STATE LAW SUMMARY
Overview of the State of South Carolina
Updated 2013

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Overview of the State of South Carolina  
Court System  
A. Trial Courts  
The Circuit Court is South Carolina’s court of general jurisdiction, and the state court system is divided into sixteen circuits. The Court of Common Pleas maintains a civil docket, and the General Sessions Court maintains a criminal docket. Each circuit has at least one resident circuit judge who maintains an office in the judge’s home county. Forty-six circuit judges serve the sixteen circuits on a rotating basis. Circuit Court judges are elected by the General Assembly to staggered terms of six years. Because Circuit Court judges rotate terms of court, it is difficult to predict which judge may preside over any given motion or trial unless the case has been designated complex upon motion of the parties. This designation assigns one judge to hear all matters, including trial. Twelve jurors are typically impaneled.
Additionally, South Carolina has a small claims court, called Magistrate’s Court. There are approximately 300 magistrates in South Carolina, each serving the county for which he or she is appointed. Magistrates must pass a certification examination within one year of their appointment, but a formal law degree is not required. Magistrates generally have criminal trial jurisdiction over all offenses subject to the penalty of a fine, as set by statute but generally not exceeding $500.00, or imprisonment not exceeding 30 days, or both. In addition, they are responsible for setting bail, conducting preliminary hearings, and issuing arrest and search warrants. Magistrates have civil jurisdiction when the amount in controversy does not exceed $7,500. Rules of evidence and procedure are generally relaxed in Magistrate Court, but no discovery may be compelled. Juries of six individuals are typical.

Currently, mandatory Alternative Dispute Resolution exists in eighteen of South Carolina’s forty-six counties, and that number will increase to thirty-three beginning June 1, 2013. The reputations of the various counties for civil cases range tremendously, from several extremely conservative jurisdictions to others that have appeared on national lists for “Judicial Hellholes”; thus, venue and the potential ability to remove a case to federal court are extremely important factors in truck accident cases.

B. Appellate Courts
In addition to its general trial jurisdiction, the Circuit Court has limited appellate jurisdiction over appeals from the Probate Court, Magistrate’s Court, and Municipal Court.

An appeal from the Court of Common Pleas generally goes to the South Carolina Court of Appeals as a matter of right although the South Carolina Supreme Court has exclusive appellate jurisdiction over certain matters. An aggrieved party in the Court of Appeals may petition the Supreme Court for a writ of certiorari.

The South Carolina Court of Appeals consists of a Chief Judge and eight associate judges who are elected by the General Assembly to staggered terms of six years each. The Court sits either as three panels of three judges each or as a whole, and it may hear oral arguments and motions in any county of the state.

The Supreme Court is the highest court in South Carolina. The Court is composed of a Chief Justice and four Associate Justices who are elected to ten year terms by the General Assembly. The terms of the justices are staggered, and a justice may be reelected to any number of terms.

Appellants can be compelled to post an appellate bond. The post-judgment interest rate is set by statute; it is 7.25% compounded annually for 2013.

Procedural
A. Venue
Whaley v. CSX Transportation, Inc. sparked dramatic changes regarding residency for venue purposes of corporate defendants in South Carolina. Under that case, for purposes of determining venue, a defendant corporation, foreign or domestic, resides in any county where it (1) maintains its principal place of business, or (2) maintains an office and agent for the transaction of business. This case specifically ended the "owns property and transacts business" test for determining venue. Merely owning property and transacting business in a county are no longer sufficient to find venue in that county.

Shortly thereafter, the South Carolina Legislature passed tort reform legislation incorporating the change in Whaley and further modifying the law concerning venue. Under this legislation, initial venue is determined on the basis of the status of the defendant as a resident individual, nonresident individual, domestic corporation, foreign corporation with certificate of authority, and other foreign corporation.

Specifically, as to a resident individual defendant, venue is proper in the county where the defendant resides at the time the cause of action occurred or where the most substantial part of the alleged act giving rise to the cause of action occurred. As to nonresident individual defendants, venue is proper in the county where the plaintiff resides or has its principal place of business at the time the cause of action occurred or where the most substantial part of the alleged act giving rise to the cause of action occurred. As to domestic corporations and partnerships or foreign corporations and partnerships with a certificate of authority, venue is proper in the county where the defendant corporation or partnership has its principal place of business at the time the cause of action occurred or where the most substantial part of the alleged act giving rise to the cause of action occurred. Venue is proper as to all other foreign corporations and partnerships in the same two locations, in addition to a third possibility, the county where the plaintiff resides or has its principal place of business when the cause of action occurred.

In addition, this tort reform legislation changed the date at which venue is to be determined. As to causes of action arising after July 1, 2005, venue is determined at the time the cause of action occurred. As for all causes of action arising before this date, prior South Carolina law requires the determination of venue at the time of commencement of the action.

