

The Transportation Brief®



The Scopelitis Law Firm Launches New Consulting Business – Scopelitis Transportation Consulting, LLC

With a new administration led by President-Elect Donald J. Trump and Republicans retaining the majority in both houses of the U.S. Congress, the regulatory climate affecting companies in the transportation industry is ripe for potentially dramatic changes. Will the new regime help break the partisan gridlock? Which policies will benefit, and which will be set back? Speculation abounds from an eventual change in regulatory policy augmenting independent contractor status to a halt of state-level audits and possibly even a shift in judicial perspectives. While we anticipate a pro-business agenda, the details remain to be analyzed. Yet, it is clear America's transportation landscape of laws, and the best practices developed in response, require a vigilant resource of long-term guidance at the implementation ground level. In response to this complex regulatory environment, Scopelitis, Garvin, Light, Hanson & Feary (The Scopelitis Law Firm) has created a new business to guide companies through their compliance and implementation processes regardless of the issue sparked by new laws and regulations and regardless of an expected business-friendly environment.

Scopelitis Transportation Consulting, LLC (STC), a wholly-owned subsidiary of The Scopelitis Law Firm, launched last month. STC is a business consulting firm focused on providing advisory services and implementation programs to companies in the transportation

industry. STC will take over where legal advice leaves off to provide real-world implementation of solutions.

Dave Osiecki, motor carrier industry expert and former American Trucking Associations Executive Vice President, leads STC as President and CEO. At ATA, he led a team of policy experts and industry advocates aimed at shaping the legislation and regulations affecting the trucking industry for the last 20 years. This natural progression to help the Firm establish STC and tap into Firm resources to provide longer term and constant business solutions suits Mr. Osiecki's 20 plus years experience inside the industry, from the U.S. DOT to his long service and many roles at the ATA, and now to a focused consulting role.

STC has focused its initial service offerings on the following: (1) Electronic Logging Device (ELD) training and implementation support; (2) independent contractor (IC) training and advice; (3) regulatory training on new rules prohibiting driver coercion; (4) transportation equipment replacement strategies for fleet owners; and (5) transportation equipment sales tax strategies for fleet operators.

With the pending implementation of the ELD mandate, and at least 40% of fleets not yet ELD compliant, STC will train and advise fleets on the ELD requirements along with

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Briefly...

Protecting IC Status Requires More Than a Well-Drafted Contract

You have a state-of-the-art independent contractor lease agreement – now what?

Transportation providers know the importance of having best-in-class contracts to document their independent contractor relationships. It can be tempting to think that such contracts are a silver bullet to ward off potential driver reclassification claims, but that is not the case. The next step in the independent contractor model due diligence process – a crucial one that even the best companies often overlook – is ensuring that your operations actually reflect the practices outlined in the contract.

That means training everyone involved in your independent contractor program to handle real-world issues and situations in a manner that is consistent with the contract and the nature of the independent contractor relationship. Supplementing your agreement with practical training on how to manage contractor relationships goes a long way toward reducing the likelihood you are later faced with reclassification claims.

*Braden Core
Ryan Wright,
Indianapolis*

EPA Enforcement of California Clean Air Rules Knows No (State) Boundaries

California has adopted several regulations related to air quality affecting commercial motor vehicle operations. What some may not know is that the U.S. Environmental Protection Agency (EPA) has adopted some of the regulations as federal regulations and is seeking compliance information from companies that have few if any ties to California. If and how the regulations affect motor carriers depends on a number of factors including if the carrier uses company trucks or obtains capacity from independent contractor owner-operators. The regulations also purport to regulate brokers. In some instances, brokers that are not headquartered in or have no physical location in California may be subject to the regulations. Companies should be aware that the EPA has been sending information

requests pursuant to the federal Clean Air Act regarding compliance with these regulations, which ask for detailed vehicle specific compliance information. Recipients of these questionnaires should also be aware that these questionnaires may be the first step in an enforcement proceeding and respond accordingly.

*Nathaniel Saylor,
Indianapolis*

*Prasad Sharma,
Washington, D.C.*

Gearing up for the Impending ELD Mandate

The December 18, 2017 compliance deadline for the FMCSA's electronic logging device (ELD) mandate looms large in the transportation industry, particularly now that the 7th Circuit Court of Appeals has upheld the rule. With only a few exceptions, the mandate requires all drivers of commercial motor vehicles who are currently required to complete daily records of duty status to begin tracking their duty status with a compliant ELD by the end of next year. For their part, carriers must ensure the devices are installed and operational in their owned and leased equipment and must retain all hours-of-service-related data, including supporting documentation, for at least six months.

ELD manufacturers are responsible for self-certifying that their devices meet the FMCSA's technical specifications and registering them with the agency. The list of self-certified (by ELD manufacturers) devices is available on the FMCSA's website and currently includes only a few devices. Because device registration is a self-certification process, the inclusion of a particular device on the FMCSA's online list does not guarantee the device is compliant with the agency's technical specifications. Ultimately, the burden is on carriers to ensure they implement compliant devices, so they must be sure to select devices that not only meet their operational needs, but also fully satisfy their regulatory obligations.

