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HELPFUL GUIDANCE FOR AG AND FOOD TRANSPORTION

Below is the full written version of a presentation given by Dave Parker, Senior Legal Counsel for Great West Casualty Company, at the Ag Trucking Summit held recently in Washington, DC. His presentation makes some important points that all carriers transporting agricultural commodities and food products as well as shippers will benefit from. I urge everyone to take the time to read it.

Dave has been involved in trucking and agriculture for over forty years. He is active in the Transportation Lawyers Association, FMCSA Motor Carrier Safety Advisory Committee, as well as ATA and other trucking organizations. He has a family heritage in farming and personally owned and lived on a farm in Nebraska, was a co-owner of an ag trucking operation, and while practicing law, many of his clients were ag truckers. Before joining Great West, he has also held various executive positions in a number of trucking companies, most recently as Executive Vice President-Administration of U.S. Xpress Enterprises, Inc.

Dave's presentation has some especially important points for those who operate under the agricultural exemption to hours of service (ag HOS). These views could provide an important perspective to help us as we defend the exemption from potential attacks in next year's highway reauthorization bill debate.

While I do not need to add any comments to it I would just highlight a couple of points:

"There is a misconception out there that if I fall within the (ag HOS) exemption that I am free to run my trucking operation free of any rules at all. Falling within the exemption frees you of maintaining logs and observing hours-of-service" . . . but "does not free you of conducting an operation focused on safety."

Negative experiences resulting from inadequate "company rules and policies" could "far outweigh the hoped-for savings of a rule-free operating environment."

Successful truckers "recognize that without safe operations, profit and all else disappears quickly."

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OBSERVATIONS FROM A TRUCK INSURANCE COMPANY PERSPECTIVE

Dealing as we do, 24-hours-a-day, with the trucking industry, and knowing as we must, the challenges and demands that confront truckers, I have been asked to address these three questions:

1. Does an insurance company like Great West like to do business with agricultural and food transporters?
2. What concerns an insurance company like Great West about a trucking company that serves the agricultural and food industry?
3. What should the agricultural and food industry know about the trucking industry today, that they may not?

I had the honor to participate in, and present at, the first Summit here in D.C. two years ago, and I am honored to participate today. I recognize the reality of, and the changes in, economic, political, and societal conditions during those intervening two years.

Some things have remained the same, such as the importance of security and the timeliness of the transport of agricultural and food industry materials, ingredients, and products.

But, many things are different, such as:

- Increased demands for education and enforcement
- Increased requirements for accountability of drivers, trucking company management, and trucking company ownership
- Increased documentary and data requirements
- Increased technology options and requirements for same
- Increased pressures and delays at point of loading and unloading, ports, and border crossings resulting from both governmental as well as shipper and receiver party requirements
- Diminished trucking capacity
- Diminished number of qualified drivers
- Diminished independent contractor/owner-operator ranks in the trucking industry
- Increasing congested roads and need for road maintenance

But, for insurance companies like Great West, based in the heartland of the country's agricultural industry, transportation for the agriculture and food industry has not only been our original core customer base, it remains a stable and highly desired key customer base. We find carriers focused on this business segment to be solid with a good work ethic. That part of the trucking industry is serving an essential and critical food industry—one that is not moving off shore and not dominated by only mega-carriers. We heard Shorty Whittington recognize the concentration of farms, feedlots, and production facilities into mega operations. That is not the case with truckers. Rather, it is a carrier population of true small business entrepreneurs who work hard until the job is done. There may be a few mega truckers, but the vast majority have only 5, 10, or 20 trucks.

My job finds me throughout the United States every week visiting with truckers concerned with effectively and efficiently serving their customers, staying in business, meeting government compliance requirements, and all of the time, retaining that primary focus on safety. For they all recognize that without safe operations, profit and all else disappears quickly.

As a result, in agricultural and food transport operations, the conversation often turns to the issue of Ag exemptions to hours-of-service regulations mandated by the Federal Motor Carrier Safety Administration.

There is a misconception out there that if I fall within the exemption that I am free to run my trucking operation free of any rules at all. Falling within the exemption frees you of maintaining logs and observing hours-of-service under Part 395 of the federal regulations.

