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February 20, 1969

NO. 298

BULLETIN TO ALL MEMBERS

RE: California Motor Truck Carrier Coverage
P.U.C. General Order 100-E, Case No. 8681

Due to the increase in minimum limits, particularly in the petroleum carrier class, a number of requests were presented to ask the Public Utilities Commission to accept Lloyd's on filings.

This resulted in preparation of the attached petition by LeBoeuf, Lamb, Leiby and MacRae.

Decision No. 75222 of the P.U.C. has now been received and copy of this is also attached. It will be noted that the protection may be provided by evidence of insurance issued on behalf of Lloyd's of London by a surplus line broker.

A. L. Lathrop
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ALL:dl

UNDERWRITERS AT LLOYD'S, LONDON

By their Attorneys

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AT THE INVITATION OF THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA SUBMIT THIS PETITION

1. In Case No. 8681, (Decision No. 74080) the Commission has issued an Order (No. 100-E) to be effective October 1, 1968, under which the minimum acceptable limits of public liability and property damage protection for a wide variety of highway carriers have been substantially increased. Underwriters at Lloyd's, London, have for many years insured this class of risks on an excess basis through placements by licensed California Surplus Line Brokers pursuant to the California Surplus Line Law. The increase in limits is a praiseworthy response to the modern needs of the citizens of California faced with ever increasing motor commerce, and no issue is taken with that portion of the Order.

2. Paragraph 3 of the Order in relevant part declares that the carrier shall "deposit with the Public Utilities Commission ... 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 ...".

3. The Commission has probably already been made aware of the fact that there is a scarcity of insurance capacity for almost all heavy duty motor carriers seeking liability and property damage coverages. For many years there was a primary,

low-limit market of insurers licensed in the State of California, which was traditionally supplemented by a higher or excess insurance market made available to the carriers and their brokers through the operation of California's comprehensive Surplus Lines Law (42 West's Annot. California Codes (Insurance Code) §§ 1760 - 1780 (1967 Cum.Supp.)). Since the excess covers were issued at a level above the former minimum liability standards promulgated by the Commission, there was no impediment in placing the excess cover with an unlicensed insurer under the Surplus Lines Law. The increasing need for motor carrier's liability and property damage coverages has along with other demands increasingly tended to limit the availability of such coverages in the California licensed insurance market.

4. The much-needed increase in minimum limits ordered under General Order 100-E has drastically changed the situation with respect to available insurance markets by placing a substantially greater demand on the already limited California licensed market.

5. The Commission has been confronted with virtually the same problem in another area falling under its jurisdiction, i.e., financial responsibility for commercial air operators. Public Utilities Commission General Order No. 120 Series sets forth the specifications for protection against liability required of such operators.

6. Paragraph 4 of General Order No. 120 Series sets out a variety of ways in which the commercial air operator can

provide the protection required. One alternative reads:

"By a policy or policies of public liability insurance and property damage insurance written by non-admitted insurers subject, however, to Section 1763 of the Insurance Code of the State of California."

Section 1763 is the operative section of California's Surplus Line Law. In addition to the quoted alternative, the commercial air operator also can produce insurance policies issued by insurers licensed in California, a bond issued by a surety licensed in California, a plan of self-insurance or

"... any other plan of protection for the public approved as hereinafter required."

7. The California legislature in enacting a new Aircraft Financial Responsibility Law (Ch. 1452, Laws 1968) has recently recognized the need to make available a variety of financial responsibility devices, including the use of the California Surplus Line Law. Section 24350(c)(2) provides that policies or bonds required of aircraft operations may be placed with insurers not authorized to do business in California. Sections 24352 and 24355 provide additional means of providing financial responsibility, i.e., self-insurance and deposits of cash, securities, or both.

