

ORIGINAL

Decision No. 66978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion to determine procedure
and rules for the administration
of Public Utilities Code Sections
5500 through 5511, Commercial Air
Carriers, including the amount of
bond required thereby.

Case No. 7777

Thomas H. Daly, for United Air Lines, Inc.;
Charles L. Frankel, for Commodore Helicopters;
Leslie Arnold, for Les Arnold Enterprises, Inc.;
Robert R. Short, for Oakland International Airport;
Hampton L. Kirchmaier, for Central Aviation Academy;
D. P. Renda, John W. Simpson and Gordon Pearce, by
Gordon Pearce, for Western Air Lines, Inc.; D. W.
Mercer, for Lockheed Air Terminal; Samuel Miro,
for Miro-Fontana Airport; Robert A. Eaton, for
Trans-California Airlines, Inc.; Ida H. Hermann,
for California Airmotive Corporation of Delaware;
and Harry Raap, for Pacific Southwest Airlines,
respondents.

E. F. Koosmann, for The Koosmann Co.; Richard T.
Powers, for Associated Aviation Underwriters;
and Eugene A. Read, for California Manufacturers
Association, interested parties.

Elinore Charles and Douglas Quinlan, for the
Commission staff.

O P I N I O N

This investigation was instituted on November 12, 1963 pursuant to Public Utilities Code Section 5505 (Added Stats. 1963, Ch. 1282) which directs the Commission after hearing to set the amount of liability insurance reasonably required of every "commercial air operator" to provide adequate compensation for damage incurred through an accident involving said commercial air operators.

Public hearings were held before Examiner Gravelle on February 10 and 11 in San Francisco and February 17 and 18 in Los Angeles. The matter was submitted on the latter date subject to the filing of concurrent briefs ten days after receipt of transcripts by the parties, and subject to a motion joined in by various parties for a continuance and direction to the staff to prepare a proposed General Order. Said motion will be considered subsequently herein. No briefs have been timely filed by any party; this matter stands submitted.

Notice of hearing and a copy of the Order Instituting Investigation were mailed to over 550 potential respondents and 433 interested parties (insurers). Appearances were entered by 11 respondents and 3 interested parties.

The staff of the Commission presented one witness and offered four exhibits which were received in evidence. It was the recommendation of the staff witness that limits of liability for personal injury or death should commence at \$50,000 per person and for property damage at \$100,000 each accident. His suggestion as set forth in Exhibits Nos. 1 and 1A established a breaking point based on the seating capacity of the aircraft covered by the insurance. Aircraft with seating capacities of 20 or less would require \$100,000 of property damage liability insurance; \$50,000 bodily injury or death liability insurance for third parties not aboard the aircraft with \$200,000 for each accident; and \$50,000 bodily injury or death liability insurance for persons aboard the aircraft, the extent of this latter coverage based upon the number of seats in the aircraft.

Aircraft with seating capacities of 21 or more would require \$500,000 of property damage liability insurance; \$50,000 bodily injury or death liability insurance for third parties not aboard the aircraft

with \$500,000 for each accident; and \$50,000 bodily injury or death liability insurance for persons aboard the aircraft, the extent of this latter coverage based upon 75 percent of the number of seats in the aircraft.

In addition to the limits of coverage as above mentioned the staff witness recommended that any General Order which should evolve from these proceedings contain a rule that the insurance carried by commercial air operators would not be cancellable due to violations by the operator of Civil Aeronautics Board or Federal Aviation Agency regulations. The balance of the staff recommendations were to the effect that the General Order implementing Public Utilities Code Sections 5500 through 5511 be built around the statutory specifications contained throughout those code sections.

The limits of liability insurance recommended by the staff were originally contained in Exhibit No. 1 which was received in evidence on the first day of hearing in San Francisco. Cross-examination of the staff witness by various respondents and interested parties disclosed certain problems with terms used in said exhibit which might cause confusion as to whom the liability insurance was to afford protection. In an effort to solve those problems the staff revised its Exhibit No. 1 and offered Exhibit No. 1A on the first day of hearing in Los Angeles. One of the problems pointed out on cross-examination involved the use of the word "passenger" in Exhibit No. 1. The staff witness testified that it was his opinion that insurance protection should only be afforded passengers and that an employee of the commercial air operator would not be such a "passenger". In Exhibit No. 1A the staff witness in response to requests by several

respondents gave his definition of the word "passenger" as well as his definition of the word "seat". Those definitions are as follows:

": 'Passenger' defined:

As used in this exhibit, 'passenger' means any person aboard the aircraft to whom the commercial air operator owes a duty imposed by law."

