

# IN TRANSIT



## Transportation and Logistics Law Group

### Contracts, Freight Claims, Rates and Regulation

John Bryant (248) 273-2162  
Neill Riddell (248) 273-2189

### Hazardous Materials/Environmental

Jim O'Brien (248) 273-2187

### Labor and Employment

Read Cone (248) 273-2166  
Ian Hunter (248) 273-2179  
Janet Lanyon (248) 273-2181  
Neill Riddell (248) 273-2189  
Peter Sudnick (248) 273-2185  
Ken Zatkoff (248) 273-2194

### Minority Certification

Neill Riddell (248) 273-2189

### NAFTA/Cross Border

John Bryant (248) 273-2162  
Neill Riddell (248) 273-2189

### Overweight/Overdimension

Neill Riddell (248) 273-2189

### Pensions/Benefits/Withdrawal

Ian Hunter (248) 273-2179  
Janet Lanyon (248) 273-2181

### Real Estate

Jim O'Brien (248) 273-2187

### Safety

Neill Riddell (248) 273-2189  
Jerry Swift (248) 273-2191  
John Bryant (248) 273-2162

### Tax and Corporate

Keith Aretha (248) 273-2160

### Trucking Accident Defense

Jerry Swift (248) 273-2191  
Neill Riddell (248) 273-2189

### Workers' Compensation Defense

Neill Riddell (248) 273-2189  
Jerry Swift (248) 273-2191

801 West Big Beaver Road, Fifth Floor  
Troy, Michigan 48084  
(248) 362-1300 ♦ Fax (248) 362-1358  
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

### ■ WORKERS COMP COVERAGE SURVIVES "CERTAIN DEATH" CLAIM

When a car hauler employee was killed while riding on an outside shuttle platform designed by the car hauler, his estate could not claim that the car hauler knew that an injury was certain to occur. Workers compensation thus was the sole remedy for the employee's death.

*May v Caliber Auto Transfer*  
E.D. Michigan 2006

### ■ TARIFF ITEM SAVES CARRIER ON FORGED C.O.D. CHECK

Shipper claimed carrier was negligent in accepting an obviously forged check as payment for a C.O.D. shipment. Because the carrier's tariff contained language placing the entire risk of C.O.D. payment on shipper, carrier was excused from liability.

*Bryant v UPS (D.S.C., 2006)*

### ■ TIRED DRIVER NOT A VIOLATION

Where a driver's off-duty hours complied with HOS rules, the carrier could not be charged with a civil penalty based on an accident caused by driver fatigue, where the driver had not reported his fatigued condition to the carrier.

*Peter Pan Bus Lines, Inc. (FMCSA, 2006)*

## ON THE DOCK

### ■ DETROIT AREA TRUCKING SEMINAR

Make plans to attend the annual Detroit area trucking seminar sponsored by D&F and the Michigan Trucking Association on December 6, 2006 from 8:30 to 11:30 at the Crowne Plaza in Romulus. Speakers from D&F, government and industry will discuss key issues in trucking management. Contact Debbie Cona at (248) 273-2165 to register.

### ■ EPA TRUCK LOANS

D&F is advising clients on a new program sponsored by the U.S. EPA offering loans to trucking companies with annual revenues less than \$23.5 million for the purpose of purchasing fuel saving and exhaust reducing equipment. Advantages include minimal paperwork, online approval, and no required collateral.

*D&F Attorney: Jim O'Brien*

### ■ SAFER RATINGS

D&F is working with clients seeking to reduce their FMCSA SAFER system ratings below the 75% threshold. Strategies: Update vehicle lists, verify reportable accident status, challenge accident entries, request re-audits.

*D&F Attorney: John Bryant*

### ■ YARD DEATH

Claims by the estate of a yard employee allegedly killed as a result of a co-employee's negligent operation of a yard vehicle for purposes unrelated to employment were dismissed before trial as a result of D&F's successful argument that the Worker Comp Act bars employee non-Comp injury claims.

