



# American Justice Partnership

Update on Trial Bar Activities to Defeat Legal Reform

## AJP Trial Bar Watch, Volume 3: Trial Bar Initiatives to Defeat Legal Reform

### Introduction

This third edition of AJP Trial Bar Watch provides an on-the-ground perspective on the well-funded strategies currently being used by the trial bar to defeat legal reform. Legal reform advocates can use these insights to better anticipate and mitigate trial bar campaigns, techniques and messages in their own states.

This edition, covering six new states and an update on the activities of a previously profiled state, is based on interviews with numerous leaders in each state and provides an accurate snapshot of the current legal reform background in each state. *The findings continue to underscore the need for constant vigilance and increased support for and involvement by the business and grassroots communities in the legal reform effort.*

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### Executive Summary

The political landscape in each of the states heavily influences the success of legal reform measures. Legislative efforts have stalled in states where anti-reform majorities control one or both houses of the state lawmaking bodies. Likewise, hotly contested judicial races, particularly at the state Supreme Court level, reflect the inclination for or, for the most part, against tort reform laws. The trial bars in each state covered were well-organized and well-funded during the Fall 2006 election cycle, and they are adopt-

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ing aggressive tactics to undo or defeat tort reform measures in the state legislatures and courts.

- In every surveyed state, the Fall 2006 elections resulted in no net gains for the legal reform movement in either state legislative or judicial races. As a result, legal reformers are facing uphill battles to protect past gains, let alone to move forward with new reforms.
- In most of the surveyed states, there has been an increase in the number of medical malpractice and liability claims resulting in significant losses of practicing physicians who leave the state by choice, leave the medical practice, or experience closings of critical medical service facilities, particularly among ob-gyn and neurological services. In no place is this crisis more clearly playing out than in Pennsylvania.
- In most of the surveyed states, governors were elected in 2006 who are, or continue to be, unfriendly to reasonable legal reform measures.
- Despite pro-reform majorities in at least one of the legislative chambers in most surveyed states, new reform measures meet with resistance in the other chamber or at the governor's desk.
- The trial bar continues to successfully plumb the state courts for cases through which to challenge the constitutionality or legality of legal reform measures. In most surveyed states, one or more tort reform measures have been struck down by activist courts within the past couple of years.
- Most of the state trial lawyer organizations, sensing a public perception problem, are opting for name changes to quell the anti-personal injury lawyer fervor.
- The trial bar continues to work diligently to infiltrate and influence business organizations, professional associations, and local Chambers of Commerce to help steer the agenda away from legal reform.

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## Colorado

Although Colorado's tort climate has historically been among the highest ranked in the country, legislative and judicial challenges threaten hard-won legal reform victories over the past three decades.

Tort reform efforts began in earnest in Colorado in the mid-1980s, with comprehensive legislation that included elimination of joint and several liability, caps on non-economic damages, and medical malpractice reform. From 1988 to 2003, a pro-growth legislature ensured that the reform laws enacted were maintained as written, except for minor alterations. One of the later amendments established an index to the caps on the basis of inflation and cost-of-living increases.

During this 15-year period, the Colorado trial bar punched minor holes in the legislation through litigation and successful lobbying efforts, but was unable to overturn any

major provision of the 1980s tort reform legislation. In 2002, the last year of relative calm surrounding the tort reform legislation, Colorado had a GOP-controlled legislature and a GOP Governor focused on attracting business and jobs to the state.

In 2003, The Colorado Civil Justice League (CCJL) initiated a number of new tort reform measures designed to plug loop-holes developed by the courts since the original reforms of the 1980s. Bills regarding class actions, product liability, punitive damages, cost shifting, attorney general litigation practices and construction defect legislation, among others, were signed into law that year.



The watershed election cycles of 2004 and 2006 dramatically changed the state's political landscape. In the 2004 elections, Democrats won control of both houses of the Colorado legislature. In 2006, Democrat Bill Ritter won the gubernatorial election, setting the stage for a flurry of anti-reform legislation in 2007.

