

To: Commission
From: Vito J. Petitti
Re: Towing - Request from Member of Public to Recommend the Infrastructure Disaster and Accident Recovery Act
Date: March 10, 2014

M E M O R A N D U M

I received a request from a member of the public regarding proposed legislation that would make it possible for towing companies to be reimbursed after being called upon in an emergency to clear and recover obstructions and debris from New Jersey roadways.

Harvey Fruchter, Esq., of Fruchter Weiss and Associates, represents Garden State Towing Association (GSTA), Inc., a nonprofit corporation that considers itself the voice of New Jersey's towing industry. According to Mr. Fruchter, GSTA primarily serves the motoring public by working with vehicular recovery specialists and communicating with governing bodies within our state and nationally through the Towing and Recovery Association of America. Mr. Fruchter's client is interested in legislation that supports the general interests of industry and transportation within the State of New Jersey by mandating the reimbursement of first-responder towing companies.

Among the materials provided by GSTA through Mr. Fruchter is a legal memorandum, attached, discussing existing mandatory property damage insurance coverage for automobile operators and the implications of commercial and tow vehicles and property liability.

Mr. Fruchter also provides a draft of the proposed Infrastructure Disaster and Recovery Act (attached) and information regarding Interstate 95 Incident Management; previous efforts to draft legislation in this and other jurisdictions; and photographs of various vehicle accident and obstruction events.

To illustrate the need for legislation in this area, GSTA describes the following scenario faced by large-scale towing vehicle owners and operators:

- A truck overturns on a highway, causing large-scale disruptions in traffic which require large-scale operations to upright and remove the overturned vehicle.
- State Police dispatch the next towing company available on a rotational basis. The towing company commits most of its resources, including several trucks and recovery personnel, to the recovery operation, which typically lasts from several hours to most of the day. Liability insurance tends not to cover the cost of the recovery; insurance companies will usually only pay for the recovery if the company that owns the overturned vehicle has collision insurance coverage. At

the time of the recovery, the towing company has no idea whether the trucking company has insurance or funds to pay for the cost of the recovery, which is likely to be thousands of dollars.

- Due to the violent nature of an overturn, the vehicle usually sustains heavy damage, reducing its salvage value. Regardless of the financial uncertainty, the towing company must recover the vehicle and clear the roadway, or risk being removed from the towing rotation.
- According to State Police, the Department of Transportation (DOT), and by statute, the load cleanup is also the duty of the towing company. Although towing companies can handle normal loads of boxed or crated freight, which are offloaded by conventional methods, spills are a different story. Spills of garbage, gravel, dirt, non-hazardous liquids (e.g., milk or orange juice), etc., require specialized equipment provided by contractors, including bucket loaders, dump trucks, garbage trucks, and tanker trucks.
- The towing company does not find out whether it will be paid until the truck is cleared from the roadway and hauled back to the towing yard, and the cargo is cleaned up. Although the towing company, police, fire department, and DOT all responded to the overturned vehicle call, the towing company is the only emergency responder not automatically reimbursed, even in light of its substantial efforts and financial risks incurred for highway incident management.

Preliminary research reveals that at least some other states have introduced or passed legislation regarding large-scale recovery and cleanup, but with mixed results. Virginia Code §46.2-1212.1 provides for the removal and disposition of vehicles and cargoes of vehicles involved in accidents, and requires owners and carriers to “reimburse [state transportation, law enforcement, and safety agencies] for all costs incurred in the removal and subsequent disposition of such property.” Likewise, under Tennessee Code §54-16-113, the department of safety, department of transportation, or local law enforcement agency may require owners and carriers “to pay for any costs incurred in the removal and subsequent disposition of the vehicle, spilled cargo or other personal property.”

Pennsylvania Code Title 75 §3757 recognizes an “unqualified right” of a towing company to “compensation for the cost of removal and cargo storage and cleanup from the owner.” Unlike the Virginia and Tennessee statutes discussed above, Pennsylvania specifies *an owner’s* right to compensation, as opposed to the right of the state or law enforcement.

