

Testimony in support of SB 2206

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Seatbelt Usage

Since 1984 there has been continued seatbelt regulation in one form or another which has since spread to all states but New Hampshire. Although New Hampshire concedes the importance of buckling-up for those under 18-years of age, they allow adults to make that choice by having no regulation in place.

The National Highway Traffic Safety Administration (NHTSA) found that in 2023, 91.9% of front seat Drivers and passengers wore their seatbelts regularly. That was a .3% increase over 2022 which concludes this continues as a trend. And why not? Statistics continue to prove seatbelt usage saves lives. We all have the duty to reduce risk, when prudent and available. Seatbelts are prudent, and available.

In fatal vehicular accidents, seatbelts make a difference:

- Of the 26,325 passenger vehicle occupants killed in 2021, over 50% were not wearing seat belts. ([Center for Disease Control – CDC](#))
- By minimizing crash injuries, seat belts can help drivers avoid the cascading costs associated with a serious motor vehicle crash, from hospital bills and [insurance rate hikes](#) to lost wages and diminished quality of life. ([Bankrates Editorial Team - 2024](#))
- Just like proper vehicle maintenance, using one's seatbelt is a responsibility of all in the motoring public.

In my eyes, failing to protect oneself and do one's part to limit one's exposure to bodily harm is negligent. Why should we not hold vehicle occupants responsible for their actions and contribution to their injuries. The seatbelt laws and transparency of the same in courts is not a one-sided affair. It holds all those other than those driving farm implements to use a seatbelt and to concede one's percentage of liability in the courts for failing to do so. Truckers and 4wheelers alike.

Tort CAP on Punitive Damages in Commercial Motor Carrier Vehicle Accidents

So far in North Dakota (ND) we have been blessed with reasonable and fair-mindedness in our courts. But this will not last forever. There is an increasing tendency for absurd and unreasonable awards across our Country and it will be only a matter of time before we experience here in the Peace Garden State.

To get ahead of this senseless and abusive trend, we need to put limits on what the courts can award for Punitive Damages. ND has had a CAP on Medical Malpractice suits since 1995. This has enabled all NoDak's to enjoy excellent health care in our state and access to competitive health insurance.

If we don't act in a proactive manner regarding Motor Carrier Tort Reform, we may find ourselves trying to play catch-up long after the damage is done. Why is this so important today? Many parts of ND rely solely on the Trucking Industry for access to goods and services. You can't lay a train track down anywhere. The rural nature of our environment in the Upper Midwest demands a robust, nimble, and dedicated trucking industry.

Nuclear Verdicts in Trucking

"Nuclear verdicts"—verdicts costing over \$10 million in damages—are common in trucking accident cases. Trucking litigation data between 2006 and 2019 showed 26 cases over \$1 million from 2006 to 2011. However, in the last five years of that data set, 300 cases cost over \$1 million. A recent study from the U.S. Chamber of Commerce Institute for Legal Reform showed that [between June 2020 and April 2023, the average award was \\$27.5 million](#). (Cit. ©2024 Marsh & McLennan Agency)

Every trucking company from small Mom & Pop shops to large carriers with hundreds of trucks are only one nuclear verdict away from failure. The trucking industry operates on very tight margins. It is subject to continued increasing costs to comply with Safety Regulations, EPA Standards, Rising Insurance Costs, Increased Equipment Maintenance and Labor Costs, to name a few. All this while freight rates continue stagnant and even dropping as third-party intermediators work their way into the supply chain breaking down the direct relationships between truckers and shippers. This peels away the layers of the freight rate until you get to the bottom of the line where the work is done, on the back of the trucking industry.

There is no way to insure against every foreseeable threat, not in Trucking, Manufacturing, or any industry. One must weigh the cost of risk mitigation against the potential loss and roll the dice. But when an industry is laden with unfair and overzealous lawsuits setting precedent after precedent in the amount awarded by the courts there is no way to even equate the potential cost of loss to try and mitigate risk. There is no fair playground in the world of trucking. Nuclear verdicts have removed that and the only way to somewhat control this freight train is to CAP the amount awarded punitive damages. With this simple control in place the industry can:

- Get back on its feet and begin to control the runaway cost of insurance.
- Plan for and be able to address these claims as they arise and have an appropriate amount of insurance to compensate others for its actions.
- Invest in additional safety measures to continue to provide safe vehicles with the most modern and effective tools available.
- Direct more dollars toward safety training, maintenance, and driver quality of life.