CCJL, one of the state's leading advocacy organizations, is currently opposing a bill providing for "loser pays" on the part of employers specifically in employment litigation. CCJL Executive Director Jeff Weist points out that the legislation, which awaits the signature of Gov. Ritter, "makes suing your employer a risk-free proposition if only the employer is liable for attorneys fees and court costs." CCJL believes that a better approach would be to eliminate fee shifting for both parties to litigation.

Gov. Ritter has already signed into law a bill increasing the cap on non-economic damages from \$366,000 to \$450,000. Another potentially damaging bill is under consideration as well, characterized by CCJL as a distorted version of the Federal False Claims Act, which is opposed by the business community but will be acted on by the legislature this year.

On the judicial front, a bill increasing the number of District and appellate judges in Colorado is pending before the legislature. The increase of 60 new judges is generally acknowledged as a necessary move to accommodate the state's caseload backlog, which has been described as a "death spiral in litigation" by Weist. However, some warn that Gov. Ritter is likely to appoint pro-trial bar allies to the new judicial posts.

The seven justices who make up the Colorado Supreme Court are initially appointed by the Governor and later stand for retention election. Currently, legal reformers have identified five of the justices as liberal and two as conservative. In the absence of term limits for justices (a statewide ballot initiative that failed in 2006), a retention election cycle essentially creates lifetime tenure for appointees.

Colorado's campaign finance laws are strict, including bans on corporate contributions. During the 2006 election cycle, the state's newly invigorated trial bar raised more than \$1.25 million for a 527-like political action committee called Coloradans for Civil Justice. According to campaign disclosures, nearly all of the money was given to Democratic statewide and legislative candidates. An increasingly vocal trial bar is gaining media

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traction with allegations that, because insurance and other costs have risen, tort reform has failed. Legal reformers point out that inherent cost increases in the system are rather the result of the progressive weakening of the tort reform legislation and increased litigation activity statewide.

Despite its historically high-ranking tort climate, Colorado's political and legislative prognosis is precarious. The trial bar is on the offensive, actively supporting and recruiting pro-trial bar candidates for legislative office and vigorously supporting legislative rollbacks of legal reform laws. In a state where the electoral makeup is roughly split between the two major political parties, the 2008 and 2010 elections will be key for determining the future health and vitality of Colorado's civil justice system.

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## Delaware

Although Delaware is traditionally identified as having one of the best legal climates among the 50 states, recent developments arising in the legislature, the courts and among the plaintiffs' bar highlight the state as one to be monitored very carefully.

Republicans have been worried that April's special election of a Democrat to replace House Majority Leader Wayne Smith in a long-time Republican district, may be a bellwether pointing to a shift in voter attitudes that will give Democrats control of the House in 2008. However, in a special May 2007 election, the GOP held on to the vacant District 41 seat giving them a 22-19 advantage. It continues to be of concern to legal reformers that the GOP majority margin has been on the decline over the past decade.

With the unexpected resignation of Smith and the retirement in 2006 of Joint Finance Co-Chairman Joseph DiPinto (R), a critical leadership vacuum exists on key issues for legal reformers in Delaware. As a nuclear engineer with Du Pont, DiPinto became one of the intellectual titans of the state legislature on matters dealing with health, the environment, medical malpractice, and liability issues.

Currently, Democrats control the Delaware Senate by a majority of 13 to 8. Newly elected Attorney General Beau Biden (D) is expected by most observers to be an "activist." His term runs until 2010 and he is expected to use his office as a stepping stone much as did Eliot Spitzer in New York. Gov. Ruth Ann Minner, a Democrat, is term-limited and cannot run again in 2008, but her Lt. Governor, Jim Carney, is a strong favorite to win election to the office. Clearly, the plaintiffs' bar views the across-the-board control of Delaware's legal policy by Democrats as a very good opportunity to make progress on their agenda to expand liability.

