



THE PROBLEM

Plaintiff lawyers have developed a strategy to maximize their fees in commercial vehicle litigation. This scheme has resulted in several massive judgments in Texas, and created a litigation vortex that is encouraging more lawsuits and more settlements, which cause insurance premiums to skyrocket—increasing the cost of goods and services for everyone.

- To avoid the risk of a massive judgment, insurers are settling cases without regard to merit. The settlements encourage plaintiff lawyers to run ads and file more lawsuits.
- The public sees these ads and thinks they are the norm in commercial vehicle lawsuits, which encourages more lawsuits and biases the pool of future jurors.
- To make up for the losses, the insurers that still write policies in Texas are increasing premiums and deductibles for all commercial vehicles, regardless of claims history.

Plaintiff’s lawyers work with cooperative healthcare providers who over-diagnose, over-treat and over-bill for the services they provide to the plaintiff.

- A cooperative healthcare provider typically agrees to work on a contingent fee basis under a “letter of protection” that assures it will be paid if the plaintiff obtains a lawsuit recovery. The provider is discouraged from submitting its bills to a health insurance company, Medicare or Medicaid for payment.
- Using a letter of protection allows the plaintiff attorney to present the provider’s billed charges to the jury, rather than presenting the much lower amount that would have been paid by insurance. That means the medical bills presented to the jury are often three, four or ten times their reasonable value.
- Once the lawsuit concludes, the lawyer pays the provider, takes his cut, and gives whatever money remains to the plaintiff.
- The entire scheme is intended to use medical bills as a litigation profit center by avoiding compliance with Texas’ existing “paid or incurred” statute, which is supposed to prevent the use of medical billing to create “phantom damages.”

At trial, plaintiff attorneys evoke fear, using what they call the “Reptile Theory” to appeal to jurors’ innate fight or flight instinct, thus maximizing the damages awarded.

- Using irrelevant safety records and employment practices as a sword in front of the jury, the plaintiff attorney paints the commercial vehicle owner as a danger to the motoring public. They seek to make the jury afraid of the commercial vehicle owner, thus engaging jurors’ fight or flight instinct.
- In many cases, this evidence doesn’t pertain to the facts of the specific case—it is irrelevant evidence intended only to prejudice the jury. Nevertheless, it is admitted into evidence by inexperienced or biased trial judges.
- The plaintiff attorney then asks the jury to fight for the safety of society—“to send a message” to the owner of the commercial vehicle—by awarding the highest conceivable amount of damages to punish the defendant.



THE SOLUTION

This litigation scheme is built on presenting misleading evidence to the jury—whether inflated medical bills or prejudicial evidence about a commercial vehicle operator’s conduct.

We cannot expect juries to arrive at a fair decision when given misleading, extraneous and purposely prejudicial information.

The Legislature can provide balance to this litigation by clarifying the rules for how commercial vehicle lawsuits are tried. This will ensure juries have the facts necessary to award fair compensation to Texans who are injured by the negligence of a defendant, while ensuring the litigation playing field is level for all players.

Fix the Paid or Incurred Statute.

- If a third party has paid a plaintiff’s medical bills, the amounts paid should be regarded as *reasonable* by the jury.
- If, however, the medical bills have not been paid, the jury must be given information about the *true value* of the healthcare services provided, not just the amount billed.
 - Along with evidence of the amount billed, the jury should be provided the amount that would be paid for the services by private health insurers, Medicaid, Medicare and other sources so it can determine a reasonable amount to award to the plaintiff.
- Plaintiffs should be required to disclose if they have health insurance and if it was used.
- Letters of protection can have a legitimate purpose and are *not* prohibited in the proposal.

Ensure the jury understands who caused the accident and the extent of the plaintiff’s legitimate injuries.

- Juries should be presented with evidence that is directly relevant to causation and injuries in the accident. Evidence of alleged *unrelated* safety violations should be not be presented to the jury.
- The case should focus on the events at issue, not on extraneous allegations of improper employment practices by the defendant.
 - A grossly negligent employment practice, however, could be introduced into evidence if it contributed to causing the accident.
- Defendants must be allowed to submit photographs and videos of the vehicles involved in the accident.
- The jury must be informed about any ongoing relationship between a lawyer and healthcare provider who testifies at trial on behalf of any party.
- Any award of money for future medical bills should be paid in the future from a fund established by the defendant.