

The Transportation Brief®



The Transportation Brief

A quarterly newsletter of legal news for the clients and friends of Scopelitis, Garvin, Light & Hanson.

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Federal Court Issues Significant Ruling on Public Liability Coverage Charge-Backs

In September, a federal district court in Indiana issued an important ruling vindicating Mayflower Transit, Inc.'s charge-backs to owner-operators of certain public liability insurance exposure. The decision was issued in one of the many class-action lawsuits brought by OOIDA alleging violations of the federal leasing regulations, and, although the case will later address other pending claims, Mayflower scored a significant victory by way of the court's ruling.

Charge-backs for required public liability insurance do not violate federal law

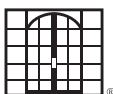
The federal court ruled that Mayflower's former practice of charging all owner-operators for the bodily injury/property damage (BI/PD) coverage required of motor carriers did not violate the leasing regulations' requirement that carriers "maintain" public liability insurance. According to the court, a carrier may require owner-operators to pay the cost of BI/PD coverage so long as the carrier is the entity that *maintains* the insurance policy. Similarly, the court declared that the charging back of BI/PD insurance costs did not violate the leasing regulations' prohibition against requiring an owner-operator to purchase or rent particular "products, equipment, or services." The court quite commonsensically pointed out that owner-operators were not being compelled to purchase insurance from the van line; rather, the owner-operators were simply subject to a clearly permissible charge for insurance Mayflower was statutorily required to carry.

Charge-backs for bobtail and other insurance will be addressed in later rulings

The court's order left for trial OOIDA's claim that Mayflower violated the leasing regulations by allegedly charging back to owner-operators more than it paid in premiums for bobtail and occupational accident insurance. The court did not hint at whether it believes charge-backs for insurance exceeding the carrier's cost would violate the regulations.

The decision in the *Mayflower case* is interlocutory in nature, meaning it cannot be immediately appealed without special permission from the district and appellate courts. Thus, it is uncertain if or when the ruling might be addressed at the appellate level. Nevertheless, carriers can take comfort in the fact that this decision (a first *vis-à-vis* insurance charge-backs by a federal court) rests upon sound legal principles and a reading of the leasing regulations that comports with their plain and unambiguous meaning.

Gregory M. Feary, Indianapolis
Daniel R. Barney, Washington, DC



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Briefly...

IRS Announces New Per Diem Rates

On October 5, 2005, the IRS updated its rules for substantiating *per diem* expenses incurred by employees while traveling away from home for business purposes. Importantly for motor carriers providing meals and incidental expense (M&IE) *per diem*s for their drivers, the IRS has substantially increased the M&IE rate. The M&IE rate for drivers operating in the continental United States has increased to \$52.00 per day, and the M&IE rate for drivers operating outside the continental United States has increased to \$58.00. Although the IRS typically adjusts the *per diem* M&IE rates annually, this is the largest single increase in its corresponding rate for some time. Motor carriers should also note that the portion of *per diem* expense reimbursement that is deductible as a business expense, which is currently 70 percent, will increase to 75 percent beginning in 2006 and to 80 percent in 2008.

Steven A. Pletcher, Indianapolis

Congress Endorses New Unified Carrier Registration System

In a long-anticipated change to the Single State Registration System (SSRS), Congress has established a January 1, 2007 deadline for the creation of a new on-line Unified Carrier Registration System (UCRS). The UCRS will not only replace the SSRS, but also consolidate into one program the current systems for FMCSA registration, issuance of DOT identification numbers, proof of financial responsibility, and identification of service of process agents.

The UCRS is intended to serve as a clearinghouse and depository

of information on all motor carriers and motor carrier-related entities. To that end, private carriers as well as freight forwarders, brokers, equipment leasing companies, and for-hire carriers exempt from FMCSA carrier registration requirements (e.g., carriers engaged in exempt intermodal terminal operations, intercorporate hauling, and the transportation of agricultural and livestock products) will all be subject to the new system even if they are not required to obtain operating "authority" from the FMCSA. It is anticipated that the FMCSA will require proof of financial responsibility of not less than \$750,000 from both for-hire exempt and private carriers even before the UCRS goes into effect.

Watch for future *Transportation Brief* updates on upcoming UCRS regulations.

Andrew K. Light, Indianapolis

California Law Requires Sexual Harassment Avoidance Training

In California, a bill known as AB 1825 was recently signed into law mandating that qualifying employers provide additional training to their supervisory workforce. The new law requires that, by the end of 2005, all employers who employ 50 or more employees/independent contractors in the State of California must provide training on the subject of sexual harassment. Training must include at least two hours of classroom or other interactive training and must be provided to all supervisors. The definition of a supervisor under this law is quite broad and includes any individual who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign

or discipline other employees. Failure to provide the required training may expose employers to punitive damages if a complaint for harassment is filed.

