TRANSTRENDS

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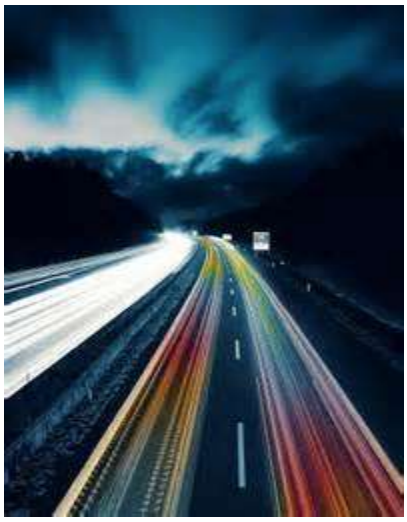

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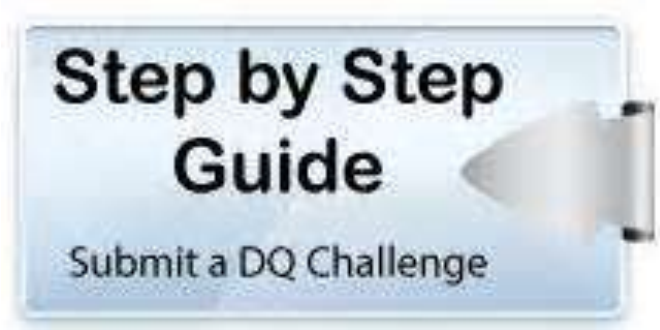
DATAQ CHALLENGE NOW AVAILABLE



The FMCSA has a plan in place that updates the Motor Carrier Management Information System (MCMIS) to allow the data to reflect the results of court resolutions of citations. Heretofore this was not possible.

This can only be called an "enlightened" move by the Federal Motor Carrier Safety Administration and one that has been called for over a long period of time.

Successfully contesting in court the questionable citations handed out at roadside inspections may not be the dead end it had been in attempting to right CSA and PSP scores. DataQ will be modified to allow review of violations that have had the concurrent citation dismissed or plead down.

The Agency has published its rule in the Federal Register on June 5, 2014 effective August 23, 2014. The change will not apply retroactively, only to inspections with violations as of August 23, 2014.

Defeating the court citation will not automatically eliminate the violation. There is a procedure in place that allows an aggrieved party to submit certified court documents showing the better outcome via court disposition.

As currently required in the MCSAP state grant programs, pursuant to 49 CFR 350.201(s), the States must "establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA."

Carriers and drivers should greet this change and begin utilizing this new tool to fix what has been an issue that seemed to have no resolution. You now have the ability to assert your rights when you have been successful in challenging a citation in court.

Here is how the Agency expects the changes to appear after resolution of citations:

- Dismissed with fine or court costs: *violation not removed*
- Dismissed without fine and court costs: *violation removed*
- Not guilty (or not responsible): *violation removed*
- Plea to a lesser charge: inspection will indicate the violation "resulted in conviction of a different charge," with severity weight reduced to 1.

Federal law. 49 CFR 384.226 states a prosecutor cannot mask, defer for imposition of judgment, or allow an individual to enter into a diversion program that would prevent the conviction from appearing on the driver's record. The law is confusing and many prosecutors believe they cannot change a citation after it has been issued, even if the prosecutor thinks that the officer made a mistake.

The law is so confusing that the state of Missouri asked for clarification and the Federal Motor Carrier Safety Administration responded. The agency said a prosecutor cannot change violation after a person has paid a citation, pleaded guilty or been found guilty. However, a prosecutor can dismiss or amend a charge ***before*** any of that happens.

Plea-bargaining does not violate the law because it reduces a charge before a court pronounces guilty, and the masking provisions of the law does not prevent plea-bargaining from taking place.

If a challenge through the judicial system does not change the citation, there is no change to the CSA score. If the citation is dismissed, it comes off the drivers and carrier's record. If the charge is amended, things are more complicated. A citation amended to a lesser charge changes the CSA score. The original charge still is listed on the CSA record, but there is a notation, allowing that the charge was amended. And, most importantly, the severity of the citation gets reduced to level I.

For example, situations where the driver does not observe a sign prohibiting the use of a particular lane of traffic, an officer might cite the driver for failing to obey a traffic control device which is a level V offense as more appropriate. Charge might be a lane restriction violation, which is a level

III offense. If the prosecutor agrees to amend the charge and the driver pays a fine the CSA score will be reduced to level I.

Drivers and carriers are responsible for reporting the outcome of an adjudicated citation; it will not happen automatically. When the outcome is final, the driver and or carrier can either obtain a formal certified copy of the outcome, scan it and upload it into the data Q system, or include a link to an official court website that shows the adjudication results.

