



OOIDA Foundation

RESEARCH • SAFETY • ECONOMICS

WHITE PAPER

Analysis of the Volpe Report

*Financial Responsibility Requirements for
Commercial Motor Vehicles*

12/ 3/ 2014



Table of Contents

Executive Summary	2
Detailed Review	4
Section 2: Cost Exporting and Liability Insurance.....	5
Section 2.1.2: The Problem of Undercompensated Injuries.....	5
Section 2.2.1 Equity Impacts of Cost Exporting.....	6
Section 2.4 Carrier Industry Structure:.....	7
Section 2.4.3 Current Crash Costs:	9
Section 2.4.4 Protecting the Public	9
Section 2.6.2 Risk Update for Insurance rates	9
The Ripple Effect: A spreading, pervasive, and usually unintentional effect or influence	10
Insurance Capacity:.....	11
3.4 FM CSA Safety Programs.....	13
Section 4.15 Insurance Requirements Fail To Deter Carriers	14
Section 6.4.2 Other Prevention Measures.....	14
Conclusion.....	14
Bibliography	15

Executive Summary

The Federal Motor Carrier Safety Administration contracted the John A. Volpe Transportation Systems Center (Volpe) to evaluate the adequacy and effectiveness of the current minimum levels of financial responsibility for large trucks in response to the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which directed the Secretary of Transportation to issue a report on the appropriateness of (1) the current minimum financial responsibility requirements for motor carriers carrying property and carrying passengers; and (2) the current bond and insurance requirements for freight forwarders and brokers.

In January 2013, Volpe published a study entitled, “Financial Responsibility Requirements for Commercial Motor Vehicles.” The basic hypothesis of Volpe’s study was that insurers will be more careful about investigating motor carriers’ safety patterns if the amount of potential liability for claims is increased. Volpe provided no basis for this assertion and offered no research to indicate that such an event will occur, yet the report steadfastly claimed that it will more than likely happen. The hypothesis stated (1) that by increasing liability limits the number of crashes and fatalities will decline; and (2) that a low insurance liability minimum allows for the exporting of cost, especially for small carriers, and increases the potential for crashes and fatalities.

The OOIDA Foundation (OOFI), the research and educational arm of OOIDA, the largest non-for profit national trade group representing over 150,000 owner-operators, offers quotes from Volpe’s report which would seem to invalidate the research teams’ conclusions, as well as repudiate the idea that their suggestion for increased liability rates has any merit based on scientific research. While reading the following quotes, please keep in mind this question, “What is the problem?” (**Emphasis has been added**)

Page Number	Statement
5	“ Crash frequency has declined , but the cost of crashes has increased”
5	“ Insurance rates for the same level of coverage have decreased in nominal dollars.”
6	“Evidence of cost exporting (or externality) problem in the regulated commercial freight and passenger sectors is anecdotal , but statistically it is a very small share of carriers and crashes.”
6	“ The number of crashes whose cost exceeds the insurance maximum ---where the truck is at fault and compensation beyond the insurance level is not paid--- is unknown... ”
6	“Compensation, on the other hand, is largely an equity problem; there is no right answer, even in principle. ”
13	“ Costly crashes are rare... ”
7	“The vast majority of CMV-caused crashes have relatively small cost consequences, and the costs are easily covered within the limits of mandatory liability insurance.”
7	A small share exceed the mandatory minimum but are often covered by other insurance or assets
7	“A final portion of high-cost crashes would fall outside existing compensation instruments even if the minimum liability were raised. ”
11	“ Costs of crashes are not routinely collected, and can only be estimated from special studies or by inference from crude indicators such as fatalities. ”

