



Insurance Task Force Report '07-'08

Message from the Chairman



Michael S. Card

They say all good things must come to an end. Unfortunately, that is proving to be especially true with respect to the pro-tort reform environment that marked a significant portion of the early years of this decade. Passage of the 20 to 45 significant state tort reform measures per year that we saw from 2002 through 2006 is now a thing of the past. Modest reforms in less critical areas are all that has been achievable in the past two years given the negative political climate in those states where reform is still needed.

That cold political environment means that our efforts now must be aimed at preserving the reforms we worked so hard for in the past. Our friends at the American Tort Reform Association (“ATRA”) report that plaintiffs’ lawyers have been energetically working in 2007 and 2008 to undue the reform measures previously passed. ATRA reports that there were over 80 bills introduced in nearly 25 states in 2007 to roll back reforms and that so far in 2008, more than 100 such measures have been introduced. These proposals include extending statutes of limitation; increasing non-economic and punitive damage limits; creating new causes of action; restoring joint and several liability; and even allowing recovery of emotional harm related to the loss or injury to a pet. The good news is that those pro-plaintiff proposals have been largely defeated. But if we and other pro-reform interests do not remain diligent, that will change. The members of the ITF and the trucking industry should take pride in the fact that we have remained fully engaged in this effort and have played an important role in defending existing reforms.

With affirmative tort-reform opportunities scarce, the ITF needs to continue to look for other ways to influence the factors that affect motor carrier insurance costs. As detailed elsewhere in this Report, one promising area is elimination of unfair indemnification clauses that expand motor carrier liability for losses caused by the negligence of others. The ITF has begun vigorously supporting the “anti-indemnification” effort; it offers a politically viable target that provides meaningful benefits.

On that note, remember that the ITF is only as good as our front-line troops, the state trucking associations, and they are very good. We owe all our successes over the years largely to the state associations’ great on-the-scene efforts. Please review the Case Studies article included in this Report to more fully understand how your contributions are being used by our state association partners to achieve our goals.

Finally, the 2008 elections provide another opportunity to advance the interests of tort reform by supporting candidates that favor a fair civil justice system. Support the candidates for Governor, state legislatures, and the courts identified later this year by the ITF and by your local reform groups.

Thanks again to the members of the ITF and all of its contributors.

2007 – 2008 LEGISLATIVE (AND COURT) REPORT

Reform Initiatives Enacted

- **West Virginia** (2007) – Appeal Bond Reform (\$50 million limit)
- **Wyoming** (2007) – Appeal Bond Reform (\$25 million limit)
- **Kentucky** (2007) – Appeal Bond Reform (\$100 million limit)

Highlights of Successful Defensive Efforts:

- **Florida** (2007) – Defeated Rollback of Joint & Several Liability Reform
- **Illinois** (2007) – Defeated Weakening of Joint & Several Liability Reform
- **Maryland** (2007) – Resisted Elimination of Contributory Negligence Standard
- **New Hampshire** (2007) – Governor Vetos Rollback of Joint & Several Liability Reform
- **North Carolina** (2007) – Preserved Contributory Negligence Standard
- **Colorado** (2008) – Defeated Increase in Non-Economic Damages Cap
- **Maryland** (2008) – Defeated Increase in Non-Economic Damages Cap
- **Washington** (2008) – Resisted Creation of Right to Punitive Damages

Highlights of Favorable Court Decisions:

- **Georgia** (2008) – State Supreme Court Upheld Expert Witness Reform
- **Ohio** (2008) – State Supreme Court Upheld Provisions of Comprehensive Reform Legislation
- **Oregon** (2008) – State Supreme Court Rejected Medical Monitoring Claim
- **Rhode Island** (2008) – State Supreme Court Adopted Forum Non Conveniens Doctrine



Tort Reform

Sorry, Mea Culpa; But You're Paying Anyway (Combating Unfair Indemnification Provisions)

In recent years a disturbing trend has arisen among shippers related to indemnification provisions in transportation contracts. Indemnification (agreeing to reimburse another for its loss) is a common contractual provision by which a party to a contract agrees to reimburse the other party for losses caused by the first party's negligence. However, many shippers are attempting to pervert that mechanism to secure indemnification from motor carriers for losses caused by the shippers' own negligent conduct. When a shipper is able to act with impunity because of such an indemnification provision, it undermines the shipper's incentive to ensure that its employees and agents act carefully and responsibly, knowing that it is protected from financial loss regardless of their conduct.

