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Viewpoint

'Tort reform': A failed experiment in legal-social engineering

By Robert M. Raitt, Esq.

Michigan has "tort reform" coming out of its ears and it has failed to deliver on a single one of its promises

Recently the big business lobbying group, the Michigan Chamber of Commerce, issued a widely criticized study asking for still more "tort reform" — a PR phrase describing limits on the right to civil trial by jury and special loopholes and favors for powerful interests.

These special interest pleas for more corporate welfare, coming during Michigan's current economic hardships, and after decades of their twisted logic and broken promises, is just plain repulsive.

For more than twenty years, these big business lobbyists have promised that, if we give them just one more special immunity or an additional "get-out-of-jail-free" card, they will make so much money we will all be better off.

Sadly, our lawmakers have listened and believed. And we let them.

But the current juxtaposition of our ailing economy, the wreckage of our justice system, and the Chamber's plea for still more special favors for special interests bring to mind the classic definition of insanity: "Doing the same thing over and over again and hoping for different results."

The insanity seems even more apparent if you realize that Michigan is arguably the most "tort reformed" state in America.

How "tort reformed" is Michigan?

 This month, Forbes.com ranked Michigan's tort system third best out of fifty in American in their Best for Business ratings. Last year we were number two. This is a telling evaluation of our state's "tort reform" saturation. Plus, it stands in stark contrast to our abysmal rating in every other category. To paraphrase the Forbes.com study, we seem to be maxed-out on "tort reform" but the wheels are falling off everything else.
 Crains' Detroit Business noted that the rabidly pro-business American Justice Partnership (AJP) has declared "Michigan's liability climate is conducive to growth and jobs creation." AJP ranks us number seven out of fifty in the category of "litigation climate." Since Michigan's "tort reform" Godfather John Engler is the head of AJP, that ranking is especially noteworthy. AJP says we have lots of "tort reform." Yet, we don't have any job growth.
 Since the creation of our unique absolute "drug industry immunity law," Michigan's once booming pharmaceutical industry has all but fled the state. Pfizer recently took 2,700 jobs out of Michigan and moved them to states without our liability immunity law. Jobs flee from the most

perfect example of "tort reform" extant — absolute immunity — and they settle in states with good old-fashioned civil justice accountability?

Do you see the pattern?

It is time to stop this insanity. It is time to admit that we have been fooled. "Tort reform" is just a scam.

"Tort reform" was sold to us circus-style as a magic elixir, with hearty handshakes and slick promises of huge savings, jobs thick on the ground, hyperactive economic growth, and sunshine blowing in all directions.

Instead, we have a hobbled justice system that functions as a puppet for special interests, tens of thousands of injured, wronged, and cheated people who have no way to hold wrongdoers accountable, hundreds of millions of dollars in costs are dumped on our taxpayers instead of being paid by those who are responsible for screwing up, and an economy that is behaving exactly and precisely as if the snake oil of "tort reform" were poison.

"Tort reform" is poison.

We should all be ashamed of ourselves for buying into the lies and ridiculous promises of "tort reform" in the first place.

It is time to stop listening to the Chamber of Commerce's recycled ads for the patent medicine that got us into this mess. It is time to listen to some smarter, saner, less self-interested voices:

"I consider [trial by jury] as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." — Thomas Jefferson

"Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle and fed and clothed like swine and hounds." — John Adams

"Trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature." — James Madison

It is time to be honest about the failed doctrine of "tort reform."

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