



MARCELLO & KIVISTO

LLC

TRANSPORT CENTER UPDATE

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Thank You!

Thank you for all of your support for M&K's complimentary Trucking Safety and Litigation Seminar held on April 16, 2013. It was a pleasure seeing everyone who attended and we hope you found the seminar to be informative and engaging.

A special thank you goes out to **Steven Bryan** of Vigillo, **Ray Haight** of Transrep, Inc., **John Schneider** of Oxford Outcomes and **Kevin Stewart** of PMTA for their time and expertise in preparing and presenting their topics.

We would also like to thank **Old Dominion** for providing a tractor trailer that was used for the on sight demonstration.

We look forward to putting together another seminar next year. If anyone has any suggestions for next years topics or areas of interest, please let us know.

Jury Halves Towing Bill At Trial

In a recent trial, we were successful in reducing a towing bill to less than half its original \$66,000



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M&K Upcoming Events:

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total. The case centered around the towing company's assessment of a 100% surcharge for a "hazardous" recovery and the extent of the billing for equipment on scene.

The three day jury trial resulted in a verdict of \$29,000 for the up righting and towing of an overturned propane tanker. The jury also awarded storage charges.

The tower was ordered by the Court to pay our attorney fees incurred in responding to a motion the towing company filed to exclude our experts. The Court denied the motion.

We presented two towing experts at trial. One expert testified as to the limited work that was necessary in this recovery. The second expert addressed the limited extent of the equipment that was needed for what the towing company did.

Some suggestions for challenging towing bills are as follows:

1. When the bill comes in, get it to a billing auditor ASAP for analysis--the analysis should be one we assume we will have to live with through trial and be fair and reasonable, not overly aggressive;
2. Make a written offer for the amount of that analysis good for X days (just a few as storage is mounting) or send a check for that amount for full settlement if accepted within X days;
3. When time runs, file for replevin and the posting of replevin bond;

PA TRUCK DRIVING CHAMPIONSHIPS

The PA TDCs are right around the corner. The Truck Driving Championships will be held at HACC in Harrisburg, PA on June 7th and 8th. It is not too late to register your drivers, but the deadline is May 1st. You can get more information and register through PMTA's website by clicking [here](#). We hope to see you there!

Upcoming Events in the Industry:

April 28th-30th - NPTC 2013 Education Management Conference & Exhibition - Cincinnati, OH - for more info click [here](#).

May 14th-16th - 2013 Transportation Technology Summit - Princeton, NJ - for more info click [here](#).

May 16th-18th- 2013 Annual Management Conference - Cambridge, MD - for more information click [here](#).

June 7th-8th- PA TDCs - Hosted by PMTA - Harrisburg, PA - for more information click [here](#).

4. If warranted by the billing, consider a civil claim for insurance fraud as you are a self-insured. This could entitle us to fees and costs with treble damages if it is part of a practice.

Towing companies provide a valuable service to our industry and are entitled to reasonable compensation for their efforts and investment. However, in those instances where the billing exceeds reason, do not be afraid to let a jury apply common sense.

Lesson From Boston Tragedy

In the aftermath of the Boston Marathon tragedy, let's consider a valuable lesson learned from the police investigation that resulted in the remarkably swift apprehension of the "suspect". The "suspect" was captured on surveillance camera, resulting in documentation of the actions.

Video surveillance cameras can similarly provide valuable evidence in defending accident claims. While it is not a given that the accident was captured on video, it's not necessarily a long shot. From mini-marts to ATM's, from outside security to intersection cameras, there has been an incredible growth in the number of cameras observing actions.

A couple of years ago, the Los Angeles Times ran an article about a smaller city that had an aggressive video surveillance program with as many cameras as the entire city of San Francisco. The city was not in the high-tech hub of the

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.

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](#).

Silicon Valley. Instead it was here in the heart of Pennsylvania Dutch Country-Lancaster, PA.

But does it work for accidents? Awaken by a call in the middle of the night for an accident where my client's truck was struck by a police car as it cross an intersection, I directed the independent adjuster to check the surrounding business for video cameras. Of the four corners at the intersections, two mini-marts had cameras. One showed only the flash of the impact. The other had two cameras that captured the sequence leading up to and resulting in the accident. I had the adjuster lead the State Police to that mini mart and secure the video. Upon their review, no ticket was issued to our driver.

Moreover, after the commencement of suit, we subpoenaed the video from the State Police file where it had been preserved. Upon review of the video, the plaintiffs dropped their suit. The lesson-check immediately and make sure it is preserved. Just as the police identified the "suspects" in the Boston case, you can document your defense in real time.

Tips for Traffic Tickets

When you or a driver for your company receive a traffic citation, it is important to have a plan of action and to be aware of the steps you need to take in order to protect you or your driver's driving record, CSA score and CDL. Here are some considerations and tips to help you or your driver be better prepared to deal successfully with a traffic citation.

1. Carefully review the citation for pertinent procedural information.

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 Information To-Go](#)

[National Traffic and Road Closure Information](#)

For more resources click [here](#)

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Quote of the Month:

"Everyday is a new opportunity. You can build on yesterday's success or put its failure behind and start over again. That's the way life is, with a new game everyday, and that's the way baseball is."

~ Bob Feller



2. If the violation occurred outside of your licensed state consider contacting an attorney in your licensed state regarding the consequences of a conviction.
3. Don't forget about your inspection report and make any necessary DataQ challenges- winning the ticket does not remove the CSA points.
4. Consider whether the ticket carries an automatic suspension or is it a first offense that can lead to the suspension of your CDL.
5. Consider consulting an attorney.
6. If you do consult an attorney be prepared - you will need information like the alleged vehicle code sections violated, the date of the alleged violation, the location, court information and any upcoming deadlines or court dates.
7. An officer who thinks he is giving a driver a break may by giving a driver a no points violation may be unaware of other potential consequences that violation may carry.
8. Consider who the defendant is listed on the ticket, if an attorney is retained and the driver is listed as the defendant on the ticket, even if the attorney is retained by the driver's company, it is the driver who is the client.
9. Keep in mind potential consequences of a guilty plea vs. conviction in any subsequent civil action that may arise out of the same occurrence as the traffic stop.

Blog Postings

Keep up to date with our Blog posting. Subscribe to our blog at <http://www.cdl-law.com/blog/>. Follow us on [Twitter](#).

Webinars On-Line

Several 20 minute webinars on key issues in the trucking industry have been posted to our

webpage. These are audio/video presentations that explain the issues and the challenges they present to the trucking industry.

The topics are as follows:

- Aggressive Defense of Trucking Accidents
- New Hires and PSP
- CSA

You can view the webinars by clicking [here](#).

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.

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

