

COMPULSORY LIABILITY INSURANCE FOR COMMERCIAL MOTOR VEHICLES

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The automobile was still a horseless carriage when state regulation of commercial motor vehicle traffic was first prophesied by a declaration in 1907 by the Georgia Public Service Commission that its jurisdiction extended over common carriers by motor. In 1914 a Pennsylvania statute inaugurated the first active regulation of such carriers. Other states soon followed suit. Shortly after regulation began, New York and Wisconsin pioneered compulsory liability insurance for motor carriers. By 1920 seven states had such legislation,¹ and today forty-six states² have some sort of insurance requirements for commercial motor vehicles.³ In 1935 Congress applied the cap sheaf in the form of the Motor Carrier Act, which regulates interstate commercial traffic.⁴

Although the need for federal regulation had been keenly felt, before the 1935 act what little regulation there was of interstate carriers was done by the states. This inevitably gave rise to problems of jurisdiction; but it became fairly well settled that a state may require permits of interstate carriers, subjecting them to reasonable police regulations and a share in the expense of highway upkeep.⁵ Since this power over interstate commerce was predicated upon the desirability of allowing a state to protect the persons and property of its citizens, it was held that a state could

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¹ MOTOR VEHICLE CONF. COMM., GOVERNMENTAL REGULATION OF MOTOR VEHICLE COMMON CARRIERS (1926).

² See Am. Trucking Ass'ns, Inc., *Special Service "G"* (1936).

³ This article will be devoted entirely to a discussion of personal liability insurance. Other types of insurance are: property damage, cargo, and fidelity. Forty-one states require common property carriers to provide property damage insurance; thirty-eight require the same of contract carriers; and six of private carriers. Thirty states require property damage insurance of passenger carriers. Most of the requirements are for \$1,000, although a few run as high as \$10,000. The ICC property damage limit is \$1,000 for trucks and buses alike. Thirty-three states require common carriers, and eighteen require contract carriers, to carry cargo insurance of from \$500 to \$1,000. The Interstate Commerce Commission requires \$2,000. The Commission and the majority of the states do not demand cargo insurance of passenger carriers. A few states require carriers to post fidelity bonds conditioned on faithful performance, payment of taxes, etc.

⁴ 49 U. S. C. A., c. 8. The Act merely provides that the Commission shall require insurance. The federal insurance regulations discussed herein were promulgated, pursuant to §315, by the Commission on August 3, 1936, after a hearing.

⁵ Kauper, *State Regulation of Interstate Motor Carriers* (1933) 31 MICH. L. REV. 920, 938.

require an interstate carrier to provide insurance only if limited to damage within the state to persons other than interstate passengers.⁶ Under this arrangement the large number of such passengers had only the protection voluntarily provided by the carrier. Since bus operators as a whole have a fair degree of financial responsibility, and the majority of them are insured, this hiatus was less important than it might otherwise have been.

Much more serious has been the situation among property carriers. State safety regulation of interstate trucks was less adequate than bus regulation, and, in addition, conditions within the industry result in a high degree of financial irresponsibility,⁷ with the consequence that the group in which the need was most keenly felt carried very little insurance. And, anomalous as it may seem, the recent federal act conceivably may result in an even more undesirable situation in one or two important fields. In several types of carrying, present exemptions from state regulation are much narrower than those granted by the Motor Carrier Act. The possibility is that the weak hold which the states have had on these interstate carriers must now be relaxed as to those carriers exempted from federal regulation, on the ground that Congressional exemption carries with it immunity from state control.

A peculiarly difficult jurisdictional problem arose in connection with carriers operating wholly within a state but engaged either wholly or in part in the carriage of commodities moving in interstate commerce. Failure to cross a state line does not of itself render an interstate carrier susceptible to state regulation.⁸ Now, however, the advent of federal regulation has removed much of the incentive to obtain an interstate classification, and, insofar as truck insurance is concerned, the matter has become unimportant. No state insurance requirement for property carriers is lower than the standard imposed by the Interstate Commerce Commission under the Motor Carrier Act; and the Commission is of the opinion that a local carrier engaged in a mixed intra- and interstate business must comply with the higher of the two insurance requirements, when there is a difference. If the two types of trucking are easily separable in a given concern, then an increase on all its trucks might be avoided. In a state where the requirements are particularly high, perhaps some operators may find it profitable to pay exclusive attention to interstate business.

