

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

In the Matter of:

Andrew C. Dillow

Respondent.

FMCSA-2008 0249
Old Case No.: MD-2008-0084-US1313
(Eastern Service Center)

**FIELD ADMINISTRATOR'S CONSENT TO
RESPONDENT'S REQUEST FOR FORMAL HEARING**

The Field Administrator for the Federal Motor Carrier Safety Administration (FMCSA) Eastern Service Center, through his representative, files this Consent to Respondent's Request for Hearing pursuant to 49 C.F.R. 386.16(b)(2) and for reasons states:

1. On June 9, 2008, FMCSA issued a Notice of Claim to Andrew C. Dillow (Respondent) for violations of the Federal Motor Carrier Safety Regulations. The Notice of Claim assessed a civil penalty of \$550.00. A true and accurate copy is attached hereto as Exhibit A.

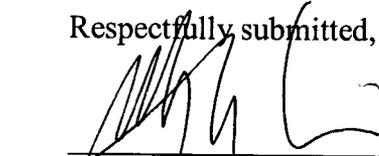
2. On or about June 17, 2008, Respondent filed a Reply to the Notice of Claim. Respondent requested administrative adjudication, however, it did not specify what form of adjudication it was requesting. Respondent's representative later indicated that Respondent wished to request a formal hearing. True and accurate copies of Respondent's replies are attached hereto as Exhibit B.

3. The Field Administrator's assigned counsel has reviewed the compliance review, Notice of Claim and documentary evidence. Considered in conjunction with the Respondent's Reply, the Field Administrator agrees that a hearing may be necessary to resolve the matters in dispute.

WHEREFORE, the Field Administrator consents to Respondent's Request for Formal Hearing.

Respectfully submitted,

Date: 8.6.08



Anthony G. Lardieri, Attorney
FMCSA Eastern Service Center
802 Cromwell Park Drive Suite N
Glen Burnie, MD 21061
(443) 703-2248

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of August, 2008, the undersigned mailed or delivered, as specified, the designated number of copies of the forgoing document to each of the parties listed below.

Joseph A. Neenan 18083 Robinsonville Road Lewes, DE 19958 <i>Representative for Respondent</i>		One Copy First Class Mail
Andrew C. Dillow 5906 Sunset Avenue Baltimore, MD 21207 <i>Respondent</i>		One Copy First Class Mail
US DOT DOCKETS Docket Operations, M-30 1200 New Jersey Avenue, S.E. West Building Ground Floor Room W12-140 Washington, D.C. 20590		Original Filed Electronically in FDMS
Barbara Webb-Edwards U.S. Department of Transportation Federal Motor Carrier Safety Administration 10 S Howard St Suite 2710 Baltimore, MD 21201 <i>Division Administrator</i>		One Copy Electronically sent via email
Docket Clerk U.S. Department of Transportation Federal Motor Carrier Safety Administration Eastern Service Center 802 Cromwell Park Drive Suite N Glen Burnie MD 21061		One Copy Hand Delivered



Camille M. White



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Eastern Service Center

Federal Express

June 9, 2008

Andrew C. Dillow
5906 Sunset Avenue
Baltimore, MD 21207

802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

Phone: (443) 703-2240
Fax: (443) 703-2253

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 395.8(e).

CIVIL PENALTY: \$550

Case Number: MD-2008-0084-US1313

US DOT Number:

Dear Mr. Dillow:

A safety compliance review was conducted at the offices of Premier Trucking Ltd. in Baltimore, MD on June 5, 2008. The purpose of this review was to determine compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Andrew C. Dillow for the amount of \$550.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. Also, under 49 CFR §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Andrew C. Dillow from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

You are charged with:

1. One (1) violation of 49 CFR § 395.8(e)- False records of duty status

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, you must take the following actions:

1. Ensure that your records of duty status are complete and accurate. The records of duty status must accurately represent all activities performed.

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

PENALTY

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the

shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
395.8(e)	R	1	\$550.00		\$550.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$550.

HOW TO REPLY TO THE NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (410) 703-2263. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commerical Regulations.

FMCSA and mailed to:

United States Department of Transportation
Federal Motor Carrier Safety Administration
Eastern Service Center
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) **REQUEST FOR ADMINISTRATIVE ADJUDICATION:** You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(a) **REQUEST TO SUBMIT EVIDENCE AND ARGUMENT WITHOUT HEARING:** (§§ 386.14(a), 386.14(d)(1)(iii)(A), 386.16(a)). You may contest the allegations in the Notice of Claim without a formal hearing. To do so, you must serve notice of your intention to proceed in this manner by filing a written Reply within thirty (30) days after service of this Notice of Claim. Service of your Reply and Notice of Intent to Submit Evidence and Argument without Hearing must be made upon all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, the FMCSA Field Administrator for this Service Center is required to serve all written evidence and written argument on each party listed on the Service List and on the Assistant Administrator for the Federal Motor Carrier Safety Administration within 60 days of the service date of this Notice of Claim. No later than 45 days following service of the Field Administrator's evidence, you must then serve your evidence upon all representatives listed in the Service List attached to the Field Administrator's evidence. The Field Administrator may, within 20 days of your filing, respond to your submission of evidence. All evidence must be in the form described in 49 CFR § 386.49, Form of Written Evidence. The Assistant Administrator for the Federal Motor Carrier Safety Administration may issue a Final Agency Order based on the evidence and arguments submitted by

both of the parties, or may issue any other order necessary to reach a decision in the matter.