Another factor making Delaware attractive to the plaintiffs' bar is that state judges, including the five Supreme Court Justices, are appointed by the Governor for 12-year terms and approved by the state Senate. Although the state constitution requires that among the Supreme Court Justices three must be from one political party and two from another major political party, the appointment process dramatically expands the domi-

nant party's ability to put its stamp on the judiciary well into the future.

Legal observers report that the Delaware high court has become more liberal in recent years, favoring anti-business claims in cases other than those involving corporate governance issues. One alarming indication of a possible pro-plaintiff bias emerging is that the Superior Court has been mass scheduling 20 or more asbestos cases to start on the same day approximately eight times each year. Plaintiffs are permitted to pick the cases to proceed with no standards governing this process. This puts defense counsel at a decided disadvantage.

The plaintiffs' bar, always quick to identify opportunities, has been moving into Delaware rapidly now that some jurisdictions in other states are proving less favorable to them. Thus far, Delaware lingers as one of the few remaining pure joint-and-several liability systems which creates a deep-pockets haven for plaintiffs. Additionally, recent efforts to pass venue reform, which would limit pure out-of-state plaintiff actions, was dead on arrival in this legislative session, leaving the doors open for the recent rapid rise in out-of-state filings to continue unabated.

From May 1, 2004 through May 1, 2005, 62 asbestos-related cases were filed in Delaware's Superior Court. Within the two years after that period, approximately 400 additional cases have been filed, all involving mesothelioma claims, with plaintiffs represented by the same law firms engaged in similar predatory mass tort litigation in Illinois, Texas and Mississippi. The plaintiffs represented by the out-of-state law firms are not from Delaware.



Additionally, scores of cases involving benzene and hundreds of additional cases involving pharmaceutical drugs have also been filed by the same law firms and others. These lawsuits are continuing to be filed at an unprecedented rate.

There was also an unexpected verdict in February against General Motors in a mesothelioma case in which the 80-year old plaintiff was awarded \$2 million, even though he would not have "lost wages" which often factors into larger awards. This award exceeds previous verdicts in such cases, which have thus far been in the \$750,000 to \$1.5 million range for younger plaintiffs. The case was tried in Delaware under Rhode Island law, which is where the "primary point of contact" for the plaintiff occurred. Rhode Island law for asbestos litigation is very plaintiff-friendly. This is the highest such verdict of its kinds, and may be a bellwether for future verdicts. The case is now in the post-trial motion stage.

It is not surprising that some enterprising plaintiff firms are opening offices in Delaware, including Simmons Cooper, which formerly exploited the porous borders of Madison County, Illinois before judges there tightened venue rules under pressure from the national legal community.

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The business community appears to be split as to how big a problem Delaware is or may become. Those saying Delaware remains a good legal climate point to recent favorable court rulings on corporate governance issues, and the successful 2007 bipartisan effort to enact legislative remedies to Delaware's failed workers compensation system as evidence that commonsense and goodwill prevails.

However, a small group of companies facing growing court dockets in the state point to the likelihood of serious deterioration. As one corporate litigator told us,

"Suppose I described a state to you this way: Democrats effectively controlling the legislative agenda; an activist AG; a Democrat governor who appoints judges and Supreme Court Justices for 12 years; no venue restrictions for out-of-state cases; an asbestos judge who crams court dockets with 20 plaintiffs a day picked by plaintiff lawyers with no procedural rules; full joint and several liability to go after deep pockets; the plaintiffs' bar buying up office space; and a business community that has a generally passive posture. Wouldn't that sound to you like Madison County or the Rio Grande in Texas five or seven years ago? The problem is, I'm describing Delaware today!"

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## Iowa

The 2006 election cycle, with major gains by pro-trial lawyer Democrats, has made legal reform legislative efforts a challenge in Iowa. With electoral map changes in Iowa, the political climate does not at all favor comprehensive civil justice reforms. Nevertheless, the Iowa business community continues to fight successfully against specific legislative proposals when they arise, with several notable reform successes in the past two years.