*D&F Attorneys: Jerry Swift, Neill Riddell*

FEATURE:  
THAT'S THE WAY THE COOKIE  
CRUMBLES —  
COURT NIXES FORCED MICHIGAN  
TRAILER REGISTRATIONS

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## THAT'S THE WAY THE COOKIE CRUMBLES — COURT NIXES FORCED MICHIGAN TRAILER REGISTRATIONS

By Neill Riddell

*“It is the difference between telling a child that she may eat a cookie anywhere she chooses so long as she properly purchased the cookie from any store; and telling a child she may only eat a cookie in the store it was purchased from.”*

OK. Maybe it is not quite what we normally expect from legal prose. And, maybe your first reaction is “huh?”

But, with words such as these, Judge William E. Collette of the Ingham Circuit Court has told the State of Michigan to get its hand out of the cookie jar, and to stop trying to force Michigan domiciled carriers to plate trailers under the state’s one-time registration scheme rather than under other states’ less expensive registration plans.

The dispute before Judge Collette traces its origins back to October 10, 2003. Previously, trailer plates could be purchased on a 6 or 12-month basis. But starting on that date, the revenue hungry state implemented 2 significant changes:

increased registration fees and permanent, non-transferrable plates.

Even before this change, it had been common practice to plate trailers in states having less expensive fees. The new plan jacked up the cost difference between Michigan and non-Michigan trailer registrations, however, and increasing numbers of equipment owners began to investigate options for registering trailers in other states.

The state sought to counter the loss of revenue represented by increased non-Michigan registrations through enforcement of provisions of the state’s motor vehicle code which require all Michigan domiciled equipment to carry Michigan plates, subject only to limited exceptions not applying to the typical trucking company.

But there was one thing that the state had forgotten, and the carriers had not.

That was the IRP.

Michigan has long been a signatory to the IRP. Continued participation, while not mandated, is fairly well assured by the federal Intermodal Surface Transportation Act of 1991 which conditions a state’s right to maintain or enforce any commercial vehicle registration law on IRP participation.

Before Judge Collette, carriers relied on a very special provision of the IRP in their attempt to secure an order stopping the state from declaring illegal any and all non-Michigan trailer registrations. IRP section 404 expressly provides that trailers “properly registered in any member jurisdiction and used, moved or operated in accordance with this section shall be granted full and free reciprocity” and that this reciprocity “shall apply to both interjurisdictional and intrajurisdictional movement or operation . . .”

Judge Collette, apparently a sharp cookie himself, recognized that one consequence of allowing Michigan to side-step these IRP reciprocity provisions would be to open the door to all states claiming the right to do that which Michigan had done, mandating local registrations, all contrary to the IRP’s singular purpose of eliminating the patchwork of individual state registration requirements.

Seeing this, the Judge directed that the state abandon its existing enforcement policy, bringing it in line with IRP reciprocity.

End of story?

Well, for now. But the state has appealed. Briefs are right now being filed and oral argument, which is almost invariably granted upon request, has indeed been requested.

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

■ **NEW OWNERS CAN’T DUCK SAFETY VIOLATIONS** Where new owners form a new corporation to take over prior trucking operations, they can be held responsible for the prior operation’s safety violations. Key factors: same management, address, drivers and equipment.

*FMCSA v Williamson Transport (FMCSA, 2006)*

■ **NEW CANADIAN HOS REGS** New hours of service rules go into effect January 1<sup>st</sup> for operations in Canada. The rules in some respects are more lenient than U.S. rules, with similar requirements for on-duty time but longer hours for actual driving time.

### ON THE DOCK

■ **AXLE AVERAGING** Prosecutors backed off hardline overweight ticket negotiations when, in the course of trial, a district judge agreed with D&F’s position that predispatch platform scaling of loaded units and express statutory language supported calculating “actual” weights on an average-per-axle basis.

*D&F Attorney: Neill Riddell*

■ **TRUCK DEFENSE SEMINAR** Jerry Swift participated in the annual Trucking Industry seminar sponsored by the Trucking Industry Defense Association (TIDA) in Memphis, Tennessee. TIDA is a national association of attorneys and industry representatives involved in defense of trucking companies in personal injury lawsuits.