

# IN TRANSIT



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News on industry developments and transportation projects from  
the Transportation and Logistics Law Group at Dean & Fulkerson

## ROAD REPORT

### ■ NEWHOS RULES FINALLY POP OUT

Having tried and failed to convert its Hours of Service Rules into a statute, USDOT finally has issued a slightly revised version of its currently effective rules, to take effect October 1. Two main changes: a 150 mile no-log zone for drivers not requiring CDL's with two 16 hour bail-out days per week; tighter rules for sleeper berth drivers. Expect another round of court challenges. *USDOT, 2005*

### ■ SAFETEA SHAKES UP REGS

The SAFETEA legislation passed by Congress will produce major changes for truckers. Starting in 2007, state per vehicle fees such as Michigan's \$100 per vehicle fee will be replaced with a federal fee charged to both for-hire and private carriers. No fee announced, but including private carriers should spread the fee burden over a larger base. SAFETEA also eliminates SSRS, creates one-stop registration for both federal and state purposes, and permits DOT to end registration for brokers and freight forwarders.

*H.R.3, SAFETEA-LU, 2005*

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### ■ MICHIGAN FEE CHALLENGE

**REJECTED** The U.S. Supreme Court has rejected ATA and carrier court challenges to Michigan's \$100 per vehicle fees for Michigan intrastate and interstate carriers. The fees were found non-discriminatory and not contrary to federal SSRS regulations. The ruling does not affect the Supreme Court's reversal of Michigan's \$10 fee for non-Michigan vehicles issued three years ago.

*ATA v MPSC, Mid-Con v MPSC,*

*U.S. Supreme Court, 2005*

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### ■ "PLACARD LIABILITY" NIXED

The Sixth Circuit has told federal courts in

## ON THE DOCK

### ■ RAIL LAWYER JOINS GROUP

Rail transport lawyer Steve Serraino has joined D&F as a member of the Transportation and Logistics Law Group. Steve has extensive experience in trials of rail accident cases involving employee injuries, train derailments, and cargo damage. He is a member of the National Association of Railroad Trial Counsel and recently participated in its annual convention.

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### ■ LIABILITY/BUSINESS DEFENSE

D&F has successfully coordinated defense and corporate reorganization efforts to protect a trucking client with a multiple fatality truck accident in a state noted for excessive jury awards. Available insurance resources were maximized and combined with internal reorganization to avoid potential eight figure liability and preserve the company business.

*D&F Attorneys: John Bryant,*

*Jerry Swift, Keith Aretha*

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### ■ CROSS BORDER EXPANSION

Working with Canadian counsel, D&F implemented strategies to allow a hazardous waste hauler to expand its operation into Ontario and take advantage of international opportunities in hazardous material hauling.

*D&F Attorney: Jim O'Brien*

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### ■ D&F/MTA DETROIT SEMINAR

D&F and the Michigan Trucking Association will be co-sponsoring the first annual Detroit-area Trucking Seminar November 10 at the Crowne Plaza in Romulus. Mark all calendars for a morning filled with hands-on solutions to safety, labor and government compliance issues.

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## FEATURE:

TRUCKERS FINALLY CATCH A BREAK ON MISLOADS (OR DO THEY?)

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TRUCKERS FINALLY CATCH A BREAK ON MISLOADS (OR DO THEY?)

By Neill Riddell

The *misload* has been a disputed issue on overweight tickets for years.

Current statutory provisions authorize discretionary relief for "misloaded" units – those which exceed permitted weights on individual axles but still are under the legal gross weight for the entire unit. Many judges (and even more prosecutors and enforcement officers), however, refuse to cut truckers a break on misloads, instead pushing for higher fines under Michigan's graduated per-axle fine schedule.

Under amendments effective January 1, 2006, however, the entire concept of "discretion" will vanish from the misload lexicon. Courts will be *required* to assess fines on a misload basis whenever a truck meets clearly stated tests.

**Finally. Truckers catch a break. Or, maybe not.**

You see, a funny thing happened on the way to passage of the amendments. The intended "fix" may end up biting truckers in the, err, wallet. **Sad but true, the new language produces higher, not lower, fines in many common misload situations.**

The new language is easily understood. It describes three categories of overweights, setting the fines for each.

