

Patterns of Safety Violations by Motor Carrier Management Practical Implications on Investigations and Enforcement

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Investigation and Enforcement Challenges

- Reincarnated Carriers
 - Same Management and supervisory personnel structure
 - Same operational structure
- Ongoing Non-compliance
 - Continued regulatory violations discovered in same part or parts after Agency intervention
 - Apparent intentional 'masking' of regulatory violations by carrier officials
- Actions Against Officials - Aiding and Abetting
 - Management role in allowing or encouraging regulatory violations
 - Practice can be spread over multiple and/or successive entities

Ongoing Non-Compliance

- Investigation Challenge
 - Ability to connect continued non-compliance to action or inaction of specific person or persons
 - Ability to determine underlying serious regulatory violations rather than “form and manner” or recordkeeping violations
- Enforcement Challenges
 - Limited violations to cite officials – does not necessarily carry over to newly formed corporate entities
 - Ability to take increased enforcement action against individual who is a ‘repeat offender’ active in legitimately formed successor entity

Reincarnated Carriers

- Investigation Challenges
 - Ability to assess and determine prioritization for investigations
 - Selection of documents to determine regulatory compliance
 - Accurate application of compliance history
- Enforcement Challenges
 - Ability to impose effective civil penalties and orders
 - Ability to prevent a carrier from avoiding negative compliance history

Reincarnated Carriers

- Is there sufficient evidence to determine that apparent commonalities demonstrate a successor company?
- Should a company determined to be a reincarnation be held liable for the history of its predecessor, and therefore subject to any outstanding penalties and/or Orders issued by the FMCSA?

Reincarnated Carriers

Investigative Barriers

General rule regarding successor corporate liability:

- A successor company is not subject to the liabilities of a predecessor company.

Exceptions:

- Express agreement to assume the liabilities
- Merger or consolidation of the two companies
- Successor company is a mere continuation of the predecessor company
- Transaction was entered into fraudulently.

Reincarnated Carriers

Investigative Barriers

- Traditional common law vs. State Law
 - Different evidentiary standards may apply depending on which jurisdiction the carrier is domiciled
 - Difficulties presented to safety investigators in determining the appropriate legal standard and obtaining sufficient documentation
 - Significantly increases the time to investigate
 - Significantly increases the resources necessary to complete the investigation

Reincarnated Carriers

Enforcement Barriers

- Weakens effectiveness of Civil penalties and orders to cease operations
 - Carriers operate under different name with same owners and/or management without addressing the regulatory violations
 - Carriers avoid compliance history which could lead to increased likelihood of roadside inspections, increased likelihood of on-site investigations and imposition of increased civil penalties
- Limited ability to track officers to subsequent entities

Actions Against Carrier Officials Aiding and Abetting

§390.13 Aiding or abetting violations

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

Aiding and Abetting

- Is there sufficient evidence to demonstrate the carrier official (officer, director, or other management official) was directly responsible for the occurrence of the regulatory non-compliance?
- Is it likely that the carrier official will continue to allow or encourage regulatory non-compliance without intervening enforcement activity?

Actions Against Officials

- Investigation Challenges
 - Collection of sufficient documentation to demonstrate direct connection to regulatory violation(s)
 - Accurate determination of compliance history
- Enforcement Challenges
 - Ability to impose effective civil penalties and orders
 - Ability to prevent a carrier from avoiding negative compliance history

Investigation and Enforcement Toolbox

Resource Needs

- Resources to alleviate challenges and barriers
- Greater ability to track officials with history of non-compliance to multiple or successor entities
- Ability to impose wider range of enforcement citations with increased penalties on carrier officials after demonstration of direct impact on continued non-compliance
- Ability to effectively or indirectly impose temporary suspension or permanent bar on individual based on continued non-compliance

Questions?