



Beth Rount
FYI

Legislative Alert

April 16, 1997

Tort Reform in the Senate *Action Needed*

The Senate Judiciary Committee will continue its one-sided hearings today on the Governor's three-bill tort reform package. As reported in last week's AlaChem legislative report, the April 9 hearings before the committee which is chaired by Senator Roger Bedford was clearly a staged event for the trial lawyers. In fact, the state's news media covered it but barely reported on it because it looked so rehearsed. At one point in the hearing, Lt. Governor Don Siegelman asked the committee not to report out the Governor's bills, but to report out "better" bills which included the net worth component that would be boondoggle for the trial lawyers. Attorney General Bill Pryor and numerous small business owners spoke in favor of the package.

The time is now for all AlaChem members to contact their respective state Senators and tell them that we want a vote in the Senate on these bills and to please support the Governor's tort reform package. Tell your Senator that tort reform is critical to the State of Alabama and for your business. Be sure to be specific about the bill numbers:

- House Bill 299 - the punitive damages cap bill
- House Bill 301 - the mental anguish cap bill
- House Bill 302 - the civil fraud bill

The telephone number for the Alabama Senate is (334) 242-7800. Ask for your Senator by name. If your Senator is unavailable to speak to you right then, *leave message to please vote for these bills (give the bill numbers) and ask for him/her to call you back.* For your information, talking points on the bills and general information on tort reform from the Alabama Civil Justice Reform Committee (ACJRC) is attached. The ACJRC is the primary business organization coordinating tort reform advocacy in Alabama. AlaChem Executive Director Mark Fowler serves on the Board of Directors and many AlaChem members also hold a membership. *Also, please use the attached information to send a letter to your Senator.* The mailing address for the Alabama Senate is:

The Honorable Senator (your Senator's name)
Alabama State House
Montgomery, Alabama 36130

Thank you for your continued interest in this very important issue and your continued support for the chemical industry in our state.

DSW 133047

Business Center of Alabama • 2 North Jackson Street • Montgomery, Alabama 36104
(334) 265-2154 • (334) 265-7795, FAX



A STATE SHAMED...

HERE'S WHAT OTHERS ARE SAYING ABOUT LAWSUIT ABUSE IN ALABAMA.

"Let me tell you another joke — a one-word joke:

Alabama.

"Alabama — the land of the \$4 million BMW paint job.

"Alabama — the place where a jury awards a drinking driver who was not wearing his seat belt \$150 million after he falls asleep at the wheel, runs off the road, has an accident, and gets thrown from the car.

"Alabama's court system is a laughing stock throughout the country.

"Forty years ago, Alabama's courts were a joke too because of the way those courts trampled all over human rights.

"Today, they do the same thing to property rights. Today there's a wide-spread feeling in the legal and business communities all over the country that Alabama is a place where you can arrange a 'hometown jury' or get a class action certified with a phone call.

"Now that might be a slight exaggeration of the facts, but it's not an exaggeration of Alabama's reputation. And I have to believe that the decent people and honest lawyers in that state must be awfully embarrassed about it..."

Robert J. Eaton
Chairman and CEO Chrysler Corp.
Addressing the American Bar Association
August 1996

ENOUGH IS ENOUGH!

THE TIME HAS COME TO STOP LAWSUIT ABUSE IN ALABAMA.

**GOV. FOB JAMES' CIVIL JUSTICE REFORM PACKAGE
IS PENDING IN THE SENATE JUDICIARY COMMITTEE.**

**CALL THESE JUDICIARY COMMITTEE MEMBERS AND ASK THEM TO MOVE
THESE BILLS ON TO THE SENATE FLOOR FOR FULL, OPEN AND FAIR DEBATE:**

