

# DECLARATION OF DEFENSE

Sustain Our Supply Chain

## Sustain Our Supply Chain "Defending Our Supply Chain Soldiers"



### Plaintiffs' Demand:

The boundless, integrated interests of South Carolina's "Supply Chain" demand freedom from abusive, judgement-stacked lawsuits targeting them as heavily-insured businesses and citizens with earned assets.

### Primary Complaints:

1. Supply chain-related enterprises operating commercial motor vehicles (CMVs) serve every sector of the economy and every consumer in this state but are exposed to increasingly unpredictable risk while operating on public highways.
2. CMV operators carry prescribed – or higher – levels of insurance coverage to meet their financial responsibilities to reasonably-restore injured parties' losses in cases where the CMV driver is a significant contributor or at-fault in a highway collision, but also at costly, speculative levels for protection from runaway claims seeking excessive non-economic and unwarranted punitive damage awards.
  - a. This insurance coverage exposes commercial fleet operators as a targeted replacement source when other at-fault parties have no or inadequate coverage or financial resources, and serves to incentivize plaintiffs' lawyers to seek judgement-stacking awards and windfalls.
  - b. Businesses face escalating awards and ever-increasing premiums, with many succumbing from the inability to source or afford coverage in a shrinking market for this risk. Successors are losing interest due to the risks posed.
3. This has spawned greed evidenced by ubiquitous, often ridiculous contingency-fee lawyers' advertising designed to stimulate lawsuits, prejudice the jury pool, cast commercial enterprises in a negative light, mischaracterize commercial truck owners, stigmatize professional drivers, drive up settlement demands, seed the specter of nuclear verdicts, and paint Lawsuit Lottery/Casino Court scenarios for would-be plaintiffs. Neither the "Bar," the Supreme Court, nor the Legislature has effectively attempted to rein in this unseemly activity. The producer-economy cannot afford to or effectively counter this assault.
4. Injury lawyers can exploit technical ambiguities and inconsistencies created by hodgepodge common law, court decisions, and the Code's framework creating a litigation environment rife with incentives abetted by:
  - a. Irrepressible and ubiquitous marketing;
  - b. "Judicial Hellholes;"
  - c. Excessive, oppressive discovery demands used to fish for anything that could be used as "proximate cause," negligence/"recklessness," and to then prejudice and inflame a jury;
  - d. Plaintiffs' delaying filing lawsuits to pile on often unnecessary and excessive "medical" expenses, then later seeking damages for these "costs" as if they are to be paid as billed;
  - e. Extending driver negligence/"recklessness" into direct claims against the employer even after the employer accepts vicarious liability – creating a "trial within a trial" seeking punitive damages most often to coerce inflated settlements;
  - f. Challenging employers whose drivers possess valid federally-sanctioned, state-issued Commercial Drivers' Licenses as if they are not qualified, essentially shifting the burden of proof to employers;
  - g. Plaintiffs' being able to effectively:
    - i. Choose who they want to sue;
    - ii. Yet, settle-out at-fault parties with no (or the least) insurance, forcing juries to reassign and shift their fault to the targeted remaining "deep pocket" defendant - creating "false" at-fault apportionment of liability by the jury;
    - iii. Employ unethical "Reptile Theory" emotion-triggering psychological manipulation tactics to inflame juries, staging the specter of "Nuclear Verdicts" against commercial and industrial defendants.

5. Punitive damages claims are sought in most significant truck-involved "accident" cases, because:
  - a. Punitive damages claims can be triggered by a violation of a local, state, or federal statute or regulation, which is most often mere negligence, but now stretched well beyond its original definition and purpose to equate with "reckless" conduct. This "reckless" application in the modern highway environment rarely warrants punishment, particularly not of employers.
  - b. The mere threat inflates settlement demands, worsens unpredictability, and renders reasonable insurance levels insufficient and increasingly unaffordable or unavailable.
  - c. South Carolina requires punitive damages insurance coverage, which is of questionable constitutionality and exceptional.
  - d. They represent another – third – layer of damages which likely were originally what common law intended for "pain and suffering" to serve.
  - e. They are pursued to exponentially increase bonus awards and fees, and if.
6. Punitive damages should only be awarded in the rare case of malicious or intentional conduct. If ever justifiable, they should go to serve a public purpose, not enrich any private party.
7. Admissibility of seat belt non-use is not allowed for a jury to consider, should they want to mitigate damage awards due to the plaintiffs' own negligence.
8. Compelling video or photographic evidence can be used as a basis for Summary Judgment, but a motion is too easily dismissed by judges with objections from plaintiffs' counsel.
9. A default judgement may be sought and granted by a judge against an employee without the employer, former employer, or insurance carrier being served and given notice.
10. Details of how and by whom a lawsuit may be being financed are opaque.
11. An established ~40% lawyer fee from a client's recovery, "plus expenses," – especially in cases which are resolved quickly and at high values – reveals a lack of "competition" in the lawsuit market, taking on the tenor of rent-seeking.
12. There has been no legislative acknowledgment of how adverse-to-business the state's lawsuit environment "taxes" supply chain industries and businesses with CMVs, nor any good-faith efforts to cure it.
13. The primary, financially-unmatchable opponents of system reforms are injury lawyers, who utilize as many as 10 Political Action Committees.
14. Systemic inequity has morphed within the General Assembly, which seems incapable, or lacking the will to cure them – evidenced by:
  - a. A zero-sum game when dealing with the Plaintiffs' Bar on reasonable lawsuit reforms and responding to super-legislature, progressive-minded Supreme Court rulings;
  - b. The Plaintiffs' Bar's disproportionate influence stifling advancement of legislative reforms, and domination over the controversial judicial selection process;
  - c. The essential commercial, transactional, genuine truth-and-justice-seeking attorneys struggling with professional and political peer pressure should they want to separate themselves from the small fraternity of injury lawyers in order to enact reforms.
15. Staged accidents are increasing; many are "organized" crimes.
16. Predatory towing and storage practices are abusive and fraudulent.
17. These complaints point to what is contributing to "social inflation."
18. The complaints cited here stifle job and small business growth opportunities and are among the contributing factors in the present shortage of willing and able industrial workers, and the decline of our civic culture.
19. These complaints and their effects are anathema to the values of truth, fairness, and justice held by our citizenry.

#### **Declaration of Defensive Action:**

This diverse and essential population declares it will pursue rectifying these complaints by defending our rights to due process, and fair, transparent, consistent, prejudice-free, and conflict-free administration of justice through action by the South Carolina General Assembly.