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IOWA MOTOR TRUCK ASSOCIATION
Summer 2010

Health Care Reform

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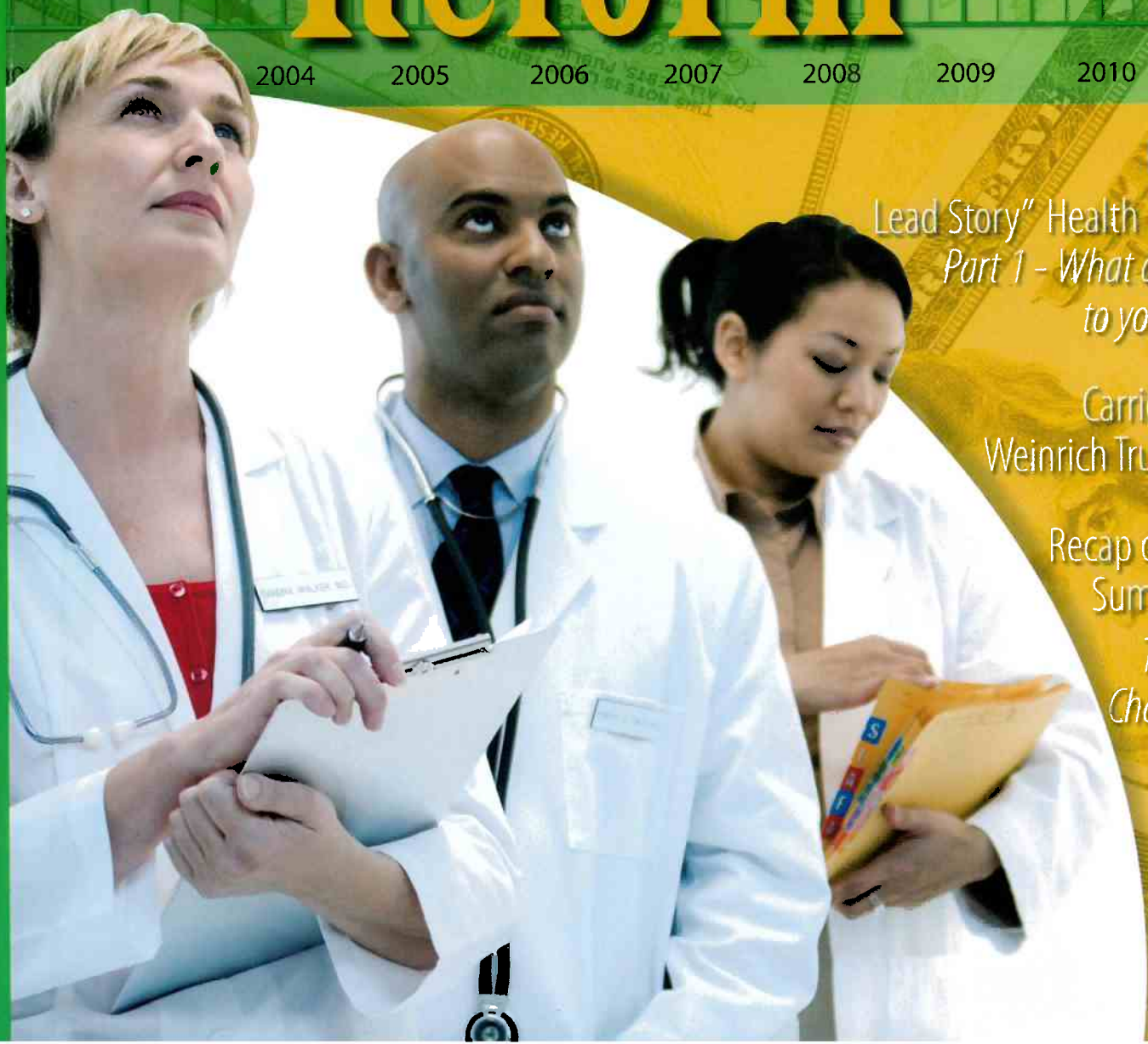


INSIDE:

Legal Update

Jason Palmer is a shareholder at Bradshaw, Fowler, Proctor, & Fairgrave, P.C. where he maintains a general practice, including, but not limited to, trucking and transportation law. Jason is a member of the Transportation Law Association (TLA) and the Trucking Industry Defense Association (TIDA). Jason represents national motor carriers, Iowa transportation companies, and insurers with regard to trucking accidents, cargo claims, and other general transportation matters.

