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15-003
NO.
STATE OF NEBRASKA
OFFICIAL
MAR 4 - 2015
DEPT. OF JUSTICE

DOUGLAS J. PETERSON
ATTORNEY GENERAL

SUBJECT: Authority of the Nebraska Public Service Commission to Adopt a Regulation Requiring Minimum Uninsured/Underinsured Motorist Coverage for Motor Carriers of Railroad Train Crews in Excess of the Maximum Amounts Established in Neb. Rev. Stat. § 44-6408(2) (2010).

REQUESTED BY: Gerald L. Vap, Chairman
Nebraska Public Service Commission

WRITTEN BY: Doug Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

The Uninsured and Underinsured Motorist Insurance Coverage Act provides that insurers are not required to provide uninsured and underinsured motorist coverage at "limits higher than one hundred thousand dollars per person and three hundred thousand dollars per accident." Neb. Rev. Stat. § 44-6408(2) (2010). The Nebraska Public Service Commission ["Commission"] is currently updating its Motor Carrier Rules and Regulations in 291 Neb. Admin. Code, Chapter 3. During the course of its rulemaking proceeding, the Commission was asked to consider adopting a rule requiring uninsured and underinsured motorist coverage for motor carriers of railroad train crews. The Commission's Motor Carrier Rules currently have minimum coverage requirements for liability and cargo insurance. 291 Neb. Admin. Code § 3.006.01. The Commission does not, however, have any rules related to uninsured and underinsured motorist coverage.

The current version of the proposed revisions to the Commission's Motor Carrier Rules includes a provision requiring that "[c]arriers that provide transportation for railroad crews shall carry uninsured and underinsured motorist insurance coverage with

a minimum limit of five hundred thousand ($500,000) per person, two million ($2,000,000) aggregate per accident coverage."[1] You note the Commission's constitutional authority to regulate the "rates, service, and general control of common carriers...in the absence of specific legislation..." (Neb. Const. art. IV, § 20), and the statute (Neb. Rev. Stat. § 75-307 (2009) providing "the Commission has the authority to determine the 'reasonable amount' of insurance required for regulated passenger carriers." Various comments filed during the course of the Commission's rulemaking have suggested the Commission lacks authority to adopt a regulation establishing minimum uninsured/underinsured motorist insurance coverage limits for carriers transporting railroad crews that exceed the maximum coverage limits in § 44-6408(2). You state that "[o]ther interested parties have argued that the Commission, as a Constitutional entity, is not limited by § 44-6408(2)...", and that "§ 75-307 is a more specific grant of statutory authority to the Commission to determine the 'reasonable amount' of insurance for regulated motor carriers." You have asked our opinion on whether the Commission is authorized to adopt a regulation establishing minimum uninsured/underinsured motorist coverage amounts for motor carriers transporting railroad crews that exceed the maximum coverage limits in § 44-6408(2). For the reasons stated below, we conclude that the Commission currently lacks authority to adopt such a regulation.

ANALYSIS

A. Scope of the Commission's Jurisdiction Over Motor Carriers of Railroad Crews.

Neb. Const. art. IV, § 20, provides:

> There shall be a Public Service Commission....The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision.

This constitutional provision grants the Commission inherent authority to regulate common carriers. *See, e.g., State ex rel. Spire v. Northwestern Bell Tel. Co.,* 233 Neb. 262, 445 N.W.2d 284 (1989). In the absence of specific legislation, the powers of the Commission to regulate common carriers are absolute and unqualified. *Myers v. Blair Tel. Co.,* 194 Neb. 55, 230 N.W.2d 190 (1975); *State ex rel. State Railway Comm'n v. Ramsey,* 151 Neb. 333, 37 N.W.2d 502 (1949).

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[1] *In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations, to rewrite the chapter in its entirety,* Rule and Regulation No. 182, Order Releasing Fourth Set of Proposed Rules for Comments and Scheduling Hearing, 38 (Nov. 13, 2014).