The existence of separate state and city governments suggests another jurisdictional clash, but since the state is the source from which the municipalities derive, the problem has been settled as each state wants it settled. Some state commissions regulate city traffic, while in other states the city exercises the power.

II

As has been remarked, the large majority of bus operators have enjoyed for some time a reasonable degree of financial responsibility, which, together with the liability insurance required of them by all jurisdictions except California, Delaware, and

⁶ *Sprout v. South Bend*, 277 U. S. 163, 172 (1928); *Continental Baking Co. v. Woodring*, 286 U. S. 352, 365 (1932).

⁷ *Coördination of Motor Transportation*, 182 I. C. C. 262, 280 (1932).

⁸ *Meyers v. Railroad Commission*, 218 Cal. 316, 23 P. (2d) 26 (1933).

the District of Columbia, has resulted in a relatively satisfactory situation with regard to protection afforded the public.⁹ The majority of the states set the limit of required coverage at \$5,000 per person, with some going as high as \$10,000. The limit per accident varies more widely, ranging from \$10,000 to \$100,000, most requirements being between \$20,000 and \$80,000.¹⁰ Quite a few statutes use a graduated scale, the single accident limit increasing as the seating capacity of the bus increases;¹¹ while the Nevada act uses gross earnings as a criterion. Most state liability insurance statutes make no mention of self-insurance, but ten states definitely provide that passenger carriers may be self-insured. In seven of these proof of satisfactory financial responsibility is sufficient; two require the deposit of collateral, and one leaves the matter in the discretion of the commission.

Individual exemptions from state regulation of buses are too varied to catalog,¹² but with one exception they are of little import; intra-city buses, which comprise 30% of the nation's total, are variously regulated by the city or the state, but in the larger number of cases the work is left to the city. Inter-city buses operating intra-state constitute 58% more of the total, and the remaining 12% are engaged in operations across state lines.¹³ There must be subtracted from the first two groups an unestimated number of local buses which engage in enough interstate commerce to gain an interstate classification, and which, with the aforementioned 12%, will fall under the new ICC jurisdiction.

The federal insurance standards of \$5,000 per person and a maximum of \$15,000 to \$50,000 per accident, on a scale graduated according to the capacity of the bus,¹⁴

⁹ Coördination of Motor Transportation, 182 I. C. C. at 287 (1932).

¹⁰ Per person limit: *Less than \$5,000*: N. Y. (\$2,500); N. H. (\$500 per vehicle plus \$100 per passenger seat). *\$5,000*: Ariz., Ark., Colo., Idaho, Iowa, Kan., Ky., La., Md., Mo., Mont., Neb., N. J., N. C., N. D., Ore., S. C., Tenn., Utah, Va., Wash., W. Va. *\$6,000*: Ohio. *\$7,500*: N. M. *\$10,000*: Ill., Mich., Minn., Wis.

Per accident limit: Less than \$10,000: Ariz. (\$4,000 plus \$1,000 per passenger seat). *\$10,000*: Conn., Md., Nev., Utah. *\$20,000*: Ark., Mont., N. C., Ore., S. C., Tenn. *\$25,000*: Colo., Ky., Okla., Va., Wash. *\$30,000*: La. *\$40,000*: N. M. *\$48,000*: Ohio. *\$50,000*: Iowa, Mo., N. Y., S. D., W. Va. *\$60,000*: Kan., Mich. *\$75,000*: N. J., Wis. *\$80,000*: Neb., *\$100,000*: Ill., Minn. *In discretion of Commission*: Ala., Fla., Ga., Idaho, Ind., Me., Mass., Miss., Pa., Tex., Vt., Wyo. (The foregoing limits represent the maximum requirement for the largest bus; smaller maxima are established for buses with lower seating capacities in states using graduated scales.)

¹¹ The New York law is representative. N. Y. CONS. STAT. (Cahill, Supp. 1935) c. 64a, §17:

<i>Passenger capacity</i>	<i>Per person limit</i>	<i>Per accident limit</i>
1-7 inclusive.....	\$2,500	\$ 5,000
8-12 "	5,000	15,000
13-20 "	5,000	25,000
21-30 "	5,000	40,000
31 and over	5,000	50,000

¹² EASTMAN, REGULATION OF TRANSPORTATION AGENCIES, SEN. DOC. 152, 73d Cong., 2d Sess. (1934) 175.

