

# SCHNEIDER POSITION: AFTER 30 YEARS, IT'S TIME TO UPDATE THE LIABILITY INSURANCE MINIMUMS

## BACKGROUND: A BRIEF HISTORY OF MINIMUM LIABILITY INSURANCE

The Motor Carrier Act of 1935 led to the establishment of federal rules and regulations to assure “security for the protection of the public, including liability insurance requirements for interstate motor carriers and freight forwarders.”

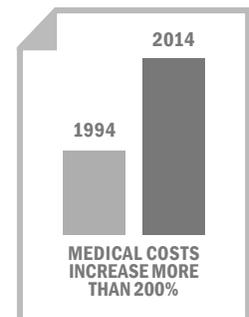
In the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), the U.S. Department of Transportation was tasked with issuing a report on the appropriateness of the minimum insurance levels, for which it enlisted the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA determined that current minimum levels of insurance for bodily injury and property damage “are inadequate to fully cover the costs of some crashes in light of increased medical costs and revised value of statistical life estimates.”<sup>1</sup> While this issue is one of the agency’s highest priorities, the House passed an amendment to the bill in summer 2014 to halt the insurance minimum increase.<sup>2</sup>

The current minimum liability insurance levels took effect in 1984 and remain unchanged today. For motor carriers not transporting hazardous materials, the minimum level of insurance is \$750,000. In addition to covering the cost of damages from crashes, the insurance levels were set to create a forcing function in which insurance companies would provide safety oversight and share best practices as a precondition to underwriting policies.

## SCHNEIDER’S POSITION

Schneider believes the minimum insurance requirement for bodily injury and property damage should be increased.

More than 30 years have passed since minimum insurance levels were last addressed, and in that time medical costs have increased significantly. Medical care is more than twice as expensive now as it was two decades ago.<sup>3</sup> Raising insurance levels to simply keep pace with medical inflation would dictate a minimum of \$3.18 million.



<sup>1</sup> <http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Financial-Responsibility-Requirements-Report-Enclosure-FINAL-April%202014.pdf>

<sup>2</sup> House Amendment <https://www.congress.gov/amendment/113th-congress/house-amendment/806.pdf>

<sup>3</sup> Department of Labor (Bureau of Labor Statistics) <http://www.gpo.gov/fdsys/pkg/ERP-2013/pdf/ERP-2013-table60.pdf>

Simply put, the existing required minimum level of insurance does not offer adequate coverage for damages resulting from involvement in a serious accident – and comes nowhere near providing the level of financial assurance that had been provided at the time the levels were last adjusted.

In addition to medical cost increases, wrongful death settlements have skyrocketed. Verdicts in excess of \$1 million were once rare and confined to a limited number of venues. Today, those verdicts are not newsworthy. There have been numerous reported settlements and verdicts within the \$10 million to \$165 million range.

### THE OPPOSITION'S VIEWPOINT

Those opposed to increased insurance levels typically cite the rarity of high-claim accidents. For example, the American Trucking Associations (ATA) analyzed data from the Insurance Services Office, an insurance advisory firm, and concluded that only 1.4 percent of claims exceeded \$500,000 and only 0.73 percent of claims exceeded \$1 million. Also cited was evidence that many carriers purchase insurance at levels in excess of the existing minimum, so an additional mandate is unnecessary.

In Schneider's view, these arguments miss the mark. Although it's true that high-dollar claims are a small percentage of total claims, the issue is how members of the public are to be protected against the costs of those claims that do occur. It also can result in expanding litigation to other parties in the supply chain, including not only transportation intermediaries but also shippers, as claimants seek to recover from "deeper pockets." That high-dollar value claims remain the exception rather than the rule is an argument supporting increased insurance minimums. It is the relative rarity of such claims that will allow increased insurance levels to be available at manageable costs.

The number of policies written above the existing minimums suggests that the issue of seriously underinsured motor carriers is a fairly narrow one. The decreased cost of insurance with increased limits of coverage suggests that cost-effective insurance at greater limits is available to carriers with good safety records. Schneider believes that increasing the minimum to \$1.75 million (though not fully recognizing the increase in medical costs and wrongful death awards since 1984) would appropriately recognize the industry's improved safety performance while not unduly increasing costs or diminishing industry capacity.

### WHAT SHIPPERS CAN DO

Contact your Senator's office (<http://www.contactingthecongress.org/>) and indicate that Congress should not interfere with the FMCSA's rulemaking process to address minimum levels of financial responsibility for motor carriers. Regardless of any action by Congress or the FMCSA, shippers should confirm that the transportation providers serving them are appropriately capitalized and that they maintain adequate insurance.

Contact Schneider General Counsellor Tom Vandenberg with questions at 920.592.3895 or [vandenbergt@schneider.com](mailto:vandenbergt@schneider.com).

**REPORTED LARGE  
VERDICTS &  
SETTLEMENTS**  
since 2010 with  
respect to vehicular  
accidents involving  
commercial motor  
vehicles include:

**\$41M**

verdict to a  
single claimant

(Kings County, NY, 2010)

**\$40.8M**

to multiple claimants

(Portage County, OH, 2011)

**\$40M**

to a single claimant

(Cobb County, GA, 2011)

**\$20–\$30M**

verdicts or settlements  
to 7 claimants

**\$10–\$20M**

verdicts or settlements  
to 9 claimants