If you are over gross, there is no change. You pay under the existing fine schedule, so much per pound in excess of the maximum legal on an axle.

If under gross, with no axle more than 4,000 lbs over legal, you pay the mandatory misload fine: \$200 for each axle over legal, up to a maximum of 3 axles (\$600 max). While more than the prior misload fine of \$250, the amendment ends the "we don't do misloads" attitude prevalent in many jurisdictions.

The final category involves under gross units having an axle more than 4,000 lbs. over the legal max. Pre-amendment, you may have been able to get a misload. In the right court. On the right day. This will no longer be the case. The amendment mandates that this category *shall* (no discretion) be treated as an over gross vehicle for fine purposes; i.e., under the normal fine schedule.

Facially, this all appears reasonable and, again, has the virtue of clarity. **Lurking, however, is the prospect of mandatory fines exceeding the maximums under the pre-amendment approach.** For example, think about an under gross truck having three axles which are each 3,000 lbs. over legal max. Post-amendment, this will be a misload with a \$600 (3 x \$200) fine. Pre-amendment, the maximum fine would have been \$540 (6¢/lb x 3000 for each of the three axles).

That may not be much of a difference but, interestingly, the discrepancy *increases* as the amount of the overweight *decreases*.

If an under gross unit has three axles, each of which are 2000 lbs. over legal max, the post-amendment misload fine is \$600. Pre-amendment, however, the maximum fine (whether or not over gross) would have been no more than \$90.

**Here is where it could get scary if facing an overzealous enforcement agency.** Pre-amendment, there was *no fine*, whether under or over gross, if the excess weight on any axle did not exceed 1,000 lbs. Post-amendment, however, if under gross, you will pay \$200 for each such axle, up to a maximum of \$600.

While serious overweights catch everyone's attention, few truckers run into such problems absent equipment problems or undetectable/uncontrollable load distributions. But, many truckers encounter situations where, although under gross, they are slightly over on several axles.

**In the past, that was no big deal. Starting January 1, 2006, that could be \$600.**

For this reason, it is important all carriers, and their attorneys, continue to explore those defenses left untouched by the recent amendments.

ROAD REPORT

Michigan and surrounding states that truckers cannot be held liable for accidents merely because a former lease operator improperly keeps the trucker's placard on a vehicle. As long as the trucker sends a letter at the end of the lease demanding return of the placards, "placard liability" is dead.

*Ross v Wall Street Systems, Sixth Circuit, 2005*

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■ **RAIL-TRUCK CRASHES** New proposed federal regulations will significantly change rail carrier responsibilities for grade crossing warnings and "black box" safety devices. Major rail carriers also are winning big victories in truck-rail crossing accidents with continuous forward video recording from locomotives. Look for continuing rail industry effort to make trucks and cars totally liable for crossing accidents and resulting damages.

*Revised 49 CFR 222, 234, 236*

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■ **STATES CAN'T FORCE DUTIES** Courts continue to rule that federal law prohibits states from forcing carriers to perform specific tasks not related to transportation safety. A recent case holds that truckers delivering tobacco products cannot be forced to check the ages of their customers.

*New Hampshire Motor v Rowe, D. Maine, 2005*

ON THE DOCK

■ **DEFENSE SEMINAR SPEAKER** Jerry Swift will be a featured speaker at the 2006 Trucking Law Seminar at the Defense Research Institute, discussing trucking company requirements for saving records on safety practices and accidents.

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■ **WITHDRAWAL LIABILITY** D&F currently is fighting pension fund withdrawal liability claims involving the Central States Pension Fund for three separate clients. The claims all flow from business contractions or changes in unionized trucking employment.

*D&F Attorneys: Janet Lanyon, Ian Hunter*

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■ **IN-HOUSE EMBEZZLER** D&F has been asked to review recently uncovered embezzlement by a carrier's maintenance supervisor of large volumes of repair parts inventory. Issues: recovery from employee plus proving loss amount for theft insurance claim.

*D&F Attorney: Read Cone*

The information contained in this newsletter is not intended to be legal advice. Readers should not act or rely on this information without consulting an attorney.