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Tort Reform in the States: Protecting Consumers and Enhancing Economic Growth in Mississippi

The Honorable Haley Barbour and Edwin Meese III

Abstract: *Before the current economic downturn, Mississippi enjoyed net increases in new jobs as major companies like Toyota, General Electric, and others opened new manufacturing facilities. One of the major reasons for this ability to attract new business is Mississippi's tort reform legislation, the most comprehensive in the United States, which restored the balance between plaintiffs and defendants in civil justice cases. One year after the reform became law, medical liability lawsuits were down 91 percent from their peak before passage of this reform. Additionally, the state's biggest medical liability writer cut premiums 42 percent. Key to the success of such reform efforts is small business, which can go broke trying to win lawsuits because of the cost of defense and the time involved.*

EDWIN MEESE III: Ladies and gentlemen, we are particularly honored and fortunate to have with us today Governor Haley Barbour of the great state of Mississippi to discuss the importance of tort reform in the states. He is in his sixth year as governor and is a very successful leader among the governors of the country.

First elected in 2003 in the largest voter turnout in the history of Mississippi, he was returned to office in 2007 with 58.2 percent of the vote, which is a landslide by any reckoning. He is only the second governor since Reconstruction to be elected to a second consecutive term. Governor Barbour, who has been a leader in political activity for a long time in this coun-

Talking Points

- The first rule in getting tort reform passed in the states is that governors must make it a top priority, explaining to the people why and how it is needed.
- The second rule is not to let the trial lawyers separate the medical community from the general business community. The trial lawyers have enormous resources, and they fear that if they lose on tort reform, they will also lose those resources.
- It is important that small business, not big business, leads the tort-reform effort. Big business has to bear part of the cost, but small business is truly grassroots.
- It is also important to keep tort-reform coalitions together, working on other issues like growth and reasonable government control and spending rather than raising taxes.

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try and was a distinguished chairman of the Republican National Committee, also had a very important role in Ronald Reagan's election in 1980 and again in 1984.

Governor Barbour inherited a budget with a deficit of more than \$720 million, which in state terms is real money. Today we hear talk about trillions of dollars at the national level, a term we never knew about when we were in state government. Yet the governor balanced his state budget without raising taxes by restraining spending, by controlling debt, and by getting the state's fiscal house in order, even raising the state's "rainy day fund" to take care of emergencies.

During Governor Barbour's tenure, Mississippi has seen an almost 28 percent increase in per capita personal income at the same time he has managed record funding increases for all three levels of education in that state.

Prior to the current economic downturn, Mississippi saw net increases in new jobs in major companies like Toyota, General Electric, and others that opened new manufacturing facilities in that state. Governor Barbour has shown a definite relationship between good government, low taxes, and spending restraints and economic success.

One of the major reasons why Governor Barbour was able to attract new business is because he was able to convince the legislature to pass the most comprehensive tort reform legislation anywhere in the United States, restoring the balance between plaintiffs and defendants in civil justice cases. He did all of this in a state that was hit by one of the worst natural disasters in American history. We all know about Hurricane Katrina, which struck that state on the 29th of August in 2005.

Now, you have all heard a lot of complaints about New Orleans and Louisiana and what the hurricane did there as well as the lack of leadership by local officials. No, you did not hear those complaints about Mississippi. As a matter of fact, Mississippi received very little attention by the news media, largely because everything worked. The state leadership was outstanding. The people were satisfied with what their government was doing for them.

I suspect, Governor, that in those situations, you do not mind not making the headlines. But, actually, it should have made the headlines to acknowledge the great leadership and the fine emergency work that was done in that state. The incredible leadership of Governor Barbour was largely responsible for that favorable outcome.

The governor's leadership has been recognized by the American Legislative Exchange Council, from whom he received the Thomas Jefferson Freedom Award, and also by *Governing Magazine*, where he was named Governor of the Year in 2006. He has done a number of important things as governor, but I would say that the tort reform legislation he accomplished is one of the best examples for other states and other governors to follow.

For that reason, we are very honored to have him with us today. Please join me in welcoming Governor Haley Barbour.

