

LAWYER VIEWPOINT
by John Ritter

TORT REFORM

What is so wrong with tort law today that seventy reform bills are pending in state legislatures and Congress is threatening to pass federal tort reform? Tort reform is so popular that there is even an American Tort Reform Association. "It's a tool of the insurance companies," complains the American Trial Lawyers Association. "We just want to end frivolous lawsuits and stop runaway jury verdicts," say the reformers, "besides, the trial lawyers care more about their huge contingency fees -- we want to reform them too."

The whole 20th century has been an era of tort reform, with the earlier reforms to help Plaintiffs and today's reforms to help Defendants. "Tort" is law French for wrong, meaning that a Plaintiff has to prove wrong or fault by the Defendant to recover in a lawsuit. The first major tort reform of the 20th century was worker compensation, a no-fault recovery system that allows Plaintiffs to recover for on the job injuries. Comparative negligence and strict liability for defective products were the last reforms to make it easier for injured Plaintiffs to recover court judgments.

The last half of the century has seen a continuous tort reform movement in state legislatures and Congress to stop the litigation explosion and lower liability insurance costs. In the 1970's forty-three states passed tort law reforms from No-fault auto insurance to laws limiting medical malpractice suits and awards. The

insurance crisis of the 1980's led to more tort reform, with forty-eight states adopting laws to limit suits and lower awards -- a cap on punitive damages was most popular, followed by sanctions against frivolous suits, abolition of the collateral source rule, and limits on joint and several liability.

So why the cry for more reform in the 90's after so much in the last 25 years? The public perception is that jury verdicts are too high, far too many frivolous law suits are filed, and injury lawyers make too much money. Attorney advertising for injury victims and media attention on cases like McDonald's losing a million dollars for spilled coffee create the perception.

Trial lawyers charge that many of the reforms take away victims' rights to compensation for injury, especially in a world where the injured may be kept alive and well for 50 years with expensive medical care and rehabilitation.

Plainly some compromise must be reached between eliminating rights to recovery and sky's-the-limit jury verdicts. The 21st century should see limits on non-economic awards for pain and suffering and punitive damages, as well as on the size of contingency fee awards. It should also make auto insurance coverage universal, perhaps through Pay at the Pump No Fault Auto Insurance. Instead of paying a lump sum insurance premium, you pay every time you buy gas. Then the whole system should be changed to an administrative one like workers compensation, so that every injured victim is compensated.

The Bar should support what the public wants -- common sense in compensating injured people, reasonable sums paid to them and no windfall millions in legal fees to their lawyers.