

SENATE JUDICIARY SUBCOMMITTEE
ON CIVIL PROCESS

Hearing Room
Tapes - 14

MEMBERS PRESENT:

Rep. Del Parks, Chair
Sen. Tom Bryant, Vice-Chair
Rep. Kate Brown
Rep. Bryan Johnston
Rep. Leslie Lewis
Rep. Bob Tiernan
Sen. Ken Baker
Sen. Randy Miller
Sen. Peter Sorenson

STAFF PRESENT:

Holly Robinson, Committee Counsel
Max Williams, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

SB 385 - Public Hearing
SB 386 - Public Hearing

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

004 CHAIR BRYANT: Calls the meeting to order at 3:38 p.m.

PUBLIC HEARING ON SB 386

(SB 386 eliminates right of individual to bring civil action under Oregon Racketeer Influenced and Corrupt Organization Act.)

Witnesses: William Belveal, Self
John Glascock, American Association of Retired Persons
Henry Kane, Self
Roger Martin, Securities Industry Association

007 WILLIAM BELVEAL, SELF: Testifies in opposition to SB 385. (Signed up wrong)

126 CHAIR PARKS: Did the defendants in your case make an offer to settle the case prior to trial?

128 BELVEAL: No.

129 CHAIR PARKS: What injury did you suffer?

130 BELVEAL: I have a broken Achilles tendon.

131 CHAIR PARKS: How long did it take you to find an attorney?

132 BELVEAL: At least three months.

133 CHAIR PARKS: Do you know how much the expenses were that your attorney charged you in witness fees, etc.?

136 BELVEAL: About \$30,000.

137 CHAIR PARKS: Was that in addition to his own fee?

138 BELVEAL: Yes.

140 JOHN GLASCOCK, AMERICAN ASSOCIATION OF RETIRED PERSONS: Testifies and submits written testimony in opposition to SB 386 & 385. (EXHIBIT A)

195 HENRY KANE, SELF: Testifies and submits written testimony in support of SB 386. (EXHIBIT B)

233 CHAIR PARKS: Were the people you represented involved in connection as protesters to abortion clinics?

235 KANE: Yes.

236 CHAIR PARKS: Did they commit criminal acts?

237 KANE: No.

237 CHAIR PARKS: Did they commit acts of violence against abortion clinics?

238 KANE: No, there was no trespass either.

239 CHAIR PARKS: They didn't do anything, but the jury awarded a verdict against them?

240 KANE: Only against one client. Explains that verdict was a compromise.

250 CHAIR PARKS: What was that clients name?

251 KANE: Priscilla Martin.

256 CHAIR PARKS: The award was for \$500 and for \$360,000 attorney fees? Is this case still on appeal?

260 KANE: Yes, it is on appeal. One of the other attorneys took over the case.

262 CHAIR PARKS: Has Priscilla been involved in any more protests of abortion clinics?

263 KANE: No.

289 ROGER MARTIN, SECURITIES INDUSTRY ASSOCIATION: Testifies in support of SB 386.

PUBLIC HEARING ON SB 385

(SB 385 requires plaintiff who previously dismissed action with prejudice and who refiles action to pay all attorney fees incurred by defendants in dismissed action.)

Witnesses:

Bob Jones, Circuit Court Judge
Harl Haas, Circuit Court Judge
Kristena Lamar, Circuit Court Judge
Sen. Rod Johnson, District 23
Sid Brockley, Circuit Court Judge

Michael Titkin, Circuit Court Judge
George McCort, Self
James Nelson, Self
Cheryl and Keith Ostergren, Self
Judy Olson, Self
Debra Braymer, Self
Jim Bowles, Oregon Hemophilia Foundation
Barry Kurath, Oregon Hemophilia Foundation
Val Bias, National Hemophilia Foundation
Steven Marks, Attorney
Mike Stebbins, Attorney for Charlie Funk
Charlie Funk, Self
Don McCann, Attorney for Mary Castle
Bob Joondeph, Oregon Advocacy Center
Michael Adler, President of Oregon Trial Lawyer Association
David Schuman, U of O Law School
Caroline Forell, U of O Law School
Hao Pham, Self
Susan Gillis, Self
Sylvia Carpenter, Self
Jacqueline Romm, Attorney
Albert Amescue, Self
Dave Davison, Self
Michael Shinn, Attorney
David Price, Self
Diana Stuart, Attorney
Caroline Tyler, Self
Karen Dorsey, Self
Julie Joel, Self
Cheryl Gaffke, Self
Elden Rosenthal, Self
Suzanne Chanti, Commissioner for Oregon Disabilities Commission
Adam Brake, Self
Robert Amy, American Association of Retired Persons
Henry Kane, Self
Debra Shelley, Self
Rod Nichols, Self
Mick Alexander, Attorney
Marianne Keys, Self
Margaret Crabtree, Self