The Edge – New Term Used to Describe Cases Fought Through the Reptile Theory

In 2009, a couple Trial Attorneys wrote a book and coined the term 'Reptile Theory' as the best way to win large settlements in trucking accidents. It was essentially a playbook on how to instill so much fear in the jurors' minds that they could only find one way, against the defendant, and award huge and unfathomable dollar amounts.

- The Reptile Theory was taught as a class to litigators interested in learning how to employ this tactic to garner large jury awards particularly in Motor Carrier related cases.
- This tactic has been expounded on and is now referred to as The Edge. They now have "Hit Lists" which are carefully crafted to bring about the fear and misplaced liability.
- The tactic uses unfair and somewhat less than ethical means which skew a defendant's testimony and instills fear in the jurors themselves.

There is no better example of this than the Werner case wherein the jury awarded the plaintiff 90 million dollars for an accident that was caused by the personal van being driven by an individual found to be driving too fast for conditions. This individual lost control of his minivan and left the HWY driving through the median and up on the other side of the HWY where he drove head-on into a Commercial Truck, killing the occupants of the minivan. The Werner truck was found to be traveling at a lesser rate of speed than the speed limit at the time of the incident.

Sadly, this is not a one of a kind case, they are happening more and more frequently, contributing to company failures, loss of jobs, and supply chain disruption.

It isn't just the Trucking Company at risk, it is everyone in our Country. And in ND 67.6% of our communities are served solely by the Trucking Industry. When we continue allow the threat of nuclear verdicts in our state, we put the access to goods and services at risk. Without legislation to CAP this type of Tort, we will ultimately fail our fellow North Dakotans.

ND Insurance Limits

- 1) Truckers Carry the Load for the Under and Uninsured as well as the general public.
 - a. My personal vehicle cost \$50k new – it's a nice vehicle now worth \$25k used
 - b. If another personal vehicle causes my vehicle to be totaled, their insurance will cover it as our state minimums are \$25k/\$50k
 - c. If that same vehicle causes the total of a Commercial truck – their insurance will cover the cost of a bumper and a radiator – maybe
 - d. Our industry is at a disadvantage from the start.
 - e. ND Requires a minimum Limit of \$200,000 Auto Liability for INTRASTATE carriers.
 - f. The Federal Government requires \$750,000 or higher based on goods hauled.
 - g. Our office does not write an insurance policy for anyone involved in the trucking industry for less than \$1Mil.
- 2) Reinsurance
 - a. Insurance Companies purchase reinsurance to help spread their losses
 - b. The reinsurance market is volatile and costs are continuing to climb at an increased pace

c. Treaty Reinsurance – Cit AMWINS

Casualty rates are set to increase in 2025 and concerns from global reinsurers about adequate reserves juxtaposed against the rise of nuclear verdicts paint a concerning picture. We expect there will likely be a reduction in available capacity as some reinsurers exit the segment.

- i. Auto is problematic across the Environmental segment. Accounts with heavy fleets, such as recycling, hydrovac or soil remediation, are facing very limited options, particularly in excess coverage. The cause is the same as in commercial nuclear verdicts are driving up loss costs.
- ii. The transportation insurance market continues to face significant challenges amid an evolving landscape characterized by economic pressures, shifting carrier appetites and increasing loss severity. While some sectors show signs of resilience, the overall environment remains tough for many insureds, particularly within the trucking industry.
- iii. The primary auto insurance market is hardening, with carriers scaling back their appetites and focusing on rate increases for renewals. However, the entrance of new capacity over the past few years has moderated some rate hikes, particularly in the preferred trucking space, where competition remains healthy. For risks that do not qualify for this market, finding coverage has become considerably more challenging.
- iv. In Business/Specialty Auto, carriers are scrutinizing auto exposures closely, with some exiting the auto line, especially in specialized classes like non-emergency medical transportation (NEMT) and last mile delivery. These exits have created gaps in coverage, requiring insureds to seek out more specialized brokerage partners that can help to provide broader cover.
- v. A tough legal environment / Social inflation continues to be a significant concern for carriers and reinsurers, particularly in states with plaintiff friendly legal venues, such as Georgia, Pennsylvania and California. At the heart of this issue is not only nuclear verdicts but third-party litigation funding, which has introduced new complexities to the legal landscape. The issue isn't simply the existence of litigation funding itself, but the disclosure (or lack thereof) in individual court cases, which can skew the playing field and contribute to the rising cost of claims. Indiana, Louisiana and West Virginia enacted reforms at the state level this year to address litigation funding, and legislation was recently introduced at the federal level for more transparency in federal cases. While these are encouraging developments, more states will need to address the issues of litigation financing and tort reform before we see any meaningful impact to the casualty market.