(b) REQUEST FOR A FORMAL HEARING: (§§ 386.14(a), 386.14(d)(1)(iii)(C), 386.16(b)(3)). You may request a hearing on the record before an Administrative Law Judge on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. Service of the Reply and Request for Hearing must be made upon all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, the Field Administrator will file a notice of consent or objection with basis to your request for hearing within 60 days of service of your Reply. If the Field Administrator files an objection with basis to your request for hearing, the Field Administrator must, then or at a later time, file a Motion for Final Order. No later than 45 days following service of the Field Administrator's Motion for Final Order, you must serve your response upon all representatives listed in the Service List attached to the Field Administrator's Motion. Before a formal hearing will be granted, the Assistant Administrator must determine whether there exists a dispute of a material fact at issue in the matter. After reviewing the record, the Assistant Administrator will either refer the matter to the Office of Hearings for hearing or issue a Final Agency Order based upon the written record.

(c) REQUEST FOR AN INFORMAL HEARING: (§§ 386.14(a), 386.14(d)(1)(iii)(B), 386.16(b)(4)). You may request an informal hearing before a hearing officer on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. By requesting an Informal Hearing, you will waive your right to request a formal hearing before an Administrative Law Judge. The Field Administrator will file a notice of consent or objection with basis to your request for an informal hearing within 60 days of service of your Reply. The Assistant Administrator will issue an order granting or denying the request for informal hearing. Before an informal hearing will be granted, the Assistant Administrator must determine whether there exists a dispute of a material fact at issue in the matter. If the informal hearing is granted, the Assistant Administrator will assign the matter to a Hearing Officer. At hearing, both you and the FMCSA will present evidence to the Hearing Officer. After the evidence has been presented, the Hearing Officer will issue a report to the Assistant Administrator containing the findings of fact and recommended disposition of the matter. The Hearing Officer's report will be the only written record of the informal hearing. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue any other Order as appropriate. If your request for an informal hearing is denied by the Assistant Administrator, the Field Administrator will serve a Motion for Final Agency Order. No later than 45 days following service of the Field Administrator's Motion for Final Order, you must serve your response upon all representatives listed in the Service List attached to the Field Administrator's Motion. After reviewing the record, the Assistant Administrator will refer the matter to the Office of Hearings for a formal hearing, or will issue a Final Agency Order based upon the written record.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute only the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding

arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

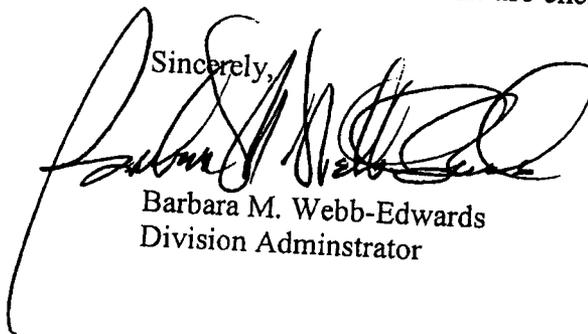
FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE **EXACT** MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



Barbara M. Webb-Edwards
Division Administrator

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 395.8(e) - False records of duty status

CHARGE #1:

On or about 4/3/2008, Andrew C. Dillow drove a commercial motor vehicle in interstate commerce from Bedford Heights, OH to Baltimore, MD for Premier Trucking Ltd. and made a false report of duty activities on the record of duty status for that date. The record of duty status is false because it shows sleeper berth in Breezewood, PA from 12:30 pm until 8:30 pm. The receipts show exiting the Indiana Toll Road in Eastpoint at 7:21 am, exiting the Ohio Turnpike Exit 151 at 12:00 pm, exiting the Ohio Turnpike Exit 239 at (15:38) 3:38 pm, exiting the Pennsylvania Turnpike (Gateway) at 15:43 (3:43 pm), and exiting the Pennsylvania Turnpike (Breezewood) at 18:18 (6:18 pm).

SERVICE LIST

This is to certify that on June 9, 2008, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Andrew C. Dillow
5906 Sunset Avenue
Baltimore, MD 21207

Original
Federal Express

Barbara M. Webb-Edwards, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
10 South Howard Street
Suite 2710
Baltimore, MD 21201

One Copy
Personal Delivery

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Eastern Service Center
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

One Copy
U.S. Mail or Electronic Mail

Wanda Parker

The Neenan Office

Professional Transportation Safety Management

Physical Address

18083 Robinsonville Road
Lewes, Delaware 19958

Mailing Address

P.O. Box 256
Rehoboth Beach, De. 19971

www.neenanoffice.com

joe@neenanoffice.com

Phone 302-644-8726

1-800-226-3309

Fax 302-644-8727

June 17, 2009

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Eastern Service Center
802 Cromwell Park Drive
Suite N
Glen Burnie, Maryland 21061

Re: Andrew Dillow
CASE NUMBER: MD-2008-0084-US1313

Under 49 CFR 386.14 this letter is contesting the above claim/case number by requesting administrative adjudication pursuant to 49 CFR 386.14(b)(2) and 386.14(d).

