TRANSTRENDS

THE TRANSLAW GROUP, INC. EDITOR: JAMES M. BURNS

MERRY CHRISTMAS AND
HAPPY NEW YEAR

IN THIS ISSUE

IF YOU WISH TO END YOUR SUBSCRIPTION TO TRANSTRENDS, SIMPLY SEND AN EMAIL REQUESTING A CANCELLATION TO JBURNS@TRANSREGS.COM

YOU'LL PUT YOUR EYE OUT!

It's that time of year when gift giving is the rage! But, are you a responsible gift giver or are you just doing the minimum at Christmas time.

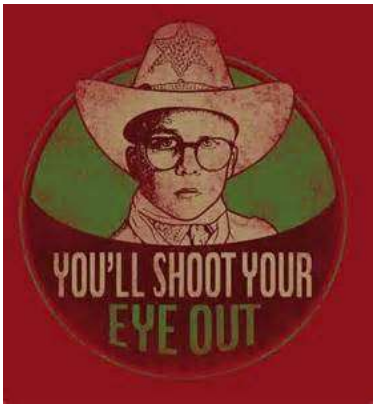
We live in a world of cautionaries; everywhere there are signs that remind us of the dangers of everyday life.

Back in the fifties, there were no such warning on anything we bought. No admonitions to "do not operate heavy equipment" or "may become habit forming". In fact, 7 out of 10 doctors when surveyed said they smoked Lucky Strikes.

Here are a few of the more modern warnings that almost seem unnecessary but TRANSLAW is sure that judicial caution after successful plaintiffs' claims has caused the following warnings to become "necessary" to ward off future litigation.

- 'Do not iron while wearing shirt'

- Warning label on a letter opener that says: 'Caution: Safety goggles recommended.'
- Fuel Tank Cap: 'Never use a lit match or open flame to check the fuel level'
- A cartridge for a laser printer warns, 'Do not eat toner'
- A label on a hair dryer reads: 'Never use hair dryer while sleeping'
- A warning on an electric drill made for carpenters, cautions: 'This product not intended for use as a dental drill.'
- On a child's buggy: 'Remove Child Before Folding'
- A label on a baby-stroller featuring a small storage pouch that warns: 'Do not put child in bag.'
- A dishwasher carries this warning: 'Do not allow children to play in the dishwasher.'
- A popular manufactured fireplace log warns: 'Caution - Risk of Fire.'
- 'The Vanishing Fabric Marker should not be used as a writing instrument for signing checks or any legal documents.'
- The label on a bottle of drain cleaner warns: 'If you do not understand, or cannot read, all directions, cautions and warnings, do not use this product.'



When Ralphie said “I want an official Red Ryder, carbine action, two-hundred shot range model air rifle! Mother Parker declared, “No, you’ll put your eye out” and that was all the warnings that were needed, years ago.

Merry Christmas and Happy New Year from the Translaw Group.

FINES FOR MISSED DELIVERY

In a simplified sales transaction, there are two contractual relationships, the vendor-purchaser relationship, and the shipper-carrier relationship. Unfortunately, the relationship integrity is jeopardized usually when a delivery appointment is missed. What ends up happening is the

purchaser (or customer) assesses fines to the shipper because of the carrier missing a delivery time.

What is the law concerning passing off fines to the carrier on missed delivery appointments?

As previously stated when the carrier misses the delivery date, customers then turn to the shipper to pay a fine. However, any fines and conditions in which a fine can be assessed will be found in the purchase order or terms of sale. The penalty must be clearly stated; otherwise, the purchaser has no right (legally) to charge a fine.

More specifically, the bill of lading must clearly lay out the conditions in which a delivery is made. If there is a specified date and time that the carrier must meet, then a penalty can be assessed to the carrier. It is commonly assumed that the intention of any bill of lading is a notice to the carrier that any delivery penalties will be passed on to them by the shipper.

Without any terms laid out, the carrier's only obligation is to deliver with "reasonable dispatch". Any penalties you seek to assess on the fault of the carrier will be considered "special damages" and will most likely fall through.

What works best in the shipper-carrier relationship is for the shipper to write out a transportation agreement. This transportation agreement lays out all terms and conditions, and clearly defines the obligations of each party. To this situation, specific delivery appointment conditions would need to be stated, and the consequences/penalties that would be assessed should the carrier fail to meet the standard.

A tariff would serve this purpose and the terms of the tariff do not need to be in the contract. You simply reference the tariff in the contract. Tariffs are "in-house" publications and are not required to be filed with any government agency. In fact, you do not have to give the shipper a copy of the tariff if the shipper does not ask for a copy of the tariff. Further, the tariff is applicable to common as well as contract authority, Call the office for more details on establishing a tariff for your operations.

