

WHEN A MOTORIST BECOMES YOUR CUSTOMER

THE LEGAL CHALLENGES &
★ OBLIGATIONS

PURPOSE...

- TO LEARN ABOUT THE LEGAL OBLIGATIONS AND LIABILITIES THAT AGENCIES ENCOUNTER WHEN MOTORISTS BECOME THEIR CUSTOMERS AND HOW OPERATIONS, POLICIES AND PROCEDURES CAN MITIGATE EXPOSURE TO LEGAL CHALLENGES, AND PUBLIC AND POLITICAL SCRUTINY.
- TO SHARE EXPERIENCES AND KNOWLEDGE OF THE CHALLENGES OFTEN RELATED TO SETTING FAIR AND REASONABLE TOLL RATES AND FEES, PROTECTING CUSTOMER INFORMATION, ACCESSING AND SHARING CUSTOMER INFORMATION, PROVIDING SUFFICIENT NOTICE TO CUSTOMERS, AND COLLECTIONS AND VIOLATIONS PROCESSES.

PANELISTS

MODERATOR:

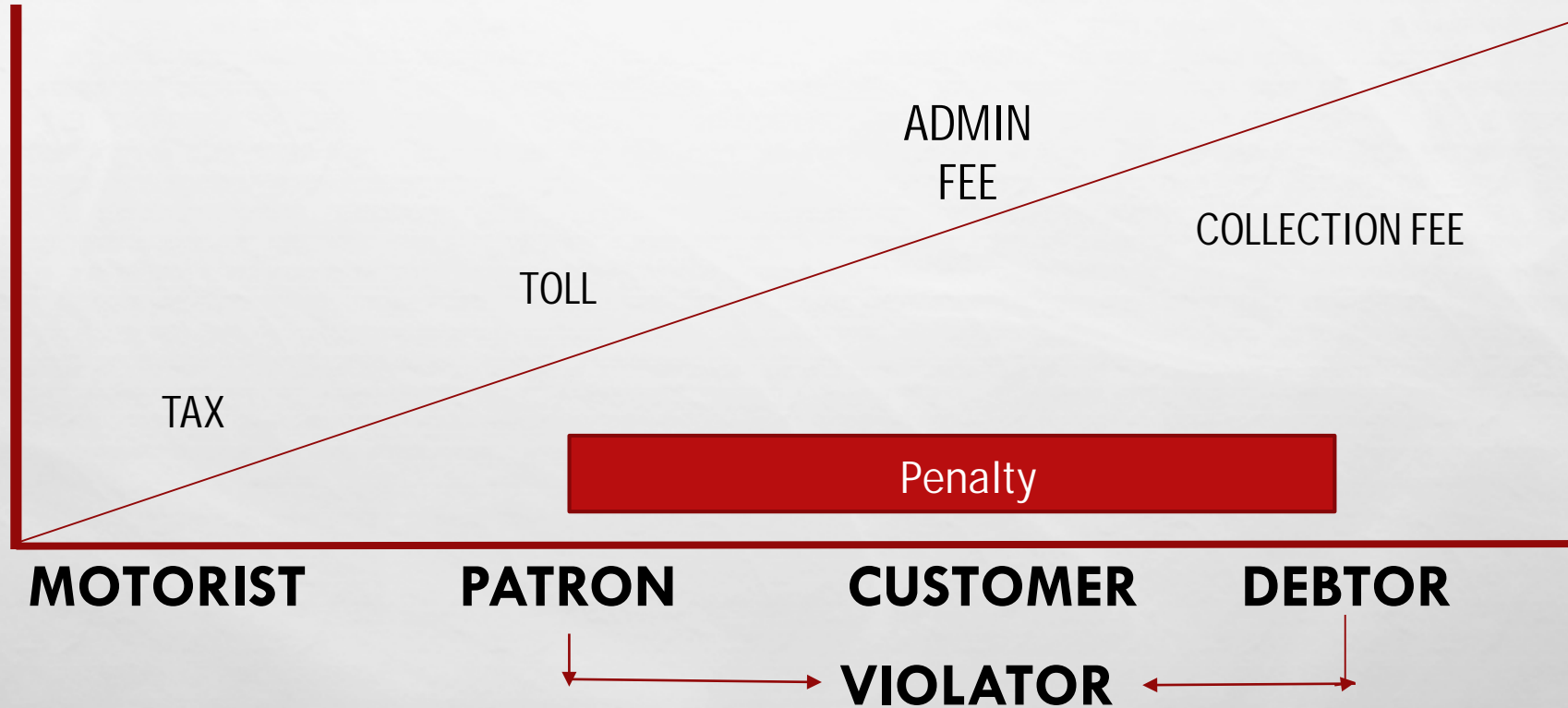
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SPEAKERS:

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EVOLUTION OF A ROADWAY USER

Due Process
Bankruptcy
Registration Hold
FDPTA
PCI Compliance
Billing
Contract
Privacy
Notice
Open records
DMV
Tort



**GATED, STOP
& PAY CASH**



**ORT, SLOW DOWN
PAY CASH , OR USE PRE-PAID ETC**



**AETC, GO FAST
PAY BY ETC, MAIL, PLATE, ONLINE**



**Anonymous Motorist
Patron
Violator**

**Patron
Account-holding Customer
Violator**

**Accountholder
No-Account Customer
Indebted Customer
Violator**

PLAZA XX

UNPAID TOLLS?

