

Mr Chairman and members of the Committee,

My name is Chris Saxman. I am a recently retired member of the Virginia General Assembly having served the 20th House District from 2002-2010. I grew up in a small family business, Shenandoah Valley Water Company and we have 45 full time employees for whom we provide health care for the entire family while paying above average market wages. Additionally, I am a past Chairman of the International Bottled Water Association while currently serving on its Board of Directors and Executive Committee.

In short Mr Chairman, I have seen the business world as a front line low skill employee to a bottled water deliveryman to a manager to an executive. I have been a legislator who has worked on legislation dealing with just about every aspect of business and I have also worked very closely with small mom and pop companies and large global corporations who employ people in the tens of thousands to improve products, services, relationships and industry standards.

Over the course of my life in business and politics, I have come across a disturbing and pervasive business practice that, in my opinion, threatens the very foundations of the American Free Market Capitalist system.

In most political debates I would be considered a free market supply side adherent; however, I also believe that as James Madison said "If men were angels, no government would be necessary."

A sound economy is not just about what one CAN do in a market but also what one SHOULD do.

Government should protect people who are engaged in commerce just as it should protect the average citizen. One cannot steal property from another just as one cannot physically harm or threaten another to gain property or pleasure.

The issue before you today is "predatory litigation" or as I prefer to call it "legal extortion."

I will give you two examples of which I have become aware in my various capacities.

1. A multinational non American company, in my industry, willfully, intentionally and knowingly breached a contract with which it had complied for 13 years in order to gain financially at the expense of the American company with whom they had had a successful mutually beneficial 20 year business relationship. The American company, at the time of the breach was .4% the size of the North American subsidiary of the large multinational which broke the contract and .01% the size of its global parent. The evidence throughout the trial clearly shows a pattern of behavior in which the larger company, and its employees, conspired to steal from the smaller firm that which it could not gain in the market or would not purchase at fair market value.

Rather than simply pay the company fair market value for the business, the larger company figured that it would be cheaper to take the business via the American court system. So, by forcing the American company to defend its own property in federal court and force the American company to spend millions of dollars in legal fees, the larger company determined it had nothing to lose. What is even more disturbing is that the large multinational forced the smaller company to initiate the litigation.

It's literally a win win scenario. Even if, after 5 years of expensive and time consuming litigation (which is still pending at the appellate level) they lose the case, the company will either expense it off their books or account it as an asset purchase ending up with the business they sought.

The large multinational went so far as to investigate the American company's owner's personal and corporate debt load before it decided to take pre-emptive legal action. They waited until he was in a weakened condition and then made their move.

The results for the consumer will be a less competitive market. The broader community will see wealth being transferred out of the country, lost jobs, lower wages and benefits, and overall economic decline.

2. Another case involves the extortion of taxpayer money by the use of threat of legal action by companies who have submitted bids to local governments under a legal Request For Proposal process. In this situation, a company will submit bids that do not comply entirely with an RFP but will have a bid price that is much higher than necessary. When that company is not awarded the RFP, the company will threaten legal action unless the bidding process is reconsidered. This causes inordinate delays and obviously higher bid awards because most local governments cannot afford protracted legal expenses. Companies know that they have a distinct advantage in this process again, in a win win scenario. They either win the bid or get the local government to increase the overall price in the market which will naturally be seen in similar bids throughout the country and all at taxpayer expense. So, a bid that forces prices up in X County in Virginia will transfer to Y City in Pennsylvania due to market realities. This is a very well thought corporate strategy which, in conjunction with federal mandates and accompanying federal grants, strikes to heart of the problem that undermines our economy - lack of trust in our governing and institutional structures.

I can provide specifics upon request but my interest here today is to leave you with the impression that there is something very wrong in our economy. The court system has been weaponized in the market and is being used against smaller, weaker companies who cannot withstand the attacks.

We are a small family business who is constantly competing with large multinational corporations for every customer. We live under the constant threat of predatory

litigation. If our biggest competitors decide to train the full resources of their legal divisions on us, how can we compete? We just want to be in business to deliver good, safe and great tasting bottled water to our customers at the best price in the market. We employ 45 Virginians who share that goal and work hard every day to make it a reality. But we don't have a team of lawyers on retainer ready to engage in trench warfare. We want to win in the marketplace, not the courtroom. I think every small businessman in America feels the same way.

Imagine my surprise when I learned that the law creates a special exemption from antitrust, the Noerr-Pennington Doctrine, that protects these big companies' right to sue my family's business and fellow small businesses in an attempt to drive us from the market. I don't think it is right that one of the most effective strategies that our competitors can adopt to exclude us from the market is also one of the few exclusionary strategies that enjoys near blanket immunity from the antitrust law.

We're not afraid of predatory pricing by my rivals. We're not afraid of anything our competitors can do to us in the market. If the game is delivering water to our customers at the best price with the best service, I know we can beat them. We have the best and hardest working drivers, customer service reps, and sales team in the Shenandoah Valley. But if the game is a protracted lawsuit, well, we just can't compete with their lawyers.

The impacts are felt all across society in a subtle but serious way - people lose health care, jobs are lost and corporate profits are concentrated and in many cases sent overseas. Unless the law sanctions this behavior severely, big corporations will continue to engage in it. Unfortunately, experience teaches that they will not do what they should do, but what they can get away with. Right now they can abuse the legal system to weaken smaller competitors like us, and so they do. The antitrust law should be clarified so that abusive litigation is punished just as severely as other anticompetitive, predatory strategies—including by treble damages and, where appropriate, criminal sanctions.

Thank you Mr Chairman.