



Insurance Task Force Report '08-'09

Message from the Chairman



L. Duane Long
Chairman, Longistics
Raleigh, NC

It is hard to believe that only a few years ago state legislatures understood the unfairness that permeated our legal system and were very receptive to the benefits of tort reform. From 2002 through 2006, 45 states enacted some type of reform, including several comprehensive reform packages. In total, more than 150 tort reform provisions were enacted. Moreover, during that time the prospect of state legislatures rolling back prior reforms was never a serious threat.

But as we all know, times have changed. For reasons unassociated with civil justice reform, state legislative philosophy has changed dramatically and legislators are more susceptible to plaintiffs' attorney influence. As a consequence, the pro-tort-reform atmosphere we enjoyed earlier this decade has evaporated and we now must live and work in a much more hostile climate.

This means we must put as much effort into defending our earlier reform victories as we did in achieving them in the first place. We must also work harder and smarter in terms of our offensive strategy. We need to focus on initiatives – such as anti-indemnification and primary seat-belt enforcement – whose principles are consistent with the philosophy of those currently in power. Whether championing the right of the little guy not to be coerced into unconscionable contracts or supporting a common-sense law that will reduce the carnage on our highways, we need to find common ground with those who did not support tort reform in the past.

This Annual Report details our offensive and defensive efforts and successes and our strategies as we move forward. The ATA Insurance Task Force greatly appreciates your generous ongoing support and vows to you that we will work harder and smarter on your behalf. We have made amazing progress and with your help we'll continue to do so by targeting our efforts toward what is achievable and best serves the interests of our trucking industry.

2009 Legislative Review

Sherman Joyce, President, American Tort Reform Association

Matt Fullenbaum, Director of Legislation, American Tort Reform Association

The 2009 legislative session has seen a flurry of activity by the trial bar in state capitals around the country. As of July 1st, the American Tort Reform Association (ATRA) had identified 150 bills in 31 states that would benefit personal injury lawyers. These bills, which would roll back previously hard fought reforms to the civil justice system or expand and create new opportunities to sue, can be grouped in the following categories:

- **Repeal or Scaling Back of Existing Reforms** – CO, HI, MD, MI, MN, ND, TX, WI
- **Expanding Consumer Protection Acts** – IA, MD, MI, MN, OR, WA
- **Expanding Wrongful Death Statutes** – IA, MD, NY, NJ, RI, UT, WA
- **Extending Time Periods to Sue** – AK, CO, CT, MD, OR, SC, VA, VT
- **Limiting or Eliminating Pre-Dispute Arbitration** – FL, ME, MN, MS, NJ, NV, TX

The American Association for Justice – formerly known as the Association of Trial Lawyers of America – pumped money and assistance (such as model legislation, white papers, etc.) to its state affiliates to support these measures. ATRA identified this emerging trend two years ago and in response developed a Defensive Efforts program to provide assistance to state civil justice reform groups as well as ATRA members who are in the trenches battling trial lawyer legislation in state capitals. **That effort has resulted in ATRA and its state allies defeating 93% of trial lawyer legislation this year.**

For example, Wisconsin Governor Doyle's budget bill contained provisions that would have effectively repealed joint and several liability reform legislation that has been on the books since 1995. ATRA supported the efforts of the Wisconsin Civil Justice Council, of which the Wisconsin Motor Carriers Association is a member, to successfully remove problematic provisions from the budget.

The political climate that has encouraged these trial-lawyers initiatives has made it very difficult to achieve proactive reform victories. Despite these challenges, civil justice reform advocates in Oklahoma scored a huge victory with the enactment of a 90-section comprehensive civil justice reform bill and in South Carolina, the business community is working on an omnibus reform package, which includes seat belt admissibility, as well as limits on punitive damages, that is expected to be enacted in 2010.

ATRA will continue to look for affirmative opportunities where available, and will maintain a watchful eye for problematic legislation. The ATA Insurance Task Force' support of ATRA and tort-reform offensive and defensive efforts in many states has been critical to the success of our legislative program. ATRA looks forward to working with the Task Force and the trucking industry to achieve a fair and balanced civil justice system.



