

Legal & Judicial

Considering the natural and economic assets of this state, Florida stands out for many companies as an attractive place to locate a business. However, when the legal climate is considered, some Florida counties are considered “judicial hellholes” and are a significant deterrent to our continued economic development and recovery. According to the American Tort Reform Association – which annually selects the 10 worst venues – “judicial hellholes” are courtrooms throughout the United States where the law is not applied evenhandedly to all litigants and where “litigation tourists,” guided by their lawyers, file lawsuits because they know they will receive a large reward, a favorable precedent or both. In 2009, South Florida was ranked as the top judicial hellhole in the U.S. for the second time in three years. Unfortunately, South Florida has a reputation for high awards and plaintiff-friendly rulings that make it a launching point for class actions, dubious claims and novel theories of recovery.

In these difficult economic times, Florida business needs a clear and level playing field in the courtroom. AIF will continue to lead the fight for any legal reforms that decrease the cost of litigation and remove unfair and unpredictable barriers to growth.

AIF will focus on the following legal and judicial issues for 2010:

Contingency Fees for Attorneys Hired by the Attorney General

AIF SUPPORTS efforts to add transparency and accountability to the hiring of outside counsel by the Attorney General’s office. Also known as Transparency in Private Attorney Contracting or TPAC, this practice will ensure tax dollars are wisely spent and not wasted on costly attorney’s fees. This measure will prohibit the Department of Legal Affairs (DLA) from entering into a contingency-fee contract with a private attorney unless the Attorney General (AG) makes a written determination before entering such contract that contingency-fee representation is both cost-effective and in the public interest. The AG will request proposals from private attorneys to represent the DLA on a contingency-fee basis and require attorneys to keep time records in increments of no greater than one-tenth of an hour. Contingency-fee contracts entered into by the DLA will not be permitted to exceed an aggregate contingency fee of \$50 million, except when the AG determines, upon consultation with the Cabinet, that there are exigent or unusual

circumstances or special legal knowledge or experience required, and provides written evidence of this. Lastly, copies of executed contingency fee agreements, as well as payment of contingency fees, must be posted on the DLA’s website.

Parental Authority

AIF SUPPORTS the right of parents to waive liability on behalf of their minor children. Without liability protection from a waiver, many businesses, particularly in the recreation and sports industries, will not allow minors to participate. Since many of these businesses cater to families, tourists or directly to minors, this could impact their ability to stay in business. Last year, the Supreme Court of Florida, in the case of *Kirton vs. Fields*, held that parents do not have the right to release a recreation provider from liability for injury on behalf of a child. AIF will seek legislation to correct this flawed opinion and statutorily grant a parent the authority to waive liability on behalf of their minor child.

Protecting Community Volunteers Providing Disaster Recovery Services

AIF SUPPORTS legislation that offers basic protection from unnecessary litigation to business owners who offer their services to first responders during natural disasters. In the wake of natural disasters, many community organizations join with local families and businesses to provide basic needs to first responders assisting with disaster relief, recovery and rebuilding efforts. Often under extraordinary physical stress, locals provide assistance such as food, clothing and shelter for those who join with them to rebuild their communities. Accordingly, those who open their homes and provide for the responders need assurance that their generosity will not be met with litigation surrounding the unavoidable and unforeseen circumstances the disaster situation forces upon them. AIF applauds businesses who form public-private partnerships to respond to emergency management needs and will advocate for the legal protections they need to continue giving and serving their communities.

Negligence

AIF SUPPORTS legislation which protects business owners from costly and frivolous litigation. Currently, Florida courts allow a plaintiff to recover from a business for injuries they allege even if the business owner was not aware of any dangerous or threatening conditions on their property. AIF supports legislation that will require a plaintiff to show the business owner’s actual knowledge of a hazardous situation before recovery is awarded.