": 'Seat' defined:

As used in this exhibit, 'seat' means the space provided aboard the aircraft to be reasonably occupied by one person."

Counsel for respondent United Air Lines, Inc. objected to the receipt in evidence of Exhibit No. 1A on the grounds that there is a basic conflict between the testimony of the sponsoring witness and the above-quoted definitions in that those definitions are broad enough to encompass crew members. While the definitions are broad enough to include members of the flight crew aboard an aircraft, the testimony makes clear the intention of the witness that they are not to be considered passengers. The exhibit was received over objection. A commercial air operator owes a duty imposed by law to its employees, both members of the crew aboard an aircraft and ground personnel. That duty is separate and distinct from the liability such operator would owe to persons who were not its employees. In California at least, employees covered by Workmen's Compensation Insurance do not have a choice of action in proceedings against their employers for injuries received in the course of employment. Since Section 5503 of the Public Utilities Code provides in part ". . .adequate protection against liability imposed by law upon a commercial air operator . . .", and there is a pre-existing and compulsory liability imposed upon both employer and employee, the "liability" mentioned in Section 5503 must necessarily be that owed to persons other than employees in the course of their employment. The extent of that liability will

be determined by a court of competent jurisdiction in a proper proceeding and is not a question to be answered by this Commission. The United Air Lines, Inc. witness in addressing himself to the definitions of "passenger" and "seat" propounded by the staff merely said . . . " 'passenger' means any person other than a member or members of the flight crew (including cabin attendants) aboard the aircraft to whom the commercial air operator owes a duty imposed by law.

And with that modification of the 'passenger' definition, we would suggest that the definition of the word 'seat' be modified, striking the word 'person' at the end of the sentence and substituting the word 'passenger'." (Tr.207)

For purposes of this decision and the accompanying General Order the Commission adopts the following definitions of the words "passenger" and "seat":

"Passenger" means any person, other than an employee of the commercial air operator protected by Workmen's Compensation Insurance, aboard the aircraft to whom the commercial air operator owes a duty imposed by law,

"Seat" means the space provided aboard the aircraft to be reasonably occupied by one passenger.

Some of the respondents who appeared at the hearings testified and gave their opinion as to the limits of liability insurance recommended by the staff witness and its possible effect on their respective operations. The operators who utilized smaller aircraft (including a glider operation) objected to the \$50,000 per person bodily injury and death requirement as being too large a sum. There was testimony that the average recovery for claims against air

operators was under \$10,000 and that a minimum of \$50,000 might force some operators out of business. They uniformly expressed doubt as to the availability of any insurance without the escape clause for violation of CAB or FAA regulations, although it was admitted that such a requirement is standard in contracts air operators enter into with various departments of the Federal Government for transportation of government employees. One operator of larger aircraft (38 passengers) testified that his present insurer would not write insurance for him above a \$25,000 per passenger limit. It appears from the testimony of the various respondents that their practices with regard to insurance protection vary widely, from those with no insurance to those with more than suggested by the staff witness.

The Commission is cognizant of the fact that the General Order attached hereto and the legislation which it implements may cause hardship to some commercial air operators, however, such hardship is outweighed by the protection afforded the general public.

In addition to the objection previously noted as to the availability of liability insurance without the "escape" clause for violation of CAB or FAA regulations, the argument was advanced that such a requirement in the General Order might do more harm than good in that it would remove the threat of insurance cancellation which acts as a deterrent to violations of those regulations. This Commission does not possess the regulatory power to enforce safety regulation upon commercial air operators, that function lies with the federal agencies. We do have the obligation, however, to protect the public, to whatever extent possible, from the loss that occurs when a commercial air operator is involved in an accident. To allow an insurer to escape liability because the insured has violated a federal safety regulation, which may have been the precise cause of an accident, would afford the public no adequate protection.

The witness for respondent United Air Lines, Inc. testified in part that he had no serious quarrel with the staff recommendations. He did, as we previously noted, qualify their definitions of "passenger" and "seat". United Air Lines, Inc. through its witness introduced three exhibits. Two of these were blank certificates of insurance that are used for filing evidence of insurance with various public bodies. The third, Exhibit No. 3, was a proposed form of General Order which incorporated the limits suggested by the staff. The witness made clear, however, that those figures were inserted in his exhibit for purposes of illustration only and that he neither endorsed nor rejected them as such. Exhibit No. 3 contains the "escape" clause provision that has already been discussed, and added among other things a provision for reporting the passenger capacity of different types of aircraft that a commercial air operator might be using. The purpose of this provision is to enable the Commission to determine that the insurance on file is adequate to cover the equipment operated. The General Order which accompanies this decision embodies most of the suggestions contained in Exhibit No. 3 with some modifications to more closely conform to the requirements of the statutory provisions involved.

