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Richard (Rick) Gobbell

Summary of experience:

For 35 years I have been responsible for truck safety, motor coach safety and hazardous materials compliance and enforcement at both State and Federal agencies. I retired from the U.S. Department of Transportation, Federal Motor Carrier Safety Administration in January of 2007 after 32 ½ years service.

For 30 years I was a Special Agent, Program Specialist, State Director and Division Administrator at the Federal Motor Carrier Safety Administration. I was a FMCSA's State Director and Division Administrator in the Tennessee Division Office for the last 12 years of my career.

Prior to my service at FMCSA I was a District Supervisor with the Interstate Commerce Commission (ICC) for two and one half years.

And prior to that I was a Tennessee State Roadside truck enforcement officer conducting roadside truck safety enforcement activities for two and one-half years as well.

Education

I have a BS Degree in Business Administration from the University of Tennessee. I have a major in marketing and minor in accounting. I completed several transportation, business law and business management courses during my four year degree program.

Specific Experience

Over the years I completed more than 100 training classes relating to motor carrier safety and hazardous materials enforcement including investigation techniques, crash investigation, evidence, interviewing witnesses, hazardous materials investigations, safety regulations and management and supervising employees.

I served as an Associate Staff Instructor at the U.S. Department of Transportation's Transportation Safety Institute in Oklahoma City and at its National Training Center in Washington, D.C for 15 years. During this time I was an instructor in more than 50 classes for Federal and State Commercial Motor Vehicle inspectors and auditors. I estimate that somewhere between 500 and 700 current and former staff members of the Federal Motor Carrier Safety Administration and State officers and officials completed safety, investigation techniques, program and policy classes in which I was either the lead or an associate instructor.

For a year I was a lead instructor in the Federal Highway Administration Quality Management Improvement Initiative program. Another instructor and I conducted six one-week classes during this project in which this class was presented to about 100 Federal Highway and Federal Motor Carrier Safety

Administration staff personnel.

During my career I conducted more than a 1,000 safety and hazardous materials compliance reviews on trucking companies, motor coach companies and hazardous materials carriers and shippers.

I investigated 100s of truck and bus crashes and hazardous materials incidents.

I have been a witness in State and Federal courts on many occasions.

I have inspected somewhere in the neighborhood of 10,000 driver and vehicles at roadside inspection sites. I have personally placed 1,000s of drivers and vehicles "Out of Service" during these inspections for safety and hazardous materials violations.

I initiated more than 500 federal enforcement actions against motor carriers, motor coach operators, drivers and hazardous materials shippers for violation of the Federal Motor Carrier Safety and Hazardous Materials Regulations during my career.

I was certified by the US DOT to conduct truck and bus inspections and compliance reviews for more than 30 years.

In the last 20 years of my career, while continuing to conduct vehicle inspections and compliance reviews, I was a supervisor responsible for a division staff that was conducting these activities.

For more than 20 years I was either directly or in-directly responsible for the oversight of our State Partner's Motor Carrier Safety Assistance Program (MCSAP) which included more than a hundred roadside inspection officers and a budget of more than 14 million dollars a year.

I have a U. S. States Government "Secret" security clearance.

Currently:

Since my retirement I have been very active in assisting Commercial Motor Vehicle operators and Hazardous Materials shippers in establishing and/or improving their compliance programs in all areas of the regulations in which the Federal Motor Carrier Safety Administration has jurisdiction.

I have provided training to hundreds of carrier officials and staff in Hazardous Materials *General Awareness/Familiarization, Function Specific and Security Awareness and in-depth Security training.*

I have provided training to hundreds of carrier officials and drivers in the new hours of service regulations, FMCSA's SafeStat CSA2010 safety data analysis program and many other parts of the regulations. I have also provided training to 100s of drivers relating to conduct vehicle pre-trip inspections and how to pass roadside inspection".

I have assisted numerous motor carriers as a safety consultant, both large and small.

I have served as a Commercial Motor Carrier Safety Expert in civil cases that

have resulted from very serious injuries and deaths.

My company, Gobbell Transportation Safety, LLC, currently serve as a safety department for seven small motor carriers. In this service we provide a full service safety program in which we qualify their drivers, maintain their driver qualification files, monitor their drivers for hours of service compliance, vehicle maintenance/safety, hazardous materials compliance as well as all of the other parts of both the Federal Motor Carrier Safety and Hazardous Materials Regulations.

I am currently a bi-weekly guest on the Dave Nemo, XM 170 Open Road Radio show. This is a one hour show where I discuss current issues, FMCSA programs, rules, rule changes, roadside Inspection and/or FMCSA Compliance and Enforcement Programs or any other subject relating to trucking that our listeners want to call in and discuss.

These are lively shows and a wide range of spontaneous subjects are discussed.

Experience

1978 – 2007

I served as a Field Investigator, Program Specialist and Division Administrator at the U.S. Department of Transportation, Federal Motor Carrier Safety Administration in Nashville, TN. This includes the years at the Federal Highway Administration that had the same areas of responsibility prior to the establishment of the FMCSA in 2000.

From 1995 to 2007 I was the Division Administrator responsible for all of FMCSA's programs relating to truck and bus safety, hazardous materials, commercial driver's license, State grants, license, insurance, and registration in the State of Tennessee.

Even though I was a supervisor for the last several years I continued to conduct the above activities.

I was one of the very few Division Administrators at FMCSA that maintained my Vehicle Inspection and Compliance Review certification.

I was responsible for the administration of a \$14 million per year Motor Carrier Safety Assistance Grant Program to the Tennessee Department of Safety. This agency used the funds to conduct truck and bus safety enforcement activities. We had more than 900 Tennessee State Troopers participating in our program.

I conducted and/or oversaw thousands of investigations that resulted in penalties for violations of the safety, hazardous materials and other regulations the agency was responsible for enforcing. I conducted and oversaw hundreds of investigations into major truck and bus crashes.

I worked with the National Transportation Safety Board on several crash investigations

1975 – 1978

Interstate Commerce Commission

I served as District Supervisor and was responsible for the administration of a compliance and enforcement program relating to trucking companies authority, tariffs, claims, and insurance and a vast array of other regulations that applied to trucking, freight brokers, shippers, freight forwarders, water, rail, pipeline and passenger transportation operations.

I was responsible for granting emergency and temporary authority applications from motor carriers requesting permission to provide transportation service to the public.

1972 – 1975

I was an enforcement officer for the Tennessee Public Service Commission. I inspected commercial trucks, buses and drivers for compliance with the safety and hazardous materials regulations at inspection sites and during traffic stops. I placed hundreds of vehicles and drivers out of service and arrested many drivers for safety, drug and alcohol related violations.

January 2007 – Present

I am currently a Motor Carrier Safety Consultant. I have conducted several Mock DOT Audits of motor carrier's compliance with the Safety and Hazardous Materials Rules and Regulations. I have conducted a Safety Director Basic Motor Compliance Rules and Regulations Course (3 day class), provided Hazardous Materials Awareness, Recurring and Hazardous Materials Security Training Classes to several of my clients.

I have conducted several Driver Hours of Service and How to Pass a DOT Inspection Training classes.

I have conducted analytical work for a very large motor carrier property broker. I have conducted several SafeStat training classes for both motor carriers, brokers and freight forwarders.

I have conducted several SafeStat Training classes at a National Trucking Association's annual meeting. I have been a guest speaker at Delta NU Alpha on the subject of SafeStat Scores, proposed and new rules on the horizon at DOT.

I have developed a New Entrant Motor Carrier Training Program covering all areas of the Federal Motor Carrier and Hazardous Materials Rules and Regulations that I provide to some of my clients.

Court Appearances:

As a State roadside inspector I regularly appeared in both General Sessions and Circuit court on matters relating to violations of the Federal Motor Carrier Safety and Hazardous Materials Regulations in which I had cited a motor carrier and/or driver.

While employed at the Federal Highway Administration, Office of Motor Carrier I appeared in U.S. District Courts on three or four occasions on matters relating to motor carrier's violations of the Federal Motor Carrier Safety Regulations.

I once appeared in U.S. District Court in a criminal matter as an expert witness on behalf of the Government (Federal Highway Administration) in a matter relating to fraud where an individual claimed that he had received design approval from the U.S. DOT for a vehicle he had obtain investments to manufacture.

I was deposed in U.S. Civil Court proceeding relating to serious truck crashes on two occasions in my career.

Recent participation

December 2007 I participated in the Federal Motor Carrier's CSA 2010 presentation in Dallas, TX.

April 2008 I participated in "Supply Chain Liability" Webinar.

July 2008 I presented a Webinar on "SafeStat Vs CSA 2010" to more than 75 participants from the Expeditors Annual Convention in Wilmington, OH.

October 2008 and January 2009 I have participated in the Federal Motor Carrier Safety Administration's Motor Carrier Safety Advisory Committee quarterly conference call meeting.

November 2008 – 2009 Presenter to the annual conference of the National Association of Small Trucking Companies SafeStat Vs CSA 2010.

November 2008 – Keynote Speaker at the annual conference of the National Association of Small Trucking Companies on the subject of Motor Carrier DOT Compliance Audits.

September 2008 to Present I am a bi-weekly DOT Expert on the Dave Nemo Open Road Radio Show that is broadcasted nationwide on XM Radio Channel 170 and Sirius 141. The name of my show is Safety Compliance and Common Sense.

November 2009 – Participated in the Federal Motor Carrier Webinars on CSA 2010.

January 2010 Participated in the Federal Motor Carrier Safety Administration Hours of Service Listening Sessions on January 19, 2010, and January 25, 2010.

August 26, 2010 Presented a CSA2010 Presentation for the National Association of Factors in Kansas City, KA.

September 26, 2010 Attended a Motor Carrier Safety Compliance Course at the U.S. Department of Transportation, Transportation Safety Institute at Oklahoma City, OK.

October 22, 2010 – Presented CSA2010 and DOT Audit Training at Xtra Lease, Inc. Le Vergne, TN with over 150 attendees.