366 BOB JONES, CIRCUIT COURT JUDGE: Testifies in opposition to SB 385.

TAPE 10, SIDE A

051 CHAIR BRYANT: If in the present case the damages are in excess of \$20,000, under the modified loser pay provision, the loser pay would not apply. It would only apply to those cases in excess of \$20,000 or those cases where there are reprocality in attorney fees.

059 CHAIR PARKS: If the verdict rendered for this woman was less than \$20,000, would the loser pay rule apply if the defendant had offered more than \$20,000?

065 JONES: These costs can be horrendous, gives example. Continues with testimony.

096 REP. BROWN: There was inequity or unfairness as the result of the bill.

Do you think this bill would have a chilling effect in terms of plaintiffs wanting to bring their cases?

100 JONES: The statistics from England show that 99 percent of their cases are settled. The reason being is the fear for having to pay for the defendants cost.

106 REP. BROWN: What are the number of cases that are either frivolous or

lack merit?

110 JONES: That is pretty rare. I can't ever remember in my court room where I have imposed sanctions for a frivolous lawsuit.

117 REP. BROWN: Have you seen cases that in your mind were sure winners, but the plaintiff lost?

120 JONES: Yes, you can not anticipate what a jury is going to do.

129 SEN. SORENSON: Can you give us any guidance as to how the legislative assembly might define "frivolous"? Have you made findings of frivolous pleadings?

140 JONES: There is a lot of judicial involvement in that kind of case. I have told people that their case will lose and they should either settle or

lose.

154 SEN. SORENSON: What are your views on the concept of 'loser pays' where the defendant has made an offer of judgment and the plaintiff will not accept?

167 JONES: If we are going to have that type of approach, it should be reciprocal. The plaintiff should have the same privilege for making a settlement demand and if the plaintiff receives a verdict in excess of that

demand, the same thing should apply. I don't understand why there is a one-way rule, reciprocal seems fair. My concern is that we have a lot of plaintiffs who would not be able to pay the costs of the other side without

a disaster.

188 REP. LEWIS: Cites statistics on England. Do you have the Oregon statistics?

192 JONES: Across the nation, 92 percent of all civil cases are settled before the jury verdict.

197 REP. LEWIS: If a case came before you and you thought it was frivolous, you would tell the parties to settle. But, the case had no merit, should there really even be a settlement?

205 JONES: I agree, explains practical situations. We represent a long time in the court room, we know bad cases.

218 HARL HAAS, CIRCUIT COURT JUDGE: Testifies in opposition to SB 385. Discusses 'frivolous' lawsuits. Cites cases that wouldn't have been brought to trial if "loser pays" rules would apply.

368 CHAIR BRYANT: Please provide us with a copy of that report.

389 KRISTENA LAMAR, CIRCUIT COURT JUDGE: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT C)

TAPE 9, SIDE B

054 CHAIR BRYANT: How often have you awarded sanctions under ORS 20.105?

055 HAAS: I haven't, but I should have and will in the future.

060 CHAIR BRYANT: Cites case, would that be a useful tool if that case overturned?

065 HAAS: Unless there is specific criteria, it is a judgment call.

069 CHAIR BRYANT: It isn't just a frivolous lawsuit, it is a frivolous

defense as well.

072 JONES: Discusses that one problem is that appellate judges view those cases in a different light than we on the bench do, explains.

080 CHAIR PARKS: Cases that are less than \$15,000 are mandatory settlement cases?

083 LAMAR: We have a mandatory arbitration program for less than \$25,000. We don't have any upper or lower monetary limit on settlement conferences.

Our only requirement is that one party request a settlement conference.

088 CHAIR PARKS: On all types of cases less than \$25,000, is it mandatory that they go to an arbitrator? Then if the party that does not improve their position appeals the arbitrators award and lose, they are then responsible for the other party's attorney fees?

094 LAMAR: You amended the statute last session to provide that in the event of cases filed after January 1, 1994, if the verdict was not an improvement on the award, the costs and deposition fees would be paid by the losing party.

