

DEPARTMENTS

## A Series of Imperative Events – A Firsthand Account of Key Moments Leading Up to Tort Reform Becoming Law in Mississippi

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Physicians of today who were not in clinical practice in the 1990s and early 2000s in Mississippi may not realize the impact that the Mississippi civil justice system was having on the practice of medicine at that time. Physicians, especially those in a “high risk” specialty such as neurosurgery, orthopedic surgery, OB/Gyn, and others, felt that they were under attack from plaintiff lawyers who would use any excuse, no matter how weak, to try to extract as much money from them as they could, even to the point of bankruptcy. Medical liability insurance premiums were soaring and many insurance companies left the state leaving doctors scrambling to find coverage that was required for them to continue to practice. This crisis was not limited to physicians because numerous businesses were also vulnerable to lawsuits that threatened their existence. The general public became alarmed as well when they saw that the availability of medical care was being threatened, as some specialists simply closed their practices and moved to other states. A storm was brewing.

In 2002 Governor Ronnie Musgrove called for a special session on medical tort reform even though he was close to the plaintiff lawyer community himself. The pressure building all over the state had become too great to ignore. The session lasted eighty-three days, was highly contentious, and ended up passing what the plaintiff lawyers felt was a drastic change in the civil justice system and what the medical community felt was a weak (at best) revision of that system.

In 2003 there would be another state-wide election with a new Legislature and potentially a new Governor. Governor Musgrove would be running for re-election but his opponent was going to be a strong proponent of tort reform, Haley Barbour. Physicians continued to advocate for tort reform and their patients (almost everyone in the state) were well aware of the risks the civil justice system posed to the availability of medical care. The upcoming campaign would have tort reform as a central point of contention between the two candidates for Governor and would play a factor in numerous legislative races as well.

One of those legislative races was for a seat representing Grenada, Calhoun, and Yalobusha Counties, where the incumbent supported the plaintiff lawyer positions. Having been one of the voices calling for tort reform, I made the decision to make the plunge into politics and run for the Mississippi House

of Representatives in that district. It was a long and hard campaign but when it was all over I had won, Haley Barbour had won, pro-tort reform candidate Amy Tuck had won the Lieutenant Governor race against a plaintiff lawyer opponent, and there were twenty-four new members of the House of Representatives. Eighteen of those new members were known supporters of tort reform and only three were plaintiff lawyer supporters. The views on the subject of the other three were unknown. The Senate was already made up of a majority of pro-tort reform members where Senator Charlie Ross was the intellectual and political leader on that subject. He would be heading up the powerful Judiciary Committee “A” that would take it up in that chamber.

Soon after the election, Governor Barbour made it clear that tort reform would be a top priority item for his term in office. He made the statement that he would be expecting a bill on his desk containing the things he wanted in the bill or he would be calling special sessions (emphasizing that he used the plural) until he got what he wanted.

It was soon obvious that the Senate leadership would be supporting a tort reform bill that would be acceptable to Governor Barbour and that the majority of the Senators would vote for the bill. The House was a different matter. The previous Speaker of the House had retired and Representative Billy McCoy quickly got the votes he needed for election to the office. It immediately became clear that he would not be supporting tort reform and he would be appointing committee chairmen who would be of like mind with him on that. The chairman of the House Judiciary “A” committee selected by Speaker McCoy was a highly successful plaintiff lawyer who made no secret of his opposition to tort reform. All tort reform bills would be handled by the Judiciary “A” committee. At the end of the Regular 2004 Session there was no tort reform to come out of the House despite intense public pressure and the passage of a Senate tort reform bill. Governor Barbour kept his promise and the Legislature was soon recalled in June, 2004, for a Special Session on tort reform.

As a freshman legislator with no legal training I did not have much expertise to lend to getting a bill written, but I could make my position clear and I could find other legislators who agreed with me. The pro-tort reform legislators all became members of the Mississippi Legislative Conservative Coalition. There were fifty-six members of the Coalition. So, while we were close, it would take seventy-two votes to pass a bill in the House. Veteran conservative Representatives Jeff Smith and Jim Simpson, Jr. plus freshmen Philip Gunn and Mark Baker were all highly experienced attorneys who took the lead for writing a bill for the House. Senator Charlie Ross and President Pro Tempore Travis Little took the lead in the Senate chamber. Governor Barbour met with these leaders and the decision was that there would never be a better time to

get tort reform accomplished than that moment. They would push for getting everything they wanted, both medical and business related tort reform, done in the bill.

All over the state, business leaders and physicians were vocal in their communities in support of tort reform. Patients also quickly realized how important the issue was to them in that without tort reform the availability of medical care was threatened. Legislators who were “in the middle” were bombarded with messages from constituents letting them know they should be supporting the tort reform bills in the House and Senate. The public pressure on the Legislature was enormous and overwhelming. “Let the House vote” became a cacophony in the ears of the legislators. Despite Speaker McCoy’s opposition, he and House leadership could no longer resist the calls for a vote. The Speaker ordered the Chairman of Judiciary “A” to bring HB 13 (the House bill written by the tort reform proponents) to the floor for a vote. A few things wanted by the medical community were not included in the bill and the cap on non-economic damages was raised from \$250,000.00 to \$500,000.00. But the main issues wanted by the medical community were still in the bill. Joint and several liability was replaced by proportionate liability. Cases could only be filed in the county where the “alleged act or omission occurred.” Limits were placed on punitive damages. There were numerous other provisions that were important to the business community as well and they almost all were in the bill.

On the morning of the vote, I was sitting at my desk on the House floor when the Chairman of one of the most powerful committees came over to me, smiled, and said, “Well, Doc, you are going to get your vote on your tort reform bill today, and it is going to pass!” I was both stunned and incredulous. I was unaware of the Speaker’s decision to bring the bill up for a vote and had thought we were still deadlocked. But he was part of House leadership and if this was about to happen then he would know. And he was right; the bill came up for a vote and passed overwhelmingly.

As I look back on the dramatic changes that happened after passage of that bill, I am both grateful and relieved. The very existence of a medical care system for Mississippi had been on the edge of collapse, but democracy had prevailed, the people had their voices heard, and the system not only survived, but has steadily progressed. The law has survived court challenges (so far) but there is always the threat of a court changing it or another election coming along putting people in elected office that want to return to the old days pre-tort reform. None of the leaders in favor of passing the tort reform package in 2004 are still in the legislature except for Philip Gunn, who is now serving as Speaker of the House. Speaker Gunn has announced his retirement to become effective at the end of this year.

Physicians, don't become complacent. To quote Pericles, "Just because you do not take an interest in politics doesn't mean politics won't take an interest in you."

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