

dz

ORIGINAL

Decision No. 89201 AUG 8 - 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion to establish requirements to be)
met by applicants for highway carrier)
authority issued by the Commission. }

Case No. 10278
(Filed March 9, 1977)

(For List of Appearances see Decision No. 88967.)

SECOND INTERIM OPINION - PHASE I

In Decision No. 88967 entered June 13, 1978 in Case No. 10278 it was concluded that, in order to expedite the establishment of procedures adopted pursuant to Topic 2 (Financial Responsibility) and Topic 4 (Permit Transfers), consideration of the evidence introduced relative to Topic 3 (Insurance) should be made the subject of a separate interim order. In Case No. 10278 the Commission found that an investigation should be made into matters pertaining to:

Topic 3 - Whether the present limits of public liability and property damage (PL&PD) insurance requirements are adequate.

At the series of public hearings commencing on May 23, 1977, held before Administrative Law Judge Gagnon at San Francisco, evidence was received relative to the Commission's investigation concerning the minimum insurance limits to be maintained by highway carriers. This matter was submitted for decision on May 1, 1978. In addition to the direct participation by the Commission's staff, several interested parties introduced evidence in an effort to fully advise the Commission with respect to the various issues involved.

General Order No. 100-H

Pursuant to various statutory provisions contained in the Public Utilities Code^{1/} for-hire carriers of property within California by motor vehicular equipment must first establish and thereafter continue in effect, to the Commission's satisfaction, adequate insurance against liability imposed by law for the payment of damages for personal bodily injuries (including death resulting therefrom) and damages to or destruction of property. To implement such statutory requirements, the Commission issued several administrative rules and regulations which are currently set forth in General Order No. 100-H (G.O. 100-H).^{2/} The requirements of G.O. 100-H must be met by every highway carrier, freight forwarder which operates motor vehicles, household goods carrier, and every highway carrier engaged in interstate (or foreign)^{3/} transportation of property for compensation in or through California which is exempt from regulation by the Interstate Commerce Commission (ICC).

Paragraphs (1) and (2) of G.O. 100-H specifies the minimum PL&PD insurance protection that must be provided and continued in effect by the highway carriers governed thereby. The required minimum limits for PL&PD insurance are:

-
- 1/ Sections 1010, 1061, 1073, 3631, 3632, 3633, 3634, 3920, 5161, 5162, 5163, and 5164 of the Public Utilities Code.
 - 2/ Adopted January 16, 1973, effective March 5, 1973 (Resolution No. 17044).
 - 3/ Reference to foreign commerce added so as to bring G.O. 100-H into conformity with Sections 3910 and 3920 of the Public Utilities Code.

TABLE 1

General Order No. 100-H Schedule of Minimum Limits for
Bodily Injury and Property Damage Liabilities

<u>Per Accident</u>	<u>A</u> (See Note)	<u>B</u>
Bodily injuries to or death of one person	\$100,000	\$200,000
Bodily injuries to or death of more than one person (subject to maximum for one person)	300,000	600,000
Loss or damage to property of others (excluding cargo)	50,000	100,000

A. Highway carriers subject to G.O. 100-H, except highway carriers transporting bulk petroleum or petroleum products.

B. Bulk petroleum carriers.

Note: PL&PD insurance limits are hereinafter sometimes abbreviated as:

A - \$100,000/\$300,000/\$50,000

B - \$200,000/\$600,000/\$100,000

The schedule of minimum limits for PL&PD insurance prescribed in G.O. 100-H have been in effect since October 1, 1968 pursuant to Decision No. 74080 issued May 7, 1968 in Case No. 8681. The minimum limits for PL&PD insurance thus established have remained unchanged for the past decade. In establishing the present minimum insurance coverage the Commission in Decision No. 74080 stated:

"The staff of the Commission presented evidence as to the necessity for increased limits as set forth in Exhibit No. 1. The staff pointed out that there have not been any changes in General Order No. 100-D for over ten years, except that petroleum carriers' insurance minimum was increased in 1961. There has been an increase in exposure; there are more vehicles; carriers travel more miles and carry more freight; and the increased general cost of living is also a factor. There has also been a growth in high awards in court decisions involving accidents.

"The staff recommended that for carriers transporting property (other than petroleum) the present limits of \$25,000/100,000 P.L. and \$10,000 P.D. be raised to \$50,000/200,000 P.L. and \$10,000 P.D.; for carriers transporting petroleum or petroleum products the present limits of \$100,000/300,000 P.L. and \$50,000 P.D. be raised to \$200,000/600,000 P.L. and \$100,000 P.D.

"Interested parties presented evidence that the insurance limits should be increased and recommended levels in the range of \$250,000/500,000 to \$500,000/\$1,000,000 for public liability for all property carriers, and \$100,000 to \$200,000 for property damage for all property carriers (other than petroleum carriers), and \$250,000 for property damage for petroleum carriers.

"In our considered opinion the recommendations of the staff are too low and the recommendations of the interested parties are too high, and while it is conceivable that in an isolated incident any required minimum level would not provide a carrier with sufficient insurance coverage, we are of the opinion that a compromise figure will more realistically reflect the insurance needs of the public and the trucking industry."