The Nebraska Supreme Court has recognized, however, that "the powers enumerated in article IV, § 20, apply only to common carriers." *Nebraska Public Service Comm'n v. Nebraska Public Power Dist.,* 256 Neb. 479, 491, 590 N.W.2d 840, 848 (1999) ["*Nebraska Public Service Comm'n*"]. "Thus, the [Commission's] constitutional authority over common carriers does not extend to contract carriers." *Id.* "In the absence of constitutional authority, an administrative agency has only that power which has been granted to it by the Legislature." *Id.* "When the Legislature grants the [Commission] jurisdiction over non-common carriers, the [Commission] must exercise such authority within the statutory scheme." *Id. See also In re Complaint of Fecht,* 216 Neb. 535, 540, 344 N.W.2d 636, 639 (1984) (As public grain warehouses are not "common carriers", Commission regulation of such warehouses "must be exercised completely within the statutory scheme....").

"The term 'common carriers,' as used in article IV, § 20, is coextensive with the meaning of that phrase at common law." *Nebraska Public Service Comm'n,* 256 Neb. at 491, 590 N.W.2d at 848. In *State ex rel. Winnett v. Union Stock Yards Co.,* 81 Neb. 67, 74-78, 115 N.W. 627, 630-32 (1908) ["*Winnett*"], the Nebraska Supreme Court stated:

> There are but two carriers known in law—private carriers and common carriers. A private carrier undertakes to deliver particular goods at a particular place. He is not bound in law to undertake such transportation. When opportunity for such employment is presented, he may reject it or avail himself of it as he sees fit. He enters into a contract applicable to and binding him only as to the particular undertaking. He does not hold himself out to the public as a carrier. Strictly speaking, at common law, so far as its vocation is concerned, a common carrier is one which holds itself out to the public as a carrier always open to employment for the transportation of persons or freight, and that it will carry for all persons indiscriminately.

Discussing the statute defining common carriers to include various entities acting as carriers "engaged in the transmission of messages or transportation of passengers or freight for hire", the Court in *Winnett* stated:

> The statute, we think, has reference to all companies or persons who hold themselves out to the public as engaged in those things which characterize it as a common carrier. It has been held that a common carrier is one who holds itself 'out as ready 'to carry at reasonable rates such commodities as are in his line of business for all persons who offer them, as early as his means will allow.' Faucher v. Wilson, 68 N.H. 338, 39 L.R.A. 431, 38 A.1002, and cases cited.
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> The statute...clearly defines a common carrier, and, under its provisions, any one engaged in the transportation of freight for hire is declared to be a common carrier. This, however, must be construed to mean any person whose public

> profession is the transportation of goods, and who is not at liberty to reject the carrying of such freight as he has held himself out to the world as willing to convey. 81 Neb. at 76-78, 115 N.W. at 631-32.

"[A] common carrier may be defined, very generally, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally." *City of Bayard v. North Central Gas Co.,* 164 Neb. 819, 831, 83 N.W.2d 861, 868 (1957) (*quoting* 9 Am. Jur. *Carriers* § 4) ["*City of Bayard*"). The Court distinguished "common carriers" from "private carriers" in *City of Bayard*, stating:

> 'A private carrier is one who undertakes by special agreement in a particular instance to transport property without being bound to serve every person who may apply. A private carrier of goods has been defined as one who, without being engaged in the business of carrying as a public employment, undertakes to deliver goods in a particular case for hire or reward; but this definition is not strictly correct in so far as it implies that one who does not carry for hire or reward is not a private carrier; and more accurately stated, a private carrier is one who, without making it a vocation, or holding himself out to the public as ready to act for all who desire his services, by special agreement in a particular instance only, to transport property from one place to another either gratuitously or for hire.' (*quoting* 13 C.J.S. *Carriers* § 4).[2]

Generally, "a 'common carrier' is one who holds him or herself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his or her services to the public generally." 13 C.J.S. *Carriers* § 2 (2005). "A common carrier is one who undertakes for the public to transport from place to place such persons or the goods of such persons as choose to employ him or her for hire." *Id.* "The definitive test to determine if a carrier is a common carrier is whether the carrier serves all the public alike." *Id.*