¹³ See Coördination of Motor Transportation, 182 I. C. C. 277 (1932).

¹⁴

<i>Passenger capacity</i>	<i>Per person limit</i>	<i>Per accident limit</i>
1-7 inclusive.....	\$5,000	\$15,000
8-12 "	5,000	20,000
13-20 "	5,000	30,000
21-30 "	5,000	40,000
31 and over	5,000	50,000

are higher than those set by most states, but are substantially beneath several state requirements. The majority of the interstate buses are already insured, some large operators carrying more than the present ICC minima. Consequently the burden of this section will fall mainly upon the smaller operators who have been insured considerably below the newly instituted standards.¹⁵ A carrier who so desires may furnish a bond instead of insurance, provided it is an open penalty bond¹⁶ written by a company authorized by the United States Treasury Department. The insurance coverage must be supplied by one policy. Objection has been made to this on the ground that one-policy coverage costs about 50% more than coverage by two policies, a primary policy for \$10,000 per bus and an excess policy which insures each bus for liability exceeding \$10,000 up to the prescribed maximum, but which is written for the entire fleet and amounts to much less than full coverage for all buses. The Commission favors one-policy coverage on the ground that it obviates the risk that the primary insurer might refuse to settle out of court a claim for less than the primary liability, litigation of which might result in an excess claim, because the excess insurer refuses to contribute to the settlement. The one-policy requirement insures against such delay and needless litigation.

One feature that is likely to embarrass the insurance companies is the requirement that the policy be in a company authorized to do business in every state through which the carrier operates. This is a common requirement of intra-state carriers, but when applied to interstate commerce it may force some insurance companies to enter undesired territory.

III

Conditions within the motor trucking industry have been much less satisfactory.¹⁷ Forty-one states require insurance of common carriers, thirty-eight of contract carriers, and six of private carriers.¹⁸ The defection of even a few states is rendered more serious by the fact that two of those without insurance requirements, New York and New Jersey, are densely populated. All states regulating more than one type of carrier have the same insurance requirements for each type, except Illinois, where the limit for contract carriers is half that set for common carriers. The per

¹⁵ Many of the small operators have hitherto been covered for only \$10,000 per accident. The increase to the new federal requirement of \$50,000 per accident might well cost, on an assumed premium of \$2.25 per \$1,000 gross annual earnings, several hundred dollars a year per bus.

¹⁶ An open penalty bond is so named because it remains in full force regardless of payments made under it.

¹⁷ *Coördination of Motor Transportation*, 182 I. C. C. at 280 (1932).

¹⁸ The following definitions of common, contract, and private carriers, taken from the Oregon Laws of 1933, c. 29, §2, are generally accepted: *Common carrier*—"Any person who transports for hire, or who holds himself out to the public as willing to transport for hire, compensation, or consideration, by motor vehicle, persons or property, or both, for those who may choose to employ him." *Contract carrier*—"Any person engaged in transportation by motor vehicle of persons or property, or both, for hire, under special and individual agreements or leases, and not included in the term 'common carrier'." *Private carrier*—"Any person engaged in the transportation by motor vehicle of property sold or to be sold by him in the furtherance of any private commercial enterprise, or property of which such person is the owner, lessee, or bailee, when transported for the purpose of lease, rent, or bailment." The main use of this classification is in relation to property carriers, for the overwhelming majority of passenger carriers are common carriers.

person limit ranges from \$5,000 to \$10,000, and the per accident limit from \$10,000 to \$50,000.¹⁹ Two states graduate the per accident limit on the basis of tonnage.²⁰ Exemptions under state statutes are numerous and varied, extending from shrimp carrying to log hauling. Quite general are provisions exempting in divers ways the farmer and farm products.²¹

Utah is the only state requiring the policy to be in a particular form, but eleven states stipulate a coverage broader than the usual. It has been suggested that these broader provisions may include employer's liability, and that the insurance company may be held to this coverage regardless of the wording of the policy.²² All states permit cancellation of policies on notice ranging from ten to thirty days, and fifteen require that expiration notice be given. Carriers who prefer self-insurance are definitely provided for in fourteen states. Of these, eight are satisfied with proof of financial responsibility; four demand collateral; and two leave the matter in the discretion of the commission. Only one state clearly prohibits self-insurance.