BIENNIAL UPDATE? WHAT IS THAT AND WHO IS REQUIRED TO DO ONE?

If you are a motor carrier, hazardous material safety permit applicant/holder, or intermodal equipment provider regulated by the Federal Motor Carrier Safety Administration, you must update your registration information every two years. If you do not, it could result in some killer fines.

Failure to comply with the biennial update requirements will result in penalties and U.S. DOT number deactivation. Civil penalties may be up to $1,000 per day with a maximum penalty of $10,000.

The appropriate form must be filed before motor carriers or intermodal equipment providers begin operations and every 24 months according to a schedule based on the number your U.S. DOT number ends in. For instance, if that number is 1, you must file by the last day of January; 2 is February, 3 is March, and so on. If it's zero, you must file in October.

If the next-to-last digit of the number is odd, the motor carrier or intermodal equipment provider shall file its update in every odd-numbered calendar year. If the next-to-last digit of the U.S. DOT number is even, the motor carrier or intermodal equipment provider shall file its update in every even-numbered calendar year.

FMCSA issues a warning letter at least 30 days in advance of a biennial update deadline. But, do not rely on the FEDS sending this letter.

Carriers should update their registration every two years or whenever there is a change in the equipment and driver counts. This information will have a direct effect on your CSA scores and you should keep your registration (DOT) number as current as possible. You do not have to wait for the two year period to file an update. In fact, many states require a current update in order to renew IRP registrations annually.

Rather than trying to figure out the crazy government scheme simply update each year or when you fleet numbers change in vehicle count and driver count.

FMCSA EYES FINAL RULE ON E-LOGS FOR TRUCKERS BY SEPTEMBER 2015

The Federal Motor Carrier Safety Administration has issued a timeline for a final rule requiring truckers to use electronic logging devices to record their hours of service. The administration announced that it intends to submit a final rule to the Office of the Secretary of Transportation in May 2015 and publish the rule by the end of September 2015.

FMCSA continues to say its rule would establish four things:

1) minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs);
2) requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS);
3) requirements concerning HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

4) The issue of ELDs and driver harassment by motor carriers was the subject of a recent third-party survey commissioned by the administration.

Congress passed a law in 2012 that required the FMCSA to bring a new final rule, one which satisfies that ELDs cannot be used to harass drivers, by October 2013. The administration's 2015 timeline is running about two years behind that.

FMCSA has been back at the drawing board since losing a federal court challenge brought by a group of owner operators through their association in 2011 – a ruling that said ELDs could be used by motor carriers to harass drivers. The ruling forced the FMCSA to vacate its initial final rule on electronic logs.

TRANSLAW would guess that a final rule would not happen by September certainly without much litigation and amendments.

NEW YORK CAR HAULER BROKER FACES FEDERAL CHARGES OF WIRE, MAIL FRAUD

A New York auto freight broker is facing charges of mail and wire fraud in connection with a scheme federal investigators say bilked customers out of hundreds of thousands of dollars.

Gregory Sclafani, 62, of Southampton, N.Y., was arrested Nov. 13 without incident, according to a news release from the U.S. Department of Transportation – Office of Inspector General. The charges against him are being pursued in U.S. District Court in Brooklyn.

The investigation has identified at least 100 victims who have been double-billed for the service or defrauded, via the unauthorized bank account withdrawals, with a monetary loss to consumers of approximately $600,000.

A criminal complaint alleges that from January 2008 to his arrest, Sclafani, the owner of various auto transport broker entities, engaged in a scheme to defraud consumers by advertising long distance auto transport on the internet. After consumers booked the trips and deposited funds, their cars were often not shipped and Sclafani absconded with their money. Additionally, it is alleged that Sclafani routinely committed bank fraud by withdrawing money from customers' bank accounts without their authorization or knowledge.

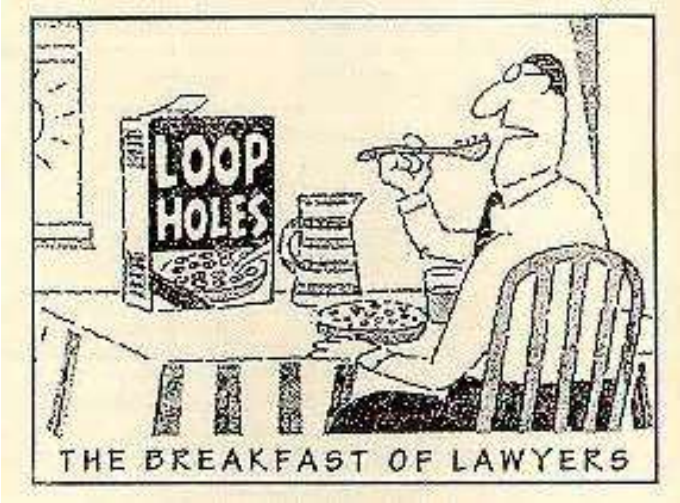
The OIG release notes that the interstate transport of vehicles by brokers is regulated by the Federal Motor Carrier Safety Administration, which had previously revoked Scalfani's operating

authority under at least one company – A USA Logistics – in January 2012.