7 DAYS TO PAY ONLINE

ILLINOISTOLLWAY.COM

OR PAY ONLINE

ILLINOIS **TOLL EAST**

390



ELECTRONIC TOLLING AHEAD

NO E-ZPass - CALL **826

WE WILL BILL YOU

EXPRESS LANE

TO Miller Rd
Royal Ln

HOV 2+	\$ 0.00
T	\$ 0.00
PAY BY MAIL	\$ 0.00

NO TAG?

NO PROBLEM

PAY BY MAIL

HIGHER RATE APPLIES

EXPRESS LANES

TO EAST /

\$0.90

HOV 2+ **\$0.45**

HIGHER RATES FOR NO TAG

PA TURNPIKE

TOLL BY PLATE

WE BILL YOU

MOTORIST VS. CUSTOMER

- **WHY DOES IT MATTER? ENHANCED LEGAL OBLIGATIONS OF FAIR AND REASONABLE DEALING AND DUE PROCESS.**

- Tax v User Fee (System Financing/ Supported Facilities)
- Differential Tolling
- Dormant Commerce
- Right to Travel
- Bond Covenants
- Data / Website Security
- Privacy (Account & Travel)
- Notice/Signage
- Excessive Fees and Fines
- User Agreements
- Public expectation
- Implied Covenant
- User Liability/Transfer
- Business Rules (Arbitrary & Capricious)
- PCI Compliance
- Fair Debt Collections
- Fair and Accurate Credit Transactions Act

THE MAKING OF A CLASS ACTION SUIT

EXHIBIT A:

***CASHLESS TOLLS
HORROR STORIES: 'I
WEPT,' WOMAN SAYS AS
SHE TAKES FROM IRA
TO PAY BILL***

WWW.LOHUD.COM/STORY/NEWS/INVESTIGATIONS/2018/02/16/CASHLESS-TOLLS-HORROR-STORIES-WEPT-WOMAN-SAYS-SHE-TAKES-IRA-PAY-BILL/324519002/ [HTTPS://](https://)

TOLL RATE SETTING

- CONSTITUTIONAL LIMITATIONS & STATUTORY AUTHORITY
- FAIR APPROXIMATION
- USER FEE V TAX
- DIVERSION OF TOLL REVENUE/ “SYSTEM” FINANCING
- DIFFERENTIAL TOLLS
- BOND COVENANTS

TOLL RATE SETTING

- CONSTITUTIONAL LIMITATIONS

EVANSVILLE-VANDEBURGH V. DELTA AIRLINES, INC., 405 U.S. 707 (1972), AS SUPPLEMENTED BY NORTHWEST AIRLINES V. COUNTY OF KENT, 510 U.S. 355 (1994)

MELISSA ULLMO V. OHIO TURNPIKE

- ORIGINALLY FILED IN MARCH 2015 IN STATE COURT
- MOVED TO FEDERAL COURT WHICH DISMISSED ALL BUT 1 CLAIM AND SENT IT BACK TO STATE COURT
- STATE CLAIM ULTIMATELY DISMISSED IN AUGUST 2017, UPHOLDING THE STATE LAW ALLOWING FOR THE TURNPIKE'S FUNDING OF CERTAIN ODOT PROJECTS (TOTAL OF \$1.5 BILLION IN PROJECTS)

STATUTORY AUTHORITY

- MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP-21) (SIGNED INTO LAW BY OBAMA IN 2012) PROVIDED \$105 BILLION FUNDING FOR 2 YEARS.
 - TOLLING ON FEDERAL HIGHWAYS WAS REFORMED – EASIER TO IMPLEMENT AND GOALS FOR NATIONAL INTEROPERABILITY
 - SEVERAL EXTENSION SINCE IT WAS ENACTED – LOTS OF AMENDMENTS AND EXTENSIONS (I.E., DELAYS)
 - SEE 23 U.S. CODE § 129 – TOLL ROADS, BRIDGES, TUNNELS, AND FERRIES