104 CHAIR PARKS: What would you think about a rule that would provide that a party appealing the arbitration award, if they did not improve their position would be responsible for the costs from the point of the arbitration through the trial?

110 LAMAR: You will run into some of the same issues that you have now, explains.

125 HAAS: Around 94 percent of people that go into arbitration accept the award as final. We don't have a flood of people going in and testing arbitration.

135 CHAIR PARKS: My interest in this is that we get a bill that has the least ownership on the middle class as possible. Perhaps we could have a rule that you could not amend your pleadings after an arbitration. Would that tend to have most cases settle at arbitration?

148 HAAS: When I look at this bill, what are you trying to fix. Docket congestion comes from the criminal side, not the civil side. Contact cases represent 50 percent of our Docket. Tort cases are not a problem.

159 CHAIR PARKS: Do you think that would cause more cases to settle?

161 LAMAR: No.

162 CHAIR PARKS: Do you think that this bill would, in fact, be an impediment to settlements?

166 LAMAR: I think it would be an impediment to the filing of lawsuits. I think this bill is an overkill. Most of the abuses of judicial time comes from the personalities of the people that happen to be involved in the case. Gives examples that maybe the cases aren't the frivolous part, but the people that file are.

190 HAAS: We are very fortunate in Oregon to have the justice system that we have.

216 REP. JOHNSTON: If this bill were to pass, what is the likelihood that a plaintiff would bring a case of first impression in Oregon?

224 HAAS: It won't happen.

225 REP. JOHNSTON: What do you think the impact would be if people stop testing law in Oregon?

232 HAAS: I think that it is very difficult, gives example.

240 REP. JOHNSTON: Do you think a rule 11 would be a helpful provision that would encourage judges to deal more firmly with that type of behavior?

248 HAAS: Although I may feel some motions are frivolous, the lawyers usually make them in good faith.

257 LAMAR: If we want to be constructive, we should go to notice pleading.

261 REP. BROWN: Some of the family law lawyers would like to see on page "shall" instead of "may". Can you respond to that?

266 LAMAR: Having sat through a judicial conference, my only hesitation for having "shall" is that there are potentially not enough judges who either want to, or are good at and who would be desired to host settlement conferences. That is changing though, explains.

305 SEN. SORENSON: Discusses tort litigation. Would your ideas about loser pays in tort litigation apply to those statutory areas?

321 HAAS: Many of the sections in the attorney fees provision were undertaken by past legislation who recognized abuses of the system. This should be an interim committee bill, explains.

352 LAMAR: I tend to agree. Many of the statutes that have a scheme for awards of attorney fees are in lieu of agencies such as police or Attorney Generals prosecuting them. Your going to have the same chilling effect on what is taking place of government prosecution if you have this kind of fear factor involved.

364 HAAS: Why do you want to make this particular law mandatory? Why don't you give us the authority to use our judicial discretion?

387 SEN. ROD JOHNSON, DISTRICT 23: Testifies in support of SB 385.

TAPE 10 SIDE B

076 REP. JOHNSTON: Were you looking at this bill as a vehicle to relieve the tort burden from the courts?

078 JOHNSON: The tort portion would be the portion that is effected the most, explains.

082 REP. JOHNSTON: Do you see the tort cases as a big contributor to that burden?

083 JOHNSON: My reason isn't just limited to the court delays that exist now.

088 SEN. SORENSON: What is your view on the bill on cases \$20,000 and above, where an offer of judgment is extended by the defendant, then attorney fees can be awarded if the plaintiff doesn't better the offer. We've had some suggestions to make that reciprocal, what do you think?

102 JOHNSON: I feel that it should be reciprocal.

105 SEN. SORENSON: It is hard to determine the outcome of a case, do you share that view?

115 JOHNSON: Yes.

137 SID BROCKLEY, CIRCUIT COURT JUDGE: Testifies in opposition to SB 385. Discusses his cases and decisions in court.

220 MICHAEL TITKIN, CIRCUIT COURT JUDGE: Testifies in opposition to SB 385.
Discusses prevailing fee. Discusses attorney fees

351 CHAIR BRYANT: Discusses tort reform in '93 session. The tort cases are relatively static, all other crime cases have risen. It is doubtful that there will be any new judges installed because of monetary issues.

