

Focused on transportation law

continued from page 1

minds of drivers and transportation companies, Marcello obtained his commercial driver's license, which he feels "provided great insight into the challenge of operating a tractor trailer and the mechanical elements of the equipment."

"We [apply] our expertise in trucking defence with the knowledge of our client's operations by representing them in cases across the country. The trucking company client benefits by not having to educate a new law firm in every case as to their equipment and operations, and by drawing upon our experience in trucking defence."

"We work with a local law firm who knows the particular jurisdiction and avoid duplication of costs by limiting activities to one attorney, not billing for communication between the firms. The result is the combined benefit of expertise in both trucking defence and local practice without incurring the combined cost."

Marcello has been specially admitted to defend cases in 33 states.

"Our trial results are the best measure of our success and are included on our webpage," he adds.

Marcello recently achieved a defence verdict after a two week trial in Watertown, NY in which the plaintiff sought \$5.9 million based upon claims of reflex sympathetic dystrophy and post-traumatic stress disorder for which he was already receiving workers' compensation and social security disability and which claims were supported by the testimony of nine medical and psychological experts.

"Our success in this case was a product of our aggressive pursuit of proof in support of our case and then presenting it in a persuasive manner. An example is our successful subpoenaing of the plaintiff's Myspace records to challenge his claims of disability."

Sonya Kivisto is also a Pennsylvania native who received her undergraduate degree from the Indiana University of Pennsylvania in 1997 and her J.D. from Dickinson School of Law in 2004.

"I'm active in transportation organizations, including service as Vice Chairperson of the PMTA Safety Management Council and past Secretary/Treasurer of the South Central Chapter of the PMTA. In an effort to more fully understand the challenges that

drivers and companies face every day, I earned my commercial driver's license in November 2004."

Both Kivisto and Marcello note that the experience they've acquired since obtaining their CDLs has been "invaluable."

"It gave us a perspective of the challenges of operating and manoeuvring a tractor trailer in circumstances that apply to the many situations in which an accident may occur... Line of sight, shifting, clearing the tandems on a turn, and various other elements of driving a unit were among the elements of our experience, providing a perspective that can be applied to the cases we defend.

"Equally as valuable was our training for performing a pre-trip inspection. Our instructors were thorough in instruction and adamant in the complete performance of a pre-trip inspection. Opening the hood to check fluids and belts, crawling under to check slack adjusters, verifying the fifth wheel, and checking the gladhands were just part of the 30-minute pre-trip we would perform each time before getting behind the wheel. In doing so, we obtained an education on the mechanical components, their operation, and their maintenance [which] is... no less important than driving."

M&K began by "re-examining the traditional approach to the defence of lawsuits to see how this could be retooled in a manner that would greatly enhance the defence and protection of our clients. This re-evaluation is a continuous and ongoing process."

And their proactive and admittedly aggressive approach – in contrast, they note, to the traditional reactive practise that permits the plaintiff to dictate the pace of litigation – has also allowed them to create tactics to "maximize new techniques and technologies to maximize the defence of trucking companies."

Within that tool chest of resources M&K can access top-level experts for each accident, drawing upon contacts that include nationally-known experts in accident reconstruction, human factors and conspicuity, DOT regulations and forensic anatomical reconstruction, along with medical, vocational, and economic experts.

In providing representation, M&K approaches each case by:

- Evaluating the liability upon assignment;
- Evaluating the reasonable value of the case;
- Developing a strategy at the beginning of the case for the most expeditious and economical achievement of success;
- Executing that strategy aggressively and creatively;
- Revising the evaluation only when warranted by unforeseen developments.

M&K provides extra value to their clients by providing a number of services at no charge, including:

- Development of a plan and procedure for the rapid response to emergencies;
- Answers and assistance on basic inquiries;
- Programs for driver training.

M&K uses all facets of social media to stay in touch with their clients – Facebook, Twitter, Blogger, Linked In and more, with RSS feeds to notify you of additional information and newsletters that help to keep you up to date. As well, they are active in many outreach programs such as drivers' meetings' education, webinars, conference pre-

sentations, and the production of three DVDs on issues related to trucking defence.

The firm has been active in numerous trucking organizations, including the ATA Safety Management Council, TCA, TIDA, PMTA, NYMTA, OTA, CVSA, NTTC, TLA, and CTLA. Their active involvement includes cooking for the drivers at Pennsylvania's annual truck driving championships.

Marcello & Kivisto, LLC is located at 1200 Walnut Bottom Rd., Suite 331, Carlisle, PA. Please call 717-240-4686 or visit their website, www.cdl-law.com, for further information.

AGGRESSIVE DEFENCE OF TRUCKING SUITS

Effective defence of trucking claims begins with pre-planning for and the immediate response to an accident, says Doug Marcello. He believes that defendants must capitalize on immediacy and employ tactics such as:

1. Video surveillance cameras: Upon arrival at the accident scene, immediately check for video cameras—public or private. Act immediately to have any chance of preserving possible capturing of the accident on video.

2. Self surveillance: Check available public sources of social media immediately upon the accident before information can be taken down. Download and preserve photos and videos. Follow up regularly.

3. Early surveillance: Traditional surveillance must be done immediately after an accident, and is frequently 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, let them know they are in for a fight. Your truck is not an 18-wheel ATM.

5. Pre-litigation medical and vocational evaluations: Request IMEs and vocational interviews early, even before suit is filed. It's a no-lose proposition for early evaluation.

6. Sue them first: 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.

7. Read the "plaintiff's playbooks": Plaintiffs tactics and strategies are no secrets. They publish them in books and sell them to anyone. We invest significantly each year to purchase plaintiffs publications and CDs of seminars.

8. Data mine: Undermine plaintiffs' claims of "no prior similar injuries" by digging into the data. Request the identity of all prior medical insurers. Subpoena their files.

9. Seek punishment of misrepresentations: Plaintiff's misrepresentations can result in dismissal of their case and reimbursement of your attorney fees where significantly egregious.

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/alcohol abuse, other illnesses, or risk-taking behaviour.

The above is a brief synopsis of some of M&K's concepts for a proper aggressive defence. Full details are available in M&K's 35-minute movie which is available by contacting their office.

DRIVERS...

You move America.

You bring our food and carry our products.

You miss your family's birthdays, dinners, and sports.

You endure bad weather and worse traffic.

You share your workplace with the motoring public.

You work hard.

You earn your money one lonely mile at a time.



THANK YOU.

M&K
MARCELLO & KIVISTO
M&K LLC
www.cdl-law.com
1200 Walnut Bottom Road, Suite 331
Carlisle, PA 17015