



TRANSPORT CENTER UPDATE

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Sue Them First

Initiating suit immediately after an accident is an option that should be considered by trucking companies where there is a potential dispute as to fault. It can provide a vital strategic and jurisdictional advantage in the face of a potential bodily injury claim.

"Sue them? But we're the trucking company. We get sued, not sue folks." If that is your reaction, your are forfeiting a key opportunity.

Initiating suit can put you in a preemptive position against a claimant. It can also protect you from being dragged into a "plaintiff friendly" courthouse as opposed to the location where the accident occurs or the claimant resides.

PREEMPTIVE POSITION

You have executed the fundamentals vital for accident response. You, your counsel, and your expert have fully investigated the accident, documented the evidence, and interviewed the witnesses.

You find that fault is doubtful, but the claimant has been severely injured or even killed. Thus,

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significant damage claim that can potentially worsen.

Maximize the advantage of immediacy and preparation. File suit first for your property damage and/or cargo claim.

Any billboard-advertising attorney considering taking the claimant's case faces an uphill, time driven and costly fight. You are prepared. You have filed suit, set the schedule, and dictated the pace.

In a profession where return-on-investment is a key consideration for the financial accomplished plaintiff's attorneys, opposing counsel would have to invest considerable time and money in a difficult case. They may well decide to use those assets on another action that has a more positive outlook for a return-on-investment.

PRESERVE JURISDICTION

Preemptively filing suit can also preserve jurisdiction in the proper locale, such as where the accident occurred. Otherwise, you are vulnerable to being dragged into a more "plaintiff friendly" courthouse on the theory that, as a trucking company, you do business in that jurisdiction. Like an alligator's prey, you are dragged and inundated in a hostile environment until you are forced to succumb.

By filing suit first, you can take a proactive approach to avoid this fate. While not a guaranty, it is generally successful.

Here in Pennsylvania, the rules provide that if suits are filed in two different counties that deal with the same facts and law, the county in which the first complaint is filed determines the coordination of the cases and their potential consolidation.

By filing your complaint first, you determine which court will decide these key issues. Doing so can result in a major difference in the financial

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M&K Upcoming Events:

Sept. 28th - M&K's FREE Transportation Seminar in Carlisle, PA. Details to follow, please let us know if you would like to be added to the invite list.

For more current updates on events, follow M&K on [Facebook](#) and [Twitter](#).

SAVE THE DATE!

Marcello & Kivisto, LLC's Transportation Seminar will be held on September 28, 2011 in Carlisle, PA. The event features speakers on transportation issues and includes a working lunch. It is presented at no charge to attendees. Please save the date and email us if you would like to be added to the invite list. Invitations

What may initially seem to be an unusual, if not crazy, concept can prove strategically vital in the defense of your accident. Act immediate and, if there is an argument as to whose at fault, sue them first.

New Webpage For Marcello & Kivisto, LLC

To provide increased resources and facilitate use, we redesigned our webpage. You can check it out at www.cdl-law.com.

Our intent is to create a webpage that serves the trucking industry and provides continuous updates through the blog and social media.

First, we are providing a continuous source of information through the blog page. We will be posting information several times a week, including accident response, trucking defense, and industry information. We will also be linking videos and presentations in the blog.

Additionally, daily Twitter postings and Facebook updates will provide current information as well. Links to our Facebook page, Twitter page and LinkedIn page are available on our website.

Second, our resource page links to webpages frequently used by those in our industry. From CSA to claims pages, from PSP to police accident templates, we have tried to provide a handy resource to get you where you want to go in the web in the shortest time.

Third, our cases and articles page provides copies of decisions we have achieved and articles we have written. We have again tried to post information that is useful in your day-to-day operations.

We hope that you find the information useful and the updates informative. Please let us know

mailed at a later date.

REMINDER - CVSA Roadcheck

From June 7th through June 9th CVSA will be operating its annual 72 hour Roadcheck. There will be more than 1,000 checkpoints posted to monitor safety compliance.

