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New Louisiana Law: Indemnity and Insurance Provisions in Motor Carrier Transportation and Construction Contracts

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On January 1, 2011, a significant change in Louisiana law took effect relating to motor carrier transportation and construction contracts for work performed in Louisiana. During the 2010 Regular Session, the Louisiana Legislature enacted Act 492 that makes certain indemnity and insurance provisions in motor carrier transportation and construction contracts null, void, and unenforceable.

In general, Louisiana Revised Statute 9:2780.1 declares null, void, and unenforceable any provision in a motor carrier transportation or construction contract that purports to indemnify, defend, or hold harmless a company against damage resulting from the negligence or intentional acts or omissions of that company. Further, any provision in a motor carrier transportation or construction contract that purports to require a company to procure liability insurance covering the acts or omissions or both of another company is null, void, and unenforceable. In addition, Louisiana law shall govern any motor carrier transportation contract for loading or unloading that occurs in Louisiana and any construction contract to be performed in Louisiana.

This new law shall not apply to prohibited clauses in any motor carrier transportation or construction contract entered into prior to January 1, 2011. Also, the new law shall not apply to a contract providing indemnity when the contract was executed before January 1, 2011, and the contract governs a specific terminable performance of a specific job or activity.

Similar to Louisiana's new law, in March 2008, the Tennessee Legislature enacted a new law that also declared void and unenforceable all provisions in a motor carrier transportation contract that purports to grant indemnity to a party against liability for damages resulting from the negligence of that party, its agents or employees against public policy. Relative to Tennessee's law, there is one exception for indemnity provisions contained in the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or in other agreements relating to intermodal chassis, containers or other intermodal equipment.

Depending upon the particular transaction involved and the motor carrier's role in that transaction, the Louisiana and Tennessee statutes will either assist or hinder the motor carrier's objectives in drafting the contract. For example, a shipper entering into a contract governed by Louisiana or Tennessee law may no longer be able to demand indemnity against its own negligence in loading or securing cargo. Note that shippers typically demand not only indemnity, but also require the motor carrier to defend negligence

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actions brought against the shipper alleging such claims. It will be important to ensure that the motor carrier's defense obligation does not exceed its indemnity obligation in drafting future contracts governed by Louisiana or Tennessee law.

If you have any questions or concerns regarding either of these statutes or if you have contracts that need to be examined to determine any new exposure you might have as a result of an unenforceable indemnity provision, please feel free to reach out to John Davis or David Hall, Chair of the Transportation Group; or any of our Transportation attorneys located in Birmingham, Alabama; Atlanta, Georgia; New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Knoxville, Memphis and Nashville, Tennessee.

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