

THIS IS AN ADVERTISEMENT.

## **Waiving Workers' Compensation in Transportation Agreements: Like Taking a Bullet After Being Stabbed**

Anyone reviewing a transportation agreement in the past few years surely noticed an uptick in the number of proposed provisions attempting to "waive workers' compensation immunity." The waiver typically reads as follows: "[Employer] expressly waives any immunity from suit with respect to injuries to [Employer's] employees as a result of any payments made by [Employer] to such employees or under any applicable workers' compensation statute or similar law."

Most states, if not all, have enacted a comprehensive set of workers' compensation laws. A critical component of these laws is the idea of workers' compensation immunity. Workers' compensation immunity provides tort immunity to an employer when an employee is injured within the course of their employment. Put simply, employers can treat compensation for work related injuries as a routine cost of doing business which can be budgeted for without fear of any substantial tort judgments (with a limited exception for intentional torts).

In an attempt to circumvent this limitation a resourceful plaintiff's bar seeks to impose liability on third parties. For example, a Company's driver loses his or her leg in a forklift accident occurring on the business premises of third party. Under the state's laws, and the Company's corresponding workers' compensation policies, the Company pays the driver workers' compensation. The injured driver looking for "full compensation" next turns to the third party and sues for negligence. The third party then looks to the Company (the employer) for indemnification.

Such an arrangement strips the workers' compensation scheme of all its certainty, and leaves open the possibility of being hit twice for the same injury. Next time your company receives a transportation agreement and you notice a proposed provision waiving workers' compensation immunity, address the issue with counsel before entering into contract negotiations to make certain the provision is necessary or even applicable.

For more information or questions, please contact [Ken Bryant](mailto:kbryant@millermartin.com) (615-744-8508 | [kbryant@millermartin.com](mailto:kbryant@millermartin.com)), [Kyle Young](mailto:kyoung@millermartin.com) (615-744-8576 | [kyoung@millermartin.com](mailto:kyoung@millermartin.com)) or any other member of our [Transportation and Logistics Practice Group](#).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

**THIS IS AN ADVERTISEMENT.**

Atlanta | Chattanooga | Nashville  
[www.millermartin.com](http://www.millermartin.com)

**ATLANTA**

1170 Peachtree Street,  
N.E., Suite 800  
Atlanta, GA 30309-  
7706

**CHATTANOOGA**

832 Georgia Avenue,  
Suite 1000,  
Volunteer Building  
Chattanooga, TN 37402-  
2289

**NASHVILLE**

150 Fourth Avenue North,  
Suite 1200, One Nashville Place  
Nashville, TN 37219

This email was sent to .

To ensure that you continue receiving our emails, please add us to your address book or safe list.

[manage](#) your preferences | [opt out](#) using **TrueRemove**®

Got this as a forward? [Sign up](#) to receive our future emails.

[Subscribe](#) to our email list