Tort Reform

Persistence Pays Off in Oklahoma

On May 20, 2009, following several years of effort by the business community, Oklahoma Governor Brad Henry signed legislation (H.B. 1603) that provides the state with significant reforms in many areas of tort law. The governor had vetoed similar bills in 2007 and 2008, much to the disappointment of the proponents of civil justice reform.

The 2009 reform provides, among many other things:

- broader authority by a court to rule that it is not the proper venue for a given lawsuit,
- a further limitation on joint and several liability,
- a general cap of \$400,000 on awards for noneconomic damages, and
- for the admissibility of evidence that the victim of a traffic accident was not wearing a seat belt.

Each of these reforms is an Insurance Task Force focus area. The ITF helped over a period of three years to fund the Oklahoma Trucking Association's close involvement in the reform effort. Annual \$10,000 grants enabled the Association to participate actively in the business coalition to make sure reforms important to trucking remained in the proposals. Dan Case, OTA's Executive Director, explained that the ITF financial support had "allowed us to bring in national speakers to address the subject and to buy media when we felt we needed public support. It showed the state that the trucking industry supported good tort reform."

The ITF deemed the lengthy effort in Oklahoma worthwhile not only because of the likelihood of eventual success, but because the state so plainly needed reform. For four years running Oklahoma achieved the dubious distinction of a "dishonorable mention" in the Judicial Hellholes publication of the American Tort Reform Association. It was widely believed that after Texas enacted tort reforms in 2003, many plaintiffs' attorneys had merely shifted their activities north.

Governor Henry himself had spoken strongly of the need for reforms in his state, yet, overcome at the last minute by scruples over legal fine points – or the strength of the trial bar, some said – he vetoed strong reform bills the past two years that had passed the state legislature with large bipartisan majorities. This year, however, with Republicans in control of both houses of the legislature – something that had never happened in Oklahoma's 100 years of statehood – an override of a possible veto was a more significant threat. Still the reforms did not come easily, taking virtually the entire session to hammer out.

Congratulations to Dan Case and the OTA for their persistence in achieving this great reform legislation in Oklahoma!

Four More States Move to Primary Seat-Belt Enforcement

Safety studies establish that when a police officer has the ability to stop a vehicle solely to enforce seat-belt laws, voluntary seat belt use increases substantially. That in turn reduces highway fatalities and greatly reduces the severity of injuries sustained in motor vehicle accidents. This so-called primary seat-belt enforcement thus works to mitigate motor carrier exposure to damages in highway accident cases, as compared to their exposure in states where there is only secondary enforcement; that is, where a citation for failure to wear a belt can only be issued if the vehicle is stopped for some other reason.

Several years ago, the ATA Insurance Task Force expanded its focus areas to include an initiative to seek the passage of primary enforcement of seat-belt laws in all the states. At that time, less than half the states had such laws, and progress in the area – however much it may seem just common sense – was slow.

In 2009, however, four states – Arkansas, Florida, Minnesota, and Wisconsin – have all enacted primary enforcement statutes. This brings to 30 the total of states with such laws. Nineteen states have secondary enforcement only, and New Hampshire alone has no seat-belt law at all. This year's effort in the states was undoubtedly helped along by the availability of federal grant money for states that pass primary enforcement by July 1, 2009.

Bolstered by the growing majority (and good public policy arguments), many state trucking associations have expressed an interest in pursuing primary seat-belt enforcement statutes in their states next year. Primary seat-belt enforcement is simply the right thing to do and it is not lost on state legislators that seat belt use lowers societal costs (health care, insurance, litigation) associated with highway accidents. Enacting primary seat-belt enforcement laws is a win/win situation for trucking and the common good.

Congratulations to the state trucking associations of Arkansas, Florida, Minnesota, and Wisconsin for their involvement in obtaining this important safety and tort-reform legislation!



Anti-Indemnification Effort Surges Forward

In 2008, the ATA Insurance Task Force added to its list of areas of beneficial reforms the ongoing effort to prohibit the coerced inclusion in transportation contracts of clauses that require a motor carrier to indemnify a shipper for any loss associated with the transaction, including those caused by the shipper's own negligence. The Task Force added its influence and financial backing to state trucking association efforts to enact ATA model legislation that holds that such contractual provisions are void and unenforceable as against the public policy of the state. The so-called anti-indemnification effort has since taken off, with the number of states enacting such provisions (see below) nearly doubling in the last 2 years.

