

Decision No. 75097**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the adoption of a  
general order prescribing minimum  
public liability and property  
damage insurance requirements for  
commercial air carriers.

Case No. 7777

(Appearances are listed in Appendix A)

SUPPLEMENTAL OPINION

On July 9, 1968, the Commission reopened this proceeding for the purpose of determining whether or not the public interest requires the adoption by the Commission of a general order prescribing minimum amounts of public liability insurance to be carried by commercial air carriers in excess of that now prescribed by General Order No. 120-A and whether any other order or orders that may be appropriate in the lawful exercise of the Commission's jurisdiction should be entered.

Public hearings were held before Examiner O'Leary on August 19 and 20, 1968 in San Francisco and on August 22 and 23, 1968 in Los Angeles. The matter was submitted on the latter date subject to the filing of written closing statements twenty days after receipt of transcripts by the parties. Three parties filed timely statements. The matter is now ready for decision.

A copy of the Order Reopening Proceeding which advised that public hearings would be held on the above-mentioned dates was mailed to 575 commercial air carriers and 433 interested parties (insurers). The staff of the Commission presented one

witness and offered six exhibits which were received in evidence. The staff witness recommended that the Aircraft Passenger Bodily Injury and Death Liability be increased from the present minimum of \$50,000 per passenger seat to \$100,000 and that the Aircraft Bodily Injury and Death Liability minimums for aircraft with passenger seating capacity of 1 to 20 persons and aircraft transporting freight exclusively having a gross weight of 20,000 pounds or less be increased from \$50,000 to \$100,000 for one person in one accident and from \$200,000 to \$300,000 for each accident. The staff also proposed that the Aircraft Bodily Injury and Death Liability minimums for aircraft with passenger seating capacity of 21 or more persons and for aircraft transporting freight exclusively having a gross weight of over 20,000 pounds, be increased from \$50,000 to \$100,000 for one person in one accident and from \$500,000 to \$600,000 for each accident. The staff did not recommend that the present property damage minimums be increased. The witness stated that the increases were recommended because of the increased number of aircraft in use, the increased number of miles traveled by aircraft, the increased number of passengers, cost of living increases and the continuing trend of the courts returning higher damage awards.

Objections to the staff's proposal were voiced by some of the respondents and interested parties who appeared at the hearings. Respondents objected to the staff proposal because the recommended increased passenger liability coverage will also mean a substantial increase in premiums. Exhibit 6 F.H. which was sponsored by the staff witness discloses that the premium increase will range between 209% to 487%. Respondents stated that an increase of such magnitude would be an economic hardship and might force many operators out of

business. No objections were voiced to the proposed increase in liability insurance requirements for persons other than passengers.

Insurers objected to paragraph 9 of the present general order and paragraph 8 of the proposed general order set forth in Exhibit 1 which provide, among other things "...that the coverage shall apply to any and all commercial flights operated by the insured...." It was proposed that paragraph 8 of proposed General Order No. 120-B be modified in accordance with the provisions of Section 11584 of the Insurance Code which was enacted in 1967. Section 11584 provides:

"No policy of insurance issued or delivered in this state covering any loss, expense or liability arising out of the ownership, maintenance, or use of an aircraft shall exclude or deny coverage because the aircraft is operated in violation of federal or civil air regulations, or any state law or local ordinance.

This section does not prohibit the use of specific exclusions or conditions in any such policy which relates to any of the following:

- (1) Certification of an aircraft in a stated category by the Federal Aviation Administration.
- (2) Certification of a pilot in a stated category by the Federal Aviation Administration.
- (3) Establishing requirements for pilot experience.
- (4) Establishing limitations on the use of the aircraft.
- (5) Any person licensed under Division 6 (commencing with Section 11401) of the Agricultural Code with respect to his operation of an aircraft for the purpose of applying pest control materials or substances by dusting, spraying or any other manner whereby such materials or substances are applied through the medium of aircraft."

