



TRANSPORT CENTER UPDATE

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U.S. DOT Bans Texting for Commercial Drivers

On January 26, 2010, the U.S. DOT and FMCSA announced new regulatory guidance that bans commercial truck and bus drivers from using any handheld cellular device or other wireless device to text while driving a commercial vehicle.

The new ban would subject commercial drivers to civil and criminal penalties of up to \$2,750, if they text while driving a commercial vehicle.

Recently, the federal government has focused upon the potential dangers of distracting driving. In an effort to raise awareness the federal government has launched a website targeting the issue of distracted driving, <http://www.distraction.gov>.

For a list of the current state laws regarding handheld cell phone and texting bans, please click [here](#).

The Impact Of Joint and Several Liability in Pennsylvania

Joint and several liability is the bane of trucking in Pennsylvania. It exposes a minimally liable trucker to being leveraged into overpaying claims involving a maximally liable four-wheeler that is minimally insured.

The principle is disturbingly simple. If a jury finds more than one defendant is responsible for the plaintiff's injuries, the plaintiff can recover the **entire** verdict amount from any of the responsible defendants regardless of their percentage of fault.

For example, a drunk driver hits a truck and severely injures his passenger. The jury finds the drunk 99% at fault and the truck a token 1%. To send a message to the drunk driver, the jury awards \$1 million to the plaintiff. The drunk driver only has \$15,000 in coverage.

The plaintiff is out of luck...right? Wrong.



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M&K Upcoming Events

- Lancaster County
PMTA Chapter
Seminar on CSA
2010 - February 25,
2010 at 6:30 p.m. at
Willow Valley - Doug
Marcello and Sonya
Kivisto will be
presenting.

**Updates for Previous
Article Topics**

Under Pennsylvania's existing "joint and several" law, the plaintiff can recover the entire \$1 million verdict from the truck. Even worse, the jury will never know the repercussions of their actions.

The effect is to expose well-insured trucking defendants far beyond the true proportion of their liability. The federally mandated insurance coverage makes our trucks prime targets for plaintiffs seeking a big payday.

This potential scenario empowers plaintiffs to leverage the potential overpayment in their pretrial dealings. The threat of being grossly and disproportionately over assessed at trial is a standard plaintiff tactic designed to garner overpayment from trucking defendants.

It's always the same threat, "Sure, maybe you don't owe that much, if the jury finds you 1% at fault,..."

Do we have to give in? Not at all. We have faced such threats, taken the cases to trial, and been totally absolved by the jury.

In one case, a fourteen year old passenger suffered a fractured ankle requiring a fusion when her mother struck our left-turning tractor trailer at night on a rural road. Our driver was found not negligent, precluding exposure for joint and several liability with the mother whose coverage limit was \$25,000.

In another, our left turning tractor trailer was struck by a drunk driver, killing the passenger. In this case, the jury found the driver and the passenger, who permitted him to drive his car, totally at fault with no liability on our driver.

Bottom line-joint and several liability is an important element in evaluating a case involving multiple defendants, particularly where the others have maximum liability and minimum coverage. Joint and several liability must be considered in the risk calculation, but does not mean automatic capitulation.

Defense of Snow and Ice Claims

As the winter season progresses, snow and ice falling from the roof of a trailer may occur causing damage to the following four wheeler. It's an unfortunate accident due to an unavoidable condition to which there is yet no practical means of protection. However, the sad reality of today's society is that there will likely be a claim and lawsuit.

Given the virtual inevitability of the conditions and the result, you need to plan and prepare your defense. Your immediate response, proper addressing of any citation, and presentation that the occurrence was not the result of lack of reasonable care are crucial to protecting your company from liability.

Your defense of an ice and snow claim begins the instant it occurs. It requires a careful and methodical defense to prevent the imposition of liability for what is essentially an unpreventable result from an inevitable

- **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 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

condition.

Immediate action is required when the call is received; have your driver photograph the accident, including any damage to the vehicles, review the driver's logs and satellite tracking and obtain a weather report. Based upon the accumulated information does it appear that the allegation that the debris came from your unit is warranted? Alternatively, do you have a defense that it came from another vehicle?

Each state's individual vehicle code determines whether there is a legal basis for a citation and, if so, the nature and severity of the charge. Charges range from ice/snow specific sections to jerry-rigged provisions relating to securement of loads. A list of state laws is available from the ATA by clicking [here](#).

If your driver is issued a citation, consult knowledgeable legal counsel to determine a strategy for dealing with the citation. The manner by which you address the citation often determines whether it will effect your position in the civil suit. It varies from state-to-state as to whether a guilty plea to a ticket may be used as proof of negligence in a lawsuit against you. In some states, you may be better pleading guilty than risking a finding of guilty at a hearing that would effect you in the civil suit.

After your immediate response and proper handling of the ticket to prevent the admission of liability, you must then focus on the defense of the civil suit. The claimant's suit will be based upon negligence. Thus, the claimant must prove that your driver or your company failed to exercise the ordinary care that a reasonable person would exercise in the same or similar circumstances.

The "duty" of the driver should be measured by the reality of the road. Over-the-road drivers spend almost every night away from terminals. Overcrowding frequently precludes pulling into a truck stop. A driver "duty" should be further considered in light of the absence of any practical consistent means of addressing the problem. In a recent study, ATRI reviewed the various potential means of snow and ice removal. A summary of the study is available by clicking [here](#) and to request a full copy of the study click [here](#).

The argument may often be made that the other vehicle was following too closely so that they did not leave time to avoid the debris. This argument is particularly true when there are forewarnings of the potential for such an accident. In sum, virtually all accidents of ice and snow are not the result of a failure to use "reasonable care" under the circumstances. Instead, they are the unfortunate result of an inevitable condition.

Lancaster County TDCs

Marcello & Kivisto, LLC would like to encourage all

accident updates for Pennsylvania roadways click [here](#).

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 Information To-Go](#)

For more resources click [here](#)

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LET US KNOW WHAT YOU THINK

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

QUOTE OF THE MONTH

"Sure, luck means a lot in football. Not having a good quarterback is bad luck."

~Don Shula

drivers and companies that are eligible to participate in the Lancaster County Truck Driving Championships. For more information regarding the Lancaster County TDCs, please contact Rich Graybeal at (717) 475-4993.

Marcello & Kivisto, LLC will pay the entry fee for all drivers who register.

A button with a white background and a gray border, featuring a small envelope icon on the left and the text "Join Our Mailing List" on the right. The button has a slight 3D effect with a shadow on the right side.

Join Our
Mailing List

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.

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.

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