Sen. Roger Bedford
District 6
205-332-2880

Sen. Sandra Escott-Russell
District 20
205-798-1600

Sen. Pat Lindsey
District 22
205-459-2478

Sen. Hank Sanders
District 23
334-875-9264

Sen. Steve Windom
District 35
334-434-0103

Sen. John Amari
District 15
205-836-6266

Sen. Wendell Mitchell
District 30
334-335-3449

Sen. Albert Lipscomb
District 32
Baldwin, Mobile
334-965-7871

Sen. Rodger Smitherman
District 18
205-322-0012

Alabama Senate
334-242-7800

Sen. Charles Davidson
District 5
205-221-9400

Sen. Charles Langford
District 26
Montgomery
334-269-2563

Sen. Ted Little
District 27
Lee, Russell, Tallapoosa
334-887-3472

Sen. Charles Steele
District 24
205-759-5736

Alabama House of
Representatives
334-242-7600

DSW 133048

TORT REFORM AT A GLANCE 1997 TORT REFORM FOUR BILL PACKAGE

PUNITIVE DAMAGES, FRAUD, and EMOTIONAL DISTRESS reformed with four bills:

1. **PUNITIVE DAMAGES: HB 299, by Rep. Perry Hooper**
 - Maximum award of three times compensatory damages not to exceed \$750,000.00
 - No punishment for innocent parties
 - Jury decides whether to punish and if so, how much
 - Only one punishment for one act
 - Employer's punishment for acts of employee clarified
2. **CRIMINAL FRAUD: SB 197, By Sen. Phil Poole**
 - Gives Alabama prosecutors the tools to fight fraud for the first time; Carefully and narrowly defines the elements of the crime
 - Makes "schemes or artifices to defraud" devised by persons or entities illegal if communicated to others and accompanied by an intent to defraud
 - Attempted fraud is a crime - the scheme does not have to succeed
 - "Puffing" (statements of opinion about quality or value of property or services) are not criminally fraudulent.
3. **MENTAL ANGUISH/EMOTIONAL DISTRESS: HB 301, By Rep. Frank McDaniel**
 - Additional damages for emotional distress equal to damages for economic loss in non-physical injury cases;
 - Maximum emotional distress damages of \$350,000.00 in physical injury cases.
4. **CIVIL FRAUD: HB 302, by Rep. Jim Haney**
 - Clarification of the Statute of Limitations;
 - Definition of "economic damage," "duty to communicate" and "reasonable reliance;"
 - Replacement of prior statutes and common law with one statute, two types of fraud (misrepresentation and suppression).

DSW 133049

The Alabama Civil Justice Reform Committee

Telephone number 334 834-4787 Fax 334 834-4226

TALKING POINTS

Proposed 1997 Tort Reform Package

Is reform of Alabama's civil justice system still necessary?

- Yes. Alabama is still famous for its unfriendly legal climate.
- Alabama's national reputation as "lawsuit capital of the world" keeps business and jobs from coming to Alabama.
- Alabama's current punitive damage laws are unconstitutional according to the U.S. Supreme Court (BMW v. Gore—paint retouching).
- Enormous punitive damage awards continue to be upheld in Alabama courts while other state courts throw them out.
- Everyone—not just business—is affected. We all pay more for goods and services.
- Alabama's court system is clogged with frivolous lawsuits, which slow down the process of litigating legitimate claims.

What is different about the 1997 civil liability reform package?

- The package consists of four bills that are simple, clean, remedies for many of the worst abuses of our legal system.
- The proposed package deals specifically with punitive damages, civil and criminal fraud and mental anguish.
- Most of the bills simply turn back the clock to undo changes made by the Hornsby-era Supreme Court.
- These bills are not an "end all-do all"; they constitute a vital beginning for substantial change in Alabama's "tort" laws.
- Combined with fair-minded judges, the proposed legislation will go a long way toward resolving the most serious problems plaguing Alabama's legal, business and economic climate.
- These proposed bills aren't nearly as conservative as reform measures now being implemented in our sister states and elsewhere in the nation.

Who are the supporters of reform in Alabama?

- 78 percent of residents surveyed believe reform is needed to discourage lawsuit abuse.
- Key state officials are appealing to consumers, businesses, legislators and other groups such as ACJRC for support of civil justice reform.