—Edwin Meese III is Ronald Reagan Distinguished Fellow in Public Policy and Chairman of the Center for Legal and Judicial Studies at The Heritage Foundation.

THE HONORABLE HALEY BARBOUR: Thank you very much, and thank all of you for being here. I am not going to be quite the lecturer today. I just want to visit with you a little bit about tort reform in Mississippi and what I think is required to get tort reform in other places.

When I ran for governor in 2003, for the third consecutive year, the U.S. Chamber of Commerce rated Mississippi the worst state in the country for lawsuit abuse, a judicial hellhole. The reason they rated us that way is because we were. We were the worst, and we had terrifically bad problems that had been caused in part because of a couple of bad Supreme Court decisions.

But we also had a very aggressive trial bar. They were working the mass tort system where we would have a case in a county with one pharmacist. That one pharmacist would be the defendant, and there would be 2,000 plaintiffs, 1,999 of whom were not from Mississippi. They came there, and they got rich.

Small businesses can go broke winning lawsuits because of the cost of defense and the time involved. That particularly applies to physicians, whose time it takes and the great costs.

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When I ran for governor, I made tort reform one of the three principal, out-front issues of the campaign. I talked about it in every speech. I did not care who I was talking to. If I was talking to school teachers, I talked about tort reform. If I was talking to minority audiences, I talked about tort reform. I did not care who it was; we talked about tort reform every day.

In my state, the lieutenant governor and the governor are elected independent of each other, and it happened that the Democratic lieutenant governor had changed parties the year before and become a Republican, and she made one of the major points of her campaign tort reform. So when we got elected and I became the sitting incumbent governor, one of the big reasons was tort reform and lawsuit abuse.

That is the phrase, by the way, we use more than tort reform. Stop lawsuit abuse: People get that. They understand that a little better. Maybe in Mississippi most of my people do not think of a tort as a French pastry, but they are not exactly sure what it is. They get lawsuit abuse. They can understand that pretty easily. So we made it a very total focus of my first year.

The First Rule of Tort Reform

The first rule, I would say to you, is that you cannot pass real tort reform unless it is led by the governor. I believe that from my own experience and from watching what happens in other states. The governor has got to lead the tort reform effort because the other side is tough. They have enormous, enormous resources. The trial lawyers fear that if you win, if you beat them on tort reform, they will not have those resources anymore. This is how they have made themselves gazillionaires and the largest donors to the Democratic Party.

In fact, there was a book written not too many years ago that called the trial lawyers the third political party in America because they gave Democratic candidates more money than the Democratic Party gave Democratic candidates, literally. So it is tough stuff. They are dug in, and they are good. They are smart, and as I say, they are fighting for home and hearth. They have their backs to the wall.

We passed, as Ed mentioned, what *The Wall Street Journal* calls the most comprehensive tort reform bill that any state has passed. I do not want to say that we have done more on tort reform, because some states like Texas had two or three rounds, but I think it is accurate that what we passed was comprehensive.

First of all, we changed the rule of venue to get very strict about where lawsuits could be brought. Ed mentioned to me earlier that there was a county in Mississippi where there had never been a judgment for the defendant. Maybe there are a handful of counties in our state that were not so pro-plaintiff.

The first rule is that you cannot pass real tort reform unless it is led by the governor.

You also might find this interesting. You might even find it disturbing. The chairman of the House Judiciary Committee who handled the tort reform bill had won \$155 million in tort judgments in the two previous years before this bill came before the committee. Somewhere, they might think that is a conflict of interest, but it was water off a duck's back. Those kinds of verdicts were not unusual in our state, in the tens of millions and hundreds of millions of dollars. And, of course, the first successful litigation against the tobacco companies was in Jackson County, Mississippi. So we are talking about big money in this and similar cases.

We got rid of joint and several liability, which we had forever. We have been a comparative negligence state since the 1930s. We were actually, I believe, the first comparative negligence state in the country. But we had the rule of joint and several liability, so it did not make any difference whether you were 2 percent negligent if you were the one with the deep pockets.