12	“Data do not allow for the observation of the share of crashes that currently exceed existing or proposed thresholds, or for the current levels when they were enacted, so neither the number of crashes over the limits nor their trends is observable.”
16	“The average cost of a crash has increased in the past 30 years, but it has been more than offset by a reduction in crash frequency.”
20	“Most crashes result in small costs: and the average is around \$18,000 per crash...”
15	“Fatalities from combination trucks can be calculated as 0.0043 per truck per year in 1980, dropping to 0.0019 in 2009.”
31	“These generalizations are strong, but they are only probabilistic; they do not identify the specific carrier (let alone vehicle) that will have a crash, or particularly, a costly crash.”
31	“There are no comprehensive data on the number of crashes, the true costs of individual crashes, cost of crash to individual victims, nor the frequency with which insurance fails to cover the cost---the optimal level at which to set the upper bound is unknown. Estimating the optimal limit can be approached as the reconciliation of multiple rough approximations...”
31	“Efforts to turn cost occurrences into dollars may have biases, distortions, omissions, imprecision, and other weaknesses and errors.”
49	“Although cost exporting clearly takes place, its magnitude is elusive because of the relatively small number of such crashes and the dearth of pertinent data.”
52	“Many strategies are in use now to monitor and sanction the safety behavior of carriers, and judging from the steady decline in crash frequency the strategies seem to be working. There is no certainty that higher liability requirements will cause insurers to be more diligent in evaluating carriers for insurance.”
67	“Compared to raising insurance requirements---which burden the entire industry or a large share of it, the majority of which operate safely---the effectiveness of other strategies for reducing crashes may be greater at a lower cost.”

Throughout the Volpe report, cost exporting was used as a fundamental principle to justify increasing the current insurance minimums. The report defined cost exporting as “the shifting of costs of a good or service to entities other than producers or consumers. If producers can avoid paying some of the costs they incur, they will produce more output that is socially desirable and undercut those producers who internalize all their costs. Exported costs in the form of uncompensated injuries unfairly impose damages on innocent third parties. Insurance is a means for internalizing the costs of rare but costly events. It cannot cover every possible outcome, but it can spread the costs of catastrophic events across producers.¹” However, the research team states, “Evidence of the problem of cost exporting is anecdotal.²”

¹ Kent Hymel et al., *Financial Responsibility Requirements for Commercial Motor Vehicles*, John A. Volpe Transportation Systems Center (2013), pg. xi.

² *Ibid*, pg. 27.

Although the report states, “The findings overall provide preliminary justification in favor of increasing the current levels of financial responsibility,³” the study has numerous statements that would seem to contradict this conclusion. To summarize the list above, the research team discovered that (1) the actual number of crashes and the costs of those crashes that exceed present limits are unknown; (2) there is no right answer; (3) crashes are rare events; (4) crashes that do exceed the minimum limits are often covered by other insurance or assets; (5) the costs of crashes has increase but it has been more than offset by a reduction in crash frequency; (6) the average cost of a claim is \$18,000; (7) there is no way to set an upward bound liability because some crashes will always fall outside the bounds; (8) any effort to turn costs into dollars may have bias, distortions, omissions, imprecision, and other weaknesses and errors; (9) judging by the steady decline in crash frequency, the current strategies being utilized by insurers is clearly working; (10) there is no certainty that higher liability requirements will cause insurers to be even more diligent; and (11) other strategies for reducing crashes may be more effective and at a lower cost.

Ultimately, while admitting that the utilization of crude estimates, unknown data, and no research or supporting evidence that increasing liability insurance minimum will improve safety, Volpe recommended raising the insurance liability minimums. The research in the Volpe report clearly demonstrated that the current minimum levels of financial responsibility for CMVs are both adequate and effective.

According to FMCSA’s Large Truck and Bus Crash Facts, between 2001 and 2011:

1. The number of large trucks involved in **fatal crashes has decreased 24%**
2. The number of large trucks involved in **injury crashes has decreased by 30%**
3. The number of large trucks involved in **property damage only crashes has decreased by 34%**

It is important to note that there is no discussion of the unintended consequences of raising the insurance minimums, such as less money spent on maintenance, tires, and new equipment in order to compete within the competitive freight market. Instead, Volpe makes the assumption that insurers, by raising the current minimum, will incentivize carriers to buy more safety equipment and provide more maintenance in order to avoid a crash.