Since the ICC requirements of \$5,000 per person and \$10,000 per accident are not higher than those of any state, their importance results from the fact that they invade a field in which state regulation has been inadequate, and which is to an alarming extent composed of uninsured carriers of doubtful financial responsibility. Yet it is easy to exaggerate the number of trucks subjected to federal control. Estimates differ somewhat as to the number which will be brought under the Commission's jurisdiction. The Commission is of the opinion that over 50% of the trucking by ton mile is done by private carriers,²³ and only common and contract carriers are affected by its regulations. Authorities are in accord that only about 20% of all trucks cross state lines. If this proportion applied equally to all classes of trucks, approximately 10% (by ton miles) of the nation's trucking would be subject to federal control because it crossed state lines. This total would be augmented to a degree not now calculable by common and contract carriers which do not cross state lines but do engage in interstate commerce. Another estimate, based on NRA registrations, represents that private carriers, including farm trucks and governmentally owned vehicles, account for 90% of the country's three and a quarter million trucks, leaving only 10% within the "for hire" classification.²⁴ Once again assuming that all classes of trucks cross state lines in the same proportion, the Commission will have jurisdiction over but

¹⁹ Per person limit: \$5,000: Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Idaho, Ind., Iowa, Kan., Ky., Md., Mass., Miss., Mo., Mont., N. C., N. D., Okla., Ore., Pa., R. I., S. C., S. D., Tenn., Tex., Utah, Va., Wash., W. Va., Wis., Wyo. \$6,000: Ohio. \$7,500: N. M. \$10,000: Conn., Ill., La., Me., Mich., Minn.

Per accident limit: \$10,000: Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Idaho, Iowa, Kan., Md. Mass., Miss., Mont., N. M., N. C., N. D., Okla., Ore, Pa., R. I., S. C., S. D., Tenn., Tex., Utah, Va., Wash., W. Va., Wyo. \$12,000: Ohio. \$15,000: Ky. \$20,000: Conn., Me., Mich., Minn., Wis. \$35,000: Mo. \$50,000: Ill., Ind.

²⁰ For example, in Kentucky the per accident limit increases from \$10,000 to \$15,000 if the vehicle weighs over 5,000 pounds.

²¹ EASTMAN, *op. cit.*, *supra* note 12, at 175.

²² Am. Truck. Ass'ns, Inc., *op. cit. supra* note 2.

²³ *Hearings before Committee on Interstate and Foreign Commerce on H. R. 5262 and H. R. 6016*, 74th Cong., 1st Sess. (1935) 40.

²⁴ *Hearings, supra* note 23, at 169, 176.

2% of the trucks, plus the aforementioned local carriers which participate in interstate commerce. The discrepancy between the figures can no doubt be partially explained by the fact that interstate trucks probably account for more than a proportionate share of the nation's per ton mile trucking.

Congress has seen fit further to diminish the number of trucks subject to federal control by exempting carriers engaged solely in the transporting of livestock, agricultural commodities, fish, and newspapers. In 1932 the Commission reported that the carrying of livestock accounted for a larger percentage of the total movement than did any other single commodity; that the trucking of fruit and vegetables was considerable; and that cotton trucking was yearly growing in importance.²⁵ The scope of the exemption is lessened by the large number of private carriers operating in the fruit and vegetable field; but on the other hand, much testimony was introduced at the House hearing to the effect that an unusually large number of the carriers in the field are utterly irresponsible financially.²⁶

Permission to supply bonds instead of insurance has been accorded truck as well as bus operators, the terms being the same. The Commission has definitely committed itself in favor of self-insurance for both trucks and buses, but has not as yet drawn up any special plan which self-insurers must follow. Until such time as the Commission decides upon fixed requirements, those who desire self-insurance may submit to the Commission an application embodying a statement of the applicant's financial resources, or else deposit securities, which, if satisfactory, will be accepted in lieu of insurance. A carrier relying on the strength of its financial position must convince the Commission not only that it can meet its liabilities as they may arise, but that it can do so without impairing its stability or permanence of operation. The Bureau of Motor Carriers recommended in its report to the Commission that this should mean a net worth or surplus of approximately \$10,000 per bus and \$5,000 per truck operated, with a minimum net worth of \$200,000 regardless of the number of units operated.²⁷

In spite of the small percentage of eligible interstate vehicles,²⁸ that the trucking industry is going to constitute the Commission's chief administrative problem is apparent upon an examination of the relative difficulties attendant truck and bus regulation under the NRA codes. The large bulk of the industry is composed of small operators, 80% of the "for hire" trucks being owned singly, with only 1% being in fleets of ten or over.²⁹ In order to facilitate administration the act provides for the utilization of the good offices of the state commissions. A goodly part of the work is to be delegated to so-called "joint boards" composed of one member from the commission of each state involved in the matter under consideration. It

²⁵ Coördination of Motor Transportation, 182 I. C. C. at 287, 291, 294 (1932).

