

# DEAN & FULKERSON



## Transportation and Logistics Law Group

**Bankruptcy/Collections**  
Kevin Summers (248) 273-2184

**Contracts, Freight Claims,  
Rates and Regulation**  
Neill Riddell (248) 273-2189  
Kevin Summers (248) 273-2184

**Hazardous Materials/Environmental**  
Jim O'Brien (248) 273-2187

**Insurance Coverage & Defense**  
Jim O'Brien (248) 273-2187  
Kevin Summers (248) 273-2184

**Labor and Employment**  
Bob Cleary (248) 273-2191  
Janet Lanyon (248) 273-2181  
Neill Riddell (248) 273-2189  
Ken Zatkoff (248) 273-2194

**Minority Certification**  
Neill Riddell (248) 273-2189

**NAFTA/Cross Border/Cabotage**  
Neill Riddell (248) 273-2189  
Kevin Summers (248) 273-2184

**Overweight/Overdimension**  
Neill Riddell (248) 273-2189  
Kevin Summers (248) 273-2184

**Pensions/Benefits/Withdrawal**  
Janet Lanyon (248) 273-2181

**Real Estate**  
Jim O'Brien (248) 273-2187  
Jerry Byrd (248) 273-2164

**Safety**  
Neill Riddell (248) 273-2189

**Tax and Corporate**  
Keith Aretha (248) 273-2160  
Jerry Byrd (248) 273-2164  
Mike Davidson (248) 273-2177

**Trucking Accident Defense**  
Bob Cleary (248) 273-2191  
Neill Riddell (248) 273-2189

**Workers' Compensation Defense**  
Neill Riddell (248) 273-2189

801 W. Big Beaver Rd, Ste 500  
Troy, MI 48084 ♦ (248) 362-1300  
Web Site: [www.DFLaw.com](http://www.DFLaw.com)  
Email: [translaw@DFLaw.com](mailto:translaw@DFLaw.com)

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

### ROAD REPORT

(INDUSTRY LEGAL NEWS)

■ **FAST ACT Picking Up Speed.** On the heels of the Fixing America's Surface Transportation Act's (FASTACT) December 4, 2015 signing by President Obama, the Federal Highway Administration issued a February 24, 2016 Memorandum discussing various provisions of the legislation, including size and weight restrictions for carriers operating on the interstate system. A full copy of the FHWA Memo can be found on our web site at [www.DFLaw.com](http://www.DFLaw.com).

■ **DOT Publishes Final Rule on "Safe Reverse Logistics"** The Pipeline and Hazardous Materials Safety Administration just announced that it has amended the Hazardous Materials Regulations. The amendment applies to the reverse logistics shipments of unsellable products containing hazardous materials from a retail facility back to the distribution or reclamation facility. The reverse logistics shipments may only be shipped via highway carriers. Rail and air transportation are prohibited.  
*49 CFR 172.315*

■ **MAP-21 (Fighting Fraud in Transportation Act)** A person may provide service as a broker only if the person is registered under Chapter 139 of Part B of Subtitle IV of Title 49 to provide such service. Anyone who knowingly authorizes, consents to, or permits brokering services in violation of these provisions is liable to:

- 1) The U.S. Government for a civil penalty of up to \$10,000 per violation; and
- 2) To the injured party for all valid claims incurred without regard to amount.  
*49 USC §14916(c)*

### ON THE DOCK

(CURRENT D&F PROJECTS)

■ **Detroit Area Trucking Seminar.** Dean & Fulkerson and The Michigan Trucking Association presented the Tenth Annual Detroit Area Trucking Seminar to over 150 invited guests that included government experts, industry insiders, trucking managers and executives. In addition to D&F's Bob Cleary (New Overtime Rules) and Neill Riddell (New Electronic Logging Device Rule), other featured speakers and topics were:

- Overview of the Compliance/Audit Process (Cindy Hedman, FMCSA)
- Motor Carrier Enforcement (Lt. Steven Horwood, Michigan State Police)
- Free Resources and Services for Michigan's Motorists (Chuck Simmons, Michigan Center for Truck Safety)

■ **Fraudulent Transfer Claim** D&F successfully defended a trustee's fraudulent transfer claim against a carrier in an adversarial proceeding in Pennsylvania. Claim was dismissed by Bankruptcy Court.  
*D&F Attorney: Kevin Summers*

■ **The Lengths We Go To** D&F assisted a client in obtaining dismissal of an overlength citation issued in violation of the preemption provisions of the recently enacted FAST Act.  
*D&F Attorney: Neill Riddell*

■ **Heavy Weights** D&F attorneys have successfully assisted a number of clients in minimizing the financial impact of a sharp uptick in the overweight citations