Detailed Review

The FMCSA commissioned Volpe to research financial responsibility requirements in order to comply with Section 32104 of MAP-21, which directed the Secretary of Transportation to issue a report on the appropriateness of (1) the current minimum financial responsibility requirements for motor carriers carrying property and carrying passengers; and (2) the current bond and insurance requirements for freight forwarders and brokers. MAP-21 also directed the Secretary to determine the appropriateness of these requirements every four years following issuance of the first report.

³ Ibid, pg. xvii

Section 2: Cost Exporting and Liability Insurance

The primary mission of FMCSA is to reduce crashes, injuries, and fatalities involving large trucks and buses. Volpe has redefined the primary mission statement of FMCSA, to read, “to reduce the costs associated with truck-and-bus-related crashes by reducing both their frequency and severity, and to ensure that crash victims receive adequate compensation for damage and injuries.”⁴

By redefining FMCSA’s mission statement FMCSA has become a judicial and economic agency concerned more with the economics of truck safety and the fair and equitable treatment of victims by assuring adequate compensation, than with reducing accidents among CMVs and buses. It would appear that a conclusion was already expected for this research introducing confirmation bias into the research.

Volpe pointed to the following changes that have occurred since the deregulation of the trucking industry in 1980 to justify their conclusions:

- Crash costs – both the medical services and the value of statistical life have increased;
- **Crash frequency has declined**, but the cost of crashes has increased;
- **Insurance rates have decreased**; and
- The freight trucking insurance market seems to accept \$1 million as the standard minimum.

The increased cost associated with medical services and the value of statistical life is the only point that adds any relevance to suggestion that the financial responsibility requirements need to be increased. It is true that there has been an increase in the cost of medical services and prescriptions, which has been allowed to expand without any restraints and has affected the entire economy. Nevertheless, it would seem the answer to these issues is to propose restraints on both the medical services and the pharmaceutical companies, rather than increase liability limits on those individuals least responsible for these runaway costs, in this case the truck drivers whose incomes have remained unchanged during this same time period.

The three other changes that have occurred since 1980 seem to contradict Volpe’s suggestion that increased liability premiums will increase safety by forcing insurers to investigate and insure fewer carriers. By acknowledging that insurance rates have not increased for specific coverage, and in fact have decreased in real inflation adjusted dollars, coupled with the fact that crash frequency has declined over the last ten years, would seem to indicate that there is actually a correlation between not raising insurance liability rates and a decrease in crashes. Volpe repeatedly references the declining crash rates, but seemingly ignores the potential correlation.

Section 2.1.2: The Problem of Undercompensated Injuries

Volpe states that compensation is an equity issue, while crash reduction is an economic efficiency objective. “The empirical problem is to determine the extent by which carriers are able to export costs by failing to adequately compensate victims, and the policy problem is to find ways to correct the under-

⁴ Ibid, pg. 5.

compensation.⁵ The research team states that it is desirable to avoid imposing costs on innocent third parties, but yet they are proposing increased costs on the trucking industry which has shown a steady linear downward trend in crashes for several years.

Volpe readily admits that cost exporting in the commercial freight and passenger sectors is anecdotal and is statistically a very small share of carriers and crashes. In addition, the research stated, “The number of crashes whose cost exceeds the insurance maximum---where the truck is at fault and compensation beyond the insurance level is not paid—is unknown, but may be in the range of 30 to 100 crashes per year.⁶” After reviewing these two statements, it is evident that the research should have ended until the extent and the number of crashes whose costs exceed the insurance minimum was known.

Again Volpe contradicts FMCSA, and in particular the Agency’s goal of achieving zero crashes and fatalities, by stating that “crash occurrence is inevitable.⁷” Instead, the research team states, “Preventing crashes is an economic efficiency problem, subject to cost-benefit analysis..Compensation, on the other hand, is largely an equity problem; there is no right answer, even in principle.⁸” This statement invites the question, if there is no right answer, even in principle, why would Volpe suggest raising the minimum financial responsibility limits?

Section 2.2.1 Equity Impacts of Cost Exporting

As Volpe studied the equity impacts of cost exporting, they discovered the following facts:

- The vast majority of CMV-Caused crashes have relatively small cost consequences;
- A small share of crashes’ costs exceed the mandatory liability insurance;
- A portion of these costs are covered by other insurance or assets carried by carriers;
- Another portion of high-cost crashes would occur outside of existing minimum even if minimums were raised; and
- And a very small part of high-cost crashes would be covered if minimum liability coverage was higher.

