

## Transportation Attorneys — The Wizards of Navigating the Legal Maze

By Douglas B. Marcello, Marcello & Kivisto, LLC

*As drivers focus on navigating the highways, transportation attorneys help to navigate the legal byways.*

“What is a transportation attorney?” That was the question my parents asked, relaying the inquiry from their friends who passed our office and saw our sign. The answer is simple in the broadest sense, but the specifics are as varied as the multiple needs of the industry that we serve.

In its most basic form, the mission of the trucking industry we serve is to move freight in a truck from point A to point B. Yet this simple purpose is greatly complicated by the numerous laws and regulations that impact this basic function. As you focus on navigating the highways to deliver the goods that we all enjoy, our mission is to help you navigate the legal byways.

The method and manner of this movement is controlled by FMCSA regulations and state motor vehicle laws. Accidents give rise to entanglements in the civil litigation system involving bodily injuries, vehicle damages, and/or freight claims.

Beyond these legal impacts unique to our industry, we are subject to the laws as is any business that opens its doors. From wage and hours to OSHA, from EEOC to zoning, America’s businesses run a gauntlet of laws and regulations on a daily basis.

As transportation attorneys, we serve these varied needs to protect trucking clients. Our clients range from large national companies to individual drivers. While we are focused in serving but one industry, we share the variety of legal challenges you face on a daily basis.

One of our primary services is protection from liability for the accidents that occur. These efforts begin with helping your company develop an accident response plan before the event so that you can seize upon the one advantage we have — immediacy. No one knows about the accident before you do. Our objective is to assist you in maximizing this advantage.

As we all know, accidents are not a 9-5 event. For transportation attorneys, calls in the middle of the night are part of our lives. I once answered a 2:00 a.m. call from a client by reflexively asking, “How are you doing?” He said, “How do you think I’m doing? I’m calling you at 2:00 a.m.” Good point.

An efficient accident response requires prior preparation. For example, the efficiency of that initial call can be greatly increased by providing the key information — location, driver name and cell number, and the power units make, engine manufacture, and VIN number. With this information, we can contact the driver to advise and direct his response. We can mobilize

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the independent adjuster to document the scene and accident reconstructionist to perform the necessary analysis and download the ECM.

From the initial response, we assist in responding to the accident by coordinating the identification and preservation of potential evidence. This includes accident scene documentation and preservation of internal documents.

If suit is filed, it is our charge to provide a vigorous and aggressive defense of the action. We must disavow those who file suit of the notion that yours is an eighteen-wheel ATM machine.

The combination of industry knowledge and an ongoing relationship empowers us, as transportation attorneys, to focus on the industry specific issues from HOS to vehicle compliance. In an era where plaintiff attorneys seek to prey upon even the most minor of regulation violations, it is vital to have an intimate knowledge of the FMCSA requirements so as to respond to any alleged deficiencies.

Responding to accidents and subsequent suits is but one aspect of the service of a transportation attorney. As transportation attorneys, our efforts are as varied as the challenges you face on a daily basis.

Cargo issues are an important part of our practice. Damaged freight, be it from accidents or in the course of shipment, present financial claims that require a legal response. The time critical nature of these claims demand immediate response with practical solutions.

Contract drafting and review are another element of our services as trucking attorneys. Shipping agreements will often ultimately define your rights and responsibilities as to freight claims. Because of this, the contract terms must be drafted, or revised, to ensure that you have not committed to more than you have intended.

Towing claims have created a more frequent demand for our services. Aggressive billing by a tower, compounded by impounding the vehicle and freight, requires immediate action to regain the unit and load and to avoid the "storage charges" that are racked up on a daily basis.

Motor vehicle tickets impact both companies and drivers. From overweight to equipment violations, to speeding and reckless driving, motor vehicle tickets are not just costly, but can have residual impacts. Companies must bear the mark on their CSA BASIC. Drivers carry points on their MVR and their PSP score. For that reason, there are no "minor" tickets. They all count. They all present challenges.

Tickets are time sensitive. From the tight time schedule for the required response to the hearing date, immediately forwarding any documents that you receive provides the best protection against inadvertently forfeiting of your rights and your money.

We also help drivers with their individual issues. Be it property damage or down time claims of owner-operators or other business issues that arise in their dealings with shippers and receivers, we provide assistance and service to help them address these problems.

## PMTA's Attorney Members

The following is a list of attorneys who are PMTA members. Not all focus exclusively on transportation law, but all have expertise in some aspects of it.

**Abom and Kutulakis, LLP** – Jason Kutulakis, Carlisle

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