Also, the statute defines a corporation’s principal place of business first where its home office is located; second, if there is no home office, where its manufacturing, sales, or purchasing center is located; or third, if there is no home office but more than one manufacturing, sales, or purchasing centers, the one in which the majority of corporate activity takes place. This requires an analysis of the number and authority of employees at each center and the amount of assets located at each.

The 2005 legislation importantly repealed a prior statute that allowed a motor carrier to be sued in any county where it operated.
B. Statute of Limitations

1. GENERALLY
Personal injury and contract actions generally must be brought within three (3) years of the date on which the plaintiff knew, or should have known, the cause of action accrued. The limitations period begins to run when the facts and circumstances would put a person of common knowledge and experience on notice that some claim against another party might exist.

2. TOLLING
Persons who are infants (under 18), insane, or in prison may avoid the effect of the statute of limitations applicable to their claims. The statutes that grant this relief from the operation of the limitations law to persons under these various disabilities also govern when, after the disability ceases, the person must bring their claims or lose them.

C. Time for Filing An Answer
The South Carolina Rules of Civil Procedure ("SCRCP") allow thirty days for a defendant to file its responsive pleading.

D. Dismissal Re-Filing of Suit
A plaintiff may voluntarily dismiss a lawsuit by stipulation signed by all parties that have appeared in the action. Rule 41(a)(1), SCRCP. Additionally, a court may dismiss a lawsuit at the plaintiff's instance "upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. Lastly, Rule 41(b), SCRCP, provides for the involuntary dismissal of a lawsuit upon motion of the defendant.

Rule 40(j), SCRCP, provides for the temporary dismissal of a lawsuit: "A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule."

Liability

A. Negligence

1. Negligence Standards
To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by negligent act or omission; and (3) damages proximately caused by a breach of duty. Each element must be proven by a preponderance of the evidence.
2. Negligence per se

Violation of a statute is negligence per se; however, “[v]iolation of a statute creating a special duty is not conclusive of liability. Negligence per se will not support a recovery for damages unless the plaintiff can show that the violation of the statute proximately caused or contributed to the injury complained of by the plaintiff.”

The use of negligence per se as evidence of punitive damages was explained by the S.C. Supreme Court as follows: “The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury. Violation of a statute does not constitute recklessness, willfulness, and wantonness per se, but is some evidence that the defendant acted recklessly, willfully, and wantonly. It is always for the jury to determine whether a party has been reckless, willful, and wanton. However, it is not obligatory as a matter of law for the jury to make such a finding in every case of a statutory violation.”

B. Negligence Defenses

The following affirmative defenses are required to be pled: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

1. COMPARATIVE/CONTRIBUTORY NEGLIGENCE

South Carolina utilizes modified comparative negligence. “[A] plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the recovery shall be reduced in proportion to the amount of his or her negligence. If there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all the defendants.”

The doctrines of “last clear chance” and “sudden emergency” have been subsumed by the adoption of comparative negligence and are simply factors to be considered in analyzing the parties’ relative negligence.

2. ASSUMPTION OF RISK

Davenport v. Cotton Hope Plantation held that the absolute defense of assumption of risk is inconsistent with South Carolina’s comparative negligence system. In analyzing the continuing viability of assumption of risk in a comparative negligence system, the S.C. Supreme Court distinguished different types of assumption of risk. Express assumption of risk applies when the parties expressly agree in advance, either in writing or orally, that the plaintiff will relieve the defendant of its legal duty. Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity. Secondary implied assumption of risk arises when the plaintiff knowingly encounters a risk created by the defendant’s negligence. The
S.C. Supreme Court held that express and primary implied assumption of risk are still viable defenses, but under secondary implied assumption of risk “a plaintiff is not barred from recovery . . . unless the degree of faulty arising therefrom is greater than the negligence of the defendant.” Essentially, consistent with previous decisions since the adoption of comparative negligence, secondary implied assumption of risk is no longer an absolute bar to recovery, but it is to be treated as another consideration within the comparative negligence system.

C. Gross Negligence, Recklessness, Willful and Wanton Conduct
A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff’s rights. A conscious failure to exercise due care constitutes willfulness.

D. Negligent Hiring and Retention
To establish an employer negligently hired, trained, supervised or entrusted a vehicle to an employee, the plaintiff must still prove the standard elements of any negligence action. The plaintiff must show (1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, and (3) defendant’s breach was the actual and proximate cause of the plaintiff’s injury or damages. Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002).

An employer owes a duty of care to a third party when the possible harm resulting to the third party by the employee could have been reasonably anticipated by the employer. “Where an employer cannot reasonably anticipate that any possible harm can come to an individual from its hiring of a certain employee, the employer is entitled to judgment in that individual’s suit against it for damages for negligent hiring.” Comer v. Tandy Corp., 295 S.C. 133, 367 S.E.2d 436 (Ct. App. 1988); see also Hoskins v. King, 676 F. Supp. 2d 441 (D.S.C. 2009).

