

NAVIGATING SHARK-INFESTED WATERS

Mitigating Tow and Storage Exposure in Commercial Trucking

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On the shoulder of the interstate in the aftermath of a trucking accident, a state trooper glanced up from his notepad, sighed, and went back to writing. “Sharks in the water,” he muttered, nodding toward a bright purple tow truck idling in an empty lot just off the highway. Within minutes, another five operators had started circling the scene. The well-worn nature of the trooper’s comment underscored the persistent and worsening issue of predatory towing practices in the commercial transportation industry.

Industry data support this impression: in its November 2023 report, *Causes and Countermeasures of Predatory Towing*, the American Transportation Research Institute (ATRI) estimated that more than 80% of commercial fleets have been subject to predatory towing practices and exorbitant invoices in recent years. Data from the National Insurance Crime Bureau also reflects this trend, with predatory towing claims nearly doubling from the beginning of 2022 through the end of 2024.

Given these facts, the trooper’s analogy

is apt. While most commercial transportation players safely navigate the vast waters of America’s roadways, many fail to appreciate the dangers lurking just out of sight. Many commercial motor carriers (CMCs) underestimate the threat of predatory towing and recovery (T&R) companies. These T&R companies lie in wait, ready to strike the moment they sense blood in the water. What first appears as a routine tow can, in the resulting feeding frenzy, devolve into a financial and logistical nightmare, particularly for small fleets or owner-operators. Captive CMCs are vulnerable to being pulled under by inflated invoices, climbing fees, and cumbersome liens. The result is not a single expensive invoice, but ripple effects across the supply chain: delayed deliveries, lost contracts, higher insurance costs, and legal battles that drain time and capital from operations.

When a simple T&R situation can quickly become expensive and time-consuming, CMCs and insurance carriers need to understand and plan for these attacks. Piloting companies through such choppy

waters may be complicated by delays in communication or poor coordination, particularly given the moving pieces at play. Unscrupulous T&R operators thrive most when CMCs and adjusters are caught unprepared. However, with proper planning, effective policies, and knowledge of the dangers, CMCs and their insurers can effectively mitigate the risks posed by these bad actors.

PLANNING FOR THE WORST: PROCEDURES, TRAINING AND POLICYMAKING

Having a plan in place for a T&R situation will give a CMC its best chance of smooth sailing. Accordingly, companies should update their accident response procedures and training to include T&R situations. Pre-establishing trusted relationships with reputable T&R providers can minimize exposure to abusive practices. The legal landscape governing towing remains a patchwork of state, county, city, and municipal rules, making it essential for carriers to stay up to date on available protections,

especially on frequently traveled routes.

When examining and selecting towing and recovery coverage, CMCs should consider the potential cost of heavy-duty recoveries: the size, weight, and complexity of tractors, trailers, and cargo increase legitimate base costs, yet these same factors also create opportunities for excessive charges. In fact, the ATRI's November 2023 study reported that from 2021 to 2023, pretax T&R bills for commercial motor vehicles "ranged from \$250 for a simple heavy-duty towaway to \$110,000 for a complex recovery and clean-up after a severe hazmat crash." Significantly, while the median bill in this dataset was around \$5,000, ATRI's analysis found the mean pretax total bill was closer to \$12,000.

To address these risks, carriers should refine their response and coverage strategies while also advocating for stronger regulatory protections against predatory towing practices nationwide. While some states have passed laws and regulations to set maximum rates for T&R in some circumstances, the vast majority of states offer few to no protections at all.

RAPID RESPONSE

When a towing or recovery incident occurs, CMCs should immediately contact their insurance provider(s), which often have established relationships or recommendations for reputable towing and recovery companies. These parties should determine whether the tow was voluntary or involuntary, since this can influence whether protections are available for the vehicle owner. Next, all sources of coverage that may apply to the incident (including those held by the tractor owner, trailer owner, and any cargo owners) must be quickly identified to ensure proper coordination and reimbursement.

