



DUMP TRUCK CARRIERS CONFERENCE

NEWSLETTER

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SCARY TRUTHS!

Some people have the vocabulary to sum up things in a way that you can quickly understand them. This quote came from the Czech Republic. Although somewhat redundant, it is obvious someone over there has it figured out. It was translated into English from an article in the Prague newspaper: *Prager Zeitungon*.

"The danger to America is not Barack Obama, but a citizenry capable of entrusting a man like him with the Presidency."

It will be far easier to limit and undo the follies of an Obama presidency than to restore the necessary common sense and good judgment to a depraved electorate willing to have such a man for their president. The problem is much deeper and far more serious than Mr. Obama, who is a mere symptom of what ails America.

Blaming the prince of the fools should not blind anyone to the vast confederacy of fools that made him their prince.

"The Republic can survive a Barack Obama, who is, after all, merely a fool. It is less likely to survive a multitude of fools, such as those who made him their president."

DID YOU KNOW?

Exempt Loads

There is a clear interpretation on the issue of exemption for the movement of gravel (or whatever commodity) transported from the commodity origin to the plant which manufacturers exempt roadwork materials. It is exempt if the gravel transported is used exclusively in the manufacture of the materials used in roadwork. However, it must be segregated correctly, typically in a stockpile used exclusively in the manufacture of roadwork materials.

For instance, the exemption would not apply if you delivered the gravel to the plant and dumped it in a stockpile of materials that were used in the manufacture of materials for both roadwork and commercial parking lots, or other non-roadwork applications.

ON FOOTBALL

"When it's third and 10, you can take the milk drinkers. I'll take the whiskey drinkers."

...Max McGee, Former Green Bay Packer

"Gentlemen, it is better to have died as a small boy than to fumble this football."

...John Heisman

GENERAL INFORMATION

GUILTY PLEA ENTERED IN SOPHISTICATED CDL FRAUD CASE

A defendant has pleaded guilty to mail fraud in connection with a widespread, fraudulent commercial driver's license (CDL) test-taking scheme in New York.

Last September, 11 individuals were arrested for their roles in helping CDL applicants cheat on their licensing exams at five Department of Motor Vehicles test centers in the New York City area.

Prosecutors allege that CDL applicants paid DMV security personnel between \$1,800 to \$2,500 for CDL test answers and to be escorted through the licensing process.

The defendants provided CDL applicants with pencils containing miniaturized, encoded test answers and Bluetooth headsets to communicate test answers. The defendants also acted as CDL test takers to help paying applicants during the test.

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Submissions by members and interested parties are welcome.

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AGENCY WANTS TO RAISE MINIMUM INSURANCE REQUIREMENTS

The Federal Motor Carrier Safety Administration (FMCSA) intends to increase the current financial responsibility minimums for commercial motor carriers as the current minimum levels went into effect almost 30 years ago and current insurance limits do not adequately cover "catastrophic" crashes, mainly because of increased medical costs.

The FMCSA projects that it will issue a formal proposal in November to:

- Increase the insurance minimums,
- Possibly extent the financial responsibility requirements to private motor carriers,
- Possibly adopt financial responsibility requirements for passenger-carrier brokers, and
- Revise its rules concerning self-insurance and trip insurance.

The insurance study found that while catastrophic motor carrier crashes are rare, the costs for resulting crash injuries can exceed \$1 million, the FMCSA says, which is more than current insurance requirements would need to cover.

DISMISSED ROADSIDE INSPECTION VIOLATIONS

Effective August 23, 2014, drivers who are found not guilty of a violation or otherwise have a citation dismissed in court will be able to have the violation removed from their CSA and PSP safety records through the DataQ program. Adequate documentation must be supplied through the DataQ website. We can assist you with the DataQ requests.

GENERAL INFORMATION

DON'T PAY THAT TICKET!

(By: Tony Palmer, ALDEN LAW)

Your driver calls you: He received a ticket. It's only a \$135 ticket and the officer told him that he can pay the ticket before the court date. It's a speeding ticket for 60 mph in a 45 mph. Your driver says he's going to pay. **DON'T DO IT!** It's a serious traffic violation and your driver could be on his way to losing his CDL privileges.

If a CDL driver is convicted of two "serious traffic violations," then there is a mandatory suspension of the driver's CDL privileges for at least 60 days. Serious traffic violations include:

- Speeding 15 mph or more over the limit,
- Reckless driving,
- Improper lane change,
- Following too close,
- Any traffic violation in connection with a fatal crash,
- Driving a CMV without a CDL or CLP or without the proper class/endorsements,
- A violation of a state or local law prohibiting texting while driving, and
- A violation of a state or local law restricting or prohibiting the use of a handheld mobile phone while driving.

We work with new CDL holders every week. We see too often where a CDL driver receives a notice of disqualification of his CDL privileges for two tickets. Invariably, the driver explains that he did not consult with counsel before paying the ticket. It is vital that drivers

understand the full impact of a ticket. Otherwise, the conviction could negatively impact a driver's CDL, a carrier's SMS scores, and insurance rates. Remember: The best ticket to fight is when your record is clean. For more information, contact John Alden or Tony Palmer at AldenLaw at (614) 221-1306.

