

Testimony of
Ms. Hilda Bankston

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Thank you Mr. Chairman and Members of the Committee. I am so pleased to be here today to have an opportunity to share with you what has been a personal nightmare for me since I faced my first class action lawsuit in Mississippi.

While I have never been a plaintiff in any class action lawsuits that I know of, I do believe I have been a victim of the system since the first suit was filed against Bankston Drug Store in 1999. Let me explain. My husband and I lived the American dream until three years ago when we were caught up in what has become an American legal nightmare. I was born in Guatemala and moved to the U.S. in 1958. I met my husband Mitch, a Navy seaman, while I was serving as a marine at Camp Lejeune in North Carolina. We were married there in 1964. After we left the military, Mitch attended college and pharmacy school at Ole Miss, while I worked as a seamstress. In 1971 we put down roots in Fayette, Miss., bought a local drugstore and fulfilled Mitch's lifelong dream. He worked hard and built a solid reputation as a caring, honest pharmacist. We raised two sons.

Our life was good. Then in 1999, we were named in the national class action lawsuit brought against the manufacturer of Fen-Phen. Let me stop here to explain why we were brought into this suit. While I understand that class actions are not allowed under Mississippi state law, what is permitted is the consolidation of lawsuits. These consolidations involve Mississippi plaintiffs or defendants who are included in cases along with plaintiffs from across the country. We filled prescriptions of this FDA-approved drug for patients in Jefferson County. We kept accurate records of prescriptions dispensed - as required by law - for five years, providing the trial lawyers with a database of potential clients. By naming us, the only drugstore in Jefferson County, the lawyers could keep the case in a place known for its lawsuit-friendly environment. I'm not a lawyer, but that sure seems like a form of class action to me. It is my understanding that legislation before the Senate will cover Mississippi consolidations, like those I've been named in, as well national class actions filed in other lawyer friendly state courts.

From the moment we learned that we had been named as a defendant in the Fen-Phen case, Mitch became extremely concerned about what our customers would think. In our small town, news travels fast and reputation is everything. Within three weeks, my husband, a 58-year-old in good health, died suddenly of a massive heart attack. In the midst of my grief, I was called to testify in the first Fen-Phen trial.

Since then, Bankston Drugstore has been named as a defendant in hundreds of lawsuits brought by individual plaintiffs against a variety of pharmaceutical manufacturers. Fen-Phen. Propulsid. Rezulin. Baycol. At times, the bookwork became so extensive that I lost track of the specific cases. And today, even though I no longer own the drugstore, I still get named as a defendant time and again.

Jefferson is a poor county, and the attorneys handling these claims have aggressively marketed their actions as the same as winning the lottery. Some days I can't open the newspaper without seeing ad after ad recruiting potential plaintiffs with a warning that "time is of the essence" if folks want the promise of big payouts. Nor are their efforts hurt by rumors that five plaintiffs in the first Fen-Phen case split \$150 million. Plus it is well-known in the community that trial lawyers point to multi-million homes that are built by successful lead plaintiffs as an inducement for signing on.

Sadly, the lawsuit frenzy has done more harm than good to our community. Businesses will not relocate to Jefferson County because of fear of litigation. And, the county's lawsuit-friendly environment has driven liability insurance rates through the roof, giving small business owners all over Fayette additional headaches they don't need. And our doctors are leaving the state in mass.

No small business should have to endure the nightmares I have experienced. Class action attorneys have caused me to spend countless hours retrieving information for potential plaintiffs. I've searched record after record and made copy after copy for use against me. I've had to hire personnel to watch the store while I was dragged into court on numerous occasions to testify. I have endured the whispers and questions of my customers and neighbors wondering what we did to end up in court so often. And, I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it.

I'm not a lawyer, but to me, something is wrong with our legal system when innocent bystanders are used by lawyers seeking to strike it rich in Jefferson County or anywhere else.

In closing, I'd like to ask you to think about the victims of lawsuit abuse. My husband Mitch and I are only two of thousands throughout this country. It's not just small businesses like ours, but it's also the plaintiffs who end up with nothing or consumers who pay more for products or for insurance. We are the ones who need your help.

I urge you to pass legislation that reforms our legal system and prevents lawsuit abuses such as those that have plagued my business and my family for years. Thank you for your attention. I would be happy to answer any questions.