November 10, 2010 – Presented CSA 2010 Training to Delta Nu Alpha Bowling Green, KY.

November 11, 2010 – Presented a CSA2010 panel discussion for the National Association of Small Trucking Companies with approximately 50 participants.

Awards and Recognitions

1983 to March 2007

In summary

11 Cash Awards

8 Outstand, exceptional or meritorious service performance appraisals

4 Within-Grade Salary Increases

12 letters of appreciation

8 Certificates of Appreciations

3 Promotions, GS 9 – GS- 11

1 Promotion GS 11 to 12

1 Promotion GS 12 to GS 13

1 Promotion GS 13 to GS-14

March 30, 2007 Press Release – FMCSA awarded the TN Department of Safety received an honor for reducing fatalities and fatal crashes involving commercial motor vehicles. TN was chosen for the honor from among the 13 states in the Southern Resource Center for 2006. This Motor Carrier Safety Assistance Program was a major program that I was responsible for during my last year of service to FMCSA.

February 15, 2006 Exceeded Expectations Performance Appraisal

October 19, 2005 Letter of Appreciation from my former supervisor, Jerry L. Cooper, expressing his pleasure of having worked with me.

August 29, 2005 Letter of Appreciation from Administrator Sandberg for assistance to the public

August 11, 2005 Cash Award of 1,500

June 22, 2005 Cash Award \$750

June 7, 2005 Cash Award \$750

May 30, 2004 Cash Award \$600

April 6, 2004 Letter of Congratulations from Administrator Sandberg

February 5, 2004 Letter of Appreciation From Chief Safety Officer, John Hill

May 1, 2003 Performance award of \$1,000

January 31, 2002 Cash Award of \$2,000

August 12, 2001 Cash Award \$600

December 30, 2001 Promotion from State Director GS-13 to Division Administrator GS-14

November 19, 2001 Outstanding Performance Appraisal

December 3, 2000 With-in-Grade Increase

December 2000 Find the Good and Award it from Administrator Rodney Slater, Federal Highway Administration

December 5, 1999 Performance Award \$500

January 17, 1999 Time Off Incentive Award 8 hrs

December 6, 1998 Within-Grade Increase

March 25, 1998 Special Act Award \$2,500

March 29, 1998 Special Act/Service Award \$500

May 1997 Plaque of Appreciation Region Four Customer Service Award (hand copied)

March 14, 1997 Letter of Appreciation from the Tennessee Trucking Association

November 1996 Promotion from Federal Program Specialist GS-12 to GS-13 State Director (copy not available)

September 3, 1996 Letter of Appreciation M.S. Carriers

July 15, 1996 Special Act Award \$400

March 7, 1996 Letter of Appreciation from the TN Motor Coach Association

October 1995 Partners For Excellence Award from Administrator George Reagle

January 23, 1995 Meritorious Performance Appraisal

September 9, 1994 Letter of appreciation from Holly J. Kinley-Lick Federal Highway Administration

April 1994 Plaque of Appreciation for Continued Superior Performance As an Associate Staff at U.S. DOT Transportation Safety Institute (Only issued after 12 classes)(I server in more than 30 such classes)

May 1993 Certificate of a Peer Award from entire staff of Region 4

May 10, 1993 Certificate of Appreciation from President Bill Clinton for my service to the Federal Highway Administration

January 20, 1993 Letter of Appreciation West Tennessee Traffic Club

May 1993 Outstanding Rating Certificate

January 19, 1993 Outstanding Performance Appraisal

May 13, 1991 Letter and Certificate of Appreciation for my exceptional efforts for achieve this highest success rate in its history of the academy for its graduating trainees.

February 8, 1991 Supervisor's Special Act Award \$200

August 1988 Promotion from GS-11 (Safety Investigator) to GS-12 Federal Program Specialist

October 11, 1983 With-in-Grade Salary Increase

February 22, 1983 Letter of Appreciation from the Tennessee Public Service Commission

February 9, 1982 Letter of Appreciation Tennessee Public Service Commission

October 6, 1981 Letter of appreciation for my work and accomplishments from my supervisor N. Hugh Galbreath

**Affidavit of J.D. Heatherly
H&V Leasing, Inc.**

My name is J.D. Heatherly. I am Office Manager of H&V Leasing, Inc. of Newport, Arkansas. I am authorized to make this statement on H&V's behalf. My company operates 13 trucks and is regulated by the Federal Motor Carrier Safety Administration.

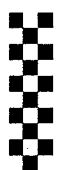
We have examined our CSA 2010 scores and if released to the public they will show that we have scores in two of the BASIC areas slightly above the 65 percentile. In those areas we are peer grouped with dissimilar carriers who have, we believe, scale house advantages which statistically skew a proper evaluation of our safety profile.

We have been advised by at least one major customer that it feels compelled to use CSA 2010 if released to the public as a screening mechanism to determine its subsequent use of carriers and accordingly we are threatened with immediate loss of business if the data is released on December the 6th.

H&V is committed to highway safety and we do not believe the CSA scoring methodology is fair, appropriate for use by shippers, or intended to interfere with our ability to compete.

In this regard, we received a satisfactory safety rating from the FMCSA on July 8, 2009 and have been determined by the Agency to be fit and safe for shippers and brokers to use. Any system which suggests that the public should be "alerted" about use of a carrier which the Agency has determined is satisfactory should not be implemented under these circumstances until the system is thoroughly reviewed under rulemaking.

Because of the possible immediate harm to H&V, we urge that the relief Petitioners seek be granted.



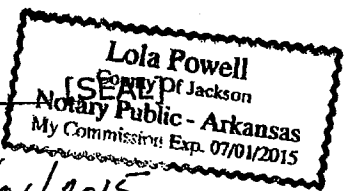
By: J.D. Heatherly
J. D. Heatherly
H&V Leasing, Inc.

State of ARKANSAS

County of JACKSON

Subscribed and sworn to before me this 24th day of November, 2010.

Lola Powell
Notary Public



My Commission Expires: 07/01/2015

**Affidavit of Mark Kreider,
Innovative Worldwide Logistics, Inc.**

I am Mark Kreider, President of Innovative Worldwide Logistics, Inc. We are a small family owned transportation brokerage located in Knoxville, Tennessee. We employ 3 people and have 1,600 small carriers under contract. I believe the CSA 2010 is unfair and has the very real possibility of forcing me out of business due to new customer requirements to protect themselves against frivolous lawsuits. Since the CSA 2010 does not render a trucking company fit or unfit, it is up to the broker to make an individual judgment on trucking company's safety. This creates a liability concern for the customer since they depend on the broker to hire fit trucking companies. Using fear tactics, large corporate brokers are already contacting my customers and telling them that they need to hire them exclusively to manage all their freight for protection against CSA 2010 related lawsuits. These large corporate brokers are promising to indemnify my customers against liability in exchange for all their business. This type of broad indemnification is not possible for small companies to provide.

If the CSA 2010 comes to be, and our customers require broad indemnification, we will be finished. We will be forced to close our doors or become an agent for a large brokerage.

I fully support efforts to increase safety but this is not the way. A better system would be for the Federal government to analyze the statistics privately and rate a carrier as fit or unfit as is done with the airline industry. Forcing brokers and traffic managers to become safety experts is ludicrous, unnecessary, and will create more lawsuits. Let the transportation experts in the Federal government make the call and inform the public on whether or not a trucking company is fit or unfit.



Mark Kreider, President
Innovative Worldwide Logistics

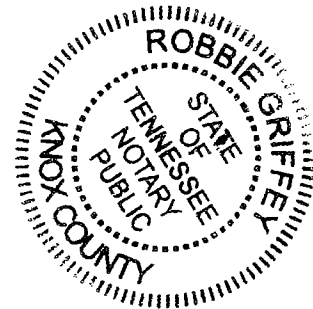
State of Tennessee

County of Knox

Subscribed and sworn to before me this 24 day of November, 2010.

Robbie Griffee [SEAL]
Notary Public

My Commission Expires: May 4, 2013



**AFFIDAVIT OF JIM LOYD,
JIM LOYD TRANSPORT CO.**

My name is Jim Loyd and I am President of Jim Loyd Transport Co., 2660 Cedartown Hwy., Rome, GA 30161. We are a small trucking company which currently has 30 power units. We provide truckload service to companies all over the United States. We enjoy a satisfactory safety rating from the FMCSA which is the highest rating awarded to a company. Our company has not had a chargeable accident in the past 5 years and has only one non-chargeable accident which was not our fault on our record in the past 5 years.

Because Georgia was a test state for the CSA 2010 methodology, I have some experience with how it works or does not work and of the possible adverse consequences release of CSA 2010 data can have on small trucking companies like Jim Loyd Transport.

As a small carrier with comparatively few power units, any statistical comparison of Jim Loyd with other carriers in a percentile ranking can be particularly sensitive to a small number of aberrant recordable events which do not accurately reflect the carrier's commitment to safety or its compliance with the Federal Safety Regulations.

Our company is based in Georgia which is a test state and accordingly, I am familiar with some of the CSA 2010 methodology and can testify to the problems I have encountered. Our company uses paper logs and has not converted to an EOBR. As a result, we have accumulated violation points with respect to form and manner violations or failure of drivers to keep logs up to date which are not incurred by our competitors who either are not required to log or who have an EOBR. Placed in peer groups, accordingly our percentile ranking in the hours of

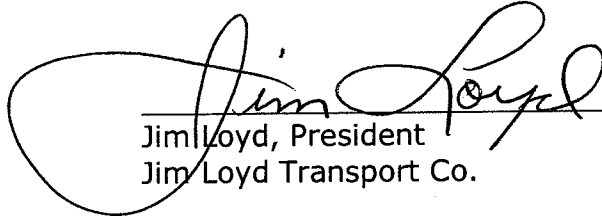
service bracket exceeds the enforcement threshold and will indicate to the public that we are in the orange area and under an "Alert". We have been advised by the 3PL for our largest customer that CSA 2010 is going public on December 6 and that we will be measured by that system. The threat to our continued business relationship is accordingly very real.

