Vehicle Owner Tort Equity Campaign -VOTE!

Legislation is Required for Public Policy Clarity and Fairness for Commercial Trucking Operations Through the Civil Justice System in South Carolina

Address the "Empty Chair," Stop the Search for the "Deep Pocket"

- Require that all actors (joint tortfeasors) are taken into consideration and held accountable for their role in a motor vehicle accident. Current statutes prohibit allocating fault among multiple parties and allows the plaintiff to choose who they sue, and usually results in a lawsuit with the party with the deepest pockets in order to apportion a disproportionate share of liability for damages.
- The SC Supreme Court recently held that current South Carolina law is to be interpreted that that a party who has settled cannot be included in the jury's allocation of fault. In both cases, the Court displayed heavy deference to statutory language and the legislature's ability to amend the statutes. *(Smith v. Tiffany and Machin v. Carus Corporation, April 2017)*

Stop Lawsuits Within Lawsuits

- Limit direct negligence claims (hiring, training, supervision, entrustment) against employers when vicarious liability exists by requiring evidence related to such claims to only be permissible during the second phase of a bifurcated trial when an award for punitive damages can be made. This ensures that the jury is not unnecessarily prejudiced by irrelevant "evidence" and the employer is not simply faulted for the actions of the employee.
- Codify the current practice that a violation of traffic statutes and safety regulations or convictions of moving violations does not constitute per se willful, wanton, or reckless conduct or gross negligence (current punitive damages triggers) but can be used to prove such conduct during the second phase of a bifurcated trial.
- Prohibit the award of punitive damages against the employer of a person holding a valid CDL based solely on vicarious liability.
- The South Carolina Supreme Court has placed South Carolina in the significant minority of states regarding vicarious liability. *(James v. Kelly Trucking Co., 2008)*

Return to the Original Intent of Punitive Damages for Vehicle Crashes

- The current threshold for an award for punitive damages *("willful, wanton, or reckless conduct")* is too low when it comes to motor carriers and the claims made against them in the event of an accident, or a mistake.
- Truck fleet owners face tremendous exposure to punitive damages, arguably more so than any other industry. This is due to the nature and manner of the work, traffic conditions, exposure, and the regulatory scrutiny over the industry. Violations of even insignificant statutes and regulations can stack up, or constitute "negligence" which can then be stretched to "reckless" in order to trigger the threat of punitive damages.
- In order for punitive damages to be awarded in motor vehicle crash cases, "intentional" and "malicious" conduct on behalf of the defendant needs to exist, and employers should not be threatened or penalized for routine, insignificant, or unrelated violations or behavior largely beyond their control.

Prohibit the Recovery of Phantom Damages

- Prevent compensatory damage awards for medical expenses from including amounts that the claimant has not and will not pay for such medical care or treatment.
- Only actual expenses paid should be included in the compensatory damages award. The gross amounts of a claimant's medical bills should be inadmissible as evidence of damages where such gross amounts are not reflective of the actual amounts paid or that remain owed to satisfy those bills.

Implement "No Pay, No Play" Law

- Generally prohibit the recovery of noneconomic damages from uninsured or underinsured drivers who are involved in a motor vehicle accident and are alleged to be at fault.
- Uninsured drivers should not be allowed to benefit from someone else's compliance with the law while simultaneously denying that same benefit to anyone who has the misfortune of being hit by them.
- Currently, 11 states have no pay, no play laws: Alaska, California, Iowa, Kansas, Louisiana, Michigan, Missouri, New Jersey, North Dakota, Oklahoma, and Oregon.

Prohibit Default Judgments When Proper Notice Has Not Been Given

- Prohibit plaintiffs in a civil action from entering into a default judgment against a party whom the plaintiff knows or should have known is insured under a liability policy, unless the liability insurer is served with a proper notice.
- Generally, an insured individual is required to provide his or her insurer with prompt notice of any claim or lawsuit. Once the insurer receives notice, it triggers the insurer's duty to investigate and/or defend its insured. However, South Carolina laws are very liberal and require insurance companies to pay default judgments against them – even if they have no knowledge of the suit. This also applies to employers who are self-insured, if the employee (usually former) does not turn over the suit papers promptly, a default judgment can be issued against the employer and they are then expected to satisfy.

Repeal the Seat Belt Gag Order

- The current provisions of South Carolina that insulate people from financial consequences of failing to wear a seat belt should be repealed. The trial judge should be able to determine what and how evidence should be used in a civil trial on a case-by-case basis.
- No other motor vehicle code violation is exempt from admissibility as evidence. All conduct is relevant, especially when one does not take the common-sense precautions to protect oneself or others by not wearing a seat belt.
- This "gag order" is likely in violation of equal protection, and therefore Unconstitutional.

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