We protect innocent sellers and innocent land-owners, which is what takes out all the drug cases because now, if the pharmacist is selling a drug that the FDA has said is appropriate for the purpose that it says it should be used for, and unless the pharmacist knows that it has been tampered with, then that pharmacist is immune.

Fourth, we put caps on punitive damages, a sliding scale based on the size of the defendant corporation. Fifth, we put caps on non-economic damages, including some special caps in medical liability cases.

One thing we did not do, and it is interesting, our experience versus Ohio and, I believe, Illinois, which was another case where the Supreme Court threw out their tort reform law. When we did the bill with the chairman of the Senate Judiciary Committee, State Senator Charlie Ross, who was the principal author of the bill, we had a really long back and forth about whether or not to include in the bill a change in the rule of joinder to return to the rule that the Supreme Court had operated under

Aggrieved people who think they have been injured still have the right to go to court and seek to be made whole. It is just that we have got the playing field back level for both sides.

for decades but had changed a few years before in a case. We ultimately decided not to put the rule of joinder in there because the Supreme Court took the position it was a court rule, and it was not within the legislature's authority under separation of powers to set the rule of joinder. The law passed. Within a few days or weeks, the Supreme Court changed the rule of joinder. They changed the rule of joinder back to what it had been so that it was consistent with the rest of what we passed.

Our Supreme Court has upheld our tort reform consistently until a small recent case where the court ruled on a part of our tort reform law that requires, in medical liability cases, written notice from the plaintiff to the defendant for 60 days before they can bring a suit because our goal here is to have less litigation. This way, there is an opportunity to resolve the matter without ever getting into the court system.

We had a case where a lawyer filed the lawsuit without giving the notice and then, by the time the lawyer came back and gave the notice, the statute of limitations had run. The court has taken the position that filing the lawsuit, even though it was done improperly, was within the statute. We take the position—and I have actually filed an *amicus* brief with the Supreme Court—that this, even though it is a relatively small issue, defeats the purpose of the legislature, which is to reduce litigation. If you are going to make exceptions to get back into litigation, that is not what we are trying to accomplish.

Restoring the Level Playing Field

We will see how that comes out, but I can tell you, after we passed this very comprehensive tort reform law, a lot of things changed. But one thing did not change. Aggrieved people who think they have been injured still have the right to go to court and seek to be made whole. It is just that we have got the playing field back level for both sides. We have done away with the outrageous suits, what Lawrence McQuillan has accurately called “the lawsuit industry.”

We have lawyers in my state who have as their practice a phone bank. The phone bank takes telephone calls answering advertising about litigation. Non-lawyers take the calls and deal with it. Then they farm out the lawsuits. It is a lawsuit mill, and there is more than one of them. I am a lawyer, a recovering lawyer. I have not practiced law in a long, long time. But we were told when I came along that that was reason to disbar you. It just simply was not allowed. That still goes on, but not to the degree that it used to.

I will also add that a number of the more prominent trial lawyers in our state have privately said this is a fair deal, that what the legislature actually passed, while they did not like it, is not unfair to plaintiffs. It really is not unfair to them. Even a lawyer like Dickie Scruggs, before we passed the law, said publicly that something had to be done. There are some things that need to be changed. So the trial bar is generally accepting of what happened.

I told them when we passed this that if it passed in good form, we would leave it alone for four years and see how it worked, that I would not come back

next year and get another bite at the apple. That is what we have done. It has not been very contentious. Most of the trial lawyers, particularly the ones that are really good lawyers, believe it is fair.

Mississippi's biggest medical liability writer cut premiums 42 percent, plus they have given an average 20 percent premium rebate every year since tort reform went into effect.

Does it make a difference? You had better believe it makes a difference. In 2007, Toyota chose Mississippi for the most sought-after economic development project in the United States, its eighth automotive assembly plant, where they are going to build the Prius. They chose Blue Springs, Mississippi, and said publicly they would not have considered Mississippi if we had not passed tort reform. They said publicly they would not have chosen Mississippi if we had not passed tort reform.

