

Happy Halloween. Here's hoping you all get treats and not tricks.

CAB's LABS - This month we released a few new and exciting features that will improve your ability to analyze radius and historical trends. On the Radius tab, you now have the option to modify the default date range of the inspections that are included in the all the radius analyses to see how things may have changed in this carrier's operations over time. The second new feature is the ability to change the intervals and time frames used in the CAB-ISS and BASIC history trend graphs. Lastly, for those of you who enjoy working with the data, the full CAB-ISS and BASIC score history can be downloaded to Excel directly from the report. We will be hosting a CAB Focus session in November to cover how to use these new features. If you are interested in attending you may register by clicking

[here](#)

. In the meantime if you have any questions or if we can assist you please

[contact us](#)

This month we report:

INSURANCE LIMITS - The move to increase mandated insurance limits is underway and under attack. The FMCSA has fast-tracked what it has deemed a "high priority" rulemaking to increase the current minimum levels of liability insurance. The amount of the increase is currently unknown. The advanced notice of proposed rulemaking is currently under review by the OMB and should be released shortly. A group of eight associations are urging Congress to step in and "halt" the attempt. Section 425 of the Department of Transportation fiscal year 2015 appropriations contains a provision that would prohibit the agency from moving forward with increasing the required minimum level of liability insurance. Signing onto the letter are the Owner-Operator Independent Drivers Association; National School Transportation Association; United Motorcoach Association; American Bus Association; National Federation of Independent Businesses; Petroleum Marketers Association of America; American Truck Dealers; and National Ready Mixed Concrete Association. There is also a move to repeal the self-insurance plan for motor carriers. President Obama's Grow America Act — the four-year, \$302 billion transportation plan— calls for repealing the government's self-insurance program for carriers.

CVSA SAFE DRIVER WEEK - Beginning Oct. 19 through Oct. 25, law enforcement agencies beefed up their traffic enforcement for the Commercial Vehicle Safety Alliance's Operation Safe Driver Week. The program targets both commercial motor vehicle drivers and four-wheelers. Law enforcement in the United States, Canada and Mexico will increase traffic enforcement, safety belt enforcement, driver roadside inspections and driver regulatory compliance. We will report on the results when they are tallied and released.

TOP STATES FOR CMV ENFORCEMENT - The ATRI released a technical report on the Top 10 states that demonstrate superior safety and enforcement performance. ATRI's identified and rank-ordered the following states as Top 10 high performers – Washington, Nevada, Rhode Island, Montana, Connecticut, New Mexico, California, South Dakota and Iowa. A copy of the report can be viewed [here](#) .

2014 ANNUAL FLEET STUDY - Released by the CK Commercial Vehicle Research, the study covers planned 2015 truck and trailer purchases for replacement and added capacity, brand choices, driver shortage impact, equipment specifications, new technologies, maintenance and replacement parts, information sources and challenges for 2015. The study indicates a slight decline in equipment purchase plans for 2015 versus what was planned for 2014, while driver shortage is the key issue facing trucking fleets impacting their ability or willingness to add capacity. New technologies that maximize safety and/or fuel efficiency; or improve driver potential, recruitment, and retention are being added to new equipment, In house maintenance still the preference although some changes are occurring Original equipment truck manufacturers playing an increasing role as a resource for fleets – for information, outsourced service and replacement part purchases.

NAFTA - Now that the pilot program has ended, the FMCSA has announced that it will allow 13 Mexico-based trucking companies that were part of the agency's cross-border pilot program to maintain U.S. operating authority. The FMCSA said the carriers will be allowed to service the business they developed over the three-year pilot, which was created to evaluate the ability of Mexico-domiciled carriers to operate safely in the border commercial zones. Should companies choose to continue operating, they will still be subject to border inspections and all U.S. trucking laws and regulations.

The FMCSA website said the 13 carriers involved made a combined 27,915 border crossings during the course of the program, but two companies dominated. In related news, U.S. NAFTA Freight has seen its sixth consecutive month of increase. U.S. freight movements with Canada and Mexico saw imports increase 3.6% while exports gained 5.2% from a year earlier, according to the U.S. Transportation Department. Trucks carry three-fifths of U.S.-NAFTA

freight and are the most heavily utilized mode for moving goods to and from both U.S.-NAFTA partners, transporting 59.6% of U.S.- Canada and Mexico freight in August. This month U.S. and Mexican officials signed an agreement to streamline the flow of goods by truck. It allows stronger collaboration between CBP's Customs-Trade Partnership Against Terrorism trade and security program, commonly known as C-TPAT, and Mexico's equivalent, the New Certified Companies Scheme, or NEEC for short, a Spanish language acronym.

ATRI SURVEY OF CRITICAL ISSUES FACING TRUCKING - HOS topped the list of items most critical to the trucking industry in the ATRI survey of more than 4,000 trucking stakeholders. That was followed by driver shortage and CSA. The top five concerns were rounded out with concerns on driver retention and electronic logging devices. For the first time driver distraction debuted on the list as the use of cell phones while driving is clearly impacting safety.