Every aspect of the T&R response should be carefully documented. Drivers and company representatives should be warned against signing any consent forms or other similar agreements without fully understanding the terms, as dishonest tow operators may use such documents to justify inflated charges or restrict the owner's rights to the vehicles and/or cargo. Photo documentation at the recovery site is also critical: drivers or other representatives should be trained to capture images of the vehicles, cargo, accident site, towing equipment, fluid spills, cleanup efforts, and visible damage. These steps preserve evidence, support insurance claims, and provide leverage in disputing excessive or improper towing bills.

MULTIPLE INSURERS, MOUNTING COSTS AND VEHICLE RETENTION RISKS

Commercial trucking claims often involve multiple insurance carriers and adjusters, each with distinct interests, coverage limits, and procedural requirements. For example, the carrier's physical damage insurer may require a vehicle inspection before authorizing release, while the cargo insurer might demand a separate inspection or removal of perishable freight. Meanwhile, the liability insurer may delay any action until fault is determined. Each insurer may assign its own adjuster, resulting in increased storage fees while inspections are coordinated and payment responsibilities clarified. These complications are not just frustrating – they can rapidly add hundreds or thousands of dollars to a T&R bill.

The stakes for carriers are high: prolonged downtime means lost revenue, potential cargo delays, and mounting costs extending far beyond the tow bill itself. If payment is not made within a prescribed period (typically 30 to 90 days, depending on the jurisdiction), the T&R company can initiate a lien sale or a title transfer through the relevant state authorities. After providing statutory notice to the registered owner(s) and lienholder(s), the tow yard can legally auction off the tractor, trailer, or both. While proceeds exceeding the amount owed should, in theory, be returned to the vehicle owner, this rarely happens in practice with accrued fees.

CHALLENGE THE INVOICE: AUDIT, NEGOTIATE, BUILD LEVERAGE

When a towing or recovery invoice arrives, carriers should treat it as a document requiring careful scrutiny, not an automatic bill to be paid. Ensure the invoice is fully itemized, showing labor, equipment, mileage, storage, and administrative fees. Request supporting documentation and compare the invoiced rates to local and regional norms or, if applicable, state maximums. The ATRI's 2023 study includes valuable resources for evaluating excessive labor and equipment rates.

Documentation is essential for both insurance and potential legal action. A CMC or its insurer should promptly deliver a written preservation letter demanding that the towing yard not sell, alter, or repair the vehicle or its cargo. The CMC may also request its attorney or adjuster to contact the storage yard, post a bond if necessary, and preserve any relevant subrogation rights. Payment should be made only after thorough vetting, or, in some cases, under protest or by posting a bond to halt ongoing

charges while the dispute is resolved.

Regulatory pressure may also be effective where available. Filing complaints with the state attorney general, the department of transportation, consumer protection authorities, or local towing regulators may yield rapid results in jurisdictions that impose fines or penalties on violators.

If the T&R company continues to refuse to cooperate or release the vehicle, the CMC should continue to leverage its legal and regulatory remedies. A written demand letter should clearly identify any unlawful holds, cite relevant statutes, and set a short deadline for resolution before legal action is filed. Filing an immediate replevin action or motion for injunctive action can be one of the most potent tools to force negotiation, as it interrupts storage expenses and exposes the yard to liability for wrongful retention or sale. Depending on the jurisdiction, CMCs may pursue various legal claims for conversion, unjust enrichment, or unfair trade practices. If the yard proceeds with an unlawful sale of the vehicle, the owner may seek injunctions, recover the proceeds, and pursue further damages, especially where T&R companies fail to comply with statutory notice requirements.

Insurers must be recruited as allies, as they may also provide another layer of leverage by posting bonds, paying under protest, or withholding payment pending an audit. Frequently, a well-drafted demand for itemization, coupled with the threat of small-claims or statutory litigation, will encourage a recalcitrant T&R company to move toward resolution. Finally, while public exposure should be used carefully, it can be influential when a T&R yard's business depends on municipal contracts or reputation.

In short, combating an inflated or unlawful tow bill requires immediate, organized action. By auditing invoices, preserving evidence, asserting legal rights, and leveraging insurance and regulatory tools, carriers can shift the balance of power, prevent mounting losses, and help curb the broader problem of predatory towing in the commercial trucking industry.



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