

# 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

■ **UNION CAN'T SIDE-STEP ARBITRATION.** A federal district court dismissed a union complaint alleging violation of contractual "foreign driver" provisions. The union failed to exhaust contractual arbitration provisions when suing to enforce an arbitration decision interpreting the contract language without first presenting specific grievances to a joint area subcommittee.

*Teamsters Local 486 v Quality Carriers, Inc. (ED Mich 2003)*  
\* \* \*

■ **FORCED TAX COLLECTION BY CARRIERS NIXED.** A federal court of appeals ruled that a Puerto Rico statute requiring carriers to collect and enforce a local use tax on goods being delivered from outside the territory was preempted by the Federal Aviation Administration Authorization Act as a law related to "a price, route or service" of a carrier.

*UPS v Flores-Galarza (1st Cir 2003)*  
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■ **CLASS ACTION DEALT BLOW.** A class action challenging Michigan's imposition of a \$100 per unit annual fee on Michigan-domiciled interstate carrier vehicles was dealt a serious blow by the Michigan Court of Appeals which held that the fee was a regulatory fee and therefore not subject to the federally mandated \$10 limitation on registration fees under the single state registration rules. This decision does not affect the successful carrier challenge by D&F to Michigan's \$10 fee on non-Michigan domiciled units in the recent *Yellow v Michigan* U.S. Supreme Court case.

*Westlake Transportation v MPSC (Michigan Court of Appeals 2003)*

FEATURES:  
Required Security Steps  
plus  
Hours Rules – Winners and Losers

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## ON THE DOCK

■ **NATIONAL LABOR AGREEMENT** D&F's Transport Labor Group has begun a month of intense negotiations for a national labor contract as counsel for the multi-employer bargaining unit of the auto and motor vehicle haulers, National Automobile Transporters Labor Division. The current contract expires May 31.

*D&F Attorneys: Bob Mercado, Ken Zatkoff*  
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■ **WASTE HAULERS** Michigan DEQ's recent announcement of cleanup assessment proceedings against waste depositors at the Fort Gratiot landfill has prompted D&F to initiate a defense group to represent the special position of waste carriers. Environmental authorities typically try to involve carriers as well as waste generators for liability assessment purposes, even though the groups have different interests

*D&F Attorney: Jim O'Brien*  
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■ **BAD SCALES** D&F recently assisted a client in persuading a local police department to check its portable scales against Michigan State Police stationary scales. The portables were proven to be wrong and the client's overweight ticket was dismissed without any court appearances.

*D&F Attorney: Neill Riddell*  
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■ **SAFETY SYMPOSIUM** D&F's Transportation Group attorneys were featured program presenters at the Michigan Trucking Association and Michigan Center for Truck Safety's first annual *Michigan Truck Exposition and Safety Symposium* in late February. John Bryant, Ian Hunter, Jim O'Brien, Neill Riddell and Jerry Swift spoke to groups of industry representatives regarding a wide range of safety related issues and everyday concerns.

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■ **SUPREME COURT REJECTS UNION** The U.S. Supreme Court took less than a month to agree with D&F and reject a Teamsters Union challenge to a U.S. Court of

## SECURITY PLAN, EMPLOYEE SECURITY TRAINING REQUIRED FOR HAZMAT TRANSPORTERS AND SHIPPERS

By Jim O'Brien

The events of September 11, 2001 graphically illustrated the fact that the United States transportation system is vulnerable to subversion by terrorists.

In response, the Department of Transportation, Research and Special Programs Administration (RSPA) has issued a Final Rule requiring enhanced security plans and employee training requirements for hazardous materials shippers and carriers.

**WHO IS COVERED?** Essentially all carriers and shippers currently required to register as hazmat transporters with RSPA, including any carrier required to use hazmat placards.

"Hazmat employees" covered by the new training provisions are everyone who directly affects hazmat transportation safety, including drivers, dockworkers and independent contractors.

Canadian truckers hauling hazardous materials to the U.S. and Canadian shippers sending hazardous materials to the U.S. also are required to comply with these rules according to RSPA representatives.

