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Legislation

**Trump to Weigh Litigation Changes
Long Coveted by Business**

BY BRUCE KAUFMAN

President Donald Trump is expected to soon begin reviewing a series of bills that represent the most significant congressional challenge to the established litigation process in more than 10 years, and would likely aid business defendants in thousands of cases every year.

At stake are six items championed by big business and scorned by consumer groups, that include changes large and small to class actions and other devices that shape the modern civil litigation process.

The bills lay bare industry efforts to rewrite class-action practice, aid defendants striving to keep cases out of plaintiff-friendly state courts, and punish attorneys who file dubious claims.

The legislative package, colloquially known as “tort reform,” also seek to put new limits on settlements entered into by the Department of Justice and the Environmental Protection Agency, and require more disclosures by asbestos victims who seek compensation from bankruptcy trusts.

Lisa A. Rickard, president of the U.S. Chamber of Commerce’s Institute for Legal Reform in Washington, said the bills represent the “most important comprehensive legal reform opportunity in a decade, and we’re confident that these issues are clearly on lawmakers’ radar.”

The prospects for enactment are “scarily real,” Lisa Gilbert, director of Public Citizen’s Congress Watch division, an opponent of the bills, told Bloomberg BNA.

“We’re in an anti-regulatory environment, and these bills feed into those sentiments,” she said.

This article, part one in a three-part series, lays the groundwork for the long-fought, contentious issue. In part two, Bloomberg BNA digs into the developing legislative battle, offering insight into each side’s likely strategy. Finally, part three focuses on what Trump might do if these bills land on his desk.

Is This the Year? Victor E. Schwartz, a partner at Shook, Hardy & Bacon in Washington and the dean of the movement to enact comprehensive litigation reform at the federal level, has seen the highs and lows over the past 35 years.

Schwartz says a significant victory may be at hand for the business community for the first time in a generation.

Since the Class Action Fairness Act (CAFA) was signed into law in 2005 making it easier for defendants to move class and other suits from state to federal court, supporters of federal “litigation reform” have mostly come up dry, he said.

But now the “clouds are finally parting,” Schwartz told Bloomberg BNA.

Legislation Targets Federal Litigation Process

The following bills, all likely to pass in the House, seek to dramatically change the federal litigation process:

- *The Fairness in Class Action Litigation Act* (H.R. 985) affects nearly all facets of class action practice. For more, see “Bill Targeting Class Actions, MDLs Sent to House.”

- *The Innocent Party Protection Act* (H.R. 725) targets what is known as fraudulent joinder—the improper addition of defendants to suits in a bid to keep cases in more plaintiff-friendly state courts. For more, see “F frivolous Litigation Targeted in Bill Headed to House Floor.”

- *The Sunshine for Regulatory Decrees and Settlements Act* (H.R. 469) . The so-called “sue-and-settle” bill alters the settlement process for citizen suits. For more, see “EPA Settlement of Citizen Suits May End Under Trump.”

- *The Stop Settlement Slush Funds Act* (H.R. 732) seeks to bar the Department of Justice from entering into settlements that steer funds to favored third-party groups.

- *The Lawsuit Abuse Reduction Act* (H.R. 720) requires judges to impose mandatory sanctions on attorneys who file “meritless” civil cases in federal courts. For more, see “F frivolous Litigation Targeted in Bill Headed to House Floor.”

- *The Furthering Asbestos Claims Transparency Act* (H.R. 906) mandates increased reporting of payments to plaintiffs by trusts that pay out asbestos exposure claims against bankrupt companies. For more, see “Asbestos Trust Disclosure Bill Heads to House Floor.”

The Republican-controlled House is already strongly supportive of the business-friendly legislative package, he said.

What's different this time is that most of the bills are now on Speaker Paul Ryan's (R-Wis.) "must pass menu" and will move through the House faster than ever before, greasing the wheels for Senate action, he said.

But whether legislation supporters can surmount the 60-vote threshold for passage in the Senate is another matter.

The Senate rule requiring 60 votes to "invoke cloture," and end otherwise unlimited debate in the upper chamber, has derailed earlier attempts at getting such legislation through Congress.

Schwartz, however, thinks the recent leadership switch there will work in the business groups' favor.

"Changes in the Senate leadership also provide a better opportunity for consideration by that body," Schwartz said, citing the retirement of its top Democrat, long-time legislation opponent Harry Reid of Nevada.

Then there's the ultimate change agent: Donald



Trump.

Numerous calls and emails to the White House seeking comment on the high-stakes legislation haven't shed any light on the president's views.

The dearth of comments from the White House has created tremendous uncertainty, complicating strategy on both sides.

Veteran consumer advocate Pamela Gilbert, a partner at Cuneo Gilbert & LaDuca in Washington, said Trump should not be counted as a supporter for significant litigation changes.

"He litigates a lot, on both sides of the v," she told Bloomberg BNA. "And I don't think the working class voters who voted for him would be in favor of rigging the legal system further in favor of corporations," she said.

Julie Braman Kane, president of the American Association for Justice, the plaintiffs' bar, told Bloomberg BNA that Trump has "never stated his position on the civil justice system, but we hope he will represent the interests of Americans and reject attempts to restrict their right to seek justice in court."



But Schwartz said he is "confident" that Trump will support a package of changes that is "good on jobs, reduces legal costs and doesn't take away people's rights."

The current litigation package checks off all those boxes, he said. And Trump "doesn't owe anything to the trial lawyers," he said.

Rickard, who heads the chamber's litigation-related efforts, voiced similar sentiments.

"We think the administration will be open to supporting legal reforms," she said.

"As a businessman who has prioritized economic growth and jobs, we think the president knows that curbing litigation abuse—particularly in class actions—fits squarely with his message," she said,

Ready for Battle. Even as Trump's position remains uncertain, the plaintiffs' bar and an array of consumer groups are girding for war.

Kane said the "one-sided" bills, which certain members of Congress are fast-tracking, are "blatant corporate handouts that will eviscerate the rights of Americans and undermine the judiciary."

"Truly meaningful litigation reform would protect and restore the rights of individual Americans to seek justice in court," she said.

However, the current batch of legislation would "make it impossible for people to hold corporations accountable if they are injured by misconduct," she said.

Joanne Doroshow, the founder of the consumer rights group Center for Justice & Democracy, told Bloomberg BNA that "whatever the election was about, it was not about sending politicians to D.C.—including Trump—so they could rig the courts against everyday Americans, or strip away legal rights guaranteed by state and local governments."

She says these bills haven't failed in the past due to strategic miscalculations, but because they are "not popular bills. They come back year after year for only one reason—paid business lobbyists keep bringing them back," she said.

Next: In part two, Bloomberg BNA examines the developing legislative battle, offering insight into each side's likely strategy.

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