The remaining provisions of G.O. 100-H are self-explanatory and are hereinafter partially discussed in conjunction with subsequent consideration of related proposals presented by various interested parties.

Staff Proposals

The Commission's Transportation Division staff submitted a report (Exhibit 13) which summarizes the Commission's existing procedures for establishing:

- a. An administrative process for the certification of a highway carrier's currently effective insurance coverage.

- b. A notification process for the cancellation of insurance.
- c. A method for notification of reinstatement of carrier's required insurance.

The staff also explained the Commission's standard form of endorsement that must be attached to and made a part of all insurance policies subject to G.O. 100-H. While the endorsements set out several critical areas of liability that must be accepted by the insurer, it is especially noted that:

"Within the limits of liability hereinafter provided it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement."

* * *

"The Company further agrees that such insurance as is afforded by the policy and this endorsement against liability for injuries to or death of persons and damage to or destruction of property shall not be cancelled, rescinded, or suspended, nor shall the cancellation, rescission, or suspension of the policy or this endorsement take effect, nor shall the policy or this endorsement become void for any reason whatsoever until the Company shall have first given thirty (30) days' notice in writing to the Public Utilities Commission of the State of California at its office, San Francisco, California, said thirty (30) days' notice to commence to run from the date notice is actually received in the office of said Commission.

"The Company further agrees that if the policy shall be cancelled or suspended or otherwise terminated, and shall thereafter be reinstated, notice in writing of such reinstatement shall immediately be given by the Company to said Commission at its said office."

Staff Exhibit 13 also contains statistical data relative to the number of G.O. 100-H insurance filings received and processed by the Commission during several fiscal periods. A summary of such computations is:

TABLE 2

Number of G.O. 100-H Insurance Filings Received and Processed

<u>Fiscal Year</u>	<u>Certificates of Insurance</u>	<u>Cancellations</u>	<u>Reinstatements</u>	<u>Total</u>
1969-70	15,905	16,922	4,222	37,049
1970-71	16,635	18,449	4,868	39,952
1971-72	15,080	16,230	4,850	36,160
1972-73	16,182	15,765	3,901	35,848
1973-74	17,735	17,968	3,893	39,596
1974-75	20,471	20,818	3,346	44,635
1975-76	20,737	21,545	3,257	45,539
1976-77	21,985	21,567	3,515	47,067

From Table 2 it will be noted that for the 1976-77 fiscal period a total of 47,067 insurance filings were processed by the Commission staff. During this same period there were only 26,477 permits and 732 certificates of public convenience and necessity outstanding held by 19,847 carriers (Decision No. 88967). There is little, if any, relationship between the total number of outstanding highway carrier authorities and the total number of highway carriers, or the number of insurance policies issued pursuant to G.O. 100-H during a given fiscal period. On its face Table 2 indicates that many highway carriers are obtaining new and/or revised insurance coverage on one or more occasions during a single fiscal period

which requires the filing of new certificates of insurance as well as cancellation or reinstatement notices of insurance. In this connection it will be noted that the certificates of insurance are largely offset by the number of insurance cancellations. While all this volitive trafficking in insurance policies is occurring within the for-hire trucking industry, the total number of licensed carriers increased at a slower but steady pace with the number of new licensees being somewhat offset by a like number of revocations (Exhibit 2). It is the opinion of the staff that the high rate of reinsurance and cancellation of existing insurance coverage held by for-hire carriers pursuant to G.O. 100-H is due, in the first instance, largely to unfavorable financial results of operations. Highway carriers are also forced to seek new sources of insurance protection whenever the insurers holding their current coverage refuse to renew, extend, or otherwise cancel the carriers' current PL&PD coverage for a variety of stated reasons, but especially alleged overexposure to high risk factors of the insureds. It is also not uncommon to find carriers shopping for the lowest insurance cost available in the insurance market, cancelling existing policies in favor of other insurance coverage presumably available at a lower cost.

The Commission staff also presented a report (Exhibit 21) on the results of its investigation and study as to the adequacy of the present minimum insurance limits prescribed by G.O. 100-H. The staff witness concludes that the present minimum insurance limits prescribed in G.O. 100-H are sufficient and that any material increase in the present minimum insurance limits would make it more difficult for truckers to obtain adequate coverage. The factual basis employed by the staff to reach the conclusions set forth in Exhibit 21 were subjected to extensive and thorough cross-examination. It was demonstrated that the factual basis developed by the staff is not complete and does not fully support the recommendations

advanced (RT 1525 through 1571). Reference was also made to the staff position expressed in Decision No. 74080 in support of its recommendation that the then effective minimum insurance limits be doubled (see pages 3 and 4 hereof).

