



KEYSTONE STATE RAILROAD ASSOCIATION

June 2011

2011 Rail Freight Seminar A Success



Norfolk Southern brought their beautiful office cars into the Harrisburg Transportation Center Tuesday May 17th to host the seminar's opening cocktail reception.

The 2011 PA Rail Freight Seminar was held May 17-19 in Harrisburg Pa at the Harrisburg Hilton. This unique partnership between the PA Rail Freight Advisory Committee, PennDOT, and the Keystone State Railroad Association again produced a top notch industry event. Over 170 railroaders, guest speakers and vendors converged on Harrisburg to discuss the rail issues of the day. Once again, the Marcellus Shale boom was a highly discussed topic along with a hearty agenda of rail freight issues. Jeff Stover and his team at SEDA-COG again served as the local sponsor and put together a great meeting with the help of many volunteers through the Rail Freight Advisory Committee, PennDOT and KSRRA. For more information, or to download some of the presentations that were made, go to www.parailseminar.com

KSRRA Passes Resolutions

The membership of the Keystone State Railroad Association passed two resolutions at its spring board meeting held April 25 in Harrisburg.

The resolutions, which were unanimously passed, concerned the upcoming Surface Transportation Board hearings focusing on rail freight and the truck size and weight issue respectively. Both are issues which our membership and the rail freight industry as a whole are quite concerned with.

The STB will be holding hearings in late June to examine the current regulatory structure overseeing the freight rail industry. The KSRRA

resolution urged them not to turn back the advances made after the 1980 passage of the Stagger's Act by taking any actions that would be detrimental to the rail freight industry's ability to grow and maintain a viable and safe freight rail network.

The truck size and weight resolution urged Federal and State officials from increasing the size and weight limits on trucks that travel on the Commonwealth's already overburdened roads and highways.

The following day, the PA Rail Freight Advisory Committee unanimously passed two identical resolutions.



With state budget negotiations kicking in to high gear, it is important to reach out to your local legislators and ask them to support restoring funding to the Rail Freight Assistance Program.



Special Thanks

To Former Deputy Secretary Eric Madden, who departed PennDOT after eight years of service to the Commonwealth. Eric was a great friend to the rail freight industry and his leadership and guidance will surely be missed by all. The Keystone State Railroad Association would like to thank Eric for his service and wish him the best of luck as he starts his new career as the Executive Vice President of the American Council of Engineering Companies/Pennsylvania.

www.ksrra.com

Please visit the KSRRA website and learn more about railroading in Pennsylvania.

Medicare Reporting In The Railroad Industry: Can Your Company Afford A Penalty of \$1,000 Per Day, Per Claim?

The Basics:

Federal law now mandates that ALL self-insured entities and insurance carriers that qualify under the Medicare Mandatory Insurer Reporting (MIR) statute, verify the entitlement of every Claimant who alleges an injury that could result in the payment of medical expenses.

For those individuals who are confirmed to be entitled to Medicare, the carrier or self-insured may have to report specifics of the case to Medicare during the companies' designated reporting quarter as a Responsible Reporting Entity (RRE). If the case is not reported in a proper and timely manner a \$1,000 per day, per claim penalty against the RRE may result.

The MIR requirement will be triggered when the Claimant is Medicare entitled and the RRE has:

1. Assumed the ongoing responsibility to pay for medical expenses (ORM) and the case is/was open on or after January 1, 2010 (THESE CASES REQUIRE REPORTING NOW!!); or
2. When there is a settlement, judgment or award that occurs on or after October 1, 2011 for an amount exceeding \$5,000 (Reporting on these claims will not take place until the first quarter of 2012).

Assessing the Need For Compliance:

For the sake of MIR compliance, you first have to determine if your risk structure mandates that you have to comply with the MIR requirement.

If your company is self-insured, in whole, in part, or assumes any

of its own claim related risk then it is likely an RRE and therefore responsible for properly reporting claim information to Medicare. However, if your company is fully insured or insured with a deductible, the carrier is likely the RRE.

How Can I Report?

If your company qualifies as an RRE, your options are to self-report or to retain a law firm or vendor who can assist you with reporting. If you retain a firm or vendor, please keep in mind that the liability associated with the MIR requirement cannot transfer to the firm or vendor that you retain. So buyer beware because all MIR services are not created equal.

When Do I Report?

If you are an RRE, reporting to Medicare is done quarterly. Once you are registered with Medicare, they will provide you with a specific date and time each quarter when you have to report your qualifying claims. If you miss your reporting window, you are non-compliant.

Other Medicare Compliance

Besides the potential liability associated with a failure to report or to report accurately, one of the largest impacts of MIR reporting will likely be Medicare's improved coordination of enforcement for conditional past and future claim related Medicare payments.

The reimbursement of Medicare conditional payments (aka Medicare liens) made for past claim related medical treatment will likely continue to involve more claims. Medicare

has continually flexed their recovery strength and with the MIR, will likely be aware of more cases in which they have a recovery right.

In addition, the potential establishment of Medicare Set-Asides (MSAs) for future claim related treatment should play a larger role in settlements, as Medicare will be on alert for injuries / their settlement amounts, and could refuse to pay for treatment related to that injury / illness.

In total, the MIR, Medicare liens, and MSA can cause a significant burden to claim handling and claim resolution. Despite these encumbrances, the potential financial impact for noncompliance is far greater than the headaches that each compliance area creates.

About the Author:

Benjamin Basista, Esq. is a Medicare Compliance Attorney at Burns White, LLC. He advises railroads, carriers, and other self-insured entities on Medicare Mandatory Insurer Reporting, Medicare lien resolution, and Medicare Set-Aside issues.

Mr. Basista also serves as Advisory Medicare counsel to a national railroad organization, as a Board Member of the National Association of Medicare Set-Aside Professionals, and in various non-traditional legal roles that assist clients with Medicare compliance.

For questions or comments regarding his Medicare Compliance article, he can be reached at 412-995-3196 or bmbasista@burnswhite.com.

If you have information to submit for upcoming monthly newsletters, please contact Josh Wilson at:
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KSRR CALENDAR IMPORTANT DATES

July 14, 2011	ASLRRRA Rail Day on Capitol Hill	Washington DC
July 19, 2011	KSRRRA Summer Board Meeting	Harrisburg, PA
July 19, 2011	Harrisburg Senators Game (6PM) <i>(Seminar rescheduled rain date)</i>	Harrisburg, PA
July 20, 2011	Rail Freight Advisory Committee Meeting	Harrisburg, PA
October 25, 2011	KSRRRA Annual Meeting	Harrisburg, PA
October 26, 2011	Rail Freight Advisory Committee Meeting	Harrisburg, PA
September 11, 2011	AASHTO Standing Comm. On Rail Meeting	Charlotte, NC
April 21-24, 2012	ASLRRRA Annual Convention	Indianapolis, IN