DSW 133050

The Alabama Civil Justice Reform Committee

How important is civil justice reform to the average Alabamian?

Very important. Mega buck lawsuits drive up the costs of everyday goods and services — Alabamians pay higher prices at the grocery store, higher health costs, and higher insurance premiums.

How important is civil justice reform to small business?

- The effects on a small or family-owned business can be devastating. One judgment can totally obliterate a small business and take away everything the owners have worked for all their lives.
- Defense costs alone can shut the doors of a small business forever, and these businesses are the very backbone of Alabama's economy.

How will the proposed punitive damage bill be beneficial in improving our civil justice system?

This bill will restore the due process the U.S. Supreme Court says is lacking in Alabama's system by limiting punitive damages to a reasonable ratio, very similar to the one used in federal antitrust and racketeering laws to deter price-fixing and organized criminal activity.

- Maximum award of three time compensatory damages not to exceed \$750,000.00.
- No punishment for innocent parties.
- Jury decides whether to punish and if so, how much.
- Only one punishment for one act.
- Punishment for acts of employee clarified.

How will the proposed civil fraud bill help?

The definition of "fraud" in Alabama has been expanded to the point where it has no meaning. No one knows what fraud is. This bill will provide:

- Definition of "economic damage," "duty to communicate" and "reasonable reliance".
- Replacement of prior statutes and common law with one statute and two types of fraud (misrepresentation and suppression).
- Clarification of the Statute of Limitations.

DSW 133051

The Alabama Civil Justice Reform Committee

What benefit is the criminal fraud bill and how does it help?

This bill makes certain fraudulent behavior criminal and provides Alabama law enforcement officials a clear role in protecting citizens from illicit schemes by:

- Giving Alabama prosecutors the tools to fight fraud for the first time.
- Carefully and narrowly defining the elements of the crime.
- Making "schemes or artiles to defraud" devised by persons or entitles illegal if communicated to others and accompanied by an intent to defraud.
- Making "Attempted fraud" a crime; the scheme does not have to succeed.
- Clarifying certain types of behavior: "puffing" (statement of opinion about quality or value of property or services) is not criminally fraudulent.

What benefit is the "emotional distress" or "mental anguish" bill and how does it work?

- This bill turns back the clock to 1988 on the law of mental anguish.
 - It requires a plaintiff to prove he suffered an actual injury before he can win damages for mental anguish.
- The bill sets a fair limit on the amount of damages which may be awarded.
 - Where there is a physical injury, the maximum is \$350,000 — more than the amount allowed by other states which have passed similar laws.
 - Where there is no physical injury, mental anguish is limited to the amount of actual "economic" damages.

What is at stake if our civil justice system doesn't change?

If this simple package is not passed by our legislators, many innocent consumers, community volunteers, and companies, large and small, will remain hostage to expensive, resource-wasting lawsuits that only drive up the price of all goods and services purchased by every Alabamian. It's time to give Alabamians a more predictable civil justice system!

DSW 133052

The Alabama Civil Justice Reform Committee

The Myths of Tort Reform as Perpetuated by Alabama's Trial Lawyers Association

THE PUNITIVE DAMAGES BILL (H.B. 299)

Trial Lawyer Myth #1:

The trial lawyers claim this bill "protects companies that intentionally go about cheating, injuring, or even killing Alabamians."

Reality:

Last year Harco Drugs, a company that employs thousands of Alabamians, was hit with more than \$10 million in punitive damages for making a mistake in filling a prescription. The undisputed evidence at trial showed that Harco had a mistake rate of only one in several hundred thousand, and that the recipient of the prescription had not been harmed by taking the mistaken medicine.

Consider the car maker hit with a \$100 million judgment by a man who admitted he was driving drunk when he had an accident. Despite complete absence of scientific proof, the man claimed he was ejected from his truck due to a faulty door latch.

Would a company intent on staying in business in Alabama intentionally try to hurt its customers? Can you imagine how quickly a company would go out of business from lack of customers if it was found to have intentionally tried to kill and maim them?

