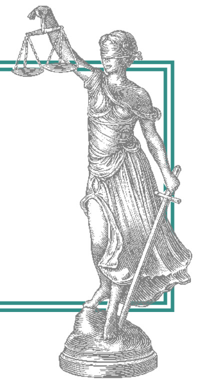

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THE TRUTH ABOUT THE MEDICAL CRISIS

by Jason D. Weisser

Many of you have been bombarded by the recent propaganda regarding the medical crisis currently affecting the people of the State of Florida. We hear messages about doctors leaving the state and astronomical malpractice premiums. Frequently, the blame for these issues is placed on frivolous lawsuits and runaway verdicts. But what is the truth behind the current state of the medical community?

Doctors in the high-risk areas, such as neurosurgeons, orthopedic surgeons, and OB/GYNs, have to pay premiums of upwards of $80,000 for $250,000 in insurance coverage. This may seem like a rather large number, but it must be taken in context of the net income generated by these professionals. The Medical Group Management Association reported that specialists such as orthopedic surgeons and neurosurgeons have incomes of approximately $400,000 after paying malpractice premiums. While the premium is high, it certainly does not create a crisis causing doctors to leave the state and stop their practices.

More importantly, medical practitioners receive additional protections and benefits not afforded to the general public. For example, if an individual dies as a result of medical negligence, and is unmarried and has no children under the age of 25, a claim cannot even be brought on behalf of that person's survivors. Moreover, medical practitioners have a statute of limitations, which governs the amount of time a person has within which to file a suit, of only two years, as compared to four years for other personal injury claims, such as car accidents.

Additionally, the legislature of the State of Florida also has provided protections to doctors to prevent frivolous lawsuits. Perspective claimants must file a Notice of Intent listing all the doctors the plaintiff has seen in the two years prior to the incident, and all the doctors the plaintiff has seen for the incident, as well as a copy of all the records relied on by the plaintiff's expert. The plaintiff must retain an expert in the same specialty as the defendant with a similar practice or affiliation with an accredited school relating to that specialty in order to be qualified to present an affidavit attesting to the negligence of the defendant doctor. The failure to comply with any of these provisions can result in the striking of the claim.

After considering all of these protections, one must ask what is the real cause of the medical crisis that is currently plaguing the State of Florida? The truth lies with the insurance industry. Insurance companies are regulated by the states. For the most part, under state law, they have to invest large majorities of premiums that they collect in bonds. When the interest rates are at a 40-year low, such as they are today, the insurance companies make very little on their investments. In order to make up for it, they need to raise the premiums.

More importantly, the insurance companies are governed by unique accounting principles. Most businesses operate under Generally Accepted Accounting Principles (GAAP), where profit is determined by subtracting losses from revenue. Insurance companies operate under Statutory Accounting Principles, or SAP. Under SAP, to determine whether an insurance company has a profit or loss, it will take its

(continued on back page)

We believe no one deserves to have insult added to injury.

Civil justice in America

Here are some truths our firm lives by:

★ Trial lawyers stand up for people harmed through no fault of their own so that the average American can get a fair shake in court.

★ We champion the legal needs of individual consumers and working families who have been injured physically and financially.

★ Trial lawyers promote public safety and the public good by compelling corporations and businesses to make safer products, improve workplace safety and fairness, clean the environment, and improve the safety and quality of health care.

★ When it comes to assessing the "economic impact" of individual consumers and working families who have been injured, the truth is that those who create the costs of the legal system are those who cause the injuries, not the victims who are injured through no fault of their own or the lawyers who represent them.

The civil justice system and the right to trial by jury, with the help of trial lawyers, have done all these things.

Motorcycle safety

Motorcycling has grown in popularity over the past several years. Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Rider safety depends on five guidelines:

1. Read the vehicle's manual to fully understand operations and all safety features.

2. Take a safe-rider's course to hone mental and motor skills for safe street and highway motorcycling. Become proficient at shifting, braking, turning, and responding to emergencies.

3. Wear high-visibility protective clothing, concentrating on protective helmets, eyewear, gloves, boots that cover the ankles, sturdy pants, and a jacket.

