

ATRA Legislative Watch

Volume 23, Number 23

June 24, 2010

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Federal Activity

Class Action Fairness Act Threatened by Legislation Approved by U.S. House Judiciary Committee

Yesterday, June 23, 2010, the United States House Judiciary Committee favorably reported H.R. 5503 (Rep. John Conyer, D-MI), the “Securing Protections for the Injured from Limitations on Liability Act,” by a vote of 16-11. Most of the bill pertains to the Gulf oil spill. However, according to the U.S. Chamber of Commerce’s Institute for Legal Reform, Section 5 of the legislation would exempt *parens patriae* actions (suits brought by a state on behalf of its citizens) from jurisdiction of the Class Action Fairness Act (CAFA). This proposal is unnecessary because state attorneys general already can bring suits as *parens patriae* on behalf of their citizens without implicating CAFA jurisdiction. Such suits are usually brought under state consumer protection statutes and can only be brought by attorneys general. Section 5 threatens to negate one of the core purposes of CAFA by creating a loophole that would encourage enterprising attorneys to avoid federal jurisdiction by finding attorneys general to join their class action lawsuits. Rather than promote justice, such a result would promote questionable collaborations between private attorneys and public officials, in which the attorneys seek the attorney general’s signature in order to avoid federal jurisdiction, and the attorney general essentially joins a private lawsuit for political reasons. For additional information, please contact Matt Fullenbaum, ATRA, at mfullenbaum@atra.org or (202) 682-1163, ext. 17.

State Activity

California

S.B. 1275 (Mark Leno – D) passed the Assembly Banking Committee on June 22, 2010, by a vote of 7-4. This bill would impose a host of detailed new requirements on lenders before a foreclosure. The bill also would allow a lawsuit by the homeowner to stop the foreclosure. Pushing nonjudicial foreclosures into court will only increase costs and delay and clog California courts. The Civil Justice Association of California (CJAC) opposes this legislation. For additional information, please contact Kim Stone of CJAC at kstone@cjac.org.

A.B. 2059 (Charles Calderon – D) was amended to remove CJAC concerns in the Senate Judiciary Committee. The bill would have allowed service of process via a rental car company on out-of-state renters who have purchased insurance from the rental car company. Service of process is the legal notice that tells a person they have been sued. Creating a new relationship (and subsequent liability) for the car rental/insurance agency that, under this bill, would now be acting as the renter’s agent for service of process would create additional liabilities that may arise from the duty to act as an agent (to receive service) of the renter. With this additional obligation would come an additional liability that may arise out of an allegation that the rental car company had not fully performed its duties as an agent for service of process. CJAC originally opposed this bill, but after the bill was significantly narrowed in committee and now only applies to out-of-country renters, CJAC no longer opposes the bill. For additional information, please contact Kim Stone of CJAC at kstone@cjac.org.

Louisiana – Good News!

The Louisiana Legislature adjourned on June 21, 2010, without passing legislation that would have authorized the attorney general to hire private attorneys on a contingency fee basis. A version of the bill, which passed the House by a vote of 71-23, would have restricted the applicability of the legislation to the Deepwater Horizon spill only, limited contingency fees to \$50 million, excluded natural resource and other damages that are already adequately addressed by state and federal law, and allowed sufficient oversight over the hiring of attorneys in suits involving this particular incident. The Louisiana business community would have accepted this version of the legislation. According to the Louisiana Association for Business and Industry, Senate President Joe Chaisson did not agree with the limited applicability of the bill, and he tried to get the House to agree to a more expansive version. However, the House was moving slowly on the final day of session, June 21st, and ultimately adjourned before S.B. 731 could come up for a concurrence vote. For additional information, please contact Ginger Sawyer of the Louisiana Association of Business and Industry at gingers@labi.org or Jim Harris of the Coalition of Common Sense at jharris@hdaissues.com.

New York – Take Action Now!

On June 22, 2010, the New York State Senate passed S. 5389, legislation that would legitimize third-party financing of litigation. Assembly companion legislation is A. 7891. Both bills are currently pending in the Assembly Committee on Codes. **ATRA strongly encourages members with an interest in New York to engage their local lobbyist and/or counsel to urge Assembly members and those on the Assembly Committee on Codes to oppose this legislation. Please coordinate with Walter Pacholczak of the Business Council of New York State at walter.pacholczak@bcnys.org.**

Pennsylvania – Take Action Now!

As we reported last week, H.B. 2246 (Will Tallman-R) was passed out of the Senate Committee on Transportation on June 15, 2010. The next step is whether the bill gets referred to the Appropriations Committee. Efforts are being made to urge the Committee on Referral to refer the bill to the Appropriations Committee in order to get another committee to take a real look at the bill. **ATRA strongly urges members with an interest in Pennsylvania to engage their local lobbyist and/or counsel to urge members of the Committee on Referral to refer the bill to the Appropriations Committee. Please coordinate lobbying efforts with Sam Marshall, President of the Insurance Federation of Pennsylvania, who can be reached at smarshall@ifpenn.org.** By way of background, H.B. 2246 is legislation that would overturn a 41-year old Pennsylvania Supreme Court ruling that closing arguments are not the proper place for arguing noneconomic damages. H.B. 2246 would introduce a needless element of uncertainty in resolving claims by allowing lawyers to argue both lump sums and mathematical formulas. The legislation only pertains to auto accident cases, and the only group pushing the legislation is the plaintiff's bar, which is the real beneficiary here, not consumers who will bear this cost in the form of higher rates. No one has demonstrated that justice is being denied or consumers are being harmed under the current legal regime. Moreover, the vehicle code is an inappropriate location for changes to rules governing the conduct of civil trials.

On June 22, 2010, H.B. 1679 was favorably reported by the House Health and Human Services Committee. It was then read across the floor once, and referred to the House Appropriations Committee. H.B. 1679 is legislation that would establish the False Claims Act. For additional information, please contact Sam Denisco of the Pennsylvania Chamber of Commerce at sdenisco@pachamber.org.

Rhode Island – Take Action Now!

S.B. 2469 (Michael McCaffrey – D) was transmitted to Governor Donald Carcieri (R) on June 17, 2010. This legislation would allow a parent to recover damages for the loss of consortium or parental society and companionship after the wrongful death of their child, regardless of their son's or daughter's age. House companion legislation, H.B. 7759, was passed by the Senate on June 9th. **ATRA strongly encourages members with a presence in Rhode Island to engage their local lobbyist and/or counsel to urge Governor Carcieri to veto this bill. For additional information, please contact David Carlin, Vice President of Government Affairs, Northern Rhode Island Chamber of Commerce, at dcarlin@nrchamber.com.**