The justification advanced by the staff in 1967 in support of its proposal to double the then effective minimum insurance limits has been shown, in this proceeding, to be equally applicable to the 1978 socioeconomic conditions surrounding the current for-hire trucking insurance requirements. Official notice is taken of staff Exhibit 2, dated November 14, 1967, in Case No. 8681 (Decision No. 74080), wherein the results of an in-depth study of the insurance liability limits then held by carriers was compared with the staff's proposed increase in minimum insurance levels. A summary of the comparison follows:

TABLE 3

Staff Survey of Insurance Liability Limits Held by Carriers

<u>Type of Carrier</u>	<u>Number of Carriers Surveyed</u>	<u>Liability</u>			
		<u>Bodily Injury</u>		<u>Property Damage</u>	
		(1)	(2)	(1)	(2)
Certificated	35	35	-	35	-
Petroleum	30	-	28	30	-
Cement/Dump Truck	25	-	22	-	23
Household Goods	41	36	-	34	-
Lumber	16	12	-	11	-
Mobile Home/Campers	30	-	15	-	12
Hay/Grain	13	3	-	2	-
Produce	30	-	24	-	22
Gen'l Commodities (LA Area)	20	20	-	20	-
Gen'l Commodities (SF Area)	20	20	-	20	-
Total	260	(45)126	89 (51)152	57	

(1) Carriers holding in excess of proposed limits.

(2) Carriers holding at least proposed limits.

() Number of Carriers holding less than proposed limits. Source: Exhibit 2, Case No. 8681 (Decision No. 87040).

Table 3 indicates that the PL&PD insurance limits held by 260 carriers included in the survey exceeded or equaled the increase in bodily injury coverage proposed by the staff in all but 45 instances. With respect to property damage liability coverage only 51 of the 260 carriers would be required to increase their insurance limits if

the proposals of the staff were adopted. Information developed in the current investigation in Case No. 10278 does not suggest that a different result would obtain if, after ten years, the minimum insurance limits previously established by Decision No. 87040 and set forth in G.O. 100-H were to now be further adjusted upward in light of current highway carrier exposure to PL&PD risk factors.

The staff notes that the overall basic liability insurance requirements in other states as of 1975 were \$25,000/\$100,000/\$10,000. According to the staff witness no other state matches or exceeds California's minimum insurance limits for petroleum carriers of \$200,000/\$600,000/\$100,000. The ICC requires \$100,000/\$300,000/\$50,000 limits for all interstate freight carriers regardless of the commodity transported. The actual level of exposure to PL&PD reflected in the minimum insurance limits prescribed by other states was not evaluated or otherwise correlated by the staff with the like exposure to PL&PD risks experienced by California highway carriers. Interstate highway carriers operating within California are exposed to the same level of PL&PD risks as experienced by California's intrastate carriers and should share an equal concern for potential public liability and safety.

Proposals of Interested Parties

In Revised Exhibit 16, the California Trucking Association (CTA) recommends a general revision of G.O. 100-H, the most salient features of which are:

1. Increase present PL&PD minimum insurance limits for carriers transporting property other than petroleum from \$100,000/\$200,000/\$50,000 to \$250,000/\$500,000/\$100,000.
2. Increase present PL&PD minimum insurance limits for petroleum carriers from \$200,000/\$600,000/\$100,000 to \$500,000/\$1,000,000/\$200,000.
3. Provide minimum cargo insurance of \$5,000 per accident for one claimant, and not less than \$25,000 per accident if property is for more than one claimant, but subject to the same limitation for any one claimant.

4. Carriers operating exclusively as subhaulers:

- (a) Exempt from Paragraphs 1, 2, and 3 above.
- (b) Required to provide and continue in effect so-called "bob-tail" PL&PD insurance limits of \$15,000/\$30,000/\$10,000.

An insurance agent-actuary testified in support of CTA's proposed revision of G.O. 100-H. He stated that since 1968, when the minimum insurance limits prescribed in G.O. 100-H were last adjusted, the exposure of highway carriers to PL&PD risks and the related cost for insurance protection has further increased substantially (200 percent). The CTA insurance witness stated that all of the prior reasons advanced in Decision No. 74080 in justification for doubling the then effective minimum insurance limits also apply equally in 1978. He stated that the increase in the cost of PL&PD insurance within the trucking industry was due to significant socioeconomic changes experienced by the insurers over the past decade; a summary of which is:

- 1. Impact of economic inflationary trends.
- 2. Impact of monetary inflation upon level of claim settlements and the reinsurance market, both domestic and foreign.
- 3. Increase in both amount and number of claim settlements.
- 4. Increase in incidents where claims are being settled for amounts in excess of present minimum insurance limits.
- 5. Medical costs since 1968 have risen by some 300 percent.
- 6. Property reconstruction costs have risen by some 250 percent since 1968.
- 7. Delayed litigation of claims makes historical insurance coverage inadequate.
- 8. Changes in underwriting practices of insurers.
- 9. Present minimum levels do not adequately cover public safety.

10. So-called "excess (umbrella) insurance" coverage above prescribed minimum limits is more expensive to obtain over the past few years.

To the extent highway carriers have PL&PD coverage in excess of the minimum limits, the CTA's proposal will have little or no effect upon their costs of insurance. In this connection the CTA's insurance witness notes that 75 percent of the insurance business in California is conducted with 50 percent of the carriers. Raising the current G.O. 100-H insurance limits will, according to the CTA witness, improve the safety or claim cost control efforts of the carriers. It may also tend to divert poor carrier risks to the assigned-risk pool, which presumably will benefit those carriers maintaining a better insurance risk profile as they could obtain more favorable insurance costs.