399 GEORGE MCCORT, SELF: Testifies in opposition to SB 385

413 JAMES NELSON, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT D)

442 CHAIR PARKS: Where you represented by a lawyer?

443 NELSON: Yes, and he did a really good job.

445 CHAIR PARKS: Who was your lawyer?

448 NELSON: Mr. Tishner.

449 CHAIR PARKS: Would you have been able to pay a lawyer if you had to pay him \$100 an hour?

453 NELSON: No.

TAPE 11, SIDE A

014 CHAIR PARKS: Were you working at the time you were hurt?

015 NELSON: Yes.

016 CHAIR PARKS: What kind of work did you do?

017 NELSON: Explains that he was a clerk of some kind. (response inaudible)

020 SEN. SORENSON: Can you tell me what section numbers you have a problem with?

025 MCCORT: Sections 11, 15, 17, 19, 65, 66, 67 are discrimination laws.

030 SEN. SORENSON: What are the names of those laws?

032 MCCORT: I don't know, but can give you the ORS numbers.

033 SEN. SORENSON: In general, these are laws that protect people against discrimination?

034 MCCORT: They are laws that protect people from discrimination from such things as housing, use of a guide dog, use of assistance animals, etc.

043 CHERYL AND KEITH OSTERGREN, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT E)

084 JUDY OLSON, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT F)

120 DEBRA BRAYMER: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT G)

176 CHAIR PARKS: Did you try the case, or was it settled?

177 OLSON: We settled out of court.

178 REP. JOHNSTON: How long did it take from incident to settlement?

181 OLSON: Three years.

182 REP. JOHNSTON: During that time, did anyone suggest that possibly your driving was what caused the incident?

184 OLSON: It was suggested and discussed.

189 REP. JOHNSTON: Did your attorney ever tell you that if your case went to trial, they would try to show that you were driving in a careless or reckless manner?

192 OLSON: I think they mentioned that.

193 REP. JOHNSTON: Theoretically, it is possible that you could have gone to trial and lost.

194 OLSON: Yes, it is possible.

195 REP. JOHNSTON: When did you know what had caused Katelan's situation?

198 BRAYMER: During the delivery we knew that she was going into stress and there was some evidence of concerns at that time.

200 REP. JOHNSTON: When did you know of the act of negligence that was caused to her?

202 BRAYMER: We were notified that she was being transferred to the trauma unit about three hours after she was born.

207 REP. JOHNSTON: Did anyone ever say to you at that time that they made a mistake?

208 BRAYMER: No, but I did hear from the pediatrician that there was an error at that time.

212 REP. JOHNSTON: Can you imagine in a case where the hospital could have denied responsibility?

213 BRAYMER: For sure.

214 REP. JOHNSTON: Then you might not have prevailed?

215 BRAYMER: That was definitely an option.

232 JIM BOWLES, OREGON HEMOPHILIA FOUNDATION: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT H)

TAPE 12, SIDE A

006 BARRY KURATH, OREGON HEMOPHILIA FOUNDATION: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT I)

030 VAL BIAS, NATIONAL HEMOPHILIA FOUNDATION: Testifies in opposition to SB 385.

066 SEN. SORENSON: Have you looked at the parts of the bill that deal with the statutory rights of action of the bill where people are discriminated against?

074 BOWLES: Our concern is not only with the law, but with the perception of the law. In our community, we will not be able to take any legal remedies. Discusses court outcomes and costs and that most people cannot

afford it.

101 SEN. SORENSON: We are scheduled to start voting on SB 385 on Feb. 20. Please keep me informed further.

108 REP. BROWN: Even though you are losing lawsuits, the fact that you have the right and ability to bring those lawsuits made the blood supply safer?

111 BIAS: Although we haven't won cases in court against the pharmaceutical companies, it has made the blood supplies better. The pressures of those lawsuits make them research and develop safer ways of producing the blood product. We have seen significant improvement of the blood supply.

125 KURATH: Cites newsletter he received where a hemophiliac did win a court case.

147 STEVEN MARKS, ATTORNEY: Testifies and submits written testimony in support of SB 385. (EXHIBIT J) Discusses Alaska case. Discusses chilling effect of bill.

296 SEN. SORENSON: I'm interested in the process to advance this rule. Are you aware of any efforts by the Council on Court Procedures to discuss modifications of our civil procedure rules?

305 MARKS: No

306 SEN. SORENSON: Do you have an interest in pursuing that so that the Council on Court Procedures could review that?

310 MARKS: I am open to any suggestions that will move toward a system that works as well as the Alaska system.

312 SEN. SORENSON: Would you be willing to support the idea that we defeat SB 385 and ask the Council on Court Procedures to take a look at your ideas?

