

Michigan's Legal Warning Sign

Drug Makers First Target Of Trial Lawyers

By Steven B. Hantler

AS CHAIRMAN OF THE AMERICAN JUSTICE PARTNERSHIP (AJP), I OFTEN WORK WITH COALITIONS IN OTHER STATES TO PUT AN END TO LAWSUIT ABUSE IN THOSE STATES.

Things are different here in our home state of Michigan. The trial lawyers and their allies are hard at work to undo hard-won legal reforms we've achieved both in the legislature and the courts. Since hundreds of millions of dollars in contingency fees for plaintiffs' lawyers are at stake, we're in for a hard fought battle.

But, more than money is at stake. If the trial lawyers succeed, the costs will be measured in human lives. Dan Pero, AJP president and former chief of staff to Gov. John Engler, wrote about this threat in the September/October 2005 issue of *Michigan Forward*. The trial bar has the pharmaceutical industry in its crosshairs. It's important to understand that, although drug manufacturers are today's target in this state, it's not the end game for trial lawyers or, as I refer to them, the legal-industrial complex. They will move beyond pharmaceuticals unless we draw a line in the sand right now.

What's At Stake?

Responding to the world's top health threats – the globalization of disease, animal-to-human transmission, fast-forward bacterial evolution, the threat of bioterrorism, and the challenges of aging – will require pharmaceutical research as never before.

Fortunately, we live in a country that develops up to 70 percent of the world's new medicines. There are more than 1,000 medicines now in advanced stages of development. America's research-based pharmaceutical and biomedicine companies are working on 62 medicines to treat both Type I and Type II diabetes. Research on Alzheimer's disease is being pushed along by, at last count, 22 promising medicines in development. Promising work is being done on Parkinson's disease. About 400 cancer drugs are under development, including 60 that treat breast cancer alone.

The pharmaceutical industry now spends 19 times more on R&D budgets than it did in 1980 – \$39 billion. That's more than the annual operating budget for the National Institutes of Health. These are huge undertakings. To develop a new drug typically takes about \$1 billion and 15 years – and then only three out of every 10 drugs the federal government approves eventually pay for themselves. Some see pharmaceutical companies as entities endowed with infinite wealth. The truth is, no one has that kind of money to throw around. You have to raise it.

The pharmaceutical pipeline is critically dependent on investors willing to take huge risks, and patient enough to wait for regulatory approval. For all its heft, this system is remarkably delicate and vulnerable. Perfect safety does not exist. In this world, safety will always be a relative concept.

So how do we establish this relative value of safety for pharmaceuticals? We need a body of impartial experts who rely on science, not emotion or economic prejudice. In aviation, experts in the Federal Aviation Administration

determine how to keep flying safe. Congress has tasked the U.S. Food and Drug Administration to do the same with pharmaceuticals. The FDA has an exacting and complicated process to do this.

Ten years ago, the Michigan legislature passed a historic legal reform, one that recognized the unique role of the FDA. That law provides that the careful studies and deliberations of the FDA cannot be overturned in Michigan courts unless a manufacturer procured the FDA's approval by fraud.

The law has worked for the past decade, striking a careful balance between providing a path for those who have been injured to seek compensation, while discouraging unwarranted lawsuits. But now state politicians—funded and backed by the Michigan Trial Lawyers Association—are trying to undo the Michigan law, and repeal the reforms retroactively to 1996.

And to get at this industry, the trial bar is deliberately confusing the public about the relative nature of safety, and the final responsibility of the FDA. If unchecked, the trial lawyers could easily wreck America's unique pharmaceutical system of risk investment and discovery. This campaign in Michigan should be a warning sign of things yet to come.

Legal Reform Saves Lives

In facing the world's top health threats, the biggest thing we have to fear is lawsuits. This is not a rhetorical point. It is empirical reality. Paul Rubin, an Emory University scholar of economics and law, used elaborate mathematical models to compare the death rates of states before and after they had

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enacted legal reforms. What Rubin found was totally unexpected. He found that over a 19-year period, almost all tort reforms led to fewer accidental deaths. In fact, over the period studied, he found that legal reform correlated to more than 14,000 fewer accidental deaths. How could this be? Aren't lawyers always telling us how they're keeping us safe?

One reason is the way in which lawsuit abuse limits access to doctors. By 2003, annual medical malpractice liability costs had reached an astounding \$26 billion. As a result, it is almost impossible in rural areas in the states with the worst legal climates to find an OB-GYN, neurologist or other physicians in many other critical specialties. Orchestrated lawsuits against insurance companies also partially explain why the cost of family coverage has soared by 59 percent since 2000.

In short, lawsuit abuse is leading to fewer doctors and less health care coverage. It is also, unfortunately, stamping out drugs that many of us depend upon to alleviate our suffering or keep us alive. This is what Michigan can expect if reform rollbacks are successful.

As mentioned earlier, the Michigan legal-industrial complex is not only focused on legislative rollbacks – they want our courts back, too. Since 1998,

the Michigan Supreme Court and some of our Courts of Appeals have transitioned from what was among the worst pro-plaintiff, anti-business courts to among the best rule of law courts in the nation.

According to a 2005 article published in *The Wall Street Journal*, "For the past six years, the Michigan Supreme Court has been a leader in attempting to restore a proper balance between the judiciary, the legislature and the people...[u]nder public scrutiny, the Michigan Supreme Court has developed a body of generally consistent legal interpretations of key relationships between the judiciary, the legislature and Michigan's citizens."


The trial bar has not missed this point – and is even now politically targeting the fair and balanced courts we've achieved.

Take the example of Michigan Court of Appeals Judge Brian Zahra, who the trial lawyers are planning to attack hammer and tong between now and this November's election. His sin? His consistent rulings reflect the abiding belief that judges should follow the rule of law. Judge Zahra must be retained, and I urge you to contact the Michigan Chamber to find out how you can help.

To sum up, our nation's legal system

is sick – and it has the potential to make us all sicker, especially here in Michigan. It compensates the wrong people, and bleeds billions that drug companies could spend on research. It disrupts the delicate system of convincing investors to risk capital for future progress. In the end, the legal system is endangering our ability to survive those five rising health threats mentioned earlier.

A Call to Action

Clearly, we need to act. We need to keep our reforms in Michigan and win reforms in other states. The American Justice Partnership works with lead civil justice reformers, like the Michigan Chamber of Commerce and Michigan Lawsuit Abuse Watch, on a state-by-state basis to secure lawsuit reform. We know what we are facing this year and for years to come in Michigan. The Michigan Chamber, M-LAW and the American Justice Partnership need your active support. To find out more about the American Justice Partnership, visit our website at: www.AmericanJusticePartnership.org. 

ABOUT THE AUTHOR



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