I do think it is important to know the results beyond that. We have talked a lot about medical liability. Our tort reform was passed in June but went into effect in September. One year following that September, if you took the number of medical liability lawsuits that were being filed at the peak before the bill passed and compared it to where we were one year after the bill became law, we were down 91 percent—91 percent fewer medical liability lawsuits. Our biggest medical liability writer cut premiums 42 percent, plus they have given an average 20 percent premium rebate every year since tort reform went into effect. So, effectively, premiums are down about 60 percent. I think it's really more like 56 percent by the time you do all the compound math. But it made a huge difference.

Getting It Done

Now I would like to tell you a little bit of the story of how we got that done, because to me that's what is important. It is great to see what happens after you get tort reform, but the hard part is getting it. I mean it is tough. I believe, as I said, the governor has to lead it, and the governor has to make it a huge public issue. The governor cannot just be for it and quietly try to do it in regular order. The gover-

nor has got to make it a top priority, explaining to the people why and how it is needed.

I think the second rule, if you want to get tort reform done, is not to let the trial lawyers separate the medical community from the general business community. That is the first thing they will try to do. They will try to buy the docs off. They tried to do that in Mississippi the year before I was elected, and to their credit, the doctors would not be bought. Medical liability is so important because the public gets that. They do not really understand very often the effects of liability on business. They are not overly sympathetic to Northrop Grumman or Nissan or these great big businesses anyway, but they do not get too easily that it costs jobs, so you have got to work pretty hard to make that plain.

But what they *do* get very easily is, if my doctor quits practicing medicine because he keeps getting sued, that isn't good for me. I remember when Martha Jones Hospital in Kosciusko, Mississippi, which is in the north central part of the state, closed its

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obstetrics ward, their baby-delivering operation. It meant women having babies in that county had to go 75 miles to have their baby. Every daddy, granddaddy, and husband knows that if your wife, daughter, or granddaughter has to travel an hour and a half, a lot of bad things can happen when you are trying to have a baby. They get that.

I live in a little town called Yazoo City, Mississippi. The next county over is Sharkey County. Sharkey and Issaquena County are two little counties that share a county hospital. While I was running for governor, Sharkey-Issaquena Community Hospital closed its emergency room because they could not pay their medical liability insurance premium. Now, this is not talking about some highfalutin gamma ray doctor. People get it.

Another thing that really got people's attention was a case of a medical liability claim that ultimately was defeated where a neurosurgeon did emer-

gency neurosurgery on somebody who was hurt really bad in a car wreck. That surgeon got sued. Between Jackson, Mississippi, and Memphis, Tennessee—the whole northern half of my state, 200 miles—there is only one neurosurgeon that would do emergency neurosurgery. Again, people get it. So do not let them separate the medical community from the business community—and they are going to be tempted.

I will be honest with you: Some of the business guys have kind of sharp elbows and can be a little difficult to deal with. The leaders have just got to get them right with the program. Because the third of the three big points is this: Small business has to lead tort reform, not big business. There is very little sympathy for big business even in New Jersey or New York, much less in the poorest state in the country.

The third of the three big points is this: Small business has to lead tort reform, not big business.

But big business has to pay for it. It is very expensive to run the kind of campaign that you have to run to win tort reform. It is not, as I said earlier, regular order. There is a tremendous amount of grassroots communication, of organizing, of meetings, of various new media using the Internet. Of course, we did not have that when we did this in 2004, but we had massive ways of communicating with people and keeping people together.

A Tort Reform Story

I will tell you a funny story, my favorite tort reform story. We passed tort reform through the Senate six times in the spring of 2004, and the Speaker of the House would not let it come to the floor of the House. We passed it in a regular session three times, including very strict deadlines, and sent it over to the House on the deadline for the House to consider bills from the Senate, for one body to consider bills that originated in the other body. The speaker would not let it come up to the floor, and the motion to adjourn the session passed 61 to 58.

What happens when a motion to adjourn fails? Then you start taking nominations for a new speak-

er. They came within two votes of not being able to adjourn, which encouraged me. So when the regular session ended—we had a 125-day session that year—the question was, should we wait a month or six weeks and get the business community back out there and spend a lot of money on advertising, or should we bring them right back? I thought they looked tired and beat down when the session ended on Sunday, so on Monday I called them back in to start on Wednesday.

