

## Alabama North

Texas, Georgia and even Mississippi have all passed tort reform to improve their economies and stop the exodus of doctors. But now bidding to take their place as a favorite trial lawyer destination is the previously sensible state of Wisconsin, led by its Supreme Court.

*Wisconsin puts out the welcome mat for trial lawyers.*

In a pair of rulings last month, the court tossed out the state's cap on noneconomic damages in medical malpractice cases, and it blessed a theory of lead paint litigation that will soon have every trial lawyer in America descending on the state and posing as a cheesehead.

On medical liability, the four judges toppled what had been a highly successful medical liability reform passed by the state legislature in 1995. That law had established a \$350,000 cap—\$445,775 today as adjusted for inflation—on noneconomic damages, which are the intangible, unquantifiable damages such as mental distress or pain and suffering. Recent studies have shown that these are the damages—comprising more than 70% of malpractice awards—that tend to drive up insurance rates and drive doctors to other states.

The 4-3 court majority offered the highly creative judgment that caps on such damages are "patently arbitrary" with "no rational relationship to a legitimate government interest." But if discouraging frivolous legal claims to make health care more affordable and available for regular citizens isn't "a legitimate government interest," we'd like to know what is. Illinois Governor Rod Blagojevich is about to sign a \$500,000 cap on such damages precisely to stop the flight of doctors out of that state—and into places such as Wisconsin.

A day after this disaster, the court doubled its damage with its 4-2 lead paint ruling. The court ruled that a Milwaukee teenager suffer-

ing mild retardation may sue a group of companies that processed a pigment formerly used in some paints called white lead carbonate. The plaintiff may have ingested it as a child, though his attorneys couldn't say for certain.

Nor could they say when the white lead carbonate he may or may not have ingested was manufactured, or what company manufactured it in the first place. But the companies under suit, or their predecessors, processed some variety of the pigment—there are three—at some point in the past; and for this the court ruled that they could have collectively contributed to the risk that somebody, somewhere, might be affected by somebody else's end product.

This decision is the first of its kind in the country and establishes a dangerous precedent. It dispenses with the traditional legal standard for torts—which is to establish actual connections between wrongdoing and injury—and replaces it with a chain of speculation and conjecture, making it all but impossible for a company to exculpate itself. In short, the decision gives defendants every incentive to settle rather than risk a trial, rigging the system in favor of the trial lawyers. There's every reason to believe those same lawyers will try to export this same unfair theory to other states.

The dual rulings pose a challenge to Wisconsin's politicians, who have essentially been overruled by a four-person judicial legislature. GOP Congressman Mark Green is already making this part of his campaign for Governor, while Democratic Governor Jim Doyle has yet to make a firm public statement. The implications for Wisconsin's economy, which depends both on health care and manufacturing, are enormous. The last thing Wisconsin needs is a reputation as a cold-weather Alabama.