The Liability Crisis and Tort Reform

The Unfinished Accomplishment of 1986

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Few public policy issues received as much consistent legislative and media attention in the last year as the liability crisis. Literally thousands of bills dealing with some aspect of the problem were introduced in state legislatures in 1986. Due to a growing consumer demand and the dedicated efforts of thousands of individuals and organizations, there were significant successes for tort reform efforts in more than 20 states in 1986, and modest progress in a dozen more.

The results are impressive and quite promising for 1987. For example, measures to abolish or modify joint and several liability were passed in 12 states. Nine states enacted provisions affecting contingency fees, another nine sets limits on punitive damages. In state after state, legislators understood that the liability crisis had gotten out of hand, and the time for action had arrived.

Americans in every facet of life face the impact of our unbridled civil lawsuit system. Little leagues were threatened, small towns faced bankruptcy, doctors were forced to abandon their profession, vaccine research was curtailed, and millions of businesses and non-profit organizations saw their insurance premiums explode. Not even the Boy Scouts were spared as their liability bill escalated six fold to more than $10 million.

The past year offered plenty of outrageous examples of the lawsuit lottery mentality that has produced this crisis. Million dollar judgments reached an all-time high, and several new lawsuits tried to pass the billion-dollar level. As reported in the press some — like the lawsuit against McDonald’s by the family of the murderer who killed 21 in their Southern California restaurant, or the jury decision in favor of the psychic who “lost her powers” — seemed almost unbelievable.

Public Supports Reform . . .

As the public became more aware of the problem, public policy makers began to speak out. President Reagan urged federal and state reforms. Federal and State Attorneys General joined the chorus. Democratic and
Republic Governors signed new tort reform bills, in spite of furious trial lawyer opposition. Thousands of delegates to the White House Conference on Small Business voted tort reform as the most important national issue. And voters overwhelmingly supported tort reform referenda by as much as a 2 to 1 margin.

Despite these successes, however, much work remains to be done. Millions of Americans, including the members of AWCI, continue to be hard hit by the current tort system. Insurance may become more available, but the costs continue to spiral upward. Unless we stand united and work actively to achieve meaningful reform this year, the momentum created during 1986 could be lost, and the opportunity to restore a fair and balanced civil justice system lost permanently.

Public opinion research conducted for the American Tort Reform Association (ATRA) indicates that the public is aware of the liability crisis, and that many Americans have had personal experience with the problem. Significantly, the researchers found that blame for the crisis is frequently placed on eroded American values—not just on lawyers, juries or insurance companies. In fact, 62 percent of the public said that the reason for the liability problem is that “suing has become part of the American way of life.” There is strong support for educating the public on the proper use of the civil court system, and general agreement that there should be penalties for frivolous or nuisance suits.

Our challenge in 1987 is not only to educate people about the problems they know about—they also need to learn about the solutions, and why the solutions can be fairer than the current system. The public needs to think through the implications of proposed reforms. They must be convinced that the reforms will be effective, and they must believe the reforms will be just.

Lawsuits have become big business in America today. Emotional television
ads and inflated contingency fees have helped unprincipled plaintiffs’ attorneys make millions at the expense of our civil justice system. And often, the truly deserving plaintiffs end up with less than half the money paid out by defendants. Our distorted, inefficient, and bloated system takes the rest.

Americans are entitled to a civil justice system that is fair, efficient, and affordable. All segments of our society have been forced in recent years to cut out waste and inefficiency. Now it is time for our tort system to be judged and accept the judgement of our scholars, business and political leaders, and the public.

**Time for Action . . .**

1987 is, without doubt, the watershed year for this effort. Two hundred years ago our constitution enshrined the concept of a fair and efficient judicial system. Three decades of neglect has led us to where our once proud civil justice system is now ridiculed by other nations. Only special interest groups that profit from it defend it now.

There is no greater gift that we can give our people 200 years after that steamy summer in Philadelphia than to reform our justice system and make it work again.

As you ponder in the weeks ahead on how you could apply your energies in 1987, please consider making a personal effort on behalf of tort reform. What can you do? Become involved in a state tort reform coalition (for the name of the contact, call ATRA), write your state legislators and local papers, and support the efforts of AWCI. You might not have been amused, perhaps, by the news that your Christmas party was cancelled because of liability exposure, or by the complicated warning and disclosure you needed as you opened a bottle of champagne on New Year’s Eve.

Also, you may have seen the bottom line as your corporate income statement was presented in red instead of black, because of the cost of litigation and liability protection. In short, the reasons for tort reform are everywhere. The time for action in now.