Summary of “The South Carolina Fairness in Civil Justice Act of 2011” (Tort Reform)

1. Punitive Damages

Process

The plaintiff must specifically ask for punitive damages in the complaint. The defendant may request in any jury trial that the trial be bifurcated. In a bifurcated proceeding, no evidence pertinent only to the issue of punitive damages can be introduced in the first or compensatory damages stage of the trial. Punitive damages may only be considered if the plaintiff is awarded compensatory (including nominal) damages.

In order to receive a punitive damages award, the plaintiff must prove by clear and convincing evidence that the harm suffered was the result of the defendant’s willful, wanton or reckless conduct. The act provides a non-exclusive list of 11 factors that may be considered by a jury in determining whether to impose punitive damages and the amount of any punitive damage award. The jury cannot be told about the existence of any cap on punitive damages. An award of punitive damages against multiple defendants must be specific as to each defendant and each defendant is only liable for the amount of punitive damages awarded against that defendant.

If punitive damages are awarded, the trial court must first review the jury’s decision to determine if the award is excessive or the result of passion or prejudice and may reduce any award based on its determination. The trial court must also determine whether any punitive damages award exceeds the relevant cap and, if it does, whether an exception to the cap applies. If an award exceeds a cap and no exception applies, then the trial court must reduce the award to the maximum amount allowed under the cap.

Caps on Punitive Damages Awards

Generally, no award of punitive damages may exceed the greater of three times the compensatory damages awarded to the plaintiff or $500,000.

If the trial court determines that either: (1) the defendant’s conduct was motivated primarily by unreasonable financial gain and the unreasonably dangerous nature of the conduct and the high likelihood that injury would result from the conduct was known or approved by the managing agent, director, officer or the person responsible for making policy decisions for the defendant; or, (2) the defendant’s conduct which was the proximate cause of the plaintiff’s damages could subject the defendant to conviction of a felony, then the cap on any punitive damages award is the greater of four times the plaintiff’s compensatory damages or $2 million.
Exceptions to Caps on Punitive Damages Awards

If the trial court determines that: (1) at the time of the injury, the defendant had an intent to harm and did in fact harm the plaintiff; or (2) the defendant has plead guilty to or been convicted of a felony and the course of conduct which is the basis of the felony was the proximate cause of the plaintiff’s damages; or (3) the defendant’s judgment was substantially impaired due to the defendant being under the influence of alcohol or drugs, then no cap on punitive damages shall apply.

2. Civil Actions By Circuit Solicitors

Circuit solicitors must have the written approval of the Attorney General prior to instituting any civil action except for any civil forfeiture proceeding arising from criminal activity or any estreatment of bail bonds.

3. Disclosure of Automobile Insurance

Every automobile insurer shall provide, within 30 days after receiving a written request from any claimant's attorney, under oath, the name of each insured, the name of the insurer, and the limits of coverage with regard to each known policy of non-fleet private passenger insurance issued by it or the insurer may provide a copy of the declaration page of each such policy instead.

The provision does not require disclosure of limits for fleet policy limits, umbrella coverages, or excess coverages. The information received pursuant to this section is confidential and must not be disclosed to any outside party except as required to pursue the claim.

4. Building Code Violations

A violation of a building code is not per se fraud, gross negligence, or recklessness but is admissible as evidence of fraud, negligence, gross negligence, or recklessness.

5. Bond Required for an Appeal

The amount of a bond or surety that a court may require to stay execution of a judgment pending its appeal is limited to the lesser of the amount of the judgment, $25 million for businesses with 50 or more employees and gross revenues exceeding $5 million or $1 million for all other entities and for individuals.
6. **Effective Date**

The effective date of the Act is January 1, 2012, and the restrictions on actions by circuit solicitors do not apply to any action pending on that date.