### WHAT IS REQUIRED AND WHEN?

■ **Immediately – Security Awareness Training.** All hazmat employees must receive so-called "security awareness training" on hazmat transport risks. This training teaches employees how to recognize and respond to security threats. Security awareness training must immediately be made a part of regularly scheduled employee refresher courses. Newly hired hazmat employees must receive such awareness training within 90 days of their date of hire.

■ **By Sept. 25, 2003 – Security Plan.** By Sept. 25, 2003, every carrier and shipper must conduct an assessment of the specific risks created by its hazardous materials operations, considering the types and quantities of hazardous materials transported, and the routes and modes of transportation.

The plan must address (a) personnel security; (b) confirming information on job applications; (c) access restrictions to hazardous materials for unauthorized personnel; and (d) security measures while shipments are in transit, including storage during transport.

The plan must be in writing and updated regularly to reflect changes in circumstances. It must be made available, on a need-to-know basis, for employees with hazmat responsibilities.

RSPA materials indicate that security planning by hazmat shippers must consider the security plans of the shippers' hazmat carriers. For carriers, this may mean a round of inquiries from shippers prior to Sept. 25 to confirm that carriers have security plans in place.

■ **By Dec. 22, 2003 – In-Depth Security Training.** By Dec. 22, 2003, every carrier and shipper is required to give each of its hazmat employees "in-depth security training" concerning its hazmat security plan, specific security procedures, employee responsibilities and actions in the event of a security threat.

**DETAILS AND PLANNING** DOT-RSPA provides some guidance on the details of implementing the Security Plan and training requirements in its Federal Register notice. Training materials are also available from DOT-RSPA on a CD, or for downloading at the DOT website.

Prompt, good-faith compliance with the new security requirements is not only mandatory to comply with DOT-RSPA require-

ments, it may also serve as a partial defense to civil liability if, despite reasonable precautions, a carrier's equipment or a shipper's product is used in a terrorist attack.

Dean & Fulkerson is working with a number of its clients to answer questions on the new security requirements. We invite you to contact us if you have questions as to your company's responsibilities under the new security rules.

## NEW HOURS OF SERVICE RULES BENEFIT LONG-HAUL, HURT SHORT-HAUL

by John Bryant

While industry leaders generally approve, changes in the motor carrier Hours of Service rules announced last month by FMCSA are likely to provide a major productivity windfall to long-haul and truckload carriers, but may have negative results for local or regional operations.

The new rule changes, effective January 4, 2004, increase allowed daily driving time from 10 hours to 11 hours, increase required off-duty time from 8 hours to 10 hours, and reduce allowed daily on-duty time from 15 hours to 14 hours.

Long-haul or truckload carriers and their owner operators receive the greatest economic benefit. A "restart" provision allows carriers to condense an operator's 60 or 70 permissible on-duty hours per week into a 4 or 5 day time period, and then begin a new 60 or 70 hour period after 34 off-duty hours – as much as 38 hours earlier than permitted under the present rules.

For carriers conducting essentially 5 day per week operations, the one-hour daily increase in driving time is offset by the two-hour increase in mandatory rest time. Reduction of permissible daily on-duty hours from 15 to 14 also could have a negative impact on operations with high concentrations of loading, waiting, or other non-driving work time.

Challenges to the rule changes are possible either within DOT or in court.

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.

## ON THE DOCK

Appeals decision awarding damages against the union for an unlawful strike.

*D&F Attorney: Bob Mercado*  
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■ **LOGISTICS CONTRACT COLLECTION** When a client serving the media industry was faced with a "stonewall" refusal to pay any part of a multi-month logistics contract based on overtime disputes, D&F and client management developed a non-litigation strategy to confront the customer aggressively, demand immediate payment and threaten severe consequences if payment was not received. Problem resolved with payment in three days.

*D&F Attorney: John Bryant*  
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■ **FLEET DRIVER SUIT** A client was sued recently by a driver-employee of one of the client's fleet operators alleging various employment claims. D&F met with the fleet operator and, based upon specific provisions of the equipment lease, as well as certain economic realities, persuaded the fleet operator to settle the litigation even before the client filed a formal answer.

*D&F Attorney: Neill Riddell*