The CTA suggests that the minimum PL&PD insurance requirements of those highway carriers operating exclusively as subhaulers be reduced to so-called "bob-tail" insurance coverage of \$15,000/\$30,000/\$10,000. This is the same coverage applicable to any motorist under California's financial responsibility law. It would apply only when the subhauler is not actively engaged in transporting property for the account of the overlying carrier. The overlying carrier, in turn, would have the nondelegable duty to provide at least the full minimum PL&PD limits otherwise recommended by CTA as protection for lawful liability involving transportation performed on its behalf by a subhauler. This proposed so-called "bob-tail" PL&PD insurance coverage for subhaul operations was shown to be totally deficient by various interested parties in opposition to this part of CTA's overall proposal.

The CTA also recommends that minimum cargo insurance requirements of \$5,000/\$25,000 be made applicable to all highway carriers.^{4/} There was no general support for this CTA proposal and we view the evidence submitted in support thereof as inconclusive. The CTA's Exhibit 16 (Revised) contains several other recommended amendments to G.O. 100-H which are self-explanatory.

^{4/} Pursuant to Section 5161 of the Public Utilities Code the Commission has established in G.O. 126 minimum cargo insurance of \$5,000 for the transportation of property by used household goods carriers governed by the provisions of Minimum Rate Tariff 4-B.

The California Carriers Association (CCA) represents a group of some 40-50 dump truck carriers, most of whom operate extensively as overlying carriers in addition to their full unit fleet operations. The CCA contends (Exhibit 20) that the current minimum PL&PD insurance limits contained in G.O. 100-H are unrealistically low when compared with the size of judgments that courts and juries hand down in personal injury cases. In support of its position CCA conducted a survey of all jury awards and settlements involving motor vehicle accidents, including accidents involving trucks and vans as reported in Jury Verdicts Weekly (Vol. 21, Nos. 1-46, January 7, 1977 through November 18, 1977). The results of the survey showed that, out of the 421 motor vehicle cases included in the sample, 8 percent (34 cases) of the resulting awards or settlements were larger than the current G.O. 100-H minimum insurance limits. Of the 80 truck and van cases included in the sample 17.5 percent (14 cases) were over the minimum policy levels.

The CCA witness also explained that overlying carriers have been sued increasingly as joint parties by third parties injured in accidents involving subhaulers. Because of this new trend of potential increased liability, overlying carriers assertedly require excess liability insurance (umbrella insurance) to cover possible liability for acts of their subhaulers. The CCA witness states that excess insurance is becoming more difficult to obtain.^{5/}

^{5/} A witness for the California Dump Truck Owners Association testified that excess insurance would become more available if the basic minimum insurance coverage were raised (Tr. 95-97).

The CCA contends that the public is not properly protected unless responsible carriers are able to acquire PL&PD insurance coverage in excess of the required minimum levels. Additionally, the carriers are overexposed to risks of liability if they cannot obtain excess coverage. Therefore, the CCA recommends that the minimum PL&PD insurance limits in G.O. 100-H be raised to \$200,000/\$500,000/\$100,000 for nonpetroleum carriers. If CCA's proposal were adopted, more than half of the settlements/awards involved in its survey that were over the present minimum levels would be within the CCA's suggested amended increased limits.

The CCA also recommends that the increase in insurance premiums that may result under its proposal should be offset concurrently with the necessary increases in the Commission's minimum rates. Finally, the CCA expressed concern over certain proposals by other interested parties which stress substantial increases in the minimum PL&PD insurance requirements as a means to restrict entry into the for-hire trucking field rather than improve public safety. The CCA maintains that such action is not lawful or otherwise in the public interest.

The California Dump Truck Owners Association (CDTOA) presented testimony relative to the current minimum PL&PD insurance limits for dump truck carriers. The CDTOA recommends that the present minimum PL&PD insurance requirements in G.O. 100-H be retained for dump truck carriers. To support its position, CDTOA introduced testimony by an official of a major California insurance agency and brokerage firm. The witness stated that since 1968 none of his insured carriers have experienced judgments that exceeded the current limits specified in G.O. 100-H. In 1976 the witness stated his insurance firm had approximately 450 claims which averaged about \$2,100 per claim.

If the current PL&PD insurance limits were to be raised to \$225,000/\$500,000 the impact, according to the CDTOA witness, upon insurance availability and costs therefor would be:

1. Fewer insurance companies would make additional insurance available to the small and medium size carriers due to problems of obtaining reinsurance contracts.
2. Premium costs would be increased 25-100 percent with the greatest cost burden being placed upon the basic minimum coverage obtained by small truck operators.
3. Many insurers write PL coverage for \$300,000/\$500,000 but many specialty companies who write policies for small to medium size carriers do not have this surplus capability so must seek other reinsurance sources.