In the next two and a half weeks, the Senate passed tort reform three more times and sent it over to the House, and the speaker kept having procedural votes to keep it off the floor. Finally, he agreed to a vote, but only after this wonderful little story happened.

There is a senior representative from up in north-east Mississippi, chairman of a major committee of the House and very close to the speaker. One Saturday night, about 7:30 p.m., his phone rang and a car dealer from their hometown was on the phone. I am not going to say liquor was not involved, but the car dealer said, “What are you doing in the legislature voting against tort reform?” The legislator said, “Well, Buster, I’m voting to support the speaker.”

The car dealer said “the speaker didn’t elect you.” The legislator said, “I have to support the speaker. He made me chairman of the Transportation Committee.” And the car dealer said, “I’m gonna tell you something. The speaker didn’t elect you, and if you don’t start voting for tort reform, you ain’t goin’ back. I’m just telling you right now,” and, bam, he hung up the phone.

Well, the legislator, all upset, called the car dealer back. The guy had been the president of the Chamber of Commerce and president of the Economic Development Fund. He said, “Man, I can’t believe you hung up on me. I mean, we’ve been friends 40 years. I taught your kids in Sunday school. You coached my boy in Little League. And you hung up on me. I can’t believe it.”

The car dealer said, “I can’t believe you keep voting against us on tort reform,” and, bam, he slammed down that phone again. Well, about 9:00 o’clock Sunday morning, over at the car dealer’s house, the phone rang. It was the legislator. He said,

“Buster, I couldn’t sleep last night after you hung up on me on the phone twice about tort reform.” And the car dealer said, “You know what, Bill, I couldn’t sleep last night either. I couldn’t sleep dreaming about some SOB who sues me and takes away from my family everything that I’ve worked for 50 years,” and, bam, he hung up the phone.

The People Are Watching

That week, the speaker allowed a vote, and it is interesting that Bill Miles voted for tort reform. It does not have to be quite that tactical, but I am going to tell you: The way tort reform wins is when legislators go to church and their friends at church tell them this is important. This matters. We are watching. If you are for tort reform, your constituents, your parishioners, your chamber of commerce, your hospital board, your doctors, and your insurance agents thank you and congratulate you, because you do not take for granted the ones that are with you. You make sure at home they are being praised for it, applauded for it to keep them strong, because, buddy, they are under pressure.

But the ones who are not right have to understand they are paying a price at home, that it is a serious price, that this is not just another issue, that these are small-business people who think somebody is going to sue them and take away from them everything they have worked to achieve for 50 years. I will tell you what: That works.

The way tort reform wins is when legislators go to church and their friends at church tell them this is important.

Big business has to bear part of the cost there, but small business is truly grassroots. That is how you get there.

Big business can do some things. The Speaker of the House in Mississippi has a Caterpillar plant in his hometown, and during the tort reform battle, the CEO of Caterpillar wrote him a letter and said, “Mr. Speaker, I just want you to know that tort reform is not only an issue when Caterpillar is looking for where to expand and build a new plant. It is also an issue in deciding where to close existing

plants.” It did not change the speaker, because he is a tough guy, but it got a lot of people’s attention. Somehow, it made it into the press.

Tort reform is worth doing. It is hard. It is not for the fainthearted. You have to be really willing to work, and work very hard, at the grassroots because you are not going to win if it is Astroturf. You are not going to win if it is just about big business. You are not going to win if they get your doctors separated from the business community. It is hard, but it is worth it. It really is worth it.

I mentioned Toyota said publicly it would not have considered us, but after Toyota chose us, GE decided to build a big plant in Mississippi; Paccar, which makes Peterbilt and Kenworth Trucks, decided to build a big plant in Mississippi; and the biggest Russian steel company, Severstal, and a big Indian steel company, PSL, came to Mississippi. I am convinced they would not really have noticed us had it not been for Toyota, and Toyota would not have considered us if it had not been for tort reform. I believe that really is the truth of the matter.