VIDEO - CVSA Roadcheck

For an idea of what a CSVA Roadcheck inspection will entail, check out this four minute [video](#) by FleetOwner Magazine, showing a CVSA Roadcheck inspection from 2009.

Good Luck!

M&K would like to wish all of the drivers and companies participating in the Pennsylvania Truck Driving Championships good luck! Congratulations on your accomplishment and thank you for your commitment to the trucking industry.

CSA Hiring Scorecard

With the inundation of information from PSP and CSA added to the MVR, evaluating drivers for hiring becomes more complicated and challenging. How do you compare and weigh the various sources of information?

At this year's TCA Safety Conference in Murfreesboro, Tennessee, Jerry Waddell shared a control chart he designed to coordinate the various sources of information and evaluate the driver applicants. By assigning points to various data, the chart can provide a very useful tool for at least an initial triage of the applicant and whether the further investment of time and money in their recruitment is warranted.

Please email us if you would like a copy of Jerry's control chart. Thank you to Jerry Waddell for sharing it with us and for allowing us to share it with you. This is just another example of the cooperation that makes the trucking industry great.

HOS Docket Re-Opened Due To Additional Studies

The HOS docket has been re-opened so that the public will have an additional thirty (30) days to comment on new research that has been added to the docket in support of the HOS proposed rule. <http://www.fmcsa.dot.gov/about/news/news-releases/2011/HOS-Proposed-Rulemaking-Official-Docket.aspx>

The four additional studies are:

1. [The Impact of Driving, Non-Driving Work, and Rest Breaks on](#)

Upcoming Events in the Industry:

June 7th-9th - CVSA Road Check.

June 10th-11th -

2011 Pennsylvania Truck Driving Championships, at HACC in Harrisburg, PA.

June 14th & 21st -

Two Day OSHA Seminar for Transportation Professionals, hosted by PMTA, in Camp Hill, PA. For more information click [here](#).

July 24th-27th - TRB

10th International Conference on Low-Volume Roads, in Orlando Florida. For more information click [here](#).

Documents and Resources Available From M&K

If you are interested in obtaining copies of the following, please call or email.

- Hours-of-Service Rules Safety Impact

[Vehicle Operations;](#)

2. [Hours of Service and Driver Fatigue-Driver Characteristics Research;](#)
3. [Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions;](#) and
4. [Potential Causes of Driver Fatigue: A Study on Transit Bus Operators in Florida.](#)

Comments on the added studies are due by

June 8, 2011. As a result of the added studies, the final HOS rule will not be published by July 26, 2011, as previously indicated. You can view the published notice on the new studies by clicking [here](#).

New Requirements for Commercial Learner's Permit

On July 8, 2011, FMCSA's final rule regarding commercial learner's permits becomes effective. The rule essentially requires applicants for a commercial learner's permit to meet the same requirements as a licensed commercial driver. To see a copy of the rule click [here](#).

This final rule was proposed over three years ago and received over 100 comments. The rule has new requirements in order to prevent fraud. For instance, social security numbers are required to be verified, legal residency within the United States must be proven, test examiners will undergo background checks and formal training and the use of interpreters will be prohibited for the knowledge and skills testing.

States are required to become compliant with the new rule within three years of the rule's effective date.

by ARTI in May 2010

- 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

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

[PA Motor Trucking Association](#)

[American Trucking Association](#)

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.

LET US KNOW WHAT YOU THINK

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

About Our 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.

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

[Federal Motor Carrier Safety Administration](#)

[PA Travel InformationTo-Go](#)

[National Traffic and Road Closure Information](#)

For more resources click [here](#)

STAY CONNECTED:

You can now follow, M&K, LLC on the web!

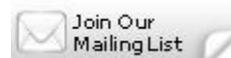


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QUOTE OF THE MONTH

"Action is the foundational key to all success."

~Pablo Picasso



DISCLAIMER: The Information Contained in this Newsletter is NOT Legal Advice.

