

Unburdening American Business: The Urgent Need for Tort Reform

The issue of reform has been discussed at length in this column, and you know where I stand on the pressing need for ethical reform and a restoration of integrity to the finance profession.

Yet, as imperative as that initiative is, there is another aspect of reform that may have great consequences for the U.S. business community. Just as the massive ethical wrongdoing of the last 18 months have shaken investor confidence and threatened the health of our financial markets, so does excess and abuse in this other system undermine the competitive nature of American

business and threaten the quality of the American justice system. It is time for that abuse to end.

Question: What system — rooted in the admirable protection of personal rights and freedoms — is now guilty of wasting huge sums of money (from both companies and shareholders), impeding U.S. business' international competitiveness, costing every American consumer over \$700 a year and clogging the justice system?

Answer: The U.S. tort system.

The inequities of the tort system are well documented but never cease to amaze. Most of the dollars awarded in damage suits never reach the victims. The outcome

of damage cases varies dramatically from venue to venue, to the extent that certain "judicial hellholes" around the country are scrupulously avoided by attorneys, and a defendant's entire future can turn on where his case is heard. Claim payments vary widely and inconsistently from trial to trial, with some litigants (and their lawyers) awarded enormous sums, and others with very similar claims winning far less.

In asbestos litigation, perhaps the most flagrant example of tort excess, dozens of companies have been bankrupted, thousands of American have lost jobs and the pockets of trial lawyers have been padded at the expense of the actual victims.

The U.S. currently has the most expensive tort system in the world, consuming an amazing 2 percent of gross domestic product (GDP) every year since 1990. Absent reform, these costs are expected to rise to 2.33 percent of GDP by 2005, putting the U.S. economy at a significant disadvantage in the intensely competitive global marketplace. Tort excess places overwhelming human and financial burdens on U.S. businesses. Protection for the scale of today's risks is difficult to come by, and extremely costly.

Our tort system has promoted legal excess and heaped huge costs on American business and the American consumer. Is it just for every American citizen to pay an annual "litigation tax" of over \$700? At current rates, that per capita cost is expected to rise to \$1,000 annually by 2005. By any benchmark, those are unconscionable costs.

FEI members have weighed in on this subject. One of the most telling responses I've seen, to a question regarding significant litigation your company has experienced, came through our FELIX PC moderated discussion forum. The key points made by a writer on "lessons learned" are sobering:

- First, factor in the cost of attorneys. If the estimate seems extremely high, it is probably accurate.
- Second, virtually all lawsuits will be settled, but the settlements will not factor in the cost of attorneys.
- Third, be prepared for a long, drawn-out process. The average lawsuit takes more than one year.
- Fourth, consider the time that will be spent by your employees, who will be pulled away from their normal activities.
- Fifth, both sides will think that their position is correct and defensible, and in the end, no one will feel like a winner, except the attorneys.

This writer concludes by saying that vast amounts of time are spent volleying letters and issues back and forth, with each issue requiring discussion, research, investigation and rebuttal. After a year, one party or both will be willing to settle because they've been worn down by the attorney costs, time costs and strain on people's jobs.

I personally experienced this several months ago when I was deposed, over the course of two days, in a class-action case (completely baseless, in my opinion) involving a former employer. I would like to think that the time I spent went towards a just consumer cause, but, in fact, it went largely towards lucrative payments to the plaintiffs' bar.

Should wronged consumers have legal recourse? Undeniably. But should American business as a whole be held accountable for the abuses and excesses of a few? No. This broken system, which very successfully rewards abuse, must be changed.

As we also attempt to move towards principles-based versus rules-based accounting standards, our litigious environment is a significant obstacle that must be overcome. The time for tort reform has never been more critical.

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