

# Court Rejects Towing Company Claim of Unlimited Billing

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**W**e recently achieved a decision that the towing law's provision for "unqualified compensation" did not obligate a carrier to pay whatever the tower charged. It further held that "[a] towing company should provide only those services necessary to fulfill the statutory requirements of the accident."

This was the first published opinion interpreting this provision. This decision provides significant support for defending against exorbitant billing by towing companies.

The action arose from a towing company's billing for righting and towing a tractor trailer. The tower refused to release the unit until its bill was paid.

The carrier offered a payment of what it considered a reasonable amount. The amount offered was consistent with what the carrier's towing expert found to be reasonable for this type of job. However, as the amount offered was less than the full amount billed, the offer was rejected by the towing company. The carrier then sued the towing company for the release of its unit and claiming the charges were excessive.

The towing company filed a motion with the court, claiming that it was entitled to full payment of its bill. It based its position upon the Pennsylvania's accident clearance law.

That law provides that a police officer can direct the removal of a vehicle if its owner is unable to do so. The police officers are not liable for any damage to the vehicle or its contents caused by the removal, nor is anyone working at the direction of the police officer in the absence of gross negligence.

That law also provides for the compensation of the company that performs the removal at the direction of the police office. It states that an entity authorized by the State Police to tow a vehicle "shall have the unqualified right to compensation for the cost of removal and cargo storage and clean up from the owner..." Pa. Motor Vehicle Code Section 3757.

The phrase "unqualified right to compensation" became the focus of contention. The towing company argued that, based upon this provision, it was entitled to be paid the amount of its bill without any right of the carrier to question or challenge it. It asserted that whatever was billed was required to be paid according to that law.

We responded that the law entitles a tower to payment for its services. However, we asserted that the amount of the payment is

subject to the requirement of reasonableness, necessity, and relation consistent with all other damage recoveries in Pennsylvania.

We argued that under the tower's interpretation requiring automatic payment, a towing company is in a superior position to a permanently incapacitated person who must prove that their medical bills are reasonable, necessary, and related to the accident. We also argued that denying a carrier's right to challenge the reasonableness, necessity, and relationship of the tower's bill violated the carrier's constitutional rights.

The court rendered a thorough and well-reasoned opinion, rejecting the towing company's interpretation. It noted that the language of the law provided for an "unqualified right to compensation for the cost of removal..." Thus, the "unqualified right" was to be compensated for the costs, not an "unqualified right" to whatever compensation it wanted.

The court also looked at the legislative history of the law. It noted that the comments of the legislator introducing the provision supported the interpretation that the towing company was entitled to be paid. However, it was silent as to whether it was entitled to payment for whatever it charged.

The court concluded that while the legislative intent was to ensure a towing company that acted at the direction of the police got paid. "We do not believe, however, that the Legislature intended for the vehicle owner to have to pay any charge, no matter how unreasonable or excessive, to a towing company."

"We therefore, hold that the Legislature intended to give approved towing companies an absolute right to the amount of compensation charged without question. Our decision is the most reasonable reading of a difficult statute."

The court stated that there was no question that the towing company was entitled to compensation. The question was what amount. "We believe under the United States and Pennsylvania Constitutions, [the carrier] has a constitutional right to due process of law to question the amount being charged for the towing, as well as the amount of the services provided in relation to an accident."

It held that "the vehicle owner is entitled to its day in court." It further ordered the towing company to respond to our discovery as to the basis for the bill.

As a result of this decision, commercial carriers have a right to challenge the reasonableness, relation, and necessity of the towing

charges for which they are billed. Here are some keys to protect yourself in these situations.

- a. Treat a towing event like an accident--I know, towing occurs because there was an accident. However, for the accident itself, you have your driver photograph the vehicles and scene, note witnesses, etc. Treat the towing like an accident. Have the driver photograph the towing equipment, the manpower, what is being used (and, more importantly, what is not being used).
- b. Have the driver make notes--The driver should be reminded (asked?) to make notes as to the process. This gives you a starting point for questioning any excessive claim.
- c. Offer what is reasonable--Make a reasonable offer for the work performed. If accepted, this saves the costs and time of dealing with the matter. If it is not accepted, you have an argument that, should the amount offered be found reasonable by the court, that you should not be liable for storage after the date of the offer. You also have the argument that you are entitled to compensation for loss of use of the vehicle as a result of the tower's refusal to release it despite a reasonable offer.

Towing claims have become a major expense in many accidents. The recent decision makes clear that you have the right to challenge the reasonableness, necessity, and relationship of the tower's charges. It makes clear that you are entitled to your day in court.

Please email us if you would like a copy of the decision at [dmarcello@cdl-law.com](mailto:dmarcello@cdl-law.com).

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## WOULD YOU USE LNG FUELING STATIONS ON THE PA. TURNPIKE?

If you're like most fleet managers, you are looking for alternatives to using costly diesel fuel. One option is to convert your vehicles to natural gas, either liquid natural or compressed natural gas. The biggest stumbling block to the conversion is the lack of available natural gas fueling stations. The Pennsylvania Turnpike Commission is considering adding natural gas fueling stations along the turnpike and wants to gauge the trucking industry's interest.

The Turnpike Commission asks PMTA members to complete the survey on the following page on natural gas fueling stations along the turnpike. Please complete the form as soon as possible and return it to Jack Christensen, director, facilities and energy management operations, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, Pa., 17106. Thank you for your input on this important issue.

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