Conclusion

I will close by making this observation: It is mysterious to me that the Administration and the leadership of Congress talk about health care reform and the goal of reducing costs and yet refuse to put tort reform into the legislation. I believe \$200 billion to \$250 billion a year of health care costs are caused by litigation. It may be more than that. But this is the lowest-hanging fruit.

This isn’t rocket science. If they want a demonstration project, come on down to Mississippi. I will show you a demonstration project. And if it works in the worst state in the country for lawsuit abuse, I promise you it will work other places too.

Thank you for all for letting me have a chance to visit with you about our story of tort reform. I encourage you to do it in your state. It can be done, and it pays off.

Questions & Answers

QUESTION: Governor, your point number two was to not let the other forces divide the physicians from the business community, yet there is a big movement to include tort reform as part of the

health reform legislation. Are those two ideas contrary to each other?

GOVERNOR BARBOUR: I believe at the end of the day, what you want is good policy. At the state level, I do not think you can achieve these things separately, but I think the payoff for the country is sufficiently large that to have national tort reform in medical liability is worth doing. I think it also will make it harder for Congress to deny the value of tort reform. If you can take medical liability and reform it nationwide, it may make it a little harder to get state-by-state tort reform, but I believe the payoff for the country is worth it.

QUESTION: I wonder if you could address the demonization of the insurance industry, and certainly the role the insurance industry played in Katrina was a factor. Is it a tactic of the litigation industry? And what role does that play in tort reform?

GOVERNOR BARBOUR: When you talk about Katrina, it is a little bit more complicated than a typical insurance issue. In the United States, flood insurance is no longer written by private companies. Beginning in the 1960s, the federal government created a flood insurance program, and, of course, it drove everybody else out of business.

So we now have a national flood insurance program created by the Congress and funded by the federal government. If you live on the Mississippi Gulf Coast or any other coast, or if you live in lowland Louisiana or in the Mississippi Delta, and you have a flood risk and you are in the flood plain—which, by the way, also is delineated by the federal government; they tell you whether you are in the flood plain or not—the only place you can buy flood insurance is from the federal government.

When you buy homeowners insurance, it excludes flood. When we had Katrina, we had tens of thousands of houses outside the flood plain that were destroyed by the storm surge because the storm surge was the largest storm surge ever recorded in the history of meteorology, and it wildly exceeded the federally delineated flood zone. So we had a lot of litigation on the question of whether your home was destroyed by wind. If so, your regular private insurance policy covered it. Or was it

destroyed by the storm surge, which in insurance law is a flood, and therefore it is supposed to be paid for by the flood insurance program.

We had thousands of people who did not have any flood insurance because the federal government told them they did not live in the flood zone. You had others who had homes worth \$750,000 or \$1 million that were fully insured with their homeowners coverage, but the federal government limit is \$250,000 for flood insurance. So there was going to be litigation about flood versus wind damage; that was unavoidable.

But the trial bar stoked up my attorney general, the only Democrat state official we have. Within 10 days, the attorney general sued all the big insurance companies for not playing right with their customers. It was so early in the process that nobody had any idea. It turned out the insurance companies paid \$12 billion in Mississippi in insurance payouts. In about 97 percent of the cases, there was no contention.

I have to say, in fairness to everybody, we had hurricane-force winds 240 miles inland, so this was not just a coastal calamity. There were claims 200 miles away inland where there was no wind versus water issue, but if you were right down on the beach, it looked like the hand of God had wiped away the Mississippi Gulf Coast for 80 miles across—in some places, not for blocks inland, but for miles inland. There were a huge number of houses, so there was going to be controversy.

The attorney general sued them, and then immediately a whole bunch of private lawsuits got filed in the process. It set us back because we had started earning a good reputation after 2004 for litigation, but the outcome was that the court threw out the attorney general. He came this close to getting serious sanctions entered against him. And they still never made public some of the documents that came forward.

Most of the litigation was settled, but not all, because there are some very serious issues: Did the wind destroy your house or do x-amount of damage before the storm surge got there? A serious question. If the answer is the storm surge did it all, you have no coverage. That made it a little

bit more complicated than your normal insurance litigation.