It is important to note in this regard, though, that in the past 2 months we have had a new audit by the FMCSA of our books and records in the BASIC area which shows a high percentile ranking and the Agency has concluded that no change in our satisfactory rating is warranted. Notwithstanding this satisfactory rating, though, unless the relief Petitioners seek is granted, we will still be shown as exceeding the enforcement threshold, or under an "Alert" to the shipping community if this material is released.

In conclusion, I am somewhat reluctant to offer testimony in this proceeding or to draw attention to my company for fear of further being blackballed or targeted for enforcement or loss of business because of the vicarious liability hysteria which surrounds the impending release of the CSA 2010 modality.

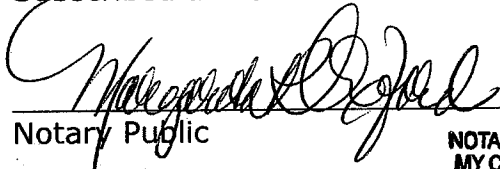
At the end of the day, though, I know that Jim Loyd Transport is a safe small carrier which is being set up to be tarred and feathered by the misapplication of wrong data. We are more than happy to help the FMCSA do its job and offer it the assurances that we are a compliant carrier if our actual safety rating, the results of their audit and our crash record alone is not enough to be persuasive.

But I feel compelled to make this statement on behalf of my company and the thousands of large and small carriers who will be threatened with loss of business if not bankruptcy.


Jim Loyd, President
Jim Loyd Transport Co.

State of Georgia
County of Floyd

Subscribed and sworn to before me this 24th day of November 2010.

 [SEAL]
Notary Public

NOTARY PUBLIC, FLOYD COUNTY, GEORGIA
MY COMMISSION EXPIRES AUGUST 9, 2011

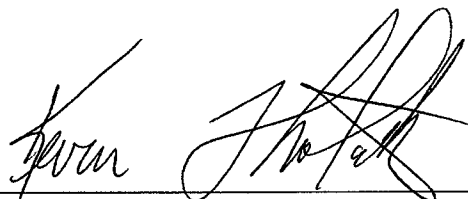
My Commission Expires: _____

**AFFIDAVIT OF KEVIN LHOTAK,
RELIABLE TRANSPORTATION SPECIALISTS, INC.**

My name is Kevin Lhotak. I am President of Reliable Transportation Specialists, Inc. and we employ 112 people. I am authorized to make this statement in support of the relief sought by Petitioners.

We currently enjoy a satisfactory safety rating from the FMCSA. We are most concerned about potential release of CSA 2010 methodology and data to the public because various customers and equipment providers have told us that they will feel compelled to use this information to bar use of any carrier over the enforcement threshold in the remaining 5 BASICS.

As an intermodal carrier based in Indiana, the system is particularly biased against our company in rating us on a percentile basis because of the high number of citations which are written by the surrounding states and the fact that intermodal carriers operate with equipment that is maintained by others. For these reasons, and these reasons alone, I believe we are above the enforcement threshold in certain areas. The agency, and only the agency, should ultimately determine carrier safety and we have been determined to enjoy the highest safety rating available. For these reasons we urge that release of this data be postponed because release will have an incalculable adverse impact on our ability to obtain existing freight. We urge that the Court stay release of this material until the Administrative Procedures Act is complied with.

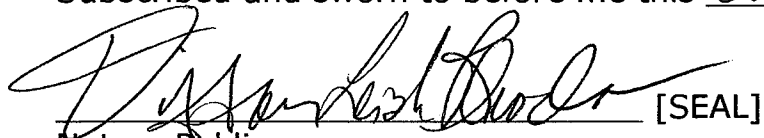


Kevin Lhotak, President
Reliable Transportation Specialists, Inc.

State of Indiana

County of Porter

Subscribed and sworn to before me this 24 day of November, 2010.



[SEAL]
Notary Public

My Commission Expires: July 14, 2012

Affidavit of Larry Danko
Southern States Cooperative, Incorporated

Southern States Cooperative, Incorporated ("SSC"), an agricultural cooperative founded in 1923, now has more than 300,000 farmer stockholder/members. As one of the nation's largest cooperatives, the Richmond, VA firm provides a wide range of farm inputs including fertilizer, seed, livestock feed and pet food, animal health supplies, and petroleum products. We serve our member and non-member customers through over 1,200 retail outlets.

SSC is dedicated to serving farmers throughout a 26 state area and as part of providing goods, materials and supplies to the farming community, we currently hire annually as many as 500 independent transportation carriers to provide service. Particularly during the spring planting season, we may procure service in the spot market from available carriers enlisting as many as 50 new carriers per month. It is neither economical nor reasonable for SSC to extensively credential each carrier before use. Reliance on the FMCSA's ultimate determination of fitness is all a shipper such as SSC can reasonably be expected to do.

Traditionally we have verified carriers for use by confirming that they were appropriately licensed, authorized and insured in accordance with FMCSA requirements.

We have been advised that CSA 2010 will impact our selection process and require us to accept responsibility for negligently hiring carriers which the FMCSA otherwise certifies as fit for use under existing regulations.

We have been advised that after release of CSA 2010 data to the public, it will be too dangerous for us to hire our own carriers based upon their certification by the Agency as licensed, authorized and insured to operate. We would need to seek professional help in weighting out each carrier using CSA 2010 in order to avoid the possibility of suit. This deeply concerns us.

As part of the preparation for CSA 2010, we have been advised by a large broker that SSC may no longer afford to follow its existing selection criteria and should hire a third party provider who will examine CSA scoring methodology to select carriers in order to protect SSC from the possibility of large vicarious liability judgments. One such judgment has been entered in the State of Virginia, where we are domiciled, using in part FMCSA data under SafeStat. Information released by the FMCSA under CSA 2010 has heightened the vicarious liability concern because the Agency has suggested that shippers and brokers have a safety obligation and responsibility which extends beyond simply relying upon the Agency doing its job to ultimately determine highway fitness.

Clearly, the confusion surrounding this issue is a major impediment to continued efficient operations by SSC, particularly in view of the impending spring planting season.

We support the efforts of Petitioners to postpone release of any CSA 2010 data until the issue of the validity of such data and who, be it the FMCSA, or the shipping public, bears the responsibility under Federal Motor Carrier Safety Regulations for certifying safety fitness for use, is clarified.

Clearly, the public release of CSA 2010 and the confusing issue of its intended use and effect on the small carriers we currently use, is an issue involving a major regulatory change which needs to fully be reviewed in the context of the yet to be announced rulemaking proceeding to address more this entire issue.

If we were required to restrict our use of carriers based upon a December 6 release of this material to the public, our distribution of agricultural products would suffer major interruptions and under fear of additional vicarious liability we would be forced to consider terminating the use of many carriers upon whom we have come to depend. We understand that an undeterminable number of carriers will not even be rated under this system and in light of the Agency's pronouncement that shippers have some undetermined additional safety duty, we are at a loss to determine what carriers can be used and under what circumstances.

Finally, as an operator of a private fleet which is subject to the new FMCSA methodology we have reviewed our numbers and how they are calculated and can affirm that CSA 2010 methodology, peer groups and mathematical algorithms are a work in progress which should not be used by any shipper to blackball use of a carrier.

I am submitting this Affidavit as the Director of Transportation of Southern States Cooperative and I am authorized to make this statement on its behalf.

By: Larry Danko
Larry Danko
Director, Transportation
Southern States Cooperative, Incorporated

State of Virginia

County of Henrico

Subscribed and sworn to before me this 24 day of November, 2010.

Jeanina Paige Hardee [SEAL]
Notary Public

My Commission Expires: 6/30/2012



**AFFIDAVIT OF STEVEN B. SAMPLE,
TYME-IT TRANSPORTATION**

My name is Stephen B. Sample and I am President of Tyme-It Transportation, an FMCSA regulated motor carrier and property broker domiciled in Louisville, Kentucky. I am also the Chair of the Legislative Committee of The Expedite Alliance of North America (TEANA) one of the Co-Petitioners in this lawsuit. I am authorized to make this statement on behalf of both Tyme-It and TEANA.

I have been involved in the trucking industry for 28 years and have substantial experience in truck brokerage having served as President of the Transportation Intermediaries Association in 2002-2003.

TEANA supports postponed release of CSA 2010 information to the public pending consideration of the affect of this data on efficiency, competition, and small businesses as required by the National Transportation Policy, the APA and the related statutes intended to protect small businesses.

TEANA is a trade association composed of approx. 65 small carriers who provide a niche service. We provide just in time shipments on a call on demand basis for large industrial shipments when inventory shortages require exclusive use to avoid plant shutdowns.

In order to efficient and responsive service, our members must be able to dispatch trucks from their local domicile to points throughout the United States on short notice and then arrange for back hauls or return moves from destination in the spot market to avoid empty miles and inefficiency. This "spot marketplace" has become a substantial portion of the truckload industry as a result of deregulation and functions by using property brokers and other intermediaries who arrange for shipments via the internet often using carriers that must be credentialed and certified on short notice.

Under existing regulations, brokers are intermediaries who act like real estate brokers or stock brokers bringing together willing shippers and carriers often times for one or two

moves. To credential a carrier, a broker must verify that it is licensed, authorized and insured and is otherwise able to meet the service requirement of its customer. This credentialing process has traditionally required only that the broker obtain certification from the ICC, now the FMCSA, that the Federal Government has certified the carrier as safe to operate. The trucking industry is no different than other regulated industries in which a credentialing organization, be it a bar association, the FAA, or local taxicab authority, certifies the regulated entity for use so that the shipping public is not required to do so.

In this context, the lead up to CSA 2010 and the Agency's informal announcements have created chaos in the industry and led major shippers to conclude that for fear of vicarious liability they must either use only large carriers with unlimited indemnification ability or impractically second guess the FMCSA's decisions by choosing only carriers which have no blemish on their safety record as shown by the data to be released.