"A private or contract carrier is a carrier that provides services not to the general public, but only under contracts." 13 C.J.S. *Carriers* § 4 (2005). "A private carrier undertakes by special agreement, in a particular instance only, to transport persons or property from one place to another either gratuitously or for hire." *Id.* "'Contract carriers' engage in the transportation of passengers or property under individual

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[2] Recently, in *Thompson v. Heineman*, 289 Neb. 798, 834, 857 N.W.2d 731 (2014), four members of the Nebraska Supreme Court noted that "[t]he common law recognizes only two types of carriers: common carriers and private carriers, although the terms 'private carrier' and 'contract carrier' are used interchangeably." These four members also concluded that common carriage does not require offering service "to the general public...", and includes transport for "'a limited few who by their peculiar situation or business may have occasion to employ it.'" *Id.* *(quoting Winnett*, 81 Neb. at 75, 115 N.W. at 631).

contracts or agreements." *Id.* "A contract carrier is one, other than a common carrier, who furnishes transportation service to meet the special needs of an individual shipper or shippers." *Id.*

This distinction between common and contract carriers has been codified in the statutes governing the Commission's regulation of intrastate motor carriers, Neb. Rev. Stat. §§ 75-301 to 75-322 (2009 and Cum. Supp. 2014) [the "Motor Carrier Act"]. "Common carrier" is defined as "any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state...." Neb. Rev. Stat. § 75-302(6) (Cum. Supp. 2014). "Contract carrier means any motor carrier who transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class...." Neb. Rev. Stat. § 75-302(7) (Cum. Supp. 2014).[3] The Nebraska Supreme Court has recognized that, under this definition, "[a] contract carrier is defined as one, other than a common carrier, which furnishes transportation service to meet the special needs of an individual shipper or shippers. *In re Application of Northland Transportation, Inc.,* 239 Neb. 918, 924, 479 N.W.2d 764, 769 (1992).

The Commission's rules provide that "[n]o carrier shall transport railroad crews or their baggage absent a special designation from the Commission giving such carrier the authority to transport such crews and their baggage." 291 Neb. Admin. Code § 3.010.02B. A review of the authorities granted by the Commission authorizing the transportation of railroad crews shows that certificates of public convenience and necessity were granted for the carriers to operate as common carriers engaging in transportation in Nebraska intrastate commerce, with the certificates authorizing the transportation of railroad train crews and their baggage within designated territories.[4] While certified as common carriers, it is our understanding that the transportation of

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[3] The Motor Carrier Act draws a distinction between "contract carriers" and "private carriers". "Private carrier" is defined as "any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire." Neb. Rev. Stat. § 75-302(17) (Cum. Supp. 2014). "Nothing in sections 75-301 to 75-322 shall apply to private carriers." *Id.*

[4] Certificate of Public Convenience and Necessity, Application No. B-1325 (Renzenberger, Inc.) (Issued Feb. 9, 1998); Certificate of Public Convenience and Necessity, Application No. B-1144 (Brown's Crew Car of Wyoming dba Armadillo Express) (Issued May 6, 1997) (Acquisition by Railcrew Xpress Corp authorized by Application No. B-1679) (April 18, 2006)).

railroad train crews by these certificated carriers is done under contracts with various railroads.

The Commission has constitutional authority to regulate common carriers which is plenary in the absence of specific legislation. The Commission's jurisdiction to regulate contract carriers, however, is limited, and exists only as granted by legislative enactment. While certificated as common carriers, current carriers transporting railroad crews apparently do so under contract, raising a question as to whether they actually fall within the Commission's jurisdiction to regulate contract carriers, which exists only as provided by statute. Although there is no clear answer to this question, we believe that, as these carriers hold certificates of public convenience and necessity to operate as common carriers, required to provide service to all who fall within the parameters of the authority granted, they are within the Commission's constitutional authority to regulate common carriers.

B. The Commission's Authority to Impose Uninsured and Underinsured Motorist Insurance Requirements on Motor Carriers Engaged in Transporting Railroad Crews.

1. The Nature of Uninsured and Underinsured Motorist Insurance and the Nebraska Uninsured and Underinsured Motorist Coverage Act.