4. Always have a valid driver's license and adequate insurance coverage.

5. Conduct good pre-ride checkups and routine maintenance.

Driver negligence

Cars rank among motorcyclists' most serious risks. No matter how diligent a rider may be about safety, problems can always crop up. When two cars collided in front of an experienced rider, he struck the rear of one, suffering leg injuries that required surgery. He also missed ten months of work and will experience future lost income. He sued the driver of one car as well as the driver's employer for negligent vehicle operation. The parties settled prior to trial.

Jury waivers

Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

We're encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.

Whether a rider is new to motorcycles or has been riding for a long time, safety is of paramount concern.

Preemptive justice

What's that?

It's giving away one's rights to trial by jury. Anticonsumer lobbyists and lawmakers have proposed legislation to prevent consumers from using the civil justice system, thus depriving consumers of their right to a day in court.

Preemptive justice is essentially very unfair in that it does not derive from intellectual debate by committees or research by learned scholars. Instead, it is based on insidious half-truths, supported by urban legend-type anecdotes and outright lies—all nurturing a political agenda to destroy citizens' rights.

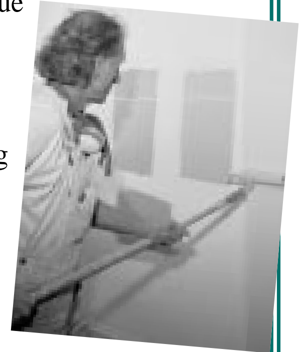
What are some examples of existing or proposed preemptive legislation?

- Limits on compensation juries may provide for harm done by HMOs, hospitals, and physicians.
- The Federal Asbestos Trust Fund, which prevents initiation of liability lawsuits in state courts.
- Gun manufacturer liability eradication.
- The "Class-Action Fairness" bill to federalize and impede virtually all individual and mass-action tort cases.
- "Obesity" lawsuit protection for food manufacturers.

What do all preemptive-justice initiatives have in common? They reduce the accountability of insurers, drug manufacturers, physicians, and others for the welfare of customers and patients. Preemptive-justice measures will also save insurers, drug manufacturers, physicians, and others a lot of money by shifting the financial burden of their errors to the victims and other taxpayers. Some call these ideas tort "reform," but is it reform to take away people's rights?

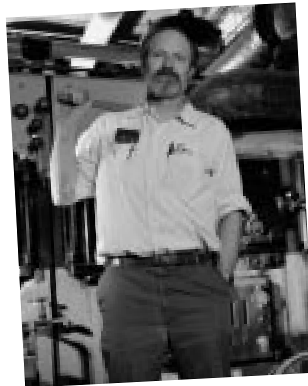
Asbestos UPDATE

Even though manufacturers knew of the deadly dangers of asbestos products 70 years ago, they concealed health hazards from workers and the public. In the 1970s, asbestos use was limited but not prohibited, but corporations continue to wage legal and public relations battles to avoid accepting responsibility. The following are some recent developments.



Painter

A commercial painter working since the 1950s and now suffering from terminal mesothelioma sued manufacturers of asbestos-laden, joint-compound products to which he had been exposed during his career. Following a settlement, a jury reached a verdict of compensatory and punitive damages against the manufacturer for failure to warn of danger to the worker.



Pipe fitter

A pipe fitter and plumber serviced and installed boilers for more than 40 years. He died at age 71 from lung disease after inhaling asbestos dust for 40 years.

His wife and estate brought a wrongful-death suit against boiler manufacturers and asbestos suppliers for failure to warn her husband about the dangers of working with their products. The manufacturers settled and a jury found the defendants 100 percent guilty, awarding the estate compensatory damages.

BURN SAFETY ON THE JOB

Unfortunately, many American workers are burned in fires at offices, factories, retail establishments, and other workplaces.

Office fire safety measures should include monitoring and training employees in the use of heat-producing electrical appliances, such as microwave ovens, hot-water dispensers, and coffee makers. Training also may include guidelines for burning candles or potpourri and smoking.

Factory or plant personnel training is usually comprehensive and should include orientation on handling and using combustibles, flammable liquids or gases, electrical equipment, and flammable metals.

