



EVERETT TRANSTRENDS

THE TRANSLAW GROUP, INC.

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

BACK TO SCHOOL



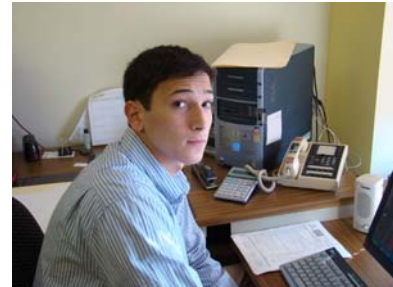
Tom Cresci

This summer The Translaw Group Inc. will be saying goodbye to Tom Cresci and Jon Gogel as they both head off to college.

Tom Cresci returns to Providence College as a sophomore and Jon Gogel begins his first year at UMASS-Amherst: Yes. We have spoken to each about the danger of alcohol, fake IDs,

partying, skipping class, and other bad habits.

The have assured us that they will consider our thoughts but like many of our clients, will simply do as they please. Good luck, gentlemen!



Jon Gogel

FMCSA CLARIFIES AUXILIARY LIGHTING RULE

The Federal motor Carrier Safety Administration earlier this month announced a change to its rule regarding the use of auxiliary lights on heavy-duty trucks.

On June 11, FMCSA said it would permit the use of additional lights on trucks, provided each extra light was "at least twice the distance that separates each (additional) lamp in the required three-lamp cluster." **Try to figure that one out!**

THP TROOPER ALLEGEDLY HARASSED FEMALE TRUCKERS

A Tennessee Highway Patrol trooper who allegedly groped two female truck drivers last year was allowed to continue working for months, and then retire with a full pension.

The two truckers say Sgt. Leon King rubbed or fondled them at the Brownsville weigh station. One of the women said she was taken to a secluded room where King allegedly threatened to write her a ticket, and then asked if she would go out on a date with him.

According to state records, King had also used his position to make advances toward another woman in 1999. Two other Tennessee highway patrolmen have recently been in the news on sex-related allegations.

One allegedly groped a married woman after showing up at her house while on duty. The other made international news when a porn star said she performed a sexual favor for the officer in return for not getting busted for drug possession. **A position on the THP certainly has its privileges.**

YOU MUST CHECK THE BOX!

Plaintiff Walters arranged for his ex-wife, Choate, to ship five boxes of personal stuff (CDs, DVDs, clothing, papers, and photos) interstate with DHL. Choate cheaped out, apparently, and signed a DHL bill of lading that limited the carrier's liability to \$100 per package or actual value unless a box was checked next to "shipment value protection" and a dollar amount inserted. Choate didn't check the box.

But before DHL fetched the freight, Walters called DHL requesting insurance coverage. He was told to speak with the DHL driver when he arrived, which Walters did, whereupon he was told to fax an authorization letter to DHL requesting coverage. Again, Walters followed instructions to the T. Of course, the freight was delivered damaged and short – who would have guessed?

DHL sought to limit its liability, and moved for summary judgment. The central district of Illinois federal court agreed, and dismissed the claim. The bill of lading's integration clause rendered Walters' calls and fax inadmissible parole evidence.

The court further found that a fax cannot modify a bill of lading that contains all essential elements of a contract of carriage. Choate was Walter's fully authorized agent; the shipper could have protected himself by instructing her to check the box. Lastly, the shipper could have used DHL's automated system to request full coverage, an option he failed to take - again for unknown reasons. **Whether you are a shipper or carrier, make sure you always protect your individual best interests.**

CONSUMER FRAUD CLAIM DOESN'T TRUMP CARMACK'S DOMINION, AND BOOKING AGENTS AREN'T LIABLE FOR FREIGHT DAMAGE

Shipper Berryman sued carrier Wheaton when her household goods arrived damaged after interstate transit. She booked the haul through Davi & Valenti Movers (DVM), and paid an additional amount for insurance coverage and selected a full replacement value liability option on Wheaton's bill of lading. She originally filed in New Jersey state court, but the carrier removed the matter to the Garden State's federal court, and soon moved to dismiss the shipper's state and common law claims.