“In circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring, supervising, or training the employee, or that the employer acted negligently in entrusting its employee with a tool that created an unreasonable risk of harm to the public.” Accordingly, “the employer’s liability under such a theory does not rest on the negligence of another, but on the employer’s own negligence. Stated differently, the employer’s liability under this theory is not derivative, it is direct.” James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008).

Additionally, “South Carolina law does not prohibit a plaintiff from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted.” Id. Likewise, evidence of negligent entrustment, such as the employee’s previous driving record, may be admissible to support claims for punitive damages or claims separate from respondeat superior to show notice on the part of the employer.
E. Negligent Entrustment
See above analysis of Negligent Hiring and Retention.

F. Dram Shop
Because South Carolina does not have a Dram Shop Act, the civil remedy arises out of criminal statutes. An aggrieved party may maintain a common law negligence claim based on S.C. Code Ann. § 61-4-580 and § 61-6-2220. Section 61-4-580 provides, in part, that “[n]o holder of a permit authorizing the sale of beer or wine or any servant, agent, or employee of the permittee may knowingly … sell beer or wine to any person while the person is in an intoxicated condition.” Similarly, § 61-6-2220 provides that an “establishment licensed to sell alcoholic liquors or liquor by the drink … may not sell these beverages to persons in an intoxicated condition.” It is important to note that while § 61-4-580 prohibits the holder of a permit authorizing the sale of beer or wine from knowingly selling beer or wine to an intoxicated person, it “does not contain a requirement that the intoxicated person be visibly intoxicated.” “The proper standard … is whether the bartenders negligently served alcoholic beverages to a person who, by his appearance or otherwise, would lead a prudent man to believe that person was intoxicated.”

To show that a defendant establishment breached a duty, the plaintiff must show that the defendant furnished alcohol to someone the defendant knew or should have known was noticeably intoxicated and as a proximate result, such person caused harm to the plaintiff. Additionally, the judge may aid the jury in assessing whether a bartender knowingly sold alcohol to an intoxicated individual by charging the jury on permissible inferences regarding “being under the influence of alcohol” taken from the criminal laws.

G. Joint and Several Liability
Joint and several liability continues to exist in South Carolina, but only in limited circumstances. One injured by the wrongful act of two or more joint tortfeasors may elect to sue each tortfeasor separately or join them as defendants in a single action.

As to causes of action arising on or after July 1, 2005, where indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability may not be applied to a defendant who is found to be less than fifty percent at fault. The defendant found to be less than fifty percent at fault is only liable for the portion of damages attributed to him.

Joint and several liability continues to apply to any defendant whose conduct is fifty percent or more of the combined fault of (1) all defendants, and (2) the plaintiff. Additionally, joint and several liability applies to any defendant whose conduct is “willful, wanton, reckless, grossly negligent, or intentional, or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale or possession of drugs.”

H. Wrongful Death and/or Survival Actions
Wrongful death and survival are separate statutorily created causes of action. To recover damages in a wrongful death action, the plaintiff must show that the negligence
of the defendant was the proximate cause of the death. The executor or administrator may bring an action for wrongful death for the benefit of the spouse and children; or parents if there are no spouse or children; or the heirs at law if there are no spouse, children or parents. In an action for wrongful death of an illegitimate child or the mother of an illegitimate child, the beneficiaries have the same rights as if the illegitimate child had been born in wedlock.

Personal injury actions survive to and against the personal representative of a deceased person. Generally, if the deceased person could have litigated the cause of action during his/her lifetime, the cause of action survives. Three exceptions are actions for malicious prosecution, libel and slander, and fraud and deceit. Survival actions are for the benefit of the decedent’s estate, different from wrongful death actions brought for the statutory beneficiaries.

I. Vicarious Liability

“A master is liable for and is charged with knowledge of the acts and conducts of his servants operating within the scope of their employment. An act is within the scope of a servant’s employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master’s business. A master or employer will not be responsible for the acts of its employees where the employee is not in the execution of the employer’s business, but rather is engaged in the servant’s own private business.”

Any doubt as to whether the servant was acting within the scope of his authority must be resolved against the master, at least to the extent of requiring that the question be submitted to a jury.

To analyze whether there is a master-servant relationship, the master’s right to control the servant’s work and manner in which that work is done must be examined. The principal factors indicating the right to control are: 
(1) direct evidence of the right to or exercise of control; 
(2) the method of payment; 
(3) the furnishing of equipment; and 
(4) the right to fire the servant.

In dealing with intentional or malicious acts of a servant, a master is “liable to third-parties for the fraud, deceit, concealment, misrepresentation, negligence and other malfeasance of an agent acting within the scope of his employment, even though the [master] did not authorize, participate in or know of such misconduct, and even if the [master] disapproved of or forbade the acts complained of.”

