SOUTH CAROLINA
CIVIL JUSTICE COALITION

2010 TORT REFORM

South Carolina improved the state's legal climate by passing tort reform in 2005. As a result, Hampton County was removed as a Judicial Hellhole by the American Tort Reform Association. Although a major step forward, the 2005 tort reform legislation only dealt with four business related issues: venue, joint and several liability, statute of repose, and post-judgment interest rates. Many major issues were not resolved and several new ones were created by judicial decisions since 2005.

South Carolina continues to receive high rankings from the US Chamber of Commerce for its unfair lawsuit climate. Currently, South Carolina is ranked 43rd for its legal environment. Also, punitive damages reform remains a top issue with the state and national business community especially in light of the recent *Mitchell v. Fortis* decision.

In this case, the plaintiff was awarded $186,000 in compensatory (actual) damages. Plaintiff was also awarded $15 million in punitive damages, which reflects an 81 to 1 ratio between punitive and compensatory damages. On appeal, the South Carolina Supreme Court considered the appropriate ratio between punitive and compensatory damages that should be applied. The Court reduced the punitive damage award to $10 million. The Court bent over backwards to award $10 million in punitive damages by (a) using the highest possible single-digit ratio that would still comport with due process requirements, and (b) by using the "potential harm" to the plaintiff instead of the actual damages to justify the award.

Speaker Bobby Harrell and Senator Larry Martin laid the groundwork for tort reform last year by introducing House Bill 3489 and Senate Bill 350. Several public hearings were held in Senate Judiciary Subcommittee in 2009 on tort reform.

South Carolina's business community's position is united in support of these bills which seek to restore common sense to the courtroom.

S.350 and H. 3489 are comprehensive bills and have 11 specific changes that must be passed.

- **Punitive Damages Standards.**
  The punitive damages are limited to three times compensatory damages or $250,000 whichever is greater. For small businesses the damages are limited to $250,000 or 3 times compensatory damages whichever is less.

- **Full and Fair Non Economic Damages.**
  These bills provide a reasonable limit of $350,000 award per entity, not to exceed $1.05 Million. This is modeled after the 2005 Medical Malpractice Act.

- **Admissibility in Civil Actions of Nonuse of Seat Belts.**
  As illogical as it may seem, juries in South Carolina cannot be told if individuals involved in accidents were wearing seatbelts. Although the law requires they be worn, South Carolina forbids juries to be told if they were worn. These bills make this evidence admissible.

- **Statute of Repose.**
  After lowering the statute of repose from 13 years to eight years in 2005, a technical amendment in these bills closes a loophole found by trial attorneys who could claim a possible building code violation is gross negligence or recklessness per se and thus eliminates the limitation set by the statute of repose.

- **Appeal Bond Waiver.**
  Currently appeal bonds may be set far beyond the means of a defendant; thus discouraging some appeals. These bills limit an appellant surety bond to $25 Million and for small businesses to $1 Million.

- **Class Action Improvement.**
  Class action lawsuits are common now. With much at stake in these lawsuits, the business community is seeking immediate appellant review of the certification of classes.

- **Private Attorney Retention Sunshine.**
  Attention has come to numerous states' Attorneys General over the selection of private attorneys to represent state interests. These bills provide for accountability and standards for hiring outside legal counsel by the State of South Carolina.

- **Piercing the Corporate Veil.**
  This provision makes it clear that a judgment against a corporation is a prerequisite to bring a claim to seek personal liability against individual officers or directors of the corporation. Incorporating this section into the bills is a result of a recent SC Supreme Court decision.

- **Regulatory Compliance Congruity with Liability.**
  Perhaps stating the obvious, these bills establish protection to products or services that are in compliance with regulatory standards or approved by a government agency. The manufacturer is not subject to claims provided the product or service was in line with pertinent government regulations.

- **Consumer Protection.**
  This section provides that any person seeking to recover damages in an unfair trade practice claim must prove that the alleged unfair practice or act caused him to enter into the transaction that resulted in an actual out-of-pocket loss.

- **Economic Loss Rule.**
  This section is also a result of a SC Supreme Court decision. The court decision created a legal duty for manufacturers even when a product does not cause any bodily harm. These bills seek to reinstate the longstanding economic loss rule.