Summer 2021

DEWHIRST & DOLVEN LLC Attorneys at Law

LEGAL UPDATE

Colorado • Utah • Wyoming • Texas

IN BRIEF

COLORADO

- Colorado legislature reverses *Ferrer;* admissions by employers of vicarious liability for employees will no longer protect employers from direct liability claims.

.....*Page 2*

UTAH

- The Utah Supreme Court rejects the "*McHaffie* Rule" and allows direct negligence claims against employers who have conceded liability for actions of employee.

.....*Page 2*

WYOMING

- The Wyoming Supreme Court interprets the meaning of Wyoming Insurance Code as to when an insurance policy is "issued for delivery" or "delivered."

.....*Page 3*

TEXAS

- The Texas Supreme Court held that an insured could file for UIM benefits via the Uniform Declaratory Judgment Act, and recoup attorney's fees allowed therein.

.....*Page 5*

FEDERAL

- Bills introduced to require speed limited equipment in large trucks and increase liability insurance limits.

.....*Page 6*

COLORADO

CONCEDING RESPONDEAT SUPERIOR DOES NOT PROTECT EMPLOYER FROM PLAINTIFF'S DISCOVERY REQUESTS, INCLUDING DISCOVERY FOR POTENTIAL PUNITIVE DAMAGES CLAIMS AGAINST EMPLOYER

Tenth Circuit: A semi-truck driver (Schultz) rear-ended a pick-up truck, injuring the pick-up's passenger, Jason Moore. Moore sued Schultz for negligence and negligence per se as well as suing the owner of the truck (Hinz) for vicarious liability. Hinz admitted vicarious liability for the negligence of Schultz who was "acting in the course and scope of his employment at the time of the [collision]." During the discovery phase, Moore sought to take Hinz's deposition who objected to topics including driver qualifications, personnel files, training, and Hinz's policies and procedures. Hinz objected that most of these items were related to direct negligence claims against the employer and therefore not relevant since Hinz had admitted respondeat superior so "such evidence *would serve only to establish that which is already undisputed:* that the employer is liable for the plaintiff's damages caused by the employee's negligent acts." Moore claimed that he was entitled to this information to support his claims of negligence as it related to Schultz, as well as to determine whether there was any potential for a punitive damages award against Schultz OR Hinz.

The Court held that because the standard of care involves analysis of the allegedly negligent person's conduct when compared to a reasonable person "under the same or similar circumstances," discovery should encompass information about those circumstances, which may include the actor's individual knowledge, training and experience. As such, discovery to obtain evidence aimed at proving negligence claims against the employee is not precluded, even when that evidence is sought from the employer.

The Court concluded that information relating to the driver's "competence," which includes his "special training," "experience" and "special knowledge," is relevant to Plaintiff's negligence claim against him and therefore could be discovered through the employer.

Clem v. Schultz
(Decided April 2, 2021, D. Colo. 2021not yet released for publication in the permanent law reports)

IN THIS ISSUE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS DENIED DESPITE THE FACT THAT DEFENDANT WAS REAR-ENDED BY AN ADMITTEDLY INEBRIATED DRIVER WHO WAS TRAVELLING AT 111 MILES PER HOUR AT THE TIME OF IMPACT

Tenth Circuit: On September 3, 2016, Plaintiff Phillips, along with two friends, Kanafani and Barlow, after sharing a bottle of rum at a private residence made their way to the Rec Room where they "shared three to four rounds of lemon drop shots, long island iced teas, and cranberry juice and vodka mixed drinks." Early in the morning of the 4th, the trio left the Rec Room, driving away in Kanafani's vehicle, with Kanafani driving, Barlow in the passenger seat, and Phillips passed out in the back seat. Kanafani was travelling at 111 miles per hour on southbound I-25. The speed limit was 55 miles per hour.

