Is Liability Really ROULETTE?

The Way Premiums Are Increasing, Liability Insurance is Rapidly Reaching a Level Where Even Insurance Companies Are Refusing to Continue

by Edward R. Court

In less than three years, my product liability insurance has risen from $6,000 to $40,000 per year. And the $40,000 this year buys only one tenth of the coverage I had three years ago.

I have spent the past nineteen years building my security gate manufacturing and security business to its present size (I now employ forty-five people). All I have worked for—and the jobs of my employees—could be lost in a single judgement in what I believe is a “lawsuit lottery” for the money grabbing plaintiffs and attorneys.

I feel as though I’m playing Russian roulette. Every gate I install raises the odds against my company. The most frustrating part of the gamble is that a judgement against me could have little or nothing to do with the quality or performance of my product.

When I first began to notice the effects of the liability crisis, I felt a lot of resentment toward the insurance industry. I believed they had created another sort of gas embargo in order to raise my premiums while reducing my coverage. However, as my understanding of the problem grew, I realized that for the most part insurance companies were reflecting their cost of doing business today. I found that most insurance companies were not willing to quote product liability rates and that many of them were getting out of the product liability market. That is not the kind of response you see if there is money to be made.

I recall the dollar amounts my insurance company had paid to settle claims against my company. In particular, I thought of the tremendous amounts they had paid to attorneys...
who represented me. Many times the attorneys’ fees were much larger than the settlements.

I thought about all the ridiculous nuisance suits that had come across my desk, many with no foundation in fact. I believe the only purpose of these suits was to persuade my insurance carrier to settle out of court (for $3,000 to $5,000 rather than spend a great deal more money defending the case.)

We’ve all seen news reports of the large awards juries give today. I recall reading in the newspaper about a family that was awarded $19.2 million because their daughter had fallen out of a car door. Unfortunately, the child was very seriously injured. Nonetheless, I could not stop thinking about the huge amount of the award. No one could think of denying the injured girl medical care for her injuries. However, the award of such an exorbitant amount would in most cases bankrupt any small or medium sized company.

A few months ago a salesman came into my office and asked, “Have you heard what happened to so-and-so back Past?” I said no. He pulled out a newspaper clipping showing that a large competitor of mine had just settled a suit for $5 million.

In 1984 the amount of money insurance companies paid out on behalf of their insured was $1,552,744,000. Over $1 billion of that amount was paid for noneconomic damages, that is, for pain and suffering. Legislation like Proposition 51 in California will help control these high costs. Unfortunately, however, Proposition 51 does not put any limit on the amount of damages that can be awarded for noneconomic reasons.

The bottom line is this: unless the cost of the system (liability insurance) is reduced, there will be little or no reduction in companies’ insurance premiums and no assurance that companies will keep the assets their owners have spent a lifetime accumulating.

“For the next two decades, the health of the American economy will be determined not by the decisions of our political leaders but by the decisions of our courts.”

Today people are more willing to sue than ever before in our history. Between 1980 and 1984, lawsuits in Los Angeles County grew at a rate four times faster than the population. In 1985 lawsuits in Los Angeles County grew at a rate thirteen times faster than the population, according to county...
records.

Wherever you look—TV, radio, or newspapers—attorneys are encouraging lawsuits. Some very powerful interests are on the receiving end of the dollars you spend for insurance: plaintiffs' attorneys, medical providers, defense attorneys, and professional witnesses, to name a few.

If the cost of our insurance is to be reduced, we will have to take those dollars away from these special interest groups. And that's not going to be easy. To achieve this, we need reforms limiting liability. Some suggested reforms follow:

• **Preclude liability where the dangerous aspect of a product is inherent and recognized by the ordinary user** Preclude liability when the product provides an important benefit and the known risk is unavoidable. Should a lawn mower retailer be responsible for someone's heart attack? Is that fair? Not at all.
• **Eliminate the Collateral Source Rule.** Today juries cannot be told an injured person has already received payment for his or her injury from another source, such as a personal health plan or a government agency. Because of this rule, the award a jury gives am be the second or third payment the injured party receives for the same injury. Juries should be able to consider all relevant information to determine how much an injured party needs or deserves.
• **Provide immunity to volunteer directors and officers of a nonprofit corporation who act in good faith.**
• **Grant design immunity, to local governments.** If a local government built a road thirty years ago that today wouldn't be considered safe (with the increased traffic and present safety standards), don't hold it liable.
• **An example of this type of case occurred in Illinois.** Three men were drinking in a car The driver left the highway, drove into a ditch, and hit a lamppost. The two passengers were killed. The driver, who was legally drunk at the time, sued the state of Illinois for damages and received an award of $300,000 because it didn't have the latest style breakaway type of lamppost.
• **Attorneys receive 30 to 50 percent of everything an injured person gets.** Limit them to a sliding scale whereby they would receive 33 percent of the first $100,000; 25 percent of the next $100,000; and 10 percent of everything over $200,000. The injured person would then receive more of the money he or she needs. At the same time, it would eliminate some of the financial incentive an attorney has to pursue long and costly lawsuits (even when his or her client might be better served by a quick settlement).

We need reforms to control the many greedy attorneys and the many greedy so-called victims who see dollar signs every time someone has an accident. In 1975 the medical industry in California got the Medical Injury Compensation Reform Act passed, which contains many of the same reforms I've detailed. As a result, the average
malpractice case nationally costs $974,858, while in California it is only $369,662. Similarly, a neurosurgeon practicing in New York pays $103,000 per year for malpractice insurance, while in California his counterpart pays $42,000. We need the same kind of reforms to protect our businesses.

My children no longer race their bicycles. The two tracks near us have been closed due to insurance problems. Football helmets now cost hundreds of dollars at my children’s school. Our car manufacturers spend more money on liability insurance per car than they do for the steel to make the car.

I ask myself, and you should ask yourself, “How secure am I?” Could you become the next jackpot in the lawsuit lottery? The answer is yes for everyone.

Our liability system is out of control. We must bring back a sense of fairness and justice to this system. Stop complaining to your insurance agent. He or she hears the same thing every day. Take twenty minutes and write a letter to your state and federal legislators. Tell them you want reforms in our liability system. And tell them you want to know what they’re going to do about it.

When you see a liability reform bill on the ballot, get to the polls and vote. One thing you shouldn’t do is agree with me and then do nothing. Take the time to voice your opinion. It might be your business and future you’re helping to save.

There are well run organizations in virtually every state working to solve the liability crisis. Join them and get involved. In California, contact the Association for California Tort Reform at (916) 442-1111. Nationally, contact the American Tort Reform Association at (202) 637-6490.

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**About the Author**

Edward R. Court owns Court Security Systems, Inc. in Van Nuys, CA. Ed called the Association for California Tort Reform for assistance in directing his efforts. You can do the same in your own state. AWCI is a member and full supporter of the American Tort Reform Association.