



Renzenberger, Inc.
14325 W. 95th Street
Lenexa, KS 66215

Shawn Ford, General Counsel

P 913-890-6203
C 913-475-1355
sford@renzenberger.com

**To: Nebraska Public Service Commission
Kathy Lahman and Mark Breiner, Directors, Transportation Department**

Please accept these comments of Renzenberger, Inc. regarding the Commission's Fourth set of proposed Rules and Regulations to Title 291, Chapter 3, Motor Carrier Rules and Regulations. Rule and Regulation No. 182 Motor Carriers.

Renzenberger, Inc. is a motor vehicle transportation provider who contracts with various railroads to provide off track motor vehicle transportation for train crews in more than twenty states, including Nebraska. The proposed rule is largely duplicative of the contractual requirements imposed by Renzenberger, Inc.'s railroad customers, including the BNSF Railway and the Union Pacific Railway, as it relates to vehicle and passenger safety, and creates unneeded oversight in that regard.

In addition, Renzenberger's railroad customers require Renzenberger to indemnify the railroads for injury or death of their employees regardless of who is at fault in an accident. Accordingly, Rule 006.02A, proposing to require higher uninsured and underinsured motorist insurance coverage for carriers providing transportation of railroad train crews, would only serve to add additional financial burden to contract carriers like Renzenberger, and would not provide any additional protection for injuries incurred involving contract carriers.

The method of remedy for Railroad Crew if they are involved in an accident with an uninsured – underinsured motorist while in a crew van is exactly the same method of remedy for a Railroad Crew if they are involved in any motor vehicle accident involving an insured tortfeasor while in a Crew Hauler van. Railroad crew are protected regardless of whether the responsible party has adequate uninsured / underinsured (UM / UIM) coverage. Railroad Crew who are injured in crew vans are protected in the following manner:

1. Contracts between Crew Hauler and Railroad specifically require the Crew Hauler (CH) to:
 1. Comply with all pertinent laws related to the services we provide.
 2. Indemnify our customers for injury or death to railroad employees if the injuries are a result of an automobile accident that directly involves a Crew Hauler vehicle.
 3. Maintain commercial general liability and automobile liability insurance coverage in amounts at least equal to \$5.0m for each occurrence.

2. All Collisions are reported to the Railroad within 24 hours, in multiple ways.
 1. The Crew Hauler provides the Railroad with a 24-hour report with preliminary information about the accident, including date, time, location, driver name, accident description, names of parties involved, known or reported injuries, and police report information. Notification goes to designated Railroad Contracts – usually in Safety and Supplier Contracts.
 2. CH Risk management contacts RR Claim Agent or Risk Mitigation Officer to report crew involved in a collision.
 3. In addition to the above reporting, CH Field Operations notify RR Field Operations immediately when a collision occurs, via telephone or email.
3. Crew injury status is confirmed. RR Risk Management works with RR field ops to determine / confirm crew injury status.
 1. If Crew report an injury, RR Risk Management notifies CH Risk Management with request to indemnify and to put CH insurance Carrier on notice.
 2. Claims are set up with CH insurance carrier and Insurance Adjuster is assigned.
 3. Adjuster works with injured crew, CH and RM Risk Management to bring claim to resolution.
4. Crew injury is treated. Crew seek medical treatment through normal medical insurance carrier as provided by Railroad contracts and benefits.
5. If losing time, Crew wages are continued. Crew receive Off Track Vehicle benefits or wage continuation through their employer or union contract benefits.
6. Claims Resolution: Once the crew have been cleared by the treating doctors and RR medical office to return to normal full duty, or have been ruled permanently disabled and are no longer able to return to work for the RR, the Crew may resolve their claim. Settlement includes:
 1. Payment to the Crew comprised of net past and future wage loss, out of pocket medical expenses as well as pain and suffering, net of any dollars paid by responsible third parties*.
 2. Payment to clear medical liens filed by RR medical insurance benefit providers for treatment related to the injuries caused by the accident.
 3. Payment to clear liens filed by the U.S. Railroad Retirement Board; Bureau of Unemployment and Sickness Insurance.

* In all instances, injured crew are taken care of in this manner, without regard to third party involvement or insurance limits. However, the Crew have the right to pursue a claim directly against the responsible third party, and any amounts received will reduce the settlement received from the Crew Hauler.

Moreover, the Commission may in fact lack the jurisdiction to impose the higher insurance requirements defined in the proposed rule. Nebraska Revised Statute 44-101.01 specifically reserves to the Department of Insurance, and the Director thereof, sole rulemaking authority in matters involving insurance, insurance requirements, and insurance agencies and providers. Section 44-6414 reserves to the Director the authority to promulgate rules and regulations regarding Uninsured and Underinsured Motorist Insurance Coverage:

“The director shall have the power and duty to enforce and execute all the insurance laws of this state and to adopt and promulgate all needful rules and regulations . . .” Neb. Rev. Stat. 44-101.01.

“The Director of Insurance may adopt and promulgate rules and regulations to carry out the Uninsured and Underinsured Motorist Insurance Coverage Act.” Neb. Rev. Stat. 44-6414.

Even assuming for argument’s sake that the Commission has the jurisdiction to promulgate Rules and Regulations imposing these higher insurance requirements – to do so specifically targeting rail crew transportation companies is unfair, as all other transportation carriers are required only to maintain coverage pursuant to the Uninsured and Underinsured Motorist Coverage Act. If the Commission deems this heightened level of coverage necessary, then its decision should not be so narrowly tailored as to affect only a small group of carriers and passengers, but should be a uniformly applied rule for the benefit of all motorists.

Sincerely,

\s\ Shawn M. Ford
General Counsel
Renzenberger, Inc.