



EVERETT TRANSTRENDS

THE TRANSLAW GROUP, INC.

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TRUCKER'S WIDOW AWARDED \$16 MILLION IN WRONGFUL DEATH SUIT

A superior court jury in Bridgeport, CT, has handed a \$16 million wrongful death award to the widow of a trucker who died of a heart attack in 1994. *The Insurance Journal* reports 49-year-old Gary Carlson's widow sued a hospital and a doctor for failing to diagnose and treat his heart disease. In an earlier trial, she was awarded \$10 million, but the defendants appealed.

DEL MONTE FINED FOR FORKLIFT ACCIDENTS, HAZARDS

A major food processing company has been fined following multiple instances of employees being hit and injured by forklifts and other injuries that went unreported. In early October, the Oregon Occupational Safety and Health Division fined Del Monte Fresh Produce \$13,100, according to a news release from the state agency.

American Staffing Resources, which employs some of the people who work in the produce plant, also was named as a responsible party by Oregon OSHA and was fined \$15,600.

Oregon OSHA investigated the Del Monte Fresh Produce plant in Portland, earlier this year after one worker was struck and injured by a forklift when the forklift operator drove 17 feet in reverse "without looking before striking the accident victim," the release stated.

Further, Oregon OSHA found multiple violations of the Oregon Safe Employment Act including:

- Failing to protect workers from safety hazards, including multiple areas where electrical connections were exposed to water, ladder rungs were covered with diced cabbage,

protective equipment wasn't provided to employees, and workers "routinely worked 8- to 12-hour shifts wearing footwear that became wet."

- Incomplete documentation of workplace injuries and illnesses. Several workplace injuries weren't documented and required information went unreported for accident forms.
- Failure to conduct investigations of accidents in order to prevent future accidents, although seven accidents were documented in 2006 where a worker was struck and injured by a forklift while standing next to a stationary object.
- Failing to ensure that non-management employees were represented on the employer safety committee.

Translaw suggests that everyone take a look at their warehouses and loading docks and take any corrective action needed.

Oregon OSHA said its investigation had been under way before June 12, 2007, when the U.S. Immigration and Customs Enforcement agency raided the Portland plant and detained 167 illegal workers.

**IMPORTANT TAX DUE DATES ON THE HORIZON
FOR 2008 CORPORATE TAX FILINGS**

MISCELLANEOUS TAX FILINGS		
TAX TYPE	STATE	DUE
BUSINESS TAX (GROSS RECEIPTS)	NEW YORK	ESTIMATE (90% TAX PAID) BY MARCH 15
BUSINESS TAX	NEW JERSEY	MARCH 15
BUSINESS TAX	PENNSYLVANIA	MARCH 15
PROPERTY TAX	ARKANSAS	MARCH 31
PROPERTY TAX	KANSAS	MARCH 20
PROPERTY TAX	KENTUCKY	APRIL 15
ST-10	EXCISE TAX ON VALUE OF FUEL CONSUMED ON MA PIKE FOR WHICH A DEDUCTION WAS TAKEN FOR MILES/TOLLS	APRIL 15

Each of the above listed states is active in making sure carriers comply with the rules and regulations affecting each jurisdiction's tax regulations. It is important to note that Pennsylvania and New Jersey will actually impound your vehicle until you pay them a small "ransom" at which time you will still be required to file the requisite tax filings going back, generally, three to five years.

You can, however, join an amnesty program in PA and NJ wherein you can make your intentions known that you will comply and those states will put you on a special list that will preclude on-the-road enforcement as long as you comply with the amnesty program. This office routinely handles such matters for those carriers who want to take advantage of the amnesty relieve. Call the office for further details.

The tax regulations may seem unfair and un-enforceable; however, many carriers have tried to escape the tax only to be “caught” on the road. Please feel free to call this office to discuss your particular situation.

SECTION 7 PROVISIONS

Section 7 provisions of the bill of lading continue to confuse carriers and shippers alike. The following text will give you a better understanding of just what Section 7 can do for both carriers and shippers.

Section 7

Much confusion surrounds the use and purpose of Section 7 of the bill of lading.

Section 7 states that the consignor (shipper) or consignee (receiver) shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected, except that collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the Bill of Lading. Nevertheless, the consignor shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information proved by the consignor.

The purpose of the provisions of Section 7 is for the transfer of liability for freight charges from the consignor to the consignee. For example, FAST FREIGHT TRUCKING CO. prepares a bill of lading for a shipment consigned to XYZ Company that originated at FAST FREIGHT TRUCKING CO.'s customer, ABC Company. ABC Company executes Section 7 of the bill of lading transferring responsibility for payment of the freight charges from ABC Company to XYZ Company.

