

# ATRA Legislative Watch

Volume 23, Number 4

February 11, 2010

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## **ATRA Annual Meeting and Legislative Outlook – Register Today!**

The 2010 Annual Membership Meeting and Legislative Outlook is scheduled for March 9th at the Grand Hyatt in Washington, DC. Confirmed speakers include: The Honorable Lamar Smith, U.S. House of Representatives; Tom Goldstein, Appellate Lawyer at Akin Gump and Publisher of SCOTUSblog about the U.S. Supreme Court; Alan Lange and Tom Dawson, Authors of the book *Kings of Tort* about the Dickie Scruggs judicial bribery scandal; Panel of State Tort Reform Leaders, including Ed Murnane (Illinois Civil Justice League), Marcus Rayner (New Jersey Lawsuit Reform Alliance), and Cam Crawford (South Carolina Civil Justice Coalition); and Victor Schwartz of Shook, Hardy & Bacon and ATRA's General Counsel. Attached are registration materials and a finalized agenda. If you have not already done so, please register today! For more information, contact Geneva Carney, ATRA's Membership Coordinator, at [gcarney@atra.org](mailto:gcarney@atra.org) or (202) 682-1163.

## **State Activity**

### **Alabama**

S.B. 215 was introduced on January 12, 2010, and referred to the Senate Judiciary Committee. The legislation would retroactively extend the statute of limitations applicable to toxic torts cases. The bill has only one sponsor and has seen no action since being introduced. For additional information, please contact Matt Fullenbaum, ATRA, at [mfullenbaum@atra.org](mailto:mfullenbaum@atra.org) or (202) 682-1163, ext. 17.

### **Arizona**

On January 25, 2010, H.B. 2492 (Andrew Tobin-R) was introduced in the House and referred to the House Judiciary, Rules, and HHS Committees. This is legislation that would adopt the *Daubert* standard for admitting expert witness testimony and expert evidence; Arizona Courts currently embrace the less stringent *Frye* standard. Senate companion legislation, S.B. 1189 was heard in the Senate Committee on Healthcare and Medical Liability Reform on Wednesday, February 10<sup>th</sup> and they recommended it pass (5-2-0-0). H.B. 2492 is scheduled for a hearing in the House Health and Human Services Committee on February 17<sup>th</sup>. **ATRA strongly encourages members with an interest in Arizona to support the effort to pass this important legislation. For additional information about how to become involved, please contact Lorna Romero of the Arizona Chamber of Commerce at [lromero@azchamber.com](mailto:lromero@azchamber.com).**

On February 8, 2010, H.B. 2713 (Daniel Patterson-D; Tom Chabin-D) was introduced in the House. This bill is the same false claims bill that ran last year and it would amend Section 1. Title 12. The False Claims Act would apply to all contracts, not just Medicaid/Medicare and the bill includes a conspiracy provision for "delivering or causing to deliver" a false claim. If the *qui tam* plaintiff participates in the fraud that he or she is reporting, then they can only get less than

33 percent of the take. 33 percent of the funds recovered by the Attorney General go towards the AG pursuing future false claims. The bill also provides that private parties may pursue false claims if the Attorney General or prosecuting attorneys choose not to file a claim. Under the bill, it is also possible for even those individuals who participated in the false claim fraud to be protected under the Act. For additional information about this bill, please contact Lorna Romero of the AZ Chamber of Commerce at [lromero@azchamber.com](mailto:lromero@azchamber.com).

### **California**

On Monday, February 8, 2010, SBX8 38 (Ellen Corbett-D, Darrell Steinberg-D, and Mark Leno-D) was introduced in the Senate and a hearing will be held early next week. This bill will impose many new requirements on providers of mortgages. The new requirements on lenders would be enforceable by lawsuit to void a foreclosure, with damages to be the greater of treble damages or of liquidated damages of \$10,000. The state is already facing a litany of housing issues and this bill would only increase the amount of claims made because the damage provisions will entice lawyers to file such claims. For additional information or for information about how to get involved in defeating this bill, please contact Kim Stone with CJAC at [kstone@cjac.org](mailto:kstone@cjac.org).

### **Colorado**

On February 9, 2010, Senator Betty Boyd (D) introduced S.B. 167, legislation that would establish the *Colorado Medicaid False Claims Act*. The bill contains *qui tam* whistleblower provisions to allow private persons (relators) to file civil actions under the Act. S.B. 167 was referred to the Senate Health and Human Services Committee, where it is currently pending. For additional information, please contact Kelly Maher of the Colorado Civil Justice League at [okmaher@gmail.com](mailto:okmaher@gmail.com).

