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DAILY REPORT

Keep on Trucking: New Law Puts Motor Carriers on the Hot Seat

By James Leonard
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For decades, victims of Georgia trucking accidents have looked no further than the companies providing insurance coverage to motor carriers and their drivers. Alone among insurance cases, truck accidents were direct-action claims, providing injured parties a clear path toward resolution. Plaintiffs filed their actions directly against insurance carriers. When tracking down and serving trucking companies, drivers or other parties involved in their accidents proved difficult, the direct action right served injured parties well.

It was a good system for claimants, who could predictably recover large sums needed to pay for hospital and medical bills, rehabilitation, pain and suffering and potentially long-term or lifetime care. It was not a particularly good system for carriers, who walked into courtrooms with large targets on their backs. Juries saw deep pockets and tended to look no further.

Direct-action may have simplified the recovery process for plaintiffs but, insurers contended, it was inherently prejudicial for their industry. Georgia lawmakers agreed.

(Courtesy photo)

James Leonard of Signature Resolution.

Senate Bill 426

On May 6, Gov. Brian Kemp signed into law Senate Bill 426, amending Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic. The new law, which took effect July 1, signaled a sea change in the way truck accident cases are prosecuted in the state. The new amendments still permit plaintiffs to name the insurers involved in their complaints, but now only in specific circumstances.

What does this mean for truck accident victims? Their path to recovery may be far more lengthy and circuitous than under the direct-

action regimen. The amount they recover for injuries and losses may be lower than under the prior system. The time it takes to get their money may be lengthy and attenuated.

With insurers out of the courtroom, there is no need for defense counsel to address conflicts of interest between carriers and trucking companies, except in the bad faith/Holt demand scenario, or when the tripartite relationship—insured/insurer/defense counsel—becomes unbalanced. Defendants may be emboldened to push back against plaintiffs' damages claims, quick to assert comparative negligence and other such claims. A more bullish defense may translate into greater difficulty settling claims and lower recoveries by plaintiffs who suffered bad injuries and large losses. Plaintiffs, now unable to assert claims against carriers directly, may enter negotiations with lower expectations and modified settlement valuations.

The reform also means that there will be considerable litigation until all the kinks have been ironed out and open questions answered. SB 426 would seem to be simple and straightforward; it is anything but. While it ostensibly closes a hole in the deep pockets of carriers, it opens enough other holes that it will be years before we fully understand the impact and implications of the law.

Those holes, outlined below, could stymy or derail settlement negotiations unless skillfully traversed by a mediator.

Conditions Allowing Direct Action

The new law restricts plaintiffs from naming insurance carriers unless certain conditions are met. These conditions are as follows: "One or more motor carriers related to the cause of action are insolvent or bankrupt"; or "Personal service, as provided in subsection (e) of Code Section 9-11-4, cannot after reasonable diligence be effected against the driver of the vehicle of the motor carrier giving rise to the cause of action; or (ii) Against the motor carrier."

When either of these conditions is met, "then the insurance carrier may be joined in the action as a matter of right, without motion or order of the court, by filing an amended complaint joining the insurance carrier. The amended complaint shall be served on the insurance carrier pursuant to Code Section 9-11-4 and such insurance carrier shall file an answer with the court within 30 days of service."

Bankruptcy or Insolvency

The plaintiff is allowed to name the insurance company to the lawsuit when one or more motor carriers related to the accident are insolvent or bankrupt, but it is not entirely clear what this means. If many motor carriers are involved, will the bankruptcy of one automatically open the door for all insurers to be named? What determines whether a party is "related to" a cause of action?

More importantly: At what point is such a party deemed insolvent or bankrupt? Does it require a filing for the benefit of creditors under the Georgia code? A legal declaration of insolvency in federal bankruptcy court? The inability to pay creditors on time or the placement of liens against assets? Because these terms are not defined in the law, there is sure to be litigation on the appropriate test for determining "insolvency or bankruptcy."

And more questions arise when a motor carrier, deemed bankrupt or insolvent, is acquired by another party. If, for example, a private (and solvent) equity firm purchases that motor carrier, should the insurance carrier named in the

lawsuit continue to be a party? Must the complaint be amended to remove the insurer, and what is the process for doing so?

Service of Process

Insurance carriers may also be added to a lawsuit when the plaintiff is unable to effect personal service—after reasonable diligence—on the motor carrier or driver. But what constitutes "reasonable diligence" when the other party is located in Georgia? Or out of state? At what point can a Georgia truck accident victim trying to serve process on a driver in Alaska throw up the white flag and name the insurer in the lawsuit?

To further complicate the picture, imagine an insurer offering to accept service on behalf of a driver or motor carrier. Could this be a reasonable alternative that meets the law's requirements? If a driver accepts service after an insurer has already been named in the action, should the insurer be dismissed from the action?

The answers to these questions are not at all clear from the text of the bill, and they will likely not become so until more litigation ensues and courts have clarified these questions.

Accrual of Actions

SB 426 just took effect, but it may apply to accidents that occurred years ago. Section 4 states as follows: "This Act shall apply to causes of action accruing on or after July 1, 2024." By using the word "accruing," rather than "occurring," the law may encompass claims that arose as far back as two decades ago. The effective date of the law could, in fact, be a moving target.

An infant injured in a truck accident would not be eligible to bring an action (i.e., the claim "accrues") until reaching age 18. An individual incapacitated as a result of an accident would be entitled to tolling of the applicable statute of limitations; their claim would arguably not "accrue" until capacity was restored. Should these plaintiffs, who would have filed their claims directly against the insurance carrier, now be denied the right to do so?

Conclusion

None of the above questions are contemplated or answered by SB 426. Such uncertainty could make settlement of future truck accident cases difficult. When insurers are named in actions, the value of those claims is likely to go up, but the carriers may be more inclined to litigate. When insurers are out of the picture, the value of cases is likely to go down, settlement expectations will be lower, and plaintiffs will feel compelled to settle their claims for less than they are worth.

The industry may ultimately target a particularly egregious case for decision by the Georgia Supreme Court. Expect to see most plaintiffs settling for lower amounts rather than waiting years for a court decision.

Until the new law has been exhaustively litigated and interpreted by the courts, successful settlement of truck accident cases will depend on the knowledge, experience and insights of skilled insurance claim mediators.

James Leonard *is a neutral in the Atlanta offices of Signature Resolution.*