New Jersey legislation does not contain any provisions for the automatic compensation of towing companies in the context of large-scale accident recovery and cleanup. There are, however, many New Jersey statutes that pertain to towing operations in general. Exemplary of these are:

N.J.S. 58:10-23.11, et seq., The Spill Compensation and Control Act, provides that the owner and operator of a commercial motor vehicle that spills hazardous waste materials as the result of a traffic accident is strictly liable for the cost of its cleanup and removal.

N.J.S. 56:13-7, et seq., The Predatory Towing Prevention Act, is concerned with unscrupulous towers engaged in unwarranted or excessive fees for towing services provided under circumstances where the consumer has no meaningful opportunity to withhold consent;

N.J.S. 40:48-2.49 empowers municipalities to regulate operators engaged in the removal of motor vehicles and is chiefly concerned with the security of stored vehicles and publicly available fee schedules.

N.J.S. 39:6-A-3 requires every owner or registered owner of an automobile registered or principally garaged in New Jersey to maintain automobile liability insurance coverage of at least \$15,000 for a single injury or death, \$30,000 for more than one injury or death, and \$5,000 for property damage.

N.J.S. 39:4-56.8 requires towing companies under contract to a public or private entity, after being called upon to remove a disabled motor vehicle, to remove from public roads or highways any motor vehicle debris or material in the area surrounding that vehicle.

N.J.A.C. 19:9-3.1 promulgates towing rates on the Turnpike and the Parkway from a flat \$60 plus \$2 per mile for towing standard automobiles to \$250 per hour for extra heavy duty towing and recovery services.

The aforementioned proposed draft of The Infrastructure Disaster and Accident Recovery Act would be a departure from current legislature in several ways. Under current law, a vehicle rendered unsafe or inoperable may be towed by agreement between the owner and a towing company. But a law enforcement officer summoning a towing vehicle from an established rotational listing creates a non-consensual¹ towing situation. In such a case, the towing company has the right to bring an action against the owner of the towed vehicle, subject to the limits set by a local fee schedule. The proposed legislation would:

“[C]reate a fair and alternate method to compensate those engaged in the cleanup and recovery activities...” consisting of “the creation and obligation for insurance coverage for the cleanup and recovery from obstructions...without regard to fault for all vehicles...utilizing the state’s roads, highways, and rail lines...”

¹ N.J.S. 56:13-9 defines non-consensual towing as the towing of a motor vehicle without the consent of the owner or operator of the vehicle.

Also, the proposed legislation would give the summoning authority discretion to deviate from the established rotation list of qualified towing companies and:

“[R]etain any company that may reasonably [be] able to remove the obstruction expediently without regard to local public contracts law, provided the retained company agrees that [it] may only look to the title owner of the obstructing vehicle for compensation...”

Current law requires operators of motor vehicles in New Jersey to obtain liability insurance coverage². The proposed legislation would mandate the addition of another line item for compulsory motor vehicle insurance, such that:

“[A]ll motor vehicle insurance policies...shall provide for the removal and cleanup of the insured vehicle and any cargo from the site of the accident...for a maximum of \$10,000.00 and all homeowner or renter’s policies...shall likewise provide mandatory coverage for any vessel or personal property that after a natural disaster is found to obstruct the use of any road, highway, rail line or navigable waterway for a maximum of \$10,000.00.”

Finally, New Jersey drivers whose vehicles are involved in accidents are subject to a determination of fault before they can be held liable for money damages. The proposed legislation would establish a new strict liability standard³, such that: “The owner of every motor vehicle inclusive of any trailer operated within this state shall be strictly liable regardless of fault for the prompt cleanup and removal from any accident or disaster which leaves their vehicle inclusive of any trailer or cargo in a position to hinder use of a road or highway.”

Staff seeks guidance from the Commission as to whether the Commission wishes to pursue a project of this nature.

Attachments: (1) Proposed Legislation: “The Infrastructure Disaster and Accident Recovery Act”, (2) a Legal Memorandum prepared by Fruchter Weiss and Associates, and (2) a summary document regarding Liability Insurance and Removal of Vehicles from Public Roadways stating, in brief, why the GSTA believes the proposed legislation should be enacted.

² N.J.S. 39:6-A-3, discussed above.

³ In addition to the existing Spill Compensation and Control Act, N.J.S. 58:10-23.11, et seq., discussed above.