



ATA Insurance Task Force Report

2006-2007



Message from the Chairman



Michael S. Card

It is no secret that tort reform efforts slowed appreciably in the 2006/2007 period. With a few notable exceptions, comprehensive reform packages or reforms in critical areas (like joint and several liability) were hard to come by. There are many reasons for this slowdown: past successes which leave to be fought only the most difficult legislative battles (but not coincidentally some of the most important battles); changes in political control that saw less tort-reform friendly officials come into power; and perhaps a little complacency that reduced the reform community's resolve and focus.

Whatever the reason though, we still find ourselves in those circumstances today and for the foreseeable future. We simply must adjust our thinking and effort to fit the current environment. As discussed in this Report, we must now be as concerned with defense as offense and be ready to put the same effort and financial support into fighting against the roll back of reforms that we originally did in securing them. The ITF has already been directly involved in defeating pro-plaintiff efforts to eliminate the doctrine of contributory negligence in Maryland and North Carolina. We also must more closely concentrate our efforts on those states where reform is most needed and where a reasonable chance of success is present. Finally, we must creatively think about advancing newer reform areas (such as workers compensation laws) that may be fertile ground for further progress.

I am extremely proud of the commitment the trucking industry has made to tort reform and the unflagging support we have given it in both productive and lean times. I believe, through the ITF, we helped lead the charge for the last wave of significant reforms beginning in 2002 and have confidence we will remain among the leaders in protecting those reforms and moving forward to enactment of new, meaningful reform measures. I am especially proud of all the Investors noted under the Financial section of this Report and their willingness to stay on a bandwagon that is not quite as crowded as it was a few years ago.

Tort reform has seen amazing success in the past several years, not only in legislative enactments, but in changes in public attitude and perceptions about frivolous litigation and unfair court procedures. Despite the recent slowdown in passage of reform measures, tort reform remains our industry's best means to control our litigation expenses and to advance an agenda that is not only good for us, but good for the nation.

Thanks again for your continued participation in and support of the ATA Insurance Task Force.

2006/2007 STATE TORT REFORM ENACTMENTS AND SIGNIFICANT PROPOSALS

Enactments: Twenty tort reform measures were enacted in 11 states in 2006 and to date, 2 reform measures have been enacted in two states in 2007. The following enactments were of the most utility to the trucking industry:

- Florida (2006) - Joint and Several Liability Eliminated
- Georgia (2006) - Attorney Fee Exposure for Declining Settlement Offer
- Hawaii (2006) - Appeal Bond Reform (limited to \$25 million)
- Washington (2006) - Appeal Bond Reform (limited to \$100 million)
- West Virginia (2007) - Appeal Bond Reform (limited to \$50 million)
- Wyoming (2007) - Appeal Bond Reform (limited to \$25 million)

Significant Proposals: In addition to the enactments, substantial headway was made on the following significant reform proposals in 2007, setting the stage for positive future action:

- **Oklahoma** - Comprehensive Reform Package (including elimination of joint and several liability; non-economic cap; and apportionment of damages including settling party) passed by Oklahoma Legislature, but Vetoed By Governor
- **Illinois** - Multiple Reform Bills (including joint and several liability, class action, and venue reforms) Under Active Consideration by the Illinois Legislature
- **Arizona & New Mexico** - Primary Seat Belt Legislation Introduced



Tort Reform

The Plaintiffs Strike Back

After years of a relatively tort reform-friendly political environment in most states, circumstances changed significantly after the 2006 election cycle. While not strictly a partisan issue, the fact is that Republican controlled state houses and governors' mansions have always been far more supportive of tort reform than Democrats. The 2006 election resulted in Republicans losing control of four State Senate Chambers and six Lower House Chambers. The Democrats now fully control 23 state legislatures, with 15 of those states also having a Democratic governor.

This change in political environment did not escape Plaintiff attorneys and those with related interests, with the result that 2007 has seen an effort in many states to roll back some of the hard-fought reforms won in recent years. Indeed, even longstanding provisions that improve the judicial atmosphere for defendants have come under fire. In total, roughly 48 pro-plaintiff measures have been introduced so far in 2007 (21 in the State of Washington alone), with many striking at fundamental reform areas.

The pro-plaintiff proposals focus on several major areas: undermining joint and several liability reform by limiting apportionment of damages to only parties named in a lawsuit (Florida, Illinois, and New Hampshire); raising caps on non-economic damages (Colorado **(enacted)**); extension of statutes of limitations especially in product liability cases (California, Maryland, Michigan, North Carolina, Oregon, and Washington); extension of time limits to void releases (Maryland **(enacted)**); changes to state consumer protection laws to allow greater plaintiff attorney use (Iowa, Michigan); and efforts to repeal contributory negligence (which prohibits a plaintiff from recovering if they are even 1% at fault) and replace it with a comparative negligence standard (Maryland and North Carolina).

