

MISSISSIPPI TORT REFORMS GO INTO EFFECT BUT IMMEDIATE RELIEF IS NOT IN SIGHT

March 10, 2003

Reeling from a mass exodus of doctors because of skyrocketing malpractice insurance costs, a deluge of negative publicity characterizing the state's legal system as "jackpot justice," and an advisory from the United States Chamber of Commerce not to do business in the state, the Mississippi legislature approved significant tort reform legislation in a marathon 83-day special session. The reforms, aimed at restoring the state's tarnished legal image and staving off a full-blown medical crisis, went into effect on January 1, 2003.

Mississippi acquired its reputation as a "judicial hellhole" from a series of damage awards in excess of \$100 million against large corporations. Mississippi was regarded a haven for plaintiffs' attorneys because of the lack of caps on jury verdicts, and lax venue rules, which permitted large corporations to be sued in poor rural counties with a history of hostility toward big business. The ensuing deluge of lawsuits against asbestos, tobacco, and pharmaceutical manufacturers and health maintenance organizations, led to such bizarre results as there being twice as many plaintiffs in Jefferson County as there were citizens. At present, approximately 100,000 asbestos plaintiffs (or 15.5% of all asbestos cases) in the United States are filed in Mississippi.

Among the more significant features of the new reforms are:

- A \$500,000 cap on non-economic damages awarded in medical malpractice lawsuits. The cap increases to \$750,000 in 2011 and \$1 million in 2017.
- A \$20 million cap on punitive damage awards against corporations with assets in excess of \$1 billion. Punitive damages are awarded against smaller corporations on a sliding scale. For example, businesses with less than \$50 million would be required to pay no more than 4% of its net worth in punitive damages.



NIXON PEABODY LLP
ATTORNEYS AT LAW

Insurance Law Alert™ is intended as an information source for the clients and friends of Nixon Peabody LLP. Its content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel.

- Restrictions on venue shopping. Lawsuits are limited to the county where the defendant resides, where the alleged acts occurred, or where the event that caused the injury occurred.
- "Innocent seller" protection in products liability cases to prevent retailers from being sued in products liability actions against out-of-state manufacturers solely for the purpose of retaining the suit in state court.
- Changes to joint and several liability among multiple defendants. A defendant found to be less than 30% at fault is only liable for its share of non-economic damages equal to its proportion of fault. Defendants found to be 30% or more at fault are required to pay no more than one-half of the non-economic damages.
- Attorneys not admitted to practice in Mississippi are not permitted to advertise in the state or to solicit clients for a pending or expected suit.
- Joining of out-of-state plaintiffs in pending lawsuits is prohibited.
- Property owners are given immunity from liability for failure to prevent criminal acts of a third party unless the owner knew or should have known of the risk of criminal conduct.
- Judges are permitted to impose a \$1,000 assessment for filing a frivolous lawsuit.
- Cities and counties are prohibited from filing multiple lawsuits against gun or ammunition manufacturers, distributors and dealers.

In December 2002, a flurry of lawsuits were filed by attorneys hoping to avoid the new laws. Consequently, courts are unlikely to see any immediate results from the legislation. While the reforms were hoped to stem the rising crisis in medical malpractice insurance, they have yet to have a positive impact. In January 2003, malpractice premiums increased anywhere from 45 - 90% of their previous rate for doctors in the state.

Numerous legal challenges to the new laws are anticipated. American Lawyer Media has already filed a lawsuit challenging the constitutionality of the portion of the law banning advertising by out-of-state attorneys. Meanwhile, some business groups are taking the position that the reforms did not go far enough. Among other things, the new laws do not place any caps on non-economic damages.

Other states are considering similar legislative efforts to control tort damages, including caps on damage awards, curbs on medical monitoring and future damages, and limitations on venue. The Texas legislature is presently considering H.J.R. 3 -- a proposed constitutional amendment that would give the legislators the ability to limit all non-pecuniary damages awarded to plaintiffs

with medical liability claims. Congress is also presently considering tort reform measures aimed at addressing the asbestos litigation crisis. Currently proposed measures include the establishment of medical criteria for filing asbestos injury claims and the establishment of a trust fund for victims.

For more information on this issue or other insurance matters, please contact:

- in our San Francisco office, Gregory Schopf at (415) 984-8314 or Ann G. Miller at (415) 984-8236
- in our Boston office, Gregory P. Deschenes at (617) 345-1324
- in our Washington, D.C. office, John C. Hayes, Jr. at (202) 585-8345 or Robert Reklaitis at (202) 585-8375

Insurance Law Alert is intended as an information source for the clients and friends of Nixon Peabody LLP. Its content should not be construed as legal advice, and readers should not act on information in this publication without professional counsel.