Andrew Dillow has hired my office to assist in filing the needed 49 CFR 386.14. My office is hired to assist Premier Trucking, LTD in all safety & compliance matters. My office was hired to do so effective December 2006. I, Joseph A. Neenan, personally was present for the compliance audit in question, and provided Mr. Robert King with all material(s) requested. Further, I was the main contact for Mr. Robert King during the compliance audit, and was requested to do so by Premier Trucking, LTD management.

The notice of claim in the amount of \$550.00 for the charge of violation to 49 CFR 395.8(e), false records of duty status is being contested on the grounds the compliance review fails to reflect the true and accurate number of logs checked of Mr. Andrew Dillow. The charge of violation 49 CFR 395.8(e) False reports of records of duty status, are officially denied based upon the method of retrieval and inaccurate and error ridden manor the compliance review data was calculated.

CHARGE #1 - DENY

SCANNED
INITIAL & DATE

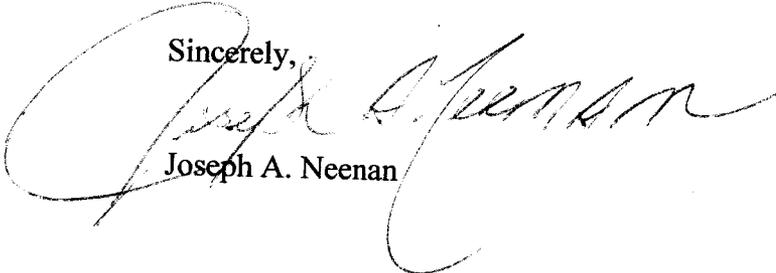
6/18

The basis and facts in contesting the case number MD-2008-0084-US1313 under 49 CFR 386.14 is outlined below. The facts below clearly show the compliance auditor selectively used unfair practices as well as knowingly submitted an untrue and inaccurate compliance audit report.

The compliance auditor, Mr. Robert King, requested 169 hours of service logs for Mr. Andrew Dillow. All 169 logs requested were provided. The compliance auditor reviewed the 169 days. However, Mr. King selectively used only 30 days to report Mr. Andrew Dillow's violations. The assessment of Mr. Dillow and his compliance to hours of service logs was knowingly inaccurately reported to reflect a false violation rate of Mr Andrew Dillow.

Again I, Joseph A. Neenan, with the approval and permission of Mr. Andrew Dillow request an administrative review be conducted for case #MD-2008-0084-US1313.

Sincerely,


Joseph A. Neenan

SERVICE LIST

This is to certify that on June 16, 2008, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim Contentment, under 49 CFR 386.14 to each of the parties listed below.

Andrew C. Dillow
5906 Sunset Avenue
Baltimore, Maryland 21207

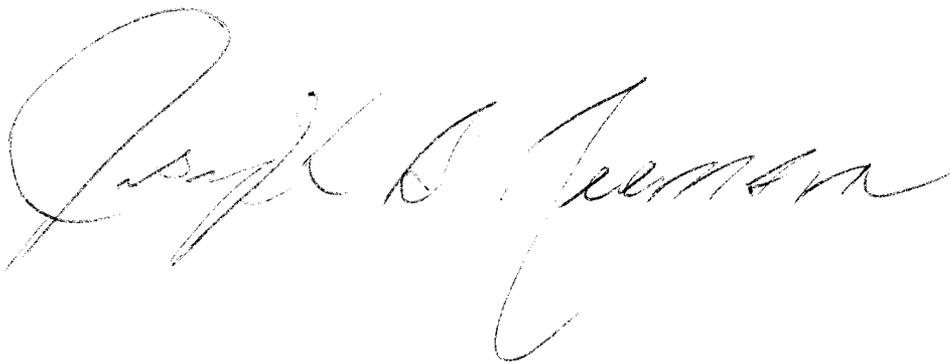
ONE COPY
FAX

Barbara M. Webb-Edwards, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
10 South Howard Street
Suite 2710
Baltimore, Maryland 21201

ONE COPY
Certified Mail

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Eastern Service Center
802 Cromwell Park Drive
Suite N
Glen Burnie, Maryland 21061

ORIGINAL
Certified Mail



Lardieri, Anthony <FMCSA>

From: joe@neenanoffice.com
Sent: Wednesday, August 06, 2008 3:14 PM
To: Lardieri, Anthony <FMCSA>
Subject: Re: Dillow

Mr. Lardieri,

The Andrew Dillow case, we would like to request a formal hearing, as we did for the Premier Trucking, Inc. case. As you had mentioned in our phone conversation today, it would be acceptable to us to have both cases in the same hearing.

Also, I was unable to scan the 385 letters into me computer? Thus I have faxed the letters to your office.

Any questions and or concerns please feel free to contact me directly.

Joseph A. Neenan