TEANA members are currently seeing in prospective contracts provisions which say that brokers cannot use nor can carriers provide service if the information to be released suggests that in any of the BASIC areas of inquiry the carrier is over the enforcement threshold, or I presume marked as under "Alert" under the newly announced nomenclature.

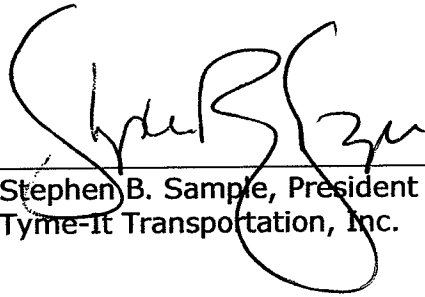
As we understand it, in the BASIC areas to be published, 35% of the peer group carriers will be deficient in each of 3 BASICs and 80% will be deficient in the remaining BASIC to be released. Any way the FMCSA cuts the pie, well over 50% of the monitored carriers it otherwise certifies as fit, willing and able after investigation under its existing system will fail under this criteria.

This is of particular concern to TEANA members since it will drastically interrupt their ability to operate efficiently and to broker loads to one another without drilling down into data and procedures which have not been subject to public review, comment or scrutiny.

The industry commentators on CSA 2010 have repeatedly called it a "game changer" or "a brave new world". It appears to TEANA that this is truly the case in terms of the catastrophic effect that it will have upon the ability of TEANA members to continue viable operations, particularly in the spot market.


Finally, one particular issue which is troubling to TEANA members is the obvious geographical anomalies which result from inclusion of carriers in peer groups with percentile rankings which pay no attention to anomalies and exceptions which affect this peer group ranking. Many of the expeditors in our association are involved in providing automotive and industrial shipments and are centered in the Michigan, Ohio and Indiana areas. Those three states are "probable cause" states and as a result historically stop far more trucks for minor speeding violations, issuing warnings than other states. Under the methodology, apparently developed by the CSA carriers operating in these states are nonetheless put in peer groups with carriers operating in states in which such warnings and speed violations are not written as frequently. Accordingly, it has been said it is a lucky day if you are based on Montana and if you are based in Indiana, Michigan or Ohio you are going to be statistically prejudiced with no effective due process or way to correct the inherent bias and prejudice in the system.

TEANA, like the other Co-Petitioners, is committed to safety and probably would have no ultimate objection to the use of imperfect data as a screening tool for the Agency doing its job in determining highway safety. Yet, whether intended or unintended, the consequences of premature public release of CSA 2010 data are substantial and incalculable because no good cause has been shown for not considering the public release of CSA 2010 methodology as part of rulemaking and we urge that the Motion to Postpone be granted.

By: 
Stephen B. Sample, President
Tyme-It Transportation, Inc.

State of Kentucky
County of Jefferson

Subscribed and sworn to before me this 24th day of Nov, 2010.

 [SEAL]
Notary Public

My Commission Expires: OCT 22, 2013

**Affidavit of Steven W. Norman,
Universal Traffic Service, Inc.**

My name is Steven Norman and I am the Director of Resource Development at Universal Traffic Service, Inc. (UTS), a licensed property broker. I'm also a member of the Board of Directors of TEANA, a named Plaintiff in this proceeding. This Affidavit is submitted on behalf of UTS.

UTS is a licensed property broker which employs 99 people and arranges for the transportation of shipments using authorized and insured motor carriers certified as authorized to operate by the FMCSA. We currently have approximately 12,000 carriers under contract and book 20,000 loads per month.

As a property broker we are required by regulation to use only licensed and authorized carriers and otherwise have no federally mandated obligations for the safe operation of the commercial motor vehicles used by the authorized carriers we retain.

We have been told by transportation attorneys, purveyors of CSA 2010 monitoring systems and others that release of CSA 2010 is a "game changer" and "a brave new world" for the motor carrier industry and the shipping and receiving public. Certain of our larger broker and 3PL competitors have been advising shippers that as a result of release of CSA data to the public, the shipping community may be required to second guess the FMCSA's ultimate safety fitness determination and use carriers which the

website reflects are over the arbitrary enforcement thresholds at their own peril. The peril being touted as the reason for using our competitors is that they will assume responsibility for the negligent selection of the carrier and can financially indemnify the shipper from runaway jury verdicts which are predicted to result from use by plaintiff's bar of the soon to be released data and percentile rankings coupled with the Agency's pronouncements that the data and rankings must be published before rulemaking so that shippers can make "safety based decisions." The ramp up to CSA 2010 indicates to us that UTS may be unequivocally harmed by premature release of this data as we are forced to either be "safe rather than sorry" and bar use of the valued carriers who are certified by the Agency as fit for use because of an unproven mathematical ranking or to accept unmeasured additional risk of liability through indemnity obligations to our customers in order to compete in the marketplace.

Clearly, this is an issue of major impact to UTS and the members of TEANA, many of which are our vendors. If all of them are placed in peer groups based on conveyed data as many as two-thirds can be expected to be above the threshold to be noted as an "Alert" under the CSA methodology. To have to cease using even 10% of our carrier base would undermine our ability to serve our customers in the critical marketplace we serve.

By: Steven W. Norman
Steven W. Norman

State of Mi

County of Kent

Subscribed and sworn to before me this 24th day of November, 2010.

Rita A. Kline [SEAL]
Notary Public **RITA A. KLINE**

My Commission Expires: 2-6-2013

RITA A. KLINE
NOTARY PUBLIC, STATE OF MI
COUNTY OF KENT
MY COMMISSION EXPIRES Feb 6, 2013
ACTING IN COUNTY OF Kent

**Affidavit of James Frye,
CHEP USA**

My name is James Frye and I am Director and Counsel of CHEP USA ("CHEP") and I am authorized to make this statement in support of the relief sought by Petitioners. CHEP is a nationwide distributor of proprietary pooled pallets used by commercial shippers in the transportation and storage of freight and cargo. We regularly retain over 100 different motor carriers to transport pallets to our manufacturing customers and from retail outlets back to our service depots.

In addition, we have an affiliate, Lean Logistics, which operates as a licensed property broker. As counsel for CHEP, I am involved in risk assessment and insurance issues for both companies and I am authorized to make this statement.

Of primary concern to shippers and brokers is the issue of vicarious liability which can arise under state law concepts of vicarious liability, negligent entrustment or negligent hiring. The industry as a whole is particularly aware of large judgments entered against or agreed to by property brokers as a result of lawsuits in which the carriers they retain have been involved in multiple fatalities.

The Federal Motor Carrier Safety Administration is charged by Congress with determining which carriers are safe to operate, and under FMCSA safety regulations, the authorized motor carrier has a non-delegable safety duty for the operation of the commercial motor vehicle.

Unfortunately in the ramp up to CSA 2010, the role of the Agency, the carrier and the carrier's customers (shippers and brokers) has become confused and many in the industry, including various trade groups, have concluded that release of CSA 2010 to the public is actually intended for use by shippers and brokers in establishing a new duty of due diligence which would result in CHEP and Lean Logistics bearing an obligation to second guess the Agency's ultimate fitness determination. Release of CSA 2010 data will confuse, we fear, the application of the Federal Safety Regulations on the shipper and broker community and result in new and greater potential exposure to lawsuits.

Unless Petitioners' relief is granted, our job in risk management will result in us facing an unanswered question of what safety standards should be applied. Is a carrier certified by the FMCSA as licensed and insured to operate fit for use, or is the Agency, by publishing this information with warnings, a color coated format like TSA security alerts, etc., actually telling the shipper and broker community that the shippers of cargo bear some new responsibility and liability? Until this issue is squarely addressed and resolved, there is no foreseeable reason for early publication of CSA 2010 methodology which the Agency acknowledges must go through rulemaking before the government can use the questionable data and scoring mechanism it proposes to give to the public with unmeasured unintended consequences.

By:

[Signature]
James Frye, Director and Counsel
CHEP USA

State of Florida

County of Orange

Subscribed and sworn to before me this 29th day of November, 2010.

[Signature] [SEAL]

Notary Public

My Commission Expires: Nov. 1, 2012

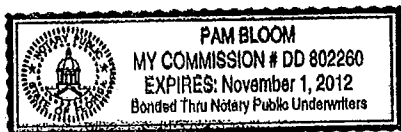


EXHIBIT C

Re: FMCSA-2004-18898: Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)

COMMENTS OF THE NATIONAL ASSOCIATION OF SMALL TRUCKING COMPANIES (NASTC), THE EXPEDITE ALLIANCE OF NORTH AMERICA (TEANA), AND AIR & EXPEDITED MOTOR CARRIERS ASSOCIATION (AEMCA)

MOTION TO POSTPONE

COME NOW, the National Association of Small Trucking Companies (NASTC), The Expedite Alliance of North America (TEANA) and the Air and Expedited Motor Carriers Association (AEMCA), through Counsel, and files this their motion to postpone further release to the public of CSA 2010 data with percentile ranking until such time as full compliance with the Administrative Procedure Act and the protection afforded under the Regulatory Flex Act and the Paperwork Reduction Act is complied with and state as follows:

1. Interest of the Parties

The three organizations supporting this Petition represent over 3,000 small privately owned motor carriers that are part of over 150,000 similarly situated small businesses which will be directly adversely effected by the FMCSA's announced public release of CSA 2010 data and scoring in its present format.

At the outset, Petitioners reaffirm their commitment to highway safety and their commitment to work with the FMCSA to develop a new, less costly methodology pursuant to which the Agency can meet its statutory obligations to ensure that all motor carriers (both private and for-hire) are fit, willing and able to comply with federal safety regulations.

Petitioners recognize that CSA 2010 is a work in progress and pledge to work with the FMCSA to ensure that its ultimate data collection and statistical analysis can be used as a reasonable and fair tool for use by the Agency in its intended progressive intervention program.