It is important to note that it is only the very small group of high-cost crashes that both Volpe and FMCSA desire to cover through an increase in liability insurance on all motor carriers, even though they recognize that 99.4 percent of all crashes are covered by the current minimum levels and that not all of these high-cost crashes can be covered even if the limits were raised. Part of Volpe’s reasoning is that while some victims are able to hire attorneys to receive equitable compensation, there are other individuals that are unable. Therefore, raising the minimum level will be more equitable to all crash victims.

⁵ Ibid, pg. 6.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

Ultimately, Volpe recognizes that:

1. Crashes are rare events,
2. Vast majority of crashes are within the minimum requirements,
3. A small share of crashes exceed the mandatory minimum but are often covered by
 1. other insurance or assets, and
4. No matter the minimums some crashes will be outside those minimums.

Volpe's perspective of equity is that the trucking industry, which has shown consistent improvements in safety, should be held responsible for those "less than well off individuals" that cannot afford to hire attorneys would seem to be more a political ideology than equity reasoning.

Section 2.4 Carrier Industry Structure:

While attempting to study the structure of the trucking industry, Volpe tried to break down all motor carriers into two distinct categories, which is nearly impossible considering the enormity and variety of business models found in the industry. The two categories of carriers were defined as, "small/medium size carriers with little equity, and large carriers that are self-insured and relatively safe."⁹ There is no evidence to support this supposition never the less, Volpe also stated, "Lower tiered carriers, in contrast **may not**, necessarily internalize safety costs and may need to be constrained through financial responsibility requirements (**emphasis added**)."¹⁰

OOFI strongly disagrees with above statement. It is the large carriers that have asked for an increase in liability limits asserting that a large number of their claim settlements are in excess of the liability minimums. This is a clear indication that large self-insured carriers are experiencing high-cost crashes.¹¹ The following data was formulated by utilizing data from FMCSA's Compliance, Safety, and Accountability (CSA) program and information from Volpe's report.

Carriers	PU	Crashes	Crash Rate per 100 PU
J.B. Hunt	11,664	817	7
Schneider National	11,103	901	8.11
Swift Transportation	17,989	1,601	8.9
Werner Enterprises	8,391	1,064	12.68
US Xpress	5,748	647	11.26
C.R. England	5,257	686	13.05
New Prime/ Prime	5,187	601	11.59
Crete Carrier	5,077	373	7.35

⁹ Ibid, pg. 9.

¹⁰ Ibid.

¹¹ Christopher J. Burkhalter, *Analysis of Crash Settlement Data from The Trucking Alliance*, Bickerstaff, Whatley, Ryan & Burkhalter, Inc. (2013).

Average for Truckload Mega Carriers	8,802	836	9.99
Total for Truckload Mega Carriers	79,218	7,526	9.5
One-Truck Carriers*	138,750	7,720	5.56
One-Truck Carriers**	125,902	6,534	5.19

* Data from Volpe Report

** Data from 2014 GAO study on CSA

Carriers	Power Units	Crashes in 12 month period	Crash Rate per 100 PU
8 "Mega" Truckload Carriers	79,218	7,526	9.5
National One-Truck Carrier	138,750	7,720	5.56

It is important to understand that self-insured carriers live by different reporting rules, and it is very unlikely that Volpe, or any agency, knows the number of crashes or claims that are paid by large carriers. It is also of interest to note that, when talking about the number of crashes large self-insured carriers have in comparison to small/medium carriers, Volpe divides up the large carriers into two separate tier groupings, those motor carriers that haul hazardous materials and those that do not. The vast majority of carriers that haul hazardous material are large carriers, and their crash statistics should be combined.

According to Volpe reasoning, "Carriers operating on narrow margins may be tempted to push safety bounds in order to augment revenues.¹²" Nonetheless, the research team offers no evidence to support this accusation. Instead, the raising of liability premiums would generate an even smaller operating margin, and by using Volpe's logic, these small carriers would be even more likely to push safety bounds to augment revenues.