This may seem to be a lot of work for a carrier or a driver to correct the record, but with shippers and others looking at safety records it is important to make sure that your record is as accurate as possible, and if you have the opportunity to challenge a citation even though it may cost you money. It may be worth it in the final analysis when you look at that CSA score.

GLOBAL INVESTORS READY TO SCOOP UP INDIANA TOLL ROAD

The recent bankruptcy of the Spanish/Australian consortium that operates the Indiana Toll Road is drawing new players to the table.

Potential investors from California, New York, Italy, United Arab Emirates and Canada, along with separate groups from Spain and Australia, are preparing to bid on the roadway lease once it goes up for auction.

The current operator, the Indiana Toll Road Concession Co., leased the 157-mile toll road for **$3.85 billion** in 2006 but owes an astonishing $6 billion in debt after just eight years. The initial lease was scheduled to last 75 years through 2081.

What sticks in the craw for truckers, who fought against the lease, is that a $14 toll that existed when the lease was signed increased 176 percent during ITRCC's reign to $38.70.

It is expected that a bidder will pay 4 to 5 billion for the lease at auction time. There's no word yet on what will happen to toll rates or how much profit a new investor would be guaranteed under a new deal, but it is sure to be in the favor of the new bidder which means higher tolls.

OFFSETTING FOR DELAY

Brokers often find themselves in situations where a lackadaisical carrier costs them a hefty fine due to a blown delivery. For example, a carrier picks up a shipment on Friday that needs to be delivered by Monday.

Monday comes around and the shipment was not delivered nor can you, the broker, even locate the driver. Finally on Thursday the load is delivered. Due to the delayed delivery, the factory that eventually received the delivery had what it claimed to be downtime. You are now being charged with the downtime.

The rate agreement between the broker and the carrier stated that if the services are not fulfilled, the rates are negotiable. The broker carrier contract remains the same.
Can the shipper legally deduct this amount from the carrier's pay?

There are two things that need to be checked before any actions are taken. You as the broker need to ensure that you are not liable for the delay.

Additionally, it would be strongly suggested to look into whether the shipper can legitimately claim this "downtime". In most cases, the "downtime" claim is actually a claim for "special damages".

Generally, special damages are not allowed and barred by the language contained on the bill of lading and the carries tariff and/or contract.

There are no legal issues with offsetting claims against freight charges; but you must research the carrier's tariff and make sure there is no "loss-of-discount" rule for late payments. If there is, the carrier's fault is covered partially.

There is always some sort of risk with any legal action made against another party. In this particular case, the carrier can seek out its freight charges from you, and your counterclaim will more than likely be denied.

JUMBO SHIPMENT

An Oklahoma trucking company doesn't plan to drive faster than 30 miles an hour during its next haul. And its drivers are just fine with that.

Northwest Logistics Heavy Haul spent Friday preparing for what may be the largest load ever

moved through the state of Oklahoma. The company, based in Woodward, Okla., will use four trucks to haul a 186-foot-long, 535,600-pound demethanizer to a gas processing plant in Colorado.

Two trucks will pull the two-lanes wide load, and two trucks from behind will help push the demethanizer from the Broken Arrow, Okla., facility it was built at to a gas plant in Fort Lupton, Colo. The total weight for the haul is 1,192,000 pounds. Broken Arrow police believe it may be the largest object ever moved through the state.

TIME LIMITS FOR FILING CLAIMS

Freight bill auditors often encounter issues with duplicate payment claims. For example, a freight bill auditing company may discover a duplicate charge several months (sometimes years) after the transaction took place.

After speaking with the carrier, they run out of luck. The carrier says it is passed their time limit; i.e. “claims for duplicate payments must be received within (carrier specified number of) months of invoice dates”

Can the carrier legally make up his or her own time limit for duplicate payment claims?

Currently, there is no time limit specified in the Federal Motor Carrier Safety Administration regulations at 49 CFR Part 378. Additionally the federal statute of limitations that deals with a

shipper to recover "overcharges" from a carrier, 49 U.S.C. 14705(b) does not apply to duplicate charges, only overcharges.

Since there are no federal regulations regarding duplicate charges and timelines, it is up to the state's laws to govern the issue.

Just as an example for reference, the State of New York has a category titled, "Money Paid by Mistake"; this is where a duplicate charge would fall under. New York's "Money Paid by Mistake" has a 6 year statute of limitations.

If the example above occurred in the State of New York, the company would have until 6 years after the invoice date to file the duplicate charge claim on the carrier in state court.

END

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