



## **An Overview of the CSA Initiative and the Potential Impact upon Litigation 10:45 a.m. – Noon**

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### **Presentation Outline**

#### **I. INTRODUCTION**

With the implementation of an initiative entitled Compliance Safety Accountability (CSA), the Federal Motor Carrier Safety Administration (FMCSA), together with State Partners and the transportation industry, has created a new system in an effort to reduce commercial motor vehicle (CMV) crashes, fatalities and injuries upon the nation's highways.

On December 13, 2010, the U.S. Department of Transportation's FMCSA took a major step with the launch of the controversial CSA program.

The primary goal of CSA is the commencement of the Safety Measurement System (SMS), which will compile and analyze all safety-based violations from inspections and crash data to attempt to reach a determination of a commercial carrier's on-road performance. The new CSA is an effort to enable the FMCSA to reach more carriers early and deploy a range of corrective interventions to address specific safety problems. As of January 3, 2011, limited CSA Safety Measurement System data was publicly available online<sup>1</sup>.

The purpose of this CLE program is to provide a brief overview of the CSA measures implemented by the federal government, to discuss compliance issues, and to take a look at several anticipated litigation implications.

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<sup>1</sup> FMCSA – Analysis & Information online: Safety Measurement System, <http://ai.fmcsa.dot.gov/sms/Default.aspx>





## II. THE SAFETY MEASUREMENT SYSTEM

The SMS provides seven (7) safety improvement categories called BASICS to examine a carrier's on road performance and potential crash risk. The BASICS are as follows<sup>2</sup>:

1. **Unsafe driving** - Operation of commercial motor vehicles (CMVs) by drivers in a dangerous or careless manner. *Example violations:* Speeding, reckless driving, improper lane change, and inattention.
2. **Fatigued driving (Hours-of-Service)** - Operation of CMVs by drivers who are ill, fatigued, or in non-compliance with the Hours-of-Service (HOS) regulations. This BASIC includes violations of regulations pertaining to logbooks as they relate to HOS requirements and the management of CMV driver fatigue. *Example violations:* Exceeding HOS requirements, maintaining an incomplete or inaccurate logbook, and operating a CMV while ill or fatigued.
3. **Driver fitness** - Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications. *Example violations:* Failure to have a valid and appropriate commercial driver's license (CDL) and being medically unqualified to operate a CMV.
4. **Controlled substances/alcohol** - Operation of CMVs by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-counter medications. *Example violations:* Use or possession of controlled substances/alcohol.
5. **Vehicle maintenance** - Failure to properly maintain a CMV. *Example violations:* Brakes, lights, and other mechanical defects, and failure to make required repairs.
6. **Cargo related** - Failure to properly prevent shifting loads, spilled or dropped cargo, overloading, and unsafe handling of hazardous materials on a CMV. *Example violations:* Improper load securement, cargo retention, and hazardous material handling.
7. **Crash indicator** - Histories or patterns of high crash involvement, including frequency and severity. It is based on information from State-reported crashes.

By reviewing violations in each of the above-enumerated categories, the intention of CSA is to permit the FMCSA and State law enforcement to be more equipped to identify carriers with patterns of high-risk behaviors. The FMCSA can then apply interventions that provide carriers the information necessary to change unsafe practices. Interventions include early warning

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<sup>2</sup> FMCSA – CSA: Safety Measurement System, <http://csa.fmcsa.dot.gov/about/basics.aspx>





letters, targeted roadside inspections and focused compliance reviews that concentrate enforcement resources on specific identified issues.

### **The six major differences between the new SMS and SafeStat are as follows**

1. SMS is organized by 7 behavioral categories while SafeStat was comprised of 4 general safety evaluation areas.
2. SMS identifies safety problems to determine who to investigate while SafeStat prioritized carriers for an overall compliance review.
3. SMS uses all safety inspection violations, SafeStat only used out of service violations and specific moving violations.
4. SMS gives weight to risk based violations while SafeStat did not.
5. **SMS will impact carriers safety fitness determination while SafeStat did not.**
6. **SMS assesses drivers and carriers.**

### **III. FMCSA INTERVENTION**

The Federal Motor Carrier Safety Administration (FMCSA) and State Partners use measurement results to identify carriers for Compliance, Safety, Accountability (CSA) interventions<sup>3</sup>. These interventions offer an expanded set of tools ranging from warning letters to on-site comprehensive investigations. These tools supplement the former labor-intensive compliance review (CR) to address specific safety problems identified.

