

No. 07-73987

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OWNER-OPERATOR INDEPENDENT )  
DRIVERS ASSOCIATION, INC. )

Petitioner, )

vs. )

UNITED STATES DEPARTMENT OF )  
TRANSPORTATION; FEDERAL MOTOR )  
CARRIER SAFETY ADMINISTRATION; MARY )  
E. PETERS; Secretary of the U.S. Department of )  
Transportation; JOHN H. HILL, Administrator of )  
the Federal Motor Carrier Safety Administration; )  
and THE UNITED STATES, )

Respondents. )

DECLARATION OF RICK CRAIG

I, RICK CRAIG, hereby declare and state as follows:

- My name is RICK CRAIG. I am the Treasurer of the Owner-Operator Independent Drivers Association (“OOIDA”) and Executive Director of the OOIDA Foundation. I have led OOIDA’s regulatory affairs efforts for 15 years. The statements made herein are based upon my personal knowledge

and information obtained during the course of my work on OOIDA's regulatory affairs and my review of data available to the public on the Federal Motor Carrier Safety Administration's SafeStat website.

2. Petitioner OOIDA is a national trade association of professional truck drivers including employee drivers and individuals who own and operate motor vehicle equipment, commonly known as "owner-operators." OOIDA is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 157,000 members residing in all fifty (50) states and in Canada. OOIDA members collectively own or operate more than 235,000 individual heavy trucks and small truck fleets.
  3. OOIDA has been a member of the Commercial Vehicle Safety Alliance ("CVSA") for over 20 years. CVSA is an alliance of every state commercial motor vehicle safety enforcement agency and other parties interested in safety enforcement issues, including trade associations and equipment manufacturers. As OOIDA's representative to CVSA, I have participated in meetings and decisions of CVSA for 18 years, including deliberations on the content of the CVSA's Out-of-Service Criteria.
  4. Federal law defines the conditions under which a driver or commercial motor vehicle shall be placed out-of-service as those where an "imminent
-

hazard” is present. “*Imminent hazard*” is defined by federal law at 49 U.S.C. § 521(b)(5)(B) as “*any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately*” (emphasis added). CVSA has endeavored to establish out-of-service criteria (“OOSC”) to define the specific and technical vehicle and driver conditions that pose an “imminent hazard” and require an out-of-service order. The OOSC are used by all state and federal motor carrier safety enforcement officials in conducting their inspections and issuing out-of-service orders.

5. In preparation for this declaration, I have reviewed the safety inspection reports of Mexico-domiciled motor carriers contained in the Federal Motor Carrier Safety Administration’s SafeStat database as collected for me under my direction and with the assistance of counsel by Catherine O’Mara of The Cullen Law Firm PLLC. (See the Declaration of Catherine O’Mara). The subject motor carriers are four of those who the FMCSA disclosed in the October 17, 2007 Federal Register (72 FR 58929) as having passed a pre-authorization safety audit (“PASA”), a prerequisite for participation in the Mexican truck demonstration project.
  6. My review of these inspection reports revealed patterns of unsafe operations by Mexico-domiciled motor carriers in the border areas of the United States.
-

The data demonstrates a high rate of safety violations, out-of-service orders, and safety violations that should have, but inexplicably did not, result in an out-of-service order. These inspection reports demonstrate the imminent hazard to safety and increased likelihood of serious injury or death for commercial truck drivers including OOIDA members that is presented by permitting these Mexican motor carriers to operate beyond the border areas under FMCSA's demonstration project.

7. Inspection reports containing safety violations of three Mexico-domiciled motor carriers, Trinity Industries De Mexico S. DE R L DE CV ("Trinity")(DOT # 610385), GCC Transporte, SA DE CV ("GCC")(DOT # 650155), and Avomex Internacional SA DE CV ("Avomex")(DOT # 1142107) are attached as Exhibits 1 through 3. These inspection reports are those containing violations reported during the twelve month period preceding September 21, 2007. All Inspection reports of Fidepal S. DE R L DE IP Y CV ("Fidepal")(DOT # 975522) from between 1/9/06 to 9/21/06 are attached in Exhibit 4.
  8. As reported by a "Y" under the column entitled "OOS" on the inspection reports, these motor carriers' drivers and vehicles received numerous out-of-service orders. Using the CVSA's OOSC for determining what driver and vehicle conditions pose an imminent hazard and merit an out-of-service
-

order, I observe that these motor carriers also received many violations for which an out-of-service order should have been issued, but was not. In these cases, there is no explanation why an out-of-service order was not issued. These are examples of such violations in the inspection reports:

