

# 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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## *Illinois Imposes New Workers' Compensation Tax on Insurers and Self-Insureds*

On June 20, 2003, Illinois Governor Rod Blagojevich signed into law a new tax on workers' compensation insurers and many self-insured employers. The tax will be used to pay for the operations of the Illinois Industrial Commission and to offset some of the estimated \$3.5 billion deficit in the Illinois General Revenue Fund.

*The tax is estimated to cost insurers and self-insureds \$35 million annually*

For self-insured employers, the tax is called the Industrial Commission Operations Fund Fee and will equal .045% of the employer's annual actual wages paid in Illinois as reported in the employer's annual self-insurance renewal application. Insurance companies will pay an Industrial Commission Operations Fund Surcharge, which will equal 1.5% of an insurer's direct written premium for each quarter beginning on September 1, 2003. Failure to pay the full amount of either component of the tax can result in a penalty equal to the greater of either \$1,000 or 5% of the deficiency for each month or part of a month that the deficiency remains unpaid.

*Many question the constitutionality of the tax*

Self-insured employers in particular are concerned that the tax lacks uniform applicability because municipalities and other governmental units are exempt. Also, self-insureds that purchase excess insurance are "double-taxed" in the sense that they will pay tax on both their payroll and on excess insurance premiums.

There is a strong likelihood that the General Assembly will revisit the new tax this Fall and expand its applicability to the self-insured employers it failed to include in the current version of the law. In the meantime, employers can expect the already tight insurance market in Illinois to constrict even further.

*Gerald F. Cooper, Jr.,  
Dennis J. Duffy,  
Chicago*

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# Briefly...

## *New Jersey Seizes Trucks to Compel Payment of Corporate Taxes*

New Jersey and Pennsylvania continue efforts to collect back taxes from trucking companies. In New Jersey, a trucking company is at risk if it makes deliveries or pickups in the state and fails to file New Jersey corporate income tax returns. At random stops, if the special agent determines from the driver that the company has a sufficient presence within New Jersey, a jeopardy assessment is issued immediately and the truck may be impounded until the trucking company agrees to payment of estimated tax and penalties. New Jersey has not released any specific guidance for trucking companies, but a previous ruling that six pickups of passengers by a bus line is sufficient to trigger the tax may apply to truckers.

With counsel's advice, companies that are regularly making deliveries or pickups in New Jersey without filing New Jersey income tax returns may want to consider their tax filing options, including New Jersey's Voluntary Disclosure Program.

*Steven A. Pletcher  
Ronald J. Morelock,  
Indianapolis*

## *Union-Organizing Campaigns Call for Calm Response*

Unions have stepped up organizing efforts in recent months, and no employer is immune from a union-organizing drive. The news that a drive has begun understandably may cause

anxiety and even outright anger. It is in these first hours and days of a campaign, however, that employers tend to get themselves into the most trouble with emotional reactions.

The most common mistakes made by anxious employers are:

- ❖ asking employees whether they support the union or whether they know who is involved in the union activity
- ❖ discharging employees believed to be union supporters
- ❖ telling employees that the company will shut down rather than accept a union

Employers targeted by unions should seek legal counsel as soon as possible and take comfort in the fact that, with proper advice and by avoiding common emotional mistakes, union-organizing campaigns can often be successfully resisted.

*James H. Hanson,  
Indianapolis*

## *Court Says "Carriers Take Heed"*

When a federal court of appeals tells carriers to "take heed" if they want enforceable limitations of liability, carriers are well advised to listen. The 11th Circuit recently refused to allow a carrier to limit its liability because, although the bill of lading contained a declared value box which the shipper filled in with the actual value of the shipment, the bill did not contain a box for requesting excess liability coverage, thereby denying the shipper a reasonable opportunity to choose between two or more levels of coverage. The Court warned carriers to draft better shipping documents, which should

prompt all companies to review and, if necessary, revise tariffs and bills of lading to better protect their interests.

*Robert L. Browning, Indianapolis  
William D. Brejcha, Chicago*

## *DOT Adopts New Security Requirements For Shippers And Transporters Of Hazardous Materials*

Since September 11, 2001, the DOT has been concerned that the transportation of hazardous material over the nation's highways may pose an inviting target for terrorist activity. As a result, the DOT's Research and Special Programs Administration established new requirements for shippers and carriers of hazardous materials that require placarding. Such shippers and carriers must develop a written security plan by September 25, 2003. The plan must address personnel, unauthorized access and en-route security issues. Also, shippers and carriers must provide security training on how to recognize and respond to possible security threats to all of their hazardous material employees and contractors by December 22, 2003. Finally, the new rules allow the DOT to assess fines and penalties for non-compliance. Companies that are involved in the transportation of hazardous material should take steps to implement the new security plan and training requirements prior to the upcoming compliance deadlines.

*Timothy W. Wiseman,  
Indianapolis*

## *SGL&H Chicago and the Art of Workers' Compensation Defense*

Successfully defending motor carriers against workers' compensation claims may be more art than science, according to Jerry Cooper of SGL&H's Chicago office. The "art," Cooper says, is weaving the unique elements of trucking and trucking law into the claims-handling process and doing so in a cost-effective way that produces a favorable outcome for the motor carrier.