Through cross-examination, it was developed that of the 2,000 certificates of insurance filed in 1976 by the insurer represented by CDTOA's witness, 30 percent were for dump truck operators, and the majority of the balance was for general freight haulers plus a small number of agricultural carriers. Of the 2,000 filings the witness stated a large percentage (around 1,200) were placed with nonadmitted insurers.^{6/} Of the 450 claims filed in 1976 the witness conceded that the majority was for property damage and not bodily injury. He was unable to further explain why his company found it necessary to place a majority of the 2,000 insurance filings in 1976 with nonadmitted insurers. The evidence indicates, however, that a heavy placement of insurance coverage with nonadmitted carriers usually is an indication that California admitted insurers consider the degree of risk exposure too high and generally unattractive and/or unprofitable business. For this reason also many so-called small highway carrier operations must on occasion seek minimum insurance coverage in the assigned-risk pool.

^{6/} Under provisions of the California Insurance Code, a surplus line broker must attest to the Insurance Commission that coverage is not available with admitted insurers before coverage can be made with a nonadmitted insurer.

The CDTOA's insurance witness further stated that insurance premiums over the past five years have increased by at least 60-70 percent. Other insurance expert testimony in this proceeding suggests that this rise in insurance costs is due to an overall increase in the insurers' exposure to risks of PL&PD liability as well as the impact of inflationary trends over the past decade. As for excess insurance coverage, the witness for CDTOA stated it was the medium to large highway carriers rather than the small truck operator who purchase this type of coverage. He stated that excess insurance has become increasingly difficult to obtain, although he agreed that this difficulty would be alleviated in the event the basic minimum PL&PD insurance limits were raised. He explained that, as the basic minimum insurance covered a greater degree of exposure to risk, the excess insurance coverage tends to become more available. The witness estimated that if the basic insurance limits were raised to \$300,000/\$500,000 insurance premiums might increase as much as 25-100 percent, with the greatest impact occurring within the area of basic minimum insurance coverage where assertedly the majority of small truck operators seek refuge from exposure to risks of PL&PD. Apparently, CDTOA's chief concern is that any substantial increase in the current minimum PL&PD insurance limits may not only cause the resulting increase in insurance costs to fall heaviest upon the small independent dump truck operator but may also increase the difficulty for such carriers to obtain the required basic coverage without being forced into the relatively more expensive assigned-risk pool.

An official for Delta California Industries and a member of the Board for Transport Insurance Company recommended that the current minimum public liability insurance limits specified in G.O. 100-H be raised to \$500,000/\$1,000,000. Because of the increased exposure to PL&PD risks and the ever increasing amount of claim settlements, the executive for Delta California Industries stated that prudent business practices would dictate raising the current minimum insurance requirements to the proposed levels deemed reasonable and necessary for public safety.

With respect to the current minimum insurance requirements specified in G.O. 100-H, the Western Conference of Teamsters testified as follows:

"The California Teamsters Public Affairs Council took a position several months ago that the present requirements should be tripled.

"It's difficult to support a precise number, whether the number should be \$300,000, or \$310,000, or \$268,000. It's very difficult to support.

"And yet, for the protection of the public, it seems to me a significant increase in the present requirements is both necessary and justified.

"In support of that, further, I would simply point out to you that, as measured by inflation, if we use the Consumer Price Index, it's just about doubled in this past 10 years, since the present requirement for insurance was established and sustained by the PUC.

"If the figures of \$100,000, \$300,000, and \$50,000 were correct for 1968, then simply whatever argument was used in 1968 to establish those figures, if we were simply to try to hold to those same relative arguments, by the same economic measures, I think we would clearly see that the amount should be significantly increased." (Tr. 1028.)

A witness on behalf of the Southern California Rock Products Association (SCRPA) and the Southern California Ready-Mix Concrete Association (SCRMCA) took the following position relative to the current G.O. 100-H minimum insurance limits:

" . . . We are of the opinion that the present limits of PL and PD Insurance...are adequate.

"If there had been jury awards and settlements greatly in excess of these limits, then the additional expense would have been passed on to the shippers.

"This has not been the case in the rock and sand industry." (Tr. 1338.)

Summary Discussion

The Commission staff and other interested parties have made several proposals relative to the current minimum PL&PD insurance requirements contained in G.O. 100-H. A summary of the suggestions of the several parties concerning the level of the present minimum PL&PD limits is:

TABLE 4

Summary of Proposed Changes in the Minimum PL&PD Insurance Limits Provided in G.O. 100-H (In Thousands of Dollars)

Source of Present/Proposed Limits	Type of Highway Carrier			
	Nonpetroleum		Petroleum	
	Minimum PL&PD Limits			
	<u>P.L.</u>	<u>P.D.</u>	<u>P.L.</u>	<u>P.D.</u>
G.O. 100-H	100/300	50	200/600	100
Staff	N/C	N/C	N/C	N/C
CTA	250/500	100	500/1,000	200
CCA	200/500	100	-	-
CDTOA	N/C	N/C	-	-
Teamsters	(1) (200/600	100	400/1,200	200
(1) Estimated	(300/900	150	600/1,800	300
SCRPA/SCRMCA	N/C	N/C	N/C	N/C
Delta Lines	500/1,000	-	-	-
Recommended	250/500	100	500/1,000	200

N/C - Indicates no change in current G.O. 100-H provisions recommended.