<u>Section Code</u>	<u>Violation Category</u>	<u>Violations Discovered</u>
393.11	Lighting	No/defective lighting devices/ref/projected
393.207	Suspension	Axle position parts defective, torsion bars cracked, broken
393.75	Tires	Tire-ply or belt material exposed, tread depth less than 2/32 of inch, flat tire or fabric exposed
391.11(B)2	All Other Driver Violations	Non-english speaking driver

I have marked those violations in pink in the inspection reports contained in Exhibits 1 through 3 in volumes 1 through 3 to this declaration.

9. I observe also that other violations listed in these inspection reports that could have been the basis for an out-of-service order, but the inspection report does not provide enough information to make that determination.

These are examples of such violations in the inspection reports:

<u>Section Code</u>	<u>Violation Category</u>	<u>Violations Discovered</u>
396.3	All other vehicle defects	Inspection/repair and maintenance parts and accessories
393.45	Brakes	hose, tubing
393.47	Brakes	actuators, lining and pads, slack adjusters, drums and rotors
393.48	Brakes	brakes to be operative

Those violations are marked in yellow in the inspection reports contained in Exhibits 1 through 3

10. In the year preceding September 21, 2007, drivers and vehicles operated in the United States' border area by Mexico-domiciled motor carrier Trinity are shown in the SafeStat database to have received 75 out-of-service orders. Applying the CVSA out-of-service criteria, however, Trinity should have received 476 additional out-of-service orders. Trinity also received 137 violations that could have been the basis for additional out-of service orders.
11. As shown in the tallies in the chart attached to Catherine O'Mara's declaration, Trinity was cited for 1,123 safety violations in the 12 month time period I reviewed. That is an average of 112 safety violations per vehicle registered with the FMCSA by Trinity.

12. In the year preceding September 21, 2007, drivers and vehicles operated in the United States' border area by Mexico-domiciled motor carrier GCC are shown in the SafeStat database to have received 42 out-of-service orders. Applying the CVSA out-of-service criteria, however, GCC should have received 56 additional out-of-service orders. GCC also received 61 violations that could have been the basis for additional out-of service orders.
13. As shown in the tallies in the chart attached to Catherine O'Mara's declaration, GCC was cited for 372 safety violations in the 12 month time period I reviewed. That is an average of just over 28 safety violations per vehicle registered with the FMCSA by GCC.
14. In the year preceding September 21, 2007, drivers and vehicles operated in the United States' border area by Mexico-domiciled motor carrier Avomex are shown in the SafeStat database to have received 42 out-of-service orders. Applying the CVSA out-of-service criteria, however, Avomex should have received 59 additional out-of-service orders. Avomex also received 38 violations that could have been the basis for additional out-of service orders.
15. As shown in the tallies in the chart attached to Catherine O'Mara's declaration, Avomex was cited for 206 safety violations in the 12 month

time period I reviewed. That is an average of just over 41 safety violations per vehicle registered with FMCSA by GCC.

16. Although Mexico-domiciled motor carrier Fidepal has one truck and only five total inspections recorded in the SafeStat database, it has been cited for 11 safety violations, five of them out-of-service violations. On three separate occasions, the Fidepal driver was cited for operating a commercial motor vehicle without a commercial drivers license. On the one occasion that a Fidepal driver received violations but not place out of service, the vehicle should have been place out-of-service. Only once was the Fidepal driver inspected *without* being cited for a safety violation. The records of Fidepal's inspections are attached as Exhibit 4.
17. These inspection records are examples and direct evidence of the increased likelihood of serious injury and death to highway users, especially commercial truck drivers who are members of OOIDA, that is presented by permitting Mexico-domiciled motor carriers to operate throughout the United States under the FMCSA's demonstration project.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 30 day of Nov, 2007.

  
Rick Craig