Trial Lawyer Myth #2:

Claims that a provision in H.B. 299 which prohibits double jeopardy in punitive damages means that a "wrong-doer may not even be taken to court again for committing the same act against someone else."

Reality:

This provision, which is derived from the U.S. Constitution (the Fifth Amendment prohibits any person from being punished, or even tried, more than once for the same criminal act) has nothing to do with whether someone may be "taken to court." The provision applies only to punitive damages, not to compensatory damages, which are for the purpose of fully compensating a plaintiff. In addition, a wrongdoer who "commits the same act against someone else" has committed a separate act. The protection of the punitive damages bill would not apply to a separate act.

Trial Lawyer Myth #3:

Claims a portion of the punitive damages bill keeps trial lawyers from digging into the "deep pockets" of businesses when an employee of the business does something wrong without management's knowledge or consent.

Reality:

This is one of the trial lawyers' biggest misrepresentations. This bill addresses only punitive damages. It does not prevent any lawsuit from being filed. Utsey's statements that "if senior management hires a convicted child abuser to take care of your children and never checks background or references, then management is not responsible for your child being abused, and "as long as senior management does not know that the truck driver had a record of drunken driving or drug abuse, the company will not be liable for the driver's action," are blatantly misleading.

The fact is, companies are liable, in compensatory damages, for the wrongful acts of the employees committed within the line and scope of their employment. Nothing in the punitive damages bill changes this principle of law.

CRIMINAL FRAUD BILL (S.B. 197)**Trial Lawyer Myth #4:**

Mr. Utsey says this bill "legalizes blatantly fraudulent acts."

Reality:

This bill, authored by Alabama Attorney General Bill Pryor, criminalizes behavior that has never before been subject to criminal prosecution in Alabama. Under this law, even unsuccessful attempts to deceive Alabamians can subject the would-be perpetrator of fraud to jail time.

Why would certain plaintiff trial lawyers be against this bill? Because for years many plaintiff trial lawyers have kept their huge contingency fees safe from reasonable tort reform efforts by claiming to be the only thing that stands between Alabamians and the mythical "New York" corporations that exist, in their words, solely to cheat and defraud customers.

Now that Mr. Pryor has proposed to take on the job of protecting Alabama citizens from cheaters and liars to a greater extent than ever before, the trial lawyers have lost one of their best excuses for derailing civil justice reform like that currently pending in the Alabama Legislature.

Trial Lawyer Myth #5:

Claims these "New York" big-wigs can't be touched by the criminal fraud bill because they live out of state.

Reality:

Do you suppose Mr. Utsey expects us to believe that Alabama courts can get jurisdiction over these out-of-state firms only if he files the lawsuit in civil court? For years, Alabama trial lawyers have been suing out-of-state companies and subjecting them to Alabama's litigation lottery.

The fact is, anyone who commits an act in Alabama can be prosecuted in Alabama. But apparently certain trial lawyers want us to believe they have some special power to invoke the jurisdiction of Alabama courts that the Alabama Attorney General and District Attorneys in each judicial district don't have.

MENTAL ANGUISH (H.B. 301)**Trial Lawyer Myth #6**

Claims "if a person is physically injured, the award for pain, suffering, mental anguish and other non-economic losses will be limited to their out-of-pocket losses, with a maximum award of \$350,000."

Reality:

There is no limitation of mental anguish damages in physical injury cases to an amount equal to out-of-pocket losses. The bill does have a maximum of \$350,000, which is an amount comparable to those in place in other southeastern states.

The reason for selecting that amount is one that most of us encounter daily: we have to draw the line somewhere. No one can put a value on pain. There is no store where you can go to find out what pain is selling for on any given day. When a jury is asked to award money damages based upon how they think someone is feeling, they are being asked to guess. Law is not about guessing.

The Alabama Trial Lawyers Association doesn't like this bill, probably because it hopes "mental anguish" will be its lingering gravy train to huge jury awards when reform inevitably strips its members of their ability to milk the system through runaway punitive damages.