It is the duty of FAST FREIGHT TRUCKING CO. to secure payment or extend credit before delivery to XYZ Company. If FAST FREIGHT TRUCKING CO. fails to secure payment before delivery and extends credit and XYZ Company fails to pay the freight charges, FAST FREIGHT TRUCKING CO. at that point cannot go back to ABC Company for payment of freight charges. Shippers can accomplish Section 7 execution on an ongoing basis by having its corporate name imprinted on the bill of lading face at the location it determines to be appropriate for the Section 7 language.

If Section 7 is not executed then FAST FREIGHT TRUCKING CO. can collect its charges from either the consignee or consignors including those shipments tendered as “collect”.

NOTE: The execution of Section 7 does not apply to undercharges on the part of the carrier or where the lading has been misdescribed whether by content or weight on the part of the consignee. The carrier may look to the consignee for the additional charges resulting from such actions by the consignee.

Please review the above and feel free to contact this office for further information or clarification.

PROPER MEASURE OF DAMAGES FOR INCLUSION ON A FREIGHT CLAIM

QUESTION: What is the proper measure of damages that should be included in a freight claim? Specifically, how do you deal with the issue of “profit” when a shipment is lost or totally destroyed and a replacement shipment has been made?

ANSWER: The proper measure of damages when goods are sold to a customer and such goods are lost or destroyed in transit would be the replacement costs and not the manufacturer’s costs.

It would not matter if the shipper replaced the destroyed or lost goods and billed the consignee for the full value of the shipment and also receiving the full replacement cost of the destroyed or missing goods from the carrier. The issue of replacing the goods and billing your customer for a second shipment is immaterial. In fact, replacement costs could reasonably be more than the cost of the original shipment and therefore a claim for the damaged or destroyed goods could exceed the cost of the original destroyed or lost shipment.

Raw materials to produce the item(s) needed to be replaced may have gone up dramatically thereby causing the replacement cost to be more than the “original” replacement costs at the invoice price of the destroyed or missing goods.

Shippers and consignees must always mitigate their losses and that fact cannot be discounted.

When preparing a claim always use the replacement costs and when the carrier denies the claim those issues surrounding proper measure of damages will necessarily have to be addressed at that time. Motor carriers always ask for the claim to be reduced to the manufacturer’s costs but that should not deter the claimant from filing for the actual loss.

Should you have any further questions, please do not hesitate to contact this office.

STATUS OF HOURS-OF-SERVICE RULES

December 27, 2007 is the date the courts have set to allow the Federal Motor Carrier Safety Administration to address the two issues the courts found objectionable; the 11 hours driving tour and the 34 hour restart. It is now up to the Federal Motor Carrier Safety Administration to announce what it will do to address the 11 hour rule and the 34 hour restart.

The motor carrier industry is, generally, in favor of the 11 hour tour and the 34 hour restart. The anti-truck groups as characterized by Translaw want a complete revision of the hours of service rules and want to see the Federal Motor Carrier Safety Administration change the rules to go back to a 10 hour tour of duty with out a 34 hour restart.

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Now, keep in mind, that all federal and state agencies that enforce the hours of service rules will need several months to get up to whatever speed they will need in order to retrain themselves to begin a new round of enforcement. The timeline is as follows.

December 27, 2007 new/revised hours of service rules to be issued by the Federal Motor Carrier Safety Administration – Merry Christmas.

March 27, 2008 or thereabouts expect to see enforcement began with whatever new rules have been promulgated.

Barrier Roads – The Secret NY HUT

The State of NY has been assessing carrier's additional highway use taxes as a result of the little known BARRIER ROAD issue. What are barrier roads? Simply stated, these are parts of the NY Thruway system that appear to be a part of the Thruway, but are in fact, non Thruway owned roads and therefore subject to HUT taxes. The major barrier road issues for most carriers involve the I-95 corridor between CT and NJ via the GWB. Any commercially produced mileage software program will compute total NY miles as 49.2 with toll miles 23, however, the NY will only allow 48 total miles with only 15 toll miles due to the fact that parts of I-95 are actually under the jurisdiction of the NY Port Authority or state of NY and not the Thruway.

Be advised that you will pay additional tax, penalty and interest if you fail to adjust your record keeping practices. The following grid may be of some use to readers.

Please feel free to call the office if you have any questions on the barrier road issue.

Actual Toll and Non-Toll Mileages on NY Highways

Leg	Total Miles	Toll Miles	Non-Toll Miles
I-95 Corridor Via GWB	48	15	33
I-95, I-287, I-95	56	23	33
I-95, I-678, I-495, I-95, Via Queens	68	15	53
I-95, I-678, I-440, I-95, Via Brooklyn/Staten Island	83	15	68
I-84, I-684, I-84, CT to NY	118	20	98

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