

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

■ **COURT BARS ANTI-WASTE HAULING ORDINANCE.** A federal judge has permanently enjoined Wayne County from enforcing an ordinance which prohibited the transportation or deposit of solid waste from states or provinces which do not have bottle deposit laws similar to Michigan's. The ordinance effectively would have banned any solid waste from outside Michigan from being moved into Wayne County for disposal. D & F attorneys Neill Riddell, Jim O'Brien, and John Bryant have been representing waste haulers and their customers in efforts to block such restrictions.

National Solid Waste v Wayne County, E.D. Michigan, 2003

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■ **BAD PLACARDS DON'T MEAN CARGO LIABILITY.** Rules making carriers liable for injuries caused by vehicles bearing their placards have been found not to extend to cargo loss claims. Thus, where a load damaged in leased equipment bearing the carrier's identification had been brokered to a third party without carrier's knowledge, the court rejected the third party's claim against the carrier.

Mercer Transp v Greentree Transp, 10th Cir, 2003

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■ **DRIVER UNLOAD NOT STATUTORY COERCION.** An owner-operator who forfeited pay for refusing a carrier's order to assist in loading could not recover under an Interstate Commerce Act provision outlawing attempts to coerce loading or unloading of interstate shipments (49 USC 14103(b)). Lease and driver manual language assigning responsibility for load-

ON THE DOCK

■ **TRUCK SAFETY EXPO.** Plan on attending the Michigan Truck Exposition and Safety Symposium in Lansing, MI on February 24-25 sponsored by the Michigan Trucking Association and the Michigan Center for Truck Safety. Features: Workshop on Safe Stat and Haz Mat Security, 16 breakout sessions on truck safety and risk protection and safety industry exhibitor booths. **Be sure to attend the sessions on safety and catastrophic accident risks presented by D&F attorneys and visit our booth for a free CD on safety issues.**

D&F Attorneys: John Bryant, Read Cone, Gary Graca, Ian Hunter, Jim O'Brien, Neill Riddell and Jerry Swift

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■ **HOURS OF SERVICE.** D&F on behalf of unionized carrier clients is resisting claims of union representatives that the new FMCSA Hours of Service rules give drivers the right to decide on their own whether to restart their driving weeks using the 34 hour "trigger". D & F and its clients maintain that employers continue to have complete discretion over driver dispatch and can require drivers to perform any operations that the rules allow.

D&F Attorney: Ken Zatkoff

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■ **UNION ORGANIZING.** D&F is defending a trucking employer against claims by the Teamsters seeking to organize one of the employer's terminals. The Teamsters also are alleging that the employer committed unfair labor practices in discharging a driver for violating plant safety rules and

FEATURE:
Truck Accident Defense - \$\$\$?

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YOUR OWN TRUCK ACCIDENT DEFENSE TEAM. TOO EXPENSIVE? THINK AGAIN . . .

By Jerry R. Swift

In a perfect world, every trucking company would have an accident response team in place to respond quickly to any road accident and preserve all evidence which may help in the defense of any subsequent litigation.

Witnesses would be interviewed, physical evidence would be photographed and preserved, and the accident scene would be surveyed and mapped. The company would not need to rely on a police agency's interpretation of the evidence, prepared with an eye to prosecuting the company's driver.

While such a team may not be necessary for every accident, when disaster strikes in the form of a fatality or multiple injury incident, an accident response team can be critical in preventing serious threat to a trucking company's finances or its very survival.

Unfortunately, in the real world of most trucking companies, the cost of an in-house accident response team is likely prohibitive.

There is, however, an effective alternative which can be yours, **and at no cost**.

An accident response team should, at a minimum, consist of an attorney, accident adjuster, and accident reconstruction expert. Having an attorney at the helm from the start makes the information collected in the investigation part of the attorney's work product, which is usually legally protected from disclosure to the other party.

The attorney should have a solid background in personal injury accidents, including catastrophic injuries. He or she should practice with a firm which has a transportation group, ensuring experience with the DOT regulations dealing with driver qualifications, hours of service, drug testing, the allowable use of such test results, as well as a general knowledge of the trucking industry, the equipment used, and trucking insurance issues. And there is more. The attorney also should have an accident response team already in place to become involved

quickly in any accident investigation.

The accident adjuster should have heavy vehicle experience. He or she will obtain witness statements (while memories are fresh) and take photographs of significant physical evidence, such as points of impact; yaw, skid and traction marks; fluid spills; all sides of all vehicles; resting positions of the vehicles; and the surroundings.

The third member of the team is the accident reconstruction expert. This expert should have heavy vehicle accident experience and be familiar with DOT regulations on truck standards. The expert will measure the relative positions of everything at the scene, perform an inspection of the vehicles and obtain information from any electronic control module units on the engines or trip recorders. From all of this information the expert attempts to reconstruct the accident and establish its causes.

So how do you assemble this team without having to pay for it? The key is to have an attorney who has an accident response team already in place appointed as your preferred counsel to handle your truck accident claims **at your insurance company's expense**.

That is accomplished by requesting through your insurance agent that a particular attorney or law firm be appointed as your preferred counsel for any truck accident litigation. Your agent will contact your automobile liability carrier and have the attorney appointed as preferred counsel.

Then, if a catastrophic accident occurs, one of your first calls would be your insurance company, requesting your preferred counsel be immediately assigned to the case. This will put someone who is on your side, **your** emergency response team, at the scene while evidence is still fresh and critical information is being developed, all at no cost to you.

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.

ROAD REPORT

ing/unloading is enforceable.

Jessep v Jacobson Transp, 8th Cir, 2003

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■ **CARRIER NAILED FOR SLOPPY LOG STORAGE.** The Federal Motor Carrier Safety Administration has turned down a carrier's request to upgrade its safety rating because the carrier's six month driver log storage consisted of throwing the logs into boxes in no particular order. The fact that the logs could have been located through a document by document search did not make those logs "available" for FMCSA purposes.

Roadco Transp. Services, FMCSA 2003

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■ **NOT LIABLE FOR LISTED VEHICLE.** Carriers that fail to remove a terminated leased vehicle from a previously filed insurance certificate cannot be held liable for post-termination accidents. A third party may not rely upon the certificate, according to the court, to change the actual coverage provided.

Campbell v Shura, 5th Cir, 2003

ON THE DOCK

reassigning a driver from city to road operations.

D&F Attorney: Ian Hunter

■ **OVERTIME EXEMPTION.** New controversies continue to arise as more employers become aware of FLSA exemptions from overtime requirements. Two recent D & F projects: Defending against USDOL claims that yard drivers are not covered by the exemption and defending against a back-overtime suit by a driver moving shipments outbound from an interstate distribution warehouse.

D&F Attorneys: Neill Riddell, Ian Hunter

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■ **CROSS-LEASES.** For a carrier client with commonly controlled subsidiaries, D&F is preparing master leases and subcontract documents to allow company and owner-operator units to cross-operate between subsidiaries without need for trip by trip leases, vehicle inspections, or placards.

D&F Attorney: John Bryant