On the last day of hearing in Los Angeles a motion was made by counsel for respondent Western Air Lines, Inc. that the staff be directed to submit a draft of a General Order to the parties, that the parties be given time to analyze and comment on said draft, and that further hearings be held prior to submission. This motion was joined in by counsel for respondent United Air Lines, Inc. and by counsel for Associated Aviation Underwriters. The matter was taken under submission subject to a ruling on the motion. The Commission has carefully considered this motion as well as the arguments advanced in its support and has decided that the motion should be denied.

Findings

1. The amounts set forth in the following General Order are reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

2. The rules set forth in the following General Order are reasonably necessary for the administration and enforcement of Public Utilities Code Sections 5500 through 5511.

Conclusion

The public interest requires the adoption of the following General Order.

O R D E R

IT IS ORDERED that:

1. The motion for a continuance is hereby denied.
2. The rules set forth in the General Order attached hereto shall be known as General Order No. 120, which shall become effective on March 20, 1964.
3. The Secretary of the Commission is directed to cause a copy of this decision and of the General Order to be served forthwith on every commercial air operator as defined in Public Utilities Code Section 5500.

The effective date of this order shall be March 20, 1964.

Dated at San Francisco, California, this 17th day of March, 1964.

William W. Beardsley
President

George T. Grover

Fredrick B. Holbluff

GENERAL ORDER NO. 120PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

RULES REQUIRING ALL COMMERCIAL AIR OPERATORS TO PROVIDE AND THEREAFTER CONTINUE IN EFFECT ADEQUATE PROTECTION AGAINST LIABILITY IMPOSED BY LAW UPON SUCH OPERATORS FOR THE PAYMENT OF DAMAGES FOR PERSONAL BODILY INJURIES (INCLUDING DEATH RESULTING THEREFROM) AND DAMAGE TO OR DESTRUCTION OF PROPERTY.

Adopted March 17, 1964. Effective March 20, 1964.
(Decision No. 65978, Case No. 7777)

1. On or before June 30, 1964, each commercial air operator as defined in the Public Utilities Code shall file evidence as hereinafter specified with this Commission that such operator has in effect liability insurance that complies with this general order.

2. Every commercial air operator shall procure and thereafter continue in effect, so long as such operator continues to offer his services for compensation, adequate protection against liability imposed by law upon such operator for the payment of damages for personal bodily injuries, including death resulting therefrom, and property damage as a result of an accident, subject, however, to the following minimum limits:

(A) Aircraft with Passenger Seating Capacity,
1 to 20 persons.

1. Aircraft Passenger Bodily Injury and Death Liability - a minimum for one passenger seat of at least \$50,000 and a minimum for each accident in any one aircraft of at least an amount equal to the total produced by multiplying \$50,000 by the number of passenger seats in the aircraft.

2. Aircraft Bodily Injury and Death Liability (excluding persons aboard aircraft)-- a minimum of \$50,000 for one person in one accident, and a minimum of \$200,000 for each accident.

3. Aircraft Property Damage Liability-- a minimum of \$100,000 for each accident.

(B) Aircraft with Passenger Seating Capacity, 21 or more persons.

1. Aircraft Passenger Bodily Injury and Death Liability-- a minimum for one passenger seat of at least \$50,000 and a minimum for each accident in any one aircraft of at least an amount equal to the total produced by multiplying \$50,000 by 75 percent of the total number of passenger seats in the aircraft.

2. Aircraft Bodily Injury and Death Liability (excluding persons aboard aircraft)-- a minimum of \$50,000 for one person in one accident, and a minimum of \$500,000 for each accident.

3. Aircraft Property Damage Liability-- a minimum of \$500,000 for each accident.

3. The amount of coverage to be provided by each commercial air operator shall be determined in one of the following ways:

(A) When the policy, surety bond or contract covers all of the aircraft operated by the commercial air operator, the coverage for all aircraft shall be determined by the coverage applicable to the aircraft having the greatest passenger seating capacity.

