

Enterprise Zones: The Missing “Legal” Link¹

By: Christopher J. Webb, J.D.²

Litigation is killing us!

Let’s stop and think for a moment about why today’s legal system was founded upon those ancient Anglo-Saxon principles of enforcement of a promise. The simple idea was that you would not lose your shirt if you invested in a venture that took you to the other side of the world and brought back some tea to sell in London. A common law court would enforce a promise if later broken to buy your tea at the price in your contract even if the tea market had tanked while you were sailing.

An English king named Henry Whatever the Number wanted a piece of the action [some say it was a domestic relations matter that drove him to it] and thought that a separate court system based upon equity would decide if it was “fair” to enforce that promise and with the power of an army, Henry’s Courts of Equity were born.

The good and bad of these competing systems of justice was the parties could pick a forum to find a legal remedy to suit their perspective on the dispute. Predictably, a maritime plaintiff rushed to common law courts to hold a merchant defendant’s feet to the fire. After all, a promise is a promise and should never be excused by a condition of hardship or prospective change of condition that the merchant should have anticipated. Those rascal merchants sought equity and an army to enforce their defenses or excuses not to enforce the contract. You could just hear the solicitor for that humble merchant plead in equity, “Hey, how did my client know that the British would drink less tea?”

To make matter worse or more like today, the disputants would sometimes reverse roles: Ought I recover compensation if my ship with the all that wonderful tea sank? Or better, can I sue the map maker that did a lousy job? Funny how third parties like insurance or bonding companies can complicate a legal battle.

This unhappy tension was transported to America and resulted after our 1776 Revolution into a single court system that was for better or worse a combo of common

¹ © 2009 Law & ADR Offices of Christopher J. Webb, J. D., PLC. All rights reserved.

² Practicing as a mediator, arbitrator, facilitator and trainer, Christopher J. Webb is currently a member of the State Bar of Michigan’s Alternative Dispute Resolution (ADR) Section Council, immediate past chair of the ADR Committee of the Oakland County Bar Association (Recipient of the 2008 Bar Committee of the Year Award), and a Founding & Executive Committee Member of the ADR Section of the Detroit Metropolitan Bar Association. Mr. Webb was the 2008 recipient of the State Bar of Michigan’s George H. Bashara Distinguished Served Award in the field of Alternative Dispute Resolution. He served for over 25 years as an officer and general counsel for a global engineering, manufacturing and construction firm responsible its legal affairs and various business entities and most recently as a facilitator regarding the public water policy issues relating to Southeastern Michigan. Along with being a member of the Panel of Neutrals of the American Arbitration Association and the International Institute of Conflict Prevention and Resolution, Mr. Webb is a contributor and member of the faculty of the Institute for Continuing Legal Education. For further information, please contact our website at www.webbadr.com.

law *and* equity. One judge could do it all and thus we resolved the inherent conflict into a single court system and a single often lifetime-appointed judge. Do you wonder why today our judicial appointments have so much controversy! Who knows if the judge will be influenced by your contract or your status at the time of the lawsuit? And “tea time” has never been the same on this side of the ocean.

The judicial tension is today in need of resolution. Unless we foster both predictable growth and legal accountability things like urban and rural development will become a foster child of capricious governmental subsidies or tax credits and abatements forever audited or revised with the rise and fall of short-term political agendas. Is there an answer?

Legal innovation like any innovation is born of necessity. Here in Michigan it is time that we considered a new legal dispute resolution method that will attract capital investment and garner full-time employment. The answer is an enhancement of today’s well-intentioned enterprise zones that would include alternative dispute resolution methods that treat fairly and with dignity both those risking their capital and those offering their talents and futures in an effort to build zones of income, wealth creation, jobs and long-term growth.

Today, important efforts are underway to create a corridor of growth and opportunity along Interstate I-94 through the Detroit Region Areotropolis. The Areotropolis Task Force chaired by Wayne County Executive Robert A. Ficano and vice-chair John Rakolta, Jr., together with key civic leaders, are determined to do just that.

The missing link – and the piece most enterprise zones miss around the globe – is the proactive management of legal risk associated with any kind of investment. To attract and foster outside investment capital, a new balance needs to be struck between enhanced predictability of legal risk and enterprise accountability. This balance should be addressed as a part of the protocol, charter or master planning for the Detroit Region Areotropolis and any associated enterprise zones along the I-94 corridor running from Downtown Detroit to Ann Arbor. No significant long-term outside capital will invest in Michigan if the “legal” link that touches all aspects of life is left out.

Enough of bureaucratic formulas and tax incentives that play to short-term financial incentives! Let’s offer in Michigan long-term solutions that will achieve sustainable investment and prosperity.

To achieve this, we propose Enterprise Neutral Panels (ENP) that would provide forums for disputes of all kinds. Effective and speedy resolution of costly and emotionally-charged conflicts in employment, workers compensation, construction, products liability, intellectual property, tort, and corporate accountability to name but a few are just an idea away. Go one step further as well. Benefiting from legal risk management, creative transportation solutions for affordable mobility to jobs within the zones comes closer to a reality. Look again and affordable health care and housing solutions are within reach as well if legal “unknowns” become quantifiable “knowns” for

investment and enterprise decision making. Without spending a dime of Michigan taxpayer dollars, the world will embrace Michigan as the place to invest its capital.

Let's stop for a moment and collaborate together about a new Michigan with ENP's that open opportunity for full-time jobs and an atmosphere in which businesses from around the globe will line up to be a part of Michigan's rebirth as a center for growth, investment and innovation. Let's bring together all regional constituents with a stake in our future to rethink traditional patterns of high-risk and high-cost litigation that scares away dollars that are so needed to rebuild our region. Together we can create a solid base that will compete with [and not to its detriment against] the world once again!

Like so many other areas past and present, Michigan can become a true innovator in the field of legal dispute resolution. We all stand to gain if we come together to use the proven means available today to empower those in dispute with the tools to resolve conflicts fairly and expeditiously. Quick and inexpensive methods such as facilitative mediation and streamlined arbitration are proven vehicles of dispute resolution. It's time we as lawyers stepped forward and served our clients as never before!

The next rooms of dispute resolution only require us to listen to those in need and to think beyond our current horizons in the field of balancing legal rights and remedies. We are just a few ideas away from taking current enterprise zone modeling into a place of legal accountability, fairness and predictability for everyone. We have nothing to lose but our current economic woes.

ENP's are the answer!