Yet, for the reasons stated herein, Petitioners must unequivocally oppose release of unscrubbed CSA 2010 data together with untested statistical analysis which announces to the shipping public that any carrier with percentile rankings above artificially established enforcement thresholds are "marginal" or "deficient" and thus somehow not fit for use.

As small businesses, Petitioners submit that any change in the FMCSA's safety methodology which has a major economic impact on small carriers should be subject to close analysis in accordance with the Reg Flex Act, the Paperwork Reduction Act and the Data Quality Act.

The data collection method, the data accuracy, and its relevance to safety has not been subject to review or rulemaking and there has been no analysis of the effect on small businesses which comprise over 95% of the motor carrier industry and virtually 100% of Petitioners' constituency. With respect to safety, Petitioners submit that small for-hire motor carriers are not merely statistics and their employee drivers and owner-operator partners are not mere numbers. They represent successful small businesses in the best of the American tradition.

In this Motion to Postpone, Petitioners will show the direct substantial and devastating effect release of this data in its present form will have on the continued operations of approximately two-thirds of the industry because of the unintended vicarious liability consequences of the Agency's action.

2. Argument

Petitioners submit that unfortunately the FMCSA has not fully comprehended the effect which release of CSA 2010 in its current format to the public will have on small carriers. The Agency currently proposes to release raw data concerning every local state and federal recordable safety incident including warnings, citations, and out of service orders to the public in the name of "transparency" and "analysis." Unscrubbed data will be statistically accumulated by carriers, sorted into 6 BASICS and then scores will be assessed by percentile ranking in peer groups consisting of tens of thousands of operationally dissimilar carriers.

Based upon the lowest of its progressive thresholds for enforcement, percentage pegs and various percentile levels will be established in each BASIC category, ranging in value for non-hazmat non-bus operations from 65 to 80 percentile. Based upon these percentile rankings of carriers, current estimates are that 68% or over two-thirds of the industry will be pejoratively described in the public release of this data as "marginal" or "deficient" in at least one of the BASIC areas.

The cursory announcement afforded in the Federal Register on April 9, 2010 sets forth only an outline of CSA 2010 and does not set forth with specificity the data to be used, the basis for the peer groups or the assignment, the relative weighing of CSA violation points, the basis for percentile ranking or any factual predicate for concluding that a carrier should be labeled as "marginal" or "deficient."

The data collection method, data accuracy, and relevance to safety has not been subject to review or rulemaking and there has been no analysis on the affect on small businesses which comprise over 95% of the motor carrier industry.

(a) Vicarious Liability/Efficiency and Competitive Concerns with Premature Release of CSA 2010 Data

The grist for this petition is the substantial anticompetitive effect which the proposed release to the public of CSA 2010 in December will have on the motor carrier industry, small carriers in particular.

Petitioners submit that the most disruptive and potentially devastating threat to the efficient and competitive privately owned motor carrier system is the fear of vicarious liability. Vicarious liability as it applies to interstate trucking is the concept that the shipper or broker as the customer of a safety regulated motor carrier (or vendor) can somehow be vicariously liable or responsible for negligent selection when it hires a carrier that the FMCSA regulates and confirms is licensed, insured and authorized to operate. The problem of vicarious liability is real and has resulted in aberrant decisions in which state law has been applied to suggest that a shipper or broker is required to second guess the Agency's ultimate fitness determination through use of publicly released data even when the FMCSA has certified the carrier is licensed and authorized for use. See *Schramm v. Foster*, 2004 U.S. Dist. Lexis 16875 (D.Md. August 23, 2004) and *Jones v. D'Souza*, 2007 U.S. Dist. LEXIS 66993 (W.D. Va. 2007).

Although SafeStat and current available data clearly contains warnings to the contrary, courts have misapprehended the role of the FMCSA and its current safety procedures. The Agency has been advised both formally and informally that release of the CSA 2010 scoring system with the current "marginal" and "deficient" limbo bars will be a train wreck involving trucks, clearly exacerbating the vicarious liability issue with drastic unintended economic consequences.

The Agency has been advised and comments in support of Petitioners' request will clearly demonstrate that major Fortune 500 customers (including shippers, logistics companies and intermodal equipment providers) are currently so confused about the Agency's use and intent of CSA 2010 that they are prospectively including in contracts provisions which would bar use of any carrier with a "deficient" or "marginal" rating in any BASICs category if and when CSA 2010 data is released to the public. See Appendix A. Attached as Appendix B is an example of the contractual language another Fortune 500 is now inserting in every contract for carriage which poignantly demonstrates this problem.

Unfortunately, the FMCSA has not disabused the shipping industry of its unreasoned fear of vicarious liability and has failed to affirm its sole preemptive duty to ultimately certify to the shipping and traveling public which carriers are fit for use. The comments of the Volpe Center and the Agency's response to inquiries from affected parties such as the Minnesota Trucking Association have only further heightened confusion over the permissible or intended use of CSA 2010 data by shippers and brokers.

Under the current system, the FMCSA audits approximately 17,000 carriers per year (including those deemed statistically the worst offenders under SafeStat) and ultimately awards over half satisfactory ratings. Assuming the accuracy of this data, far less than 1% of the motor carriers were found unfit to operate by the FMCSA in 2009 and crashes involving commercial motor vehicles declined 20% to a 60 year low. The Agency cannot don judicial blinders and ignore this economic reality, the confusion in the industry, or the devastating effect on over 150,000 small for-hire carriers¹ if

¹ This estimate is based on FMCSA data showing approximately 220,000 of the 700,000 registered carriers are for-hire and the estimate that CSA data will label two-thirds of the authorized drivers as marginal or deficient.

they are barred from handling customers' freight because the proposed unscrubbed CSMS data is released on schedule.

The labeling of over two-thirds of the industry as "deficient" with the obvious unintended consequence of bankruptcies and loss of jobs due to unrebutted vicarious liability concerns is clearly a foreseeable consequence which requires the relief Petitioners seek. Moreover, if faced with the risk of losing major customers at any time that the FMCSA website shows their operations are marginal or deficient under any BASICs, small businesses will be unlikely to make major investments in new equipment and lenders will be less likely to support them. Brokers' ability to access the back haul market and match loads with available carrier capacity will be compromised. Dead miles will be increased, fuel will be wasted, and the cost of transportation will be increased as the efficiency of the spot market is compromised.

**(d) Why the FMCSA Should Affirm Its Sole Ultimate Duty
to Determine Highway Fitness for Use**

In the context of vicarious liability, Petitioners submit that the federal statutes and regulations have a preemptive effect under the Commerce Clause and The Federal Aviation Administration Authorization Act of 1994 (F4A).

The FMCSA and not state authorities are solely responsible for determining which carriers are safe to operate. Federal statute places the sole non-delegable duty upon an authorized motor carrier to conduct its operations in compliance with the Federal Motor Carrier Safety Regulations, to designate agents and to provide evidence of insurance to assure the traveling and shipping public that the carrier meets minimum levels of financial responsibility for its negligent acts or omissions. (49 CFR 387)

Federal statutes and regulations impose no safety compliance duty on shippers and brokers. In fact, property brokers which are regulated by the Agency and hence directly affected by this ruling are required only by regulation to retain "authorized carriers". See 49 C.F.R. 371.1. The U.S. DOT through the FMCSA, is charged with the exclusive duty of determining the compliance of motor carriers and bus lines with the requirements of the Act including the safe operation of commercial motor vehicles. The FMCSA is solely charged with registering authority, issuing permits to regulated carriers and assigning safety ratings and placing carriers out of service.

In this regard, the FMCSA's regulation of the trucking and bus industry as public utilities is no different than the duties and obligations of other regulatory bodies vis-à-vis the credentialing of the regulated and their certification for public use, whether the regulated entity be subject to the regulations imposed by the FAA, the FCC or the FMC. The Agency in the name of uniformity and highway safety has the sole duty to decide who is authorized to operate commercial motor vehicles in interstate commerce. The Agency assumes the duty so the shipping public does not have to.

Unfortunately, the Agency in an effort to be transparent and inclusive, has issued certain comments which have obfuscated the purpose of the CSMS data system and which have suggested to some that determining safety fitness is a "stakeholder shared

responsibility" and that shippers and brokers are invited, if not required, to second guess the Agency's progressive threshold analysis.

In responding to an inquiry by the Minnesota Trucking Association, the Agency's Administrator said that shipper use of CSA information allows "... the FMCSA to leverage the support of shippers, insurers, and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safety operations over time."

In issuing the most recent safety measurement system methodology in August, the Volpe Center confirmed in the preface that "Future SMS development will be part of the continuous improvement process based on results and feedback" yet on page 1-2, concluded that, "Thus, the SMS will empower carriers and other firms (e.g. shippers, insurers) involved in the motor carrier industry to make safety based business decisions."

The Agency has not defined the "safety based business decisions" for which its shippers are required to make under the new methodology.

On the contrary, unless the FMCSA affirms its sole duty to determine safety for use as part of the CSA methodology, this kind of "inclusive" language will simply, through fear of vicarious liability, introduce a "game changer" which affects small companies, jobs and competition long before the SFD portion of the methodology can even be submitted for approval.

Petitioners submit the Agency cannot transition from SafeStat, with its warning that the data is not intended for use, to CSA 2010, with the suggestion that stakeholders should use the information to make safety decisions, without recognition that a major change in policy is inherently occurring which requires closer scrutiny and the protection assured by statute.

(e) CSA 2010 Methodology is a Work in Progress and Does Not Meet the Data Quality Act Requirements for Public Reliance in its Present Format

As late as last month, the Agency, in an effort to improve its analysis, made peer grouping changes and other system corrections which resulted in changes in as much as 50 percentage points for some carriers. Carriers one day ranked as deficient or marginal who were 15 percentage points above the 65% marginal threshold found their scores dropped to 30 with no change in their safety profile. (See Appendix C.)