Prior to the 2006 elections, both chambers of the Iowa legislature were virtually even between the political parties. The Senate and House of Representatives are now controlled by pro-trial bar, pro-union Democrats. During his tenure, former Gov. Tom Vilsack (D) appointed three liberal, pro-trial bar Justices to the Iowa Supreme Court. According to Iowa business leaders, his successor, Gov. Chet Culver (D), has demonstrated early on that he may be working even more closely with the state's trial bar. None of this bodes well for tort reform legislation in the next two to four years.

The Iowa trial bar has not been the dominating political force that legal reformers have seen in other states, owing in great measure to a GOP-controlled Governor's Office and legislature for the better part of thirty years before Vilsack.

Over the past decade, legal reformers have been successful in passing a few significant tort reform laws, particularly in the area of products liability. In 2004, business interests supported the passage of "failure to warn" legislation and supersedeas appeal bond caps. However, caps on non-economic damages and limits on pre-judgment interest, also passed in 2004, were vetoed by Vilsack.

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During this year's legislative session, the Iowa Association of Business and Industry (ABI) has identified approximately 50 bills introduced on behalf of, or supported by, the trial bar that will be detrimental to business, jobs, and economic growth in the state. According to legal reformers in Iowa, the top target of the state's trial bar is to create private "causes of action" for consumer products.

In support of the private causes of action legislation, the Iowa trial bar has worked behind the scenes to influence lawmakers this year. Iowa Attorney General Tom Miller (D), who is friendly with the trial bar, has publicly supported the consumer products measure. However, business leaders and legal reformers have successfully fostered the accurate public perception that some among Iowa's trial bar members are greedy and self-serving, and that a runaway civil justice system will harm jobs in the state.



The Iowa legislature identifies the dates that bills must be out of committee, passed in at least one legislative chamber, and moved to the other chamber as "funnels." While more than 50 pieces of anti-business legislation were introduced this past legislative session, business leaders were pleased that the number of troublesome bills decreased to approximately 15 after the first "funnel". ABI officers report that the 15 bills represent potential losses of thousands of jobs and product innovations, as well as the introduction of the private cause of action specter attracting new lawsuits into the Iowa civil justice system.

In 2006, with the support of the ABI and legal reformers, the state enacted a law encouraging physicians and other healthcare providers to issue apologies for instances in which mistakes were made during medical procedures. Such apologies, and potential offers of compensation, are not admissible in Iowa's courts as admission of legal liability. Despite strong efforts by the trial bar to undo this important provision, ABI and its allies believe the provision will survive the current legislative attack.

The Iowa trial bar continues an aggressive yet stealth legislative assault while at the same time maintaining a strong influence on the state's judiciary, which is selected by gubernatorial appointment and periodic retention elections. The Iowa trial bar political action committee (PAC) is a top ten contributor in the state, but it does not dominate the political landscape as in other states. However, with a strong and growing alliance with the labor unions, who also maintain a top ten PAC in the state, the upcoming gubernatorial and state legislative elections are a critical battleground for future legal reform success in Iowa.

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## Kentucky

Kentucky legal reformers point to a "quietly aggressive" trial bar in Kentucky in the 1980s and 90s, making the Commonwealth one of the nation's better legal environments

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for business. The business community and its legal reform allies were successful in passing a series of tort reform measures designed to rein in trial bar activity, including caps on non-economic damages.

As in Pennsylvania, the Kentucky Constitution includes a ban on caps. In response to various actions filed by the plaintiffs bar, the legislative successes of the late 80s were declared unconstitutional on the vague grounds that legislatively enacted caps denied a plaintiff's right to a day in court. As a result, the Commonwealth no longer has non-economic damages caps. However, the state chamber and other business groups were successful in 2006 with their support of a \$100 million supersedeas bond limitation on plaintiff's damage awards on appeal, which serves as a relative form of damages cap.