Volpe does not recognize the "law of unintended consequences" that would more than likely follow an increase in the cost of operation, which would result in carriers that operate under very tight margins to cut back on maintenance and to delay the purchasing of tires or brakes in order to adjust for the added cost.

In fact, Volpe takes a very naïve approach to the problem by stating that the increase in premiums for an additional \$1 million dollars of insurance would add only \$0.01 to the operating cost per mile. The increasing of premiums has to account for a number of contingencies, and there is no linear relationship between the liability coverage and the increase in premiums. Stated simply, if the liability coverage goes up \$2 million, the premium may be greater than double the amount it was for \$1 million.

Operating ratios, which show a company's expenses as a percentage of its revenue, are a prime indicator of profitability. Within the industry, the standard operating ratio for a successful truck within a fleet is 92.5%, meaning that a carrier is looking to make 7.5 cents for every dollar in expenses in order to be successful. Utilizing the OOIDA 2012 Member Profile,¹³ a small business owner with a fleet of five

¹² *Financial Responsibility Requirements*, pg. 10.

¹³ "The 2012 Owner-Operator Member Profile Survey," OOIDA Foundation, Inc.

trucks could profit \$11,332 per truck after all expenses, which would amount to a respectable net income of \$56,660 for all five trucks.

However, if the public liability insurance requirement were increased to just \$2 million, another \$5,000 would need to be added *per truck* to the gross expenses. Utilizing the example above, the small owner's expenses would increase to \$184,880, whereas the net income per truck would shrink to \$6,332. The small business owner's overall net income would be just \$31,660 for all five trucks, which is less than a single truck owner-operator expects to make.

Section 2.4.3 Current Crash Costs:

Volpe makes the statement, "Costs per crash of fatal and catastrophic injury crashes exceed current insurance limits."¹⁴ The next sentence however is contradictory, which states, "Costs of crashes are **not routinely collected**, and can only be estimated from **special studies or by inference from crude indicators** such as fatalities (**emphasis added**)."¹⁵ This certainly calls into question Volpe's claim that fatal and catastrophic injury crashes exceed insurance limits?

Section 2.4.4 Protecting the Public

Volpe interprets the intent of Congress when establishing the minimum financial requirements, stating, "Although not directly stated, it [the intent] seems likely that the limits required in the 1980 legislation were intended to cover all but the most extreme crash costs." Nevertheless, the present liability minimums do precisely that, and is admitted by Volpe. The research team acknowledges, "Data do not allow for the observation of the share of crashes that currently exceed existing or proposed thresholds, or for the current levels when they were enacted, so neither the number of crashes over the limits nor their trends is observable."¹⁶

According to Volpe, the intent of Congress in setting insurance minimums was to incentivize insurers to investigate carriers seeking liability coverage and charge them suitable rates. For an unknown and unexplainable reason, Volpe does not recognize the fact that insurers are risking \$750,000 in payout for a premium of \$5,000 per year, a risky bet, and that insurers that do not thoroughly investigate carriers will find themselves quickly out of business.

Section 2.6.2 Risk Update for Insurance rates

Volpe acknowledges that the average claim cost is \$18,000, which well below the \$750,000 minimum, and that crashes that exceed \$750,000 or \$1 million are rare.¹⁷ The research team explains, "Truck-involved fatalities have dropped by 44 percent since 1980 while VMT has increased by 180 percent and the number of registered trucks has increased by 30 percent."¹⁸ Furthermore, the fatalities from combination trucks can be calculated as 0.0043 per truck per year in 1980, dropping to 0.0019 in 2009.

¹⁴ *Financial Responsibility Requirements*, pg. 11.

¹⁵ *Ibid*, pg. 11.

¹⁶ *Ibid*, pg. 12.

¹⁷ ISO data and modeling.

¹⁸ *Financial Responsibility Requirements*, pg 15.