Although the CSA 2010 methodology is hopefully a perfectible tool which has ultimate value for use by the Agency in performing its safety duties, it is the release of this data in December maligning over two-thirds of the industry as "marginal" or "deficient" which Petitioners submit is without statutory, scientific or statistical warrant and which will have a demonstrable and catastrophic effect on the industry and small carriers in particular.

Not only has the small business protection assured by statute not been complied with, the CSA 2010 methodology and data reliability has not been tested in accordance with

the Data Quality Act.

Petitioners have concerns that releasing of CSMS to the public in its current state and without the protections afforded by the Administrative Procedure Act, Reg Flex analysis and scrutiny under the Data Quality Act will have a serious adverse effect on small carriers, brokers and shippers who use them.

The ongoing "refinements" to CSMS with regard to issues such as methods of measuring exposure, peer groupings, and violation severity weighting are issues which seriously impact small carriers and which should timely and properly be considered in the context of rulemaking and regulatory approval of the entire safety fitness determination methodology.

Petitioners have specific concerns about the effect of the current CA methodology as it relates to small carriers in the following areas:

(1) The law of large numbers - Reporting anomalies statistically prejudice entities with small samplings.

(2) Geographical anomalies - Small carriers operating in "probable cause states" are up to four times more likely to accumulate unsafe driving points than carriers operating nationally.

(3) Profiling - Small carriers without Prepass are subject to greater and more severe roadside inspections than larger Prepass carriers.

(4) Reporting failures/scale house anomalies - The system contains no checks to preclude underreporting of clean inspections which Petitioners' members report are significant at some scales.

(5) Due Process/DataQ has no checks or balances - Small carriers are particularly unable to efficiently and uniformly correct false data. (See Appendix D, Express America Statement.)

(6) EOBRs - Over 50% of the points in the fatigued drivers BASICS are incurred because of paper log violations. Thus, small carriers are statistically twice as likely to be rated "deficient" or "marginal" in the BASICS. (See Appendix E.)

(7) Carriers with units operating under the 100 mile logging exemption are not segregated from the OTR carriers which must log and comply with the 11 and 14 hour rule, thus contaminating any peer group sample.

The above flaws in the information gathered by the FMCSA represent an inherent problem in CSA 2010 whereby the information and its dissemination violate the Data Quality Act and the Office of Management and Budget ("OMB") and DOT Information Dissemination Quality Guidelines (referred to collectively herein as the "Guidelines"). The goal of the Guidelines is to "ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by

Federal Agencies," and in order to meet that goal, CSA 2010 must not go into effect as it is currently structured. (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8458 (Feb. 22, 2002).)

The Guidelines define dissemination as "agency initiated or sponsored distribution of information to the public," and information as "any communication or representation of knowledge such as facts or data, in any medium or form..." CSA 2010 thus falls within the purview of the Guidelines as under CSA 2010, motor carrier "BASICS" (information) will be publicly displayed on an FMCSA website (dissemination). (See *Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)*, 75 Fed. Reg. 68,18256, 68,18258 (April 9, 2010).) Additionally, the analytical information disseminated through CSA 2010 is likely to be "influential" as defined by the Guidelines (i.e., information "that will most likely have an important effect on governmental or private-sector policies, or have important consequences for specific technologies, substances, products, or firms") and as such it is necessary that an "independent re-analysis of original and supporting data using the same methods would generate similar analytical results, within an acceptable range of error or imprecision." (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8460 (Feb. 22, 2002).)

CSA 2010 fails to meet the standards of the Guidelines because the information therein contained and disseminated is not objective. Under the Guidelines, objectivity has two distinct components: presentation and substance. *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8459 (Feb. 22, 2002). As to presentation, "objectivity includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation." *Id.* As to the substance, "objectivity involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods." *Id.*

The information disseminated by CSA 2010 is neither objective with respect to its presentation nor its substance. As detailed above, the substance of the information is plagued with anomalies, reporting failures and the consequences of profiling small motor carriers. The gathered data is therefore not developed using sound statistical and research methods. Additionally, the information is presented in a significantly biased manner, as the motor carrier "peer groups," in which the data on carriers are compared directly to one another, are created without taking into account the varied characteristics of the motor carriers.

Finally, the information is not presented with "a high degree of transparency about

data and methods to facilitate the reproducibility of such information by qualified third parties." (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; Republication 67 Fed. Reg. 36,8451, 36,8460 (Feb. 22, 2002).) Thus, motor carriers performing significantly different services and subject to the laws of significantly different jurisdictions are compared as if the differences did not exist. CSA 2010 is therefore currently designed to disseminate influential information regarding motor carriers that is not objective and as a result will have important and often devastating consequences on the transportation industry.

Obviously, the CSA 2010 modality can be further refined and reasonable thresholds can be imposed for the Agency's use in determining ultimate fitness but Petitioners submit there is an entirely different question whereas here the Agency intends to release the data for public use knowing that imminent loss of business is foreseeable.

(f) Argument in Support of Delaying Publication of CSMS Data

The Federal Register Notice to which this comment is addressed provides for a three step program for its implementation of CSA 2010. The first step is approval of the "more comprehensive carrier safety measurement system" and only the third step, the ultimate new safety fitness determination methodology is scheduled for Notice of Proposed Rulemaking. (See Fed. Reg. Vol. 75, No. 68, p. 18257.)

The Agency states that the subject Federal Register Notice addresses only implementation of the first component "a more comprehensive safety measurement system" to identify and prioritize motor carriers for investigation. The Agency has repeatedly acknowledged that the CSMS system is a work in progress and that the Agency has received "valuable feedback from its partners and stakeholders through listening sessions and written comments." Petitioners submit that the valuable feedback time has not yet expired and that the CSMS program is not ready for prime time. The industry has not had an opportunity to review the peer groupings, the assigned point valuations on violations, the due process concerns of reporting warnings and citations not convictions, the viability of DataQ or a scientific basis for labeling carriers as "marginal" or "deficient" based upon percentile rankings.

Conclusion

In conclusion, Petitioners share the FMCSA's safety concerns and pledge to work with the Agency to develop CSA 2010 methodology as a viable compliance and enforcement tool for the Agency's use. Yet Petitioners submit that release of CSA 2010 information to the public with percentile rankings by artificial peer groups labeling a majority of the industry as "marginal" or "deficient" is flawed, seriously misleading, and will have direct and severe adverse consequences on the motor carrier industry and small carriers in particular.

CSA 2010 procedures and the terms and conditions of release to the public can and must be considered in the context of rulemaking in order to assure that the real concerns of small carriers concerning misuse of CSA 2010 by the industry for purposes

of barring carriers from use can be considered.

The Agency must affirm its sole duty to certify carriers as licensed, authorized and insured for use by the shipping public and for operations on the public highways. The Agency must affirm its regulatory obligation and retract misleading statements to the contrary from which the industry has inferred that second guessing and other safety standards need to be applied for fear of vicarious liability. The issue of the Agency's preemptive safety duties is an important issue of Federal Constitution law which cannot be treated as a language change in a press release. At stake is an important principle of federal transportation law and the Agency's statutory duties and obligations which cannot and should not be left to state courts in accident suits to resolve in disparate and non-uniform fashions. Such a change in the schema of federal regulation of interstate commerce cannot be left to a confused industry to sort out with loss of business and jobs as collateral damage. Clearly, statutory and judicial issues are at stake which mandate the immediate relief Petitioners seek.

Finally, the Agency must acknowledge its regulatory duty to consider the effect of all regulations on small business enterprises and its obligation to provide a level playing field in which "mom and pop" small businesses can be certified for use and compete on a level playing field with large carriers backed by Wall Street hedge funds.

Relief Sought

The above premises considered, Petitioners request the Agency to (1) postpone public release of CSA 2010 data pending completion of rulemaking on the SDF aspects of CSA 2010; or in the alternative (2) release only accumulated safety data as FOIA may require, redacting any pejorative characterization of a carrier based upon such data as well as percentile ranking and establishing a duty on shippers, brokers or other carriers; and (3) issue a statement affirming that in the absence of an administrative final rulemaking, the Agency is monitoring the activity of all interstate carriers and that the shipping and traveling public may rely upon the Agency's ultimate fitness determination as a certification for use.

Respectfully submitted,



Henry E. Seaton, Esq.
Seaton & Husk, L.P.
General Counsel for NASTC, AEMCA and TEANA
September 30, 2010

**AFFIDAVIT OF CHRIS MOORE
IN SUPPORT OF MOTION TO POSTPONE**

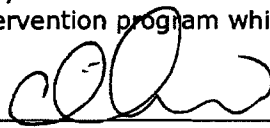
My name is Chris Moore and I am President of National Drayage Services, LLC, 3150 Lenox Park Boulevard, Suite 312, Memphis, TN 38115. We support the Motion filed by NASTC, AEMCA, TEANA and other parties to postpone release of CSA 2010 data for public use until this matter can thoroughly be reviewed as part of rulemaking.

We are a small drayage company which current utilizes 0105 owner-operators and which provides intermodal transportation to and from the following ports: Charleston SC, Savannah GA, Jacksonville FL, Memphis TN. We are 1 of the over _____ motor carrier signatories to the UIIA which is intended to permit motor carriers to have free and open access to steamship owned containers and chassis.

Out of fear of vicarious liability, at least 2 steamship lines (one of which is the country's second largest) has determined that it must second guess the FMCSA's determination of fitness and has issued orders that motor carriers found deficient or marginal under CSA 2010 in any BASIC area are to be barred from use and cannot even transport the steamship's box on customer routed freight.

Because of this misconception about the FMCSA release of existing and proposed data, carriers who are fit, willing, able and authorized by the Agency for use are very simply deprived of access to freight. We oppose the release of CSA 2010 in its present form because it will only exacerbate the problem. Now is the time for the Agency to address the misconception concerning the label "deficient" or "marginal" which have no meaning in the current safety fitness methodology and which we submit should have no place in the new methodology which should be subjected to rulemaking.

