



Parents Against Tired Truckers and Citizens for Reliable and Safe Highways

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## **Minimum Insurance Levels for Motor Carriers Need to be Increased**

- Minimum levels of insurance for trucks and motor coaches have not been increased in 30 years and are woefully deficient.
- Consequently a very large portion of the damages and losses caused by the trucking industry is imposed upon the American motoring public.
- The industry should not continue to be allowed to pass on these costs to the innocent motoring public.
- If the industry were to be required to absorb the losses it causes, there would be significant changes in the industry which would result in safer highways for all.

### **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 sufficiently significant not only to provide an appropriate means of compensation to truck crash victims if crashes occurred, but also to cause the insurance companies to provide effective underwriting so that the insurance market would provide effective incentives for safe operations of motor carriers.<sup>1</sup>

Congress set the absolute minimum level of insurance to be applied to motor carriers of property, of persons, and of hazardous materials at \$750,000, \$5,000,000 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 750,000 in existence today), the Secretary has never increased the bare minimums set by Congress, and the low original minimum amounts, over the past 30 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 our public highways. Indeed, most “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 absolute minimums with the actual amounts necessary for protection of the public to be determined and set by the Secretary. Since then, not only have all of the expenses associated with truck crashes increased dramatically, the sheer disparity in size between cars and trucks and size of the trucks has increased resulting in more severe crashes. In that same time, trailers were allowed to expand first to 48’ in length, then to 53’ and 102” in width. Although crash expenses and damages



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have increased, (for example, lost income and medical expenses have had huge increases) not one penny has been added to the original minimums set by Congress in 1980.

The accepted approach by an insurance company for a trucking company with only the required minimums in liability coverage, when the trucking company causes a catastrophe on our public highways 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 so woefully short of the damages actually caused by the industry.

The effect of the lack of adequate insurance is that the damages caused by the industry are not borne by the industry. The uninsured amounts 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 very 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 accident or a construction zone. These crashes typically involve multiple vehicles, multiple deaths and multiple injuries. The total damages caused in such cases frequently 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, Medicare or other government programs because the trucking industry does not have to pay for the cost of the damages it causes.

**Unfair Competition**

The low limits allowed by law are frequently carried by trucking companies that are otherwise uncollectable; companies that lease their terminals and equipment or otherwise leverage their operations without significant owned assets. 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 was described in a recent report by the GAO.<sup>2</sup>

Larger, nationwide companies, which are adequately capitalized on the other hand, have much higher limits. It is common for the larger carriers such as Swift, Schneider, Yellow, Fed Ex, etc. 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 huge damages that can be caused when a commercial truck hits a passenger vehicle or vehicles.

The larger companies, therefore, 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



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“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.

#### Effect of Mexican Trucks

When a United States trucking company causes more damages than it has insurance to pay, the injured parties at least have the option of bringing that company into court, obtaining an excess judgment, and attempting to collect the judgment against any available assets or putting that company out of business. Additionally, the individuals whose negligence caused the crash (driver, safety manager, trainers) can be subject to personal jurisdiction and a personal judgment against them. If a Mexican trucking company causes more damages than its insurance can pay, the injured parties will be able to get a paper judgment against the company, but in order to collect other assets or close the company down, the injured party would have to enforce such a judgment in Mexico which means, in reality, the insurance will be the only real recourse available. Negligent individuals working at the company are effectively judgment proof, as they would have no physical presence in the United States. Accordingly, there is a clear and present need to have adequate minimum insurance levels established before the first Mexican truck should be allowed full entry into this country.

#### Minimums That Should be Required

The industry should have to absorb the losses it causes. Crashes involving multiple vehicles, multiple deaths and multiple injuries with damages far exceeding the current minimums happen every single day. 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 be selective about what companies they will insure, and to set real underwriting standards that would exclude the possibility of coverage for unsafe companies. The limits should also reflect the real devastation and damages that are caused when an 80,000 pound rig 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 \$5,000,000 per occurrence and transporters of hazardous materials and people should be required to carry at least \$15,000,000 worth of coverage.

#### Conclusion

Congress' fear 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 bloody 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 a very sad joke. 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. **The Secretary of Transportation has the authority and the responsibility to make sure that the congressional purpose of the**



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**required financial responsibility is achieved.** The Secretary should exercise his authority in this regard and set the minimums at responsible levels that will encourage safe underwriting and safe operations as was intended by Congress.

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<sup>1</sup> *House Report No. 96-1069, Motor Carrier Act of 1980. P.L. 96-296, page 42-43: “To protect against any potential impairment to safety, arguments were made that some precautions should be taken to require higher financial responsibilities for motor carriers.... Thus, the action of the Committee in increasing financial responsibility is to encourage carriers to engage in practices and procedures that will enhance the safety of their equipment so as to offer the best protection to the public...The carrier who wants to maintain high safety levels will be under pressure to cut his costs to meet his competitors, some of which may cut costs by operating in violation of minimum safety standards. Specifying minimum insurance levels is one way to help improve motor carrier safety. Insurance companies are equipped to evaluate the performance of the motor carriers. The premiums they assess are in direct relation to the risks they assume. Therefore, an unsafe carrier will have an increased premium and a totally unsafe carrier may not be able to obtain the insurance necessary to operate, or at best will be at an insurance cost disadvantage.”*

<sup>2</sup> *Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public...* GAO-09-924, July, 2009.

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