*Brandon Wiseman,
Indianapolis*

Mileposts

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the implementation challenges and opportunities it presents. Continued attacks on the IC business model makes STC's one-of-a-kind independent contractor training program essential for recruiters, dispatchers, front-line motor carrier safety personnel and managers of companies using independent contractors. As the industry strives to understand the recently effective driver coercion regulations, STC is positioned to provide training and advice on the regulations, operational considerations and the government's approach to enforcing the regulations.

Rounding out STC's initial service offerings are two consulting packages which provide fleet owners and operators with large cost savings opportunities relating to modernizing fleets and lowering or eliminating sales tax liabilities.

In addition to the initial consulting offerings, STC also makes available various survey reports and white papers to provide clients greater access to legal and regulatory information. STC's office is in Washington, DC at the epicenter of changing laws and regulations where legislative support services will also be available to STC clients. Please visit www.scopelitisconsulting.com for additional information.

*Gregory M. Feary,
Scopelitis, Garvin, Light, Hanson
& Feary
Indianapolis*

*Dave J. Osiecki,
Scopelitis Transportation Consulting
Washington, D.C.*

For the Record

Congratulations to Timothy W. Cochren, who began his law practice this fall as an associate in the Indianapolis office.

On the Road

Todd Metzger attended the Indiana Motor Truck Association's Annual Convention, November 3-5, in **Amelia Island, FL**.

Kevin Phillips and Jake Fisher participated in a panel discussion addressing "Safety of Life at Sea (SOLAS) update" at the International Warehouse Logistics Association's Warehouse Legal Practice Symposium, November 3-4, in **Rosemont, IL**.

John Hove presented "Turning in the Boss: Corruption Risks for Supply Chain Executives & Compliance Professionals" at the Transportation Lawyers Association's 49th Transportation Law Institute, November 4, in **Houston**.

Kathleen Jeffries attended the Transportation Lawyers Association's 49th Transportation Law Institute and Executive Committee Meeting, November 3-5, in **Houston**. Fritz Damm attended as voting past president.

Fritz Damm attended the Ontario Trucking Association Convention, November 9-10, in **Toronto, Canada**.

Annette Sandberg presented "URS Implementation" at the Washington Trucking Association's Safety Committee Meeting, November 11, in **Yakima, Washington**.

Mike Langford will present "Proving or Disproving Damages – The Art of Closing Argument" at an ICLEF seminar, December 15, in **Indianapolis**.

Kathleen Jeffries will attend and serve as Chair at the Conference of Freight Counsel's Winter Meeting, January 6-9, in **Dana Point, California**. Fritz Damm will also attend.

Don Vogel, Norm Garvin, Kathleen Jeffries and Fritz Damm will attend the Transportation Lawyers Association's Chicago Regional Seminar, January 20, in **Chicago**.

Chris McNatt will attend the CTS Annual Membership Conference, January 20-23, in **Monterey, California**.

Mike Langford will attend and serve as the TIDA Board of Directors Chair of the TIDA Advanced Seminar, February 2-3, in **Orlando**.

Trending

- Major foreign ocean carrier out of business creates uncertainty as to cargo reclamation.
- U.S. EPA enforcing CARB regulations creates enormous data retrieval burden for carriers.
- FAAAA preemption of state laws that effect the relationship between owner-operators and carriers gaining traction with courts.
- High wage threshold for white collar exempt status curbed for the time being by Congress.
- Shippers actively determining whether core carriers will be ready for ELD regulation deadline in December of 2017.

Dispatches

Mike Langford reports that in, *Zak v. JB Hunt*, the Indiana Court of Appeals upheld a net \$19.5 million jury verdict against JB Hunt. The Firm has filed an *Amicus Curiae* brief to the Indiana Supreme Court on behalf of the Trucking Industry Defense Association (TIDA), supporting JB Hunt's Petition to Transfer. The TIDA *Amicus Curiae* brief argues the appellate court incorrectly determined that JB Hunt can be independently liable for failing to instruct a truck driver to cease driving during inclement weather. This appellate holding runs counter to the federal regulatory guidance in 49 C.F.R. § 392.14, which provides the driver, not the motor carrier, is to decide whether to cease operation because of hazardous weather conditions.

Kevin Phillips advises that under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), a warehouse is not liable for labeling issues unless one of their employees detaches, alters, defaces, or destroys the label.

Although the claim filing deadline (Oct. 25, 2016) for the Hanjin Bankruptcy has passed in Korea and claims are not being accepted in the U.S., there are still many issues to address. According to Craig Helmreich, a key issue for most is if increased expenses and cover costs can be offset against sums otherwise due to Hanjin. Hanjin does not appear to be reorganizing and instead appears to be processing the remaining cargo, collecting the receivables it can collect and setting up its assets for a likely liquidation.

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