



TORT REFORM

- **Definition One:**

Improve the “civil justice system [to] one that’s fair, efficient and predictable.”

– Sherman Joyce, President

American Tort Reform Association

- **Definition Two:**

“Tort reforms are always aimed at curbing litigation by sick and injured consumers against corporations, hospitals and other wrong-doers.”

- Emily Gottlieb, Deputy Director

Center for Justice & Democracy



Legislative - Federal

- Med-Mal Proposed Damages Caps:
 - Non Economic: \$250,000
 - Punitive: Greater of \$250,000 or 2 times economic damages
- Apportions Liability
- Limits Attorneys' Fees
- Establishes Limitation Period
- Passed in House/ Stalled in Senate



Legislative – State

- Primary Source of Legislative Tort Reform
- South Carolina, Tennessee and Kentucky have No Damages Cap for Tort Reform
- Arkansas (2003), Mississippi (2002) and Florida (2001 & 1999)



Legislative – Judicial

- State Farm Mutual Automotive Insurance Company v. Campbell, 123 S. Ct. 1513 (2003)
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 115 S. Ct. 1589 (1996)



Types of Damages

- Compensatory: intended to make plaintiff whole
 - Economic
 - Readily measurable in economic terms (Hospital bills, lost income, property damages)
 - Non-Economic
 - “real” damages but not susceptible to easy calculation (pain and suffering, mental anguish)
- Punitive: intended to punish actual conduct and deter future conduct



Tort Reform Options: Damage Caps

- Punitive Damage Caps
 - Absolute Cap (Virginia)
 - Multiple of Compensatory (Alabama, Florida and North Carolina)
- Non-Economic Damage Caps
 - Absolute
 - Multiple of Economic Damages



Tort Reform Options: Statutes of Limitation and Repose

- Establish deadline to file lawsuit
- Shortened SOL for certain actions
 - Alabama has 1 year for medical malpractice vs. 2 year for general tort
- Remove Incompetency of Minors (Arkansas)



Tort Reform Options: **Collateral Source Rule**

- Prevents admissibility of collateral source payments to plaintiff (ex: insurance benefits)
- Many states have abolished collateral source rule (Alabama, Georgia, Kentucky)
- Others have required damages to be offset by collateral source payments (Tennessee)

Tort Reform Options:

Joint and Several Liability

- No apportionment of fault
- Comparative fault of parties
- Comparative fault of non-parties

Tort Reform Options:

Miscellaneous

- Proof of qualified expert witness before filing lawsuits (Alabama, Arkansas, Mississippi)
- Good Samaritan Laws
- Increased Standard of Care
- Contingent Fee Limitations

Tort Reform: For or Against ?

Damage Caps

■ Arguments in Favor

- Reduces likelihood of outrageous jury verdicts
- Lowers cost and uncertainty for doctors and insurance companies
- Increases likelihood of settlement
- Lowers concerns of doctors about practicing in a particular state or regions
- Results in reduction of defensive medication

■ Arguments Against

- They can leave severely injured plaintiffs less than "whole"
- Results in less adequate punishment for the most egregious cases
- Result in less safe medical practices
- No guaranty that savings to insurance companies will result in lower premiums
- Less likely that attorneys will represent plaintiffs with smaller but worthy claims

Tort Reform: For or Against ?

Statutes of Limitation

■ Arguments in Favor

- Closure
- Witnesses & evidence are fresh
- Greater certainty for business
- Due diligence required by Plaintiff

■ Arguments Against

- Arbitrarily cuts off valid claims
- Not always easy to know your cause of action quickly

Tort Reform: For or Against ?

Collateral Source Rule

■ Arguments in Favor

- Prevents double recovery or undeserved windfall
- Allows for more accurate computation of damages

■ Arguments Against

- Prejudice to jury by identifying insurance company
- Reward wrongdoers at expense of plaintiff and/or plaintiff's insurance company
- Affects subrogation interest of insurance company



Tort Reform: For or Against?

Joint & Several Liability Reform

■ Arguments in Favor

- Defendants pay only "fair share"
- Forces plaintiff to sue all responsible parties

■ Arguments Against

- Can leave plaintiff less than "whole"
- Can result in unjust (unconstitutional ?) "punishment" of one defendant

Tort Reform: For or Against ?

Miscellaneous Reforms

- Contingent Fee Limitations
- Higher Standard of Liability
- Higher Burden of Proof

Tort Reform: Does It Work?



- American Medical Association:
 - In Crisis: WA, OR, NV, WY, TX, AR, MO, IL, KY, OH, WV, PA, NY, NC, GA, FL
 - Showing Problem Signs: AZ, UT, ID, MT, ND, SD, NE, KS, IA, TN, AL, SC, VA, RI, MA, NH, ME, VT, MI
 - Currently OK: CA, CO, NM, LA, WI, IN

Tort Reform:

Is It Necessary ?

- State Farm Mutual Automotive Insurance Company v. Campbell, 123 S. Ct. 1513 (2003)
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 115 S. Ct. 1589 (1996)