Acting to combat that trend, ATA developed model state legislative language in 2004 that prohibits enforcement of those types of indemnification provisions as contrary to public policy, an argument that has been sustained by some courts. Since then, what has become known as the "anti-indemnification" effort, has met with success in several states. To date, 12 states (CA; IN; KS; MD; NE; NC; OK; SC; TN; TX; VA; and WV) have enacted anti-indemnification provisions, most of which are patterned on the ATA model language – special congratulations is due to Kansas that joined these ranks in May 2008. Additionally, at least 10 other state trucking associations are either already pursuing such legislation or actively considering it, with an anti-indemnification bill sitting on the Governor's desk in Missouri awaiting his expected signature.

The ATA Insurance Task Force became directly involved in the effort in 2007 and 2008. Recognizing that such indemnification provisions effectively make motor carriers the insurers of shippers and thus drive up the carriers' own insurance costs, the Task Force has made funding grants to Missouri, Colorado, and Louisiana to support anti-indemnification legislative efforts. While state legislative conditions remain relatively inhospitable to further tort reform efforts, the indemnification issue presents a different scenario. Dedicated tort reform opponents like the plaintiffs' attorneys are not engaged and the issue may be fairly characterized as big businesses wielding unfair bargaining power to coerce smaller businesses into unconscionable contractual arrangements – a position that strikes a chord with many in power in state legislatures today.

Focusing its efforts where they have the most chance of success, the ATA Insurance Task Force is making the anti-indemnification effort one of its main priorities. It simply makes no sense from a safety or public policy perspective to allow parties to escape the consequences of their own negligence. It is only when all parties share the financial incentive that comes from potential tort liability that they can work together to prevent the losses in the first place.

Money Well Spent (State Trucking Associations Working for Reform)

Every year since 2003, the vast majority of contributions to the ATA Insurance Task Force are passed along as grants to selected state trucking associations to fund their active participation in tort reform-related efforts in their states. The associations apply formally to the ITF for these grants, which are awarded on the basis of standard criteria such as whether the reforms being sought are in the ITF's target areas and the chances of eventual success. While not all the efforts funded have been successful, the overall record has been remarkably good. For example multiple grants over the years in states like Mississippi, South Carolina, and West Virginia positioned those state trucking associations among the reform leaders in their states and led to the pursuit and enactment of reforms of particular importance to trucking.

Among the state trucking associations to which the Insurance Task Force made grants this year were the Missouri Motor Carriers Association ("MMCA") and the Colorado Motor Carriers Association ("CMCA"). As recounted below, those associations were able to use the ITF funding to broadly advance the interests of all motor carriers that operate into and through their state.

MMCA had a very successful year, securing passage of an anti-indemnification bill which is awaiting the Governor's signature, and doing the groundwork for obtaining a primary seatbelt law. The grant provided the ITF was instrumental to those successes, allowing the association to secure much needed assistance in lobbying. The grant also allowed the MMCA to assume an important role in the new Missouri Justice Alliance. The Alliance was established to provide a strong voice for the business community for both offensive and defensive reform-related efforts. Tom Crawford, MMCA President and CEO, expressed strong appreciation for the contribution of the ITF: "You don't know going into a session what kind of a battle you're getting into, and the support of organizations like the Insurance Task Force can be an enormous help."

CMCA focused on taking a leading role in defeating various proposals by trial attorneys, among them the indexing of existing caps on damage awards. The ITF funding enabled the association to obtain lobbying assistance in the Trial Bar dominated state legislature. CMCA also used the funding to pursue anti-indemnification legislation which CMCA President Greg Fulton notes will be a recurring effort. Greg is very appreciative of the ITF funding which he terms a "key to our efforts," and notes: "We fully intend to bring the anti-indemnification measure back next year and plan on winning."

