



Opinion

Bull market for Litigation, Inc.

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While many companies are hitting the reset button and entire areas of commerce are stuck at an unprofitable pause, at least one industry -- Litigation, Inc. -- remains on a fast-forward growth pace.

Unfortunately, what's good for this multi-billion dollar industry isn't good for America. Its parasitic business model and unregulated pursuit of riches hampers U.S. economic recovery.

As recently as two years ago, it seemed like the litigation industry's bubble was about to explode. Major media stories declared that trial lawyers had been "trounced" and pronounced the end of mass-tort class actions.

Lawsuit market leaders like Bill Lerach and Richard Scruggs had respectively pled guilty to fraud and bribery, and were headed to jail. Trial judges like Janice Graham Jack had exposed lawyers and doctors who dangerously manufactured baseless injury claims. The U.S. Supreme Court was issuing decisions which reduced outrageous punitive damages and curtailed lawyer-driven litigation.

But the bubble never burst. Instead, it continues to swell in size and strength. Unresolved mass litigation still lingers like bad loans on business balance sheets, and financially weakened companies are more susceptible than ever to shakedown lawsuits aimed at compelling settlements. And yet, our government appears recklessly determined to pile on further liability burdens and risks.

Plums for plaintiffs' lawyers abound in new federal bills and laws. One proposal creates a \$1.57 billion tax break through write-offs for plaintiffs' lawyers who bankroll litigation as part of their contingent fee arrangements.

As highly respected civil justice expert Victor Schwartz writes in a new Washington Legal Foundation paper, during the first months of 2009 "virtually the entire American Association for Justice [formerly ATLA] lobbying team was directed at helping assure the passage of the proposal." Congress has not yet taken action on the bill.

Other recent bids for stimulating the litigation industry include federal proposals that would expand lawsuits against medical device companies; erode non-litigation devices to resolve disputes, such as arbitration; and

eliminate corporate defendants' ability to deduct punitive damages as an ordinary business expense.

Congress has also included a number of clever back-door benefits for trial lawyers in new laws this year. Several statutes delegate federal civil law enforcement authority to state attorneys general, thereby creating new opportunities for state AGs to hire private contingent-fee lawyers to sue businesses on their behalf.

Under this distortion of democracy, self-interested, unelected lawyers advance their own agendas with the imprimatur of state authority. State AGs in turn can use the pursuit of "justice" as a cover for lucrative and career-advancing regulation-by-litigation. One hand ably washes the other. Taxpayers should be asking -- what's in it for us?

That is a question, especially in the current economic climate, which everyone should be asking about the litigation industry and the services they offer. For instance, securities class action lawsuits are once again on the rise against public companies.

Lawyers specializing in such suits hold out the promise of recovering lost funds, but because shareholders are essentially suing themselves, securities class actions are a very lethal double-edged sword. After the class action settles or drags on for years, how much will clients really recoup, and how much will end up in their lawyers' pockets?

The lawyers who enrich themselves at the expense of their clients are no different from the high-living CEOs who do the same to their shareholders and employees. But there is no talk of executive compensation limits for the leaders of Litigation, Inc.

And amid all the discussion about increasing business regulation, no one has considered protecting consumers from the unaccountable litigation industry's excesses.

One thing is certain -- America can't sue its way back to economic leadership in the world marketplace.

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