Business groups, along with national legal reform allies, is currently contemplating a constitutional amendment campaign to eliminate the caps ban. State supporters of reform indicate the need for solid strategy and financial support because of Kentucky's unique situation. Mike Ridenour, Vice President of Public Affairs at the Kentucky Chamber of Commerce, said recently "it is difficult to pass legislation putting initiatives on the ballot due to the supermajority requirements for passage of amendments." Currently, the Kentucky Senate is controlled by the GOP, with a 21-16-1 majority. The



House of Representatives, by contrast, is controlled by the Democrats, with a 61-39 majority. Kentucky Governor Ernie Fletcher, a Republican, is a former family physician who has indicated a willingness to support medical malpractice and other legal reform measures. However, the stalemate in the legislature currently prevents passage of any aggressive tort reform measures.

The Kentucky Supreme Court consists of seven Justices. Four of the Justices are newly elected. Kentucky insiders speculate that the newly constituted high court may rule 4-3 in favor of business on many employer issues, while leaning 4-3 against business on tort reform issues. The swing vote just may be Chief Justice Joseph Lambert, a Republican who tends to oppose tort reform.

Like its brethren in many states, the Kentucky Academy of Trial Attorneys (KATA) operate partly in stealth mode, with members becoming increasingly active in local business groups and community organizations – a tactic seen in other states. Once ingratiated into the business arena, the trial bar has demonstrated its effective leadership skills by blunting or re-directing business community efforts to promote legal reform in local communities.

KATA also maintains an active political action committee (PAC), which, despite stringent campaign finance limits of \$1,000 per candidate per cycle, nevertheless raises hundreds of thousands of dollars per year from individual members who also give to favored candidates, which is more challenging to track. As in other states, records indicate that most of this money goes to Democratic candidates.

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Following the trend started last year by the American Trial Lawyers Association, KATA is currently changing its organizational name to the Kentucky Justice Association. According to Ridenour, “Kentucky public opinion is currently open to education - neutral to unfavorable to the plaintiffs’ bar.” Adding to the public perception problems for the trial bar, three Kentucky attorneys have been suspended, and a sitting judge has resigned from the bench in a scandal over the handling of a \$200 million settlement related to alleged injuries sustained by 440 plaintiffs from their use of the diet drug fen-phen. Now defendants in multiple lawsuits filed by defrauded plaintiffs, the attorneys continue to face high-profile scrutiny in Kentucky, further hurting the plaintiff’s opinion of the state’s trial bar.

Kentucky’s political landscape, which an anti-reform Democratic majority in the House currently makes a high hurdle for substantive legal reform, will require active engagement by state and national business leaders at the grassroots political level to break the legal reform logjam.

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## North Carolina

North Carolina currently faces a highly energized trial bar expending significant resources to undo existing tort reform laws and introduce trial bar-friendly legislation.

Since the early 1990s, North Carolina has enjoyed a Supreme Court and appellate court system viewed by many as a model of a fair, business friendly judiciary. Consistently ranked among the top states for its legal climate – and judges who recognize the rule of law – the state has also had a legislature that has regularly avoided expanding liability for employers.



In the past three election cycles, the state’s trial bar has aggressively engaged in recruiting and funding pro-trial bar candidates for the state legislature and the judiciary. Ranking as one of the top political action committees in the state, the trial bar PAC has targeted the 2008 election cycle as a key to future success. In addition to important legislative and judicial races, the state will elect a new governor. U.S. Sen. Elizabeth Dole stands for re-election, which will increase voter turnout.

North Carolina’s pro-business statute of repose law is currently under assault by the trial bar, led by the North Carolina Academy of Trial Lawyers (NCATL). The proposed legislation would more than double the amount of time allowed to bring a products liability lawsuit. The legislation raises the current six-year statute to 15 years, and would apply retroactively to cover purchases made since 1992.

