



# 2024 Transportation Practice Group Seminar

## May 1-3, 2024

### Move on Up! Transportation Elevated

*Is It A Turning Of The Tides Or A High Watermark? Legislative Changes and Lobbying In Transportation*

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## 2023 State Reform Activity

### Seat Belt Nonuse Admissibility

CT, GA, IN, NE, WI

### Phantom Damages

AR, FL, KY, MO, WV

### Third Party Litigation Financing

CA, CO, IN, KY, LA, MO, MTT, NV, NJ

### Direct Action (Admitted Vicarious Liability)

IN, LA

### Damage Caps

LA

### Failure to Equip

FL, TX

### Joint and Several Liability/Allocation of Fault

SC, VA

### Shortening Statutes of Limitations

FL, MO

## State Level Review – 2023 Wins

### Iowa

SF 228: Legislation that caps noneconomic damages and limits direct negligence claims (e.g., negligent hiring) against the motor carrier when vicarious liability for driver's negligence is admitted.

### Florida

HB 837: Legislation that shortens the statute of limitations, alters the comparative fault system to a modified comparative negligence system, and allows evidence of medical amounts paid, not the gross amount billed for medicals.

### Indiana

HB 1124: Legislation that requires disclosure of civil proceeding advance payment transactions.

### Montana

SB 269: Legislation that requires disclosure of litigation financing agreements.

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### Texas

HB 4218 (failure to equip reform) – Pending before Gov. Abbott.

### Louisiana

SB 196 (3<sup>rd</sup> party litigation financing disclosure reform) – **Vetoed** by Gov. Edwards on 6/15/2023.

## State Level Review – 2024 Wins (as of 3/31/2024)

### Indiana

**ENACTED** HB 1090 (evidence that the plaintiff is not wearing a seat belt may be admitted as proof of failure to mitigate damages, provided the plaintiff was 15 or older) and HB 1160 (amends existing state law to further reform third party litigation financing abuses and regulate the industry).

### West Virginia

**ENACTED** SB 583 (in tort litigation involving CMVs, noneconomic damages would be capped at \$5M provided that the trucking company have at least \$3M in aggregate commercial auto for each occurrence).

**ENACTED** SB 850 (amends existing state law to further reform third party litigation financing abuses).

### Georgia

**PASSED** SB 426 (repealing the direct action statute unless the motor carrier is insolvent or bankrupt or personal service cannot be perfected on driver or motor carrier) and HB 1114 (referred to as the Data Analysis for Tort Reform Act (it will require insurance companies to disclosure certain data around the number of lawsuits filed, the total attorney fees and costs paid, and the total value of the incurred claims)).

### Wisconsin

**PASSED** SB 613 (in tort litigation involving CMVs, noneconomic damages would be capped at \$1M, provided that the driver was acting in course and scope of the trucking company) **VETOED** by Gov. Evers 3/29/2024..

## 2024 State Reform Activity (as of 3/31/2024)

### Seat Belt Nonuse Admissibility

GA, IN, NE, SD, WV, WI

### Phantom Damages

CT, LA, MO, WV

### Third Party Litigation Financing

AZ, CA, FL, GA, IL, IN, IA, KS, KY, LA, MO, NY, RI, WV, WI

### Precluding Direct Action (Admitted Vicarious Liability)

WV

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### Damage Caps

LA, WV, WI

### Failure to Equip

FL

### Joint and Several Liability/Allocation of Fault

SC

### Shortening Statutes of Limitations

MO

### Jury Anchoring

IN, MO, OK

## 2024 State DEFORM Activity (as of 3/31/2024)

### Repealing Damage Caps

CO\*, KS, MD (\*CO – ballot initiative)

### Expanding Wrongful Death Laws

MA, MN, NH, NJ, NY, VA

### Lengthening Statute of Limitations

KS, LA

### Allocation of Fault

FL\*, MN (\*CO – proposed jury instruction (sunshine jury instruction))

## State Level Review – 2024 DEFORM Activity (as of 3/31/2024)

### Florida

Florida Proposed Amendment to Standard Jury Instructions – in response to HB 837, the Florida Supreme Court’s Committee on Standard Jury Instructions has proposed new language to reflect modified comparative fault (51% bar – Florida was a pure comparative fault state). You can make comments until April 1, 2024.

### Colorado

Colorado Ballot Initiative 150 effectively aims to repeal noneconomic damage caps. The proposed change would allow a plaintiff to recover the total amount of monetary damages awarded by a jury or judge in a lawsuit involving catastrophic injury or wrongful death, eliminating the statutory caps on economic, non-economic, and punitive monetary damages. Similar initiatives in Kansas and Maryland.

### Minnesota

Minnesota is seeking to modify its contributory fault calculations and allocations. As introduced, the bill allows a

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plaintiff to recover the entire amount of a benefit, including that paid by an employer and allows recovery of damages so long as plaintiff's fault is not greater than the aggregate of all defendants (defendants would also be liable for the full award to the plaintiff if they are found 50% or more at fault).

### Federal Lawsuit Abuse Legislation

#### Highway Accident Fairness Act of 2023

Proposes penalties to persons who intentionally cause ("stage") a collision with a commercial motor vehicle and requirement for plaintiffs to disclose third-party litigation funding, including any funding agreements, 10 days after execution.