While the staff and certain other interested parties primarily interested in transportation of property by dump truck or agricultural carriers recommend the current G.O. 100-H minimum insurance limits be retained, the evidence compels a different result. It has been clearly established that the existing G.O. 100-H minimum insurance limits, which have been in effect for nearly 10 years, are deficient and not in the general interest of public safety. Accordingly, we are of the opinion, after a careful review of the evidence, that the present limits of \$100,000/\$300,000/\$50,000 should be raised to \$250,000/\$500,000/\$100,000 or a combined single limit of \$600,000 for other than bulk petroleum highway carriers, and for highway carriers of bulk petroleum the present limits of \$200,000/\$600,000/\$100,000 should be raised to \$500,000/\$1,000,000/\$200,000 or a combined single limit of \$1,200,000. Such action has been shown to be fully justified and reasonable in the interests of public safety.

When the minimum levels of PL&PD insurance were last adjusted upward, pursuant to Decision No. 74080, by amounts similar to that recommended in this proceeding, it was estimated that the resulting increase in premiums (Exhibit 1, Case No. 8681) would range between 6.0 percent and 9.7 percent for public liability and from 6.9 percent to 11.7 percent for property damage. This estimated increase in premiums is substantially lower than the estimate of 25 to 100 percent submitted by the witness for the CDTQA in this proceeding.

As previously stated the CTA proposal to establish minimum cargo insurance was not shown to be necessary or otherwise required at this time. No general shipper support was offered in behalf of this CTA proposal and no probative evidence was submitted to show that the public interest was not being adequately served under the carriers' own initiative to protect their inherent responsibility and/or liability for the cargo they transport.

The CTA's suggested provision for reduced so-called "bob-tail" insurance limits for highway carriers operating exclusively as subhaulers is not adopted for the reasons previously stated herein. This proposal raises a myriad of questions and/or problems of application, interpretation, and implementation not heretofore addressed by proponents. The CTA's suggested insurance reinstatement filing fee of \$50 plus a substitution filing fee of \$50 was found to be unnecessary by the staff. We are of the opinion that it should not be adopted at this time.

The CTA's recommendation to add a provision in G.O. 100-H whereby highway carriers will not be required to furnish evidence on the extent of insurance protection beyond the prescribed minimum limits, except upon receipt of adequate compensation therefor could, if adopted, produce discriminatory rate practices and, in any event, is a matter that should be addressed in the governing rate tariffs of highway carriers. Other minor technical suggestions for amending G.O. 100-H not specifically referred to herein having been thoroughly considered and shown to be inappropriate will not be adopted.

This order increasing minimum insurance limits will not apply to carriers who operate into California exclusively with ICC authority. The limits of liability insurance set by the ICC will continue to apply to such interstate carriers. However, our order will affect the interstate carrier exempt from ICC regulation, but who must register his affidavit of exemption before entering or operating in California on interstate movements. The result will be that some interstate carriers operating in California will have an insurance obligation not required by others. We are of the opinion that the ICC should initiate appropriate proceedings to increase the minimum insurance limits it requires of carriers so as to put all interstate carriers on the same basis insofar as insurance requirements and resulting costs. Also, in view of this opinion, we believe the ICC should increase the limits of liability to reflect today's conditions. Accordingly, we will direct the Executive Director to forward a copy of this order to the ICC's Chairman.

Findings

1. Pursuant to statutory mandate set forth in the Public Utilities Code for-hire carriers of property within California by motor vehicular equipment must establish and thereafter continue in effect, to the Commission's satisfaction, adequate insurance against liability imposed by law for the payment of damages for personal bodily injuries (including death resulting therefrom) and damages to or destruction of property (PL&PD).
2. The Commission's administrative rules and regulations governing the establishing and maintenance of minimum PL&PD insurance by specified highway carriers are set forth in G.O. 100-H adopted January 10, 1973, to become effective March 5, 1973, by Commission Resolution No. 17047.
3. The current schedule of minimum PL&PD insurance limits for highway carriers transporting property (other than bulk petroleum) is \$100,000/\$300,000/\$50,000; for carriers transporting bulk petroleum the present limits are \$200,000/\$600,000/\$100,000.

4. The present level of minimum PL&PD insurance limits prescribed in G.O. 100-H has been in effect since October 1, 1968 pursuant to Decision No. 74080, issued May 7, 1968 in Case No. 8681.

5. The present level of minimum PL&PD insurance limits prescribed in G.O. 100-H is inadequate and not in the interest of public safety.

6. Interested parties have presented evidence which proposes that the insurance limits should be raised to levels ranging from \$100,000/\$300,000/\$50,000 to \$500,000/\$1,000,000/\$150,000 for all highway carriers (other than bulk petroleum carriers), and from \$200,000/\$600,000/\$100,000 to \$600,000/\$1,800,000/\$300,000 for bulk petroleum carriers.