A master may still be liable for acts committed by an agent or employee beyond the scope of his or her employment if the master ratifies these acts. The three elements used to show ratification are: 
(1) acceptance by the [master] of the benefits of the agent’s acts; 
(2) full knowledge of the facts; and 
(3) circumstances or an affirmative election indicating an intention to adopt the unauthorized act.”
If a third party so desires, the master and the servant may be sued jointly or individually, “even though the master’s liability rests on principles of respondeat superior.” “However, if the servant is found not to be negligent, no verdict can be obtained against the master.”

J. Exclusivity of Workers’ Compensation
If an employee and his employer have accepted the provisions of the Workers Compensation Act for coverage of a personal injury or death by accident, that employee is excluded from all other rights and remedies at common law or otherwise on account of his injury, loss of service or death. South Carolina statutory law also provides that automobile insurance policies need not cover liability under the workers’ compensation law nor liability for bodily injury to an insured’s employee. S.C. Code Ann. § 38-77-220 “allows an … automobile insurance carrier to offset workers’ compensation benefits received by an employee. The offset shall be applied against the total of damages sustained once the employee has been fully compensated for the injuries.”

Damages
A. Statutory Caps on Damages
South Carolina law provides for a noneconomic damages limit in medical malpractice claims and actions brought against a charitable organization. South Carolina law also caps damages in actions against the State of South Carolina, its agencies, political subdivisions, or any other of its governmental entities. Lastly, South Carolina recently implemented a statutory cap where punitive damages awards may not exceed the greater of three times the amount of compensatory damages or $500,000, subject to certain exceptions.

B. Compensatory Damages for Bodily Injury
A plaintiff can generally recover for the following injuries resulting from the defendant’s wrongful act:

1. Lost time or income and impairment of the ability to work;
2. Out of pocket expenses and past and future medical work;
3. Physical pain and suffering and disfigurement;
4. Loss of family services and consortium;
5. Loss of enjoyment of life, deprivation of normal life expectancy, and alteration of lifestyle;
6. Mental distress, mental anguish, psychological trauma, and embarrassment and humiliation; and
7. Any future damage resulting from injuries.

C. Collateral Source
The collateral source rule is recognized in South Carolina. Damage awards will not be reduced by the amount the plaintiff has received as compensation for his injuries from a wholly independent source such as health insurance, Medicare, Medicaid or workers’ compensation. Likewise, evidence of such payments is inadmissible at trial.
D. Pre-Judgment/Post judgment Interest
S.C. Code Ann. § 34-31-20 states:

(A) In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths (8.75%) percent per annum.

(B) A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. [For 2013, this rate is 7.25%]

As a general rule, the plaintiff may collect interest, calculated from the time a debt is due, a contract is breached, or a tort is committed on liquidated damages claims or on property or services that can be valued. However, courts generally avoid allowing interest on unliquidated claims or claims based on subjective valuations. Post-judgment interest is in the nature of a penalty. If, after appeal, a further determination by the trial court is necessary to fix the amount of the award, the award will not draw interest until the determination is made.

E. Damages for Emotional Distress
Whether the plaintiff has suffered bodily injury as a result of the defendant’s action is generally dispositive in determining if the plaintiff can recover for negligent infliction of emotional distress. If physical injury accompanies emotional injury, the plaintiff is entitled to recover for any mental anguish that is the natural and probable causes of the injury. The plaintiff can also recover for any psychological trauma that resulted from the physical injury.

South Carolina allows for recovery of emotional trauma associated with injury to another under limited circumstances. The elements of such a cause of action are (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

F. Wrongful Death and/or Survival Action Damages
The following are damages recoverable in a wrongful death action: (1) Pecuniary loss; (2) mental shock and suffering; (3) wounded feelings; (4) grief and sorrow; (5) loss of companionship; and (6) deprivation of the use and comfort of the intestate’s society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries, in addition to the loss of his ability to earn money for the support, maintenance, care and protection of his wife and children, and for the education and training of the latter.
Pecuniary loss is calculated by considering “(1) the prospective earnings of the decedent subsequent to death, (2) calculated on the basis of his [or her] work expectancy (can refer to mortality tables in South Carolina Code), and (3) the extent to which his statutory beneficiaries might logically have expected to share in such prospective earnings.”

South Carolina’s rule differs from the federal courts’ rule on whether the life expectancies of beneficiaries are relevant in wrongful death actions. South Carolina courts have refused to let a defendant introduce evidence of the beneficiaries’ life expectancies when determining damages for wrongful death actions. The recovery is only based on the deceased’s statutory life expectancy.

Appropriate damages in survival actions include those for medical, surgical and hospital bills, conscious pain suffering, and mental distress of the deceased. Funeral expenses are recoverable under either a wrongful death or survival action, but not both.

