

#### Know Better, **Do Better, Be Better.** 2023 TRANSPORTATION PRACTICE GROUP SEMINAR

# 2023 Iowa Tort Reform Legislation



# **Iowa Senate File 228**

NOT law yet – will be shortly.

• History: • Version  $1 \rightarrow$ \$2 million • Version 2  $\rightarrow$  \$5 million; more exceptions









# Who Does It Apply To?

- vehicle requiring a commercial driver's license."
- including school buses.





Personal injury cases "involving the operation of a commercial motor

Exceptions: Does NOT apply to "common carriers of passengers,"





# What Does It Do?

### • (1) Eliminates "negligent hiring" claims IN MOST CASES.

### • (2) Limits noneconomic damages to \$5,000,000 IN SOME CASES.









# (1) Eliminates "negligent hiring" claims IN MOST CASES.

- "Trial court shall dismiss...any claim of the employer's direct negligence in hiring the employee driver," BUT ONLY IF:
  - AND

#### Issues?

• Retention, training, supervision? Need to follow proper procedure.







(A) Company admits driver was driving in scope of employment;

• (B) Company makes this admission by "motion," at the proper time.

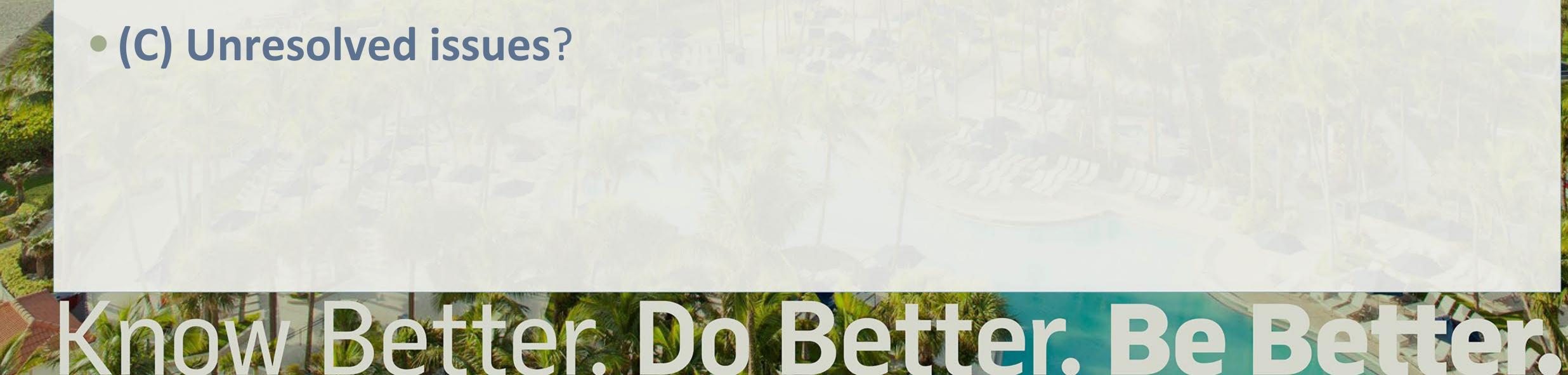




# (2) Limits noneconomic damages to \$5,000,000 IN SOME CASES.

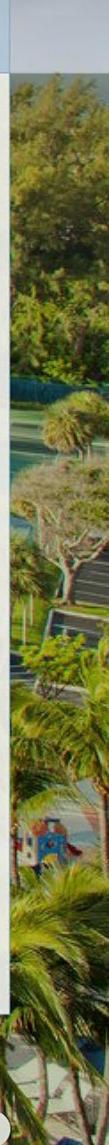
• (A) What is the cap?

• (B) When does the cap apply?









# (2) Limits damages to \$5,000,000 IN SOME CASES.

### • (A) What is the cap?

operator...for noneconomic damages" is \$5,000,000.

 "noneconomic damages" – "damages arising from pain, suffering, inconvenience, physical impairment, mental aguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages."



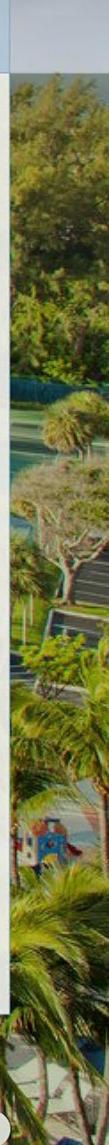




# • "The total amount recoverable per plaintiff against the owner or

# Know Better Do Better Be Better





# (2) Limits damages to \$5,000,000 IN SOME CASES.

# • (B) When does the cap apply? $\rightarrow$ NOT for:

- **BAC**.04
- Driver refuses post-accident testing
- Felony
- Cell phone
- Speeding 15 MPH
- "reckless driving" "willful or wanton"







# "disqualified from operating a [CMV]" due to lack of CDL "or otherwise"





# (2) Limits damages to \$5,000,000 IN SOME CASES.

- (C) Unresolved Issues?
  - (I) Multiple loss of consortium claims = multiple caps?
    - Argument for "yes" : "per plaintiff"
  - (II) Multiple caps where "owner" is different than "employer"?
  - (III) What fact scenarios will trigger exceptions?

    - "reckless driving"

• (IV) How often will we know cap applies pretrial?



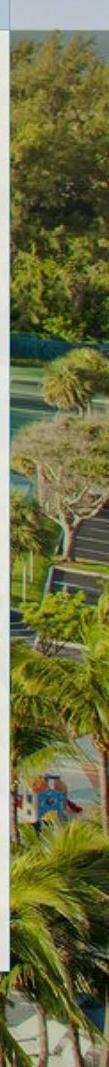




Argument for "no" : applies "regardless of the number of derivative claims"

"disqualified from operating a [CMV]" due to lack of CDL "or otherwise"





# TAKEAWAYS

### Good legislation...

- Can limit discovery.
- Great negotiating tool.
- Potential cap.

### **But NOT a silver bullet.**

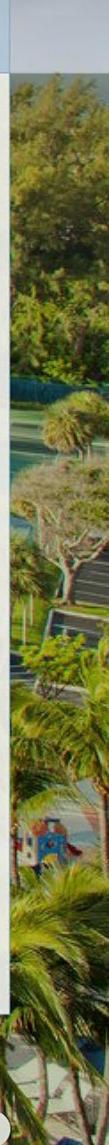




### Need counsel who knows how to navigate this to your advantage.

# Know Better Do Better Be Better





### TAKEAWAYS

• Narrow discovery as appropriate.

• Ensure cap applies as soon as possible





- Need counsel who knows how to navigate this to your advantage
  - Timely file the required "motion" to trigger the damages cap.
    - e.g., timely file motion to kick out boilerplate claims of "recklessness"







Zach Hermsen Member attorney Whitfield & Eddy – Iowa Hermsen@whitfieldlaw.com 563-663-4343