315 MARKS: I'm not a politician, I just know how the system works for prevailing party fee structure.

324 REP. BROWN: Do you feel that the Alaska rules either limits meritless lawsuits or limits the quantity of lawsuits in Alaska?

328 MARKS: Yes.

330 REP. BROWN: We received an article that shows Alaska as being twice as litigious as Oregon.

333 MARKS: That is true, explains why. Discusses what happens in lawsuit cases and "frivolous-ness". The Alaska scheme makes the parties proceed in settlement, so it works both for the defendant and the plaintiff.

378 REP. JOHNSTON: You were surprised about the \$300,000 case offer here in Oregon?

380 MARKS: No, because since I've started practicing here, I see that is how the practice works here.

387 REP. JOHNSTON: Is it foreign to your practice to have a case come in against your client that you thought was meritless? Have you ever advised a client one-way and then found the jury ruled completely opposite?

405 MARKS: With this rule in place it would be foolish to counsel a client that they were absolutely going to win and wouldn't have to pay prevailing party attorney fees.

409 REP. JOHNSTON: People should be able to predict the outcome of a trial.

414 MARKS: Juries are very unpredictable.

418 REP. JOHNSTON: Even though it might look like a wonderful case it might lose?

419 MARKS: Absolutely, that is why it is important to have both sides reevaluate their cases.

424 REP. JOHNSTON: Gives example of Alaska case and asks about contingency fees being a percentage of winnings. Alaska has a modified version of the English rule?

TAPE 11, SIDE B

014 MARKS: Yes, they follow a schedule and the other factor that is important in the scheme is the award of prejudgment interest.

016 REP. JOHNSTON: Prejudgment interest starts from when?

018 MARKS: From the date the plaintiff provides notice of an intent to sue.

019 REP. JOHNSTON: What is the timeliness from the date of filing to resolution in Anchorage?

022 MARKS: Longer than here. It may be approaching what we have here, but generally much longer.

026 REP. JOHNSTON: My understanding is that it is a multiple of years, like 2 or 3?

027 MARKS: When I practiced there, yes, that is correct.

027 REP. JOHNSTON: In Oregon, we have the process down to 10 months so perhaps we are not facing the same problem?

028 MARKS: I agree. I don't think that the rule was designed to deal with overload.

033 REP. BROWN: Are judges, in terms of settlement conferences, good at encouraging their clients to settle?

037 MARKS: I would say they are.

049 MIKE STEBBINS, ATTORNEY FOR CHARLIE FUNK: I'm here as Mr. Funk's attorney and to answer any questions.

056 CHARLIE FUNK, TRUCK DRIVER: Testifies and submits written testimony in opposition of SB 385. (EXHIBIT K)

077 REP. JOHNSTON: After you got the offer of \$50,000, did you have a talk with your attorney to decide what to do?

081 FUNK: Yes, I did.

082 REP. JOHNSTON: It looks like you didn't have a chance to gain that much more money?

085 FUNK: I felt that \$50,000 wasn't worth considering. Under the law now, I had the opportunity to take them to court.

091 REP. JOHNSTON: If they offered you money and you ran the risk of paying

their fees, would you have done it?

098 FUNK: No, I couldn't have afforded to.

100 DON MCCAN, ATTORNEY FOR MARY CASTLE: Testifies in opposition to SB 385 for Mary Castle.

150 CHAIR BRYANT: If the lawsuit was over \$20,000 then the loser pay wouldn't have effected that.

152 MCCAN: Even if that wasn't the case and she gets less than \$20,000 for whatever the reason, she wouldn't have even tried the case at all.

154 CHAIR BRYANT: Because of the intimidation of the possible loss?

155 MCCAN: Yes, continues with testimony

161 REP. JOHNSTON: Do you do any defense work at all?

162 MCCAN: The only defense I have done is non-insurance defense work.

163 REP. JOHNSTON: If I were a defense attorney and this bill passed, I would only offer \$100.

169 MCCAN: Absolutely.

184 BOB JOONDEPH, OREGON ADVOCACY CENTER: Testifies in opposition to SB 385.

288 MICHAEL ADLER, PRESIDENT OF OREGON TRIAL LAWYER ASSOC.: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT L) Opposes 'loser pay' concept. Discusses product liability cases.

TAPE 12, SIDE B

027 CHAIR PARKS: No one has discussed the third party practice and recovery situation. We might want to find out how much money that involves.