### **Florida**

On February 9, 2010, the Criminal & Civil Justice Policy Council agenda was released and included on the agenda for the meeting is H.B. 437 (Seth McKeel – R). This legislation would prohibit the Department of Legal Affairs of the Office of the Attorney General from entering into contingency fee contracts with private attorneys unless the Attorney General makes a written determination prior to entering into such a contract that contingency-fee representation is both cost effective and in the public interest. Moreover, the bill requires the Attorney General, upon making his or her written determination, to request proposals from private attorneys to represent the Department of Legal Affairs on contingency-fee basis unless the Attorney General determines in writing that requesting such proposals is not feasible under the circumstances. H.B. 437 provides that written determination does not constitute final agency action, and it also provides that request for proposals and contract awards are not subject to challenge under the Administrative Procedure Act. Finally, the bill requires maintenance of specified records, limits the amount of contingency fee that may be paid to private attorney pursuant to contract with the Department of Legal Affairs, and requires Internet posting of specified information. For additional information, please contact William Large of the Florida Justice Reform Institute at [william@fljustice.org](mailto:william@fljustice.org).

### **Iowa**

On February 1, 2010, the Senate passed S.F. 2088. This legislation contains a State False Claims Act, as does House companion bill, H.S.B. 565, which is pending in the House State Government Committee. The House is going to hold a hearing either late this week or next week. They are working to amend the False Claims Act language. Amendment S-5036 would have stripped the State False Claims Act from the bill, but the amendment failed by a vote of 24-

26. For more information on these bills, please contact John Gilliland with the Iowa Association of Business and Industry at [jgilliland@iowaabi.org](mailto:jgilliland@iowaabi.org).

On February 1, 2010, the Senate Judiciary passed H.F. 758 (Judiciary) without recommendation. It is now on the Senate calendar and eligible for debate. This is of concern, as the chamber has an even larger Democratic majority than the House. This legislation provides that a spouse or child of an injured or deceased person may recover for the loss of support, services, companionship, and society resulting from the injury or death. Damages also may include damages for a decedent's loss of enjoyment of life that are separate from the economic productive value the decedent would have had. **ATRA strongly encourages members with an interest in Iowa to contact their local lobbyists and/or counsel and have them get involved in the effort to defeat this bill. For more information about how to become involved, please contact Andy Warren with the NFIB in Iowa at [Andy.Warren@nfib.org](mailto:Andy.Warren@nfib.org).**

### **Oklahoma**

On February 3, 2010, S.B. 1379 (Anthony Sykes-R) was recommended to the full committee from the Appropriations/Sub-Public Safety Committee and Judiciary Sub-Committee. This bill would enact the Private Attorney Retention Sunshine Act (PARSA). It would require a request for proposal process for retention of a lawyer or law firm on behalf of the state when the fees and expenses for the service are expected to exceed \$5,000. The bill would authorize the state to create an Internet website to request for proposals and the website would contain a list of all persons and entities who received a request for proposal and information about the vendor that was awarded the state contract. The act would also require the governor to review any state agency contract for legal services that would exceed \$500,000. The state agency would be required to provide along with the contract, a written statement including the reasons the agency needed to retain private counsel, the reasons for the selection of the lawyer or law firm, and the past or present relationship between the lawyer and the state agency. At the conclusion of any legal proceeding, the state shall receive from the private counsel a statement of the hours worked, expenses incurred, the aggregate fee amount, and a breakdown of the hourly rate. The bill provides that in no case shall the hourly rate exceed \$1,000. For more information about this bill, please contact Mike Seney with the Oklahoma State Chamber at [mseney@okstatechamber.com](mailto:mseney@okstatechamber.com).

### **South Carolina**

On Tuesday, February 9, 2010, the South Carolina Civil Justice Coalition (SCCJ) sent the South Carolina Association of Justice their final compromise on comprehensive civil justice reform. It was unknown at the time we went to press whether the SC Association of Justice had accepted the SCCJC's compromise proposal, which was in accordance with a majority of the other southern states. SCCJC offered a limit on punitive damages of three times compensatory damages or \$350,000 whichever is greater and they asked for a legislative repeal of *Mitchell v. Fortis Insurance*, as it related to "potential harm" being used as a basis for awards. They included an Appeal Bond limit of \$25 million for larger businesses and \$1 million for small businesses. The offer also provided for the immediate appeal of class certification. As for the Private Attorney Retention Act, they suggested a panel appointed by the House and Senate Leadership to review outside legal counsel contracts that are likely to *exceed* \$1 million. SCCJC is also trying to ensure that the Statute of Repose that was enacted in 2005 does what it was intended to do and nothing more. They are also seeking to return to the pre-Drury standard in order to protect corporate officers from actions that are trying to pierce the corporate veil. Lastly, the compromise requests that proof of the non-use of seat belts be admissible in cases involving car accident injuries. Today, February 11, 2010, the Senate Tort Reform Subcommittee was scheduled to debate S.B 350 (Senator Larry Martin-R). ATRA will report on the results of the hearing and any compromise that was reached in next week's *Legislative Watch*. For additional

information, please contact Cam Crawford of the South Carolina Civil Justice Coalition at [scciviljusticecoalition@yahoo.com](mailto:scciviljusticecoalition@yahoo.com).

