



The Star-Ledger

THE VOICE OF NEW JERSEY

State's bad tort system hurts business

Sunday, May 4, 2008

By Marcus Rayner

There is a storm brewing in New Jersey's civil justice system. Employers across the state have been noticing the signs for some time, but it is now becoming unmistakable to many across the nation that New Jersey's tort system is crippling our state's economic competitiveness. New Jersey is consistently slipping in national rankings that compare state civil justice systems, and our employers are increasingly voicing concern because they know that a bad tort climate leads to abusive litigation that is bad for business and bad for consumers.

A couple of weeks ago, the U.S. Chamber of Commerce Institute for Legal Reform issued its 2008 State Liability Systems Ranking Study, which asks senior attorneys to grade their states on about a dozen aspects of the legal system. New Jersey slipped nine spots in the annual rankings, falling from 26th to 35th of the 50 states. Our courts barely received a passing grade in predictability of judges, the awarding of non-economic damages and the overall treatment of tort and contract litigation.

Last month, the Pacific Research Institute's U.S. Tort Liability Index reported that our state had the second worst tort system in the nation, ranking New Jersey 49th out of 50. That study found that New Jersey has one of the most burdensome systems in terms of the size of awards and one of the highest litigation risks, meaning that relative to other states we have more lawyers seeking and winning bigger awards.

These rankings shed light on why New Jersey is getting unwanted attention as a terrible place to get sued. The American Tort Reform Association's annual "Judicial Hellholes" report, which highlights jurisdictions where courts are particularly unfair, this year included our own Atlantic County as a hellhole. Forbes magazine recently flagged Atlantic County as one of the worst places in the nation to get sued, explaining "Atlantic County has made pharmaceutical litigation into a cottage industry." Unlike traditional tourism in Atlantic City, litigation tourism burdens our state's economy and strains our judicial system.

Two pending cases in our courts are good examples of how our civil justice system is threatening business. In *Briest vs. Wyeth*, a New Jersey trial court ruled that two lifelong Virginia residents, barred from suing under Virginia law, could sue Wyeth in New Jersey under our statutes. Left alone, this policy will allow out-of-state plaintiffs to sue New Jersey companies under the most favorable law and risks further opening the flood gates to litigation tourism in our state. Already, 93 percent of the pharmaceutical mass torts in our court system are brought by out-of-state plaintiffs. This is unsustainable for our state. New Jersey's courts should serve our residents, not plaintiffs from around the nation who find their own laws less favorable.

In *Bosland vs. Warnock Dodge*, the New Jersey Supreme Court will soon determine whether a business should be given the opportunity to fix a consumer complaint before being sued under the Consumer Fraud Act. If the recent appellate court decision is upheld, merchants and businesses, whether they acted fraudulently or merely in error, could be dragged into court without the opportunity to simply refund the consumer's money, making lawsuits the first course of action even when more commonsense solutions might be available. The only winners in this scenario are attorneys.

As New Jersey slides downwards in national rankings and our courts fill up with more and more out-of-state lawsuits, employers across the state face increasingly tough decisions about trying to grow their operations and even whether they can afford to stay here. A recent study conducted by the Eagleton Institute of Politics at Rutgers University found that virtually every employer in the state believes lawsuits are driving up the cost of doing business here.

Three out of four employers have been sued or threatened with a lawsuit in the past five years. In fact, more than half of those surveyed have already seen their costs of doing business increase due to the worsening litigation climate. Not surprisingly, these costs are usually passed along to consumers.

Employers, lawmakers and citizens across the state should be concerned about these warning signs that point to a seriously deteriorating civil justice system. We are all feeling the effects of a flagging economy, and we must now realize that a fair and predictable legal system can boost our economy by attracting and retaining high-quality jobs and thriving businesses.

Marcus Rayner is executive director of the New Jersey Lawsuit Reform Alliance, a statewide, bipartisan group advocating for changes in the legal system.

© 2008 The Star Ledger
Reprinted with Permission