CASES

AUTO

A motor carrier was successful in reversing a judgment against it for personal injury when the trial court allowed a jury instruction on willful suppression of evidence. The Court of Appeals in California held that there no evidence of willful suppression and therefore the instruction was prejudicial. The evidence at issue related to the driver logs which were lost, along with the failure to retain a black box which was not even known to the trucker. The Court also held that the failure of the driver to complete an accident report when he was not required to do so could not be held against him. ([Johnson v. Oakhurst Industries](#) , 2014 WL 5293398)

In a lengthy decision by the District Court in North Dakota, the Court considered the application of an auto and a bobtail policy to an accident which occurred during repairs to a leased vehicle. The court concluded that the repairs were in the business of the motor carrier and therefore the auto policy provided coverage. The Court further concluded that the severability clause in the policy would impact the application of certain exclusions to the driver seeking coverage. The Court also concluded that the statutory employee mandate required by the federal regulations would not be read into the motor carrier coverage form. ([Great West Casualty Co v. National Casualty Company](#) , 2014 WL 5089795)

Negligence per se is properly pled when the complaint alleges violations of state laws requiring a driver to maintain a vehicle lane and breach of federal statutory safety regulations. The District Court in Nevada refused to dismiss the complaint against a trucker for personal injuries. ([Mitschke v. Gosal](#) , 2014 WL 4987966)

The issue of an expert to address industry standards on the use of cell phones in commercial vehicles was considered by the Middle District in Georgia. The Court held that Dr. David Strayer could testify about the proper standards based upon his experience and knowledge garnered through research on distracted driving and experience in risk management. ([Little v. McClure](#) , 2014 WL 5320557)

Speaking of cell phones, the First District in Florida held that a trucking company defendant would be entitled to retrieve data from the plaintiff's cell phone where there was evidence that the driver may have been using her phone at the time of the fatal accident. The Court did require that the production be limited to times relative to the accident to protect the privacy of the deceased driver. ([Antico v. Sindt Trucking](#) , 2014 WL 5213850)

An insurance carrier is not responsible when various brokers issues certificates of insurance which indicate higher limits than the policy actually had. While the Western District of Louisiana reached that conclusion, it did not reach a decision on whether the policy should be reformed to reflect required limits for Louisiana where insufficient information was presented as to which statutory limit would apply, which would depend, in part, on vehicle weight. ([Progressive Express Insurance Company v. All Seasons Disaster Relief](#) , 2014 WL 4925151)

The Supreme Court in Kentucky upheld a directed verdict against a truck driver concluding that when a driver is on the wrong side of the road at the time of collision the driver must prove that his own negligence did not put him there. The driver cannot defeat that presumption when he created an emergency with his own negligence. ([Wright v. Carroll](#) , 2014 WL 5393925)

Over in Ohio the Northern District also concluded that there was negligence per se when the driver failed to stay in marked lanes and maintain a clear distance, granting summary judgment to the plaintiff. The Court also held that a driver stopped for a breakdown on the side of the road is not required to anticipate that someone would hit him. ([Wheeler v Estes Express Lines](#) , 2014 WL 5293398)

The Court of Appeals in Michigan slammed an insurer with sanctions when it brought an action against another insurer seeking to make that insurer primary for purposes of no fault benefits. The court held that the Michigan statute mandated that the first in priority for payment was the insurer of the furnished vehicle. As the plaintiff had already been ruled against in another court and could not justify the second suit, sanctions were imposed. ([Hamdi v Citizens insurance Co.](#) , 2014 WL 5018825)

CARGO

A plaintiff's efforts to avoid the preemptive effect of the Carmack Amendment failed in the Eastern District of Louisiana. While plaintiff sought to assert a state cause of action against the carrier for failure to procure insurance, the Court concluded that the claim was still subject to the Carmack Amendment. ([Rouquette v. North American Van Lines](#) , 2014 WL 5213850)

The Southern District in Illinois dismissed a counter claim by a cargo owner for freight damage. The court concluded that defendant could not allege a negligent broker claim against the plaintiff, a motor carrier while at the same time attempting to argue that the plaintiff was a motor carrier. ([Mason Dixon Lines v. Walters Metal Fabricating](#) , 2014 US Dist. Lexis 129285)

Follow those rules or beware! The 11th Circuit held that a carrier could not appeal the denial of a request to add an insurer to its action against a lessee for indemnity for a cargo loss when it only obtained a decision from a magistrate. The Court also held that the motor carrier was not allowed to seek fees and costs from the lessee when it failed to seek them correctly in the lower court. ([J.B. Hunt Transport v. S&D Transportation](#) . 2014 WL5011135)

The issue of the contractual indemnity agreements with brokers was addressed again this

month. The Western District of Tennessee, citing the Southern Refrigerated case discussed in last month's Bits & Pieces held that the broker's claim against a motor carrier was not subject to Carmack preemption. The Court also held that the motor carrier was not entitled to summary judgment on the broker's claim for consequential damages stemming from lost profits. ([National Bankers Trust Corp. v. Peak Logistics](#) , 2014 WL 5343639)