



MARCELLO & KIVISTO

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PA Has Adopted Anti-Indemnification Law

Indemnity provisions in motor carrier transportation contracts are now void in Pennsylvania. The law becomes effective in 60 days after the governor signed it on October 19th. The law defines "indemnity provision" as "a provision which: (1) is contained in, is collateral to or affects a motor carrier transportation contract; and (2) indemnifies or attempts to indemnify the promisee against liability for loss or damage resulting from intentional, reckless or negligent acts or omissions."

A "motor carrier transportation contract" is defined as "Any contract, agreement or understanding covering any of the following:

- (1) Transportation of property for compensation by a motor carrier.
- (2) Entrance on property by a motor carrier for the purpose of loading, unloading or transporting property for compensation.
- (3) Service incidental to activity described in paragraph (1) or (2). This paragraph includes storage of property."

Pennsylvania is the twenty-fifth state to adopt such a law. To view the new law click [here](#). For more information look for Sonya's article discussing this new law in an upcoming issue of PennTrux.

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Third Circuit Holds Shipper May be Liable for Driver's Injuries in Vehicle Rollover

In a recent court opinion, the Third Circuit U.S. Court of Appeals held that a shipper who loaded a trailer and provided securement devices may be liable to the driver for injuries caused by the overturning truck due to load shift. For more information visit M&K's blog at <http://www.cdl-law.com/blog/>. A copy of the opinion is available by clicking [here](#).

EPA and DOT Propose Rule on Fuel Economy Vehicles

EPA and DOT proposed a rule to decrease greenhouse gas emissions and increase fuel economy of medium and heavy duty vehicles. The proposed rule may be viewed on EPA's website by clicking [here](#) or on NHTSA's website by clicking [here](#). Comments on the proposed rule can be made for 60 days after the date of publication. The EPA and NHSTA will also hold public hearings on the proposed rules. The first public hearing will be held in Chicago on November 15, 2010 and the second will be held in Boston on November 18, 2010. For information on how to submit comments and/or attend a public hearing regarding the proposed rule visit either link provided above.

Employee Injured Out of State and PA Worker's Compensation Jurisdiction

In a recent decision, Williams v. WCAB (POHL Transportation), the Commonwealth Court of Pennsylvania held that Pennsylvania had jurisdiction over a workers' compensation case where a Pennsylvania resident who worked for an

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M&K Upcoming Events:

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

Archived Webinars:

20 Minute Webinars presented by Doug Marcello regarding CSA, PSP and other pertinent topics are now available through the M&K website. To check out these webinars and other resources click [here](#).

Upcoming Events in the Industry:

Nov. 8th - 10th - International Conference on Commercial Driver Health and Wellness, Baltimore, MD for more info click [here](#).

Nov. 8th - 10th - 2010 Cargo Tank Maintenance Seminar and Exhibit Show, Louisville, KY, for more info click [here](#).

Ohio trucking company and was injured in Vermont. The Commonwealth Court examined whether Pennsylvania had jurisdiction over the workers' compensation claims under 77 PS §411.2 (Section 305.2 of the Pennsylvania Workers' Compensation Act of June 2, 1915).

Specifically, the Commonwealth Court relied on Section 411.2(a)(1) in holding that Pennsylvania had jurisdiction. Section 411.2(a)(1) says: "If an employe[e], while working outside of the territorial limits of this State, suffers an injury on account of which he...would have been entitled to the benefits provided by this act had such injury occurred within this State, such employe[e]...shall be entitled to benefits provided by this act, provided that at the time of such injury: (1) his employment is principally localized in this State."

Section 411.2(d)(4) defines "principally localized." A person's employment is considered to be "principally localized" in Pennsylvania if one of three conditions are met. First, the employer's place of business is located within Pennsylvania and the employee regularly works from that location. Second, the employee, whose job duties have taken him/her out of Pennsylvania for no more than a year, had worked at the employer's place of business located within Pennsylvania. If neither of these first two conditions are met, an employee's employment will be "principally localized" in Pennsylvania, if the employee is domiciled in Pennsylvania and he/she spends a substantial amount of his/her working time serving his/her employer in Pennsylvania.

In Williams, the Commonwealth Court found that a "substantial" amount of the driver's working time was spent in Pennsylvania. Of the driver's 110,751 miles driven on behalf of his Ohio employer, approximately 38% were driven in Pennsylvania, approximately 32% were driven in Ohio and the remaining 30% were accumulated driving in 19 other states. The court indicated that it did not need to be the majority of the employee's work time, but simply a substantial amount of the employee's work time spent in Pennsylvania. The employee produced documentation to support his claim that a substantial amount of his work time was spent in Pennsylvania, i.e. driver's logs.

The Court also indicated that just because the employee had previously been receiving worker's compensation benefits under Ohio law, it did not preclude the employee from filing for benefits

Nov. 18th - 20th - 32nd Annual Conference and Hazardous Materials Transportation Exposition, Bellevue, WA. For more info 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 2010 Analysis compiled 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](#).

under Pennsylvania's law.

To see a copy of the Commonwealth Court's decision in [Williams](#), click [here](#).

Data Preview Website Updated

FMCSA's [Data Preview Website](#) was last updated on October 6, 2010 and contains information that is current through September 24, 2010. It is anticipated that the website will be updated again on or about November 5, 2010.

Keep in mind that MCS-150 changes are updated on the website monthly so any changes submitted after September 24, 2010 will be included in the next update. It is important to review your company's BASICS. This way any improper violation may be promptly challenged through [DataQ](#).

FMCSA Has Until November 4th to Respond to OOIDA's Challenge to EOBR Final Rule

In April, FMCSA issued a final rule regarding Electronic On-Board Recorders (EOBRs) for carriers who are chronically in violation of hours of service. In June, OOIDA filed a petition challenging the final rule in the U.S. Court of Appeals for the 7th Circuit. FMCSA has until November 4, 2010 to file a response to the petition challenging the rule.

For more information check out William Cassidy's article in The Journal of Commerce Online by clicking [here](#).

Free Presentations for Your

Other Resources

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

[PA Motor Trucking Association](#)

[American Trucking Association](#)

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

[Federal Motor Carrier Safety Administration](#)

[PA Travel InformationTo-Go](#)

[National Traffic and Road Closure Information](#)

For more resources click [here](#)

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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.



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.

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.

QUOTE OF THE MONTH

"Someone's sitting in the shade today because someone planted a tree a long time ago."

~ Warren Buffett

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