G. Punitive Damages
Statutes codified at S.C. Code Ann. §15-32-510, et seq., effective January 1, 2012, govern the procedure and review of punitive damages awards. A plaintiff must pray for punitive damages in the Complaint in an unspecified amount. In jury trials, any defendant against whom punitive damages are sought may request a bifurcated trial. In the first stage, the jury shall determine liability and the amount of compensatory or nominal damages, and evidence relevant only to punitive damages is not admissible. Punitive damages may be considered only if the jury awarded compensatory or nominal damages. Punitive damages may only be awarded if the plaintiff proves by clear and convincing evidence that the defendant’s conduct harming the plaintiff was willful, wanton or reckless.

In the second stage of the bifurcated trial, the jury shall determine liability for punitive damages and may consider all relevant evidence to include the following: (1) the defendant’s degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff’s own conduct contributed to the harm; (4) the duration of the conduct, the defendant’s awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant’s ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff. Prior caselaw interprets the “ability to pay” as a defendant’s net worth and prohibits introduction of evidence of gross revenues or statistical extrapolations of the defendant’s net worth.
If there are multiple defendants, any punitive damages award must be specific to each defendant and each defendant is only liable for the amount awarded against that defendant. If the jury awards punitive damages, the trial court reviews de novo the jury’s decision, including the eleven factors above, to ensure the award is not excessive or the result of passion or prejudice.

An award of punitive damages generally may not exceed the greater of three times the amount of compensatory damages or $500,000. However, if the jury awards punitives greater than this cap, the cap rises to the greater of four times the amount of compensatory damages or $2,000,000, if the trial court determines: (1) the wrongful conduct was motivated by unreasonable financial gain and the unreasonably dangerous conduct, together with the high likelihood of resulting injury, was known to or approved by the person responsible for making policy decisions on the defendant’s behalf; or (2) the defendant’s conduct could subject the defendant to conviction of a felony and that course of conduct proximately caused the plaintiff’s damages. Furthermore, there are no caps if the trial court determines: (1) the defendant had an intent to, and did in fact, harm the plaintiff; (2) the defendant has pled guilty or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that conduct proximately caused the plaintiff’s damages; or (3) the defendant acted or failed to act because of substantially impaired judgment while under the influence of alcohol or drugs other than those lawfully prescribed.

The amount of these caps are adjusted annually based on the Consumer Price Index changes compared to the previous year.

It is not against public policy in South Carolina for an insurance policy to cover an award of punitive damages. South Carolina statutes define damages, in the context of insurance policy coverage, as “both actual and punitive damages.” However, this provision may not prevent application of an exclusion above the mandatory minimum liability limits.

H. Diminution in Value of Damaged Vehicle

Under South Carolina law, a plaintiff may recover the fair market value of damaged personal property as of the date of loss. As a general rule, “the measure of damages for injury to personal property is the difference between the market value of the property immediately before and its value immediately after the injury.” If a market does not exist for such property, then the cost of repairs or the replacement value of the property may be used as the measure of damages. Any fanciful or sentimental value attributed by Plaintiff must be excluded.

A plaintiff may also seek recovery for depreciation of value of property that is damaged. However, the plaintiff bears the burden of proving the amount of depreciation through admissible testimony or evidence. The existence or amount of damages cannot be left to conjecture, guess or speculation. However, proof of amount of loss with absolute or mathematical certainty is not required. Rather, damages must be susceptible to ascertainment with a reasonable degree of certainty.
I. Loss of Use of Motor Vehicle
Under this law, a plaintiff should not be allowed to recover for loss of use damages if the property at issue is totally destroyed. Rather, the proper measure of damages in that case would be the fair market value at the time of loss. On the other hand, if the property is damaged and capable of being repaired, a plaintiff may recover damages for both the cost of repair and the loss of use for the time it takes to repair the property.

The plaintiff bears the burden of presenting adequate proof of damages for loss of use. Likewise, the plaintiff has a duty to use reasonable efforts to mitigate or minimize his damages for loss of use, and failure to do so may prevent recovery. The burden of proving a lack of due diligence in minimizing the damages is upon the defendant. Additionally, if the defendant believes the amount of time alleged by a plaintiff for loss of use is unreasonable, the defendant has the burden of proving that the repairs could have been completed sooner.

There is no requirement that one whose property is damaged by the negligence of another must have it repaired to entitle him to recover his damages. A “competent estimate of the cost of repairs is relevant upon the issue of the amount of damages” if the property is not actually repaired.

Evidentiary Issues
A. Preventability Determination
South Carolina’s appellate courts have not addressed the admissibility of a trucking company’s determination of whether an accident was preventable.

