

# US LAW

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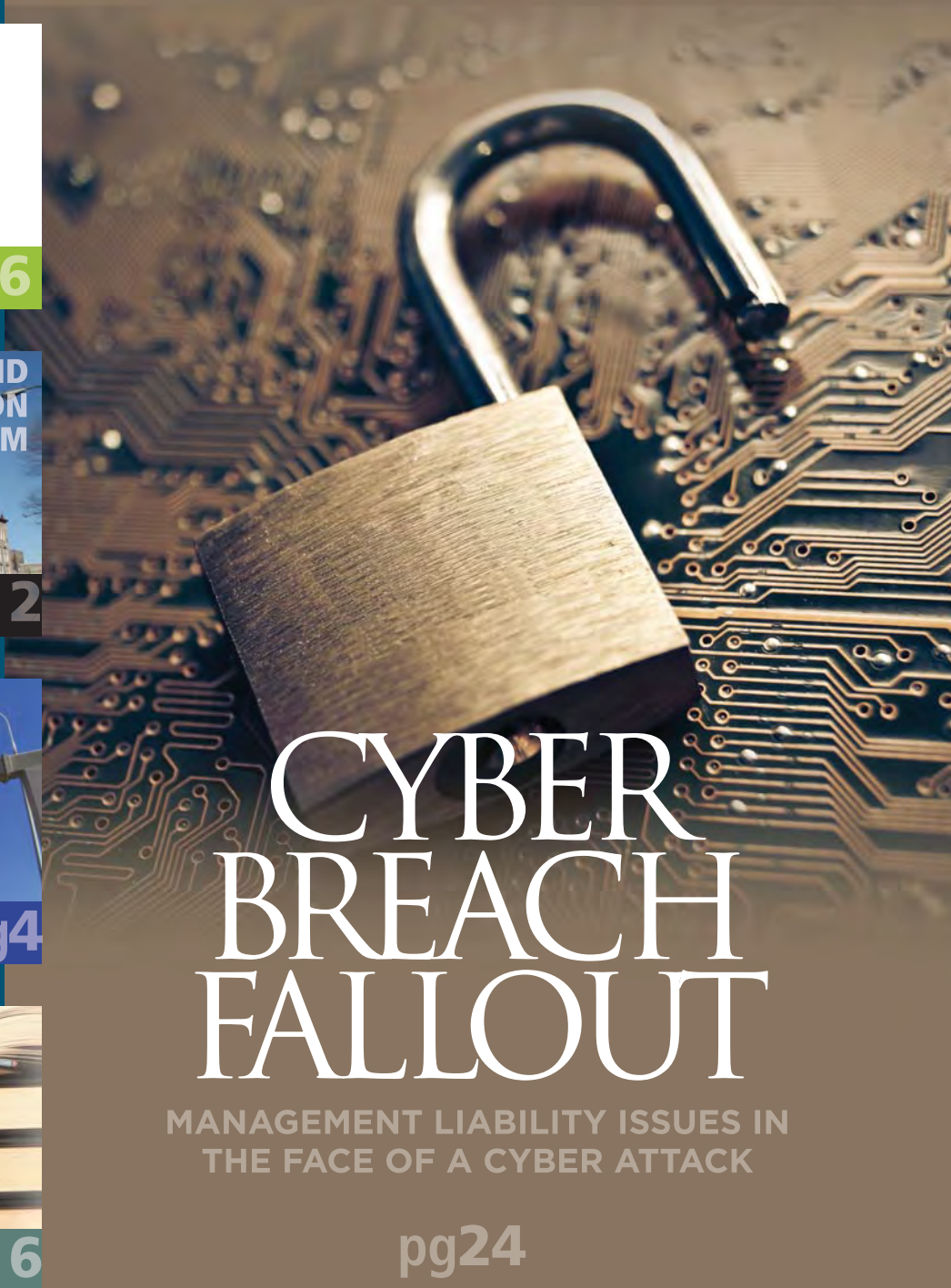
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# DEFENDING MOTOR CARRIERS PERFORMING OVERSIZE LOAD AND HEAVY HAUL OPERATIONS

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Every motorist has likely encountered a truck hauling an oversize or overweight shipment on the highway. These trucks often have signs warning of “oversize load” and other warnings, such as flags and flashing lights. Sometimes, these loads seemingly consume the whole travel lane or even protrude outside the designated travel lane. Depending on their size, oversize loads are occasionally escorted by pilot vehicles or the police.