036 ADLER: I have handled many third party worker's compensation claims and recovered hundreds of thousands of dollars for SAIF and other worker's compensation carriers from manufacturers of defective products.

040 CHAIR PARKS: These are non-Oregon companies that are selling products in Oregon but manufactured somewhere else? Our worker's compensation in Oregon pays for these claims and then is reimbursed for the money we paid out?

045 ADLER: That is correct. The worker's compensation organizations have a lien on the recovery.

047 CHAIR PARKS: The fund would have the option many times of pursuing the claim on their own and incurring the expense of hiring an attorney, but do they ever do that?

050 ADLER: I've never seen them do that, but I'm not sure that they don't.

051 CHAIR PARKS: Could someone find out what recovery has been in the last couple of years.

055 SEN. SORENSON: If this bill is enacted, who would get the attorney fees in the event that an attorney fee award was made to a defendant from a plaintiff, when the defendant had their legal fees paid by their insurance carrier?

064 ADLER: I don't know.

076 DAVID SCHUMAN, U OF O LAW SCHOOL: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT M)

150 CHAIR PARKS: Could you clarify the bond requirement issue?

154 SCHUMAN: SB 385 requires plaintiffs to post an enormous bond. They would have to put themselves at a tremendous personal risk if they lose.

159 CHAIR BRYANT: The any prevailing party would have that same risk?

162 SCHUMAN: Only if that prevailing party is the plaintiff, explains.

175 CAROLINE FORELL, U OF O LAW SCHOOL: Testifies and submits written testimony in opposition of SB 385. (EXHIBITS N, O)

258 SEN. SORENSON: Asks about the 130 statutes that allow people to sue. What is your view of the effectiveness of those statutes and do you think they should be included in the bill?

277 SCHUMAN: I don't know, I don't practice tort law.

281 FORELL: Discusses that some of the cases aren't really tort law provisions, gives example of blind man vs. housing facilities.

294 CHAIR BRYANT: In that situation, the owner of the facility could be charged unfairly, so should he have the right to recover his costs in defending?

301 FORELL: No.

302 CHAIR BRYANT: That would be the same for anyone defending. It puts a cost on them as well.

306 FORELL: These statutes were enacted to protect the rights of certain groups of people. Changing this law would change the rights of those people, and they wouldn't be protected anymore.

317 CHAIR BRYANT: If they do pursue them, then the prevailing party would win.

319 FORELL: But they won't pursue them, considering the risk involved.

320 CHAIR BRYANT: We are concerned about frivolous lawsuits from the defendant and plaintiff standpoints. If one side is able to recover attorney fees, shouldn't the other, or neither?

328 FORELL: The neither side is preferable.

332 SCHUMAN: Cites article 1, Section 10 expresses a policy for an uneven playing field.

342 CHAIR BRYANT: Isn't there an equal rights argument for the other side?

343 SCHUMAN: There wouldn't be an equal protection argument. The other side, in the area of punitive damages, continues to raise due process claims and it is having some effect. If someone who was victimized by a frivolous lawsuit didn't have a right to recover a reward, that would be a due process claim.

356 REP. JOHNSTON: An unintended consequence of this bill could be that, if we adopt this, we will be left with only one legislative way for the tort law to evolve.

367 FORELL: I agree. Explains and discusses tort case laws. I don't see people going forward with the hard cases because they are too risky.

381 REP. JOHNSTON: The purpose of tort law is to correct the market place, or the behavior of the police, etc.

387 FORELL: That is part of the purpose. As society changes over time, it becomes more apparent that certain remedies should be available and some should go away.

394 CHAIR PARKS: I didn't see that the Alaska rules were only for tort cases.

400 FORELL: I know that the Alaska rules are not for types of civil rights that are statutory, explains.

TAPE 13, SIDE A

002 HAO PHAM, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT P)

051 SUSAN GILLIS, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT Q)

162 SYLVIA CARPENTER, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT R)

198 JACQUELINE ROMM, ATTORNEY: Lawyer for many defendants including Albert Amescue, Dave Davison, Cindi Nelson, Pamela Nollen. Submits written testimony in opposition to SB 385 for Cindi Nelson and Pamela Nollen. (EXHIBITS S, T)

214 ALBERT AMESCUE, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT U)

243 CHAIR PARKS: What is the unbelievable conduct you were submitted to?

244 AMESCUE: Different treatment, scrutinization of work, poor performance appraisals, lies against me. I would have risked everything to take this to trial under this kind of bill, but because of my wife I wouldn't have taken that risk. I won and am still employed there today.