Miser, a driver for C.R. England, was also headed southbound on I-25 travelling at approximately 60 miles per hour. Miser, who had been driving in the far right hand lane, had transitioned into the middle lane several miles earlier in preparation for an upcoming exit on the left hand side of I-25 when he was rear-ended by Kanafani. Kanafani, the inebriated driver (who had essentially fled to Saudi Arabia), stated in an affidavit that Miser made a sudden and quick change of lanes causing Kanafani to swerve to avoid the truck. Kanafani swerved right and hit the right rear corner of the C.R. England trailer. Miser felt a bump and thought he had a flat until he checked his mirrors and saw the car careening off to the side.

Despite what seems like a clear cut case, there were multiple evidentiary issues and ultimately a material issue of fact based on the affidavit of Kanafani. Even though Defendant had an expert who opined that "on average, tractor-trailers complete right-to-left lane changes in 8.03 seconds…it is likely that a hypothetical right-to-left lane change in a tractor-trailer combination would take between 6.87 to 10.19 seconds…" The expert further opined that even if the Court were to suppose that Mr. Miser had performed a lane change just prior to the crash, there would have been a gap of almost two football fields between Miser and Kanafani. The expert concluded that "[i]t is only due to the excessive closing speed of Mr. Kanafani that this hypothetical situation could result in conflict."

Another discovery issue was the fact that the Kanafani affidavit was produced after fact discovery closed. In fact, he was unavailable throughout the entire discovery process despite attempts made by the Defendants to take his deposition. Plaintiff's counsel stated they couldn't find Kanafani, however the Court noted that the affidavit was signed at least two weeks before it was provided to Defendant who saw it for the first time in response to their Motion for Summary Judgment and two months after fact discovery closed. The Court further noted that Kanafani, "who was under the influence of alcohol at the time of the accident and made multiple false statements when questioned by the police, may not be an entirely credible witness" as he had lied to the officer about who was driving and the amount of alcohol he had had that night. Despite this, the questionable Kanafani affidavit, which was the only piece of evidence that created a material dispute, was accepted and the Defendants' Motion for Summary Judgment was denied.

Phillips v. Miser
(Decided February 24, 2021,
D. Colo. 2021
not yet released for publication
in the permanent law reports).

NEW LEGISLATION ALLOWS DIRECT NEGLIGENCE CLAIMS AGAINST EMPLOYERS EVEN AFTER EMPLOYERS ADMIT VICARIOUS LIABILITY

House Bill 21-1188 is new legislation that reverses the Colorado Supreme Court's holding in *Ferrer* by allowing additional direct negligence claims against an employer who has already admitted vicarious liability for the negligence of their employee or agent. Under *Ferrer v. Okbamicael,* 390 P.3d 836 (Colo. 2017), when an employer admitted to liability for its employee's negligence, any other direct claims against it, such as negligent hiring, training, etc., would go away. The law removes this incentive for an employer to admit to vicarious liability inasmuch as they can still be sued for negligence directly.

There have been several cases since that time that have applied the holding in *Ferrer*; however, as mentioned in one of the more recent Tenth Circuit cases addressed herein, some courts had begun to allow discovery beyond what many would consider the scope of just the employees' negligence. The bill was signed by Governor Polis on May 17, and absent a referendum petition, will be effective September 6, 2021.

Utah

UNDER UTAH'S LIABILITY REFORM ACT, A PLAINITFF CAN STILL MAINTAIN A SEPARATE CLAIM AGAINST EMPLOYER WHO CONCEDED VICARIOUS LIABILITY

Supreme Court of the State of Utah: In 2013, Duane Ludlow (Ludlow), a bus driver for the Nebo School District (Nebo) turned a school bus in front of Plaintiff Ramon (Ramon) and caused a collision wherein Ramon was injured. After a basic investigation, it was found that Ludlow had a myriad of driving issues and complaints, "including not stopping long enough before entering intersections, rolling past stop signs, and speeding around corners."