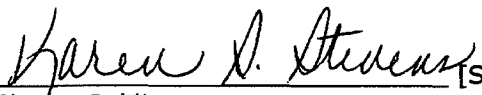
If the current misconceptions about CSA 2010 are not corrected by the Agency and the proposed data is released, there are estimates that as many as _____ small draymen like my company may lose business and may not be able to financially survive long enough to successfully complete the progressive intervention program which CSA 2010 envisions.



Christopher Moore, President
National Drayage Services, LLC

State of Tennessee)
County of Shelby)

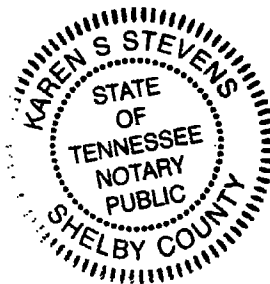
Subscribed and sworn to before me this 24th day of September, 2010.



Notary Public [Seal]

My Commission Expires: _____

MY COMMISSION EXPIRES MARCH 25, 2012



(g) Carrier hereby acknowledges that it possesses full and complete understanding and knowledge of the DOT's CSA 2010 program (including, but not necessarily limited to, driver violations and ranking criteria). Carrier, and any drivers of Carrier, shall at all times meet CSA 2010 safety standards sufficient to enable Carrier to (a) operate without DOT intervention or restriction; (b) obtain and maintain the insurance coverage required by this Agreement; and (c) be and remain competitive with similarly situated carriers with regard to quality of driver safety as measured under CSA 2010. Carrier further agrees to (i) immediately notify Broker in writing of receiving notification that Carrier has been deemed "unfit" or "marginal" in any area of their safety and compliance performance measured by the CSA 2010 program; and (ii) to reject and not otherwise accept the transport of any freight offered by Broker during such time as Carrier is deemed "unfit" or "marginal" in any area of its safety and compliance performance measured by the CSA 2010 program.

(h) Carrier shall only provide services under this Agreement by using competent professional drivers who meet the minimum driver qualification standards of the DOT, including, but not limited to, familiarity and compliance with state and federal motor carrier safety regulations. Carrier shall not provide services under this Agreement when utilizing any driver found to be unsafe, unqualified, unfit, uninsurable, or marginal, pursuant to federal or state law or the criteria established by the DOT as part of the CSA 2010 program.

CSA Revisions Improve Most Scores but Worsen Others, Carrier Execs Say

Sean McNally, Senior Reporter

Changes that the **Federal Motor Carrier Safety Administration** has made to its CSA safety-monitoring program are causing the ratings of fleets across the country to change, and not always for the better, carrier executives told Transport Topics.

Carriers by and large saw their scores go down, sometimes dramatically, but in some of the BASICs most related to higher crash rates, some fleets saw their scores go up in other areas, as a result of FMCSA's changes to the program. In this program, lower scores mean better safety ratings. "We saw significant drops in some of our scores and saw increases in others, and it is strictly in tune with the methodology changes that were implemented," said Jack Curry, safety director for American Central Transport Inc., Liberty, Mo.

Curry said the truckload carrier "saw significant improvement in the BASIC area of unsafe driving and in our crash indicator . . . 55 basic points in one and 30 in another; it is a huge drop," which he attributed to FMCSA's use of miles driven and total vehicles for grouping fleets, rather than just the number of trucks.

On the flip side, he said that American Central Transport's percentile score in the cargo-related BASIC rose because of the changes FMCSA made to the types of violations it examines in that category. FMCSA started allowing nationwide fleets to see their percentile scores under CSA on Aug. 16, but fleets in nine states, such as Missouri, where the agency had been running a pilot test of the program, have been able to see their scores all along.

In addition to opening up the system to provide more information, FMCSA also made a number of changes to how it calculates fleet safety records — ranging from resetting the thresholds for when a company is targeted for intervention to the severity of hundreds of violations to how the system calculates a carrier's exposure to safety problems.

"Had these tweaks been done previously, we probably wouldn't have been on their radar," said Donna Underwood, safety director for Steelman Transportation Inc., Springfield, Mo. Underwood said Steelman, primarily a flatbed carrier with 100 trucks and a small hazardous materials division, was deficient in four of the BASICs before the changes were made. "I am right now deficient in just two: cargo and fatigued driving," she said. Steelman had been deficient in unsafe driving because of speeding violations, but FMCSA instituted a graduated point system, Underwood said, which reduced its score.

Sherwin Fast, president of Great Plains Trucking Inc., Salina, Kan., said the modifications caused dramatic drops in the score for his fleet of about 55 trucks. The company initially was in the 95th percentile for crashes, Fast said, but after an FMCSA investigation put the fault for many of those crashes elsewhere, "they lowered it down to 75." "Now, this last couple weeks when they switched to the mileage instead of the vehicle, we're at a 20.7," he said. "We run a lot of miles, so we went from a 95 to a 20. . . . We would never have been targeted for an intervention of any kind, had they been doing this all along."

Great Plains' unsafe driving score also fell dramatically, to 43.8 from 93.9, because of the change in methodology. "I love the new one; it just looks so much better," Fast said.

"They've improved across the board," said Richard Jenkins, safety director for Brown Trucking Co., Lithonia Ga., adding that the company's crash indicator score "dropped 30 basis points, which was huge."

APPENDIX D

A couple of key points I would like to discuss with CSA 2010 is the challenge process. The process for removing erroneous information through the DataQ web portal and the state time frame for having roadside inspection data reported.

The time frame to remove false or inaccurate data differs in each and every state as well as the process to remove false data listed in the FMSCR Web portal. The DataQ website allows you to challenge any incorrect data however getting the incorrect information removed is not easy at it sounds.

As an example, an owner operator leased his truck on with Express America in March 1 ,2010 only to quit unexpectedly on March 23, 2010 – His registration still shows Express America Trucking and he has received no less than 4 roadside inspections from his current carrier. Unfortunately his current carrier is not concerned with all the applicable requirements regarding vehicle registrations. All of this driver's roadside inspections were horrendous and this information is listed under our DOT number. I move to challenge the information and have this data removed.

The state of Georgia required me to send a notarized letter stating the circumstances in which this driver left our company and affirming that he no longer worked for Express America. The state informed me that it could be 6 weeks or longer before the information was removed once they received my notarized letter. This driver had 2 inspections in the state of Georgia and 2 of his inspections in Texas. Texas did respond that the data would be removed but it could take up to 6 weeks. I had 2 inspections to show up on our DOT number in July 2010 of this year from the state of Texas but the driver had not been employed with Express America since November of 2009. Almost 8 months had passed prior to this information being uploaded to the FMCSR web portal.

The time constraints associated with reported data and the method of removing inaccurate data are both significant issues that should be addressed as well.

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Express America Trucking Company, Inc
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Cell 901-301-3022

Charleston Terminal
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Phone: 843-760-9485
Fax: 843-760-9489

Savannah Terminal
6-D Telfair Place
Savannah, GA 31415
Phone: 912-232-5722
Fax: 912-232-5721

Statistical Anomalies in SafeStat

Fatigued driving (HOS) is highlighted by the FMCSA as a stand alone BASIC and the threshold for being labeled as deficient is the 65 percentile. In other words, if a carrier is in the bottom 35% of its peer group based upon a weighted points scheme, the carrier will be labeled as deficient in this area and if CSA 2010 data is prematurely released to the public, that carrier will be barred from use by steamship lines, shippers and brokers who feel compelled to use CSA 2010 data for fear of vicarious liability.

In an excellent article entitled, "Trust but Verify" Aaron Huff in the September issue of CCJ opined that the on-board recording device represents a technological gain for the industry. Included was the conclusion that carriers who convert to electronic logs before CSA 2010 goes live have the rare opportunity to reduce their total violations in the fatigued category BASIC by 50%.

An examination of the attached chart demonstrates how this is possible and how little a 50 percentile drop may actually have to do with fatigued driving. Clearly, the biggest source of violations classified as "fatigue related" are actually paperwork violations pertaining to general form and manner of logs and failure of a driver to record current duty status. When coupled with failure to maintain a log, these 3 paperwork violations account for 71% of the total violations in the fatigue BASIC area.

This means that drivers who fill out paper logs based on the numbers are susceptible to receive over three times more fatigued driving violations than those who log electronically.

This obvious discrepancy does not disappear when the CSA 2010 point valuation criteria is applied. For rating purposes, each violation in a category is weighted, points are assigned and total points accumulated are compared based upon the number of inspections conducted with all peer grouped carriers including both those who log manually and electronically. Based upon the number of violations times the severity rating, paperwork violations account for 122.98 points, far more than are assigned to carriers found guilty of exceeding the hours of service under the 11 and 14 hour rules combined (76.65).

The 50 point differential in percentile ranking enjoyed by carriers with electronic logs may have some correlation to safety but the frequency and severity attached to paperwork violations severely skews the percentile ranking as to make any peer group including both paper and electronic loggers statistically invalid as a measure of fatigue.

In sum, the electronic logging system is certainly to be encouraged for a whole lot of reasons but any system which assigns more total points to paperwork violations (which only paper loggers incur) than it does to actual violations of the hours of service regulations cannot compare apples to oranges and conclude that one is deficient, marginal or not safe to eat.