8. It is respectfully submitted that the conditions which called for the variety of approaches outlined in General Order No.120 Series are equally pertinent here. Further, it is submitted that the legislative policy reflected in Ch. 1452, Laws 1968, is equally applicable and should be followed here. It would be consistent with Commission policy and other laws of the State of California to amend General Order No. 100-E or otherwise allow highway carriers to use the California Surplus

Line Law. It would be a practical amendment, since it is the presumption under the Surplus Line Law that unlicensed insurers are available for use only when there is not a licensed market. It is plain that great hardship can be created for highway carriers by demanding higher sums of liability insurance and at the same time restricting the market in which such insurance can be found. At the very least, the motor carriers would be penalized, since they would have to pay high premiums in purchasing coverages from insurers who are reluctant to write the insurances in the first instance. In addition, it is possible that inability to obtain the required coverage will hamper this vital flow of California highway commerce and, perhaps, endanger the public safety by tempting a few carriers to operate without the proper coverages. In short, curtailing the available insurance market while simultaneously increasing mandatory insurance requirements may defeat the Commission's goal, i.e., greater financial protection for the public.

9. It is, therefore, respectfully requested that the Commission amend General Order No. 100-E (3) insofar as pertinent to read as follows:

" ... (a) 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 of a bond of a surety company licensed to write surety bonds in the State of California; or of a policy or policies of public liability insurance and property damage insurance written by non-admitted insurers subject, however, to Section 1763 of the Insurance Code of the State of California."

10. It is requested that ex parte relief be granted by such approval of Lloyd's on certification filed with the

Public Utilities Commission. In the absence of such ex parte relief, an early date hearing is requested.

11. Petitioner will furnish copy of this petition to any other interested party upon written request.

12. Petitioner will furnish further data or any exhibits upon request of the Commission.

Dated at New York, N.Y.

FOR UNDERWRITERS AT LLOYD'S, LONDON

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United States General Counsel
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212 - HA-26262

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the adoption of a General Order prescribing minimum public liability and property damage insurance requirements for highway common carriers, petroleum irregular route carriers, cement carriers, radial highway common carriers, highway contract carriers, petroleum contract carriers, cement contract carriers, household goods carriers and city carriers.

Case No. 8681
(Filed August 29, 1967)

O R D E R

Underwriters at Lloyd's, London have petitioned for modification of General Order No. 100-E issued in Decision No. 74080 under which minimum acceptable limits of public liability and property damage protection for a wide variety of highway carriers have been substantially increased.

Paragraph 3 of the order in relevant part declares that the carrier shall "deposit with the Public Utilities Commission... 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..."

Petitioner refers to General Order 120 Series provisions applicable to commercial air operators allowing, in accordance with Section 5511 of the Public Utilities Code, the Commission to accept policies of insurance written by nonadmitted insurers subject to Section 1763 of the Insurance Code. Section 1763 of the Insurance Code provides that a surplus line broker may place insurance with

nonadmitted insurers only if such insurance cannot be procured from a majority of the insurers admitted for a particular class or classes of insurance.

Section 5511 is not applicable to the classes of carriers which are respondents in Case No. 8681. These respondents' insurance requirements are subject to the restriction in Sections 3632 and 5162 of the Public Utilities Code, that the insurance must be issued by a company licensed to write such insurance in the State.

Petitioner contends that by increasing the public liability and property damage minimum limits the Commission has placed a substantially greater demand on the already limited California licensed market and that a hardship has been created for highway carriers by requiring these higher limits and by this requirement pushing them into a restricted market in which such insurance can be found.

A similar situation was created by General Order No. 121 (insurance requirements imposed upon for-hire vessels); however, among the various ways of indicating that the insured has adequate protection on file with the Commission is one which provides "By evidence of insurance issued on behalf of Lloyd's of London by an insurance broker licensed as such in this state."

General Order No. 100-E cannot be amended as requested by petitioner inasmuch as it would be in violation of those sections of the Public Utilities Code under which the general order was issued and this request will be denied. However, it appears in the public interest that petitioner should be permitted to place evidence of insurance on file through a California licensed broker, and this order will so provide.

IT IS ORDERED that:

1. Petition for modification of General Order No. 100-E is denied.

2. Protection required by General Order No. 100-E may be provided by evidence of insurance issued on behalf of Lloyd's of London by an insurance broker licensed as such in this State.

3. The Secretary shall cause a copy of this decision to be served forthwith on the petitioner.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 21st day of January, 1969.

WILLIAM SYMONS, JR.
President

A. W. GATOV

FRED P. MORRISSEY

J. P. VUKASIN, JR.

Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.