Ramon sued Ludlow and Nebo for various negligence claims, including vicarious liability (*respondeat superior*) as well as a separate claims for Nebo's own negligence in hiring and retaining said driver. Nebo filed a Motion for Judgment on the Pleadings, arguing that Ramon's claims against Ludlow and Nebo were essentially the same and since Nebo conceded vicarious liability, the claims against Nebo should be dismissed. The district court agreed and granted the Motion.

More on Page 3

Continued from Page 2

In July 2021, the Utah Supreme Court reversed and held that the district court erred when it granted Nebo's Motion stating that "Ramon…is entitled to proceed to trial on alternative claims." The Court held that Ramon's negligent employment and negligence claims were not redundant as the two claims have distinct elements.

The Court acknowledged that some jurisdictions (specifically citing to the *Ferrer* case from Colorado as discussed herein) adopt the "*McHaffie* rule," that the claims are a concurrent form of negligence, based in part upon a belief that the rule would prevent a plaintiff from double recovery. The Utah Court rejected that notion, determining that there were better tools to address that potential outcome, including jury instructions, special verdict forms, or even removal of the doubly-covered portion through post-trial motions.

The Court also dispelled the notion that allowing both claims to proceed may inflame the jury against the employer for continuing to employ the driver with knowledge of his less than stellar record. The Court held that "in most instances the best course is to rely on our district courts' discretion to determine whether evidence should be admitted" via Utah Rule of Evidence 403, which permits a court to "exclude relevant evidence if its probative value is substantially outweighed by…unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

The Court concluded that "we ultimately reject the *McHaffie* rule for an even more basic reason: it is incompatible with Utah's Liability Reform Act. The Act provides that '[a] person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery'…Under the Act's plain language, Ramon is entitled to request that the jury determine the proportion of fault attributable to Ludlow's negligence in driving and Nebo's negligence in its supervision of Ludlow…Nothing in the Act allows Nebo to use res*pondeat superior* as an off-ramp from having fault apportioned to it directly for its own negligent acts."

The Court also added this footnote, "[t]o be clear, we are not suggesting that a separate theory of liability against Nebo increases the amount of damages Ramon could recover… But we reject the argument that because a separate theory of liability against Nebo cannot increase the amount of damages Ramon suffered in the accident, a jury cannot consider that theory of liability and assign fault accordingly. And we reject the related argument that because Nebo concedes that it will ultimately be financially responsible for any damages, Ramon loses the ability to ask the jury to apportion fault between Nebo and Ludlow."

Ramon v. Nebo School District, 2021 UT 30.

AMOUNT FOR MINOR SETTLEMENTS REQUIRING JUDICIAL APPROVAL HAS INCREASED

Utah Code Annotated §75-5-102: The portion of Utah Code that controls the limits where judicial approval for minor settlements is required has recently been amended. The new amount allowed in a minor settlement without court approval has increased from $10,000 per annum to $15,000 per annum. Further, this $15,000 amount does NOT include any monies that go toward paying the minor's medical bills, attorney's fees, and costs of litigation. This amendment went into effect on May 5, 2021.

REVISED UIM ARBITRATION STATUTE DID NOT LIMIT REQUESTS FOR TRIAL DE NOVO TO ONLY THOSE AWARDS BASED UPON FRAUD, CORRUPTION, OR OTHER UNDUE MEANS

Utah Court of Appeals: Allstate Insurance Company asked the Third District Court to dismiss the request of Allstate's insured, Lane Halverson, for a trial de novo after receiving an arbitration award that he did not agree with. The Motion was denied and the trial de novo proceeded. Halverson (the insured) received a favorable verdict in the de novo trial. Allstate appealed and argued that Utah Code Ann. §31A-22-305, as amended, requires fraud, corruption or other undue means in order to request a trial de novo of a UIM arbitration award. The statute at issue reads:

(o) An arbitration award issued under this section shall be the final resolution of all claims not excluded by Subsection (8)(l) between the parties unless:

(i) the award is procured by corruption, fraud, or other undue means;

(ii) either party, within 20 days after service of the arbitration award:

(A) Files a complaint requesting a trial de novo in the district court; and

The previous version of the statute used to have the word "or" in between sub-sections (i) and (ii). As such, Allstate claimed they were connected and one could not be read or implemented without the other. The Court of Appeals disagreed with Allstate's assessment and upheld the trial court, essentially stating that just because the legislature got rid of the word "or" did not mean they meant to include the word "and" but just forgot to put it in. The trial court was affirmed and the resultant verdict from the trial de novo remained.

Halverson v. Allstate, 2021 UT App 59.

WYOMING

INSURANCE CONTRACT IS DEEMED DELIVERED FOR PURPOSES OF THE WYOMING INSURANCE CODE EVEN WHEN NO PHYSICAL DELIVERY HAS TAKEN PLACE

Supreme Court of the State of Wyoming: In May of 2021, the United States Court of Appeals of the 10th

More on page 4

Continued from Page 3

Circuit certified to the Supreme Court of Wyoming the following question for guidance: "Whether, under Wyo. Stat. Ann. § 26-15-101(a)(ii), an insurance policy is 'issued for delivery' or 'delivered' in Wyoming where a Wyoming corporation is a named insured, the policy covers risks in Wyoming, and the policy provides that coverage shall apply 'in the same manner and to the same extent' as if the policy had been issued to the Wyoming corporation, but no copy was ever conveyed to Wyoming and the policy only lists an out-of-state address for the insured?"

In 2012, the Sinclair Companies, parent company to the Sinclair Wyoming Refining Company ('Sinclair"), entered into an "All Risks of Direct Physical Loss or Damage, Including Business Interruption" insurance policy ("Policy") through the London market for the year 2013. The Policy covered all-inclusive risks to "property located anywhere in the world." Sinclair and multiple other subsidiaries were listed separately as named insureds with policy coverage issued to each. Eighteen different insurance companies provided coverage for a percentage of any loss suffered by Sinclair and its subsidiaries. Infrassure, LTD (Infrassure), a Swiss company, was one of the eighteen insurers that provided coverage under the Policy and was severally liable for seven and one-half percent (7.5%) of any covered loss. The corporate address of the insureds parent company was a Salt Lake City, Utah address.

In 2013, the Sinclair refinery in Wyoming sustained damage due to a fire and explosion in the plant. Sinclair and the other insurers came to an agreement; however Infrassure rejected the settlement and decided to litigate the loss in the 10th District Court. When a panel of independent appraisers deemed the actual value of the loss to be more than the settlement which Infrassure rejected (another issue Infrassure appealed) Sinclair sought to recover their attorney's fees and an enhanced interest rate of 10%, both remedies found in the Wyoming Insurance Code. Infrassure argued that the Insurance Code did not control inasmuch as the policy was never "issued for delivery" nor "delivered" to a physical Wyoming address. As such, the Appellate Court sent the certified question to the Wyoming Supreme Court resulting in the decision that "absent an insurance contract unambiguously stating otherwise, if the location of the insured and the location of the risk to be insured are both in Wyoming, an insurance policy is intended to be delivered and is 'issued for delivery' in Wyoming."

Sinclair Wyo. Ref. Co. v. Infrassure, Ltd., 2021 WY 65 (Wyo. 2021).

Texas

TEXAS LAW THAT COULD CURTAIL "RUNAWAY" JURY VERDICTS GOES INTO EFFECT SEPTEMBER 1, 2021

New Legislation: On June 16, 2021 Texas Governor signed into law House Bill 19, which will go into effect on September 1, 2021. This law will require a bifurcated trial as it pertains to commercial transport companies. There will be two phases of trial, the first being the liability phase and the second phase will address damages. The first phase will not even address the employer so as not to unintentionally influence juries, but will instead focus on the liability of the driver himself/herself before moving into the damages phase. The Texas trucking lobby has been claiming for years that there have been too many "runaway" verdicts in the state (including 2018 where there were five verdicts in the nine-figure range).