Jason Palmer
Bradshaw, Fowler, Proctor, & Fairgrave, P.C.

Motor carriers and shippers have historically argued over the legal responsibility regarding damaged cargo or personal injuries caused by cargo. The shippers have primarily won this battle because they have had the ability to demand indemnification and hold harmless clauses in shipper/carrier contracts in which the motor carrier would have to pay any claims or damages arising from a shipper's negligence. However, the advent of anti-indemnification statutes in several states have made such provisions in contracts void and unenforceable. Thankfully, this is now the law in Iowa.

Motor carriers and shippers have historically argued over the legal responsibility regarding damaged cargo or personal injuries caused by cargo.

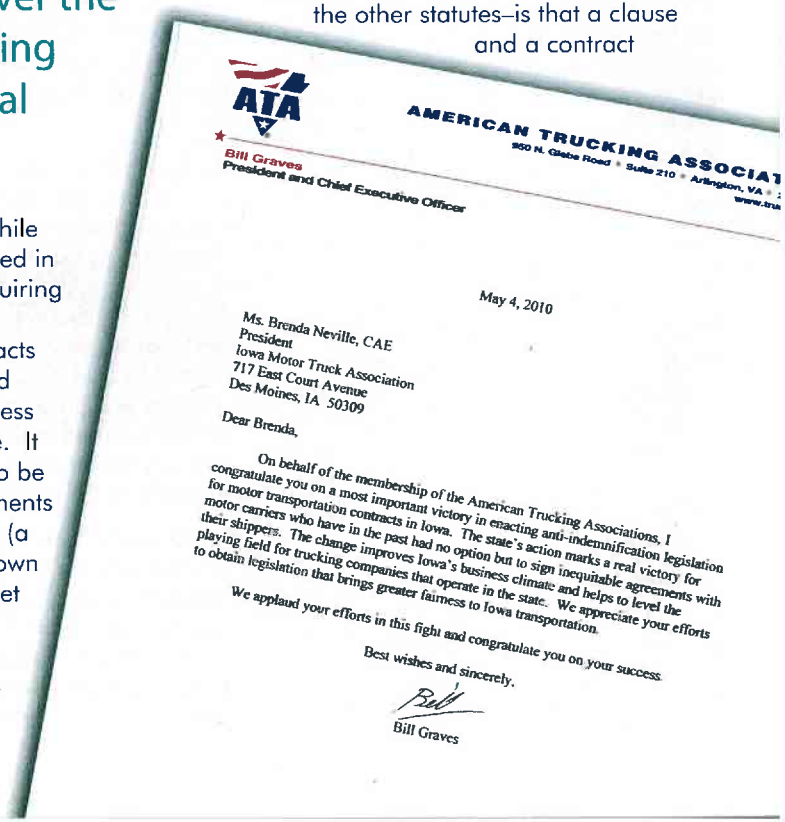
On April 23, 2010, Governor, Chet J. Culver, signed Senate File 2220, sponsored by the Iowa Motor Truck Association, declaring certain indemnity provisions to be unlawful and void in motor carrier contracts. This new statute, found at Iowa Code section 325B.1 reads, in relevant part, as follows:

Notwithstanding any provision of law to the contrary, a motor carrier transportation contract, whether expressed or implied, shall not contain a provision, clause, covenant, or agreement that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, a promisee from or against any liability for injury, death, loss, or damage resulting from the negligence or intentional acts or admissions of that promisee, or any agents, employees, servants, or independent contractors who are directly responsible to that promisee. This prohibition applies to any provisions or agreements collateral to or effecting a motor carrier transportation contract. Any such provisions, clauses, covenants, or agreements are void and unenforceable.

This article briefly discusses the ramifications of this new statute and how it effects motor carriers in Iowa and elsewhere.