B. Traffic Citation from Accident
Evidence of a conviction for any violation of the Uniform Act Regulating Traffic on Highways is inadmissible in any court in any civil action. A guilty plea to a violation of the traffic laws, however, may be used as an admission subject to explanation or rebuttal or a prior inconsistent statement for the purposes of impeaching credibility.

C. Failure to Wear a Seat Belt
In South Carolina, non-use of a seat belt is not evidence of negligence, contributory negligence, nor is it negligence per se. It is simply “not admissible as evidence in a civil action.”

D. Failure of Motorcyclist to Wear a Helmet
Under South Carolina law, a motorcyclist over 21 years old has no statutory duty to wear a helmet. Thus, the failure of an over 21-year-old to wear a helmet does not constitute negligence.

E. Evidence of Alcohol or Drug Intoxication
It is against the law in South Carolina to drive a motor vehicle under the influence of alcohol or drugs. Violation of this statute is admissible into evidence in a civil action as
negligence per se and is prima facie evidence of gross negligence, potentially
warranting punitive damages. However, expert testimony likely is required to prove
impairment that proximately caused the accident.

F. Testimony of Investigating Police Officer
A law enforcement officer may be permitted to offer expert testimony on particular
subjects related to his/her expertise provided he/she meets the evidentiary standard for
expert testimony.

G. Expert Testimony
Rules 701 through 705 of the South Carolina Rules of Evidence ("SCRE"), and recent
opinions interpreting them, govern the procedure for, and admissibility of, expert
testimony. Although appellate opinions hold that South Carolina does not follow the
federal Daubert standard, any differences are insignificant.

The trial court judge serves as a gatekeeper to determine whether expert testimony is
admissible. Specifically, the trial judge makes three preliminary findings before
admitting expert testimony into evidence. First, the trial judge must determine that the
subject matter is beyond the ordinary knowledge of the jury, thus requiring explanation
from an expert. Second, the trial judge must find the proffered expert possesses the
requisite knowledge and skill to qualify as an expert in the particular subject matter.
Finally, the trial court must determine whether the substance of the expert’s testimony is
reliable. If all three requirements are met, the trial court may admit the evidence and
the jury may assign it such weight as the jury deems appropriate.

H. Collateral Source
The collateral source rule is recognized in South Carolina. Damage awards will not be
reduced by the amount the plaintiff has received as compensation for his injuries from a
wholly independent source such as insurance, Medicare, Medicaid or workers’
compensation. Likewise, evidence of such payments is inadmissible at trial.

I. Recorded Statements
The admissibility of a written statement in South Carolina state court is subject to S.C.
Code § 19-1-100 and the South Carolina Rules of Evidence. A written statement may
be considered hearsay under the South Carolina Rules of Evidence. However, there
are instances where the written statement may not constitute hearsay under Rule
801(d), or an exception to hearsay under Rules 803 or 804, SCRE.

S.C. Code § 19-1-100 states “[n]o statement taken from and signed by a witness or
litigant after July 1, 1966 shall be used in any civil judicial proceeding for the purpose of
contradicting, impeaching or attacking the credibility of such a witness or litigant, unless
such party shall have been furnished a copy of said statement at the time of its signing.”
Therefore, under this statute, in order for the contents of a written statement to be
admissible through impeachment at trial, it must be signed and provided to the party at
the time the statement was given. This requirement is more stringent than those for
admissibility under the Rules of Evidence.
J. Prior Convictions
Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404, SCRE.

Rule 609, SCRE, makes evidence of a crime punishable by more than one year imprisonment admissible for purposes of attacking a witness’s credibility so long as less than ten years have passed since the conviction or release, whichever is later. To be admissible, such evidence must be more probative than prejudicial as required by Rule 403, SCRE. However, if the conviction was for a crime involving dishonesty or false statement, the conviction is admissible notwithstanding the length of the possible punishment for the crime or its prejudicial nature. For the purposes of Rule 609, SCRE, a conviction includes a conviction resulting from a trial or any type of plea, including a plea of nolo contendere or a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

K. Driving History
The S.C. Supreme Court issued several recent opinions addressing the admissibility of other accidents, transactions or occurrences in the products liability setting, but the logic should apply to evidence of a driver’s other violations or accidents. Evidence of other accidents or violations may be admissible if a special relation exists between them tending to prove or disprove some fact in dispute in the pending lawsuit. A plaintiff is required to demonstrate that the other accidents/violations are substantially similar to the accident at issue before the trial court can admit such evidence.

L. Fatigue
South Carolina does not have an appellate opinion addressing this topic. However, as stated above, a plaintiff is required to establish substantial similarity between prior hours of service violations and an issue in the pending lawsuit. If the plaintiff proves substantial similarity, the issue become analogous to evidence of alcohol or drug use where the plaintiff must prove, presumably through expert testimony, impairment that proximately caused the accident.