#### **A. Early Contact**

1. **Warning Letter** - Correspondence sent to a carrier's place of business that specifically identifies an alerted Behavior Analysis and Safety Improvement Category (BASIC) and outlines possible consequences of continued safety problems. The warning letter provides instructions for accessing carrier safety data and measurement as well as a point-of-contact.
2. **Carrier Access to Safety Data and Measurement** - Carriers have access to their measurement results (BASICs scores), as well as the inspection reports and violations that went into those results. With this information, carriers can chart a course of

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<sup>3</sup> FMCSA – CSA: Intervention, <http://csa.fmcsa.dot.gov/about/interventions.aspx>





self-improvement. Carriers can also monitor this data for accuracy and challenge it as necessary through FMCSA's DataQs system.

3. **Targeted Roadside Inspection** - CSA provides roadside inspectors with data that identifies a carrier's specific safety problems, by BASIC, based on the new measurement system. Targeted roadside inspections occur at permanent and temporary roadside inspection locations where connectivity to the SMS information is available. As Commercial Vehicle Information Systems and Networks (CVISN) technologies evolve, they will be incorporated into the roadside inspections.

### **B. Investigation**

1. **Off-Site Investigation** - A carrier is required to submit documents to FMCSA or a State Partner. These documents are used to evaluate the safety problems identified through the SMS and to determine their root causes. Types of documents requested may include third-party documents such as toll receipts, border crossing records, or drug testing records. The goal is to identify issues which may be subject to an on-site investigation or to subpoena.
2. **On-Site Focused Investigation** - The purpose of this intervention is to evaluate the safety problems identified through the SMS and their root causes. An on-site focused investigation may be selected when alerts in one or two BASICs exist. Onsite "focused" investigations target specific problem areas (for example, maintenance records), while onsite "comprehensive" investigations address all aspects of the carrier's operation.
3. **On-Site Comprehensive Investigation** - This intervention is similar to a CR and takes place at the carrier's place of business. It is used when the carrier exhibits broad and complex safety problems through continually alerted BASICs, worsening multiple BASICs (three or more), or a fatal crash or complaint.

### **C. Follow-Up**

1. **Operative Safety Plan (CSP)** - Implemented by the carrier, this safety improvement plan is voluntary. The carrier and FMCSA collaboratively create a plan based on a standard template to address the underlying problems resulting from the carrier's substandard safety performance.
2. **Notice of Violation (NOV)** - The NOV is a formal notice of safety alert that requires a response from the carrier. It is used when the regulatory violations discovered are severe enough to warrant formal action but not a civil penalty (i.e., a fine). It is also used in cases where the violation is immediately correctable and the level of, or desire for, cooperation is high. To avoid further





intervention, including fines, the carrier must provide evidence of corrective action or initiate a successful challenge to the violation.

3. **Notice of Claim (NOC)** - An NOC is issued in cases where the regulatory violations are severe enough to warrant assessment and issuance of civil penalties.
4. **Operations Out-of-Service Order (OOS)** - An OOS order is an order requiring the carrier to cease all motor vehicle operations.

#### IV. AN INTRODUCTION TO THE NEW INSPECTION SELECTION SYSTEM

In support of the Roadside Inspection Program, CSA is aimed at developing an improved Inspection Selection System (ISS) to support state inspectors in determining which carriers to inspect, based on the carrier's identified safety problems and relevant inspection history<sup>4</sup>.