Financials



ITF Full Accounting

Cash on hand 6/1/07	\$65,880.50
Revenue	
Interest Earned 6/1/07 - 5/31/08	\$4,429.24
Contributions 6/1/07 - 5/31/08	\$114,250.00
Total Revenue	\$118,679.24

Expenses

Contributions to State Trucking Associations	\$90,000.00
Contributions to National Organizations	\$48,747.00
Miscellaneous Expenses	\$2,154.88
Total Expenses	\$140,901.88
Cash on hand 5/31/08	\$43,657.86

ITF Contributions to State Trucking Associations (STA)

Arizona Trucking Association	\$10,000.00
Colorado Motor Carriers Association	\$10,000.00
Louisiana Motor Transport Association	\$10,000.00
Maryland Motor Truck Association	\$10,000.00
Missouri Motor Carriers Association	\$10,000.00
Ohio Trucking Association	\$10,000.00
Oklahoma Trucking Association	\$10,000.00
South Carolina Trucking Association	\$10,000.00
West Virginia Motor Carriers Association	\$10,000.00
Total STA Contributions	\$90,000.00

ITF Contributions to National Organizations (NO)

American Tort Reform Association	\$38,747.00
The Republican Attorneys General Association	\$10,000.00
Total NO Contributions	\$48,747.00

CONTRIBUTORS (Since June 1, 2007)

ABF Freight System, Inc.	GE Capital Solutions,
Ability Tri-Modal	Transportation Finance
Transportation Services, Inc.	Glass Trucking Co.
American Trucking &	Golden Oak Insurance
Transportation Insurance Co.	Golf Mulligans at MC&E
Bendix Comm. Veh. Systems LLC	Grand Island Express, Inc.
Best Way Express, Inc.	HNI Truck Group
C. R. England, Inc.	Hogan Transports, Inc.
Campbell's Express	Hurley Transportation Companies
Cherokee Freight Lines	John Bunning Transfer
Cobbs, Allen and Hall of LA Inc.	Company, Inc.
Cresco Lines, Inc.	Lakeville Motor Express
Daly Agency, Inc.	Lynden Incorporated
Dart Transit Company	Marvin Johnson and Associates
Davis Express, Inc.	Midwest Specialized
Eagle Systems, Inc.	Transportation, Inc.
Epes Transport Systems, Inc.	Motor Transport
Fremont Contract Carriers, Inc.	Association of CT, Inc.

Mr. Albert Y. Bingham, Jr.
 Mr. Alex Dunphy
 Mr. Barry E. Pottle
 Mr. Bill Graves
 Mr. Danny Opie
 Mr. David Huneryager
 Mr. David S. Congdon
 Mr. Dean Siddle
 Mr. Fred C. Burns, Jr.
 Mr. Gregory R. Hodgen
 Mr. James Burg
 Mr. James R. Millar, Jr.
 Mr. John F. Walsh
 Mr. John McKinnon
 Mr. Michael S. Card
 Mr. Peter J. Lovato
 Mr. Richard E. Bundschuh
 Mr. Stanley Vander Pol
 Mr. Stephen D. Johnson
 Mr. Steven G. Bryan
 Mr. Terry Holley

Mr. Tex C. Pitfield
 Mr. William A. Gantz
 Mr. William Harry McDonald
 Pohl Transportation, Inc.
 Pride Transport
 Progressive Transportation
 Services, Inc.
 Rocha Transportation, Inc.
 Sherwin Williams Co.
 Southeastern Freight Lines
 Specialized Carriers &
 Rigging Assoc.
 Tango Transport, Inc.
 Titan Transfer, Inc.
 Transportation Services, Inc.
 Trans-System, Inc.
 Watkins & Shepherd
 Weinrich Truck Line, Inc.
 White Moving & Storage, LLC
 Wilson Trucking Corporation



**ITF contributions may be made by corporate
 and individual check made payable to:**
 American Trucking Associations
 P.O. Box 101360
 Arlington, VA 22210