The Lawsuit Abuse Reduction Act of 2013

In a recent letter from Thomas A. Susman of the American Bar Association's Governmental Affairs Office to the House Judiciary Committee, the ABA expressed its opposition to H.R. 2655, the Lawsuit Abuse Reduction Act of 2013, which seeks to "amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes." In particular, the Act "reinstates sanctions for the violation of Rule 11, ensures that judges impose monetary sanctions against lawyers who file frivolous lawsuits, including the attorney's fees and costs incurred by the victim of the frivolous lawsuit, and reverses the 1993 amendments to Rule 11 that allow parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing them within 21 days after a motion for sanctions has been served."

The ABA opposes the Act for three main reasons. The Association asserts that all changes to the Federal Rules should follow procedures outlined by the Rules Enabling Act, which requires amendments to first be drafted by committees of the Judicial Conference of the U.S. and be subject to public comment before approval by the Conference, then submitted to the U.S. Supreme Court for its consideration, and finally given to Congress to reject, modify, or defer the amendment before it is enacted. The ABA asserts that the Lawsuit Abuse Reduction Act circumvents this "balanced and inclusive" process. The

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dent debt levels, to accreditation standards. It aims to produce a draft report for public comment before the ABA Annual Meeting in August, with a final report to be issued later in the fall.

Since 1952, the Council of the ABA Section of Legal Education and Admissions to the Bar has earned the privilege of recognition by the U.S. Department of Education as the nation's accreditor of programs leading to the J.D. degree. The ABA's accreditation standards are the product of a great deal of research, diverse thought and robust discussion, and they are open to regular review and public comment. Because the ABA's accreditation project is necessarily separate from the leadership of our professional association, I cannot speak for the Council. But it has consistently shown itself to be receptive to recommendations that would improve the standards for the accreditation of law schools.

Q: In its mission, the ABA states that it is the national representative of the legal profession. Can the Association achieve this goal, and at the same time, stake out positions on controversial issues that significantly divide the ranks of the legal profession? Policy recommendations dealing with the right to abortion, same-sex marriage, racial preferences, and stem cell research come to mind most readily here.

A:The ABA is by far the nation's largest association of lawyers, with almost 400,000 members. Our members are lawyers from all types of practice, from all across the country and in every legal specialty.

The 560-member ABA House of Delegates is our policy-making body and represents a broad cross-section of the legal profession from all state bars, many local and specialty bars, and Sections and other groups throughout the Association. It considers and votes on positions openly and democratically.

Over the years, the ABA has adopted thousands of policies on a wide array of legal topics. Nearly all of our policies are viewed as nonpartisan positions designed to improve the legal profession or the overall justice system. All voices in the ABA have an equal opportunity to be heard during our highly transparent and deliberative policymaking process. We welcome all lawyers to join the ABA and fully participate in that process.

Q: How do you respond to the allegation that the ABA, in its adoption of resolutions, has generally sided with plaintiffs lawyers?

A: This assumption is simply not true. The ABA is committed to supporting a legal system that is effective, just and efficient, while protecting the rights of all parties. While the ABA works with plaintiffs' lawyers on a number of issues, we have taken a very different approach on a number of other key issues, including asbestos liability reform and certain state tort reforms. The ABA also opposes the Sunshine in Litigation Act, which would limit federal courts' ability to keep settlements confidential under Federal Rule of Civil Procedure 26(c).

While some ABA policies may result in favoring plaintiffs more than defendants, many other positions adopted by the ABA House of Delegates could be seen as more defense-oriented. For example, the ABA has adopted policies supporting certain class action and Superfund liability reforms, as well as the greater use of

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ABA also contends that there is no evidence to suggest that there has been an increase in the filing of frivolous lawsuits in the last twenty years, and therefore there is no need to amend the current Rule. Lastly, the ABA opposes the legislation on the claim that the 1983 version of Rule 11, which also required mandatory sanctions, had adverse consequences and this Act will have similar results. In the letter to the House Judiciary Committee, Thomas Susman declares, "During the decade that the 1983 version of the Rule requiring mandatory sanctions was in effect, an entire industry of litigation revolving around Rule 11 claims inundated the legal system and wasted valuable court resources and time."

Sponsors of the Lawsuit Abuse Reduction Act of 2013 argue that frivolous lawsuits are plaguing the United States judicial system and are damaging the U.S. economy. In the press release issued upon the introduction of the bill, Senate Judiciary Committee Ranking Member and co-sponsor of the legislation Chuck Grassley stated, "Law-abiding Americans with a legitimate legal grievance are entitled to their day in court. But unscrupulous attorneys who file frivolous lawsuits stand in the way of valid claims… Putting the brakes on frivolous lawsuits that damage the economy and clog the legal system will go a long way towards balancing the scales of justice, upholding the rule of law, and improving the public good." Congressman Lamar Smith of Texas, co-sponsor of the bill and former Chairman of the House Judiciary Committee, affirms "Lawsuit abuse is all too common in America today partly because the lawyers who bring these cases have everything to gain and nothing to lose… The Lawsuit Abuse Reduction Act restores accountability to our legal system by reinstating mandatory sanctions for attorneys who file meritless suits."

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