

THE TORT REFORM AGENDA

JOINT AND SEVERAL LIABILITY

Under this doctrine, an injured person can sue and recover 100% of the award from any one or more of the wrongdoers at his option, regardless of that wrongdoer's degree of negligence. This is unfair and leads to a search for the "deep pocket."

The law should provide for pure several liability. Under pure several liability in any case involving unintentional torts, each party to the suit is held liable only for the portion of damages assessed to him, except when the defendants acted intentionally or in concert.

COMPARATIVE NEGLIGENCE

Under the legal rule of pure comparative fault, a plaintiff can recover at least some portion of his damages regardless of his own contribution to the injuries. Pure comparative fault has resulted in defendants being held largely accountable for a plaintiff's injury despite being only slightly responsible.

The law should provide a modified comparative negligence standard. The liability of each person who contributed to the injury would be allocated in proportion to his respective percentage of fault. Where the plaintiff's percentage of fault exceeds the aggregate fault of the defendants and nonparties, the plaintiff would be barred from any recovery.

FRIVOLOUS LAWSUITS

With increasing frequency, courts and state legislatures are recognizing a need to authorize sanctions for the bringing of frivolous lawsuits or the maintenance of frivolous defenses. Such actions by attorneys impose substantial costs and delays on our already overburdened court system.

The law should authorize judges to assess attorney's fees and court costs for bringing an action or maintaining a defense determined to be frivolous, groundless or vexatious.

NON- ECONOMIC DAMAGES

~~Non-economic damages are money awards that do not compensate the injured~~ person for monetary loss, but rather for pain and suffering, mental anguish, and emotional distress, inconvenience, loss of security and companionship, loss of consortium, injury to reputation, humiliation, and destruction of the

parent-child relationship. The monetary compensation granted by courts or juries is often arbitrary and bears little relationship to the severity of the injury for which compensation is sought.

The law should base compensation for non-economic damages on a schedule based on life expectancy times one-half of the average annual wage in the state. The schedule would set awards within a range of \$100,000 to \$500,000.

PUNITIVE DAMAGES

Sometimes called "exemplary" damages, punitive damages are awarded in tort cases to punish a defendant for a malicious, intentional act rather than one that is merely negligent. Such damages are awarded to a plaintiff in addition to economic compensation.

The law should require bifurcated trials. This means that punitive damages would only be considered after the defendant was found liable for actual damages. Also, punitive damage awards should be set by the judge; the award should be based on clear and convincing evidence and should be capped at twice the amount of economic damages.

PRODUCTS LIABILITY

In recent years some judges have moved toward a concept of absolute liability. This has resulted in holding product manufacturers liable for all injuries related to their products regardless of the foreseeability of the injury by the manufacturer and regardless of whether the injury might reasonably have been avoided by the injured party.

The law should return to traditional principles of product liability which are based on manufacturer fault, including defenses if the product: was misused or altered; met state of the art design standards at the time of manufacture; complied with government standards; had open and obvious danger; or was unavoidably dangerous.

STATUTES OF REPOSE

Statutes of repose prohibit filing of claims beyond a specified period of time after the date of sale of a product or provision of a service. Some statutes of repose preclude any liability after the repose period. Others create a rebuttable presumption that a defendant is not liable if the injury occurs after the statutory repose period.

The law should provide that a plaintiff must commence a cause of action within ten years after the date that the product was first purchased for use or consumption; the date of the last professional action alleged to have caused the harm; or the date of substantial completion of the construction that is alleged to have caused the harm.

COLLATERAL SOURCE RULE

The traditional evidentiary rule which prevented juries from learning whether a plaintiff has been compensated for an injury (through an insurance policy or by another defendant) has often led to double and triple recoveries.

The law should permit juries to be fully informed of payments received from collateral sources.

PERIODIC PAYMENTS

Under a periodic payment system, lawsuit awards are paid to the plaintiff throughout his lifetime or for the period of disability or for any other set period, instead of in a lump sum.

The law should provide for periodic payment of damages, require findings of special damages, and establish requirements for the form of funding and payment of periodic installments.

EQUITABLE ATTORNEY CONTINGENT FEES

Because of the contingency fee system, some plaintiffs who otherwise might be unable to obtain legal counsel have the opportunity to find representation for meritorious claims. However, in some cases, unrestricted contingency fee arrangements have enabled plaintiffs' counsel to reap unjustified and excessive benefits.

The law should cap attorney's contingency fees at a sliding scale such as: 33 1/3% of the first \$150,000 recovered; 25% of the next \$150,000 recovered; and 10% of the recovered amount in excess of \$300,000.

PREJUDGMENT INTEREST PROHIBITION

Prejudgment interest in personal injury and wrongful death actions adds interest on all or part of the award from the date the lawsuit was filed or the injury occurred. These statutes coerce innocent defendants to settle rather than face a possible award plus high interest.

The law should prohibit prejudgment interest.

STATUTE OF LIMITATION

Statutes of limitation establish a period of time within which an injured party must initiate a legal action. Traditionally, the time limit runs from the date of injury. State statutes of limitation for personal injury range from one to six years, with the typical period being two to three years.

The law should provide that a plaintiff must commence a suit within two years of the time that the injury, disease, disability or death is or, in the exercise of reasonable diligence, should have been discovered by the plaintiff.