**FEATURE:  
NEW OVERTIME RULES**

*Page Two*

# FEATURE ARTICLE

## DESPITE THE "CARRIER EXEMPTION," CHANGES IN OVERTIME RULES ARE COMING - ARE YOU READY?

By Bob Cleary

Interstate carriers sometimes express only mild interest in proposed changes to the Fair Labor Standards Act's overtime rules because of the FLSA's express exemption for motor carriers. While typically (but not always) covering a carrier's driver-employees, the exemption does not cover all employees. Classifications such as office staff, dispatchers and purely intrastate drivers remain subject to FLSA. That is why an understanding of imminent changes in the FLSA's overtime rules are important to the industry.

On June 30, 2015, the U.S. Department of Labor issued a Notice of Proposed Rulemaking that, if adopted, will potentially increase the number of non-exempt employees eligible to receive overtime compensation. The DOL estimates that as many as 4.6 million additional workers would become eligible for overtime compensation as a result of these changes.

Presently, there are a number of factors employers must consider in determining whether or not an employee is eligible for overtime compensation. The proposed new rule amends one of those factors - the minimum salary basis test for

determining exempt/non-exempt status. Currently, to be exempt from overtime compensation, an employee must earn a salary of at least \$455 per week or \$23,660 per year. The new proposed rule more than doubles this threshold to \$970 per week or \$50,440 per year. The proposed rule would also trigger automatic minimum level increases to insure the minimum salary level adjusts to increases due to inflation. The practical impact is that all salaried employees making less than \$50,440 may now be eligible for overtime compensation. Without planning, such a shift will have an enormous impact on fixed expenses.

Although the precise effective date is unknown, it is expected the proposed rule should become effective in mid to late 2016. We anticipate that the DOL will give employers a short period of time to make the necessary changes to implement the new rule. We also anticipate employers will want to consider making structural changes to operations to contain the consequential cost increases associated with paying overtime to employees who were previously exempt and thus not eligible to receive overtime compensation.

The new rule, if implemented, is expected to impact budgeting, operations, staffing and company organizational development. Planning now for these changes will enable a smooth transition. Part of this planning should include an audit of all job classifications. Although such an audit should be customized for an organization's specific operation, some things to look for and areas to consider for adjustment should include the following:

- Are there currently exempt employees who earn less than the new salary level in the proposed rule? Should decision makers adjust and pay these employees more to maintain exempt status or should they be converted to non-exempt?

- If a wide range of mid management employees are converted to non-exempt status, how can employers manage hours of work to reduce overtime liability? Will there be a need to hire additional employees? Will wholesale structural changes be needed to offset the increase in fixed expenses?

- How will employers track hours of work for the newly converted non-exempt employees?

- Since the salary test will be adjusted each year based on inflation, what processes need to be implemented to insure continued compliance?

- Reclassifying an employee as non-exempt will likely have a negative impact on employee morale. Employers may need to create and implement a communication plan and strategy to address this; and

- Last, but not least, employers should use implementation of the new rule as an opportunity to correct/adjust the job duties of any exempt job description that may not currently meet the duties test for exempt employees. It is an opportune time to conduct a wage-hour audit of operations to insure compliance of pre and post proposed rule implementation.

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

(CONTINUED)

This liability extends to the company and the individual officers, directors and principals. 49 USC §14916(d)

- **First Instance Transaction May Qualify for "Ordinary Course of Business" Preference Defense** Section 547(c)(2) of the Bankruptcy Code excepts a trustee's power to avoid preferential transfers made by a debtor to a creditor in the ordinary course of business. In Jubber v. SMC Electrical Products, 798 F.3d 983 (10th Cir. 2015), the Tenth Circuit Court of Appeals held that a first-instance transaction between the debtor and a creditor can satisfy the ordinary course defense (debt ordinary with past practices of debtor and creditor when dealing with each other, similar situational parties, and the payment was made in the ordinary course of business between the debtor and creditor).

### ON THE DOCK

(CONTINUED)

written by local authorities.

D&F Attys: Jim O'Brien & Jim Dworman

- **Enforcement of Transportation Charges** D&F obtained a Judgment following a grant of summary disposition for freight charges against a shipper who maintained that it had no involvement with the arrangements for transportation of goods.

D&F Attorney: Kevin Summers

- **Show Me the Money** D&F assisted a motor carrier client in the resolution of claims for transportation charges owed when the property broker who arranged the transportation filed Chapter 7. Opposing collection were not only the shipper, who claimed to have already paid the broker partial charges, but also the bankrupt broker's bank who claimed a security interest in all "receivables" of the bankrupt.

D&F Attorney: Neill Riddell