



TRANSPORTATION LAW UPDATE

PENNSYLVANIA

Towing and Towing Storage Facility Standards Act, Part II



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Pennsylvania Governor Tom Corbett recently signed into law the Towing and Towing Storage Facility Standards Act, which became effective on September 3, 2012. Prior to passage of this law, Pennsylvania’s towing industry – including tow-truck operators and storage facilities – was unregulated, which left all motorists open to being victimized by inflated towing and storage charges, difficulties involving inspection, and refusals to release property without invoice payment.



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These problems were highlighted recently by the Property Casualty Insurers Association of America, which released a special report to raise awareness of unscrupulous, deceptive and underhanded towing and storage practices. According to the study, “Abusive towing and storage practices cost vehicle owners and their insurers over a half a billion dollars each year.” That report also identified the five states with the most aggressive towing practices (in descending order): Illinois, Pennsylvania, New York, New Jersey and California. These states’ combined property damage liability and collision loss cost is 21% higher than all other states.

The number of reports of inflated towing claims continues to grow. This results in major problems for motor carriers and insurers. The abusive towing and storage practices consist of excessive towing and storage fees, hidden fees and costs, bundled charges, double charging, administrative fees, sublet fees, billing for unused equipment brought to the accident scene, as well as four-hour-minimum bills on equipment, regardless of the time it takes to actually clear an accident scene.

The practical problem is this: obtaining access for inspection or achieving return of the vehicle from a local towing company contacted by the State Police to tow and store the vehicle, likely without your consent, when the towing company demands full payment of an arbitrary, excessive and unreasonable invoice before they will release your property. Blackmail? Of course it is, but the “legal” kind, where the police will not get involved, dismissing it as a “civil matter,” and the towing company and its attorney claim liens and property interest without factual or legal merit, to support the improper detention of the vehicle until the bill is paid.

Before passage of this law, we have been forced to defend clients in expensive, unnecessary and protracted litigation due to excessive towing bills as well as the holding hostage of tractor, trailer, and cargo. The towing companies do not care, because as long as the litigation continues, the property remains in their hands and the “meter keeps running” on the storage fees. Even more difficult is the instance where a trucking company cannot release the cargo without court intervention and is also left with frustrated customers who demand delivery of the cargo on the trailers that were promised to be timely delivered by the bills of lading. Tempers flare, emails

and telephone calls from customers abound, and cargo claims loom. Prior to passage of the Act, motor carriers that found themselves involved in an accident had no choice who would tow their vehicles in Pennsylvania. The state police would dispatch a towing company pursuant to a “rotation list” and the motor carrier would have no voice in the choice. Rather, the trucking company was left to chance that the rotation list would result in dealing with an honest and reasonable towing company or one dramatically less than forthright. Although the vast majority of these firms are honest and reasonable, providing an invaluable service, some engage in abusive business practices designed to “double the bottom line.”

In our previous cases, we have been able to secure return of clients’ property and also settle inflated towing and storage bills through court intervention. In *Central Transport v. Ed’s Towing and Recovery Service*, we filed a replevin and seizure action in the U.S. District Court for the Middle District of Pennsylvania. This prompted a federal judge to order the release of the client’s tractor, trailer, and \$100,000 worth of cargo.

We also requested and coordinated an investigation by the Pennsylvania State Police to review the details of the accident as well as the invoice, equipment, time, and fees charged on a suspected unreasonable and inflated invoice. In response, the State Police suspended the towing company from all interstate towing for six months. After pleas by the towing company, the suspension was shortened to three months. We were able to utilize the suspension and official police investigation as leverage for a final invoice figure substantially below the towing company’s original invoice.

More recently, in *Zachrich Transportation v. Null’s Towing*, in Chester County, Pennsylvania, we were faced with the identical issues of a vehicle being “held hostage” coupled with an unreasonable invoice. We also secured immediate release of our client’s property through a replevin action and had the court rule that our property was never abandoned, despite a false abandonment claim filed by the towing company in an attempt to obtain a “backdoor” lien on our property.

In our opinion, the towing company’s invoice was riddled with excessive charges, inconsistent hourly rates, hidden fees, sublet charge markups to its own (but legally separate) recovery and site restoration company, and four-hour-minimum charges. Through discovery, we obtained years of company invoices that revealed

arbitrary and disparate charges. We also compared the rates of this towing company with all other companies with rates on file with the Pennsylvania State Police for the venued county and neighboring county. This towing company was regularly four times higher than all other companies. In addition, rates charged by the company were not posted and were arbitrarily determined to be fair by the company.

We also discovered that this company and a small minority of companies have been attending a billing class offered by a Northeastern towing company which sells its class by touting that the towing companies’ “bottom line will double.” This factual unearthing of documents, coupled with the services of a local honest towing company, were crucial in obtaining a settlement.

Last, in *Central Transport v. Atlas Towing v. County of Lehigh*, our client’s property was impounded following a fatal accident involving a criminal defendant who struck our tractor trailer. The District Attorney’s office impounded our client’s property for over a year. Once the defendant was convicted and the trial was over, the towing company demanded payment for the period of impoundment from the trucking company. We denied responsibility for the charges incurred during impoundment and achieved a court-ordered return of the property. The towing company joined the County for the benefit of the services provided to the Commonwealth during the criminal case and we were able to curtail any exposure to an excessive bill not of our own doing.

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