

TO HELL AND BACK

A veteran tort reformer's view of Alabama's legal climate

**GUEST COLUMN BY
FORREST LATTA**

It was 15 years ago that Alabama earned the "Tort Hell" title in a 1993 *Forbes* magazine article by David Frum. He described a lottery-like legal system where giant jury awards were unchecked, sending businesses racing for the exits. In response to bad publicity and U.S. Supreme Court rulings that said the system was so flawed it violated the Bill of Rights, Alabama began cleaning up its act.

**DESPITE JUDICIAL AND
LEGISLATIVE REFORMS, THE
PERCEPTION IS THAT ALABAMA'S
LEGAL SYSTEM IS STILL BAD FOR
BUSINESS.**

The judicial and legislative reforms that followed, combined with political changes on the courts, produced a far more improved climate by the year 2000. But as the saying goes, it's hard to shake a reputation. The indelible impression left by Alabama's lawsuit frenzy may be the hardest thing to reform of all.

My experience on tort reform covers over 20 years as a vocal critic. Our goal in the early days was to sound the alarm and tell the story of how our legal system affects not only business but also everyday life, from recreation to church youth programs. We gave power point presentations, provided information to the media, wrote briefs in any court that would listen, and urged political and legislative changes.

Eventually national organizations began to grade the states' legal climates. Some like the American Tort



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Reform Association and the U.S. Chamber of Commerce, now publish annual lists like football rankings. Others like the Rand Corp. and Pacific Research Institute, conduct more specialized studies. No single report is definitive, but together they offer a fairly accurate picture of how Alabama's legal climate is seen in the marketplace.

So how do we stack up?

The most important list may be

the one Alabama can brag about not making. It is the annual "Judicial Hellholes" list published by the American Tort Reform Association (ATRA), a non-profit group that identifies the worst state legal systems and how to improve them. For the seventh year, Alabama failed to make the list whose name it inspired. It seldom is "news" when one is left off a list, but almost nobody noticed when Alabama disappeared from the ATRA Hellhole list nearly a decade ago.

Another often cited list is the U.S. Chamber of Commerce ranking of state court systems. The latest report ranks Alabama 47th — fourth worst in the country. The important thing that sets this list apart is that it measures only perceptions. But not just any perceptions — its surveys are sent to over 1,000 corporate officers asking the states they consider most dangerous. The poor ranking shows that perception of Alabama has not caught up with reality. Despite years of reforms and a lack of affirmance of big jury awards — indeed, reversals have become the norm — businesses still remember our "tort hell" days from years ago. Before one discounts the Chamber ranking as uninformed, remember that "perception is reali-

HIGHWAY FROM HELL

Alabama has addressed its "jackpot justice" problem in many ways. Here are the top 10:

1. The U.S. Supreme Court has sharply curtailed punitive damages.
2. Binding arbitration now governs many consumer contracts.
3. Tort reforms enacted by the Legislature restrict many causes of action.
4. Class action lawsuits have been sharply limited and regulated.
5. Many group insurance disputes are no longer allowed in state court.
6. Medical liability cases are now subject to new rules of proof.
7. Consumer fraud cases now face stiffer burdens of proof.
8. Alabama's voters have elected more conservative judges.
9. Mediation has promoted settlement, reducing jury trials.
10. New court rules limit forum shopping for "magic" jurisdictions.

ty." These people decide where companies do business.

Mississippi, which arguably had worse problems, has tried to change its perception. It secured placement of favorable articles in publications, such as the *Wall Street Journal* — "In Mississippi Tort Reform Works" — suggesting Mississippi has resolved its problems. It has used PR professionals to encourage an appreciation by business groups like the U.S. Chamber which, while still ranking Mississippi 48th, tipped its hat in recognition of the state's improvements. Mississippi's efforts are paying off. It recently was ranked the 21st best legal climate by the Pacific Research Institute, which publishes a "U.S. Tort Liability Index" co-sponsored by the National Association of Manufacturers.

The PRI study is more analytical than the others. It uses 39 factors to assess a state's economic vitality and potential for growth, which it suggests is closely linked to a state's legal climate. The PRI index ranks Alabama 40th — leading Florida, Massachusetts, New York and

Pennsylvania, but trailing neighbors like Georgia (10), Tennessee (12) and Mississippi (21). The report has a warning, however, for Alabama and

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four other states which it says risk falling due to a history of "relatively high monetary tort losses," and the absence of any objective limits.

Those lists aside, few disagree that Alabama's legal climate has improved the last 10 years — paralleling new business announcements. Such

improvements have been noticed in the insurance community, as well. A task force named by Alabama's Commissioner of Insurance concluded, "Alabama's days as Tort Hell could be over." A recent *ABA Journal* described Alabama as a state where "the pendulum has swung and the state now leads the country in what critics call limited justice." Some say Alabama has become too conservative, turning a deaf ear to valid tort claims.

It is not a bad thing when people disagree over whether Alabama's reforms have gone too far. It means we are somewhere near center, which is perhaps where most people want it. We owe our leaders and judges — and the voters who chose them — credit for their work in responding to the "tort hell" situation. For those like me who were vocal critics of the unreformed state of affairs in the 1980s and 90s, we likewise owe it to Alabama to be equally honest in recognizing the improvements. We now have another story to tell — about a state that found its way back from hell as a leader in tort reform. Let's not be upstaged by our southern neighbors.

Success does not mean we can rest on our laurels. There remain issues and courthouses still needing attention. And we must remember that Alabama's legal system is inherently political — all our judges are elected — so the benefits of tort reform can be wiped away in one election cycle. Indeed, this is an area still needing reform. At least for now, Alabama is becoming known as a more conservative state, stemming the excesses that tarnished its reputation. The task now is to reform perceptions.

Our economic growth is fueled by business development, which requires financing, insurance and other things that depend upon confidence in our laws and in those who administer them. We must never forget the lesson of tort reform in Alabama — that our legal system is only as good as we make it. •

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