TOLL RATE SETTING

- FEDERAL GAS TAX (18.4 CENTS PER GALLON) WAS LAST INCREASED IN 1993 (NO INDEXING FOR INFLATION)
- 19 STATES HAVE NOT INCREASED GAS TAX IN LAST 10 YEARS – REMAINING 31 STATES HAVE INCREASED GAS TAX IN LAST 10 YEARS
 - CRITICAL INFRASTRUCTURE IS FAILING
 - SHOULD WE TOLL MORE ROADS?
 - WHAT ARE OUR OTHER OPTIONS?
 - TAX ELECTRIC CARS?
 - HIGHWAY MILEAGE FEES? (MILEAGE BASED FEES INSTEAD OF GAS TAX)



SUBSTANTIVE & OPERATIONAL DUE PROCESSES

- NOTICES, FINES AND FEES
- DECEPTIVE TRADE PRACTICES/PREDATORY
- FAIR AND ACCURATE CREDIT TRANSACTIONS ACT

EXAMPLES:

- 2008 - *Avery et al., v. Orange County Transportation Authority, et al.* (All persons who have been assessed any toll evasion penalty for any violation during the period between January 1, 2003 - October 5, 2009.) The agencies agreed to pay eligible class members a total of \$1.4 million in restitution to the class, \$1.5 million in attorneys' fees and to waive up to \$41 million in fees owed by a certain class of patrons
- 2008 – *Kushner v. Illinois Tollway* (limited appeals option, i.e. mail-in; inability to contact. Case dismissed failure to state a claim.)
- 2009 - *Mary Kemp v. TxDOT* (contesting invoice fee)
- 2015 - Washington DOT – billing practice: delayed notice/oppty to contest/no payment plan
- 2015 – *Illinois Tollway* - Judge tosses \$100M suit over 'unconstitutional' collection practices, unlaw enrichment
- 2016 - *Ebrahim Mahda v. TCA*. Alleging Poorly Marked Toll Roads Resulted In Unfair Fines; Seeking \$5M Actual Damages; \$5M Restitution and Corrective Action/Ad Campaign
- 2017 - *Cohen v. Foothill/Eastern Transportation Corridor Agency; San Joaquin Hills Transportation Corridor AGENCY; 3M COMPANY And BRICTPS LLC*, Case No. SACV15-1698 DDP (Dfmx), U.S. District Court, Central District Of California, 2017 (Violated Fair And Accurate Credit Transactions Act By Disclosing More Than The Last Five Digits Of His Card Number On The Receipt.) Motion File 12/2017 To Approve \$850,000 Settlement Fund (\$20/Person – Approx. 26K) And Injunctive Relief
- 2018 -Virginia DOT/Transurban P3 Partner (reached tentative settlement)
- 2018- New York Thruway (under threat changed practices)

REYES V. THE NORTH TEXAS TOLLWAY AUTHORITY

- NTTA, Tolling Industry Leader; 4-county Self-governed Regional Authority
 - From 2 System Financing Structures (7 Systems; 2 Special Projects) To One System
 - First To Institute Electronic Tolling; Among First In All-ETC
 - \$900M Annual Revenues; 833M Transactions Annually
- Under Enabling Statute, NTTA could charge “An Administrative Fee Of Not More Than \$100 To Recover the Cost of Collecting an Unpaid Toll” (Note that this was changed by Texas Legislature Effective Sept. 1, 2011.)
- Statute now allows for an Administrative Fee “Of Not More Than \$25” For The First Notice Of Nonpayment And The Second Notice Of Nonpayment.

NTTA PREVAILED

BY MOTION TO DISMISS OR SUMMARY JUDGMENT MOTION:

- Due Process (14th Amendment, U.S. Constitution)
 - Procedural Due Process
 - Substantive Due Process
- Equal Protection (14th Amendment, U.S. Constitution)
- Excessive Fine (8th Amendment, U.S. Constitution)
- State Constitution (Due Process, Equal Protection, Excessive Fines)
- Individuals Were Sued; Qualified Immunity From Suit

DEBT COLLECTIONS/ VIOLATIONS

- FAIR DEBT COLLECTION PRACTICES ACT
- FEDERAL DRIVERS PROTECTION ACT
- OPEN RECORDS
- OPERATIONAL WAIVERS

ect »

ON THE HORIZON

RELATED LITIGATION

- FRAUDULENT TRAFFIC AND REVENUE FORECASTS/INVESTOR SUITS
- BANKRUPTCY INTERVENTIONS/REORGANIZATION
- VENDOR CLAIMS – SYSTEM REQUIREMENTS AND PROJECT MANAGEMENT
- RENTAL CAR AGENCIES (EXCESSIVE FEES/IMPROPER NOTICE/COLLUSION WITH AGENCIES/PREFERENTIAL TREATMENTS) *Susan Doherty and Dwight Simonson V. The Hertz Corporation, ET AL., 2013*