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Pierce, Hems, Sloan & McLeod, LLC

Mission Statement

It is our goal to provide superior legal services to each client in a professional and efficient manner. Through our trial experience, extensive legal knowledge and association with experts in the field, we are able to provide concise solutions to complex problems.

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What to Do If You Are Involved in an Accident

You are sitting at a red light, stopped behind another car. You are staring in front of you, trying to conjure up an idea for dinner for your family. All of a sudden, BAM! You are hit from behind by another driver who failed to slow down when approaching the stoplight. This type of automobile accident happens frequently on South Carolina roadways. If you are involved in a car accident, the following steps should be taken:

(1) Call the police and report the location of the accident.

(2) Call your insurance company and report the accident.

(3) Take photos of any vehicular damage. Most cell phones are equipped with cameras, and the photos taken can be e-mailed.

(4) Keep the receipts of any work performed on your car as a result of the accident.

(5) If you are injured or sore, seek medical attention.

(6) Call the attorneys at Pierce, Hems, Sloan & McLeod, LLC, to help you get the most money from the at-fault driver's insurance company, or to help you obtain your underinsured or uninsured motorist insurance coverage.

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Breach of Contract Defenses

If you're being sued for breach of contract, it is imperative that you understand how to defend and protect your business and personal interests. There are many valid defenses that can be raised to a claim of breach of a contract. Depending upon the particular facts and circumstances of the contract and the actions of the parties, an attorney can advise you of what makes sense.

The more common defenses to a breach of contract claim are:

- (1) One side was not competent to enter into the contract, either due to age or mental illness;
- (2) One side never provided any form of "consideration;"
- (3) One side was under pressure and duress or other undue influence to sign;

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(Breach of Contract Defenses Continued ...)

- (4) One side engaged in "fraud" to procure the contract;
- (5) One side prevented the other from fulfilling their end of the bargain;
- (6) The original contract was changed with the agreement of all parties;
- (7) There was a mistake of fact or mistake of law prior to signing the contract;
- (8) The contract has an illegal purpose or act;
- (9) Something happened, through no fault of either side, making the duties under the contract impossible to perform;
- (10) The side claiming the breach accepted the performance without claiming a breach had occurred.

The attorneys at Pierce, Hems, Sloan & McLeod, LLC, are experienced and skilled at handling breach of contract

lawsuits. If you need assistance regarding a breach of contract dispute, contact the attorneys at Pierce, Hems, Sloan & McLeod.

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Time Is Not on Your Side: a Brief Synopsis of the Statute of Limitations

We are all familiar with the acronym "S.O.L."—the old adage commonly used in the real world to describe the state of having run out of all other options, wherein the remaining situation is less than desirable. The same holds true in the legal world.

A statute of limitations is a law which fixes the time within which a party must take judicial action to enforce a legal remedy. If a party waits to file a lawsuit seeking money damages or other relief until after the time to seek such relief has expired, the party loses their right to recover. Put another way, the statute of limitations does not destroy a cause of action, but simply closes the doors of the courts to a party who undertakes to bring

his suit after the time in which to bring the suit has already expired.

There are different statutes that apply limitation periods to civil actions. South Carolina Code § 15-3-530(5) requires that the action be brought within three years of the event giving rise to the cause of action. For example, the statute of limitations on a negligence claim accrues at the time of the wrongful conduct or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party.

If you are unsure about whether or not you can bring a claim or are concerned about losing your right to sue, consult a lawyer to verify the statutory time period and its relevance to your situation and whether an exception may apply. A lawyer will be able to help determine which statute applies to your claim(s) and preserve your right to recover.

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Truck Driver Fatigue

Despite governmental attempts to improve truck-driving safety, the facts indicate that large trucks still impose a serious danger to the motoring public. One of the many factors that can cause a commercial accident is truck driver fatigue. The vast majority of truck drivers and truck companies operate under a simple economic plan—the more they drive, the more they get paid. This industry standard puts pressure on trucking companies and truck drivers to not only drive faster, but also to drive further and longer. Ultimately, this creates a situation where the goal of the trucking industry (to make more money) is diametrically

opposed to the safety of the motoring public.

The Federal Motor Carrier Safety Regulations (FMCSR) apply to and may be enforced against all trucking companies in the United States. Many trucking companies are small (less than 10 trucks) and have difficulty complying with all of the regulations enforced by the FMCSR. Violations of specific sections of the FMCSR by the trucking company and/or truck driver can prove elements of driver fatigue, which can be used as evidence of recklessness and willfulness on behalf of the truck driver or trucking company. The major deterrent to trucking companies for violating the FMCSR is lawsuits which expose to the general public the trucking company's policies of non-compliance with the FMCSR resulting in injuries and fatalities. The FMCSR Parts used most often against defendants to show fatigue are cited below.

(Continued below ...)

Part 392—Driving of Motor Vehicles

This Part places a duty on both the driver and the trucking company not to require or permit a driver to operate a motor vehicle while the driver's ability or alertness is so impaired, or is so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him to begin or continue to operate the motor vehicle (49 C.F.R. § 392.3). This Part is used in conjunction with 49 C.F.R. § 395 regarding the driver's hours of operation. If a driver consistently exceeds the maximum hours of operation as prescribed by the Federal Motor Carrier Safety Regulations, then

the trucking company and the driver have violated § 392.3 because the driver is likely to be impaired through fatigue due to the excessive driving.

Part 395—Hours of Service of Drivers

Every motor carrier shall require every driver to record his duty status for each 24-hour period (49 C.F.R. § 395.8(a)). Failure to complete the record of duty activities, failure to preserve a record of such duty activities, or making false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution (49 C.F.R. § 395.8(e)). The drivers must keep their record of duty status current to the time

shown for the last change of duty status and the entries must be made by the driver only (49 C.F.R. § 395.8(f) 1-2). If a driver fails to keep an accurate record of duty status, it leads to the inference that the driver is operating in excess of the maximum hours of operation and is likely impaired due to fatigue.

If you or a loved one has been injured as a result of an accident with a large truck, please contact the aggressive, experienced attorneys of Pierce, Hems, Sloan & McLeod, LLC.

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THANK YOU!

Thanks, Contributors!

Pierce, Hems, Sloan & McLeod, LLC, would like to thank the PHSM associates who provided the contents for this issue of our newsletter. Good work and thanks for your contribution!

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