

Larger, nationwide companies, which are adequately capitalized on the other hand, have much higher limits. It is common for the larger carriers to carry multiple layers of coverage, sometimes with a significant self-insured retention, with totals exceeding \$30,000,000. These companies carry adequate amounts because they have “something to lose” and they know too well the significant damages that can be caused when a commercial truck hits a passenger vehicle or vehicles.

The larger companies have significant incentive to make their operations as safe as possible rather than simply gamble against the risk of a catastrophic crash. As a result, they have higher insurance overhead costs to protect against potential losses, yet they have to compete with companies that have nothing to lose (and others willing to put the public at risk) that carry the minimum basic coverage. The companies with “nothing to lose” are effectively subsidized by the victimized motoring public and government programs that absorb the uninsured losses. The low limits, then, create exactly the opposite effect that minimum insurance levels were intended to provide. Rather than increasing overall safety within the industry by creating an economic incentive to operate safely, the low levels create a more dangerous situation through unfair competition by allowing the losses of the most irresponsible companies to be subsidized by the public while responsible companies pay the full amount of the damages they cause.

### **Minimums That Should be Required**

The industry should have to absorb the losses it causes. Crashes involving multiple deaths and injuries, along with any property/infrastructure damage, with total combined damages far exceeding the current minimums happen every week. In order for the minimums to serve the purpose for which they were intended, the limits need to be set sufficiently high to give the insurance companies a reason to set realistic underwriting standards that would reward safe companies and identify unsafe operations. The limits should also reflect the real devastation and damages that are caused when an 80,000 pound truck slams into traffic stopped or slowed in a construction zone. In order to have these effects, property-carrying motor carriers should be required to carry at least \$10,000,000 per occurrence. If inflation alone were to be addressed the amount would need to be \$2.2 million.

### **FMCSA Report on Minimum Financial Responsibility**

In April 2014, the Federal Motor Carrier Safety Administration (FMCSA) released a report on its review of minimum financial responsibility that found current levels to be inadequate. It found that costs for severe and critical injury crashes can easily exceed \$1 million. The study only identified a small number of crashes that exceeded minimum insurance levels due to the lack of available settlement data. Insurance settlements for amounts that exceed the minimum levels often contain a nondisclosure agreement, and this information is not publicly available. In summary, the report noted that current limits do not adequately cover catastrophic crashes and acknowledged that medical care inflation would increase levels to at least \$3.2 million.

### **Findings from Other Reports on Minimum Financial Responsibility**

- Pacific Institute for Research and Evaluation (PIRE) - This report found that the upper range for liability awards involving death or catastrophic injury is \$9–10 million, and recommended that DOT set limits per crash of at least \$10 million.
- Trucking Alliance Review of Crash Settlements - Member companies of the Trucking Alliance voluntarily tracked 8,692 accident settlements between 2005 and 2011. According to the Trucking Alliance, 42 percent of the injury claims could have had no avenue for offsetting all medical costs.

### **Conclusion**

Congress’ concern of an explosion in the number of motor carriers and the consequential inability of regulation and enforcement to keep our highways safe has become a reality. The intended protective mechanism of federally-required minimum levels of insurance, however, has never adequately performed its intended function. The amount was never set at a sufficiently high level to require insurance companies to seriously underwrite motor carriers and require safe operations before agreeing to insure them and, over time, the minimum amount has become totally inadequate. Death and catastrophic injuries have become accepted as part of the cost of doing business, with most of that cost being shifted to non-industry members of the motoring public and to the American taxpayers. **The Secretary of Transportation has the authority and the responsibility to ensure the Congressional intent of the required financial responsibility is achieved. The Secretary should exercise her authority in this regard and set the minimums at responsible levels that will encourage safe underwriting and safe operations as was intended by Congress.**

### **Summary**

- Minimum levels of insurance for trucks have not been increased in over 35 years and are woefully insufficient.
- Consequently, a large portion of the damages and losses caused by motor carriers at or near the minimum is imposed upon the American motoring public.
- The underinsured segments of the industry are effectively subsidized by American taxpayers through unreimbursed social welfare programs including Medicaid and Social Security.
- If all of the industry were required to absorb more of the losses they cause, significant changes in the industry would occur, resulting in safer highways for all.