But, falling within the exemption does not free you of conducting an operation focused on safety. It does subject you to your own company rules and policies that limit the hours drivers are on duty, hours they drive, their rest and break periods, their training, their qualification requirements, their working conditions, their equipment maintenance and inspection procedures, their shift schedules, and the management systems that ensure compliance with all of those items.

There may not be a government inspector with an hours-of-service checklist at the trucking company front door every day, nor on the roadside. But, the first time there is an event, incident, accident, or problem, there will be questions and more questions. At that time, it is too late to develop a credible and responsible set of company rules and policies, and to make available your employees and management to attest to the existence and enforcement of those rules and policies.

The cost of this experience will far outweigh the hoped-for savings of a rule-free operating environment.

For instance, it may be a law enforcement officer shutting down the truck for ten hours because that backhaul was not an exempt load. This is a direct result of there being no hours of service records of any kind for the driver that would document that the driver had not been on duty in excess of seventy hours in the past eight days.

Or, it may be a plaintiff's attorney seeking to convince the jury that those responsible for the injuries to his/her client did not really care about whether the driver was over-worked or tired because the company had no record to show, nor did they monitor, duty hours, etc.

My advice to trucking companies operating under an agricultural exemption is to have those company rules and policies in place, even though you are exempt from FMCSA regulations. And you, as the shipper, should insist on it.

The implementation and perpetuation of such an essential goal as safety first, requires continuous education, enforcement, and encouragement. As our roads become more congested, pick up and delivery times more critical, and life more challenging, this is a goal that cannot and should not be placed solely on the trucker.

Shorty Whittington recognized today that trucking and agriculture are all links of a chain, and must all work together and support each other.

Let me share with you a few examples as to how that can and should be done.

The shipping and receiving community should not seek to shift accountability and liability for the negligent and intentional acts or inaction of themselves or others to the trucker.

Increasingly, we see transportation and access agreements drafted by shippers requiring truckers to indemnify and hold harmless the shipper, not only for the trucker's negligence and intentional act which is reasonable, but also for the negligence and intentional acts of the shipper, as well as other third parties who the shipper has authorized to be on the shipper's property at the same time as the trucker. State legislatures and courts are beginning to recognize and speak out that such a transfer of corporate responsibility is against public policy. Indeed, it is the risk of paying for injury or damage that is an incentive to conduct a safe operation. If you shift that risk to another, you no longer have an incentive to conduct a safe operation.

Government should watch adding regulation after regulation, without periodically giving consideration to the confusion, congestion, and cost they are adding to the flow of commerce. Every requirement for one more piece of paper, one more data entry, one more report, one more advance notice, one more signature, etc., contributes to either a delay and/or added cost. These may seem miniscule to the author or draftsman, but they become an avalanche to the driver and dispatcher. And, this avalanche occurs at the same time that the driver and dispatcher are attempting to focus on that singular core value of safety.

Truckers need the support of the shipper customers to educate government on this issue. Again, Shorty recognized this earlier in discussing the trickle down effect from the basic law through the detailed regulation process with the ultimate burden and confusion impacting the public as did Clayton Yeutter this morning, when he cautioned about overreacting with excessive regulation.

Lastly, I would urge the shipping community to:

- § Know your trucker. For your own best interests, go beyond picking just the lowest cost trucker.
- § Develop long-term relationships and insist on a real commitment to safety. There is a correlation between safety and quality service.
- § Do not just seek out a compliant-to-rules trucker. Seek out a trucker who is committed to safety as the core value, and goes beyond mere compliance.

§ Remember, the commercial vehicle regulations apply to both for hire and private truck fleets. Thus, the increasing CMV regulations you will see, apply to not only our insured truckers, but also to your own private fleets.

Protect yourself and limit your exposure as the public looks to both truckers and shippers to set and maintain high safety standards.

And you, the shipper, are known by the trucking company you keep!

I thank you for this opportunity to share with you some thoughts from the world of truck insurers, who are proud to serve the world of agricultural and food transporters and their customers.

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