A second measure that awaits a floor vote in the House is HB 244, which would give the plaintiff an equal number of jury strikes as all named defendants combined. A third measure, HB 744, would prohibit an employer-defendant named in a case from

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participating in the defense of that case when the alleged liability is based solely on the acts or omissions of an employee or agent of the company – regardless of the fact that the company is named as co-defendant. This bill would enable the trial bar to target corporate “deep pockets” while focusing on an individual’s actions independent of the employer. The state’s trial bar is also pushing a legislative research commission to study the doctrine of contributory negligence, which is currently the standard for damages in the North Carolina civil justice system.

Ever aware of their public image, the state’s trial bar is following the lead of the former American Trial Lawyers Association (ATLA), which underwent a name change last year. The NCATL is considering changing the name of the organization to the North Carolina Association for Justice. A recent statewide poll suggested a name change might be in order; according to poll results, only 34 percent of state voters give NCATL a favorable rating, while one of the state’s leading tort reform advocates, North Carolina Citizens for Business and Industry, received a 42 percent favorable rating. Since the poll, NCCBI has changed its name to North Carolina Chamber to more accurately reflect its pro-business mission and employer members.

The energized North Carolina trial bar, as demonstrated by its aggressive legislative agenda and political action, is poised to make significant gains against the state’s traditionally pro-business legal environment in 2008. Business leaders and legal reform advocates will likewise need to prepare for costly and hard-fought political campaigns to protect tort reform gains.

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## Pennsylvania

Pennsylvania has one of the strongest, most aggressive trial bars in the nation, and the results have shown in the state’s repeatedly low national ranking for favorable legal climates. The Pennsylvania Trial Lawyers Association (PATLA) is considered one of the strongest political lobbies in the state. By successfully establishing multiple political funding mechanisms for both direct contributions and other recruiting/support methods, the state’s trial bar has effectively spread its influence through its own political action committee and so-called “independent” committees, such as the Committee for Justice for All and Citizens for Fairness.

Democratic Gov. Ed Rendell, the former chairman of the Democratic National Committee, has close ties to the state’s trial bar, and is considered a tort reform obstructionist. During the 2006 election cycle, Rendell hired the former public relations director for Citizens for Fairness as a campaign consultant. However, pure partisan politics is not an effective gauge for tort reform advocacy in the state; many GOP state lawmakers are friendly with the trial bar, while some of the Democratic lawmakers, who understand the needs of small business and job creation, support tort reform.

Despite thousands of physicians and dozens of key hospitals and health care facilities

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leaving the state or simply shutting down based on rising liability insurance premiums and costly “defensive medicine” requirements, Rendell has disputed the fact that there is a health care crisis in the state. In 2002, the state legislature passed the Fair Share Act, which eliminated joint and several liability. A quick court challenge to the state’s trial bar-dominated judiciary resulted in the law being struck down. The legislature responded by making some technical corrections through new legislation, which was vetoed by Rendell.

Although he has called for a change in the way the state’s judiciary is selected, the hope is that the pressing health care crisis will compel Rendell to consider a weaker joint and several bill in the coming months. Currently, the state elects its judges; Rendell has called for gubernatorial appointment, which would further solidify the trial bar’s dominance of the judiciary.



In 2002, the state legislature also passed venue reform for medical malpractice cases, due to the fact that the Philadelphia court system was considered a friendly venue for the trial bar. The reform, however, has led to so-called “suburban sprawl” in litigation, with personal injury lawyers finding selected friendly venues across the state. In 2004, the legislature was unsuccessful in its efforts to amend the state constitution to lift the ban on caps on non-economic damages. At the time, Pennsylvania was one of only five states to have this constitutional ban.

2005 proved to be a watershed year for Pennsylvania politics. Lawmakers approved a last-minute, late-night significant pay increase for themselves, which was approved by Rendell. The firestorm of media coverage on the effort led to significant losses by incumbents in the 2006 elections. The “payjacking” scandal resulted in 55 new lawmakers taking the oath of office in January 2007. The legal reform community, made up of business and medical advocates, have identified the new lawmakers as targets for grassroots education on the need for tort reform.