Specifically, the trucking lobby had argued that plaintiffs' attorneys in Texas have been cherry-picking evidence of a transportation company's violations of federal motor carrier safety regulations that have nothing to do with the crash in question. They also claim plaintiffs' attorneys utilize "reptile theory" trial tactics to get juries to award oversized verdicts against companies perceived to have deep pockets.

The Bill does not just benefit trucking companies, but applies to any commercial vehicle transport company, including Lyft, Uber and others.

INSURED CAN FILE CLAIM FOR UIM BENEFITS VIA THE DECLARATORY JUDGMENT ACT WHICH CAN INCLUDE AN AWARD OF ATTORNEY'S FEES TO THE INSURED

Supreme Court of Texas: In May 2021, the Supreme Court of Texas ruled that an insured who is seeking coverage under their underinsured motorist coverage may make the claim either via a standard UIM claim procedure or through the Uniform Declaratory Judgment Act ("UDJA"). Daniel Irwin was involved in a car accident and had settled with the tortfeasor for the policy limits of $30,000. He then submitted a UIM clam to his own insurance company, Allstate, which carried a $50,000 UIM policy. Allstate offered him $500. Irwin refused that offer and filed a declaratory judgment action seeking a determination of his damages from the accident, and attorney's fees, invoking the UDJA.

Allstate denied his claim to UIM benefits under the policy, both generally and specifically and demanded a jury trial. Prior to trial the parties stipulated to Irwin's coverage under the UIM policy and for Allstate to receive an offset of the previously paid $30,000 by the underlying tortfeasor. The jury came back with an award of $498,960.36 in damages, including "medical expenses, physical pain and mental anguish, physical impairment, and lost earnings."

Based upon the jury verdict, Irwin moved for entry of judgment. Allstate objected inasmuch as it included attorney's fees and the invocation of the UDJA. They then tendered their policy limits and court costs. The trial court acknowledged payment of the same from Allstate but still awarded Irwin his attorney's fees. Allstate appealed. The appellate court upheld the award, holding that "the UDJA was properly invoked to determine Irwin's entitlement to UIM benefits under the policy and a proper basis for the award of attorney's fees." Allstate then appealed to the Texas Supreme Court, which also affirmed the award of attorney's fees. The Supreme Court specifically held that "[t]he Act's application here to determine the prerequisites form and existence of,

More on Page 5

Continued from Page 4

the insured's UIM claim not only served a useful purpose but also terminated the controversy between the parties. The UDJA was thus properly invoked to determine the parties' status and responsibilities under the UM/UIM policy prior to its breach."

Allstate argued that a breach of contract does not include an award of attorney's fees under Chapter 38 of the Texas code. The Court agreed but differentiated Irwin's claim as he did not make a breach of contract claim but a claim under UDJA. The Court stated "[b]ecause the UM/UIM contract provides for a unique first-party insurance claim, the insurance carrier's failure to pay is not an actionable breach of contract until the carrier is bound by an appropriate judgment…even though no breach has occurred, a justiciable controversy may arise as to the parties rights and status under the contract. When such a controversy exists, and a declaration of the parties' rights will terminate the controversy between the parties or otherwise serve a useful purpose, the remedy is available to the court... Chapter 37's stated purpose is 'to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.' Part of the remedy it affords is a discretionary award of reasonable attorney's fees when equitable and just." As such, if a Plaintiff files a UIM claim pursuant to the UDJA, that can lead to an award of attorney's fees if done properly.

Allstate Ins. Co. v. Irwin, (Tex. 2021).

