THE WALL STREET JOURNAL.

MONDAY, JANUARY 3, 2005 - VOL. CCXLV NO. 1 - ★★★ $1.00

REVIEW & OUTLOOK

So Long to Shakedowns

Tort reform, California-style.

What policy wonks call "tort reform" can sometimes seem to be a mere abstraction, but the difference it makes in the real world can be remarkable. Consider the experience of California, where an initiative voters passed on November 2 is already yielding benefits to consumers, businesses and the broader economy.

Much of California's tort problem stemmed from its Unfair Competition Law, enacted in the 1930s to curb allegedly unfair business practices. Over the years the law morphed into an income redistribution tool for lawyers, who filed shakedown lawsuits against companies for anything they claimed was unfair to consumers. Most crazy was that the law allowed any party to sue, regardless of whether the plaintiff had been directly affected.

Lawyers were actually able to file lawsuits "on behalf" of the entire citizenry of California, for example. Yet since there were very few genuine plaintiffs, average Californians never really stood to gain anything. The plaintiffs bar, however, could win huge legal fees ordered by judges who decided their cases. Many defendent businesses settled out of court to avoid the cost of going to trial. Consumers ultimately financed this extortion via higher prices for goods and services.

Californians put a stop to all this in the recent election, with 59% voting to amend the law. Citizens can still file lawsuits, only now the plaintiffs must show they personally suffered physical harm or property damage. Credit for this bit of sanity goes to the Civil Justice Association of California, a nonprofit group that's been urging change for nearly a decade, as well as to Governor Arnold Schwarzenegger, who gave vocal support to the initiative as part of his strategy to make California more hospitable to job creation.

And in only a few weeks the difference has been tangible. The trial bar is still waging a last-ditch battle to have the suits (potentially hundreds) filed before the election remain in court. But a number of judges have already decided the new law applies retroactively and are throwing out the sillier suits.

In the past few weeks alone, a judge dismissed a suit against Bayer for including certain products in its "One a Day" vitamin brand that called for more than one tablet a day. The suing lawyers admitted that their "plaintiff" had never bought or used any of the products in question. Another judge dismissed a lawsuit against AT&T filed by one Daniel Banales, in which he claimed the company charged a "hidden" fee when upgrading to a new phone. Mr. Banales was not an AT&T customer.

The disputed cases also offer a window into just how much cash lawyers were siphoning under the old law. A California appellate court will soon decide whether to dismiss a suit originally brought by such infamous tort lawyers as Bill Lerach against Black & Decker and Target, Wal-Mart and other retailers. Their crime? Selling Kwikset locks advertised as "Made in U.S.A" when the lock contained six screws made in Taiwan. The lower court awarded the sole "plaintiff" in the case costs plus legal fees—or $3 million that went straight to the attorneys.

Our hope is that these courts and others abide by the will of the people, who made it clear in November they want a stop to all of this. Meanwhile, everyone can take satisfaction in knowing that future shakedowns have been outlawed. California businesses, taxpayers and consumers are the better for it.