Going forward, legal reformers – including the Politically Active Physicians Association (PAPA) and the Pennsylvania Chamber of Commerce – believe that the state’s future political makeup will hinge on political funding and public education. While PATLA’s political juggernaut continues to dominate the recruiting and support mechanisms for lawmakers, judges, and statewide elected officials, PAPA believes that consistent, focused efforts to hold elected officials accountable for the cause-and-effect relationship between trial bar-friendly laws and the state’s health care crisis will yield results in the coming years.

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## Wisconsin

With significant union influence and a healthy trial bar, Wisconsin legal reformers face

institutional difficulties before legislative reform can be considered. Nevertheless, Wisconsin Manufacturers and Commerce (WMC) and other pro-business allies maintain an aggressive program to push for economic growth and jobs, with special focus on tort reform as a necessary component.

During the 2006 election cycle, business and manufacturing interests tried to defeat incumbent Gov. Jim Doyle, a pro-trial bar leader. With Doyle's re-election victory, he has indicated in 2007 that the trial bar will have a friendly state chief executive during his term. The trial bar bundled political contributions during the '06 election cycle, and targeted the money mostly to pro-trial bar Democrats. Along with the national trend in which voters moved away from Republican candidates – the so-called “Bush Factor” – the GOP lost control of the Wisconsin Senate. The House of Representatives remains in GOP hands, with a small 52-47 margin. Since both chambers are held by slim majorities, neither business nor the trial bar can afford to be too ambitious, according to WMC leaders.



On the state judicial front, AJP partner WMC played a leading role in an overwhelming 58-42 percent victory in April's Supreme Court race between conservative Annette Ziegler and Linda Clifford, who was heavily backed by the Wisconsin Academy of Trial Lawyers (WATL). Clifford, a former immigration attorney who has done work for the American Civil Liberties Union (ACLU), is the wife of former WATL President Keith Clifford. Ziegler will be one of three “rule of law” justices on the seven-member court. This race sets the stage for another important Supreme Court race in Wisconsin in April of 2008, in which Justice Louis Butler, appointed by Doyle and a friend of the trial bar, faces a re-election campaign.

Political veterans in Wisconsin consider the state's trial bar to be relatively stingy with their political money, marking Wisconsin as one of the few such states. The Wisconsin trial bar has traditionally been slow to react to political changes, and has been reluctant to seek and accept professional political strategies to improve their position on legislative issues. For example, despite having a truly bipartisan state legislature, the state's trial bar nevertheless continues to exclusively support Democratic candidates. The trial bar has done little to infiltrate pro-business organizations such as the state Chamber of Commerce as it has in other states.

However, the Wisconsin trial bar has shown recent signs of energized political activism. The Greater Wisconsin Committee, a pro-Democratic organization controlled by Gov. Doyle, now enjoys the full support of the trial bar in its efforts to increase government regulation and open the door to expanded business liability.

During the 2007 legislative year, the trial bar's focus is on legislation that would essentially enshrine in state law a state Supreme Court ruling in a controversial lead paint case. In the case, the court found that an injured plaintiff did not need to prove that

any single manufacturer of paint pigment produced the specific product that caused the specific injury to the plaintiff under the “risk contribution” theory. This finding greatly expands potential liability for thousands of product and chemical manufacturers in Wisconsin.

Even as WMC and its pro-reform allies are battling the expanded liability bills, they are aggressively promoting expert witness legislation that would tighten the scope and qualifications for expert witnesses in civil cases. Despite a strong potential for passage this year, Gov. Doyle vetoed similar legislation in 2003 and 2005, and WMC expects the same this year.

Wisconsin’s business community, faced with daunting odds in terms of the ideological makeup of the state’s chief executive and the state legislature, continues to do an excellent job blunting the increasingly aggressive tactics of the state’s trial bar by focusing public attention on economic development and job retention and creation. The battleground in Wisconsin is the state’s legislature and courts, as well as the hearts and minds of Wisconsin voters.

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