Rather than admit that the decrease in crashes and fatalities has allowed the insurers to hold down premium costs, Volpe states, “The fact that insurance rates have not doubled is an indirect indicator of potential cost exporting.¹⁹” Volpe also recognizes that the average cost of a crash has increased in the past 30 years, but it has been more than offset by a reduction in crash frequency.

Volpe never considered the vital concept of insurance capacity and its effect on the economic market. For a brief introduction to insurance capacity and its historical and economic repercussions, read the following excerpt from an OOFI white paper, entitled *Analysis of Cost to Owner-Operators in Raising the Insurance Requirements*.

The Ripple Effect: A spreading, pervasive, and usually unintentional effect or influence

The present recession has often been compared to the recession that occurred in the 1980's. While most people who study such economic events do not believe the present recession is as bad as the previous recession, there are certainly similarities. The prior recession suffered a “double dip,” meaning that just when it looked like things were getting better, the economy flat lined and things got worse. It took some very difficult decisions with considerable economic uncertainty to come out of that recession. One of the leading causes of the 80's recession was what has been called a “Liability Insurance Drought.”

*A basic fact of business is that companies must have liability insurance in order to operate. Without such insurance, lenders will not loan money and investors will not invest, therefore, **business stagnates and the economy goes into free fall**. This was the ripple effect where insurance companies were not in a position to offer liability insurance at a reasonable premium and keep enough reserves on hand to maintain their status as a viable insurance carrier.*

There are basically two schools of thought as to what brought about the drought of liability insurance protection. The insurance industry blames the litigation attorneys who went after companies and products asking for, and often winning, what many considered outrageous settlements for plaintiffs. The attorneys found ways to include in their lawsuits, companies and individuals that were only tangentially involved in the product or service, in order to pad the settlement cases. This was referred as the “litigation explosion” that has made realistic underwriting for commercial liability risks problematic.

Litigation attorneys denied the accusation from the insurance companies and said that the insurance companies just made bad decisions on investments and were not able to earn the kind of cash reserves that were needed to operate. The 1980s, and early 1990s, was tumultuous time for businesses, and the trucking industry was especially hard hit. As more and more businesses failed or were stymied because they could not obtain the liability coverage needed to operate, the trucking industry had less and less freight to haul.

Similar to the 1980s recession, the present recession has a product liability insurance crisis, which has rippled to affect a wide range of businesses that depend on liability insurers to secure loans and attract investors. David Golden, senior director of commercial lines for the Property Casualty Insurers

¹⁹ Ibid.

Association of America recently stated that, **“Insurance capacity is finite. There is only so much capacity out there.”**

Insurance Capacity:

The simple fact is that insurance is a business that affects almost all levels of the economy. Insurance companies must retain a certain amount of capitalization (cash) to cover anticipated claims. To be successful, insurance companies rely on premiums from their insured consumers and the investment revenue that they make in the marketplace. If the insurance company loses premium dollars, they then rely on investments to counter the loss. If they lose on investments then they will normally increase premium rates to make up the losses. The issue becomes when they lose both premium dollars and investment income.

*The amount of capital, or cash, the insurance companies have in anticipation of claims to be paid, determines their capacity to continue to offer insurance liability. In the recession of the 80’s, there was a **“capacity crisis”** within the industry. The consequence was a Liability Insurance Drought, whether it was because of the crisis resulting from tort litigation, as the Justice Department suggested, or because insurance carriers made poor decisions on their investments and did not adjust their premiums correctly. Insurance carriers were very meticulous about who and what they would insure along with the amount they would insure for, this then created a ripple effect where businesses were not getting the loans they needed to function, municipalities were not able to build and develop, and we were into a full-blown recession. Unemployment rose, the stock market tumbled, which created a vicious circle as investments tanked, and insurance became even scarcer. This is referred to as a **“hard market”** in insurance, which directly affected the middle class. Moreover, the trucking company bankruptcies were rampant.*

The characteristics of a hard market are:²⁰

- *Higher insurance premiums (Since the end of 2012 we are facing a hard market as premiums across the board have increased)*
- *More stringent underwriting*
- *Reduced capacity, which means insurance companies write less insurance policies*
- *Less competition among insurance carriers*

