

## HOW TO MAKE THE LEGAL SYSTEM MORE EFFICIENT

1. Limit defense lawyers' fees. Since 1956, defense lawyers' fees have risen almost three times as fast as the amount insurance companies pay to injured people, according to the National Association of Independent Insurers. Of the money spent by a corporation in a typical liability case, more money goes to the defense lawyer than to either the plaintiff's lawyer or the plaintiff himself.

2. Establish automatic, severe sanctions for frivolous motions, objections, and defenses. Because defense lawyers charge by the hour, they have an incentive to delay. To "keep their meters running," they may raise defenses, file motions, interpose objections and brief and rebrief the same issue -- no matter how untenable their position -- even if settling the case quickly would save their clients money. As long as there is no effective sanction for such tactics, defense lawyers will continue to delay -- to the detriment of the legal system and often of their own clients.

3. Limit plaintiff's lawyers' contingency fees to one-third. Plaintiff's lawyers have no incentive to delay, since they get paid only if and when they win. And the contingency fee system is invaluable in allowing average people who could never afford to pay a lawyer by the hour their day in court. But if a lawyer will take a case only on a 40% or 50% basis then the case is too speculative and probably should not be brought. The traditional one-third contingency fee has worked well for both attorney and client and should not be exceeded.

4. Prohibit secrecy agreements. Defendants will often settle a case only if the plaintiff agrees never to disclose evidence in the case to any other plaintiff. Such agreements create more unnecessary work for defense lawyers and force plaintiff's lawyers to continually re-invent the wheel.

5. Expand the use of offensive collateral estoppel. Even when courts have already held a product to be defective, each plaintiff injured by that same product must re-prove that the product is defective. Again, this creates unnecessary delay and unnecessary work. It would be much more efficient to allow prior holdings that a product is defective or that a product has caused an injury to be used in other cases.

6. Transfer relatively small cases where the deterrent function of the tort system is less important into alternative, "no-fault" type systems. For example, in auto accident cases, where criminal penalties and the instinct toward self-preservation presumably deter negligent conduct, a well-structured no-fault system may compensate people more efficiently than the tort system without substantially lessening deterrence.

7. Increase the use of voluntary arbitration and mini-trials as alternatives to the tort system.

8. Transfer all inter-defendant disputes -- e.g., between a manufacturer and its insurance companies -- into an alternative dispute resolution system.

9. Establish nationwide and world wide service by mail to the greatest extent possible. With many corporations doing business through subsidiaries in all 50 states and throughout the world, service on a subsidiary should be service on the parent. Today, particularly when Japanese holding companies are defendants, it may take months just to perfect service.

10. As a prerequisite to any changes in the legal system, the insurance industry must agree that it will lower its rates by a specific amount if specific changes are enacted. Otherwise, such changes are futile.