As a general rule, while historically not favored in Iowa, a contract requiring a party to indemnify another for its own acts of negligence is valid and enforceable unless prohibited by statute. It has been said that to be enforceable, agreements to indemnify a party (a shipper) against its own negligence must meet the following three conditions: (1) the parties must express their intent to exculpate in unequivocally clear language; (2) the agreement must result from an arm's length transaction between the parties of equal bargaining power; and (3) the exculpation must not violate public policy. Now, if Iowa law is the law of the contract, because of Code section 325B.1, motor carriers will no longer be presented with the Hobson's choice of either refusing to sign the agreement—and ultimately lose the business—or agreeing to the onerous provision that compels it to pay damages for the shipper's own negligence.

Numerous other states have enacted anti-indemnity statutes and most of the statutes clearly void that portion of a transportation contract in which the motor carrier must indemnify the shipper for the losses caused by the negligence of the shipper. These statutes have received little attention to date from the court system. The operative part of the Iowa statute–and most of the other statutes–is that a clause and a contract



ATA
AMERICAN TRUCKING ASSOCIA
950 N. Glebe Road • Suite 210 • Arlington, VA
Bill Graves
President and Chief Executive Officer

May 4, 2010

Ms. Brenda Neville, CAE
President
Iowa Motor Truck Association
717 East Court Avenue
Des Moines, IA 50309

Dear Brenda,

On behalf of the membership of the American Trucking Associations, I congratulate you on a most important victory in enacting anti-indemnification legislation for motor transportation contracts in Iowa. The state's action marks a real victory for motor carriers who have in the past had no option but to sign inequitable agreements with their shippers. The change improves Iowa's business climate and helps to level the playing field for trucking companies that operate in the state. We appreciate your efforts to obtain legislation that brings greater fairness to Iowa transportation.

We applaud your efforts in this fight and congratulate you on your success.

Best wishes and sincerely,

Bill

Bill Graves

effecting or collateral to a motor carrier agreement, that purports to, "or has the effect of," indemnifying a promisee against the promisee's own negligence is void as against public policy and unenforceable. The Iowa statute even uses the broad words "or has the effect of" indicating that it is the effect, namely, indemnifying the indemnitee for its own negligence that is prohibited. Therefore, a contract provision requiring the motor carrier to pay the cost of having its own insurer indemnify the shipper for its own negligence would have "the effect of" indemnifying the indemnitee for the indemnitee's own negligence and the provision would fall within the prohibition of the statute.

There are some important factors to consider as it relates to Code section 325B.1. First, the statute only applies to motor-carrier contracts entered into, extended, or renewed on or after July 1, 2010. Therefore, any motor carrier transportation contracts executed before this date that has an indemnification provision is still valid and can be upheld. Because of this fact, a motor carrier should request that the contract be amended to strike the indemnification provision, or the agreement should be renewed or extended in some manner so that the provision would be void under the new statute. Second, Code section 325B.1 does not apply to the intermodal interchange and facilities access agreement which commonly refers to the use of more than one method of transport during a single shipment and generally in containerized shipments, over both land and sea. Third, it is important to note that this statute only applies to contracts that would be governed by the law of the state of Iowa. It is therefore critical to examine the contract to determine if there is a "choice of law" provision in it so that it is known whether the indemnification provision will be void. Thus, if the contract is governed by some other state, either by an express provision or because of other factors, this statute will not control. Further, as to future contracts, if one party to the contract is not from Iowa, it is important to request that a "choice of law" provision be inserted into the contract and that the law of Iowa govern the terms of the contract. If for whatever reason that is not possible, the motor carrier should make every effort to have the law of a state that has an anti-indemnification statute control the terms of the contract.

Code section 325B.1 is a significant step in leveling the playing field between a shipper and a motor carrier. After July 1, 2010, a shipper will not be able to, despite its own negligence, point to a provision of a contract and demand that the motor carrier, or the motor carrier's insurer, pay for the defense and damages arising from the shipper's negligent actions. This is not only fair and equitable, but will also serve to decrease motor carriers' insurance and operating costs because they will now only be monetarily responsible for their own actions.