PSA Financial believes that we are already looking at a hard market in insurance because:

- *Mother Nature made 2011 one of the worst years in world history in terms of losses due to natural disasters worldwide. In the United States, there were tornadoes in the Southeast and Midwest, flooding on the East coast, and a drought in the South. In 2012, Hurricane Sandy struck, while Japan suffered from earthquakes continually into 2013. All of these natural disasters meant insurance carrier’s reserves were reduced, which forced insurance companies to replenish their reserves by increasing the rates. Economic downturn has meant*

²⁰ Craig English, *Hard market vs soft market the insurance industry’s cycle and why were currently in a hard market*, PSA Financial (2013).

that investments are not obtaining double-digit returns and have dropped to a 3-5% return, resulting in higher rates.

- *Business Insurance premiums are affected by payroll and revenue. As the recession hit, trucking companies began to lay off drivers and experienced a decrease in revenue as consumers had less capital to spend and freight took a nosedive. As a result, insurance carriers saw a decrease in premium revenue.*
- *Most underwriters today want a five to ten percent higher rate upon renewal and some are requiring substantially more. Rates will vary from insurance carrier to insurance carrier and will depend on a business's inherent risks, claims history, and finances.*

*In addition, **capacity becomes strained and limited to those that can afford it.** For the small trucking industry, an increase in the mandatory public liability insurance will expose the insurance carrier to more claims risk and will offer an incentive for more tort litigation awards. **The insurance carriers will be forced to "harden" their requirements for insurance, raising rates that will force small carriers out of business, which will again create a rippling effect.** This will of course have little or no effect on the mega carriers with their mega millions in revenue, while they continue to self-insure through surety bonds and assets. Many other carriers will merely pass on any premium hikes to the driver by taking it out of their settlement. Unfortunately, the regulations require the carrier to hold the insurance but do not require them to pay for the insurance.*

*The Insurance Journal released a report on the National Interstate Corp., which insures transportation providers, that stated the corporation posted an 18 percent loss in the second quarter of 2013. They experienced higher than normal claims costs, **and in fact, higher costs were fueled by only three claims.***

Another little known fact about insurance coverage is the incentive for insurance carriers to settle claims even though they may doubt the authenticity of the claim. If the plaintiff is willing to settle the claim against an insurer for the maximum amount of the coverage or below, and the insurance carrier denies the offer and the case goes to trial, a jury can give a much higher award to the plaintiff than the policy limits. This would assure bankruptcy for the small trucking company, as it will be responsible for the award amount over the policy limits. However, the attorney for the plaintiff can now represent the insured and sue the insurance carrier for being negligent in not settling earlier. There is precedent for this in law, and although the insured will undoubtedly still lose his or her business, they would not be obligated for the excess judgment.

For this reason, insurance carriers are incentivized to settle claims within policy limits as most claims are handled. This litigation process takes a great deal of time and attorneys are not incentivized to bring these suits to court when policy limits are where they are today. They may win a big judgment but they also may not, and even if they do, an appeals court may overturn the mega settlement and reduce the award. If the policy limits were to be raised to \$4.4 million, then the attorneys will have much more incentive to sue and challenge insurance carriers who may offer settlements even when they believe the claim is unfounded. The attorneys can collect substantial settlements because the policy limits have been raised, and insurance carriers will have to keep much more money in reserve

*to meet the potential claim settlements. In the present economy, raising premiums would be the only option, which would force the smaller and **safest carriers out of business**.*

Volpe made the questionable statement, “Studies have shown that safety measures and outcomes are correlated with the net worth of the carrier.²¹” The report gives as a reference, a Doctoral Dissertation authored by Robert Pritchard (who is on the team conducting this research). The OOIDA Foundation did an analysis of this dissertation,²² and found it to be a political diatribe of the free market system and the need to constrain the carriers and insurers through more regulations.