7. An increase in the present minimum insurance limits prescribed in G.O. 100-H to the levels of \$250,000/\$500,000/\$100,000 or a combined single limit of \$600,000 for all highway carriers other than bulk petroleum carriers, and to the levels of \$500,000/\$1,000,000/\$200,000 or a combined single limit of \$1,200,000 for bulk petroleum carriers has been shown to be just, reasonable, and in the interest of public safety.

8. To what extent, if any, highway carriers incur increased insurance costs, as a result of the Commission's order herein, which should now be offset by appropriate rate relief cannot be determined from the evidence of record in this proceeding. However, carriers desiring such rate relief have ample formal and/or informal remedies at their immediate disposal. Common carriers can file for appropriate tariff authority to adjust rates. Permitted carriers may increase rates without prior authority. Finally, carriers may request an increase in minimum rates.

Conclusions

1. In light of the evidence introduced in Phase I (Topic 3) of Case No. 10278, the minimum insurance limits and related governing provisions prescribed in G.O. 100-H should be modified as set forth in Appendix A hereof and made part of the procedures for implementing the objectives of the statutory requirements to be met as a condition for the for-hire transportation of property by highway carriers between points within California.

2. In order to afford all highway carriers, insurers, and the Commission's staff a sufficient amount of time to establish and fully implement the additional insurance limits and qualifications found to be just, reasonable, and in the interest of public safety herein, the revised G.O. 100-H adopted by the ensuing order should not be made effective earlier than ^{October 14,} ~~January 1,~~ 1979. *W*

SECOND INTERIM ORDER - PHASE I

IT IS ORDERED that:

1. General Order No. 100-I as set forth in Appendix A, attached hereto and by this reference made a part hereof, applicable to all carriers as specified therein, is adopted to become effective ^{October 14,} ~~January 1,~~ 1979 at which time it shall supersede General Order No. 100-H.

2. The Executive Director of the Commission shall cause a copy of General Order No. 100-I to be mailed forthwith to every carrier subject to the governing provisions contained therein and a copy of this decision to the Chairman of the Interstate Commerce Commission.

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

Dated at San Francisco, California, this 8th day of AUGUST, 1978.

Robert B. Berman
President

Vernon L. Sturgeon
Charles W. Howell

Commissioners

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

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
Page 1 of 4

GENERAL ORDER NO. 100-I
(Supersedes General Order No. 100-H)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES AND REGULATIONS REQUIRING ALL HIGHWAY CARRIERS, FREIGHT FORWARDERS WHICH OPERATE MOTOR VEHICLES, HOUSEHOLD GOODS CARRIERS AND HIGHWAY CARRIERS ENGAGED IN INTERSTATE OR FOREIGN TRANSPORTATION OF PROPERTY FOR COMPENSATION WHICH ARE EXEMPT FROM REGULATION BY THE INTERSTATE COMMERCE COMMISSION, TO PROVIDE AND THEREAFTER CONTINUE IN EFFECT ADEQUATE PROTECTION AGAINST LIABILITY IMPOSED BY LAW UPON SUCH CARRIERS FOR THE PAYMENT OF DAMAGES FOR PERSONAL BODILY INJURIES (INCLUDING DEATH RESULTING THEREFROM) AND DAMAGE TO OR DESTRUCTION OF PROPERTY.

Adopted AUG 8 - 1978 Effective January 1, 1979.
(Decision No. 89201, Case No. 10278)

(1) Every highway carrier, (except highway common carriers of petroleum products in bulk in tank vehicles, petroleum irregular route carriers and petroleum contract carriers), freight forwarder which operates motor vehicles, and household goods carrier as defined in the Public Utilities Code, and every highway carrier engaged in interstate or foreign transportation of property (except petroleum products in bulk in tank vehicles) for compensation in or through California which is exempt from regulation by the Interstate Commerce Commission, shall provide and thereafter continue in effect, so long as they may be engaged in conducting such operations, adequate protection against liability imposed by law upon such carriers for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than two hundred fifty thousand dollars (\$250,000) on account of bodily injuries to, or death of, one person; and protection against total liability of such carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person, in the amount of not less than five hundred thousand dollars (\$500,000) and protection in the amount of not less than one hundred thousand dollars (\$100,000) for one accident resulting in damage to or destruction of property other than property being transported by such carrier for any shipper or consignee, whether the property of one or more than one claimant; or a combined single limit in the amount of not less than \$600,000 on account of bodily injuries to, or death of, one or more persons and/or damage to or destruction of property other than property being transported by such carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(2) Every highway common carrier of petroleum products in bulk in tank vehicles, petroleum irregular route carrier, and petroleum contract carrier, as defined in the Public Utilities Code, and every highway

