

SENATE JUDICIARY SUBCOMMITTEE
ON CIVIL PROCESS

Hearing Room
Tapes - 22

MEMBERS PRESENT:

Rep. Del Parks, Chair
Sen. Neil Bryant, Vice-Chair
Rep. Kate Brown
Rep. Bryan Johnston
Rep. Leslie Lewis
Sen. Ken Baker
Sen. Peter Sorenson

MEMBER EXCUSED:

Rep. Bob Tiernan
Sen. Randy Miller

STAFF PRESENT:

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

MEASURES HEARD:

SB 385 - 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 4:06 p.m.

PUBLIC HEARING ON SB 385

Witnesses:

Laurie Wimmer, Oregon Commission for Women
Larry Wobbrock, Attorney
Michael Sanzone, Self
Rep. Kevin Mannix, District 32
Dennis Hilsabeck, Self
Don Corson, Attorney
Barbara Gaines, Self
Burl Beard, Self
Nancy Lewis, Self
Cheryl Brooks, Self

Bill Gaylord, Attorney
Tim Gaston, Self
Bob Osterman, Self
Joe Turner, Self
Robert Stoll, Attorney
Steve Larson, Attorney
Mike Sherlock, Oregon Gasoline Dealers
Tom Novick, OSPIRG
Julie Clute, Realtor - Self
Annabelle Jaramillo, Hispanic Affairs
Chuck Tauman, Oregon Trial Lawyers Association

026 LAURIE WIMMER, COMMISSION FOR WOMEN: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT A)

078 LARRY WOBROCK, ATTORNEY FOR MR. SANZONE: Testifies in opposition to SB 385, here representing Mr. Sanzone.

082 MICHAEL SANZONE, SELF: Testifies and submits written testimony and picture in opposition to SB 385. (EXHIBITS B, C)

146 SEN. SORENSON: One of the ideas is reciprocal loser pays. How do you feel if we modified the bill to have a reciprocal offer?

155 WIMMER: I'm not a lawyer and don't feel comfortable speaking about that. We are dealing with unlevel playing fields.

163 WOBROCK: This was a liability case and was hard fought until it was settled. If the defendants would have had the provisions available to them, they would have offered a token amount and let that be a hammer on the plaintiff. Discusses Sanzone family case.

184 SEN. SORENSON: What do you think about a reciprocal judgment instead of a one-way offer?

191 WOBROCK: That would put too much of a bounty and access to justice. Discusses Sanzone case and that future hospital care costs are in the millions. The assessment of damages isn't scientific.

214 KEVIN MANNIX, DISTRICT 32: Testifies in opposition to SB 385.

322 SEN. SORENSON: Another idea is that judges should be given the discretion to award attorney fees against one party. Do you like that solution?

336 MANNIX: I think that is appropriate because it serves as a protective device against someone who is unreasonable. Discusses own cases and problems when both sides tried to get together and discuss the issues "off the record". People should be required to sit down and talk to one another about the issues which would help reduce some of the litigations of the system.

368 REP. BROWN: You are discussing mandatory settlements conferences like they have in Multnomah county?

370 MANNIX: Yes.

374 REP. JOHNSTON: Gives example of a party being given a set time to ask for an early neutral evaluation. At the conclusion of this session the officer would pass out one of three options, explains. Would this be a system of interest?

405 MANNIX: Yes, that would work. Discusses and gives examples of people in denial and continuing to get other lawyers who will continue with case until the end. The nuisance value settlement is one of the worst that we have.

TAPE 21, SIDE A

011 DENNIS HILSABECK, SELF: Testifies in support of SB 385.

078 CHAIR BRYANT: Ultimately your case was dismissed with prejudice, but you were out your time and own attorney fees?

080 HILSABECK: Yes.

081 CHAIR BRYANT: Did your attorney request any sanctions against the plaintiffs attorney? Are you planning on filing a suit against the plaintiff that had a suit against you?

092 HILSABECK: If I have to file a suit to get someone to pay attention, I will.

095 REP. JOHNSTON: After the plaintiff did not show up for the deposition, did your attorney ask the court for money?

098 HILSABECK: No.

099 REP. JOHNSTON: Explains that under the civil rules, the attorney should have been able to ask for money. The second time they did not show up, did your attorney ask for money?

101 HILSABECK: No. I just wanted the case dismissed.

102 REP. JOHNSTON: Asking for money is one way to encourage getting your case dismissed. When they failed to show up for the telephone deposition, did you ask for anything?

104 HILSABECK: I asked for the case to be dismissed.

105 REP. JOHNSTON: To the judge?

105 HILSABECK: Yes.

106 REP. JOHNSTON: What was the name of the plaintiff's company?

107 HILSABECK: Diversified Developments. It turned out to be two businesses and he sues people under these businesses. In the last seven years, this man has filed 25 lawsuits in Eugene and has never won any of them. He also has used the same attorney for almost all of the cases.

120 REP. JOHNSTON: One of my concerns is if we have the right tools in the system. What was the name of the judge who heard the case?