The ISS algorithm will consider three components: safety; insufficient data; and investigative results. It provides a numeric value (1-100) that indicates an inspection recommendation for each company DOT number:

- 1-49: Pass recommendation
- 50-74: Optional recommendation
- 75-100: Inspect recommendation

The following fictional example illustrates just how ISS would help a state inspector select a carrier for inspection:

Three trucks pull into a fixed Port of Entry Weigh Station in Eastern Colorado. The owner-operator of the first truck has never been inspected and, as a result, has no safety performance data in the Carrier Safety Measurement System (CSMS). The second truck is operated by a large truckload carrier with a failed Fatigued Driving (Hours-of-Service) BASIC. The third truck is operated by a small intra-state company that recently had a CSA investigation which identified serious safety violations. The roadside inspector runs all three DOT numbers through Inspection Selection System (ISS) to help make the best choice of which truck to inspect<sup>5</sup>.

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<sup>4</sup> CSA – BASICs to Roadside ISS 2010 UPDATE, Anaheim, California (September, 2010).

<sup>5</sup> Tom Whitaker, Executive Director Kansas Motor Carriers Association, Road Map to CSA 2010: A View from an Early Implementation State.





Moreover, ISS will help the inspector assess what is actually causing the carrier to be flagged by providing the targeted carrier's BASIC percentiles as well. The inspector will be able to use this information to conduct the most effective level of inspection.

For Example, imagine that a carrier is stopped as a result of its ISS score. After closer examination, the officer determines that the carrier is deficient in the Fatigued Driving (Hours-of-Service) BASIC – but not deficient in any other BASIC. As a result, the officer decides to focus his or her efforts on a level III inspection that targets the log books of the driver.

### **V. CSA TESTING AND MODIFICATION**

Contemplating national deployment of this targeted new protocol for late-2010, February 2008 saw the initial start of a 30 month test in four states: Colorado, Georgia, Missouri and New Jersey. The test states only included 50% of the motor carriers in each state. Subsequently, Kansas, Minnesota, Delaware and Montana were added in 2009; however, implementation of CSA included all carriers in these states. FMCSA implemented CSA in Kansas on September 21, 2009. Within a couple of weeks, almost 600 Kansas motor carriers had received "Warning Letters" or other interventions from FMCSA's Office of Enforcement and Compliance. The letter indicated that the recipient's performance was "unacceptable" and the FMCSA "had opened a case file" regarding each company. This warning letter has since been toned down.

Many, if not most, of the Kansas companies receiving this letter maintain very good safety programs and compliance levels that were well below the violation thresholds established by FMCSA's former system, SafeStat.

#### **A. Kansas Motor Carriers Association Criticism**

The KMCA went on record saying they agreed with the general concept of a performance based safety rating program, and that they were looking forward to greater access of driver data for use in pre-employment screening and driver behavioral training<sup>6</sup>. However, the KMCA had serious concerns related to the process of implementation and the specific methodology used to decide on an "intervention." The KMCA asked the FMCSA to immediately address the following five areas, in order to provide fairness within the originally outlined CSA program.

##### **1. Use of "Warning And Inspector Notes" As A Violation Under The Seven Basics Contained In CSA**

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<sup>6</sup> *Id.*





Warnings for violations given to drivers during a roadside inspection should be removed from the database and the computation of the carriers BASIC's score. Under the current CSA program, warnings carry the same severity level as those violations where a ticket is issued. Motor carriers have "due process" when a citation is issued and can seek such in a court of law, whereas, the motor carrier has no recourse if a warning is issued. In addition, in cases where a court of law overturns or throws out an alleged violation, certain states have said they will not remove the violation from the CSA record. This must be allowed through a DataQ challenge.

### 2. **Crash and Incident Data**

Studies have shown the majority of serious multiple vehicle crashes involving trucks are instigated by the actions of passenger vehicles. The current CSA does not take into consideration "fault" when including crash data into a carrier's "crash" BASIC. All crashes involving the carrier are included, thereby skewing the carrier's threshold at which FMCSA intervention will be initiated. The CSA database must only include those accidents in which "fault" was established against the motor carrier or driver. In addition, the database should only include DOT recordable accidents. The FMCSA is currently attempting to address crash accountability within the CSA methodology.