3.4 FMCSA Safety Programs

Unsurprisingly, Volpe, who developed the CSA program, states, “CSA scores have significant predictive power for crashes.²³” However, many outside organizations, federal agencies, and Congressional oversight committees, such as ATRI,²⁴ Wells Fargo Securities,²⁵ and the Government Accountability Office,²⁶ have expressed disagreement with the CSA scoring methodology. While vigorously defending CSA, Volpe does admit, “These generalizations are strong, **but they are only probabilistic; they do not identify** the specific carrier (let alone vehicle) that will have a crash, or particularly, a costly crash (**emphasis added**).²⁷”

The research team also stated, “There are **no comprehensive data** on the number of crashes, the true costs of individual crashes, cost of crash to individual victims, **nor the frequency** with which insurance fails to cover the cost---**the optimal level at which to set the upper bound is unknown**. Estimating the optimal limit can be approached as the reconciliation of **multiple rough approximations (emphasis added)**.²⁸” Therefore, Volpe did not use actual data, but utilized “multiple rough approximations,” as well as statistical formulas, based on these approximations and inferred from anecdotal evidence, none of which should be considered in a scientific inquiry.

Volpe further divulges that, in trying to determine a minimum level of liability, “Efforts to turn cost occurrences into dollars may have biases, distortions, omissions, imprecision, and other weaknesses and errors.²⁹” In addition, while relying on cost exporting as the reason that carriers should be required to carry more liability insurance Volpe discloses, “Although cost exporting clearly takes place, **its**

²¹ *Financial Responsibility Requirements*, pg. 28.

²² *Analysis of Federal Motor Carrier Safety Policy: Reducing Fatalities with Increased Financial Responsibility*, OOIDA Foundation (2014).

²³ *Financial Responsibility Requirements*, pg. 29.

²⁴ Micah D. Lueck, *Compliance, Safety, Accountability: Analyzing the Relationship of Scores to Crash Risk*, American Trucking Research Institute (January 2014).

²⁵ *CSA: Another Look With Similar Conclusions*, Wells Fargo Equity Research (July 2012).

²⁶ *Federal Motor Carrier Safety, Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers*, GAO (February 2014).

²⁷ *Ibid*, pg. 31.

²⁸ *Ibid*.

²⁹ *Ibid*.

magnitude is elusive because of the relatively **small number of such crashes** and the **dearth of pertinent data (emphasis added)**.³⁰

Section 4.15 Insurance Requirements Fail To Deter Carriers

Although the report suggests an increase in the financial responsibility requirements, the research team states, “Many strategies are in use now to monitor and sanction the safety behavior of carriers, and judging from the **steady decline in crash frequency the strategies seem to be working. There is no certainty** that higher liability requirements will cause insurers to be more diligent in evaluating carriers for insurance **(emphasis added)**.”³¹

Section 6.4.2 Other Prevention Measures

While discussing other prevention measures, Volpe discloses, “Compared to raising insurance requirements---**which burden the entire industry or a large share of it, the majority of which operate safely**---the effectiveness of other strategies for reducing crashes may be greater at a lower cost **(emphasis added)**.”³²

Conclusion

The research team concluded, “The findings overall provide preliminary justification in favor of increasing the current levels of financial responsibility.”³³ However, the report is perforated with evidence and statements that are contrary to the study’s conclusion.

It is important to ask, “What exactly is the problem?” The research team discovered that (1) the actual number of crashes and the costs of those crashes that exceed present limits are unknown; (2) there is no right answer; (3) crashes are rare events; (4) crashes that do exceed the minimum limits are often covered by other insurance or assets; (5) the costs of crashes has increase but it has been more than offset by a reduction in crash frequency; (6) the average cost of a claim is \$18,000; (7) there is no way to set an upward bound liability because some crashes will always fall outside the bounds; (8) any effort to turn costs into dollars may have bias, distortions, omissions, imprecision, and other weaknesses and errors; (9) judging by the steady decline in crash frequency, the current strategies being utilized by insurers is clearly working; (10) there is no certainty that higher liability requirements will cause insurers to be even more diligent; and (11) other strategies for reducing crashes may be more effective and at a lower cost.

³⁰ Ibid, pg. 49.

³¹ Ibid, pg 52.

³² Ibid, pg. 67.

³³ Ibid, pg. xvii.

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