DEPOSITION OF INSURANCE COMPANY CORPORATE REPRESENTATIVE ALLOWED IN UIM CLAIM EVEN THOUGH NO BAD FAITH OR EXTRA-CONTRACTUAL CLAIMS WERE MADE

Supreme Court of Texas: In June 2021, the Supreme Court of Texas responded to a petition by USAA to prevent a deposition of a corporate representative of USAA in a UIM, breach of contract lawsuit. Mr. Wearden, the USAA insured, was involved in a collision, settled with the underlying tortfeasor for policy limits and subsequently sued USAA for breach of contract and declaratory judgment to recover UIM benefits. As part of his initial discovery process, Wearden sought to take the deposition of a USAA corporate representative about myriad issues that he claimed were relevant to the case. USAA moved to quash the deposition and that motion was denied. USAA filed a Petition for a Writ of Mandamus.

Wearden's Notice of Intent to take the oral deposition of a USAA corporate representative originally listed 19 items to be addressed. By the time the petition for the writ was filed, the areas of inquiry for the deposition was whittled down to 9, including applicable insurance policies; the occurrence or non-occurrence of all conditions precedent under the contract/policy; facts supporting USAA's legal theories and defenses; amount and basis for USAA's valuation of Wearden's damages; whether the original tortfeasor was an uninsured/underinsured motorist at the time of the collision; USAA's contention that Wearden has failed to comply with all necessary prerequisites; USAA's contention that it is entitled to offsets; and USAA's affirmative defense of Wearden's failure to comply with contractual obligations. The Notice also included a subpoena duces tecum for any and all reports prepared concerning Wearden's claim.

USAA argued that a deposition of a representative was improper pertaining to how the claim was investigated and evaluated, whether the underlying tortfeasor was truly at fault as well as what, if any, injuries and damages Wearden actually sustained. They further argued that the discovery being sought from USAA was "unreasonably cumulative and duplicative" or better obtained from other sources, including written discovery requests to USAA. USAA also argued that any representative would have no relevant personal knowledge of events of the collision and therefore a deposition would be useless.

Wearden argued that USAA's claim that they lacked any relevant knowledge of the underlying accident and resulting damages is "obviously false," asserting that when insurance carriers investigate their insureds' claims, they uncover, or at least may uncover, information relevant to those claims and the carriers' own defenses. Wearden further argued that parties are not required to engage in discovery in any particular order.

More on Back Page

About Our Firm

Dewhirst & Dolven, LLC is pleased to serve our clients throughout the Intermountain West and Texas from the following offices:

- Denver, Colorado
- Colorado Springs, Colorado
- Grand Junction, Colorado
- Salt Lake City, Utah
- Casper, Wyoming
- San Antonio, Texas
- South Padre Island, Texas

Please see our website at DewhirstDolven.com for specific contact information.

Dewhirst & Dolven, LLC has been published in the A.M. Best's Directory of Recommended Insurance Attorneys and is rated an "AV" law firm by Martindale Hubbell. Our attorneys have extensive experience and are committed to providing clients throughout Utah, Wyoming, Colorado and Texas with superior legal representation while remaining sensitive to the economic interests of each case.

Dewhirst & Dolven's Legal Update
is published quarterly by
Rick N. Haderlie, Esq and
Camille J. Jarvis, Esq
of
Dewhirst & Dolven, LLC

For more information regarding legal developments, assistance with any Utah, Wyoming, Colorado or Texas matter, contact Rick Haderlie at
rhaderlie@dewhirstdolven.com
4179 Riverboat Road
Suite 206
Salt Lake City, UT 84123
(801) 274-2717
www.DewhirstDolven.com

DEWHIRST & DOLVEN
Attorneys at Law
www.DewhirstDolven.com

SALT LAKE CITY
4179 Riverboat Road,
Ste 206
Salt Lake City, UT 84123
(801) 274-2717

