

**Written Submitted Testimony to the
Transportation and Infrastructure Committee**

by
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Chairman DeFazio, Ranking Member Graves, and members of the Committee:

As you know, the Motor Carrier Act of 1980 served to deregulate the trucking industry by reducing the barriers of entry into the industry. Congress believed that federal regulators alone could not adequately oversee trucking activities and sought to cut red tape to increase efficiency, produce jobs, and deliver lower prices for consumers. Congress also sought to engage private insurance companies to ensure that the trucking industry operates in a safe manner. One of the significant provisions in the 1980 Act is that motor vehicle carriers must maintain a liability insurance policy of no less than \$750,000 for trucks carrying typical freight and no less than \$5 million for trucks carrying hazardous materials.

Congress intended for the minimum liability insurance coverage to provide incentives to the trucking industry to operate safely. Insurance companies and their underwriting process would “regulate” the trucking industry – so the thinking went – by requiring safety standards for the equipment and drivers as part of the insurance application and coverage process. The theory was that insurance companies would not insure trucking companies that do not adequately follow safety practices. The intended result was that the minimum liability insurance requirement would “weed out” the trucking companies that operated in unsafe manners – ones that caused or threatened property damage, injury, or death.

Congress also provided a key provision in the 1980 Motor Carrier Act that permits the Secretary of Transportation to raise the minimum level of liability insurance to achieve the intended purpose of the Act. As you all also know, things have changed significantly in the nearly 40 years since passage of the Motor Carrier Act. The number of authorized motor carriers has risen enormously, doubling in just the first decade after the Act. The number of large trucks registered with the U.S. Department of Transportation (DOT) was reported to be over 11 million in an estimate calculated just over two years ago. The permitted tractor trailer length has risen as well – first to 48 feet and now to 53 feet. Truck weight also increased significantly over this same time. The costs of lost wages and medical expenses resulting from truck crashes have simultaneously increased with the rates of general inflation and medical inflation, respectively. According to all DOT reports, our highways are more congested, drivers are more distracted, and truck fatalities are increasing. The conditions of freight-bearing trucks on our highways that existed in 1980 are now long gone.

During this same time period, however, the various Secretaries of Transportation did not increase the minimum liability insurance coverage requirement at all. Not one increase of any amount. If one were to adjust the \$750,000 amount for inflation, it would more than quadruple the minimum coverage level. Adjustment factoring in the even greater average inflation in medical

expenses, which victims of accidents face, would require a minimum liability insurance coverage level of over five million in today's dollars.

The result of nearly four-decades of inaction is that victims of truck accidents that cause injury or death are often unable to recover needed, adequate, just compensation from motor carriers who only carry the minimum requirement of \$750,000.

Consequences of the gap between today's actual costs of accidents and the original minimum liability level amount reach beyond the trucking industry itself. Courts are frequently forced to deal with interpleader actions by the insurance industry, a practice that permits insurance companies to sue all parties involved in a truck accident and then submit only the minimum level policy amount to the court, leaving the parties to fight or interplead among themselves as to who should receive what level of compensation from the policy. Appellate case law has been that the minimum liability policies cover only a per accident liability limit and not a per victim limit. In cases where there are multiple victims with claims exceeding \$750,000, the victims then have no chance of recovering adequate compensation from the policy if the motor carrier has only the minimum coverage.

There are also known instances where trucking companies with minimal assets engage in the practice of establishing "reincarnation" companies after significant accidents involving serious injury or death. Reincarnation occurs when trucking companies close or enter bankruptcy to avoid payment beyond the insurance policy limit. Many of these companies later rename themselves and simply move assets to a different company or another person to avoid judgment exposure. The result is that parties who do receive judgments exceeding the minimum liability level frequently have no recourse because they are unable to recover damages from companies that either do not exist anymore or have no assets.

The costs associated with accident damages caused by the trucking industry are therefore not borne by the trucking industry but instead are exported to the victims themselves, other entities not responsible for the accident, or the public at large.

On the latter point, uncompensated and undercompensated truck accident victims who are forced to self-pay for their injuries often turn to Medicaid, Social Security disability compensation, and other government programs to provide for their expenses, lost wages, or basic necessities after a personal bankruptcy at some level occurs. In effect, then, taxpayers subsidize the trucking industry by covering many of the full costs of accidents involving underinsured trucks.

It is important to note that not all trucking and insurance companies are responsible for this problem of underinsured motor carriers. Many larger and better-funded trucking companies obtain higher liability insurance policy limits to protect their relatively greater assets from exposure to a lawsuit. Large-truck-company crash victims are, therefore, better able to recover damages to pay their medical bills. Many insurance companies also maintain self-imposed minimum policy limits which further ensure that crash victims receive compensation.

The Trucking Alliance, a coalition of freight and logistics companies that advocates for safety reforms in the motor carrier industry, seems to understand the issues facing the industry and

takes a responsible position with respect to liability insurance. The Alliance advocates that “Motor carriers should be sufficiently self-insured or, if fully insured, maintain liability insurance that fully compensates the medical expenses of large truck crash victims, as Congress intended in 1980 when it passed this requirement.” The Trucking Alliance supports an official increase in the minimum insurance requirement for operating on U.S. highways in order to maintain the public’s trust and to cover medical costs faced by truck crash victims.

In support of their position, the Alliance voluntarily tracked 8,692 accident settlements involving member companies between 2005 and 2011. It reported that 42% of the trucking companies’ monetary exposure from these settlements would have exceeded their insurance coverage if all of the companies in the study had maintained only the minimum \$750,000 insurance requirement.

For a number of compelling reasons, therefore, I urge the Committee to finally pass legislation to raise the required insurance minimum for motor carriers. The best policy result would be to tie the minimum coverage requirement to inflation or, more accurately, medical inflation, since the compensation is used to pay medical expenses. Such a new law would protect the American public as well as trucking companies themselves by ensuring that insurance coverage is available to cover the total costs of their accidents.

Congress never intended the 1980 Motor Carrier Act to leave accident victims in dire financial straits. Advocacy groups such as the Truck Safety Coalition, industry members such as the Trucking Alliance, and even the Federal Motor Carrier Safety Administration all understand this and agree that action is needed to protect motorists. The Committee should move to correct the unintended and unfair situation that currently exists on our nation’s highways.