



# TRANSPORT CENTER UPDATE

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## Verdict for the Defense

Marcello & Kivisto, LLC partner, Doug Marcello achieved a defense verdict after a two-week trial in Watertown, N.Y. that concluded with the Plaintiff's counsel asking the jury to award \$5.9 million for his client's claims of permanent physical and mental disability. The jury found that the Plaintiff did not suffer a serious injury as a result of the accident and entered a defense verdict.

Plaintiff, a commercial driver, claimed that he was side-swiped by the Defendant driver and injured as a result. He claimed that while he continued to work for seven months, he did so despite his physical and mental injuries.

He ultimately stopped working, claiming that he was unable to continue working due to his conditions. He claimed permanent disability due to reflex sympathetic dystrophy (RSD), complex regional pain syndrome, post-traumatic stress disorder (PTSD), anxiety and depression.

Plaintiff presented numerous medical witnesses in support of these claims, including two primary care physicians, an orthopedic surgeon, two pain doctors, a pain treatment nurse, a psychiatrist, a social worker, as well as the report of a psychologist who performed an independent examination for his workers' compensation carrier. He also argued that his having been awarded workers' compensation and social security disability for these conditions supported his claim.

Plaintiff sought damages for claims of



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#### HOS RESOURCES:

[FMCSA'S HOS WEBSITE](#)

[COPY OF PROPOSED  
RULE](#)

permanent injury for the balance of his life from the date he stopped working at age 33. This included lost wages of \$1.2 million, medical bills of almost \$100,000, future medical bills of \$1.2 million, as well as pain, suffering, and loss of life's enjoyment.

Defendants' position was that Plaintiff did not suffer any psychological injury and that his physical condition was a product of symptom magnification. In support of these positions, we presented the testimony of a psychiatrist and an orthopedic surgeon who performed independent examinations of the Plaintiff.

We argued that these were the only two medical providers who testified in the case that reviewed the entirety of his medical and psychological records. We noted that the numerous medical providers presented by Plaintiff lacked the entirety of the records and were limited in their ability to compare the Plaintiff's complaints from provider-to-provider.

Defendants also presented the testimony of two nurse practitioners, each of whom performed a DOT examination of the Plaintiff between the date of the accident and the date he stopped working due to his alleged disability. The nurse practitioners both testified that they did not receive a history of such an injury or even the accident and found no sign of the claimed shoulder injury upon their respective physical examinations.

We also provided testimony from his employer at the time of the accident as well as the safety director of the company for whom he subsequently worked at the time he left employment. Both testified as to the lack of complaints, limitations, or reduction in driving during the period between the accident and Plaintiff's leaving employment.

Defendants also successfully subpoenaed Plaintiff's Myspace file. By working in conjunction with a California attorney, Myspace produced the entirety of his file, including photographs that raised question as to the extent, if not existence, of the alleged disability.

Attorney Marcello's two and one half hour closing, at the conclusion of the trial, methodically presented the evidence from the two week trial in a manner that persuasively refuted Plaintiff's claims and exposed the

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Updates for Prior  
Articles

GSHA Update on  
States with Cell Phone  
Ban - click [here](#) for  
updated cell phone ban  
laws throughout the U.S.

Upcoming Events in  
the Industry:

Feb. 4th-5th -  
2011 Mid-West Truck Show  
& Convention, Peoria, Ill.  
For more info click [here](#).

Feb. 8th - HOS  
Compliance Seminar hosted  
by PMTA from 9am to 3pm.  
For more info click [here](#).

Feb. 15th & Feb. 22nd -  
OSHA General Industry  
Outreach Training hosted by  
PMTA from 9am to 3pm  
both days. 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

flaws in Plaintiff's case. The defense's ability to clearly and logically present its case both during trial and during its closing argument is evidenced by the jury's verdict in favor of Defendants.

## Stay Up To Date on HOS Proposed Changes

Recently, Attorney Marcello presented a webinar on the proposed changes to the HOS regulations. If you missed the webinar, you can view it on M&K's website by clicking [here](#).

You can also stay current on HOS news by following [FMCSA'S HOS website](#) and ATA's website on HOS at [safedriverhours.com](#). For other resources or to view a copy of the proposed rule check out the right column of this newsletter.

Learn more about submitting a comment on the proposed rule on [M&K's blog](#).

## FMCSA Proposes Rule on Electronic On-Board Recorders and Hours of Service Supporting Documents

On January 31<sup>st</sup>, FMCSA published a notice of proposed rulemaking regarding electronic on-board recorders (EOBRs) and hours of service (HOS) supporting documents. Under the proposed rule, all motor carriers who are required to keep records of duty status (RODS) for HOS recordkeeping will be required to use EOBRs. The proposed rule would eliminate the requirement of the motor carrier to retain documentation that verifies a driver's drive time.

FMCSA's proposed rule would also require all motor carriers, regardless of whether they use RODS or timecards, to monitor their drivers' compliance with HOS requirements. All motor carriers would need to become compliant within three (3) years of the final

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](#)

[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](#)

## 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.

rule becoming effective.

To view the proposed rule click [here](#). You can also make comments on the proposed rule at <http://www.regulations.gov>.

## Regulatory Guidance on Electronic Signatures and Documents

On January 4, 2011, FMCSA published regulatory guidance regarding electronic signatures and documents in the Federal Register. To view a copy of the guidance click [here](#). The guidance was effective on January 4, 2011.

The purpose of the guidance was to provide uniform information regarding FMCSA's acceptance of electronic signatures on documents that are required by the Federal Motor Carrier Safety Regulations. Any prior interpretations, guidance, memoranda and/or letters that are inconsistent with the January 4<sup>th</sup> guidance may not be relied upon.

Generally, the guidance states that "[f]or the purposes of complying with any provision in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR parts 300-399) that requires a document to be created, signed, certified or retained by any person or entity, that person or entity may, but is not required to, use electronic methods. Any electronic document or signature is considered the legal equivalent of a paper document or signature if it is the functional equivalent with respect to integrity, accuracy and accessibility. The substance of the document must otherwise comply with the applicable Federal laws and Agency rules."

For more specific guidance see a copy of the Notice by clicking [here](#).

## NHTSA Has Granted Petitions for Rule Making on Speed Governors

On January 3, 2011, NHSTA granted two

## About Our Firm

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### QUOTE OF THE MONTH

"Perfection is not attainable, but if we chase perfection we can catch excellence."

~ Vince Lombardi

petitions for rulemaking one submitted by the ATA and the other submitted by Road Safe America and a group of nine motor carriers. Both petitions requested NHSTA to initiate rulemaking that would require vehicles with a gross vehicle weight rating over 26,000 pounds to be equipped with a speed governor limiting the vehicle's speed to 68 miles per hour or less. It is anticipated that a Notice of Proposed Rulemaking will be issued in 2012.

To view a copy of the Grant of Petition for Rulemaking in the Federal Register click [here](#).

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