Trial Lawyer Myth #7**CIVIL FRAUD (H.B. 302)****Trial Lawyer Myth #8**

Claims this bill is "prejudiced against hardworking consumers" because it allows an agent to lie about the contents of a contract without being held responsible for the fraudulent misrepresentation.

Reality:

Just where does personal responsibility fit in here? It appears the trial lawyers do not think it is fair for people to have to keep their promises, and they are worried that a fraud bill, which respects the sanctity of contracts, will get in their way.

In the real world, people decide every day whether they think a particular deal is complicated enough to require the help of a lawyer. If we are selling a washing machine, we probably don't need a lawyer. If we are buying an expensive insurance policy, we are free to do what we believe is best to ensure our complete understanding. What we should not be able to do is accept the policy on its stated terms and then try to change the rules after the game has started by claiming, with no way to verify the truth, that someone lied to us about how the policy would work.

If the trial lawyers truly wanted to protect consumers from fraud, would they be trying to kill a bill that would allow prosecution of it? It would seem they want to keep this issue in the civil arena so they can continue to make money off the misfortunes of Alabamians, whether real or contrived.

SUMMARY

In closing, we at the ACJRC would respectfully request your studied review of the governor's proposed legislation. We strongly believe that once you have had the opportunity to review the bills, apart from the trial lawyers' colored misrepresentation, you will recognize them for their common-sense moderation and fairness and will overwhelmingly support this much-needed reform.



HOUSE OF REPRESENTATIVES
STATE OF ALABAMA
MONTGOMERY, ALABAMA
36130

JAMES S. CLARK
SPEAKER

April 10, 1997

Mr. John McMillan
Chairman
Alabama Civil Justice Reform Committee
Post Office Box 11594
Montgomery, Alabama 36111-0594

Dear John:

I am writing to thank you and the Alabama Civil Justice Reform Committee for responding to the attack ads that are being run by the trial lawyers. Advertising on radio, television and in newspapers is very expensive, but the funds were well spent. Your ads provided our members with much needed support back home. The trial lawyer ads were a disgrace and confusing to many Alabama voters. Your ads help to set the record straight.

As you know, the Alabama House has a long record of supporting and passing meaningful legislation to stop lawsuit abuse in Alabama. This state is being crippled by a handful of trial lawyers who have profited beyond belief. I question how many jobs those lawyers have ever created in this state.

Again, thank you for standing up for those House members who have repeatedly voted to pass tort reform. Please encourage the members of ACJRC to continue their efforts to stop lawsuit abuse in Alabama.

Sincerely,

A handwritten signature in cursive script that reads "James S. Clark".

James S. Clark

DSW 133057

NEXT TIME YOU SEE REPRESENTATIVE PERRY HOOPER, BOB MCKEE, OR GREG WREN, SHAKE HIS HAND.



Why? Because they had the courage and backbone to stand up for you when it counted.

A few weeks ago, the Alabama Trial Lawyers ran a sleazy advertisement that called certain members of the House of Representatives every name in the book. The ad was so bad one newspaper called it "an embarrassment" to the trial lawyers and to the state.

Of course, what the Trial Lawyers didn't count on is that folks around here know them a whole lot better than they do. We know what they did was vote for a bill that would stop the Trial Lawyers from making millions of dollars by taking money out of our pockets. People here know that we pay more than we should for food and medicine, daycare, just about everything we need, because of lawsuit abuse.

The ad actually tried to make you believe that they were somehow in favor of drug kingpins, drunk drivers, and toxic polluters. That sounds far fetched to you but it's political dirty tricks as usual for the Trial Lawyers. All because they and a majority of their fellow House members had the courage to vote for a better Alabama.

It's a credit to them, and the people in their district that they held firm.

You know Perry Hooper, Bob McKee and Greg Wren. So, next time you see them, shake their hand. After all, they're fighting for all of us.



Representative
Perry O. Hooper, Jr.



Representative
Bob McKee



Representative
Greg Wren

LAWSUITS ARE ARISES ALL OF US

DSW 133058

Montgomery Advertiser 4/8/97