263 DAVE DAVISON, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT V)

331 REP. BROWN: Are you currently employed with the same company?

335 DAVISON: No, it would be hard working for a company under these conditions.

361 MICHAEL SHINN, ATTORNEY: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT W)

420 DAVID PRICE, SELF: Testifies in opposition to SB 385. Explains his case that was represented by Michael Shinn. (EXHIBIT W)

TAPE 14, SIDE A

031 SHINN: Continues with testimony. Explains that international and larger companies can make it very difficult for legal actions to take place.

075 CHAIR PARKS: Asks what multiple service costs there are.

075 SHINN: Explains that service cost are to serve someone or company with a complaint. Continues with testimony. We had to discuss where the depositions going to take place, here or in Japan, which would be extremely expensive. Discusses ORCP 17 remedy for 'frivolous', explains.

159 SEN. SORENSON: As I understand the text of this legislation, it would not have an attorney fee shift for cases above \$20,00, but would have a civil procedure rule that would allow defendants to make offers that could result in the fee shift. What is your prediction as to how this tool would

be used?

167 SHINN: Explains that large corporations like this would instruct their national counsel, who would then instruct their local counsel, to automatically file and offer a certain amount of money which immediately shifts the pressure onto the plaintiff. Discusses making both sides pay.

180 SEN. SORENSON: Cites page 9, line 10, asks if that language is referring to unlawful trade practices?

185 SHINN: Yes, it is.

186 SEN. SORENSON: This legislation provides that it would be a full fee shift, explains.

193 SHINN: I think that is the case. Unfair trade practice act litigation has a prevailing attorney fee provision that the plaintiff gets if they prevail, explains.

232 DIANA STUART, ATTORNEY FOR CAROLINE STUART: Testifies and submits written testimony in opposition of SB 385. (EXHIBIT X)

237 CAROLINE TYLER, SELF: Testifies and submits written testimony in opposition of SB 385. (EXHIBIT Y)

338 KAREN DORSEY, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT Z)

TAPE 13, SIDE B

031 REP. LEWIS: As a small business owner, I understand your situation, but don't quite know how to resolve the issue.

040 JULIE JOEL, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT AA)

068 CHERYL GAFFKE, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT BB)

099 ELDEN ROSENTHAL, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT CC)

146 SUZANNE CHANTI, COMMISSIONER FOR OREGON DISABILITIES COMMISSION: Testifies and submits written testimony in opposition of SB 385. (EXHIBIT DD)

242 ADAM BRAKE, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT EE)

279 ROBERT AMY, AMERICAN ASSOCIATION OF RETIRED PERSONS: Testifies in opposition to SB 385.

317 SEN. SORENSON: What leads you to believe that it is better to stay with the current system than to go with a loser pay system in your case?

328 AMY: I have been in business for myself since 1960. I have never had a lawsuit against me. I make sure the consumer knows their rights when I work on their car and that they are fully aware of what I am going to do. It is up to the business to clarify their job and realize that the consumer doesn't know everything about that trade, but go out of their way to make sure the consumer is protected.

360 HENRY KANE, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT FF)

TAPE 14, SIDE B

035 DEBRA SHELLEY, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT GG)

069 ROD NICHOLS, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT HH)

107 MICK ALEXANDER, ATTORNEY: Introduces Marianne Keys.

119 MARIANNE KEYS, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT II)

136 REP. JOHNSTON: Do you still take this position knowing that as restaurant owners you may be the target of alleged and frivolous allegations. If you prevail, you recognize that you still have to pay your own costs?

144 NICHOLS: That is the reason we have liability insurance. It doesn't necessarily have to happen to a business owner, it could happen in front of my home. We shouldn't have to all live in constant fear. Somewhere along the line there will be costs incurred by everyone for some cause that has nothing to do with us.

159 KEYS: I agree, I have insurance that would cover any situation like that.

162 REP. LEWIS: What about a discrimination suit from an employee that your liability insurance would not protect?

166 NICHOLS: I don't see what the alternative would be. The employee wouldn't have that kind of money to incur those costs anyway.