The release states that despite the revocation, Sclafani created a new brokerage entity, named New Logistics LLC, which did not have FMCSA operating authority. The company's business address in North Carolina was later found to be a graveyard. Authorities estimate Sclafani has created as many as 45 differently named companies for engaging in his fraudulent activities.

The New York State Attorney General's Office already has a pending civil contempt action against Sclafani for similar fraudulent vehicle transport brokerage schemes. That complaint stems from an October 2011 settlement in which Sclafani agreed to a stipulated settlement requiring, among other things, that he be permanently barred from participation in the business of auto transport brokerage. The OIG release states that to date, Sclafani has not certified his compliance with said stipulated settlement. And, so it goes!

SCHUMER CALLS FOR FMCSA TO CLOSE LOOPHOLE FOR CHAMELEON CARRIERS



U.S. Sen. Charles Schumer is calling for the Federal Motor Carrier Safety Administration to include information about individual drivers to improve the agency's screening protocols used to identify reincarnated or "chameleon" carriers.

In a letter to acting FMCSA administrator Scott Darling, Sen. Schumer, D-N.Y., urged the agency to include driver information as part of the algorithm used to identify motor carriers that artificially shut down their business to skirt safety regulations, and then re-form under a new name.

"Chameleon carriers often re-form with the same management, same dangerous vehicles, same unfit drivers, and same unsafe ways," Schumer's letter stated. "FMCSA must do all that it can to ensure that truck drivers with a proven history of unsafe behavior are not able to get a new job at the same old unsafe company."

A member of the Senate's Housing, Transportation and Community Development Committee, Schumer said he "applauds" FMCSA's recent steps to develop a data-driven system for vetting motor carriers. The final product is expected to be released in ***October 2015***.

FMCSA has already implemented stricter new entrant vetting policies and financial penalties to prevent unsafe bus companies from avoiding their enforcement history by reincarnating under new names and USDOT numbers.

Earlier this year, the agency published a new rule on Patterns of Safety Violations, which gives it authority to shut down a bus or truck company if the company, or a company officer, has a history of purposely violating federal safety regulations. The new rule complements a rule adopted by the agency in 2012 to apply out-of-service orders to reincarnated or chameleon carriers and to consolidate their enforcement histories.

SENATOR COLLINS' OFFICE UPSET OVER DOT PUSH TO KILL 34-HOUR RESTART AMENDMENT

Sen. Susan Collins office struck back late last week against an attempt by the Department of Transportation to get an amendment pulled from the transportation appropriations bill. The amendment would roll back changes to the voluntary 34-hour restart.

The Collins amendment would suspend the overnight provisions and the restriction on using the restart once every seven days while the Federal Motor Carrier Safety Administration conducts a comprehensive study – with input from the Office of Inspector General – to see if these changes are truly justified.

The Collins amendment has drawn praise from the Owner-Operator Independent Drivers Association, the Fraternal Order of Police, former FMCSA Administrator Annette Sandberg and others.

The provision authored by Collins, which was approved on a bipartisan basis by the Senate Appropriations Committee, is a commonsense approach to the concerns of thousands of safe and professional drivers. They say the current rule has the unintended effect of forcing truckers who are coming off of restart to be on the highway during the most congested and dangerous hours of the morning.

Appropriations bills, of which there are 12, fund the federal government and are to be passed on an annual basis by Oct. 1. The government is continuing to operate thanks to a continuance of last year's appropriations bill.

That continuing resolution expires Dec. 11, meaning Congress is in the process of finalizing a bill. The actual bill could become public as early as Monday evening, Dec. 8.

FEDS: FORMER ARROW TRUCKING EXECS SWINDLED MILLIONS IN FRAUD SCHEMES OR, HOW TO SHUT DOWN IN STYLE

In 2009, the same year Arrow Trucking would collapse and leave hundreds of the company's drivers stranded on the roads just before Christmas, former Arrow Trucking CEO Doug Pielsticker

received hundreds of thousands of dollars from the company accounts to pay for personal expenses, including his wedding and payments on luxury cars, according to a federal indictment filed in U.S. District Court.

APPEARS TO HAVE NOT A CARE IN THE WORLD, DOUG PIELSTICKER

WHAT ME WORRY

In addition to unspecified cash infusions totaling hundreds of thousands of dollars between Nov. 4, 2009, and Dec. 8, 2009, the indictment states that Pielsticker received nearly $283,000, beginning in January of that year. Outlays included a $36,380 payout to Porsche Payment Center by Oklahoma-based Arrow Trucking on behalf of Pielsticker, as well as two separate payments of $10,000 to his ex-wife.