Furthermore, AIF OPPOSES the weakening or re-

peal of any of the 2005-06 legal reform laws. AIF will be ready to defend any proposals by the trial bar to undo the repeal of joint and several liability. The 2006 Legislature repealed the remaining vestiges of joint and several liability in apportioning economic damages in negligence cases and replaced that system with a comparative fault approach. As a result, a party's degree of liability is limited to its degree of fault. In other words, a defendant who is found 10 percent at fault is only 10 percent liable for damages. Florida's business climate is facing tough challenges in the form of soaring unemployment taxes, property tax bills and property insurance rates. The repeal of joint and several liability has created a more stable legal climate that is fair and predictable. AIF will do whatever it takes to ensure that businesses in Florida only pay their "fair share" of damages.

AIF continues its SUPPORT for existing caps on non-economic damages arising from medical malpractice lawsuits, as well as measures expanding immunity to health care providers providing medical attention in certain emergency situations. Litigation in the medical and health care arenas is a significant cost driver that affects the price of health insurance. The liability climate has also driven many doctors from the state, but this situation has steadily improved since the Legislature enacted medical malpractice reforms in 2003. The Legislature can impact the rising cost of care by enacting greater medical malpractice reforms.

Court Funding

AIF strongly encourages the Florida Legislature to fund the court system adequately and swiftly at a level equivalent to the judiciary's status as the third equal branch of government. The Legislature should look to explore all possible mechanisms that would ensure proper funding for the judicial. Establishing a state courts trust fund in 2009 was a step in the right direction. Yet, we must continue to dedicate the resources necessary for the judicial branch to meet the legal needs of Florida's citizens and businesses involved in more than four million cases each year. Overall, judicial funding is a critical need for Florida's business community. Even speedy resolution of family law cases helps employers because employees will experience less interference in their work schedules.

Ideally, Florida's judicial system should embrace a business court system to produce standardized procedures and consistency in rulings in complex business to business litigation matters. The establishment of business courts will lead to reduced workloads because such courts use alternative dispute resolution in order to facilitate settlement before trial. In today's economic environment, a similar court designation dedicated to


the foreclosure crisis should be considered.

Crashworthiness

AIF SUPPORTS efforts by the Florida Legislature to clearly express that a Florida Supreme Court-created standard regarding crashworthiness is absurd and unfair. Florida juries are currently not presented all the evidence surrounding the details of automobile accidents when an auto manufacturer is sued in an action challenging a vehicle's crashworthiness. Florida is the only state that prohibits the introduction of any evidence relating to the driver's condition at the time of the crash. In other words, drivers who are drunk, underage, without license or under the influence of any manner of illegal substances, bear no responsibility of fault in crashworthiness cases because their condition is never shared with the jury. This results in jury awards being astronomically higher in Florida than any other state for these types of cases. This is also more burdensome for American car manufacturers because foreign car manufacturers are rarely sued in these cases since obtaining their vehicle design evidence from foreign countries is so difficult. SB 744 by Sen. Garrett Richter (R-Naples) and HB 433 by Rep. Marlene O'Toole (R-Leesburg) address this important issue and must be passed this year.

Justice Reform

AIF SUPPORTS smarter allocation of Department of Corrections dollars through diversion of prisoners who have behavioral health care (i.e. substance abuse, mental health, co-occurring disorders, etc.) issues so that Florida prisons will be for violent felons who need to be incarcerated to protect the public. AIF also supports character-based and faith-based programming in prisons, which will benefit prisoners through education and life-skills training and, at the same time, make prisons safer places to work for corrections officers. In addition, AIF supports the immediate convening of the Correctional Policy Advisory Council created in 2008 under SB 2000. Finally, we support re-entry programs on the back-end, which help facilitate a prisoner's re-integration into society so that they can become productive, law-abiding and tax-paying citizens. **Importantly, AIF OPPOSES the early release of prisoners and allowing prisoners to serve less than 85 percent of their prison sentence, as well as the further construction or expansion of correctional facilities — either with general revenues funds or bonds.**



AIF Lobby Team Member Assigned to Legal & Judicial Issues:
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