

# Admissibility of Traffic Citations in Subsequent Civil Litigation

Wednesday, April 22, 2015

Presented By the IADC Transportation Committee

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# Presenters



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# Necessity of Understanding State Law

- Protect drivers interest
- Protect company's interest
- Avoid traffic proceedings admissibility in civil case
- Varies from state to state



# Strategies at Retention



- **Work with police at scene to avoid citations**
- **Obtain separate counsel for traffic matters with client approval**
- **Work with local prosecutors**
  - **Prolong proceedings**
  - **Amend charges**
  - **Seek dismissals**
  - **Make necessary pleas**

# Considerations

- FMCSA “Major” and “Serious” Offenses § 383.51
  - <http://www.fmcsa.dot.gov/regulations/title49/section/383.51>
  
- FMSCA anti-masking provisions § 384.226
  - The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

# Missouri Law

- Generally improper to introduce evidence of citation
- Arrest or criminal charge not resulting in conviction not admissible
- Guilty plea or traffic conviction can be used to impeach



# Missouri Law

- Driver is not convicted until a sentence has been imposed
- Suspended imposition of sentence (SIS) does not result in conviction while suspended execution of sentence (SES) does
- A conviction resulting from *nolo contendere* plea may be admissible

# Missouri Law

## ➤ MO Department of Revenue guidance on masking

- <http://dor.mo.gov/faq/drivers/mcsia.php#q1>
- Situation #3: CMV operator issued traffic citation for "Improper lane change in a CMV". Prior to the citation being filed with the court the prosecutor determines to only file the charge as a "defective muffler". Final conviction is for "defective muffler" and that is the only charge ever signed by the prosecutor or filed with the court.
- Response) FMCSA: This practice is not in violation of 49 §CFR 384.226 because the violation was reduced before a judgment of guilt was pronounced. Before we can apply the conditions in 49 §CFR 384.226 to determine whether masking has taken place, there has to be a judgment of guilt (conviction) for a violation. The masking provision in 49 CFR §384.226 do not prevent plea bargaining from taking place.

# Illinois Law

- Evidence of driver arrest, charge or receipt of ticket generally inadmissible
- Guilty plea admissible whereas a conviction for traffic offense after not-guilty plea is likely not admissible
- Plea of *nolo contendere* may not be used as an admission, but a conviction based on such a plea may be received as evidence



# Iowa Law

- Record of conviction barred in civil action while guilty pleas are admissible
- Guilty plea can be given conclusive effect driver committed charged acts



# Iowa Law

- Iowa does not recognize *nolo contendere* pleas, but if defendant pled such in another out of state action such plea is inadmissible
- Can plead not guilty, but allow a finding of guilt to be entered and the record of conviction should not be admissible

# No Time to Waste

## ➤ Initial Protective Investigation

- Interview your driver
- Interview police officer
- Scope of charges
- Know your state's law
- Court dates
- Hire outside criminal counsel to protect driver and company

# Questions for Presenters?



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