But I can tell you one thing without fear of contradiction: If you cannot insure it, you cannot finance it. Normally, if you cannot finance it, you cannot build it. So the property casualty insurance industry is incredibly important to rebuilding a place like ours where 70,000 homes were either destroyed or uninhabitable after the storm. Most of those have either been replaced or are now livable again.

We could not have done that without the ability to insure. Premiums are a lot higher than they used to be, and our state wind pool is covering a larger percentage of the risk than we used to, but I want to make sure you know, unlike some states, the state of Mississippi and taxpayers do not take the risk in our wind pool. We organize it, and the companies have the risk. So if there is a big loss, the companies have to pay the loss, and then we allow them to recoup it in their premiums.

You see TV spots today saying health insurance companies deny one out of five claims. That just strikes me as absurd. I cannot believe that is true. But relating it to Katrina is what I was trying to do because what happened in Katrina is unusual. It is why we need multi-peril insurance. People need to be able to buy an insurance product where they know everything is covered. Right now on the coast of Mississippi, you have to buy flood insurance from the federal government; you have to buy wind from the state pool; and then all other homeowners claims—fire, burglary, all that—are on a third policy. So you have about three homeowners insurance policies, two of which are in conflict with each other, and that is just not right.

People ought to be able to buy an all-perils policy. Maybe it ought to cost a little more. It ought to be actuarially priced. People in Louisiana have the same problem we do. It is a little more complicated than a lot of things. This health insurance deal is a whole lot easier to understand and cleaner.

QUESTION: Governor, one of the harshest forms of going after lawsuit abuse, at least one of the most controversial, is limiting the contingency fee payments to the trial bar. We polled that in California, and there is 70 percent support for it. It is

usually popular among people, but it is the trial bar that gets very upset about it—it feels like you are going after them personally. What do you think about it?

GOVERNOR BARBOUR: We considered it when we were doing tort reform in Mississippi. I personally would prefer the English rule where the loser pays, but I know that in lots of the abusive cases, the plaintiff cannot pay. If you have the English rule and the lawyer for the plaintiff is on the hook, then I think it may have equally good effect.

I was a small-town lawyer, and I am not totally unsympathetic to contingency fees, but they can be very abusive. I would suspect, if we look at Lawrence McQuillan's data, very often the lawyers made more than the plaintiffs at the end of the day—that after the plaintiff paid his doctor's bill, the lawyer netted more than the plaintiff. That does not sit well. My own view is to get at that problem through the English rule and let it specifically be the lawyer who is responsible as well as the client.

QUESTION: I wondered if you could comment, Governor, on protecting the reform once you have it enacted. The trial lawyers coalition stays together always, and they have an incentive to always undo. It sounds like you had maybe some interesting messaging with them that you would not try to undo it for four years, but that means that you may have to keep your coalition of small business and big business together.

Also, what did you do to try to make sure there wasn't jury nullification, or judicial nullification by the courts?

GOVERNOR BARBOUR: The first thing you do is get a good court. I mean, that solves a multitude of problems. Our court today is about seven to two, maybe six to three, but we work hard on our court elections. I think that is important.

The second thing that I think is important in doing this is, you need to keep your coalition together for more reasons than just tort reform. Those people have a natural affinity for each other because the people in your coalition tend to be small business, family business, entrepreneurial, civic minded; you want the hospital board, and you want the chamber of commerce. You want the

development authority. You get them all working together on tort reform; you ought to keep them working together on other issues, particularly about growth and reasonable government control and spending rather than raising taxes.

I never thought very much about keeping the coalition together just because it was so important to do that for lots of other reasons. Our fight was pretty tough. The Speaker of the House had a stroke, literally, in the special session. I had already said if they would pass this, we would stand pat and not try to go further for four years.

Keep your coalition together. Keep them working together on other issues, particularly about growth and reasonable government control and spending rather than raising taxes.

I think after a really tough battle there is not much appetite to replay this game soon. But, yes, down the road, when I am gone, I have no doubt there will be some effort to undo some of this legislatively. So it is pretty tough stuff.