- (B) When each aircraft is covered by a separate policy, bond or contract, or by separate schedules each of which is applicable to a single aircraft within a policy, bond or contract covering two or more aircraft, then the minimum required coverage for each aircraft shall be determined by its own individual requirement.
- (C) When the policy, surety bond or contract procured by the commercial air operator is of a single limit nature such policy, surety bond or contract shall be acceptable by the Commission provided that the minimum single limit of the policy, surety bond or contract is at least equal to the total of the minimum limits as determined by paragraph 2 herein for separate limit policies, surety bonds or contracts.
- (D) Coverage herein shall be deemed sufficient as to each aircraft operated commercially when the minimum requirements set forth in paragraph 2 have been met and filed with the Commission and nothing herein shall require two or more persons to separately insure the same aircraft; however, nothing herein shall prevent two or more persons who are commercial air operators from being named as insureds on the same policy of insurance, surety bond or contract.
- (E) When the actual limits of insurance, surety bond or contract indemnity exceed the minimum amounts set forth in paragraph 2 herein the commercial air operator filing evidence of insurance as hereinafter provided may report only said minimum coverage and need not specify the amounts of insurance, bond or contract indemnity in excess of said minimum requirements.

4. The protection herein required shall be provided in one of the following ways:

- (A) By a policy, or policies, of public liability insurance issued by a company, or companies, licensed to write such insurance in the State of California.
- (B) By a bond or bonds issued by a surety company, or companies, licensed to write surety bonds in the State of California.
- (C) By a plan of self-insurance approved as hereinafter required.
- (D) By a policy, or policies, of public liability insurance and property damage insurance written by nonadmitted insurers, subject, however, to Section 1763 of the Insurance Code of the State of California.
- (E) By any other plan of protection for the public approved as hereinafter required.
- (F) By a combination of two or more of the foregoing methods.

5. When the protection is to be provided by the means set forth in subparagraphs (A), (B), (D), (E) and (F) of paragraph 4 hereof, a deductible clause may be inserted. Where 5 per centum, or less, of the risk is made deductible no special approval will be required. Where more than 5 per centum of the risk is made deductible special approval under paragraph 7 of this general order shall be required.

6. The protection provided hereunder shall not be cancellable on less than thirty days' written notice to the Public Utilities Commission, such notice to commence to run from the date the notice is actually received at the San Francisco or Los Angeles offices of the Commission.

7. When the protection is provided by an approved alternate plan or a plan of self-insurance, or includes such an approved plan or plan of self-insurance with other methods, approval of the Commission is required. Such approval shall be requested by a formal application in accordance with the Commission's Rules of Practice and Procedure setting forth all the facts which shall be required by the Commission with respect thereto.

8. When protection hereunder, as set forth in paragraph 4, is provided by a policy or policies of insurance, or by bonds, evidence thereof shall be filed with the Public Utilities Commission by the commercial air operator prior to June 30, 1964, and thereafter evidence of renewal prior to the expiration of policies of insurance or bonds, in one or more of the following manners:

- (A) By a copy of the policy of insurance, or bond, duly certified by the company issuing it to be a true copy of the original policy.
- (B) By a photostatic copy of the original bond or policy.
- (C) By an abstract of the original policy or bond, signed by the company issuing it, in sufficient detail to evidence compliance with Chapter 9 of Division 2 of the Public Utilities Code.
- (D) By a certificate of insurance, in form approved by the Commission, signed by the company issuing the policy, or by the underwriting managers for a group of companies issuing such policy, or, in the case of nonadmitted companies by the broker placing such coverage.

9. The policies, or certificate above referred to shall evidence that the coverage shall apply to any and all commercial flights operated by the insured; irrespective of whether the aircraft involved in the liability insured are specifically described in the policy (unless the policy or policies are written on a single specific aircraft), and shall not be subject to any exclusion by virtue of violations by said commercial air operator of any applicable provisions of the Federal Aviation Act of 1958, as amended, or of any rule, regulation, order or other legally imposed requirement prescribed by the Federal Aviation Agency or Civil Aeronautics Board.

10. On, or prior to, June 30, 1964, each commercial air operator shall file an affidavit, (signed by an executive officer if a corporation; by a partner if a partnership, or by the owning operator if an individual) with the Commission setting forth the passenger seating capacity of each type of aircraft in commercial operation. At any time thereafter that the capacity of any such aircraft may be increased to a point where the protection then on file as provided in paragraph 2 of this general order is inadequate, and if a new type of aircraft is acquired and operated, a supplementary affidavit of passenger seating capacity shall be filed with the Commission. Prior to the operation of added capacity, or new aircraft with capacity in excess of coverage theretofore on file, the commercial air operator shall cause to be filed evidence of additional coverage sufficient to comply with the minimum limits heretofore set forth.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

By Noel Coleman, Acting Secretary