



# TRANSTRENDS

THE TRANSLAW GROUP, INC.

EDITOR: JAMES M. BURNS

## IN THIS ISSUE

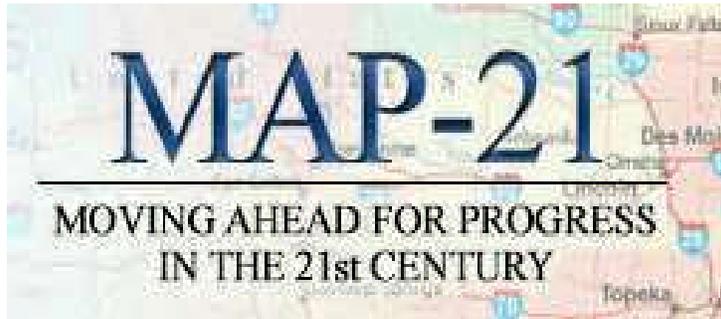
- 1 ARE YOU LEGAL
- 2, 3, 5 CARRIERS SHUT DOWN
- 2 NH FUEL TAX ON THE RISE
- 4 BOGUS DOT CREDENTIALS
- 4 BOBCAT SCAM
- 6 PERILS OF FALSE DOCUMENTS
- 7 CINTRA GETTING BIGGER

IF YOU WISH TO END YOUR SUBSCRIPTION TO TRANSTRENDS, SIMPLY SEND AN EMAIL REQUESTING A CANCELLATION TO [JBURNS@TRANSREGS.COM](mailto:JBURNS@TRANSREGS.COM)

## ARE YOU AN UNLICENSED PROPERTY BROKER

Effective October 1, 2013 motor carriers that routinely engage in “brokering” of loads to other carriers without holding a broker’s license may find that they are in violation of a new regulation pursuant to MAP-21 - Moving Ahead for Progress in the 21<sup>st</sup> Century.

Any entity providing brokering service must hold a broker’s license. Many motor carriers do not hold a broker’s license but engage in brokering on a daily basis. Currently it is legal to provide such service but after October 1, 2013 it will be illegal and the penalty is \$10,000.00 for each violation.



itself worthy of a broker’s license through training and/or documentary evidence. All brokers after October 1, 2013 will have to produce a surety bond in the amount of \$75,000.00 rather than the current \$10,000.00 requirement.

The new surety bond requirement should cost about \$7,000.00 according to industry estimates. Many entities may find that they cannot qualify for the new bonding requirement even if they have the money!

It should be noted that the new entities will have to form new companies in order to avoid carrier liability from combining the two types of service, motor carriage and brokering.

To learn more about this dramatic and perhaps unintended result of MAP-21 call the office for more specifics that will address your particular situation.

### **FMCSA SHUTS DOWN MASSACHUSETTS VAN SERVICE**

A Massachusetts bus company offering interstate shuttle services to Connecticut and New York City has been ordered to suspend service for failing to meet federal safety regulations.

Santana Busline Inc., of Springfield, MA, was declared to be an imminent hazard to public safety by the Federal Motor Carrier Safety Administration. The administration's findings and an out-of-service order were sent out via press release on Wednesday afternoon, March 13.



FMCSA began a review of the carrier's operations in March, which resulted in the shutdown order. Investigators found that Santana Busline "failed to ensure that its drivers comply with hours-of-service requirements, allowed unqualified drivers to operate its vehicles in an unsafe manner, failed to conduct periodic vehicle safety inspections, failed to properly maintain and repair vehicles as required by federal regulations, and knowingly

dispatched vehicles with safety defects" according to the release.

The company had been operating an unmarked 15-passenger van service between Springfield, Hartford, CT, and New York City. The report states that Santana Busline was denied a DOT operating permit in October of 2012, due to its close affiliation with Santana Xpress, Inc., another carrier service that was placed out of service for failure to pay civil penalties, as well as unsatisfactory safety ratings.

Santana Busline had been cited in several stops during the past several months. The DOT is all over the place!

### **NEW HAMPSHIRE FUEL TAX IS ON THE WAY UP**

A plan to nearly double fuel taxes in New Hampshire to pay for road and bridge work got a boost in recent days. One project that would benefit is widening work on Interstate 93.

House lawmakers voted 207-163 to advance a bill for further committee consideration that would increase the state's fuel tax rate by 15 cents over four years for motorists and six years for truck drivers.



The state's 18-cent-per-gallon tax has not increased since 1991. Advocates say that something needs to be done to address a funding shortfall that state transportation officials put at \$1.3 billion during the next decade.

The fuel tax increase is far from a sure bet to win legislative approval. State Republicans have voiced concern about increasing taxes in a tough economy. House Republican Leader Gene Chandler of Bartlett said that while he understands that roads and bridges need attention he wants to avoid dipping into consumers' pockets to fill funding needs.

"Our economy is still fragile and taking hundreds of millions of dollars out of the pockets of New Hampshire consumers is not the solution to the problem," Chandler stated.

### **FMCSA SHUTS DOWN ANOTHER CHINATOWN BUS SERVICE**

For the second time in nearly as many weeks, a federal regulatory agency has issued a shutdown order for a regional bus service accused of flagrantly flouting safety standards.