M. Spoliation
A party in control of the evidence has a duty to preserve that evidence during litigation and at any time before the litigation when such party should reasonably know the evidence may be relevant in anticipated litigation. When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. In the event of spoliation, the court may dismiss the case, exclude the evidence, or reflect its reprimand in a negative inference instruction to the jury. South Carolina does not recognize an independent tort to redress alleged spoliation.

Settlement
A. Offer of Judgment
Rule 68, SCRCP, and S.C. Code Ann. § 15-35-400 allow any party, “at any time more than twenty days before the actual trial date,” to file an offer of judgment “offering to take judgment in the offeror’s favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer.” If within twenty days after service of the offer, or at least ten days before trial, the adverse party serves written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service thereof, and thereupon, the clerk shall enter judgment on the stipulation. An offer not accepted within the proper time period shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.

“If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer,” he may recover costs from the time of the offer until judgment. Also, if the offeror was the plaintiff, eight percent interest will be added to the amount of the award or verdict, computed from the date of the offer. If the offeror was the defendant, the judgment or award will be reduced by eight percent, computed on the amount of the verdict from the date of the offer.

Any offer of judgment may be withdrawn prior to its acceptance or prior to the date which it would be considered rejected by serving notice upon the offeree in accordance with the Rules of Civil Procedure. A party may make more than one offer, and if so, the subsequent offer supersedes any previous offer and terminates all rights that may have been applicable to the previous offer.

B. Liens
Beyond the statutory Medicare “Super Lien” under federal law, South Carolina statutes recognize liens for workers’ compensation payments and on judgments.

C. Minor Settlement
A minor settlement cannot be enforced in South Carolina unless proper procedures are followed. All minor settlements must be settled by a conservator, guardian or guardian ad litem for the child. A minor is a child under the age of 18 who is not married or emancipated as decreed by the family court. The net amount from the settlement with a minor dictates who has authority to approve the settlement and whether a conservator is necessary to carry out the settlement. The net amount is “the net or actual amount accruing to…the minor or incapacitated person as result of the settlement.” If the net to the minor is $2,500 or less, the parent or guardian may effect the settlement without court approval and without appointment of a conservator. If the net is between $2,500 and $10,000, court approval is necessary, but a conservator is not required. If the net is between $10,000 and $25,000, court approval is necessary and it is best to have a conservator appointed although there is some indication the law will permit a case to be settled without a conservator if the net is below $25,000. If the net to the minor is more than $25,000, a circuit court must approve the settlement and a conservator must be appointed. Lastly, although South Carolina law does indicate under certain circumstances the Probate Court has jurisdiction to approve minor
settlements, the Circuit Court always has jurisdiction and is the most conservative approach.

D. Negotiating Directly With Attorneys
Claims professionals may negotiate directly with attorneys.

E. Confidentiality Agreements
The South Carolina Rules of Civil Procedure outline the factors which a court must consider when determining whether settlement documents filed with the court should be filed under seal when requested by a party. Rule 41.1, SCRCP states that “[i]n determining whether to approve the filing of the settlement documents, in whole or part, under seal, the court shall consider: (1) the public or professional significance of the lawsuit; (2) the perceived harm to the parties from disclosure; (3) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and, (4) why public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.” However, it is important to note that Rule 41.1(a) specifically states that it does not cover private settlement agreements and shall not be interpreted as approving confidentiality provisions included in private settlement agreements. Assuming the parties do not seek to file the settlement agreement with the court, the enforceability of the confidentiality provision, in whole or part, is left to the discretion of the Court. While it is not completely clear under South Carolina law, the Court would most likely treat such a provision of a settlement agreement as a restrictive covenant and therefore look to the reasonableness of the terms of the confidential agreement in determining whether or not it is enforceable.

F. Releases
Typical agreements in South Carolina include general releases, indemnifying releases, covenants not to sue and covenants not to execute. There is no requirement that release agreements be notarized. A release of one tortfeasor does not release others unless the parties so intended or the plaintiff received full compensation amounting to satisfaction.

G. Voidable Releases
There is no particular law in South Carolina allowing an unrepresented party to void a release unilaterally. General law governing formation and enforcement of contracts would apply to that scenario.

Transportation Law
A. State DOT Regulatory Requirements
South Carolina does not have any regulatory requirements in excess of Federal Motor Carrier Safety Regulations.

B. State Speed Limits
Generally, interstate travel in South Carolina is governed by a speed limit of 70 miles per hour. This speed limit applies to most rural stretches of the interstates of the state;
however, the speed limit generally reduces to 65, 60, or 55 miles per hour in more populated areas, including major cities.

Rural highways in South Carolina are generally governed by a speed limit of 55 miles per hour, although some four-lane rural highways allow for speeds up to 60 miles per hour. Speed limits in and around towns and other populated areas generally reduce to 35 or 45 miles per hour.