### 3. **Use of Vehicle Miles Traveled (VMT) To Determine Crash Exposure**

VMT instead of the number of power units should be used to determine exposure rate. The number of registered power units is not the best approach in making CSA evaluation decisions, particularly since many power units are idle or are being used less in the current troubled economy. Using the number of power units distorts the score, because many carriers have trucks parked, without drivers assigned to them. VMT is a more objective means to determine exposure and risk. VMT information is already made readily available to FMCSA in required data collected through biennial updates made by motor carriers on the MCS-150. It is imperative that motor carriers update their MCS-150 as changes occur in their operation. We have found that numerous carriers do not know their PIN number to access CSA data.

### 4. **Release of CSA Data To The Public**

Data accumulated through CSA should not be released to the public until such time modifications are made to the program and all states have implemented the program. The public could distort the data, such as when a driver may only have been exceeding the speed limit by two miles-per hour. Further, unless the "at fault" determination is included in the crash data, carriers could be subjected to public scrutiny when most of their accidents were caused by the other driver or vehicle involved. Release of this information could create a hostile environment for many motor carriers with exceptional safety histories.

Henry E. Sexton, Esq., counsel for the National Association of Small Trucking Companies; the Expedite Alliance of North America; and the Air & Expedited Motor Carrier Association;





along with William D. Bierman, executive director of the Transportation Loss Prevention and Security Association, requested that Ann Ferro, administrator of the FMCSA, to include the following disclaimer on a carrier's individual data:

"Data accumulated for use by the Agency in prioritizing carriers for further safety monitoring is intended solely for the use of the Agency and should not be used for establishing criteria for use of carriers by the shipping and receiving public. In addition, such data may not be used for any purpose in court or other legal proceedings except by the Agency. The FMCSA intends to use this data as part of fulfilling its obligation to ultimately determine which carriers are authorized to conduct interstate operations, Until addressed in rulemaking, the Agency's determination of carriers shall be reflected as "unsatisfactory," "conditional," "satisfactory," and "unrated." Unrated carriers are fully licensed, authorized and insured in accordance with FMCSA regulations."

### 5. **Severity Weighting of Violations Not Consistent With Severity of Violations**

Severity weights are supposed to represent crash risk. If a truck driver forgets to notify his employer of a speeding ticket conviction (severity weight six), that is apparently more likely to result in a crash than an actual act of speeding (severity weight five).

Moving/changing residences from one state to another and not transferring a drivers license has a severity weight of six while not being able to see or hear (operating a CMV w/o corrective lenses or hearing aid) while driving is a two. FMCSA must review all severity weights to assure they correlate to crash risk. The FMCSA is apparently addressing this issue and will be implementing a "gradation" system to address speeding violations.

### **B. FMCSA Reactions**

As result of input from KMCA, the Minnesota Trucking Association, ATA, enforcement personnel, industry representatives, and safety experts, as well as findings from the nine-state Op-Model Test, FMCSA has updated the SMS in an effort to make it more effective in identifying high-risk and other carriers with safety compliance problems.

Specifically, the following updates were made and published in the October 2010 edition of Federal Motor Carriers Safety Administration's *CSA Dispatch*:

#### **1. Unsafe Driving and Crash BASICS**

The measure of exposure was changed from Power Units (PUs) only to a combination of PUs and Vehicle Miles Traveled (VMT) in the Unsafe Driving BASIC and Crash Indicator. In addition, those two items changed from using PUs as a safety event grouping







(formerly referred to as peer grouping) to using the number of crashes for the Crash Indicator and the number of inspections with a violation for the Unsafe Driving BASIC.

### **2. Controlled Substances/Alcohol BASIC**

The measure of exposure changed from PUs to the number of relevant inspections.

### **3. Cargo-Related BASIC**

FMCSA is employing a more strategic approach to addressing motor carriers with a history of size and weight violations rather than counting these violations in the Cargo-Related BASIC. It is important to note that these violations will still be cited at roadside inspections and addressed during investigations.

### **4. Severity Weighting**

Severity weights for some roadside inspection violations were updated. These enhancements allow FMCSA to more effectively identify motor carriers with safety compliance problems, thereby raising the bar for safety on the nation's roads.

## **C. November 2010 Modifications**

Less than a month before the FMCSA nationally rolled out the new CSA program, the agency released a number of critical changes to the program's Safety Management System (SMS). Specifically, on November 18, 2010, FMCSA announced modifications to CSA in the following two areas.

