

Small business and the 'lawsuit lottery'

by Edward R. Court

In fewer 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 the coverage I had three years ago.

I have spent the past 19 years building my security gate manufacturing and installation business to its present size (I now employ 45 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.

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. 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. Most insurance companies were not willing to quote product liability rates, and many of them were getting out of the product liability market. That is not the kind of response you see when there is money to be made.

Liability juggernaut

In 1984, insurance companies paid out \$1,552,744,000. More than \$1 billion of that was for non-economic damages—that is, for pain and suffering. Legislation like Proposition 51 in California will help control these high costs. Unfortunately, however, it doesn't put any limit on the amount of damages that can be awarded for non-economic reasons.

The bottom line is this: Unless the cost of the system 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.

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 13 times faster than the population, according to county records. Wherever you look

attorneys are encouraging lawsuits.

A call for reforms

If the cost of our insurance is to be reduced, we will have to take these dollars away from the special interest groups perpetuating this condition. To do that, we need reforms limiting liability. Some suggested reforms include:

- 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?

- 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. 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 non-profit corporation who act in good faith.

- Grant design immunity to local governments. If a local government built a road 30 years ago that today wouldn't be considered safe (with the increased traffic and present safety standards), don't hold it liable.

- Attorneys receive 30 to 50 percent of everything a 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, and the attorney would not have a financial incentive to pursue long and costly lawsuits (even when his or her client might be better served by a quick settlement).

To be done...

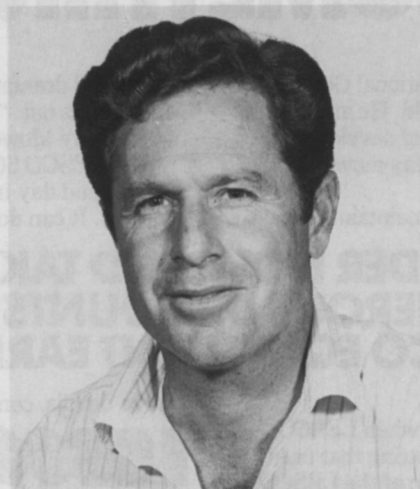
We need reforms to control the many greedy attorneys and the many greedy so-called victims who see dollar signs every time someone has an accident. In 1975, the medical industry in California got the Medical Injury Compensation Reform Act passed, which contains many of the reforms I've detailed. As a 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.

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 fears the same thing every day. Take 20 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 time and 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) 442-1111.



Edward R. Court owns Court Security Systems in Van Nuys, California.