"Uninsured/underinsured (UM/UIM) coverage substitutes for liability insurance normally available to injured persons...." 7 Am Jur. 2d *Automobile Insurance* § 35 (2014). "The right of an automobile insurance policyholder to [UM/UIM] benefits is generally provided by statute, at least with regard to minimum levels of coverage." 7A Am. Jur. 2d *Automobile Insurance* § 314 (2014). "The purpose of [UM] statutes has sometimes been said to provide minimum protection or insurance for individuals injured by uninsured motorists." 7 Am. Jur. 2d *Automobile Insurance* § 36 (2014). "The basic purpose of an UM statute has also been said to be to provide protection for an automobile insurance policyholder against the risk of inadequate compensation for injuries or death caused by the negligence of financially irresponsible motorists." *Id.* "UIM coverage pays for losses incurred because another negligent motorist's coverage is insufficient to pay for the injured person's actual losses." 7 Am. Jur. 2d *Automobile Insurance* § 35 (2014). "Such coverage allows the insured to recover when the tortfeasor has insurance, but the coverage is insufficient to fully compensate the injured party." *Id.*

"Statutorily required [UM/UIM] coverages have been construed as complementary, both coverages protecting against essentially one peril-loss caused by a tortfeasor who is not financially responsible." 7A Am. Jur. 2d *Automobile Insurance* § 314 (2014). Three classes of individuals are entitled to benefits under UM/UIM motorist insurance policies: (1) "Class 1 insureds", meaning "those individual[s] who are insured directly by the policy..."; (2) "Class 2 insureds", who are "those persons who are covered while occupying a vehicle insured by the policy..."; and (3) "Class 3 insureds", meaning "those persons who are entitled to damages because of bodily injury to a

Class 1 or Class 2 insured." 6-65 *Appleman on Insurance* § 65.02 (2014). To recover on an UM/UIM claim, "the insured must establish that the insured is 'legally entitled to recover' from the uninsured tortfeasor." *Id.* at § 65.03. This requirement insures that the UM/UIM coverage "fulfills the function of providing compensation for injuries that were the fault of the uninsured [or underinsured] motorist." *Id.*

The statutes governing UM/UIM insurance in Nebraska are contained in Neb. Rev. Stat. §§ 44-6401 to 44-6414 (2010) [the "Uninsured and Underinsured Motorist Insurance Coverage Act"). The Nebraska Supreme Court has recognized that "[t]he purpose of the Uninsured and Underinsured Motorist Insurance Coverage Act is to give the same protection to a person injured by an uninsured or underinsured motorist as the person would have if he or she had been injured in an accident caused by an automobile covered by a standard liability policy." *Allied Mutual Ins. Co. v. Action Electric Co., Inc.,* 256 Neb. 691, 697, 593 N.W.2d 275, 279 (1999). Subsection (1) of § 44-6408 provides:

> (1) No policy insuring against liability imposed by law for bodily injury, sickness, disease, or death suffered by a natural person arising out of the ownership, operation, maintenance, or use of a motor vehicle within the United States, its territories or possessions, or Canada shall be delivered, issued for delivery, or renewed with respect to any motor vehicle principally garaged in this state unless coverage is provided for the protection of persons insured who are legally entitled to recover compensatory damages for bodily injury, sickness, disease, or death from (a) the owner or operator of an uninsured motor vehicle in limits of twenty-five thousand dollars because of bodily injury, sickness, disease, or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury, sickness, disease, or death of two or more persons in any one accident, and (b) the owner or operator of an underinsured motor vehicle in limits of twenty-five thousand dollars because of bodily injury, sickness, disease, or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury, sickness, disease, or death of two or more persons in any one accident.

Subsection (2) of § 44-6408 further provides:

> (2) At the written request of the named insured, the insurer shall provide higher limits of uninsured and underinsured motorist coverages in accordance with its rating plan and rules, except that <u>in no event shall the insurer be required to provide limits higher than one hundred thousand dollars per person and three hundred thousand dollars per accident</u>. (emphasis added).