The Federal Motor Carrier Safety Administration issued an imminent hazard order on Friday, stopping operations for Ming An Inc., a New York City-based interstate bus company.



Ming An provided service from the Big Apple to many southern cities along the Eastern Seaboard.

Among the numerous violations outlined in the stop order, Ming An was cited for failing to conduct pre-employment drug and alcohol testing; employing drivers without CDL's; allowing drivers who are not medically certified to drive; failure to prepare records of duty status; failure to require drivers to prepare vehicle inspection reports; and failure to annually inspect the vehicles.

"We are committed to removing unsafe bus and truck companies from our highways and roads," U.S. Transportation Secretary Ray LaHood said in a press release announcing the stop order. "We will not let up and we will not slow down. Companies that ignore our safety regulations will not be tolerated."

FMCSA began investigating the bus company on Feb. 13, based on poor scores Ming An was receiving in the agency's Safety Measurement System. Investigators found that Ming An allowed unqualified drivers to operate its vehicles in an unsafe manner with its drivers receiving "numerous citations for speeding in excess of 15 miles per hour over posted speed limits" according to the stop order.

Before it can resume operations, Ming An must implement policies and procedures to remediate the unsafe driving, institute drug testing, ensure all drivers have CDL's, and implement a drug screening program.

### **FMCSA WARNS OF BOGUS DOT LICENSES, PLATES**



The Federal Motor Carrier Safety Administration is issuing warnings to drivers and others in the commercial driving and transportation industries to be on the lookout for bogus license plates and CDL's bearing a DOT endorsement.

The phony plates typically say "US DOT" on top, followed by a Department of Transportation number. One plate depicted in a photograph from the agency's news release shows the motto "Live Free or Die."

Duane DeBruyne, an FMCSA spokesman, said the federal government does not have a role in issuing motor vehicle licenses or plates. Individual states have the authority to issue licenses and valid plates for motor vehicles.

"License plates and commercial driver's licenses are state-issued instruments; the U.S. Department of Transportation does not issue license plates or commercial driver's licenses," "Individuals who fabricate bogus license plates or CDL's are involved in a criminal activity. These instances should be reported to the appropriate state law enforcement agency."

### **MINNESOTA OWNER-OPERATOR BILKED BOBCAT OUT OF \$426,000**



A Minnesota man accused of swindling Bobcat out of more than \$426,000 in false invoices and overbillings told police investigators that once he started submitting fraudulent documents "he couldn't stop," according to court documents filed in connection with the case. This will become known as the "Lays Potato Chip" defense!

Mark J. Czywczynski, 38, of Elko New Market, MN, was charged on Feb. 4 with four counts of theft by swindling for submitting fraudulent invoices for loads, as well as overcharging for detention time and empty miles. Each charge carries a maximum penalty of 20 years in prison, a \$100,000 fine or both. A court date is set for 8:30 a.m on Monday, March 4.

Czywczynski is identified in a probable-cause statement as the owner and operator of Ol' Skool Transfer. From March of 2011 to August of 2012 Ol' Skool was under contract with Bobcat Co. to pick up and deliver merchandise stored in Brooklyn Park, Minn., roughly 50 miles south of Elko New Market.

Court records indicate Czywczynski is currently on felony probation stemming from a February 2009 incident in which he was also charged with two felony counts of theft by swindling. According to court records, the 2009 charge stemmed from allegations by seven men who said Czywczynski had hired them to haul loads for him.

Under a plea agreement, Czywczynski pleaded guilty to one count and was ordered to pay restitution to the victims in the amount of \$128,705. A hearing on his probation is also scheduled for March 4.

### **FMCSA USES FENG SHUI ON FUNG WAH**

A bus company's refusal to open its safety records for investigation has resulted in the Federal Motor Carrier Safety Administration shutting it down and using a new administrative power to do so.

Fung Wah, which, apparently when translated into English means ***magnificent wind*** stopped cooperating with FMCSA investigators Friday, March 1, and blocked the agency from looking further into its safety records, FMCSA said in a news release. The company's actions Friday prompted FMCSA to use recently granted powers and revoke Fung Wah's operating authority, according to an FMCSA news release.



The action marks the first time FMCSA has yanked a carrier's operating authority using powers granted in Moving Ahead for Progress in the 21st Century (MAP-21) – a measure President Obama signed into law in July 2012.



“Bus companies that jeopardize public safety and refuse to cooperate with our investigators have no place on the road, and now, thanks to our additional authority, we can take them off,” Transportation Secretary Ray LaHood said, according to the news release. “Safety is our highest priority, and we will continue to do all we can to ensure that unsafe bus companies are not on our roads.”

MAP-21 includes provisions that allow FMCSA to “revoke the operating authority registration of a motor carrier that fails to comply with an administrative subpoena or a letter demanding release of company safety records,” FMCSA said in the release.

The company had a history of problems complying with federal safety rules.

