

INSIDE LITIGATION

Innovative Strategies for In-House Counsel

Winter 2005

www.aretellegal.com

Reprinted with Permission from Areté Legal Publishing, LLC, *Inside Litigation* (Winter 2005). Copyright © 2005 Areté Legal Publishing, LLC. All Rights Reserved.

Turning the Tables

Efforts to fight abusive legal practices are making headway.

But the next push toward reform will be driven by corporate America.

By Steven B. Hantler

IN BRIEF

The American Tort Reform Association and other reform advocates have raised public awareness of plaintiff-friendly judicial venues and abusive lawsuits—and won ground in the political arena. Now it's time for companies to step up to the plate.

Those of us who have spent a long time advocating the cause of civil justice reform have reasons for cautious optimism today. While legal reform is a long-term effort requiring broad changes in our courts, legislatures, and culture, I see progress in several areas that can serve as a strong foundation for further reform.

First, the elections were good for champions of legal reform. From the White House to Capitol Hill, from governors' mansions to state attorneys general offices, we're seeing increasing support for reform. This hasn't happened by accident. Pro-reform activists and corporations have changed the political environment in district after district and state after state, and have won office after office. If more companies begin to recognize what's at stake, that trend can continue.

Second, we have seen the beginning of a new national consensus about the true nature of the plaintiffs' bar. The U.S. Chamber of Commerce—under

the direction of its president and CEO, Tom Donohue—is doing an excellent job pointing out which states are friendliest to abusive lawsuits. The Chamber not only discovered the worst offenders—a list led by Mississippi, West Virginia,

"We are seeing big law firms take enormous hits for abusive practices."

Alabama, Louisiana, and Texas—but took out ads in the media identifying the bad players. The American Tort Reform Association is also shining a bright light on lawsuit abuse. ATRA polled its membership and located the nation's "judicial hellholes," highlighting 13 areas of special concern. ATRA is erecting billboards in some of these areas to alert the public that due process stops at the county line. Similarly, the Manhattan

Institute's groundbreaking report "Trial Lawyers Inc." made an impact that will reverberate in the media and public consciousness for years to come. When people learn that Trial Lawyers Inc. pulls in \$40 billion a year and may be the wealthiest industry on earth, they will support reform.

Fighting Back

We are also seeing big law firms taking enormous hits for abusive practices. California tort king Bill Lerach was forced to pay \$50 million after wrongly naming a consulting firm and one of its executives as defendants in a class-action suit. And as a recent issue of *Forbes* reports, "Mr. Class Action's" troubles don't end there. Federal prosecutors are investigating charges that Lerach's firm "violated criminal laws in its hell-bent pursuit of securities fraud cases in the 1990s." *Forbes* reports that Lerach and partner Mel Weiss "fancy themselves as the No. 1 enemy of corporate crooks, the champion of the small investor"—but some of their cases "paint a picture of a firm that abuses its power, pursues vendettas, conspires with short-sellers, and buys influence among Democratic politicians." Advocates of legal reform have been saying the same thing for years. In another case, the firm of Ness, Motley, Loadholt, Richardson & Poole was charged by a client for breaking professional conduct rules. The courts agreed, and

Ness, Motley was hit with a \$36 million judgment.

I can't leave out attorney Larry Schonbrun, now known as "The Spoiler." He is nothing short of a national treasure. Schonbrun targets plaintiffs' lawyers who pillage the take from class-action settlements by raising objections and challenging their outrageous fees. Schonbrun has cost the trial bar money—real money. He has convinced judges to trim predatory fees by more than \$100 million. In the same spirit, the Washington Legal Foundation is building support for an excise tax of at least 15 percent on lawyer revenue when fees exceed \$400,000 for any given litigation. It has also been a leader in challenging class-action attorneys' fees and in filing requests with the U.S. Securities and Exchange Commission to investigate complaints against plaintiffs' lawyers for short selling. Meanwhile, the Federalist Society is shedding light by organizing panel discussions and debates on the problems of the current state of litigation and a myriad of other issues.

One other area of progress is of special interest to me. Corporate America has now recognized that we can turn the tables on predatory lawyers by suing them for their abuses. DaimlerChrysler Corporation, where I serve as assistant general counsel, has been a leader. With all due modesty, I must say I am very proud of my company because I know all too well the temptation to settle a suit and move on, even when a company is absolutely innocent. But DaimlerChrysler, preyed on for years, finally had enough.

Fines and Disbarment

In Missouri, for example, two attorneys who represented the company and had access to confidential company documents left their law firm and filed meritless lawsuits against DaimlerChrysler. John Carey and Joseph Danis no doubt thought they had it made, but we had other plans. After a lengthy investigation, we were able to expose exactly what they were up to. The courts responded by hitting the pair with a judgment of more than \$850,000, which they quickly paid after their appeal was denied. We also argued for disbarment, which initially fell on deaf ears. But we prevailed when both were suspended from practicing law—in Illinois for six months and in Missouri indefinitely with the ability to apply for reinstatement after a year. We made our point: If you target us with abusive lawsuits, you will be held accountable.

We scored another success against a trio of Texas attorneys who blamed us for a multifatal-ity auto accident that was actually the result of the driver falling asleep at the wheel. Not only did Robert Kugle, Andrew Toscano, and Robert "Trey" Wilson III involve a grieving widow in their plan, they participated in a scheme involving manufactured evidence, attempts to bribe witnesses, and witness intimidation—all of which were exposed. The Texas Court of Appeals denounced their conduct as "an egregious example of the worst kind of abuse of our judicial system" and fined them heavily. One of the lawyers has been disbarred, and the other two are

currently under investigation by the state bar.

Working for civil justice reform has been a long, hard, and often lonely job. We are moving forward in many ways, but our job is hardly finished. Changing our legal system for the better requires a sustained commitment to changing our courts, our legislatures, and our culture—a commitment that must start in corporate America.

Steven B. Hantler is assistant general counsel for government and regulation at DaimlerChrysler Corporation. E-mail him at sbh2@daimlerchrysler.com.