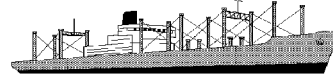




Rollin' On



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FMCSA AND ODOT CHANGING ENFORCEMENT; Plus Insurance, and the Duke

The Federal Motor Carrier Safety Administration is embarking on a new endeavor, called Comprehensive Safety Analysis (CSA) 2010, to improve, as its states, the effectiveness of FMCSA's compliance and enforcement programs. Its goal is to achieve a greater reduction in truck (and bus) accidents.

There are four major components of CSA 2010, which are measurement, intervention, safety evaluation and information technology, or COMPASS.

Measurement will group the safety performance data of motor carriers and drivers into seven categories: unsafe driving, fatigued driving, driver fitness, drugs/alcohol, vehicle maintenance, cargo securement, and crash experience.

Intervention steps include, in part, warning letter, targeted roadside inspection, off-site investigation, on-site investigation, cooperative safety plan, and notice of violation.

Safety evaluation would be based upon performance data, and will result in a safety fitness determination of continue to operate, marginal, or unfit., which would be updated every 30 days.

COMPASS leverages new technology to change the way that FMCSA does business. The idea is that COMPASS will help FMCSA and the states to identify high risk carriers and drivers, and to apply a wider range of interventions to correct high-risk behavior in the stages.

The initial testing is scheduled for early 2008 in Colorado, Georgia, Missouri and New Jersey. At some point there will be rulemaking and then

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everyone will be invited – compelled to participate.

ODOT:

Focus on Drivers

Meanwhile, the Oregon Department of Transportation has a 2007-2009 Action Plan to Reduce Truck-at-Fault Crashes. According to ODOT, from 2001 to 2006, truck crashes increased 33%, in terms of actual numbers, while the truck crash rate, based upon miles traveled, increased 23%. Similarly, truck-at-fault crashes increased 32%, while the truck-at-fault crash rate, again based upon miles traveled, increased 22%. Total truck miles increased only 8% for the same 2001-2006 time period.

ODOT states that truck driver behavior accounted for 94% of the truck-at-fault accidents during the past six years. Therefore, ODOT is focusing on changing the truck drivers' behavior and fitness in order to reduce this at-fault accident rate.

The drivers are in ODOT's sights.

Insurance companies: Whose policy limits?

You pay your hefty premiums to the insurance company so that your company and operations are protected. Sometimes you also have an excess or umbrella policy as an additional safety net. Then disaster hits and you are glad that you have insurance.

But at times insurance companies decide to gamble and you may be at risk. For example, if there is a question of liability, the insurance company may decide to roll the dice and take its chances with the jury. That's fine and dandy if there is no

concern about exceeding the policy limits.

But if the decision of the insurance company leaves you exposed to a jury verdict in excess of your policy limits, that's a different story. By issuing the policy, the insurance company has the authority to decide how to defend a case or settle a case. At the same time, the insurance company has an obligation to act prudently.

I am involved with a fatality accident where liability is iffy, yet the damages could great exceed the combined limits of the primary and excess policies of \$2,000,000. The insurance companies, especially the excess carrier, may want to gamble. Yet the consequences to the motor carrier, if there is a large jury verdict, could be disastrous.

I have put them on notice that the case can be settled within the policy limits, limits that were previously agreed to. If the insurance companies wrongfully refuse to settle, they can be liable for the entire jury award.

John Wayne:

Sorry don't get it done.

You know how some people will mess something up, and then they'll apologize and then do the same thing again, and then apologize again. Like that's supposed to be OK since they always apologize. Drives some of us nuts since the harm is still repeated.

Well, we have company. I recently saw *The High and the Mighty*, with John Wayne, where the Duke says, after hearing an apology, "Sorry don't get it done."

So I have added that to my list of thoughts to live by, which are posted on my website.

That's it for now. Until next time, keep the cargo *rollin' on!*

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation.

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.