²⁶ *Hearings, supra* note 23, at 98, 229.

²⁷ Published with Interstate Commerce Commission findings of August 3, 1936.

²⁸ An interesting question is the status of passenger automobiles driven across state lines for dealer delivery. See *Hearings, supra* note 23, at 184.

²⁹ *Hearings, supra* note 23, at 159.

has been suggested that this will lead to difficulty in determining what states are affected by the act of a local carrier in connection with interstate carriers operating in many states.³⁰ At any rate, it is upon local commissions that the Interstate Commerce Commission must depend for ferreting out the interstate carriers who cross no state lines. If these are all discovered they will no doubt add materially to federal jurisdiction, but a doubt has been expressed as to both the ability and the inclination of the state commissions to unearth these myriad small operators.³¹

IV

As to the future of intra-state insurance legislation one can only observe that there has been steady progress in the past. The Interstate Commerce Commission to a large extent controls the future of the federal regulation, and it has given some hint as to its intentions for tomorrow. Last winter the Bureau of Motor Carriers submitted recommendations for an insurance coverage double in amount, for both trucks and buses, that finally adopted by the Commission after hearings. Commissioner Caskie filed a minority opinion to the effect that buses should carry policies of \$10,000 per person and \$75,000 per accident, and trucks \$10,000 per person and \$20,000 per accident. He pointed out that most of the large operators represented at the hearing carried at least that much insurance, and that several states required coverage in excess of the federal limit. The majority report expressed a hope that some time better financial conditions and lower premium rates, due in part to increased safety factors, would make possible the adoption of standards similar to those recommended by the Motor Bureau, but that for the present practical considerations stood in the way of higher requirements.

V

There remain to be considered a few classes of vehicles not falling directly within the ordinary classifications of trucks and buses. Taxicab insurance, which is variously prescribed by either the city or the state, is obviously the most important. Because of the volume of municipal legislation in the field, the writer was compelled to confine the inquiry to a few representative cities. St. Louis, Columbus, Cleveland, and Detroit reported municipal regulation; Philadelphia, New York, Seattle, and Chicago rely on state regulation; and Los Angeles has neither state nor city legislation. The director of safety in one of the mid-western cities informed the author that the first requisite of a good taxicab ordinance is compulsory liability insurance.³² The usual requirements of the city ordinances are \$5,000 per person and \$10,000 per

³⁰ If the matter involves three states or less, a board composed of commissioners from those states takes jurisdiction automatically; if more than three states are involved, the Interstate Commerce Commission may at its discretion sit on the question itself.

³¹ *Hearings, supra* note 23, at 177.

³² A spokesman for taxicab companies has, on the other hand, suggested that the prevalence of ordinances requiring liability coverage of taxicabs is to be accounted for by the pressure of competitive interests upon municipal councils and that adequate protection to the public might better be secured by the adoption of an accident compensation plan.

accident.³³ Two of the cities require taxi operators who furnish a bond in lieu of insurance to post an open penalty bond. The state taxi requirements vary from \$1,000 to \$5,000 per person and from \$2,500 to \$10,000 per accident.³⁴

Miscellaneous requirements for less ordinary types of vehicles cannot be dealt with here, but a few illustrations may prove enlightening. Arizona compels passenger "u-drive-its" to carry insurance; Kansas provides specifically for "u-drive-it" trucks; while Ohio exempts the lessors of trucks furnished without drivers. Chicago requires sight-seeing buses to insure, as do some states. School buses are generally exempt, some exemptions being limited to buses operated by the authorities.³⁵

	<i>Per person limit</i>	<i>Per accident limit</i>
³³		
Cleveland	\$5,000	\$10,000
Columbus	5,000	10,000
Detroit	2,500	2,500
St. Louis	2,500	5,000
³⁴		
Illinois	\$2,500	\$ 2,500
New York	2,500	5,000
Pennsylvania	5,000	10,000
Washington	1,000	5,000

³⁵ EASTMAN, *op. cit. supra* note 12, table opposite 190.