### **1. Presentation of SMS BASIC Results**

In response to concerns raised by the industry and its representatives, FMCSA now reports that the word "deficient" will no longer be used to characterize a motor carrier when the motor carrier's score in a BASIC is above the threshold set by FMCSA for intervention. Instead, FMCSA will use the word "alert." In addition, the highlighting on the system will be orange rather than a more alarming red. Furthermore, FMCSA indicates that it will add disclaimer language to SMS advising those utilizing the system that the scores simply indicate that the carrier is prioritized for an FMCSA intervention. The disclaimer will emphasize that the score does not signify or imply a particular safety rating or safety fitness determination.

### **2. Modification of Cargo-Related BASIC**

FMCSA determined that this particular BASIC was over-representing certain industry segments. As a result, FMCSA states that it is recalibrating this BASIC. More specifically, FMCSA is going to be adjusting the cargo securement violation severity weightings based upon input from various subject matter experts. For the time being, the only publicly-available information regarding this specific BASIC will be an indication of the





cargo-related BASIC violations. In contrast, percentiles and intervention status will **not** be publicly available.

The foregoing modifications to CSA are very positive developments for a program that has created a great deal of anxiety for the industry. Hopefully, FMCSA will continue to evaluate CSA and implement other sensible changes in a variety of areas.

### VI. CSA AND THE IMPACT ON INDIVIDUAL DRIVERS

Individual drivers have voiced many concerns regarding pre-employment screening, individual safety ratings, the Driver Safety Measurement System (DSMS), and driver histories. Below are three frequently asked questions that have been addressed by FMCSA<sup>7</sup>:

**1. How does the Pre-Employment Screening Program (PSP) process work and who can use PSP?**

Motor carriers may request, through NIC Technologies, driver information for the purpose of pre-employment screening. The driver must provide written consent. Individual drivers may request their own driver information record at any time. The information will be retrieved from the Motor Carrier Management Information System (MCMIS). MCMIS electronic profiles will contain five years of crash data and three years of inspection data, however, MCMIS will not include conviction data. There will be a fee for this service. The system is currently under development, but people can enroll now<sup>8</sup>.

**2. Will CSA assign safety ratings to individual CMV drivers? I heard that CSA is designed to rate CMV drivers and to put many of them out of work this summer.**

No. Under CSA, individual CMV drivers will not be assigned safety ratings or Safety Fitness Determinations (SFDs). Consistent with the current safety rating regulations ([49 CFR part 385](#)), individual drivers who operate independently as a “motor carrier” (i.e. have their own USDOT number, operating authority, and insurance) will continue to be rated as a motor carrier, as they are today, following an onsite investigation at their place of business. CSA *will* also provide enhanced tools for Safety Investigators (SIs) to identify drivers with safety performance problems during motor carrier investigations. As a result, motor carriers and drivers will have the opportunity to correct the specific safety performance problems. CSA is designed to meet one overriding objective: to increase safety on the Nation’s roads. Therefore, it is, by design, a positive program for drivers and carriers with strong safety performance records. Also, it will send a strong message that drivers and carriers with poor safety performance histories need to improve.

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<sup>7</sup> FMCSA – Frequently Asked Questions, <http://csa.fmcsa.dot.gov/FAQs.aspx>

<sup>8</sup> FMCSA – Pre-Employment Screening, <http://www.psp.fmcsa.dot.gov/Pages/Enroll.aspx>





3. **I have heard a lot about a Driver Safety Measurement System (DSMS) and want to know what it is and who will have access to it?**

The new Safety Measurement System (SMS) includes a driver assessment tool, also known as DSMS. At present, this driver assessment is used strictly as an internal investigative tool for law enforcement and is not available to carriers, drivers, or the public. Law enforcement officials use this tool to examine the safety performance of individual commercial motor vehicle drivers when conducting CSA carrier investigations, but do not use the DSMS results to identify or to intervene with individual drivers outside of a carrier investigation. The raw data that will be available to carriers and drivers in the Driver PSP is the same data that is used in DSMS but it does not provide a score or assessment from FMCSA. PSP allows carriers to review a driver's safety record during the hiring process with driver permission.