C. Overview of State CDL Requirements
South Carolina’s version of the CDL Manual generally follows the uniform manual.

Insurance Issues
A. State Minimum Limits of Financial Responsibility
$25,000 because of bodily injury to one person in any one accident, $50,000 because of bodily injury to two or more persons in any one accident, and $25,000 because of injury to or destruction of property of others in any one accident.

B. Uninsured Motorist Coverage
1. UNINSURED MOTORISTS LAW
Every insurance policy must contain an uninsured motorist endorsement. The uninsured motorist statutes provide a cause of action to the named insured against the uninsured or unknown, “John Doe”, motorist whereby the insured’s automobile insurance carrier provides coverage for bodily injury damages to the insured.

2. UNDERINSURED MOTORISTS LAW
Automobile insurance carriers must offer, “at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.”

Coverages may be stacked for “Class I” insureds defined as a named insured or resident relative with a vehicle involved in the accident. However, there are no Class I insureds under a corporate policy.

C. No Fault Insurance
South Carolina does not have No Fault Insurance.

D. Disclosure of Limits and Layers of Coverage
Upon request of a claimant’s attorney, an insurer must provide within thirty days a statement under oath identifying the name of the insurer, the name of each insured and the limits of coverage. Alternatively, the insurer may produce a copy of the declarations page for each policy. This requirement does not extend to disclosure of limits for fleet policies, umbrella coverages or excess coverages. The claimant’s attorney is required to keep this information confidential and cannot disclose it to any outside party.
If a lawsuit is filed, South Carolina practice permits discovery of all available insurance coverages.

E. Unfair Claims Practices
The South Carolina Unfair Trade Practices Act declares unlawful the employment of unfair or deceptive acts or practices in the conduct of any trade or commerce. The terms “trade” and “commerce” include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situated, and any trade or commerce directly or indirectly affecting the people of South Carolina.

In order to recover under the Act, a plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act. Whether an act or practice is unfair or deceptive within the meaning of the Act depends upon the surrounding facts and the impact of the transaction on the marketplace. It need not be based on a binding contract. Where a contract exists, a mere breach of the contract is not conduct which violates the Act.

Additionally, unfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts or practices have the potential for repetition. The potential for repetition may be shown in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts.

“If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of [the Act], the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney’s fees and costs.”

F. Bad Faith Claims
1. FIRST PARTY
The elements of an insurance bad faith first party action are “(1) a mutually binding contract, (2) the insurer’s refusal to pay benefits under the contract, (3) the refusal resulted from the insurer’s bad faith or unreasonable action in the breach of an implied covenant of good faith and fair dealing arising on the contract, and (4) damage to the insured.”

“[The] South Carolina Supreme Court and the South Carolina Legislature have repeatedly evinced a liberal attitude in the protection and promotion of the rights of individuals against insurance companies.” South Carolina is among the first in the nation to allow the recovery of punitive damages arising from the breach of an
insurance contract and is the only state which permits punitive damages for conduct which does not give rise to an independent tort claim.

To recover punitive damages in a first party bad faith breach of contract claim against an insurer, a plaintiff must prove (1) a breach of contract, (2) fraudulent intent by proving a fraudulent act, and (3) a fraudulent act accompanying the breach.

2. THIRD PARTY
Although the S.C. Supreme Court has recognized a cause of action for an insurer’s bad faith refusal to pay first party benefits (i.e. the insured), the court has repeatedly denied actions for bad faith refusal to pay claims to third parties who are not named insureds. The Court has recognized a limited exception to this rule for a widow who was held to be a derivative policyholder of her spouse’s health policy under the necessaries doctrine. This exception is inapplicable to personal injury or transportation cases.

G. Coverage – Duty of Insured
The insured has a duty to read his insurance contract or have it read to him so as to avail himself of the opportunity and means to protect his interests. The insured has duties as outlined in the insurance contract itself, one of which typically is the duty to cooperate with the insurer in making any fair and legitimate defenses to the actions pending against the insured. An insured also has the duty to complete truthfully an application for insurance, but an insurer cannot rely upon the falsity of an application when the insurer or an agent thereof inserted answers on behalf of the insured-applicant.

H. Fellow Employee Exclusions
South Carolina adheres to the rule that an employee exclusion clause is a valid limitation on coverage in an automobile policy. South Carolina courts have generally recognized that the "cross-employee exclusion" bars recovery against the insurer where the circumstances fall within the language of the exclusionary provision. Since the "cross-employee exclusion," by its terms, applies only where the injuries were sustained by the employee "in the course of such employment," South Carolina courts have recognized that the phrase "in the course of such employment" as used in the exclusion provision should receive the same interpretation as the one given to similar phrases under the workers' compensation statutes. It goes without saying that an employee exclusion clause will only apply to employees of an insured; thus, an employee exclusion clause will not apply to an independent contractor.