APPENDIX A
Page 2 of 4

carrier engaged in interstate or foreign transportation of petroleum products in bulk in tank vehicles for compensation in or through California which is exempt from regulation by the Interstate Commerce Commission, shall provide and thereafter continue in effect, so long as they may be engaged in conducting such operations, adequate protection against liability imposed by law upon such carriers for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five hundred thousand dollars (\$500,000) on account of bodily injuries to, or death of, one person; and protection against a total liability of such carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person, in the amount of not less than one million dollars (\$1,000,000); and protection in an amount of not less than two hundred thousand dollars (\$200,000) for one accident resulting in damage to or destruction to property other than property being transported by such carrier for any shipper or consignee, whether the property of one or more than one claimant; or a combined single limit in the amount of not less than \$1,200,000 on account of bodily injuries to, or death of, one or more persons and/or damage to or destruction of property other than property being transported by such carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(3) The protection required under Sections (1) and (2) hereof shall be evidenced by the deposit with the Public Utilities Commission, covering each vehicle used or to be used in conducting the service performed by each such highway carrier, freight forwarder which operates motor vehicles, and household goods carrier of a policy or policies of public liability and property damage insurance, issued by a company licensed to write such insurance in the State of California, or by nonadmitted insurers subject to Section 1763 of the Insurance Code, if such policies meet the rules promulgated therefor by the Commission or of a bond of a surety company licensed to write surety bonds in the State of California.

(4) The protection required under Sections (1) and (2) hereof by every highway carrier engaged in interstate or foreign transportation of property in or through California who is exempt from regulations by the Interstate Commerce Commission, shall be evidenced by the filing and acceptance of a certificate of insurance, or surety bond, or qualification as a self-insurer as may be authorized.

(5) A copy of an insurance policy, duly certified by the company issuing it to be a true copy of the original policy, or a photostatic copy thereof, or an abstract of the provisions of said policy, or a certificate of insurance issued by the company issuing such policy, may be filed with the Commission in lieu of the original or a duplicate or counterpart of said policy. This section does not apply to filings made under Section (4).

APPENDIX A
Page 3 of 4

(6) A policy of insurance, or surety bond, evidencing such protection, shall not be cancelable on less than thirty (30) days' written notice to the Public Utilities Commission, such notice to commence to run from the date notice is actually received at the office of the Commission.

(7) Any highway carrier, freight forwarder and household goods carrier desiring to furnish equivalent protection to the public by means other than those prescribed in the foregoing sections, whether as a self-insurer or otherwise, shall file an application for authority to do so in accordance with the Commission's Rules of Practice and Procedure.

(8) Every insurance policy, surety bond or equivalent protection to the public shall contain a provision that such policy, surety bond or equivalent protection will remain in full force and effect until canceled in the manner provided by Section (6) of this General Order.

(9) Upon cancellation, expiration or suspension of an insurance policy or surety bond, or the cancellation of equivalent protection issued by this Commission, the operative authority of any highway carrier, freight forwarder subject to this order or household goods carrier shall stand suspended immediately upon the effective date of such cancellation, expiration or suspension. The registration issued by this Commission to every highway carrier engaged in interstate or foreign transportation of property in or through California who is exempt from regulation by the Interstate Commerce Commission shall stand suspended immediately upon the effective date of cancellation, expiration or suspension of an insurance policy, surety bond or equivalent protection.

(10) The suspension of the operative authority of any highway common carrier, petroleum irregular route carrier, cement carrier or freight forwarder pursuant to Section (9) hereof shall suspend also tariff filings of such carrier. Suspension supplements to tariffs so suspended are not required and shall not be filed.

(11) No carrier shall engage in any operation on any public highway in this State during the suspension of its operative authority or suspension of its registration.

(12) The operative right or rights held by any highway common carrier, petroleum irregular route carrier, cement carrier or freight forwarder shall be subject to revocation in the manner provided by Section 1070 of the Public Utilities Code whenever the operative right of such carrier has been suspended under the provisions of this General Order.

APPENDIX A
Page 4 of 4

(13) No highway common carrier, petroleum irregular route carrier, cement carrier or freight forwarder whose operative rights have been suspended under the provisions of Section (9) of this General Order shall resume operations unless and until such carrier shall have filed a written request for removal of such suspension. Such written request shall be accompanied by evidence of an insurance policy, surety bond or equivalent protection in effect at the time and which meets the standards set forth in this General Order and by a fee of one hundred fifty dollars (\$150). The operative rights of such complying carriers shall be reinstated from suspension upon the filing of evidence of adequate insurance coverage, the written request and payment of the fee.

This order shall be effective ^{October 1, 1978} January 1, 1979.

Approved and dated at San Francisco, California, this 8th
day of AUGUST, 1978.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By FREDERICK E. JOHN
Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion to establish requirements to be
met by applicants for highway carrier
authority issued by the Commission.


Case No. 10278
(Phase II - Topics 5 & 6)

SUPPLEMENTAL MEMORANDUM OF PREHEARING CONFERENCE

It has been determined that the initial memorandum of the
June 28, 1978 prehearing conference relative to Phase II of Case
No. 10278 should be clarified as follows:

1. The October 17, 1978 San Francisco series of
hearings will be limited to the receipt of
evidence pertaining to the first issue set
forth in the original memorandum as:
 1. Subhauler
 - a. Type of authority required
 - b. General Order No. 102 (subhaul bond)
 - c. Division of revenue
 - d. Deviation rates.
2. It was further agreed that at the conclusion of
the first interim subhauler issue noted above,
the disposition of Case No. 5432 (Petition 904),
et al. would be addressed.

Dated at San Francisco, California, this 8th day of
August, 1978.


M. J. Gagnon
Administrative Law Judge