Shipper efforts to coerce motor carriers into these types of provisions are most acute for haulers of petroleum products and other hazardous materials. However, the problem is by no means restricted to such carriers, but is becoming a broader concern that could easily come to affect the trucking industry generally. As shippers look to cut costs in this challenging economy, they are more likely to propose these types of provisions. And with freight being relatively scarce, most motor carriers – particularly smaller carriers – have little or no choice but to sign contracts with such indemnification clauses when they are presented to them by valued customers.

But allowing a party to escape the financial consequences of its own negligence is simply bad public policy. Bearing the consequences of one's own negligence is the strongest incentive for a party to conduct itself in a safe manner. Consequently, these contractual provisions have long been suspect and state legislators seem very open to the argument that they should be banned as contrary to public policy.

At the beginning of 2008, only nine states had laws of the sort the ITF recommended – see Map 1. During the 2008 legislative sessions, three more states – Kansas, Missouri, and Tennessee – enacted such provisions. In 2009, five additional states have done so: Georgia, Illinois, New Mexico, North Dakota, and Wyoming. See Map 2 for the current situation, and for other states where the state trucking association has expressed interest, some of them in the strongest terms, in passing such legislation in the next year or two.

The ITF has been instrumental in recent progress. In 2009, the Task Force made grants to a number of state trucking associations to fund anti-indemnification efforts, among them New Mexico and North Dakota. Tom Balzer, Managing Director of the North Dakota Motor Carriers Association, says of the grant to NDMCA: "The anti-indemnity legislation was quickly escalating to be one of the monumental battles of the 2009 ND Legislative Session, and the resources of the Insurance Task Force gave us the opportunity to make sure the right thing was done in the face of powerful opposition."

Anti-Indemnification Legislation, January 2008

- States with Statutes



Anti-Indemnification Legislation, August 2009

- States with Statutes
- States Pursuing Legislation in 2010
- States Considering Legislation



Financials

Insurance Task Force

Balance at 6/1/08 \$ 43,747.37

Revenues:

Contributions \$140,250.00

Interest Earned \$ 1,672.49

Total Revenues 6/1/08 - 5/31/09 141,922.49

Expenses Paid:

Grants to State Trucking Associations \$115,000.00

Contributions to National/State Organizations \$10,875.00

American Tort Reform Association (ATRA) Dues \$17,500.00

Amicus brief in Arkansas case \$5,000.00

Staff Travel/Supplies \$1,446.67

Total Expenses 6/1/08 - 5/31/09 \$149,824.67

Balance @ 5/31/09 \$ 35,845.19

Grants to State Trucking Associations Amount

Arizona Trucking Association \$10,000

Colorado Motor Carriers Association \$10,000

Florida Trucking Association \$10,000

Missouri Motor Carriers Association \$10,000

New Mexico Trucking Association \$10,000

North Dakota Motor Carriers Association \$10,000

Ohio Trucking Association \$10,000

Oklahoma Trucking Association \$10,000

South Carolina Trucking Association \$10,000

Utah Trucking Association \$5,000

West Virginia Motor Truck Association \$10,000

Wisconsin Motor Carriers Association \$10,000

Contributions to Other Organizations Amount

The Civil Justice League of CA \$10,000

Staff Travel/Supplies Amount

Staff Travel \$1,106

Supplies \$343

CONTRIBUTORS (Since June 1, 2008)

ABF Freight System, Inc.

Ability Tri-Modal Transportation Services, Inc.

American Trucking & Transportation Insurance Co.

ATA Associates, Inc.

Bellavance Trucking, Inc.

Best Way Express, Inc.

Bulkmatic, Inc.

Burns Motor Freight, Inc.

C. R. England, Inc.

Campbell's Express

Cherokee Freight Lines

Cline Wood Agency

Combined Transport, Inc.

Cottingham & Butler

Dart Transit Company

Double D Distribution

Eagle Systems, Inc.

GE Capital Solutions, Transportation Finance

Glass Trucking Co.

Golf Mulligans Total

Grammer Industries, Inc.

Grand Island Express, Inc.

Great West Casualty Company

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Tri-State Delivery Inc.

Weinrich Truck Line, Inc.

Wilson Trucking Corporation

* Special thanks again to Con-way, Inc. for its \$25,000 contribution on July 31, 2008



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