For obvious reasons, oversize and heavy shipments can pose an increased danger to the motoring public and strain the public infrastructure by causing the premature deterioration of the highway structures. The types of accidents involving oversize and overweight loads vary from routine traffic accidents to accidents caused by the load itself.

For instance, an oversize load may strike a bridge overpass or sideswipe another vehicle, or could become detached if improperly fastened. Accidents can also sometimes arise when the oversize load is simply traveling down the highway, and a driver of an oncoming vehicle attempts to steer away from the oversize load to allow more space



and then inadvertently loses control. Often, claims involving oversize and overweight loads involve questions of whether the load was being legally operated at the time of the accident.

When accidents occur, motor carriers that perform oversize load and heavy haul op-

erations frequently face legal issues beyond those typically encountered by motor carriers transporting normal goods. Handling cases involving oversize and overweight shipments often necessitates special attention because heavy haul and oversize shipments are subject to stringent regulations.

## SPECIAL REGULATIONS GOVERNING OVERSIZE AND OVERWEIGHT LOADS

Not only do trucks hauling oversize or overweight shipments have to follow the “rules of the road,” but they must also generally follow the Federal Motor Carrier Safety Regulations (FMCSR), as well as state laws and regulations governing heavy haul and oversize load operations. Accordingly, the FMCSR and state laws governing heavy haul and oversize load operations regularly play a significant role in these types of cases.

For example, the FMCSR forbid the obscuring of brake lights, reflective devices, or other conspicuity treatments by the load being hauled (49 CFR § 392.33); the FMCSR require that a commercial truck parked along a highway have warning triangles placed around it (49 CFR § 292.22); and the FMCSR forbid the operating of a commercial truck during hazardous road conditions (49 CFR § 392.14).

In addition, the FMCSR require that cargo being transported is properly distributed and adequately secured and that the load securement devices be periodically inspected and adjusted, if necessary (49 CFR § 392.9).

Beyond the FMCSR, however, the federal government has tasked each individual state to enforce vehicle size and weight laws to assure that vehicles traversing the highway system do not exceed the size and weight limits specified by law (23 CFR § 657.5). Therefore, it is critical to understand the state regulations governing oversize and overweight shipments, which can vary from state to state. A summary of the state regulations governing oversize and overweight shipments can be found at [www.wideloadshipping.com](http://www.wideloadshipping.com).

The state regulations typically detail special warnings and markings that must be placed on oversize shipments. Importantly, individual states, as opposed to federal government, issue special permits for oversize or overweight loads, to which strict adherence is required. The special permits control the shipment's width, height, weight, speed, route, date, time and other related matters. Also, the permits may detail when and how the shipment must be escorted by qualified pilot vehicles or the police. Further, state regulations governing the oversize and overweight shipments often require the motor carrier to:

- comply with all restrictions on the oversize or overweight permit (otherwise the permit is void);
- indemnify the state for all claims;
- assume all responsibility for injury or damages to public property; and
- have more insurance than is required under the FMCSR.

States are often immune from liability on claims related to issuance of oversize load permits.<sup>1</sup> On the other hand, the penalties for motor carriers and drivers violating the state laws and regulations can be harsh. As mentioned above, the motor car-

rier can be strictly liable for any damage caused to public property during the course of the shipment, even if the state dictates the route. State regulations that require the motor carrier to indemnify the state for claims are typically enforceable, unless the state agency exceeded its statutory authority in making said regulations.<sup>2</sup> Where state regulations are silent as to liability to third parties, courts have held that such regulations do not impose strict liability upon the motor carrier and driver.<sup>3</sup>

However, if a motor carrier and its driver fail to comply with all the permit restrictions, the permit is typically void, and the shipment is deemed illegally on the road. Obviously, this can have profound ramifications on a lawsuit brought by a party injured in an accident involving an oversize and overweight shipment. Thus, when handling such a third-party lawsuit, it is extremely important to confirm that all the permit requirements have been fulfilled (i.e. that the correct load was on the correct route at the correct date and time with all the correct warnings and markings, etc.).

