

To the Point

Talking Points for Manufacturers

July 2006

THE NEED FOR LEGAL REFORM

According to a recent study*, tort costs in 2004 were \$260 billion. This translates to \$886 per person, or nearly \$3550 for a family of four, and only 20% of this amount went to the claimants. This is equivalent to a 5 percent "tort tax" on wages. The NAM has a long history of support and involvement for product liability and broader legal reform. The NAM has launched a ground-up, multi-year campaign to reform the nation's legal system. The program focuses on encouraging manufacturers to communicate with their employees in order to raise awareness, encourage action and demand accountability from elected representatives in Washington. Congress has already acted to correct class action abuses. It is expected that Congress will also seek to address frivolous lawsuits, asbestos litigation, medical malpractice and other liability reforms this year.

- Most of the problems in the legal liability system derive from judge-made laws and rules, at both the federal and state level. These changes have made it easier to bring suit, and also contributed to a loss of personal responsibility. Legislators have a right – and a duty – to rein in excesses.
- The response must be federal and nationwide. Nearly all products are involved in interstate commerce; even in non-products lawsuits, trial lawyers are clever enough to manipulate rules while shopping around for plaintiff-friendly judges and juries.
- True victims face lengthy delays before having their cases heard, due to backlogs in the judicial system, and only 20 percent of direct liability costs go to claimants for economic damages.
- Every dollar paid by a corporation for an unwarranted lawsuit hurts its workers' job security, pay and benefits and/or is passed through to customers.
- The concept of "punitive damages" needs to be clarified so that they punish truly egregious conduct – their original purpose – rather than be considered a "jackpot justice" win for a lucky plaintiff. The prospect of outrageous punitive damages awards leads to far more cases being settled than should be.
- A sense of personal responsibility must be restored so that firms cannot be held liable for accidents attributed to substance abuse or for products that are misused, altered or old and not maintained.
- A truly fair judicial system would hold a defendant liable only to his or her direct contribution to an injury. Currently, a defendant who is only one percent liable for an accident might be left responsible for 100 percent of a damage award.
- Lawsuits should be heard where there is a direct connection to the alleged harm rather than allowing plaintiffs' attorneys to file in a jurisdiction because they know it is friendly to plaintiffs. Uniform, national standards should apply where there is an impact on interstate and foreign commerce.

* "U.S. Tort Costs: 2005 Update" by the firm Tillinghast-TowersPerrin

These talking points are designed for communications with members of Congress. Specific company examples will give these points greater emphasis. For more information on this issue visit our website at www.nam.org or call or e-mail the NAM's Larry Fineran at (202) 637-3174 or lfineran@nam.org.