*Sara L. Pettinger, Chicago
Kathleen C. Jeffries, Los Angeles*

Congress Tightens Regulation of Household Goods Carriers

The recent federal SAFETY highway bill created a number of new requirements and penalties for interstate household goods movers:

- Physical surveys for customers within 50 miles of an agent are now mandatory unless waived in writing
- Failure to release a shipment upon tender of 110% of a non-binding estimate or 100% of a binding estimate – subject to very specific exceptions – is punishable by criminal fines, two years imprisonment, and a civil penalty of \$10,000 *per day*
- State regulators are empowered to enforce federal consumer protection regulations against interstate movers
- State attorneys general are authorized to file suits against interstate movers, brokers, and anyone who "participates" in an alleged violation
- Incomplete waiver/declaration of value forms now result in the customer's right to the replacement value of the shipment

The new requirements were effective August 10, 2005.

*Richard A. Clark, Indianapolis
Robert J. Henry, Chicago*

Kathleen Jeffries, Bob Henry Advance the “Full Service” Commitment at the Transportation Law Firm

The Scopelitis firm is pleased to welcome Kathleen Jeffries and Bob Henry – both well known and highly regarded professionals in the transportation industry – as two recent additions to its full service transportation legal team.

Collectively, Kathleen and Bob add breadth and depth to the firm’s singular focus in transportation law. Individually, they bring different but equally impressive records of experience that will serve as valuable resources for the firm’s trucking and transportation clients.

Kathleen Jeffries is Immediate Past President of the Transportation Lawyers Association (TLA) and a recipient of the TLA’s Distinguished Service Award. She also previously served as editor of the TLA’s national publication, *The Transportation Lawyer*, and as Chair of its Freight Claims Committee.

In joining the Scopelitis firm, Kathleen was instrumental in the opening of the firm’s new Los Angeles office, which is well positioned to serve clients’ transportation needs. She has over 21 years of experience in transportation and general business law in Southern California and represents motor, rail, and air-freight carriers; freight forwarders; property brokers; and a variety of shippers, among others, as general business counsel and in transportation-related litigation, regulatory proceedings, and contract development.

Bob Henry comes to the Scopelitis firm’s Chicago office from SIRVA, Inc., an international leader in the household goods moving industry, where he served as vice president and associate general counsel.

Bob has practiced in the transportation industry for 28 years, with a background in transactions ranging from transportation contracts to acquisitions (as buyer and seller) and experience that includes antitrust issues, securities, secured lending and UCC matters, and bankruptcy. Before joining the firm, Bob provided in-house legal services for SIRVA following the combination in 1999 of North American Van Lines and Allied Van Lines, where he served for eleven years as vice president and general counsel. His role included counseling the van line activities of the Allied, North American, and Global Van Lines household goods moving businesses in the U.S. and Canada, their international moving networks, and SIRVA’s insurance business.

Many of the firm’s senior attorneys have enjoyed working with Bob in his former roles – as they have Kathleen in hers – and look forward to collaborating with them on behalf of the firm’s clients in the future.

For the Record

Robert J. Henry joined the firm on September 6, 2005, as a partner in the Chicago office. He will concentrate his practice on transportation and agency contracts, transportation regulatory matters, insurance, and business transactions.

Michael B. Langford was awarded the Schneider National Outside Counsel Partnership Award in October 2005 while attending the Transportation Industry Defense Association’s meeting in Las Vegas.

Congratulations to **Jeffrey S. Jackson** and **Nathaniel G. Saylor**, who began their practices this fall as associates in the Indianapolis office.

On the Road

Jim Hanson will present “Complying with Recent Developments in Wage and Hour Law in Indiana” at the National Business Institute’s Wage and Hour Law Seminar, December 14, in **Indianapolis**.

Kathleen Jeffries will attend the Conference of Freight Counsel meeting, January 8-9, in **Sonoma, California**.

Andy Light, Dan Barney, and Adam Smedstad will participate in a panel on owner-operator/independent contractor issues at the Transportation Lawyers Association’s Regional Meeting on January 13 in **Chicago**. Norm Garvin, Tim Wiseman, Bill Brejcha, Leonard Kofkin, Don Vogel, Greg Ostendorf, and Kathleen Jeffries will also attend.

Mike Langford will offer a presentation on orthopedic injuries at the Transportation Industry Defense Association’s Mini Conference, February 1-2, in **Orlando**. Don Devitt will attend as well.



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Dispatches



New Federal SAFETY Highway Bill Highlights

◆ Tim Wiseman warns that the bill substantially increased the criminal and civil penalties for violations of the Federal Motor Carrier Safety Regulations by motor carriers and their employees or drivers. For example, motor carriers that knowingly allow a driver to violate an out-of-service order are now subject to penalties of up to \$25,000 and up to 12 months of imprisonment for each violation.

◆ The Secretary of Transportation is required to formulate new regulations for intermodal equipment safety by August 10, 2006. According to Greg Ostendorf, the new regulations will likely place a larger burden on intermodal equipment carriers with respect to responsibility for roadworthiness.

◆ Jeff Jackson reports that the SAFETY bill makes the agricultural exemption to the federal hours of service rules for truck drivers permanent in federal law. It also clarifies the definitions of “agricultural commodities” to mean “any agricultural commodity, non-processed food, feed, fiber or livestock and insects” and “farm supplies” as “products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting season within each State, as determined by each State, and livestock feed anytime of the year.”