124 HILSABECK: Brewer, I think.

128 REP. JOHNSTON: Do you have any insurance to cover your costs?

129 HILSABECK: No.

130 REP. JOHNSTON: How much do you think you paid in attorney fees?

130 HILSABECK: Attorney fees were about \$7,000 and \$2,00-3,000 in other fees.

133 SEN. SORENSON: In this case, did you make a claim that the litigation was frivolous?

135 HILSABECK: I don't understand.

136 SEN. SORENSON: Explains civil procedure rule in that if someone has had a frivolous case brought against them, they can make a statement of frivolousness.

139 HILSABECK: Yes, we did that every time we went before the judge. We also petitioned and took all of our evidence to court and the judge wouldn't pay attention.

145 SEN. SORENSON: Did you ever get awarded attorney fees for frivolousness?

146 HILSABECK: No.

147 SEN. SORENSON: Did you ever prepare a statement of what you had paid in attorney fees to show the court?

148 HILSABECK: In the last session, when they threw the case out, yes we did that.

150 SEN. SORENSON: Did you get an order that your attorney fees were reasonable and that they should have to pay them because they were being frivolous?

153 HILSABECK: It doesn't say that it was frivolous, but it says I have the right to go after my attorney fees.

158 DON CORSON, ATTORNEY: Testifies as attorney for Barbara Gaines.

164 BARBARA GAINES, SELF: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT D)

210 BURL BEARD, NANCY LEWIS, CHERYL BROOKS: All submit written testimony and are played on video tape in opposition to SB 385. (EXHIBITS E, F)

368 SEN. SORENSON: Could you give us any insight on the whether we should give the judges power to award attorney fees?

379 CORSON: We have a system that weeds out and awards attorney fees in frivolous litigation, those aspects are good. If were are going to change it at all, it should be to increase the sanctions for frivolous claims and defenses.

393 REP. LEWIS: Had there been a loser pay provision, do you think they would have been so willing to bring the lawsuits?

403 HILSABECK: No, explains. It ended up that there were eight other people being sued as well during my case. Something along the loser pay lines would help and should be thought through.

TAPE 20, SIDE B

012 BILL GAYLORD, ATTORNEY: Testifies for attorney for clients, in opposition to SB 385.

050 TIM GASTON, SELF: Testifies and submits written testimony in opposition to SB 385, being played on video tape. (EXHIBIT G, H)

103 GAYLORD: Reads testimony of STUART LISHAN. (EXHIBIT I)

139 GAYLORD: The defendant in this lawsuit would have said that this was a frivolous law suit. After 36 depositions, we had to find the person responsible for compiling accurate information to the public.

149 REP. JOHNSTON: Let's assume that we adopted SB 385 and had a loser pay provision. This is a case of questionable liability colorability under the state of laws that existed when this case was brought, is that right?

155 GAYLORD: It was factually questionable, explains.

161 REP. JOHNSTON: Was it a risky litigation?

162 GAYLORD: Absolutely.

163 REP. JOHNSTON: It may have been too risky for the plaintiff if they contemplated paying the defendants attorney fees?

164 GAYLORD: Absolutely.

165 REP. JOHNSTON: Do you think that one of the unintended consequences of this bill might be to give rise to litigation venture capitalists?

169 GAYLORD: I would say it is.

170 REP. JOHNSTON: In the event that we created such a class of "capitalist" litigation, might they expect a higher return on their money than is currently contemplated by the worst of our contingency fee arrangements?

174 GAYLORD: That is a possibility. I don't know if they would come in the form of loan sharks, or a new dimension of advertising lawyers. People are still going to be seriously injured and they will still try to find a way to get some justice out of the system.

186 REP. JOHNSTON: Would there be motivation for someone to "buy" a lawsuit?

190 GAYLORD: You are discussing seriously injured people, where potentially

large sums of money at stake. Discusses other cases.

200 REP. JOHNSTON: Can you imagine a case with clear enough liability and significant enough damages that you would personally front the risk exposure in taking the defendants fees into consideration?

207 GAYLORD: No. I, and my colleague, risk very substantial sums of money in the present system. The plaintiffs treatments of these cases, and our motivations for this case, are streamline and cheap compared to the defendants. We spend what we have to, but try to keep it cheap because it is risked money. I don't think we can economically risk paying the other sides fees as well.

230 BOB OSTERMAN, SELF: Testifies in opposition to SB 385.

374 JOE TURNER, SELF: Testifies in opposition to SB 385.

430 ROBERT STOLL, ATTORNEY WITH STOLL STOLL BERNE & SCHLACHTER: Testifies and submits written testimony in opposition to SB 385. (EXHIBITS J, K) Also discusses SB 386, explains their opposition and discusses cases.

TAPE 21, SIDE B

148 STEVE LARSON, ATTORNEY WITH STOLL STOLL BERNE & SCHLACHTER: Testifies and discusses written testimony in opposition to SB 385 & 386, EXHIBITS J, K. Cites sections of statutes that would become less effective if SB 385 passed.

198 REP. JOHNSTON: There are still individual recoveries and actions that can be brought alleging fraudulent conduct, not withstanding the presence or absence of ORICO statutes.

205 STOLL: Correct

206 REP. JOHNSTON: SB 386 doesn't negatively impact the right to recover. It does negatively impact the amount of recovery?