Cooper has been defending motor carriers for nearly 20 years, the past five years as leader of the firm's Illinois workers' comp defense team. The Chicago workers' comp group includes fellow partner Victor Shane; associate Dennis Duffy; and Rob Rubin and Maria Portela, two senior attorneys who supervised workers' comp litigation for a major national insurer before joining SGL&H.

Since 1985, Cooper has handled all Illinois claims for Roadway Express. He began his career in workers' comp law as Midwest Division counsel for Roadway Services and continued serving Roadway and other trucking concerns after moving on to private practice with Shane. Cooper and Shane have now expanded the firm's Chicago workers' comp practice to include nearly 100 motor carriers involving over 3,000 matters.

Cooper is past president and current director of the Workers' Compensation Lawyers' Association. He is a Governor-appointed member of the Illinois Self-Insurance Advisory Board and Legal Technical Advisor to the Minority Leader of the Illinois House of Representatives.

Shane currently teaches workers' comp law for the Illinois Institute of Continuing Legal Education and the Chicago Bar Association. He is managing partner of the SGL&H Chicago office.

## *For The Record*

**Carla Hounshel**, an associate in the Indianapolis office, has been selected to participate in the Bar Leader Series, a year-long leadership training program sponsored by the Indianapolis Bar Association.

**James Attridge** was selected as the new Vice Chairman of the Transportation Loss Prevention and Security Association at the group's annual conference in Reno.

## *On The Road*

**Mike Langford** will speak on "Fighting Overly Broad and Irrelevant Discovery Requests" at a Schneider National Carriers seminar, September 10-12, in **Green Bay**.

**Andy Light** and **Tim Wiseman** will speak at First Fleet Corporation's Fleet Management Conference, September 17, in **Ft. Lauderdale**.

**Don Devitt** will present "What Not To Do When a Loss Occurs" at the Calumet Suburban Traffic Association's Education Night, September 17, in **Hammond, Indiana**.

**Dan Barney** will moderate a panel on owner-operator class actions at the Truckload Carriers Association Independent Contractor Division Annual Meeting, September 25-26, in **Dallas**.

**Rich Clark** will address the National Safety Conference of the American Moving and Storage Association, September 29, in **Chicago**.

**Steve Pletcher** will attend the National Association of Professional Employer Organizations' annual conference, October 1 - 4, in **Orlando**.

**Norm Garvin** and **Tim Wiseman** will attend the Indiana Motor Truck Association's annual meeting, October 1-3, in **Baselton, Georgia**.

**James Attridge** and **Kim Mann** will attend the Transportation Law Institute, October 12 - 13, at the **University of Denver College of Law**. **Kim** will moderate a panel on motor carriers' obligations to collect state sales and use taxes.

**Jim Hanson** and **Dan Barney** will speak and **Jerry Cooper** and **David Robinson** will attend the Annual Conference of the North American Transportation Employee Relations Association, October 12 - 15, in **St. Petersburg Beach**. **Dan's** topic is "Independent Contractor Update: NLRB Trends and OOIDA Lawsuits." **Jim's** topic is "UAW Competes with the Teamsters for Organizing Local Drivers."

**Tom Farrell** and **Mike Langford** will attend the Trucking Insurance Defense Association's highway accident litigation seminar, October 15-17, in **Denver**.

**Greg Feary** will moderate a panel on current issues in liability insurance and **Dan Barney** will speak on owner-operator lawsuits at the American Trucking Associations' Management Conference & Exhibition, October 19-22, in **San Antonio**. **Andy Light** and **Jerry Cooper** will also attend.

**James Attridge** will present "So You Thought You Were De-Regulated?" at the Loss Prevention Conference of the Southern Motor Carriers Association, October 20, in **Atlanta**.



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## Dispatches



**Angie Cash** reports that the liability of in-home service and residential delivery companies will change in Texas effective September 1, 2003, by requiring criminal background checks on drivers. The new law also provides a defense to certain negligent hiring claims if the employer follows procedures to obtain criminal background information from the Texas Department of Public Safety.

**Rich Clark** advises that Florida imposes broad new regulations on intrastate household goods movers effective September 1, 2003. The new law includes an annual registration requirement, mandates written estimates and contracts, and imposes administrative fines for violations. Violations of the law may also constitute deceptive and unfair trade practices, exposing movers to additional penalties and attorney fees.

Effective October 1, a statute in North Carolina will allow motor carriers to charge back owner-operators for worker's compensation coverage under the motor carriers' insurance policies. According to **Greg Feary**, the law also specifies that common law tests will apply to determining the work status of owner-operators in the state.

**Donald W. Devitt and Jeffrey Tabares** have joined our Chicago office as Of Counsel and Associate, respectively, effective August 1, 2003. They will continue their practice in highway accident litigation.

To accommodate our growth, we are relocating the Chicago office to:

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