



# TRANSPORT CENTER UPDATE

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## Aggressive Defense of Trucking Suits

The battlefields of history are littered with losers who prepared to fight the prior war. Their failure to recognize and develop new strategies and tactics spelled their doom.

We cannot follow this fate in trucking defense. We cannot wallow in the war stories of past glory while ignoring new means and methods of defending against actions.

We must constantly look for new methods of proof. We must continuously consider and develop new means of persuasion.

The following is a brief overview of some of the tactics we have successfully employed to the success of our clients. More information is provided in a 35 minute video that we would be glad to forward to you upon request.

1. VIDEO CAMERAS-Upon arrival at the accident scene, immediately check for video cameras-public or private. Sure, it's a longshot that any are present or even longer that the accident was caught on film, but you must act immediately to have any chance of preserving any possible capturing of the accident on video.

Video cameras can be both public and private. From municipal intersection cams to business security cameras, the myriad of possibilities constantly increases. A security camera outside a business captured the landing of the airliner on the Hudson River.

Recently, a convenience store surveillance cam captured the accident and provided documentation of

M&K Upcoming  
Events

our driver's version in an intersectional accident involving a police car. Lucky? Maybe. But isn't luck the residue of preparation?

2. SELF SURVEILLANCE-Social media is today's life stream. Younger generations live there. Even older generations engage it regularly. People constantly post their activities and photos.

Those who do so before or after they assert a claim against our companies are handing us a gift. We cannot waste this resource of self surveillance.

Act fast. Check available public sources immediately upon the accident, before it can be taken down. Download and preserve photos and videos. Then follow up regularly. You can often save the expense of iffy surveillance by capitalizing on their "self surveillance".

3. EARLY SURVEILLANCE-If you do traditional surveillance, do it early, immediately after the accident. Frequently this is far more productive than later when claimants are warned by an attorney or guarded for the sake of litigation.

4. PUSH BACK-When the notice letter comes from plaintiff's counsel, push back. Let them know they are in for a fight. This is not "hit-a-truck, get-a-check."

Fire back a letter enclosing medical and employment releases and requesting a list of providers and employers. Follow up in at least thirty days, reminding them of your prejudice due to their delay.

Information does not flow just one way. Prejudice is not limited to the plaintiff. Push back immediately and set the tone for the long run.

5. PRE-LITIGATION MEDICAL AND VOCATIONAL EVALUATIONS-Request IME's and vocational interviews early, even before suit is filed. For us, it is a no-lose proposition.

If plaintiff agrees, you have early evaluation by your expert to rebut their claims. If they refuse, we have documented our attempt and their rejection, raising questions of their validity and motives.

This combats the too frequent occurrence where plaintiffs delay for months or years while they build their case, one visit at a time, before filing suit. This removes the argument that initial claims of injury and disability must be justified as our experts never saw the plaintiff until much later.

6. SUE THEM FIRST-I can't tell you how many cases we filed suit first to establish jurisdiction and take the initiative. When we sense that plaintiffs intend to sue in a "plaintiff friendly" jurisdiction, we look to file suit in the jurisdiction of the accident or residence of the plaintiff to recover property damage or cargo loss.

If the case is one of arguable liability, this can keep the action where it will properly and fairly be located. Further, having responded rapidly to the accident, documented the scene, and statementized the witnesses, we can capitalize on our preparation by

- Annual Truck Driving Championships - June 5th-6th

- Look for Sonya's article on Carmack in the upcoming issue of Penntrox

Updates for Previous Newsletter Article Topics

- Updated ATRI Compendium on Idling Regulations- available by clicking [here](#).

- Updated ATRI Cab Card with Idling Regulations - available by clicking [here](#).

- Current State Laws Regarding Handheld Cell Phone and Texting Bans - available by clicking [here](#).

Documents and Resources Available From M&K

If you are interested in

taking and maintaining the initiative.

7. READ THE "PLAINTIFFS' PLAYBOOKS"- Plaintiffs tactics and strategies are no secrets. They publish them in books and sell them to anyone. We spend significant money each year to purchase plaintiffs publications and cd's of seminars.

Take advantage. Buy and read their books. Learn their strategy. Prepare to respond.

8. DATA MINE-Undermine plaintiffs' claims of "no prior similar injuries" by digging in the data. Request the identity of all prior medical insurers. Subpoena their files. These records can lead to prior treatment that plaintiff previously denied.

Identify all pharmacies filling prescriptions for any reason. These can often reveal prescriptions that can again be traced to similar previous maladies. Alternatively, they can reveal abuse that may be admissible based upon their effect on life expectancy.

9. SEEK PUNISHMENT OF MISREPRESENTATIONS- Plaintiff's misrepresentations can result in dismissal of their case and reimbursement of your attorney fees where significantly egregious.

Our webpage contains a decision we received in such a case. Shortly before trial we uncovered misrepresentation by plaintiff as to her pre-accident condition resulting in the court's dismissal of her case and assessment against her of our fees and costs.

10. CHALLENGE LIFE EXPECTANCY-Cases claiming permanent injury bring into issue the length of life expectancy. Use this as an opportunity to introduce evidence of plaintiff's activities such as drug and alcohol abuse, other illnesses, or risk taking behavior. Use an actuary to quantify the effect of these items.

In permanent or future lost wage cases, employ the same strategy. Also, verify citizenship. Check for records of criminal activity which could arguable undermines earnings if repeated in the future.

We explain these in further detail in a 35 minute DVD. Email if you would like a copy.

These are a few of the aggressive strategies that can come to bear on plaintiff's claims. We must continue to look for new tactics to ratchet up the fight.

