

Why Florida needs tort reform to stop wasteful litigation | Opinion

Steve Precourt, Guest columnist Published Aug. 30, 2018

If you want to get a sense of how the American economy is faring, one question you might ask yourself is whether or not small businesses are prospering and growing in number.

The reason this metric is a more interesting barometer than the vibrancy of mega-corporations, is because the thousands of mom-and-pop shops around the country give us a good sense of the general feeling Americans have about the future of the country.

There is no greater economic sin than to work in ways that inhibit or destroy this sector of our community. But this is precisely what powerful and very large trial lawyer interest groups do every day, without repercussion, through exhaustive, wasteful litigation aimed squarely at this vulnerable group.

What follows is a cautionary tale of David and Goliath. It is reported that in California, throughout 10 counties and cities, including Los Angeles, San Diego, and San Francisco, thanks to lawsuits leveled by out-of-state trial attorneys, a judge ruled that homes built before 1981 are “public nuisances” on the presumption these dwellings have traces of lead paint. So now, middle class and lower income families must ask themselves, “Should I do unnecessary remediation work on my house to preserve its value or save for college?”

For some working families, the added burden will beg the question: “Why stay?” The bigger fish in this whole affair, of course, are national paint companies, but the little people, especially local small business owners often with only one month’s salary safety-net, suffer the litigation’s aftershocks and are left holding the bag.

I can imagine some readers wondering, naturally enough, what’s wrong with these lawsuits, especially since they are perfectly legal within the confines of our current laws and judicial system and, at least on the surface, seek to redress a wrong? And yes, some are good, but many, many are not.

Simply because something is legal it does not mean it is right. And it certainly does not mean we should refrain from amending bad outdated laws. Advocates of tort reform are well aware that trial lawyers simply follow the money trail when deciding which industries to target. In the case of the lead paint lawsuits, the lawyers will receive a fat percentage of the settlement — not ensure things are fixed — and go on their merry way. Meanwhile, the citizens of the targeted

cities and counties will be left to figure out how to pay for mitigation. There is something deeply wrong with a legal system that allows these practices to occur.

The good news is that some states, such as Wisconsin, have done a good job tackling civil litigation abuse. They are mandating stronger transparency when third-party litigation funding is involved, tightening discovery rules and cleaning up class action rules. The positive impact these changes have on their small business community will continue to become evident over the coming years as the threat of predatory trial lawyers fades away.

But in other places such as Pennsylvania, the fight is just starting and will be much harder. The National Federation of Independent Business's Pennsylvania office noted recently the state's legal climate "is one that has frustrated many of us in the private sector, but also as consumers and taxpayers. The cost of litigation in our state is a major deterrent to businesses and job creators wanting to locate here." The NFIB fears correctly that job creators and small businesses will leave the state for more accommodating climates unless reforms like those in Wisconsin are enacted.

Tort reform is a slow process and it can seem nearly impossible, especially when you advocate for substantive improvements that curtail income to trial lawyers. But the worst thing we can do here in Florida is nothing, hoping things get better. Doing nothing lets the "backbone businesses" that support our communities be forced "out of business."

Steve Precourt of Orlando is a former majority leader of the Florida House of Representatives.