Altogether, the indictment lists 23 counts of fraud and conspiracy, including a scheme federal prosecutors say bilked a Utah bank out of $15 million, and charges of tax fraud. The bank fraud charges stem from a conspiracy allegation that Pielsticker and others at Arrow Trucking misreported company assets to Transportation Alliance Bank of Utah, in an effort to secure loans from the company.

Another former Arrow Trucking Co. executive, Jonathan Leland Moore, struck a plea deal with prosecutors that fingers Pielsticker as a fraud conspirator. In his plea agreement, Moore states that he and co-conspirators attempted to hide the transmission of false information to the bank by various means, including by directing individuals to pretend to be shippers in telephone conversations with bank representatives.

In addition to the bank fraud charges, the indictment alleges that Arrow trucking withheld $5 million in employee payroll taxes without accounting for, or paying over, that money to the IRS, as well as Pielsticker's own individual tax returns for the years 2007, 2008, and 2009.

Moore's plea agreement states that the loss to the IRS totaled more than $9 million, bringing the total amount of losses in the alleged conspiracy to $24 million. Moore's plea agreement is contingent on his cooperation in other cases against co-conspirators.

Arrow Trucking Co. closed its doors abruptly just before Christmas in 2009, stranding hundreds of drivers without paychecks, fuel cards or the means to get home to their families. Pielsticker filed for bankruptcy protection from creditors soon after the shutdown.

Doug Pielsticker, now 46, was named CEO of Tulsa-based Arrow Trucking Co. after Jim Pielsticker, his father and a prominent Tulsa businessman, was killed in a plane crash in 2001.

Much has been alleged and written about how the younger Pielsticker ran the company, how he spent large sums on cars, an airplane and vacation property and left his drivers hanging at the end.

Former company drivers filed a lawsuit in 2011 seeking restitution for what they were owed. Deliberations revealed that Pielsticker and his mother Carol Pielsticker Bump had been living high on the hog and spending lavishly even as their company was going down the tubes.

The trustee in the lawsuit, Patrick Malloy, estimated that Arrow Trucking Co. had $8.5 million in assets but owed $99 million to creditors. That suit alleged that Pielsticker fraudulently transferred $8.4 million to himself "disguised as salary" while Bump received $4.4 million.

Pielsticker and Bump agreed to settle the civil suit with the trustee who distributed more than $2 million to 550 former company drivers.

REINCARNATED HORSE-HAULER SENTENCED IN SAFETY VIOLATION CASE

One of two owners of a Tennessee horse-hauling company will spend a year on probation for her role in violating an imminent hazard out-of-service order.

Theresa Vincent, who owned and operated Terri's Farm in Murfreesboro, Tenn., was sentenced to 12 months of probation at a hearing in U.S. District Court on Nov. 21. In August, Vincent and another owner-operator, Dorian Ayache, of Three Angels Farms in Lebanon, Tenn., pleaded guilty to violating an imminent hazard order issued by the Federal Motor Carrier Safety Administration.

Three Angels Farms was declared an imminent hazard to public safety by the FMCSA in June of 2012. At that time the agency issued the order requiring Ayache to cease all commercial vehicle operations – due to unacceptable safety practices, including failure to adequately maintain commercial vehicles and failure to ensure drivers were qualified. He was also cited for accidents that occurred in January and June 2012, which resulted in fatal injuries to horses.

The criminal violation occurred when Ayache continued his commercial operations under the name and authority of Terri's Farm. FMCSA categorized Terri's Farm as a "chameleon" carrier and placed it under an imminent hazard order.

According to court documents, Ayache was accused of selling or transferring truck and trailers belonging to Three Angels Farms, contrary to the provisions in the imminent hazard order, to Vincent, owner of Terri's Farm. Ayache then drove for Terri's Farm.

The indictment claims that Ayache tried to conceal and destroy emails to Vincent. She is accused of making false statements while testifying before the grand jury regarding her communication with Ayache.

In January 2012, a Three Angels Farms driver fell asleep behind the wheel, veered off the right side of the road, and lost control. The trailer carrying 38 horses overturned, and three of the horses died. The driver claimed he had been working all night at the farm and only had 30 minutes of rest in a 24-hour period, according to the imminent hazard order issued by FMCSA.

Six months later the company was involved in another wreck in which a trailer carrying 36 horses collapsed and snapped in half. One horse had to be euthanized. The investigating agency found that the driver of the truck did not have a valid CDL, and the second driver in the vehicle had only a suspended CDL.

Out of Service orders are complex and cover a wide area of restrictions on the carrier that has been placed out-of-service.

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