195 MARGARET CRABTREE, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT JJ)

217 CHAIR BRYANT: Adjourns the hearing at 9:00 pm.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

- A. Testimony on SB 386 - John Glascock - 1 page
- B. Testimony on SB 386 - Henry Kane - 1 page
- C. Testimony on SB 385 - Judge Lamar - 2 pages
- D. Testimony on SB 385 - James Nelson - 3 pages
- E. Testimony on SB 385 - Ostergren Family - 2 pages
- F. Testimony on SB 385 - Judy Olson - 1 page
- G. Testimony on SB 385 - Braymer Family - 2 pages
- H. Testimony on SB 385 - Jim Bowles - 11 pages
- I. Testimony on SB 385 - Barry Kurath - 1 page
- J. Testimony on SB 385 - Steven Marks - 8 pages
- K. Testimony on SB 385 - Charlie Funk - 1 page
- L. Testimony on SB 385 - Michael Adler - 3 pages
- M. Testimony on SB 385 - David Schuman - 4 pages
- N. Testimony on SB 385 - Caroline Forell - 4 pages
- O. Testimony on SB 385 - Caroline Forell - 16 pages

P. Testimony on SB 385 - Hao Pham - 1 page
Q. Testimony on SB 385 - Susan Gillis - 4 pages
R. Testimony on SB 385 - Sylvia Carpenter - 1 page
S. Testimony on SB 385 - Cindi Nelson - 1 page
T. Testimony on SB 385 - Pamela Nollen - 2 pages
U. Testimony on SB 385 - Albert Amescue - 1 page
V. Testimony on SB 385 - Dave Davison - 1 page
W. Testimony on SB 385 - Michael Shinn - 18 pages
X. Testimony on SB 385 - Diana Stuart - 2 pages
Y. Testimony on SB 385 - Carolyn Tyler - 1 page
Z. Testimony on SB 385 - Karen Dorsey - 2 pages
AA. Testimony on SB 385 - Julie Joel - 1 page
BB. Testimony on SB 385 - Cheryl Gaffke - 1 page
CC. Testimony on SB 385 - Elden Rosenthal - 1 page
DD. Testimony on SB 385 - Suzanne Chanti - 2 pages
EE. Testimony on SB 385 - Adam Brake - 1 page
FF. Testimony on SB 385 - Henry Kane - 9 pages
GG. Testimony on SB 385 - Debra Shelley - 1 page
HH. Testimony on SB 385 - Rod Nichols - 2 pages
II. Testimony on SB 385 - Marianne Keys - 1 page
JJ. Testimony on SB 385 - Margaret Crabtree - 1 page
KK. Testimony on SB 385 - Mark Toledo - 2 pages
LL. Testimony on SB 385 - David Nebel - 4 pages
MM. Testimony on SB 385 - Clifford Looney - 2 pages
NN. Testimony on SB 385 - Tom Dietz - 1 page
OO. Testimony on SB 385 - Kathleen Flemming - 1 page
PP. Testimony on SB 385 - Marilyn L. ? (illegible) - 1 page
QQ. Testimony on SB 385 - Gretchen Yost - 1 page
RR. Testimony on SB 385 - Richard Yugler - 6 pages
SS. Testimony on SB 385 - Michael Scott - 2 pages
TT. Testimony on SB 385 - Aixe Djelal - 2 pages
UU. Testimony on SB 385 - Steve Call - 1 page
VV. Testimony on SB 385 - Shirley Fitzgerald - 2 pages
WW. Testimony on SB 385 - Dale Morris - 2 pages
XX. Testimony on SB 385 - Ron Hyde - 3 pages
YY. Testimony on SB 385 - Dean Miller - 2 pages
ZZ. Testimony on SB 385 - Jeff Seymor - 1 page
AAA. Testimony on SB 385 - Howard Winters - 1 page
BBB. Testimony on SB 385 - Stephen Walker - 2 pages
CCC. Testimony on SB 385 - Bill Whitlatch - 2 pages
DDD. Testimony on SB 385 - Cheryl Hartung - 2 pages
EEE. Testimony on SB 385 - Mary Diane Legg - 1 page
FFF. Testimony on SB 385 - Cathi Jones - 2 pages
GGG. Testimony on SB 385 - Spiros Kollias - 2 pages
HHH. Testimony on SB 385 - Gerry Winfield - 2 pages
III. Testimony on SB 385 - Alberta Ellingson - 2 pages
JJJ. Testimony on SB 385 - Lolly Champion - 2 pages
KKK. Testimony on SB 385 - Ingrid Harper - 2 pages
LLL. Testimony on SB 385 - unknown - 19 pages
MMM. Testimony on SB 385 - Ted Kulongoski - 6 pages