WHEN IS SUBSTANCE TESTING REQUIRED?

Motor carriers are required to have drug and alcohol testing programs for any drivers operating commercial motor vehicles that require a CDL license. Under Part 382, the FMCSA requires these carriers to:

- **Randomly** test 10 percent of their drivers for alcohol and 50 percent of their drivers for drugs each year;
- Perform drug testing on drivers being considered for **employment**;
- Test-drivers who have been involved in an **accident** when there is a fatality or when the driver receives a citation in a tow-away or injury-related accident;
- Test drivers who are **suspected** (by a trained supervisor) of using drugs or alcohol while at work;
- Perform **return-to-duty** testing on drivers who have tested positive and completed an education/treatment program; and
- Perform **follow-up** testing on drivers who pass their return-to-duty test and have returned to performing safety-sensitive functions.

GENERAL INFORMATION

DRUG/ALCOHOL USE REMAIN LOW, BUT CARRIERS NON-COMPLIANT

Recent survey results indicate that relatively few drivers are failing their drug and alcohol tests, but many small motor carriers are not testing their drivers at all.

Results from the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Testing Survey for 2011 show that the violation rate for random drug and alcohol testing was 0.9 percent and 0.1 percent, respectively, similar to prior years.

The survey also found that only about 60 percent of motor carriers with drivers who are subject to testing have random testing programs in place. However, an estimated 90 percent of all drivers who are subject to testing - those operating vehicles that require a commercial driver's license (CDL) - are participating in random testing programs.

Why the discrepancy? According to the FMCSA, the disparity stems from the fact that small carriers, which make up a majority of companies in the national fleet, tend to be less

compliant with the Part 382 testing regulations. Large companies, on the other hand, tend to be more compliant with Part 382 and hire a majority of drivers.

The FMCSA's annual survey measures the percentage of drivers with CDLs who test positive for drugs and/or alcohol as a result of both random and non-random testing. Non-random testing includes pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up testing.

The 2011 survey results are based on data from about 2,000 randomly selected carriers employing almost 500,000 CDL drivers.

Rates

The accompanying table shows the estimated drug and alcohol violation rates for the six mandatory test types. According to the FMCSA, sample sizes for the non-random test categories were low, making the estimates less precise. In general, differences between the non-random testing results for 2010 and 2011 are not statistically significant. An alcohol violation is considered a blood alcohol concentration of 0.04 or higher.

Estimates of FMCSA Drug And Alcohol Violation Rates Among CDL Drivers

Category	2009		2010		2011	
	Drugs	Alcohol	Drugs	Alcohol	Drugs	Alcohol
Random	1.2%	0.0%	1.0%	0.0%	0.9%	0.1%
Pre-Employment	0.9%	0.0%	1.0%	0.0%	1.2%	0.0%
Post-Accident	1.9%	0.1%	1.4%	0.8%*	1.8%	1.5%
Reasonable Suspicion	5.8%*	11.5%	5.6%	15.4%*	15.7%	27.4%
Return-To-Duty	4.8%*	0.1%	0.9%	0.1%	6.8%	0.0%
Follow-Up	1.8%	1.0%	3.4%	0.1%	3.1%	0.0%

* - This estimate has extremely low precision. See FMCSA data for details on estimated sampling error.

GENERAL INFORMATION

ANTI-COERCION RULES WOULD APPLY TO MOTOR CARRIERS, SHIPPERS, RECEIVERS

Newly proposed regulations would prohibit motor carriers, shippers, and receivers from pressuring drivers into operating commercial motor vehicles (CMVs) in violation of highway safety regulations.

The proposal from the FMCSA includes procedures for drivers to report incidents of coercion to the agency, and the steps the agency would have to take in response.

The FMCSA says the rule is meant to help protect drivers from people in the logistics chain - including dispatchers - who are "frequently indifferent to operational limits." Under the new rule the company would be in violation if it disregards objection that a request would require violating safety regulations.

DRIVER AWARDED \$123,000 AFTER WHISTLEBLOWER COMPLAINT

An Iowa-based waste hauler has been ordered to reinstate a truck driver and pay damages after the driver was fired for raising safety concerns.

OSHA has ordered the company to pay \$123,203 in compensation following a federal investigation.

The driver was terminated early last year after raising repeated concerns to the company's owner during the reorganization of company routes. According to OSHA, the employee rightfully refused to operate a commercial vehicle in an unsafe manner and in violation of federal safety regulations.

After investigation OSHA ordered the company to reinstate the driver to his former position and pay back wages of over \$23,000 and compensatory and punitive damages of \$100,000.

Under federal whistleblower laws, companies may not discharge or retaliate against drivers for refusing to operate a vehicle in violation of a safety, health, or security rule, or because they had a reasonable apprehension of serious injury to themselves or to the public related to a vehicle's safety or security condition.

Detailed information on employee whistleblower rights is available online at www.whistleblowers.gov.

UPGRADE CONDITIONAL SAFETY RATINGS

(Larry Dannemiller)

If you have a "Conditional" safety rating, it can effect your insurance rates and, in many cases the ability to work for certain customers. You are also more likely to be inspected.