Top rankings of 2010 inspection violations (through May 21)

| Rank | Violation Code | Description | % of total violations | CSA 2010 point value |
|------|----------------|--|-----------------------|----------------------|
| 1 | 395.8 | Log violation (general/form and manner) | 19.84 | 2 |
| 2 | 395.8F1 | Driver's record of duty status not current | 13.64 | 5 |
| 5 | 395.3A2 | Requiring or permitting driver to drive after 14 hours on duty | 7.04 | 7 |
| 6 | 395.8E | False report of driver's record of duty status | 4.02 | 7 |
| 8 | 395.3A1 | Requiring or permitting driver to drive more than 11 hours | 3.9 | 7 |
| 11 | 395.8A | No driver's record of duty status | 3.02 | 5 |
| | | | 51.46 | |

EXHIBIT D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|------------------------------|---|-----------------------|
| NATIONAL ASSOCIATION |) | |
| OF SMALL TRUCKING COMPANIES, |) | |
| THE EXPEDITE ALLIANCE OF |) | |
| NORTH AMERICA and AIR & |) | |
| EXPEDITED MOTOR CARRIERS |) | |
| ASSOCIATION, |) | |
| |) | |
| Petitioners, |) | |
| v. |) | F.R.A.P. 28(a)(1) |
| |) | Certificate as to |
| FEDERAL MOTOR CARRIER SAFETY |) | Parties, Rulings, and |
| ADMINISTRATION, |) | Related Cases |
| |) | |
| Respondent |) | |

Under Rule 28(a)(1) for the U.S. Court of Appeals of the District of Columbia Circuit and the Federal Rules of Appellate Procedure, counsel of Petitioner certifies the following:

A. Parties

1. Petitioners:

The National Association of Small Trucking Companies (“NASTC”) is a trade association incorporated in the State of Tennessee. Its membership consists primarily of individuals who operate commercial motor vehicles. The purpose of NASTC is to serve as an advocate for, a consultant to, and a source of collective

buying power for its member companies. NASTC has over 2600 members in the United States and Canada. See attached Declaration of David Owens.

The Expedite Alliance of North America (“TEANA”), is a trade association incorporated in the Commonwealth of Pennsylvania. Its membership consists primarily of individuals who operate commercial motor vehicles in the expedited freight market. The purpose of TEANA is to serve as an advocate for and a consultant to its members on matters of federal and state legislation and regulation. See attached Declaration of Mark McLochlin.

The Air & Expedited Motor Carriers Association (“AEMCA”), is a trade association incorporated in the State of Virginia. Its membership consists primarily of individuals who operate commercial motor vehicles in the air and expedited freight markets. The purpose of AEMCA is to provide its members with timely, value added information, education, benefits and opportunities to promote business development through networking with members and industry groups and to serve as an advocate for and a consultant to its member companies. See attached Declaration of Mike King.

2. Respondents:

The respondents are the Federal Motor Carrier Safety Administration (“FMCSA”) and the United States.

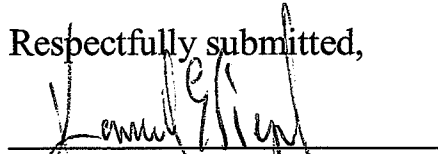
B. Rulings Under Review.

Petitioners seek review of the final rules issued by respondents in Docket No. FMCSA-2004-18898; *Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)*. A copy of the request for comments and final rules, which rules have not been published in the Federal Register, are attached.

C. Related Cases.

The case on review has not previously been before this Court or any other court. Petitioners are not aware of any related cases currently pending before this Court or any other court.

Respectfully submitted,



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Seaton & Husk, L.P.

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Henry E. Seaton, Esq.
Seaton & Husk, L.P.

Counsel for Petitioners

DECLARATION OF DAVID OWEN, PRESIDENT OF NATIONAL ASSOCIATION OF SMALL TRUCKING COMPANIES

My name is David Owen. I am President of the National Association of Small Trucking Companies ("NASTC"). NASTC is a for-profit trade association incorporated in the State of Tennessee. The membership of NASTC consists primarily of individuals who operate small fleets of commercial motor vehicles. NASTC's mission is to serve as an advocate for, a consultant to, and a source of collective buying power for its member companies. NASTC has over 2600 members in the United States and Canada. Several of the parties submitting statements in support of the motion for stay of the Federal Motor Carrier Administrations (FMCSA) rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") are members of NASTC¹

NASTC has been a leading party in representing the interests of its members and other small fleet operators before the FMCSA and Congress with respect to the agency's CSA-2010 program. NASTC filed comments, on behalf of its members, with the agency in the 2004-18898 docket. NASTC's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of NASTC's member carriers could have brought this action before the Court or filed comments before the agency below on its own, NASTC and its members elected to take such action collectively on behalf of themselves and other small fleet operators.

As stated in the statements submitted by the NASTC members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because of the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nations roads and highways.

An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

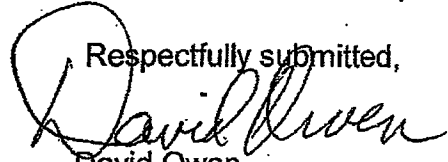
The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided

¹ Ennis Corp., H&V Leasing, Inc., Jim Loyd Transport Co.

an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declarations under penalty of perjury.

Respectfully submitted,



David Owen
President

DECLARATION OF MARK McLOCHLIN, ELECTED PRESIDENT
OF THE EXPEDITE ALLIANCE OF NORTH AMERICA

My name is Mark McLochlin. I am elected President of The Expedite Alliance of North America (TEANA) and owner of Clearwater Logistics. TEANA is a not-for-profit trade association domiciled in the State of PA. The 85 members of TEANA consist primarily of small carriers which provide expedited or "hot shot" motor carrier transportation in interstate commerce, and affiliated brokers. TEANA's mission is to advocate best practices and ensure an efficient and competitive environment in which its members can provide economical services designed to meet the industry's needs. Two of the parties submitting statements in support of the motion for stay of the Federal Motor Carrier Administrations (FMCSA) rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") are members of TEANA.¹

TEANA has been a leading party in representing the interests of its members before the FMCSA and Congress with respect to the agency's CSA-2010 program. TEANA filed comments, on behalf of its members, with the agency in the 2004-18898 docket. TEANA's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of TEANA's members could have brought this action before the Court or filed comments before the agency on its own, TEANA and its members elected to take such action collectively on behalf of themselves and other similarly affected motor carriers.

As stated in the statements submitted by the TEANA members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because to the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nation's roads and highways.

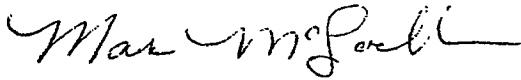
An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

¹ Tyme-It Transportation, Inc. and Universal Traffic Service, Inc.

The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declaration is under penalty of perjury.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark McLochlin".

Mark McLochlin
President

**DECLARATION OF MICHAEL KING, ELECTED PRESIDENT OF THE
AIR & EXPEDITED MOTOR CARRIER ASSOCIATION**

My name is Michael King. I am the elected President of the Air & Expedited Motor Carrier Association (AEMCA) and owner of King's Express of Buffalo, New York. AEMCA is a not-for-profit trade association domiciled in Manassas, Virginia. The AEMCA currently has 110 members consisting primarily of licensed for hire interstate motor carriers serving the air freight industry. Among the services AEMCA provides to its members is information concerning regulatory compliance with not only the Federal Motor Carrier Safety Administration (FMCSA) requirements but also with TSA and FAA rules and regulations, compliance with which is essential to the rendition of surface transportation having a prior or subsequent movement by air. AEMCA is committed to ensuring that its members are apprised of regulations governing their operations and regularly participates in regulatory issues which affect the membership. One of the parties submitting a statement in support of the motion for stay of the FMCSA rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") is a member of AEMCA.¹

AEMCA has been a leading party in representing the interests of its members before the FMCSA and Congress with respect to the agency's CSA-2010 program. AEMCA filed comments, on behalf of its members, with the agency in the 2004-18898 docket. AEMCA's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of AEMCA's member carriers could have brought this action before the Court or filed comments before the agency on its own, AEMCA and its members elected to take such action collectively on behalf its members, broker partners and other similarly affected small carriers.

As stated in the statements submitted by the AEMCA members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because to the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nation's roads and highways.

¹ Forward Air, Inc.

An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declaration is under penalty of perjury.

Respectfully submitted,

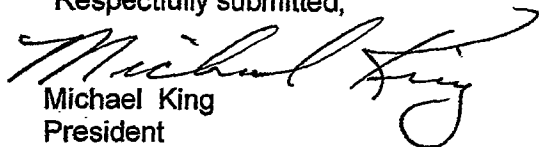

Michael King
President

EXHIBIT E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|------------------------------|---|----------------------|
| NATIONAL ASSOCIATION |) | |
| OF SMALL TRUCKING COMPANIES, |) | |
| THE EXPEDITE ALLIANCE OF |) | |
| NORTH AMERICA and AIR & |) | |
| EXPEDITED MOTOR CARRIERS |) | |
| ASSOCIATION, |) | |
| |) | |
| Petitioners, |) | |
| v. |) | F.R.A.P. 26.1(a) |
| |) | Corporate Disclosure |
| FEDERAL MOTOR CARRIER SAFETY |) | Statement |
| ADMINISTRATION, |) | |
| |) | |
| Respondent |) | |


Under Rule 26.1 of the U.S. Court of Appeals of the District of Columbia Circuit, counsel of Petitioner certifies the following:

The National Association of Small Trucking Companies (“NASTC”) is a trade association incorporated in the State of Tennessee. No parent company or publicly-held company holds a 10% or greater ownership interest in NASTC. Its membership consists primarily of individuals who operate commercial motor vehicles. The purpose of NASTC is to serve as an advocate for, a consultant to, and a source of collective buying power for its member companies. NASTC has over 2600 members in the United States and Canada.

The Expedite Alliance of North America (“TEANA”), is a trade association incorporated in the Commonwealth of Pennsylvania. No parent company or publicly-held company holds a 10% or greater ownership interest in TEANA. Its membership consists primarily of individuals who operate commercial motor vehicles in the expedited freight market. The purpose of TEANA is to serve as an advocate for and a consultant to its members on matters of federal and state legislation and regulation.

The Air & Expedited Motor Carriers Association (“AEMCA”), is a trade association incorporated in the State of Virginia. No parent company or publicly-held company holds a 10% or greater ownership interest in AEMCA. Its membership consists primarily of individuals who operate commercial motor vehicles in the air and expedited freight markets. The purpose of AEMCA is to provide its members with timely, value added information, education, benefits and opportunities to promote business development through networking with members and industry groups and to serve as an advocate for and a consultant to its member companies.

Respectfully submitted,


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