2. The Insurance Requirements in the Motor Carrier Act.

Neb. Rev. Stat. § 75-307 (2009) provides, in pertinent part:

> (1) Certificated intrastate motor carriers, including common and contract carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section. (emphasis added).

"In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. . .", and a "court will not resort to interpretation to ascertain the meaning of statutory words that are plain, direct, and unambiguous." *Japp v. Papio-Missouri River Natural Resources Dist.,* 271 Neb. 968, 973, 716 N.W.2d 707, 711 (2006). Section 75-307 requires certificated and permitted carriers to comply with Commission regulations requiring "policies of insurance...in such reasonable amount...conditioned to pay...any final judgment recovered against [a] motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit...."[5] The plain and ordinary meaning of this language is that certificated carriers must comply with Commission regulations that require liability insurance coverage for injuries arising out of negligent "operation, maintenance, or use of" the carrier's motor vehicles.

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[5] In addition to insurance policies, § 75-307(1) permits the Commission to enact regulations which allow carriers to satisfy financial responsibility requirements for bodily injury or death by filing surety bonds, qualifying as a self-insurer, or filing other securities and agreements conditioned to pay damages resulting from negligent operation, maintenance, or use of the carrier's motor vehicles. The Commission's regulations allow carriers to satisfy the liability coverage requirements "by insurance, surety bond, or self-insurance, or a combination thereof...." 291 Neb. Admin. Code § 3.006.01. Your question is based solely on the provision of UM/UIM insurance coverage, so our discussion is limited to the Commission's proposed requirement to require policies of insurance including amounts for UM/UIM coverage in excess of the maximums in § 44-6408(2).

3. *The Commission's Authority to Impose Uninsured and Underinsured Motorist Insurance Coverage Requirements on Carriers Transporting Railroad Crews in Excess of the Maximum Amounts Established in the Uninsured and Underinsured Motorist Coverage Act.*

Section 75-307(1), by its terms, is limited to the Commission's establishment by regulation of a "reasonable amount" of insurance for regulated motor carriers to provide for recovery of damages against the motor carrier for bodily injury or death resulting from the negligent operation, maintenance, or use of the carrier's motor vehicles. This language limits the Commission to adopting regulations requiring carriers to obtain an insurance policy providing liability insurance to cover bodily injury or death occurring as a result of negligence by the motor carrier in the operation, maintenance, or use of the carrier's motor vehicles. Imposing a requirement that motor carriers maintain UM/UIM automobile insurance, however, does not involve insurance coverage providing benefits as a result of negligent operation of a motor vehicle by a regulated motor carrier. As noted in detail above, UM/UIM insurance provides coverage for damages, including bodily injury or death, resulting from the negligence of another driver, and not any negligence attributable to negligent operation, maintenance, or use of the insured's motor vehicle. Thus, § 75-307(1) authorizes only Commission regulations requiring financial responsibility or liability insurance coverage for damages attributable to the motor carrier's negligent operation, maintenance, or use of the carrier's motor vehicles. As UM/UIM insurance coverage is not based on liability of the motor carrier, § 75-307(1) does not, by its plain terms, permit the Commission to impose any requirement for a motor carrier to provide UM/UIM coverage beyond what the carrier is required to provide under the Uninsured and Underinsured Motorist Coverage Act.

This construction of § 75-307(1) is certainly true with respect to the Commission's jurisdiction to impose insurance requirements for contract carriers, as the Commission's authority to regulate contract carriers exists solely by statute. To the extent the Commission proposes to adopt a UM/UIM insurance requirement under its constitutional authority to exercise general control over common carriers, however, § 75-307(1) is not specific legislation which prevents the Commission's exercise of authority to adopt a rule requiring such insurance coverage. As noted previously, while carriers currently providing transportation of railroad crews do so under contract, they are certificated as common carriers and likely fall within the Commission's constitutional authority to regulate common carriers.