Large shippers have become sensitive to the possibility of "upstream lawsuits" as a result of using carriers with substandard safety ratings. Basically, the plaintiff who was harmed in an accident looks "upstream" for someone with deeper pockets than the carrier.

It used to be that if you had less than a "Satisfactory" rating you could clean up your act and request the DOT/PUCO to come and audit you in hopes of achieving that "Satisfactory" rating.

Not any more. Most audits these days are driven by your CSA/SMS scores determined from roadside inspections and the resulting "focused" audits only cover the troublesome basic, so the audit is unrated, leaving your safety rating unchanged.

Now you must file a petition (called a Safety Management Plan (SMP)) with supporting argument and documentation to upgrade your safety rating. It is an extensive process but normally successful. If you would like assistance with a substandard rating contact me or one of the attorney members shown on Page 9.

MY TURN

"THE ONE"

*(Written in biblical prose by a pastor's wife
as a commentary of current events)*

As it came to pass in the Age of Insanity that the people of the land called America, having lost their morals, their initiative, and their will to defend their liberties, chose as their Supreme Leader that person known as "The One."

He emerged from the vapors with a message that had no meaning; but he hypnotized the people telling them, "I am sent to save you." My lack of experience, my questionable ethics, my monstrous ego, and my association with evil doers are of no consequence. I shall save you with hope and change. Go, therefore, and proclaim throughout the land that he who proceeded me is evil, that he has defiled the nation, and that all he has built must be destroyed. And the people rejoiced, for even though they knew not what "The One" would do, he had promised that it was good; and they believed. And "The One" said "We live in the greatest country in the world. Help me change everything about it!" And the people said, "Hallelujah! Change is good!"

Then he said, "We are going to tax the rich fat-cats." And the people said "Sock it to them!" "And redistribute their wealth." And the people said, "Show us the money!" And then he said, "redistribution of wealth is good for everybody."

And Joe the plumber asked, "Are you kidding me? You're going to steal my money and give it to the deadbeats??" And "The One" ridiculed and taunted him, and Joe's personal records were hacked and publicized. One lone reporter asked, "Isn't that Marxist policy?" And she was banished from the kingdom.

Then a citizen asked, "With no foreign relations experience and having zero military

experience or knowledge, how will you deal with radical terrorists?" And "The One" said, "Simple, I shall sit with them and talk with them and show them how nice we really are; and they will forget that they ever wanted to kill us all!" And the people said, "Hallelujah!! We are safe at last, and we can beat our weapons into free cars for the people!"

Then "The One" said "I shall give 95% of you lower taxes." And one, lone voice said, "But 40% of us don't pay ANY taxes." So "The One" said, "Then I shall give you some of the taxes the fat-cats pay!" And the people said "Hallelujah! Show us the money!"

Then "The One" said, "I shall tax your capital gains when you sell your homes!" And the people yawned and the slumping housing market collapsed. And He said "I shall mandate employer-funded health care for every worker and raise the minimum wage. And I shall give every person unlimited healthcare and medicine and transportation to the clinics." And the people said, "Give me some of that!" Then he said, "I shall penalize employers who ship jobs overseas." And the people said, "Where's my rebate check?"

Then "The One" said, "I shall bankrupt the coal industry and electricity rates will skyrocket!" And the people said, "Coal is dirty, coal is evil, no more coal! But we don't care for that part about higher electric rates." So "The One" said, "Not to worry. If your rebate isn't enough to cover your expenses, we shall bail you out. Just sign up with the ACORN and your troubles are over!" Then He said, "Illegal immigrants feel scorned and slighted. Let's grant them amnesty, Social Security, free education, free lunches, free medical care, bilingual signs and guaranteed housing..." And the people said, "Hallelujah!" and they made him king!

MY TURN

Then "The One" said, "I am the "The One" - The Messiah - and I'm here to save you! We shall just print more money so everyone will have enough and everyone will be happy!"

But our foreign trading partners said unto him. "Wait a minute. Your dollar is not worth a pile of camel dung! You will have to pay more...And "The One" said, "Wait a minute. That is unfair!" And the world said, "Neither are these other idiotic programs you have embraced. Lo, you have become a Socialist state and a second-rate power. Now you shall play by our rules!"

And so it came to pass that employers, facing spiraling costs and ever-higher taxes, raised their prices and laid off workers. Others simply gave up and went out of business and the economy sank like unto a rock dropped from a cliff. The banking industry was destroyed.

Manufacturing slowed to a crawl. And more of the people were without a means of support.

And the people cried out, "Alas, alas!! What have we done?" But yea verily, it was too late. The people set upon "The One" and spat upon him, and stoned him, and his name was dung. And the once mighty nation was no more; and the once proud people were without sustenance or shelter or hope. And the change "The One" had given them was as like unto a poison that had destroyed them and like a whirlwind that consumed all that they had built.

And the people beat their chests in despair and cried out in anguish, "give us back our nation and our pride and our hope!!" But it was too late, and their homeland was no more.

Is this a fairy tale????

"The One" With Joe The Plumber





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