

THE ROLE OF THE PLAINTIFF'S TRIAL LAWYER

Some Law Makers Want To Pass Laws Restricting Justice

Although we are living in a time of great prosperity and freedoms, American society is also experiencing a trend where juries seem to be more conservative in awarding jury verdicts to injured persons. Some political leaders are proposing the passage of laws in our Congress and State Legislatures attempting to limit the ability of the injured persons to seek compensation for the wrongs they have experienced as a result of the negligence of another and to limit the time in which to bring a claim.

Protection Is Leaning Towards the Big Drug Makers

Much of this effort has been made to protect big pharmaceutical companies from liability for promoting a drug that has not been adequately tested. Some are protecting big insurance companies who keep trying to cast doubt on the role of trials and justice in order to protect their incredible profits.

Jury Verdicts

In Minnesota, large jury verdicts are very rare. In fact, of the cases that were tried in Hennepin and Ramsey Counties in 2008, 100% of Medical Malpractice jury verdicts found in favor of the defendants. In 2008, personal injury trials were won by only 57% of the plaintiffs.

Justice Requires Skill and Hard Work by All Lawyers

Justice is won through the hard work of the attorneys on both sides. According to the ethical rules required by the Rules of Professional Responsibility, lawyers are called upon to preserve the justice system and "as an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." As a result of this requirement, many lawyers are misjudged for vigorously defending their client, as though the lawyer were unethical in the mere representation of the client rather than carrying out an ethical duty.

Skill of the Trial Lawyer

The trial lawyer's role becomes important in preserving justice. The role requires incredible effort and skill. The lawyer must present her/his client's case to a judge or a jury with the skill that only experience can bring. First of all, she must work hard to gather all the facts of the case.

She must understand the technical aspects of the case and all the legal issues that will be presented to a jury. For instance, in a personal injury case, the lawyer must understand the

physical/medical mechanics of the injury and be familiar with and understand all of the client's medical records. She must be able to explain to the jury the mechanics of the crash.

Gathering Evidence Requires a Financial Commitment

The lawyer must commit her financial resources by paying for the costs of presenting the case to a jury which can cost several thousand dollars. It is her responsibility to pay the costs of bringing the experts to testify at the trial such as the treating doctor who will explain the extent of the injuries, an accident reconstructionist who will explain how the crash occurred, an engineer who will describe the mechanical forces that caused the injury to the plaintiff, and a toxicologist who will explain how the behavior of the drunk driver was affected by the level of alcohol as measured immediately after the crash. The costs are re-paid to the lawyer if the case is successfully resolved.

Communication with the Jury

The lawyer must understand the psychology of the jury pool and be able to skillfully inquire of and perceive the prejudices held by jurors so that she can eliminate those jurors who would not be able to put away their prejudices against her client when deciding the case.

The lawyer must also be able to speak to a jury in such a way as to hold their attention and present the evidence and the law to the jury so that they may see clearly the merits of her client's case. She must be able to argue with passion to the jury proving her case to the jury "by a preponderance of the evidence" (civil case) or "beyond a reasonable doubt" (criminal).

Trial Lawyer's Efforts Have Produced Safer Products and Services

Generally speaking, plaintiff's lawyers have been in the lead in producing product safety. Most of the advancements in the safety of consumer products have come about not because of government regulation but because of the efforts of lawyers to make it more economical for big companies to make safe products. The FDA is supposed to be America's protector against poorly designed medical devices and tainted pharmaceutical drugs.

The Food and Drug Administration Inadequately Supervises Products for Their Safety to the Consumer

Recently, Congress investigated the effectiveness of the FDA and were told by the agency's chief counsel, Peter Barton Hutt, that the agency was "barely hanging by its fingertips." The agency does not have enough money or enough skilled scientists to do its job. They do not have enough staff or adequate computer systems to conduct timely inspections of foreign plants that make drugs, medical devices and food products.

The egregious importer is China which has been a source of very dangerous goods in the last few years. (Recently China produced a leukemia drug that was somehow contaminated with another cancer drug during production. When the product was injected into the patients' spinal area, it caused paralysis and other side effects. Congress has continually added new burdens to the agency but without providing enough money and personnel to carry out the tasks.

Plaintiff's Trial Lawyers Have Become the Protectors of Consumers from Bad Products

Manufactures are corporations and motivated by financial profit. They are not designed to have and do not have a conscience. They will take shortcuts and try to get their product to market as quickly as possible in order to limit their expenses without regard to the possible danger of the product and the human cost. Because the FDA, by its own admission, cannot protect the public from unsafe drugs, medical devices and food products the only way to hold these manufacturers accountable is by making it less profitable to make an unsafe product than it is to make a safe product. This has become the role of the trial lawyer.

Trial Lawyers' Accomplishments in Protecting Consumer Safety

Consumer victories in the areas of hospital care, medical treatment, highway and automobile design, workplace safety, and safer products have come about because of the dedication of a plaintiff's lawyer who was willing to risk assets, energy and determination on behalf of the plaintiff to make America a safer place to live.