DENVER
650 S. Cherry St.,
Ste 600
Denver, CO 80246
(303) 757-0003

COLORADO SPRINGS
405 S. Cascade Ave., Ste 301
Colorado Springs, CO 80903
(719) 520-1421

FORT COLLINS
2580 East Harmony Rd.,
Ste 201
Fort Collins, CO 80528
(970) 214-9698

GRAND JUNCTION
2695 Patterson Road,
Ste 2, #288
Grand Junction, CO 81506
(970) 241-1855

SAN ANTONIO
One Riverwalk Place,
700 N. St. Mary's St.,
Ste 1400-5767
San Antonio, TX 78205
(210) 817-4001

SOUTH PADRE ISLAND
2216 Padre Boulevard, Suite B605
South Padre Island, TX 78597
(956) 433-7166

CASPER
123 West 1st Street,
Ste 675
Casper, WY 82601
(307) 439-6100

CLM

Continued from Page 5

The Court agreed with both parties, in part, finding that "USAA's insistence that a lack of personal knowledge necessarily equates to a lack of relevant knowledge rings hollow. USAA has conceded some facts regarding coverage but disputes [the tortfeasor's] liability for the underlying accident and the existence and amount of Wearden's damages. Presumably, USAA is in possession of information that supports its position on those issues, even if gleaned second-hand. That information is discoverable unless privileged, regardless of its admissibility at trial." However they also found that the scope of Wearden's Notice was not narrow enough as "[a] plaintiff may not obtain discovery on an unasserted, abated, or unripe bad-faith claim under the guise of investigating a claim for benefits." As such, while Wearden was allowed to take the requested deposition, he was limited to 1. facts supporting USAA's legal theories and defenses; 2. whether the original tortfeasor was an uninsured/underinsured motorist at the time of the collision; and 3. USAA's contention that it is entitled to offsets. The Court also allowed the deposition to address the amount and basis for USAA's valuation of Wearden's damages "to the extent USAA possesses information that is not privileged and that bears on the existence and amount of those damages, that information is discoverable."

In Re USAA Gen. Indem. Co. (Tex. 2021).

Federal Developments

BILL INTRODUCED TO REQUIRE SPEED LIMITER EQUIPMENT IN LARGE TRUCKS

In May of 2021, a bipartisan measure was introduced and referred to the Committee on Transportation and Infrastructure, as well as the Committee on Energy and Commerce, in an effort to "limit the speed of heavy commercial trucks and support efforts to improve safety, enhance fuel efficiency, and reduce the occurrence of these often fatal crashes." It is called the *Cullum Owings Large Truck Safe Operating Speed Act of 2021,* and the intent is to codify into law a "speed limiter" rule which "has been under consideration for more than a decade…and is endorsed by the Truckload Carriers Association, the Trucking Alliance, AAA, the Institute for Safer Trucking, Road Safe America, and the Safe Operating Speed alliance." The goal is to essentially keep "truck speeds at or below 65 mph (or 70 mph with use of automatic emergency breaking and adaptive cruise control)". Proponents of the bill claim that the "speed limiter installed in large trucks for many years can be easily programmed to limit the top operating speed."

BILL INTRODUCED TO SUBSTANTIALLY INCREASE LIABILITY COVERAGE MINIMUMS FOR BUSINESSES THAT TRANSPORT PROPERTY

Another bill that was introduced this session addressed increasing the minimum levels of financial responsibility for transporting property, also known as requiring higher liability limits for those businesses that transport property. It is called the *Improving National Safety by Updating the Required Amount of Insurance Needed by Commercial Motor Vehicles per Event Act of 2021,* or the "INSURANCE Act of 2021." The current minimum that is required is $750,000, a number that has not been changed since 1980. Proponents of the measure claim that this amount "would have the same purchasing power as $5,193,665.62 in 2020, if the amount was raised to account for medical-cost inflation." As a result, proponents are seeking to amend the current Code by striking the $750,000 requirement and raising it to $5,000,000.