All training should emphasize understanding how fires start, notifying fire departments, extinguishing fires, evacuating in emergencies, and helping coworkers who may be on fire or who have suffered burns.

Poor fire training

When a fire started in an auto aftermarket-supply company, its sales manager drove a burning truck out of the building and returned to help others evacuate. He suffered first-, second-, and third-degree burns over 20 percent of his body. He subsequently sued his employer, alleging negligent fire training and management in failing to comply with local fire regulations and operating without a permit. A jury found his employer and its parent company each 50 percent liable for his injuries and awarded the sales manager compensatory damages.

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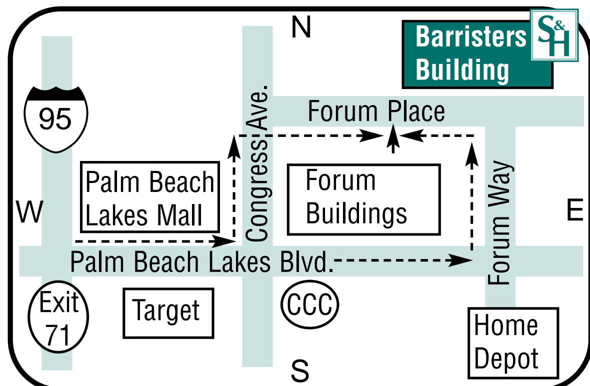

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The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

What caused the injury?

Consumers may harm themselves if they misuse or abuse a product. An example? A person falling when standing on a child's lightweight plastic play chair to reach a top cabinet shelf.

In other cases, negligently designed products are accidents waiting to happen. When they do, consumers have recourse.

Lack of a handguard

A seven-year-old suffered extensive crush and skin injuries from a riding mower when his hand contacted spinning parts in the running engine's exposed air intake. His parents sued the manufacturer and retailer for designing and selling the mower without an engine guard. Following an initial settlement, a jury awarded additional funds for pain and suffering, continuing medical expenses, and lost future wages.

Unsteady baby walker

When a walker holding a ten-month-old baby tipped over, she fell headfirst into a bucket of mop water. Despite emergency medical efforts, she suffered irreversible brain damage and remains in a vegetative state. Medical and lifelong expenses will be significant. Her parents sued the company that imported the walker and the retailer that sold it, alleging the design violated federal safety standards and was unreasonably dangerous. It fit through standard doorways, lacked a gripping mechanism to prevent it from falling down stairs, and had no use instructions or warning labels. The parties settled prior to trial to fund a trust to provide care for the child.

THE TRUTH ABOUT THE MEDICAL CRISIS

(continued from front page)

"incurred losses" and divide them by its "earned premium." The problem is the earned premium is a hard number, the amount of money that the insurance company collected in premiums for the policies it wrote. Incurred losses, however, are an estimate of the amount the insurance company will ultimately pay on those policies. Statistics reported by Jay Angoff, the Commissioner of Insurance of Missouri from 1993 to 1998, found that the amount of incurred losses the medical malpractice insurers projected turned out to be substantially less than the amount they actually paid out. In the case of one of the major carriers, it was 38 percent greater. Thus, the insurance companies are reporting greatly reduced income as a result of these inflated losses.

So how does this happen? The State Insurance Departments regulate the insurers and their solvency. Their role is to ensure that the insurers have enough money to pay claims. However, none of those states regulate the standards to govern the incurred losses of these insurance companies. Therefore, there is nothing to prevent the insurance companies from projecting inflated incurred losses.

The best example of how lawsuits are not a cause of rising malpractice is illustrated by the State of California. In 1976, the California State Legislature passed the Medical Compensation Reform Act, which placed a cap of $250,000 on medical practice noneconomic damages. Yet surprisingly, the malpractice premiums went up by 20 percent the next year. In fact, the premiums did not go down until 1988, when the California Legislature passed Proposition 103, which ordered the insurance companies to reduce the malpractice premiums doctors were charged. When one examines this historical evidence in connection with all of the protections afforded to the doctors by law, it appears that the medical crisis today is not the result of frivolous lawsuits or runaway verdicts, but lies at the hand of unregulated insurers more concerned with profit maximization than the well-being of the people of Florida.