

ORIGINALDecision No. 68122

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

(Appearances are Listed in Appendix A)

SUPPLEMENTAL OPINION

On June 3, 1964, the Commission reopened this proceeding for the receipt of additional evidence in order that it might determine whether Decision No. 66978, dated March 17, 1964 should be altered or amended.

Pursuant to said order a public hearing was held before Examiner Gravelle at San Francisco on August 11, 1964.

The staff of the Commission presented one witness who recommended certain changes in General Order No. 120, which order resulted from the previous hearings in this matter (Decision No. 66978). Those recommendations are contained in Exhibit No. 7 and consist of the deletion from paragraph 2(B) of General Order No. 120 of the 75 percent factor for aircraft with a passenger seating capacity in excess of 21 persons; the addition to said paragraph 2 of the definitions of the words "passenger" and "seat" that are contained in Decision No. 66978; and the addition to said paragraph 2

of provisions which would require insurance on aircraft used exclusively for the transportation of freight.

On cross-examination the witness stated that there should be a change in paragraph 10 of General Order No. 120 to provide the Commission with information relative to the gross weight of aircraft operated by a "commercial air operator" in a manner similar to the present requirement that such operator furnish the Commission with information as to the passenger seating capacity of each type of aircraft operated.

There were no objections by any appearances to the changes suggested by the staff witness. Each of the recommended changes appear reasonable and will be adopted.

Suggestions for further revision of General Order No. 120 were made by two representatives of insurance companies who introduced in evidence Exhibits Nos. 8 and 9, respectively, which set out those suggestions.

The objection to General Order No. 120 expressed by the sponsors of Exhibits Nos. 8 and 9 are directed to paragraph 9 of the general order which concerns itself with what the policies, or certificate of insurance must evidence and, particularly, with regard to the fact that the required insurance must apply to..."any and all commercial flights operated by the insured;..." It was argued that this is a burden upon the insurer who must bear the risk of an operation by the air operator of aircraft which have not been reported to the insurer and of which said insurer is unaware. The practical problem was pointed out that an insurer may not have the financial or legal capacity to assume a risk which the air operator

may expose it to by the unreported addition of increased capacity equipment.

The insurer overlooks, however, that General Order No. 120 is not directed to the insurer but is rather directed to the commercial air operator. This Commission does not presume by the general order to exert jurisdiction over an insurer. It must be admitted that an insurer "desirous" of obtaining or keeping the business of a commercial air operator is indirectly required to conform to the requirements of the general order by the demand made to such insurer by the commercial air operator. This is not an unusual situation in the field of regulation where those entities that are regulated must in the course of their business deal with other unregulated entities but must do so in a specified manner. The suggested changes to paragraph 9 of General Order No. 120 are not reasonable and will not be adopted.

There was a further objection made to the form of the certificate of insurance which is utilized by a commercial air operator who chooses that method of reporting his insurance pursuant to paragraph 8 of General Order No. 120. The sentence in the certificate to which objection is made is as follows:

"Whenever requested by the Public Utilities Commission of the State of California the undersigned companies agree to furnish said Commission a full and correct copy of said policy, with all endorsements thereon."

Paragraph 8 of the general order sets out the various ways in which the evidence of insurance is to be filed by the commercial air operator and it is the intent of that paragraph that the option is that of the commercial air operator; hence, the sentence above

quoted which is in conflict with paragraph 8 of General Order No. 120 is to be disregarded and will be stricken from the certificate of insurance.

Testimony was presented by several commercial air operators relative to their objection to any requirement of insurance or the alternative to the limit of \$50,000 per passenger seat. These objections were discussed in Decision No. 66978, nothing new was offered at the hearing after reopening and there need be no further comment with regard to said objections.

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.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. The Certificate of Insurance presently used by commercial air operators to report their insurance coverage to this Commission is hereby amended by deleting from said Certificate of Insurance the sentence quoted in the body of this opinion.

2. The rules set forth in the general order attached hereto shall be known as General Order No. 120-A, which shall become effective January 1, 1965.

3. Concurrently with the effective date of General Order No. 120-A, General Order No. 120 is rescinded.

4. 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 January 1, 1965.

Dated at San Francisco, California, this 27th day of OCTOBER, 1964.

Frederick B. Holcomb
President
James S. Hilditch
Wesley A. Rogers
George L. Traver
William B. Bennett
Commissioners

GENERAL ORDER NO. 120-A

PUBLIC 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 OCT 27 1964 . Effective January 1, 1965.

(Decision No. 68122 , Case No. 7777)

1. On or before January 1, 1965, 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 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 \$500,000 for each accident.
 3. Aircraft Property Damage Liability-- a minimum of \$500,000 for each accident.
- (C) Definitions of the words "passenger" and "seat".
1. "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.
 2. "Seat" means the space provided aboard the aircraft to be reasonably occupied by one passenger.

(D) Aircraft Transporting Freight exclusively having a gross weight of 20,000 pounds or less.

1. Aircraft Bodily Injury and Death Liability (excluding flight crew aboard aircraft)-- a minimum of \$50,000 for one person in one accident, and a minimum of \$200,000 for each accident.
2. Aircraft Property Damage Liability (excluding freight aboard aircraft)-- a minimum of \$100,000 for each accident.

(E) Aircraft Transporting Freight exclusively having a gross weight of over 20,000 pounds.

1. Aircraft Bodily Injury and Death Liability (excluding flight crew aboard aircraft)-- a minimum of \$50,000 for one person in one accident, and a minimum of \$500,000 for each accident.
2. Aircraft Property Damage Liability (excluding freight aboard aircraft)-- 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 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 January 1, 1965, 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 January 1, 1965, 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 and gross weight carrying capacity of each type of aircraft in commercial operation. At any time thereafter that the passenger seating capacity or gross weight carrying 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 and gross weight carrying 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

APPENDIX A

LIST OF APPEARANCES

FOR RESPONDENTS:

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. Kirchner, for Central Aviation Academy; D. P. Randa, 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 Air motive Corporation of Delaware; Harry Raap, for Pacific Southwest Airlines; Leigh Athearn, for Pan American World Airways, Inc.; Michael Bota, for Flying Tiger Line, Inc.; Frank R. Chabot, for Bonanza Air Lines; Tom Kennedy, for Air Taxi of Oakland; Theodore P. Lambros, for Compania Mexicana de Aviacion, S. A. (Mexicana Airlines); Edmond F. McKeown, Jr., for United Air Lines; Louis M. Robinson, for Career Aviation Academy; and Herbert T. Wardman, for Wardman Flying Service.

FOR INTERESTED PARTIES:

E. F. Koosmann, for The Koosmann Co.; Richard T. Powers, for Associated Aviation Underwriters; Eugene A. Read, for California Manufacturers Association; Charles E. Bradshaw, for International Aviation Underwriters, Inc.; Thomas B. Columbus, for American Mercury Insurance Company; John L. Dewey, for Alexander and Alexander Inc.; Michael German, for American Aviation Underwriters; John F. Gruchy, for Northwest Underwriters, American Mercury; Anthony N. Hobgood and Roger G. Teig, for Insurance Company of North America; Robert C. Packard, for Aviation Insurance Managers, Inc.; Perry H. Taft, for Association of Casualty and Surety Companies; Frank G. Thomas, for Johnson & Higgins of California; E. Avery Tindell, for Appleton & Cox; Franklin L. Winship, for Marsh & McLennan, Inc.; Jack R. West, for United States Aviation Underwriters, Inc.; and John J. White, for United States Aviation Underwriters, Inc.

FOR THE COMMISSION STAFF:

Elinore Charles and Douglas Quinlan.