### COMBATING VARIOUS LEGAL THEORIES IN PERSONAL INJURY LAWSUITS

Injured parties will often try to use violations of the FMCSR and state regulations governing oversize and overweight loads to form the foundation of a negligence claim or punitive damage claim. Many states will allow the plaintiff to introduce the violation of an oversize or overweight permit as evidence of a breach of the truck driver's standard of care for a negligence claim.<sup>4</sup> Nevertheless, the plaintiff still must prove that the breach of the truck driver's standard of care directly caused the plaintiff's injury. If a violation is asserted by a plaintiff, it is well advised to retain an appropriate expert to address it.

In addition, some states allow a violation of state regulations governing oversize and overweight loads to be the basis of a negligence *per se* claim.<sup>5</sup> In other words, the

plaintiff need not prove that the truck driver violated any standard of care, but rather only that the law was violated. Under a negligence *per se* claim, however, the plaintiff still must also prove that the violation was a proximate cause to the accident. Again, an expert might prove helpful in this regard. Also, some states may allow exceptions to a negligence *per se* claim where an unusual condition or emergency may excuse the violation.<sup>6</sup>

It should be noted that a couple of states have rejected negligence *per se* claims on the basis that said regulations are primarily designed to protect the state from damage to public roads and not to protect any individual from private damage.<sup>7</sup>

Finally, courts have generally found that oversize load and heavy haul operations do not qualify as an ultra-hazardous or inherently dangerous activity, which would impose either strict liability or a non-delegable duty.<sup>8</sup>

### CONCLUSION

Defending cases involving motor carriers performing oversize load and heavy haul operations presents unique challenges. Often, the motor carrier will be held liable for property damages caused by the shipment to the public roadways and bridges. In personal injury cases, it is important to determine whether the truck hauling the oversize or overweight load was violating any laws at the time of the accident, especially under the permit for the oversize or overweight shipment. If any violations did occur, then it might be necessary to prove that such violation was not the proximate cause to the accident. In the end, handling these types of claims requires careful attention.



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<sup>1</sup> *Crossno v. State*, 726 N.E.2d 375 (Ind. App. 2000); *State ex rel. Dept. of Highways v. Ray I. Jones Serv. Co.*, 475 P.2d 139 (Okla. 1970); *contra Graves v. State of Ill.*, 32 Ill. Ct. Cl. 623 (Ill. Ct. Cl. 1978).

<sup>2</sup> *State v. Daily Exp., Inc.*, 465 N.E.2d 764, 766 (Ind. App. 1984); *State v. C & H Nationwide, Inc.*, 876 P.2d 1199 (Ariz. App. 1994).

<sup>3</sup> *McGlone v. Super. Trucking Co., Inc.*, 363 S.E.2d 736 (W. Va. 1987); *Etinger v. Denny Chancler Equip. Co., Inc.*, 910 P.2d 420, 422 (Or. App. 1996).

<sup>4</sup> *BellSouth Telecomm., Inc. v. Bennett Motor Exp., L.L.C.*, 131 So. 3d 236, 244 (La. App. 2013); *Vintila v. Drassen*, 52 S.W.3d 28 (Mo. App. 2001); *see also Young v. Julian*, 97 F. Supp. 370 (D. Del. 1951).

<sup>5</sup> *See Marich v. Bob Bennett Constr. Co.*, 880 N.E.2d 906 (Ohio 2008); *King v. Morgan*, 873 S.W.2d 272 (Mo. App. 1994); *Liefeld v. Johnson*, 659 P.2d 111 (Idaho 1983); *Lewie Montgomery Trucking Co. v. S. Pac. Co.*, 439 S.W.2d 691 (Tex. App. 1969); *Byers v. Stand. Concrete Products Co.*, 151 S.E.2d 38 (N.C. 1966); *Curtis v. Q. R. S. Neon Corp.*, 305 P.2d 294 (Cal. App. 1956).

<sup>6</sup> *Marich*, 880 N.E.2d at 915.

<sup>7</sup> *Etinger*, 910 P.2d at 422; *Allen Trucking Co., Inc. v. Blakely Peanut Co.*, 340 So. 2d 452 (Ala. App. 1976).

<sup>8</sup> *Fike v. Peace*, 964 So. 2d 651, 662 (Ala. 2007); *Inland Steel v. Pequignot*, 608 N.E.2d 1378 (Ind. App. 1993); *see also Est. of Knox v. Wheeler*, 2005 WL 2043787 (N.D. Ind. Aug. 25, 2005); *George v. H. James Fry Trucking, Inc.*, 1982 WL 6442 (Ohio App. June 11, 1982).