

## MINIMUM TRUCK LIABILITY INSURANCE IS A SAFETY ISSUE

### **I. Background – 1980 Motor Carrier Act: Congress Intended Minimum Insurance Limits to Maintain Safety While Deregulating the Trucking Industry**

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 since the barriers to entry were being removed. 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 to cause the insurance companies to provide effective underwriting so that the insurance market would provide effective incentives for safe operations of motor carriers:

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.

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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>1</sup>

### **II. Inflationary Factors**

Following the passage of the Motor Carrier Act of 1980, the Secretary began to implement the authority to set minimum insurance limits with a phase-in that took approximately

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<sup>1</sup> House Report No. 96-1069, Motor Carrier Act of 1980. P.L. 96-296, page 42-43.

five years, but the congressional minimum limit was set at \$750,000 in 1980. Any increase based on inflation should be based on the amount set in 1980 in order to recognize congressional intent, rather than begin at the time, five years after Congress set the minimum, that the Secretary finally implemented the requirement.

### **III. Crash Costs and Increased truck Size and Weight**

When the \$750,000 minimum was set as part of the deregulation process, the amount was considered to be the absolute minimum, with the actual amount, 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 and weight between cars and trucks has increased resulting in more severe crashes. Since 1980, semi-trailers were allowed to expand from 48' to 53' in length and 102" in width and states were required by federal law to increase the allowable weight of trucks to 80,000 pounds. Although crash expenses and damages 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.

### **IV. Effect of Mexican Trucks – Urgent Action Required**

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 for, 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 Mexican trucks should be allowed full entry into this country. Injured American citizens and the American taxpayers already subsidize the United States trucking industry by paying for uninsured damages the industry causes. We should not extend this unfortunate subsidy to foreign trucking interests.

#### **V. Unfair and Unsafe Competition by Under-Capitalized and Underinsured Trucking Companies**

[SEE ENCLOSED RECOMMENDATION BY THE SAFETY, SECURITY AND ENVIRONMENTAL SUBCOMMITTEE OF THE NATIONAL FREIGHT ADVISORY COMMITTEE (NFAC)]

#### **VI. 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. Other modes of freight transportation involve significant capitalization and require very substantial insurance to protect the interests involved. Consequently, all other modes have successfully implemented safety systems that have reduced their casualty losses to a fraction of the losses caused by the trucking industry. However, in segments of the trucking industry, 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 taxpayers. The Secretary of Transportation has the authority and the responsibility to make sure that the Congressional safety purpose of the required financial responsibility is achieved.