In 2006, FMCSA fined the company \$31,110 after one of its buses overturned on a highway ramp in Massachusetts. The wreck resulted in 48 passengers being injured, including some with serious injuries. Fung Wah was fined for its drivers exceeding the speed limit and drivers not being able to speak English. The company paid \$12,900 in fines in May 2006 for violating safety and traffic regulations.



“We will not hesitate to immediately shut down a bus or truck company that ignores safety regulations and puts innocent lives at risk,”

FMCSA Administrator Anne Ferro said, according to the news release. “We will employ every tool we have to take unsafe commercial drivers, vehicles and entire companies off the road anywhere in the country at any time.”

*Do any of these buses ever get to final destination?*

### **PASSENGER CARRIER ADMITS FALSIFYING DOCUMENTS**

A Connecticut motor carrier that provided passenger service has pleaded guilty to falsifying driver logbooks when federal investigators asked to inspect them.

According to the Department of Transportation Office of Inspector General, representatives of New Britain, CT-based Wisla Express LLC pleaded guilty in late February to presenting falsified documents to the Federal Motor Carrier Safety Administration. The plea was entered in U.S. District Court in Hartford, CT.



Dariusz Szteborowski, of Rocky Hill, CT, the company’s office manager, pleaded guilty Feb. 22 on a criminal charge related to the investigation.

“The investigation disclosed that Szteborowski often created and maintained false and fraudulent driver time records or caused others to create false and fraudulent driver logs in order to meet the prescribed reporting requirements and that Szteborowski submitted logs to the FMCSA that were not only false, but in many cases had not been created by the driver as required under the federal regulations,” the OIG announcement reads.

The OIG’s office said Szteborowski and others working with and for Szteborowski and Wisla routinely assigned drivers on trips knowing they would exceed federally regulated hours-of-service time.

In order to hide these violations from FMCSA inspectors, Szteborowski often instructed the drivers and/or other Wisla employees to record falsely in the logs that the driver was off-duty during those times before Szteborowski turned in the faked logbooks. The company used time cards with accurate work-hours to pay its drivers before Szteborowski reportedly destroyed the true time cards.

### **SPAIN'S CINTRA GOBBLES UP SIXTH U.S. TOLL ROAD CONTRACT**

The Spain-based company that controls the Indiana Toll Road and Chicago Skyway has just signed a deal to operate its sixth public-private toll contract in the U.S.

Cintra, full name Cintra Concesiones de Infraestructuras de Transporte, will operate two future portions of the North Tarrant Express in Dallas/Fort Worth as part of a consortium formed by its parent company, Ferrovial. The deal is worth \$1.38 billion.



I-280 between I-35W and U.S. 287.

In exchange for developing the contracts, Cintra would manage the lanes and tolls for 43 years from the date the roadway is expected to open IN 2018.

The managed lanes will allow drivers to pay a toll to get out of congestion, according to the model. The more congestion there is, the more a driver pays to access the managed lanes.

Current toll-free lanes will remain toll-free, the company said.

“This is the sixth contract that Cintra has headed in the U.S.,” company CEO Enrique Díaz-Rato said. “It confirms our strong position in North America, where we have landed three new projects worth \$3.85 billion in the last year.”

The first portion involves managed toll lanes along 6.5 miles of Interstate 35W between Fort Worth and I-280. The managed-lanes project in the greater Dallas/Fort Worth region is known as the North Tarrant Express.

The second portion of the contract is for Cintra to operate, maintain and manage tolls on 3.6 miles of North Tarrant Express lanes being constructed by the Texas Department of Transportation along



Cintra is by far the largest private toll operator in the U.S. Four of the company's six U.S. toll contracts are in the Texas, and from the looks of things the company has no plans to slow down. TxDOT tapped a Cintra-based consortium in 2009 to build first two sections of the North Tarrant Express.

The granddaddy of all public-private partnerships involving infrastructure to date is still Cintra's 75-year lease of the Indiana Toll Road in 2006. Cintra and minority partner Macquarie of Australia paid \$3.85 billion to Indiana to operate the 157-mile roadway in exchange for toll revenue through the year 2081.

Under the agreement in Indiana, toll rates for five-axle trucks were allowed to more than double from \$14 to \$32 within the first five years. For the remaining 70 years, toll rates are indexed to the rate of inflation, estimated at 2 to 3 percent per year.

Cintra entered the U.S. toll road market in 2005, partnering with Macquarie to pay the city of Chicago \$1.83 billion to control the eight-mile Chicago Skyway in exchange for 99 years of toll collection.

More recently, Cintra's parent company Ferrovial inked a deal in December 2012 to build a future toll road parallel to U.S. 460 in Virginia's port region. The company estimates completion of that 55-mile roadway in 2017. The starting toll for five-axle trucks is expected to be \$12 per trip.

TRANSTRENDS is published monthly for friends and clients of the Translaw Group, Inc. The information provided in this newsletter is not intended as specific advice on a particular subject. Rather, the information is for general edification. Further, this information is time sensitive and may need to be revised and updated from time to time. Please feel free to call this office with your specific questions at 413 781 8205, or you may e-mail the office at [jburns@transregs.com](mailto:jburns@transregs.com).