### **Washington**

On February 5, 2010, the Senate Judiciary Committee passed S.B. 6764 (Randy Gordon-D) to the Senate Rules Committee. The deadline for this bill is Tuesday, February 16<sup>th</sup>, when all bills must be out of their house of origin. This legislation raises the tort judgment interest rate from two points above the T-bill to at least 12% or 4 points above for all private sector defendants. Today's 26-week T-bill rate is around .17%. As a result, it creates an unfair playing field because the government entities enjoy a lower interest rate while the private sector is forced to pay almost 100% higher. The bill would also increase the interest rate by approximately 10% for non-public defendants. The legislation would also create a significant barrier to the basic civil right to appeal. The bill reverses the bi-partisan legislation that was passed in 2004, which lowered the interest rate in order to be more in accordance with current interest rates. **ATRA strongly encourages members with an interest in Washington to help defeat this legislation. For more information about how to become involved, please contact Dana Childers of the Washington Liability Reform Coalition at [dana@walrc.org](mailto:dana@walrc.org).**

On February 9, 2010, the Senate Ways and Means Committee passed S.B. 6508 (Darlene Fairley-D) to the Senate Rules Committee for a second reading. This legislation would allow parents of a deceased adult child to recover for wrongful death. S.B. 6508 eliminates the decades-old age limit of 18 for making a wrongful death claim for a child, and it allows the parents of an adult child to recover unlimited noneconomic damages. The bill expands liability for state and local government by holding the government accountable for any preventative action that may have been taken in advance. The bill would indirectly allow for recovery of punitive damages against governmental entities and it would undermine the availability of important defenses that are currently available to the governmental entities such as the public duty doctrine and discretionary immunity. This legislation is similar to a bill two years ago that was the top priority of the trial bar, but was defeated by the civil justice reform community, led by the Washington Liability Reform Coalition (LRC). The Attorney General estimates that this bill will cost state taxpayers at least \$18.4 million per biennium, and local government taxpayers can expect to be responsible for an additional \$2 million per wrongful death claim. The State of Washington also expects an 80% increase in claims frequency (number of claims) against them. **ATRA strongly encourages members with an interest in Washington to help defeat this legislation. For more information about how to become involved, please contact Dana Childers of the Washington Liability Reform Coalition at [dana@walrc.org](mailto:dana@walrc.org).**

### **West Virginia**

On February 5, 2010, Delegate Tim Miley (D) introduced H.B. 4352, legislation that would authorize the West Virginia Supreme Court of Appeals to create a business court division within the circuit court in any judicial district with a population in excess of 75,000 people. The legislation also provides that the Supreme Court of Appeals would promulgate rules for the establishment and jurisdiction of the business court divisions within its circuit court system. For additional information, please contact Matt Fullenbaum, ATRA, at [mfullenbaum@atra.org](mailto:mfullenbaum@atra.org) or (202) 682-1163, ext. 17.

S.B. 402 (Jeffrey Kessler – D) is legislation which would provide for the election of Supreme Court of Appeals justices to be elected by division. This means that if two seats were up for election in the same year, candidates could pick which seat they were running for (rather than the current free-for-all in which the top two vote getters get the two seats). The bill was introduced on January 29, 2010, and referred to the Senate Judiciary Committee. For additional information, please contact Matt Fullenbaum, ATRA, at [mfullenbaum@atra.org](mailto:mfullenbaum@atra.org) or (202) 682-1163, ext. 17.

H.B. 4242 (Patrick Lane – R) is legislation that would prohibit the Attorney General from entering into a settlement agreement until the Joint Committee on Government and Finance approves such settlement. The bill also requires the Attorney General's office to enter into a competitive bidding process for the hiring of outside counsel, and provides that any proceeds received in any civil action involving the Office of the Attorney General be deposited in to the general revenue fund to be appropriated by the Legislature. The bill was introduced on January 29, 2010, and referred to the House Judiciary Committee. For additional information, please contact Matt Fullenbaum, ATRA, at [mfullenbaum@atra.org](mailto:mfullenbaum@atra.org) or (202) 682-1163, ext 17.