



Highway Accident Litigation Reform

Protecting the Trucking Industry from Lawsuit Abuse



ATA POSITION: ATA supports federal legislation promoting fair adjudication of highway accident claims by granting federal courts jurisdiction over catastrophic accident cases involving the interstate movement of goods. Trucking companies are regularly unable to get a fair hearing in many state courts, and trial lawyers manipulate their pleadings to keep their cases out of federal courts. Relatedly, the rise of third-party financing in highway accident litigation reflects a view of such litigation as a profit opportunity, rather than a means of making a legitimately aggrieved party whole. These unpredictable, often unfair state-court proceedings threaten motor carriers' ability to efficiently move freight in interstate commerce, thus requiring Congress's intervention. Relatedly, the trucking industry has seen a sharp increase in the extraordinarily dangerous practice of staging a crash in an attempt to shake down motor carriers and reap the rewards of costly litigation. Beyond the injustice to motor carriers, this trend represents a serious hazard to travelers on the nation's highways. We call on Congress to prescribe criminal penalties targeted at the practice to deter it.

BACKGROUND: ATA and its members strongly believe that when a motor carrier acts wrongfully, and when that wrongful conduct results in injury, the motor carrier must be held accountable and those injured should be fairly compensated. Unfortunately, highway accident litigation in the U.S.—always an imperfect system—continues to become less about accountability and fair compensation, and more about profiteering and lining the pockets of the trial bar at the expense of the supply chain.

Recent years have seen an alarming increase in “nuclear verdicts”: eight- and nine-figure verdicts awarded against trucking companies. These verdicts are fueled by the trial bar's strategy of trying these cases in state courts before a judge who will allow them to present the jury with matters far afield from the crash under scrutiny. Plaintiffs' lawyers then use this irrelevant but prejudicial evidence to distract the jurors from the facts of the crash itself, cultivate a strong dislike or fear of the defendant as a threat to the community, and leverage that emotional response to elicit unfair findings of fault and grossly excessive damages awards.

Compounding the problem is the increasing role of third-party financing firms in highway accident litigation. These firms, operating largely in the shadows with virtually no regulation or oversight, issue what are in effect loans to plaintiffs at exorbitant interest rates. Because they style the arrangement as merely purchasing a stake in the proceeds of the lawsuit, they evade banking regulations and usury laws. Moreover, plaintiffs who enter into such arrangements often find themselves unable to accept reasonable settlement offers that would otherwise make them whole. Lawsuit lending thus, by necessity, puts artificial upward pressure on the value plaintiffs assign to their claims. This represents a fundamental perversion of the justice system and allows the trial bar to prey upon already-vulnerable plaintiffs. However, because lawsuit lender involvement is typically undisclosed, the full extent of this problem is invisible to policymakers.

Finally, with a steadily increasing number of nuclear verdicts creating the impression that trucking companies are easy targets, it is no surprise that the problem of staged truck accidents and insurance fraud are rising at alarming rates. As an example, federal prosecutors in Louisiana in 2019 and 2020 indicted more than 30 individuals, and obtained over a dozen guilty pleas, on mail fraud charges in connection with a sophisticated conspiracy to deliberately collide with tractor-trailers and press fraudulent injury claims, with the help of lawyers who coordinated their actions and doctors who were all too willing to perform unnecessary procedures in order to generate “damages.”

While the financial harm to motor carriers, the victims of these schemes, is a grave injustice, even more urgent is the serious danger such schemes pose not just to the truck driver but to the traveling public. Currently, there are no criminal penalties for individuals who conspire to stage accidents at the detriment of highway safety.

SOLUTION: To address these judicial shortcomings, Congress should pass the *Highway Accident Fairness Act* (H.R. 2936). The bill would establish criminal penalties for staged highway accidents involving commercial trucks, extending not only to the motorist perpetrators but also to the attorneys and physicians who conspire with them to extort motor carriers. The bill would also give federal courts jurisdiction over truck crash litigation where the matter in controversy involves interstate commerce, exceeds \$5M, and where at least one defendant is a citizen of a state different from at least one plaintiff. Finally, the bill would increase transparency by requiring the disclosure of third-party commercial enterprises other than a plaintiff or plaintiff's counsel that hold a right to receive payment in the event of a reward of monetary relief by settlement or judgement for such a lawsuit. These improvements will limit the existential risks of these lawsuits and shine a light on the forces of litigation financing that are leading to unreasonable nuclear verdicts.

The bill is a commonsense effort that would curb rampant lawsuit abuse against the trucking industry. It will help to restore balance and fairness to the system and ensure that justice—rather than profit—drives accident litigation. This bill represents a tangible step to create safer roads and highways for truck drivers and the motoring public, while also improving the overall supply chain.

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