**VII. CSA AND THE POTENTIAL IMPACT ON LITIGATION**

There is not any regulation or statutory authority that specifically states that information collected as a result of CSA will, or will not, be admissible in legal proceedings. Further, FMCSA Part 385 (Safety Fitness Procedures) does not specifically mention the admissibility of SafeStat data. As such, there are several possible implications, but little clarity regarding the future usage of CSA data.

**A. Potential Implications of CSA Data**

Compliance with the new regulations will not protect a carrier from liability for an accident. However, the fact that the CSA program will force carriers to be overly vigilant in complying with safety guidelines, may mean that plaintiff's lawyers will have less ammunition vis-à-vis certain carriers for negligent hiring or negligent maintenance claims. Good safety records may also be beneficial in reducing potential punitive damages claims that are generally based on reckless disregard of public safety, or blatant violations of trucking regulations. At a minimum, CSA should force motor carriers to be more diligent in safety record keeping, which will likely prove beneficial to defense counsel when defending negligence claims against compliant motor carriers.

CSA could also have the reverse effect for those carriers that have poor BASIC scores. Since most CSA data will be made public, plaintiff's attorneys will certainly attempt to make use of the negative data against a carrier and/or driver at trial. Despite the FMCSA's statement that PSP/DIR reports will **not** be made public, plaintiff's will most likely attempt to use the subpoena power of the courts to obtain this information, similar to how plaintiffs currently acquire medical, criminal and traffic records. Whether this data will ultimately be admissible at a trial is questionable given that the FMCSA's concern with implementing CSA





is safety and not admissibility of evidence. Only time will be able to tell how state trial courts will rule on the admissibility of data collected as a result of the CSA initiative.

### **B. Legal Precedent**

Both recent and prior seminar court decisions may shed some light on how CSA information may be used by courts in the future.

1. In *Schramm v. Foster*, a case against a broker for negligent hiring of a motor carrier, the federal trial court held that the duty of the broker was to use reasonable care in hiring carriers, including at least: checking the SafeStat database; and maintaining records on the carriers used to assure the carriers are not manipulating their business practices to avoid unsatisfactory SafeStat ratings. The CSA data could be used in a similar fashion regarding the hiring of drivers and motor carriers. *Schramm v. Foster*, 341 F.Supp.2d 536 (D.Md. 2004).
2. In *Doyle v. Watts Trucking*, there was an accident involving allegations of “sleep deprivation” against the truck driver and vehicle maintenance against the carrier. The court allowed into evidence various safety reports from the FMCSA, including SafeStat data showing that the carrier regularly violated HOS rules and violated regulations on brakes and tire tread depth. The defendant objected on relevance grounds, but the court allowed the evidence. CSA data will contain similar information. *Doyle v. Watts Trucking of Nebraska, Inc.*, 2007 WL 197721 (Neb.Ct.App. 2007)
3. In *Jones v. CH Robinson*, a plaintiff was injured in a trucking accident by a carrier hired by a broker, CH Robinson. The carrier had a “conditional” safety rating and was hired by CH Robinson, with the contract requiring that the carrier maintain a “satisfactory” safety rating. The court held there was enough evidence for the jury to decide whether Robinson breached its duty to select a competent carrier. Carriers with “marginal” ratings can expect the same. *Jones v. C.H. Robinson Worldwide, Inc.*, 558 F.supp.2d 630 (W.D.Va. 2008).
4. In *Burke v. TransAm Trucking*, a claim for punitive damages was dismissed because the plaintiff did not have evidence of specific violations beyond FMCSA downgrading the carrier from a “satisfactory” to “conditional” rating. It was held that violations of the regulations are not, alone, a sufficient basis for punitive damages. There must be some nexus between the violations and the cause of the accident showing reckless





indifference to the rights and welfare of others. *Burke v. TransAm Trucking, Inc.*, 617 F.Supp.2d 327 (M.D.Pa. 2009).