We have previously stated, in Decision No. 66978, that:

"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." (62 Cal. P.U.C. 477.) Similarly to allow insurers to escape liability because of the exceptions enumerated in Section 11584 of the Insurance Code, which may have been the precise cause of an accident would not afford the public adequate protection. Furthermore, if the Legislature had intended to limit the Commission's power with respect to commercial air carriers by the enactment of Section 11584 of the Insurance Code, it would have also amended Sections 5500 through 5511 of the Public Utilities Code.

Based on the evidence adduced the Commission finds that:

1. The amounts set forth in the general order, designated Appendix B and attached hereto, 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 attached general order are reasonably necessary for the administration and enforcement of Public Utilities Code Sections 5500 through 5511.

The Commission concludes that the public interest requires the adoption of the attached general order.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. General Order No. 120-B, as set forth in Appendix B to this order, applicable to all commercial air carriers, is hereby adopted, to become effective March 1, 1969 and superseding General Order No. 120-A on that date.

2. The Secretary shall cause a copy of this decision and its appendices to be mailed forthwith to each commercial air carrier.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup> day of DECEMBER, 1968.

William J. Parsons, Jr.  
President

Augustine  
Frank P. Morrissey  
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

For Respondents: Robert J. Crandall, for Pacific Southwest Airlines; Thomas N. Kearney of Pelton & Gunther and Richard A. Bridgeford, for Bridgeford Flying Service; Robert F. Gunnell, for Gunnell Aviation, Inc.; and Jon A. Kodani, for Conard Aviation Services, Inc.

For Interested Parties: Leigh Athearn, for Mexicana Airlines; A. L. Lathrop, for The Surplus Line Association of California; Michael J. Hall, Darrell F. Lee, and Thomas N. Kearney of Pelton & Gunther, for Cravens, Dargen and Company; Joseph R. Wills, for Johnson-Wills, Inc.; Jack Cronan, for California Council of Aviation Associations; Robert L. Creber, for Continent, Inc.; Zola Siegal, for California Operators & Dealers Association; David V. Stevens, in propria persona and for Air Charter Service, Inc. and El Monte Flight Service; Roswitha Reuschel, for Pan American Underwriters; Robert Oliverio, for Insurance Company of North America; John Smeltzer, for Klopfenstein & Smeltzer and James F. McClanahan, for Associated Aviation Underwriters.

Commission Staff: Janice E. Kerr, Counsel and Douglas C. Quinlan.

APPENDIX B

General Order No. 120-B  
(Supersedes 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 PAY-  
MENT OF DAMAGES FOR PERSONAL BODILY INJURIES (INCLUDING  
DEATH RESULTING THEREFROM) AND DAMAGE TO OR DESTRUCTION  
OF PROPERTY.

Adopted DEC 17 1968. Effective March 1, 1969.  
(Decision No. 75097, Case No. 7777)

1. On or before March 1, 1969, 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 \$100,000 and a minimum for each

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accident in any one aircraft of at least an amount equal to the total produced by multiplying \$100,000 by the number of passenger seats in the aircraft.

2. Aircraft Bodily Injury and Death Liability (excluding persons aboard aircraft) - a minimum of \$100,000 for one person in one accident, and a minimum of \$300,000 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 \$100,000 and a minimum for each accident in any one aircraft of at least an amount equal to the total produced by multiplying \$100,000 by the number of passenger seats in the aircraft.
2. Aircraft Bodily Injury and Death Liability (excluding persons aboard aircraft) - a minimum of \$100,000 for one person in one accident, and a minimum of \$600,000 for each accident.
3. Aircraft Property Damage Liability - a minimum of \$500,000 for each accident.



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- (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 \$100,000 for one person in one accident, and a minimum of \$300,000 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 \$100,000 for one person in one accident, and a minimum of \$600,000 for each accident.

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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.

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- (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.

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- (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.

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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 March 1, 1969, 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

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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 March 1, 1969, 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 WILLIAM W. DUNLOP, Secretary