While few of these pro-plaintiff measures have been enacted to date and a number defeated (including the challenges to contributory negligence and 19 of the 21 bills introduced in Washington), the onslaught of pro-plaintiff bills is significantly greater than in past years and a sign of the current political environment. Further evidence of the shift in the reform environment is vetoes of two reform measures: a comprehensive reform package passed in Oklahoma and a non-economic damage cap related to the state's consumer protection law in Ohio.

The pro-plaintiff tort offensive and the success of reform opponents in limiting pro reform measures in 2007 (see 2006/2007 Enactments) signals the coming of a new battleground where reformers no longer hold the advantage.

Workers' Compensation Reform: A Promising Second Front

The cost of participating in the workers' compensation system is often staggering for motor carriers. While the average workers' compensation premium is approximately \$2.50 per \$100 of wages paid, truck driving is considered a high risk occupation with premiums often 4 times that level or more in some states. In recent years, many states have adopted reforms of their workers' compensation system. However, much still needs to be done and even states that enacted recent reforms can often benefit from supplemental measures. In many respects, workers compensation reform should not meet the same level of current resistance as tort reform measures and usually benefits from strong support by state government. In fact, Democratic Governor Brad Henry of Oklahoma supported and signed the workers' compensation reform discussed below, but vetoed comprehensive tort reform passed this year.

Broad-scale workers' compensation reforms were enacted most recently in Missouri and Oklahoma. Those reforms included many of the key elements that have proven successful in other states to keep costs and therefore premiums under control. Reforms in each state tightened the requirement that injuries be work-related; increased penalties and prosecution of fraud; and limited contingent fees to reduce attorney involvement in the system. Other core reform measures often focus on lowering medical care costs, including lowering fee schedules, requiring use of generic drugs, tightening control of referrals to and fees of out-patient surgery centers, and authorizing employers to use preferred providers.

An Oregon Department of Consumer and Business Services annual survey ranks states according to workers' compensation premium cost. For 2006, the five most expensive states were Alaska, California, Delaware, Kentucky, and Montana, each with average premiums 49% or more higher than the national median average. Fourteen other states had premiums at least 10% higher than the national average. Consequently, even if the national average represents an acceptable cost level, there is still work to do in many states to bring down premium costs. Workers' compensation reform offers a promising second reform front in the ITF's effort to assist the industry control its insurance costs.

Financials

The ITF saw a more than three fold increase in the number of contributors in the 2006/2007 period from the prior year.

As shown below, more than 60 contributors invested over \$140,000 in ITF efforts, allowing the ITF to fund all state association funding requests and continue its strong support of national organizations dedicated to reform.

ITF Full Accounting

Cash on hand 6/1/06	\$54,038.66
Revenue	
Interest Earned 6/1/06 - 4/30/07	\$7,742.18
Contributions 6/1/06 - 5/31/07	\$140,460.00
Total Revenue	\$148,202.18
Expenses	
Contributions to State Trucking Associations	\$90,000.00
Contributions to National Organization	\$42,749.00
Miscellaneous Expenses	\$3,611.34
Total Expenses	\$136,360.34
Cash on hand 5/31/07	\$65,880.50

ITF Grants to State Trucking Associations

Alabama Trucking Association	\$10,000.00
Arizona Trucking Association	\$10,000.00
Colorado Motor Carriers Association	\$10,000.00
Maryland Motor Truck Association	\$10,000.00
Montana Motor Carriers Association	\$10,000.00
New Mexico Trucking Association	\$10,000.00
North Carolina Trucking Association	\$10,000.00
Oklahoma Trucking Association	\$10,000.00
West Virginia Motor Truck Association	\$10,000.00
Total STA Contributions	\$90,000.00

Note: Iowa Motor Truck Association grant of \$10,000 was returned.

National Organization Support

American Tort Reform Association	\$27,500.00
National Chamber Foundation	\$249.00
The Manhattan Institute	\$5,000.00
The Republican Attorneys General Association	\$10,000.00
Total NO Contributions	\$42,749.00

The Insurance Task Force Needs Your Continued Support!

Over the past five years the trucking industry has been a leader in the tort reform effort. Literally dozens of reform measures have been enacted that both lower litigation costs and liability exposure for trucking companies and promote a healthier national economy. Our affiliated state trucking associations have been on the front lines of those reform efforts and our financial support of them has ensured that reforms most important to trucking are pursued. We are now facing not only a battle to enact affirmative reform measures, but a broad-based assault on the reforms we have only recently secured. Please make as generous a contribution to the ITF as your budget allows. It will benefit your company's bottom line many times over.

June 1, 2006 - May 31, 2007 Contributors

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* Contribution received at the 2006 MC&E ITF Golf Tournament

** Special thanks again to Con-Way Inc. for its 06/07 \$25,000 contribution

ITF contributions may be made by corporate and individual check made payable to:
American Trucking Associations
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