

Transportation Agency Risk Management & Insurance Issues

Session 15

July 17, 2018

3:00 p.m. – 4:30 p.m.

Topics and Speakers

- COMMON CHALLENGES: Denise Standridge, General Counsel, *AC Transit, Oakland, CA*:
- EMERGING TRENDS: Jeanne Scherer, Chief Counsel, *CalTrans, Sacramento, CA*
- INDEMNIFICATION CLAUSES: Kathleen Kraft, Partner, *Thompson Coburn, LLP, Washington, D.C.*
- Kimon Manolius, Partner, *Hanson Bridgett, LLP, San Francisco, CA*

Common Challenges Facing Public Transit Agencies in California

- Fatigue among safety sensitive employees due to commute times and working second jobs
- Common Carrier Duty vs. Collective Bargaining Agreement
- Increase in pedestrian and bicycle traffic with an increase in high exposure cases
- Agency causation analysis studies
- Increasing jury verdicts

Fatigue Awareness

- In the San Francisco Bay Area housing prices have skyrocketed causing employees to move to outlying counties. Safety sensitive employees are now commuting up to 3 hours one way to get to work, working their shift, which is often a split shift, and then commuting back home.
- Because the cost of living is high in California, many employees are taking second jobs such as with TNCs or limousine services just to make ends meet but are not telling their employer. This leads to fatigue and potential violation of driving hours.

Common Carrier Duty vs. Collective Bargaining Agreements

- CA Jury Instruction for Common Carrier:

Common carriers must carry passengers safely. Common carriers must use the highest care and the vigilance of a very cautious person. They must do all that human care, vigilance, and foresight reasonably can do under the circumstances to avoid harm to passengers.

While a common carrier does not guarantee the safety of its passengers, it must use reasonable skill to provide everything necessary for safe transportation, in view of the transportation used and the practical operation of the business.

- Do your CBA provisions support this duty?

Increase in pedestrian and bicycle traffic

- Many agencies are seeing an increase in pedestrians and bicyclists, many of them distracted by their electronic devices. There has been an increase in pedestrian and bicycle accidents.
- Cities are adopting *Vision Zero* but not always consulting with the transit agency to see if there are safety issues with the plan.
- Is there technology to help with detecting these vulnerable road users to decrease the accident rates?

Agency Causation Studies

- What statistics do you keep to analyze accident causation?
 - Location?
 - Schedules?
 - Fatigue issues?
 - Type of vehicle?
 - Age?
 - Gender?
 - Physical condition?

(While you may not discriminate in hiring, you may want to consider tailoring your training.)

Increasing Verdicts

- Recent AC Transit net verdict in excess of \$330,000 for a sleeping passenger, under the influence, who fell out of his seat as the coach turned. No other passengers fell. Medical specials were only \$1,300.
- Recent Chicago verdict \$148 million
- Many states have damages cap