These included the usual mispleaded allegations, such as breach of contract, breach of the covenant of fair dealing, and negligent infliction of emotional distress. Tucked in the list was a claim for breach of New Jersey's *Consumer Fraud Act*. Berryman apparently saw the light, and fought only to keep the latter state-law allegation alive.

Drawing on decisions that preserve causes of action independent from the actual cargo loss, the plaintiff shipper urged that Carmack doesn't preempt a consumer fraud claim based on failure to procure or provide insurance.

The court looked to a number of other decisions (and the absence of any counter-authority), to conclude that this type claim, which is encompassed by bill of lading terms, still falls under Carmack's dominion.

HOURS OF SERVICE, WHERE DO WE GO NOW!

COURT DUMPS 34-HOUR RESTART, 11-HOUR DRIVING LIMIT

TRANSLAW ALERT



The motor carrier industry once again is faced with another new hours-of-service regulation, complements of the U. S. Court of Appeals for the District of Columbia. The Court issued a ruling on July 24 on a pair of challenges to the current hours-of-service regulations.

In the decision issued by the court, the 11-hour driving time limit and the 34-hour restart were rejected and thrown out. However, there were no changes to the sleeper-berth provision. The court ruled based on procedures followed by the Federal Motor Carrier Safety Administration and not on the merit of the challenged provisions.

The change does not take effect until September 14 unless the Court issues additional directives. According to a statement from FMCSA, agency staffers are "analyzing the decision issued today to understand the court's findings as well as determine the agency's next steps to prevent driver fatigue, ensure safe and efficient motor carrier operations and save lives. This decision does not go into effect until Sept.14, unless the court orders otherwise."

Until FMCSA takes some sort of official action carriers should continue operating under the 11-hour driving rule and utilizing the 34-hour restart if needed.

LOUISIANA LAWMAKERS WANT TO REDIRECT STATE MONEY

Staring at a backlog of transportation projects that reaches well into the billions, the Louisiana Legislature spent a lot of time this year looking into ways to help plug the gap in funding.

Gov. Kathleen Blanco weighed in with a proposal to use \$450 million of the state's budget surplus to make one-time road and bridge improvements. With little reaction from many legislators, she openly pondered boosting that amount to about \$650 million.

The state's backlog of road needs is increasing by up to \$400 million a year, reported The Advocate newspaper in Baton Rouge. At press time, bills that drew consideration included several efforts to redirect fees and taxes from the state treasury to transportation.

One such revenue measure would divert all of the 4-percent state sales tax assessed on cars and trucks. About \$360 million annually would be routed to a special highway program for non-federally funded roads.

INSPECTION STATIONS TO BE OPEN LONGER

What can we say! Connecticut is up to it, again! They first raised diesel fuel tax from 26 cents to 37 cents per gallon and now they want to keep there inspection stations open longer to generate more money.

Here is what it would look like.

Greenwich	Monday - Friday	Saturday - Sunday
	12 hr/day	8 hr/day
	4 hr shifts	4 hr shifts
Danbury	Monday - Friday	Saturday - Sunday
	8 hr/day	4 hr/day
	4 hr shifts	
Union	Monday - Friday	Saturday - Sunday
	8 hr/day	4 hr/day
	4 hr shifts	

The Department of Public Safety and Motor Vehicles would share responsibility for operation. We can only see turf wars and blame most likely on the backs of the motor carrier. It appears the state is trying to balance the budget by extorting large sums of money from the Motor Carrier Industry.

Shippers beware; you are the ones who end up paying for all of this.

BRIDGES FALLING DOWN

Just as Transtrends was to be distributed, the 35W Bridge in Minneapolis collapsed. This tragedy is symptomatic of a larger problem throughout the United States highway infrastructure. Here in Massachusetts we see much evidence of the neglect of highway maintenance. Many blame the funneling of funds to the Big Dig, which is always falling apart.

Even the Massachusetts Turnpike is neglected for the first time since its opening – Stretches of the Pike ride like a washboard. We pay the tolls but it seems the Pike is cheaping out, perhaps in favor of management jobs and big paychecks. It will not be unusual to see other similar tragedies like the 35W Bridge. The solution, as always, is money!

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