209 STOLL: Gives example as to how SB 385 & 386 would effect certain cases.

We defend RICO cases and settle them. We have never had to pay any money to other party because of a RICO case. If you changed the title of the bill, most businesses would be happy.

305 REP. JOHNSTON: Predicate acts are different than by use phone, or mail fraud?

309 STOLL: Right.

321 MIKE SHERLOCK, OREGON GASOLINE DEALERS: Testifies and submits proposed amendments in opposition to SB 385. (EXHIBIT L)

360 REP. BROWN: Can you elaborate on Section 92, "plaintiffs as small businesses asserting rights against large chains or suppliers"?

365 SHERLOCK: It goes back to SB 664 regarding the big franchisers dealing with the franchisees. Prior to SB 664, they could do whatever they wanted and there was no recourse. This bill established what the appropriate rules

are for the large franchisers and how they deal with the smaller franchisees.

385 TOM NOVICK, OSPIRG: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT M)

TAPE 22, SIDE A

028 JULIE CLUTE, REALTOR - SELF: Testifies in support of SB 385.

064 REP. LEWIS: As a small business person, the threat of lawsuit has a chilling effect.

068 REP. BROWN: Do you have some type of insurance that would cover the cost of attorney fees?

071 CLUTE: No. I didn't think I would encounter this the first six months as a realtor.

074 REP. LEWIS: Does your broker have any type of insurance that would cover you?

075 CLUTE: Yes, but it every time you tap into a policy, it raises it for everyone. The point is, this is a frivolous case.

080 REP. LEWIS: Are they suing you, or the mortgage company as well?

081 CLUTE: Right now I am the only defendant. I have told the mortgage broker that if I go to court I'm taking them with me.

084 REP. BROWN: Let's assume that this couple has been discriminated against in the past, can you think of any way to prevent or prohibit discrimination without bringing lawsuits?

091 CLUTE: There should be a mediation requirement. They shouldn't be put in affirmative action groups which tends to enable people to sue more easily. If we had a bill like in California, this might begin to eliminate some of these cases.

098 REP. BROWN: Like proposition 187?

099 CLUTE: I'm thinking of the one that would eliminate all affirmative action groups. There is entirely too much discrimination of middle class white people. Mediation and pretrial investigation of the merits of a case would be good.

118 REP. LEWIS: You as the broker, don't get paid until the deal goes through, so you don't have much motive to discriminate.

120 CLUTE: No, I have no motive.

132 ANNABELLE JARAMILLO, HISPANIC AFFAIRS: Testifies and submits written testimony in opposition to SB 385. (EXHIBIT N)

166 REP. BROWN: How many months to get to court?

167 JARAMILLO: It can take up to two years to get to court. Continues with testimony. We are opposed to the California rule, Proposition 187.

212 CHUCK TAUMAN, OREGON TRIAL LAWYERS ASSOCIATION: Testifies and submits
written testimony in opposition to SB 385. (EXHIBITS O, P)

242 REP. BROWN: By policy holder you mean businesses?

243 TAUMAN: Yes.

246 REP. BROWN: Adjourns the hearing at 6:15 pm.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A. Testimony on SB 385 - Laurie Wimmer - 2 pages
B. Testimony on SB 385 - Michael Sanzone - 3 pages
C. Picture - Michael Sanzone
D. Testimony on SB 385 - Barbara Gaines - 1 page
E. Testimony on SB 385 - Don Corson - 3 pages
F. Video Tape of testimony on SB 385 - Don Corson
G. Testimony on SB 385 - Tim Gaston - 19 pages
H. Video Tape of testimony - Tim Gaston
I. Testimony on SB 385 - Stuart Lishan - 2 pages
J. Testimony on SB 385 - Robert Stoll - 9 pages
K. Testimony on SB 385 - Robert Stoll - 7 pages
L. Testimony on SB 385 - Mike Sherlock - 1 page
M. Testimony on SB 385 - Tom Novick - 2 pages
N. Testimony on SB 385 - Annabelle Jaramillo - 1 page
O. Testimony on SB 385 - Charles Tauman - 10 pages
P. Testimony on SB 385 - Charles Tauman - 1 page
Q. Testimony on SB 385 - Dairy Fabrication - 1 page
R. Testimony on SB 385 - Rich Peppers - 2 pages
S. Testimony on SB 385 - Oregon Student Lobby - 2 pages
T. Testimony on SB 385 - Henry Kane - 17 pages
U. Testimony on SB 385 - Henry Kane - 2 pages
V. Testimony on SB 385 - Stephen Brischetto - 4 pages
W. Testimony on SB 385 - Michael Rosenbaum - 2 pages
X. Testimony on SB 385 - Robert Tolson - 1 page
Y. Testimony on SB 385- Ralph Smith - 5 pages
Z. Testimony on SB 385 - Russ Lipetzky - 1 page
AA. Testimony on SB 385 - Tevina Benedict - 2 pages
BB. Testimony on SB 385 - Grainger & Tresider - 62 pages
CC. Video Tape testimony on SB 385 - Merle Campbell - Video