5. In *Stanley v. Star Transport, Inc.*, there was an accident involving allegations of negligent hiring, against the Defendant, Star Transport, Inc. The court found that plaintiff's allegations including (1) the driver had been fired from his previous employer for unsafe loading; (2) that he had his license suspended for reasons unrelated to driving; (3) that he was convicted of speeding while driving his personal car; (4) or that Star Transport shouldn't have hired him because he took excessive time off, would not have a sufficient causal connection to support the claim. *Stanley v. Star Transport, Inc.*, 2010 WL 3433774 (W.D.Va. 2010)
6. In *Davies v. Commercial Metals Co.*, a motorist brought an action following a motor vehicle accident against the driver and owner of tractor-trailer for negligence, as well as against the owner's customer, who had retained the owner to haul scrap metal. The Court held that to state a claim for negligent selection of an independent contractor a plaintiff must generally plead ultimate facts showing (1) the contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness; (3) and the incompetence or unfitness was a proximate cause of the plaintiff's injury. *Davies v. Commercial Metals Co.*, 46 So.2d 71 (Fla.App. 2010).

When viewed together these six decisions shed light upon several emerging legal trends. As discussed above, it is likely that CSA safety data will be sought in discovery and used, both for and against potential defendants at trial, regardless of the FMCSA's intent. This further increases the importance of diligent CSA compliance. In 2004, the Court in *Schramm v. Foster* first allowed a plaintiff to use FMCSA data in support of claims for vicarious liability and negligent hiring. Fortunately, as noted above, subsequent decisions, including *Burke* and *Stanley, supra*, have limited that connection to violations causally related to the accident in question.

Lastly, on November 29, 2010 several trucking associations including the National Association of Small Trucking Companies, The Expedite Alliance of North America, and the Air & Expedited Motor Carriers Association have filed a motion for an emergency stay with the U.S. Court of Appeals for the District of Columbia. These organizations have asked the court to block implementation of CSA or at least to prohibit the public release of CSA data until the FMCSA completes a rulemaking program that complies with the Administrative Procedures Act. Previous legal challenges to CSA have been unsuccessful, but this lawsuit's impact on the CSA timeline and influence policy is still unknown.

## VIII. GPS AND CSA COMPLIANCE





There are seven safety categories in total that CSA will be monitoring. Here are a few that fleet managers can stay on top of by utilizing GPS fleet tracking.

### 1. **Unsafe Driving**

The FMCSA will be keeping a close eye on fleets with drivers who drive in a dangerous or careless manner. Speeding, reckless driving and other unsafe driving habits can be monitored by fleet managers in real-time using GPS

### 2. **Fatigued Driving (Hours-of-Service)**

Any non-compliance with the Hours-of-Service (HOS) regulations is regarded seriously. GPS can automatically log drivers hours and send managers instant HOS violation alerts.

### 3. **Vehicle Maintenance**

Any CMV not maintained properly will count against a fleet's overall safety score, particularly in the event of a crash. GPS can be used to setup preventative maintenance schedules based on actual usage so you can stay ahead of necessary repairs and keep your vehicles in optimum condition.

### 4. **Cargo-Related**

Any cargo-related hazards such as overloading or unsafe handling of hazardous materials can be another strike against a fleet's good reputation. GPS can be used to make sure drivers are completing pre-trip safety inspections and checking loads are being transported safely.

The added advantage of using GPS tracking is that it's a reliable, accurate method of monitoring a fleet on an ongoing basis. Once installed, a carrier can be certain their fleet is being continually tracked to make sure it stays safe and you stay compliant with CSA.

## **IX. CONCLUSION**

With CSA's implementation on December 13, 2010, the FMCSA completed the initial phase of the Compliance, Safety, Accountability program. Diligent compliance with CSA's requirements, although burdensome, will likely be crucial to avoid FMCSA intervention and minimize damages related to catastrophic accidents. It is important to note that better SMS scores will reduce both FMCSA inspections and investigations.

As CSA implementation continues there will certainly be extensive growing pains for multitude of carriers, insurance companies, shippers and other parties affected by the program. Carriers can only hope that the FMCSA will take major steps to work with stakeholders during CSA's development and implementation. As such, it will be important for all parties to be aware of adjustments to the CSA program as it continues to evolve.