## CSA 2010 - Managing Your Score

CSA 2010 is not delayed. While they may have pushed back the full implementation and score reporting, what your and your drivers do now will determine that score.

Do not delay. Begin to manage your score today. There are many things you can do now to control the score your company will receive in the future.

1. AUDIT YOUR EFFORTS-Review your company, from safety to operations, to tighten controls and lessen exposure. Gerald Krisa, of R+L, posted a very thorough review process for a company to self-audit its operation on the CVSA website. Email us if you would

obtaining copies of the following, please call or email.

- Accident preparedness DVD and/or forms

- Powerpoint presentation regarding CSA 2010 presented by ATA

- Powerpoint presentation by Dr. Hickman regarding Distracted Driving Study presented at M&K Seminar

To see M&K's recent case results and articles click [here](#).

### Other Resources

To get construction and accident updates for Pennsylvania roadways click [here](#).

FMCSA Distracted Driving Instructional Videos click [here](#).

[PA Motor Trucking Association](#)

[American Trucking Association](#)

like a copy.

2. REVIEW THE POINT SYSTEM-Know the schedule of points. Educate yourself as to what violations result in what points. The purpose of the point system is to encourage safe conduct to lessen accident risk and severity. You need to know the source of point generators to work to avoid them. The CSA 2010 website contains an Excel Spreadsheet of the points. Again, email us if you would like a copy.

3. APPLY THE POINT SYSTEM TO YOUR COMPANY'S BUSINESS-In reviewing the points, consider how they apply to the equipment operated and freight hauled by your company. Flatbeds? Study the securement provisions. Chemical hauler? Hazmats should be your primary focus. Do not ignore the overall provisions, but focus on your area of trucking.

4. EDUCATE YOUR DRIVERS-Your drivers will "drive" your score. Teach them the points assessed for specific violations. Make sure they know it's no longer just about the company-drivers are scored both in CSA 2010 and in the Driver Pre-Employment Screening System. Roadside violations are on their records for three (3) years, crashes for (5).

5. REINFORCE CONDUCT- You cannot afford to hemorrhage points. Any unnecessary points will result in increasing your percentile within your "peer group", and that means trouble in River City. Pre-trips must be more than a quarter hour mark on the logs. Equipment must be inspected, defects identified, and repairs made before exposure to being stopped on the road. Securement must be to regulation in both form and equipment. Prevent points before getting on the road.

6. REVIEW ROADSIDES-Points are generally a function of roadside inspection reports. Absent a roadside inspection, non-crash-related citations do not generate CSA 2010 points. Thus, roadsides are the key. Make sure driver's turn in ALL roadside reports.

7. REVIEW, REVIEW, REVIEW YOUR CSA 2010 DATA-You can access your data. Let us know if you have any questions doing so. Review it frequently. Diary to do so at least once a month. Make sure your record is correct. Compare the roadside reports collected from your drivers to ensure that the information is correctly reported. Don't expose yourself to unwarranted points.

8. TERMINATE LEASES CLEANLY-Make sure you have closed out the lease cleanly. You cannot afford points on your record from a former leased driver sporting your placards. Demand them back-even the pieces if destroyed. Request a photo of the placardless tractor. Laxity can mean points on your records.

9. CHALLENGE POINTS-Use DataQ to remove improper points. Challenge unwarranted assessments. Let us know if you need the link to the system.

10. THINK "CHALLENGE" AT THE ROADSIDE-Treat a roadside similar to an accident scene. Is a

[Trucking Industry  
Defense Association  
\(TIDA\)](#)

[Federal Motor Carrier  
Safety Administration](#)

[PA Travel  
InformationTo-Go](#)

For more resources click [here](#)

## Free Presentations for Your Driver Meetings

We provide FREE presentations at driver's meetings geared toward our client's topics of interests. Recently, we finished filming a mock trial cross-examination of a driver as part of a new presentation.

Please let us know if you are interested.

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"violation" unwarranted and improper? Think about how you can prove it. Use the disposable cameras to document the evidence, from correct securement to correct equipment. Consider a local mechanic to verify equipment compliance, such as brakes, as a potential independent witness at a later challenge or hearing. For roadside overweights on portable scales, consider going to the nearest certified scales for verification and documentation of compliance.

These are but ten ways to control your score. Don't delay in doing so. The score may not be reported now, but the points are piling up.

## Did You Miss the CSA 2010 Webinars Presented by M&K?

If you did not participate in the CSA 2010 Webinars presented by Marcello & Kivisto's Doug Marcello, you can still view the webinars through KCI Insurance's website. Just click [here](#).

Here is a list of other CSA 2010 resources:

- FMCSA CSA 2010 Proposed Rule Making click [here](#).
- CSA 2010 Webpage click [here](#).
- Powerpoint presentation regarding CSA 2010 presented by ATA - to obtain a copy contact us.
- Powerpoint presentation regarding CSA 2010 presented at Marcello & Kivisto webinar on CSA 2010 - to obtain a copy contact us.
- CSA 2010 Frequently Asked Questions click [here](#).
- CSA 2010 Outreach click [here](#).

LET US KNOW WHAT  
YOU THINK

We want to focus our articles on the issues and concerns of our clients. If you have suggestions for our newsletter please do not hesitate to contact us.

## About Our Law Firm

Founded in 2005, M&K, LLC is dedicated to and focused upon transportation law and the needs of their transportation clients. Since opening in 2005, M&K, LLC has expanded its office to provide clients with the attention and availability they deserve.

QUOTE OF THE  
MONTH

"I can teach you how to dribble, pass and shoot the right way, but I cannot make you do it the right way."

~Jeff Tufford

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