Assuming the Commission has constitutional authority to require UM/UIM insurance coverage for common carriers engaged in transporting railroad crews, we conclude that such authority cannot reasonably be construed to include the power to require coverage in amounts that exceed the statutory maximums established in the Uninsured and Underinsured Motorist Coverage Act. The provision of UM/UIM insurance coverage is governed solely by the Uninsured and Underinsured Motorist Coverage Act. Section 44-6408(2) expressly states "that in no event shall [an] insurer

be required to provide limits higher than one hundred thousand dollars per person and three hundred thousand dollars per accident." "It is well established that where general and special provisions of statutes are in conflict, the general law yields to the special...." *J.M. v. Hobbs,* 281 Neb. 539, 546, 797 N.W.2d 227, 231 (2011). Any general authority of the Commission to establish insurance requirements under § 75-307, including any constitutional authority permitting the Commission to require UM/UIM insurance coverage by common carriers in addition to the liability coverage provided for under that statute, cannot be construed to allow the Commission to impose UM/UIM coverage requirements which exceed the statutory maximum amounts in § 44-6408(2). Section 44-6408(2) is a specific statute which establishes the maximum amounts of UM/UIM insurance coverage an insurer is required to provide in Nebraska. The Commission has no authority to require UM/UIM coverage in excess of these statutory maximums.[6]

We note that other states have enacted legislation specifically addressing the amounts of UM/UIM insurance coverage required of motor carriers transporting employees, including specific statutes directed to carriers transporting railroad crews under contract. *See, e.g.,* Minn. Stat. § 221.0255 subd. 4(b)(5) (2014) (Requiring motor carrier transporting railroad employees to "maintain uninsured and underinsured coverage in a minimum amount of $1,000,000..."); N.D. Cen. Code § 8-02-08.1 (2014) ("Insurance standards for contract carriers that carry employees with the employer must include uninsured and underinsured motorist coverage of not less than one million dollars per occurrence for the benefit of passengers being transported."); 625 Ill. Comp. Stat. Ann. § 5/8-101(c) (2014) ("As part of proof of financial responsibility, a contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motorist motor vehicle coverage,..., and underinsured motor vehicle coverage,..., in a total amount of not less than $250,000 per passenger."). Consistent with this trend, LB 597, which would require contract carriers transporting railroad employees to obtain a minimum of $500,000 UM/UIM coverage for each passenger in each motor vehicle that transports such employees, has been introduced in the Nebraska Legislature this session. Legislative action of this type, as opposed to adoption of a Commission regulation, is necessary to require carriers transporting railroad crews to obtain UM/UIM insurance coverage in excess of the maximums set in § 44-6408(2).

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[6] Indeed, there is some question as to whether the Commission may even impose UM/UIM requirements equal to the maximum amounts in § 44-6408(2), as the statute contemplates higher limits of UM/UIM coverage being provided "[a]t the written request of the named insured...", as opposed to being required by Commission regulation. If coverage in the maximum amounts were required by regulation, however, the "named insured" would be required to request UM/UIM coverage in the maximum amounts in order to be in compliance with the regulation.

CONCLUSION

In conclusion, as to contract carriers, the Commission has no authority to require UM/UIM insurance coverage, as § 75-307 provides only that the Commission may enact regulations to require reasonable amounts to cover liability for negligent operation, maintenance, or use of motor vehicles used by motor carriers. To the extent the Commission is exercising constitutional authority over motor common carriers, § 75-307 does not preclude the Commission from requiring common carriers to obtain UM/UIM coverage, but the Commission cannot adopt a regulation requiring UM/UIM coverage to be maintained in amounts which exceed the maximums established in § 44-6408(2). The provision of UM/UIM coverage is governed by the Uninsured and Underinsured Motorist Coverage Act, and the statutory maximums in § 44-6408(2) establish the maximum amounts an insurer can be required to provide for UM/UIM under Nebraska law. The specific provisions of § 44-6408(2) control over the authority granted the Commission to establish insurance requirements for motor carriers under § 75-307. Any exercise of the Commission's constitutional authority to regulate common carriers by establishment of UM/UIM requirements is subject to the specific limitations imposed by the Uninsured and Underinsured Motorist Coverage Act, including the maximum limits set by § 44-6408(2). Legislative action is required to establish higher limits for UM/UIM coverage for motor carriers of railroad crews.

Very truly yours,

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