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SPONSOR INSIGHT:

Increased Risk for Business Defendants Possible - Again

A repeat issue in the Legislature this year is an attempt to turn back the clock on tort reform to make it more likely businesses with valuable assets or adequate insurance will pay more than their fair share of damages if they are named in litigation.

HB 197, relative to apportionment of damages in civil actions, is this year's version of HB 143, which passed the Legislature but was vetoed by the Governor in 2007. The bill has only one paragraph, as follows:

For purposes of this section, fault and damages may be apportioned by the trial judge in jury instructions and by the jury only against parties to an action who are before the court at the time of such instructions or apportionment.

To understand the impact of HB 197, two components of current law must be understood.

- The 50% Rule - In an attempt to balance the interests of plaintiffs and defendants in cases with multiple parties and varying levels of fault, current law states that if a defendant is less than 50% at fault, that defendant can be held responsible only for the percentage of damages directly attributable to it. On the other hand, if a defendant is 50% or more at fault, that defendant can be held responsible for the entire claim. Many believe this "50% rule" strikes an appropriate balance between the interests of plaintiffs and defendants because it puts a defendant at risk of assuming more than its fair share of liability only if that defendant is at least 50% at fault.
- Current Definition of "Party" - Current law, as interpreted by the New Hampshire Supreme Court, defines "party" to include all parties contributing to the occurrence that gave rise to the action. Thus, "party" may include entities that are not officially before the

court at the time judgment is imposed, either because they reached a settlement prior to litigation, because the plaintiff did not choose to name them as a defendant, or because they are immune from liability. Current law does not require that the plaintiff sue every party that contributed to the occurrence; only that, when apportioning fault, the entire scenario be considered. This makes logical sense from a truth and fairness-seeking perspective.

By allowing damages to be apportioned only against parties who are or remain officially before the court, HB 197 divides the pie of fault by fewer slices, increases the likelihood that the 50% rule will be triggered, and, therefore, increases the likelihood that one party will be held responsible for more than its fair share of the claim.

In 2007, Governor Lynch vetoed the predecessor to HB 197, stating, "HB 143 would change existing law and allow the jury to allocate fault only between those individuals or entities that remain parties to the lawsuit at the conclusion of the trial. This change in law would prohibit the jury from apportioning fault to certain individuals or entities who carry significant degrees of fault for the plaintiff's injuries, but who either settled claims prior to conclusion of the lawsuit, or who are not parties to a particular lawsuit for other reasons. **I cannot support this change in the law because it is unfair for a defendant with a low degree of fault to have to pay a disproportionately large share of the damages** (emphasis added)."

Absolutely nothing has changed since this issue was deliberated and decided in 2007. Please urge members of the House Judiciary Committee and Governor Lynch to oppose HB 197 this year. Contact information for the Judiciary Committee is available online at <http://www.gencourt.state.nh.us/house/committees/standingcommittees.aspx> (Click on Judiciary, then on individual names.) Contact information for Governor Lynch is available at <http://www.governor.nh.gov/contactus.htm>.

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CHAMBER INSIGHT:

Stimulus package mania comes to New Hampshire....

With the pomp and circumstance of both the state's and federal inauguration festivities concluded, state legislators and New Hampshire's congressional delegation will now be fully focused on the challenging legislative season ahead.

In fact, "challenging" may be to tame a word to describe the situation due to the state of the economy. At a recent briefing of the Chamber's Infrastructure Committee Richard Branch, an economist with PSNH, reported that soon to be released data will show the U.S. has lost 5% of its gross domestic product in 2008. He expects an additional 4% loss in GDP in 2009. In addition, Branch projects the recession will result in 10 to 12 thousand total jobs lost statewide with as much as 60% to 70% of those

losses located in the Southern New Hampshire region.

These are tough times to be sure. While the news and data is sobering, there is good news as well if you look hard enough. Branch's briefing also showed that New Hampshire's economy continues to outperform all other New England states in several key economic indicators. New Hampshire also continues to see job growth in such key industries as healthcare and education. So while times are tough, New Hampshire is poised to lead New England out of this recession. Now the challenge falls to our federal and state policy makers to help facilitate and lead our state to a period of economic recovery and growth.

On the federal level, this effort is taking the shape of a massive federal stimulus package. Media reports have pegged the cost of the package to be a staggering 750 billion to 1 trillion dollars. The most amazing aspect of this proposal is a) no one knows for sure whether it will work and b) no one has any clue what the right dollar amount is. This ever changing proposal is expected to include among other things a variety of tax cuts and credits aimed to help consumers and homeowners, and federal aid for state infrastructure projects.

Across New Hampshire the feeding frenzy over potential stimulus dollars is well underway. Municipalities, state legislators, and state department heads have all compiled "wish lists" of projects ready to be funded by potential federal stimulus funds. The Obama Administration has indicated these funds should be directed to "shovel ready" projects that will result in long term job creation and economic growth. For the sake of the ballooning national deficit and the fiscal future of the next generation, let's hope our policy makers follow the President's wishes and use these funds wisely.

The GMCC is keeping a close eye on this issue and will advocate strongly that any earmarked stimulus funds are used for critical infrastructure projects that are important to our economic future. At the state level, the widening of I-93 from Salem to Manchester is not only a critical safety need, but will aid the expansion of commerce and business activity in that corridor. Providing startup funding to the NH Rail Transit Authority and the NH Capitol Corridor rail project would also be smart investment. As the Chamber has said before, rail is not only a safe and efficient method of transportation, but also an economic catalyst that will lead to new development and business expansion along the capitol corridor.

Locally, the City of Manchester may also be in line to receive funding. Investing in the proposed multi-modal transportation center and Hackett Hill Business Park are two areas the City would be well served to consider. The proposed transportation center, located downtown, will include parking garage, bus service, a potential rail site, and the opportunity for retail and residential development. The Hackett Hill site, meanwhile, is one of the last remaining development sites left in the City. Investing in the infrastructure of this site will greatly bolster efforts to attract new employers (and the much needed jobs they bring with them) to Manchester.

The one no-no all policymakers need to remember as these funds are doled out? Using the stimulus package to fill holes in the state budget would be a mistake and a lost opportunity. If the goal of the federal stimulus package is

truly to jump start the economy, then the funds need to get into the hands of consumers, homeowners, and businesses as soon as possible.

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