Tort-Reform Legislation . . .

. . . Ought to Reduce Premiums

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Will "tort reform"—limiting the amount injured people can recover in court—reduce insurance rates? Some legislators may believe that it is good public policy to reduce such rates by limiting compensation to injured people. But surely no one believes that we should limit compensation to injury victims and get nothing in return. Yet that's exactly what two of the nation's largest insurance companies seem to be saying—just as the reforms they had lobbied for in Florida go into effect.

Aetna Casualty & Surety Co. and St. Paul Fire & Marine Insurance Co. recently told the Florida Insurance Department that their insurance rates won't be affected by the following limitations on compensation, which were recently enacted in that state:

- Limiting compensation for paralysis, disfigurement and other types of pain and suffering to $450,000.
- Limiting punitive damages – damages assessed when a defendant has acted recklessly or maliciously.
- Restricting the doctrine of joint and several liability, which allows an injured person to recover from one of several negligent defendants, with the defendants then working out among themselves who ultimately must pay how much.

In a request for a 17% rate increase on Aug. 8, Aetna argued that based on its detailed analysis of 105 claims it had recently closed, limiting punitive damages will have "no impact" on its rates, since punitive damages accounted for only 0.1% of Aetna's payouts. It further argued that limiting damages for pain and suffering to $450,000 will not reduce rates because, among other things, most policyholders purchase limits of less than $450,000.

And it claimed that restricting joint and several liability will not reduce insurance rates "due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to Aetna's insured, and the policy limits purchased." For example, if the plaintiff's damages are $1 million, and Aetna's policyholder is 20% liable and has policy limits of $200,000, whether joint and several liability applies is irrelevant to Aetna, since under the policy the maximum it must pay is $200,000.

Striking, Ironic Conclusions

Ironically, Aetna lobbied aggressively throughout the country for the tort reforms it now says are worthless. Doubly ironically, it has held up the specific reforms enacted in Florida as a model for other states to enact. Florida is one of only seven states to have enacted "full-fledged tort reform," Aetna general counsel Stephen Middlebrook told the American Bar Association's annual meeting last summer. Perhaps most ironic of all, what Aetna has told the Florida Insurance Department in its recent rate filing flatly contradicts what the insurance industry's public-relations arm, the Insurance Information Institute, has been consistently telling the public and legislators for more than a year.

St. Paul conducted an analysis similar to Aetna's and reached similar conclusions. It found that only four of the 313 closed claims it analyzed would have been affected by the Florida "tort reforms," and concluded that they "will produce little or no savings to the tort system as it pertains to medical malpractice."

St. Paul's conclusion is striking in view of its threat this spring to withdraw from the West Virginia medical-malpractice market, in part because the legislature there had failed to significantly limit compensation for pain and suffering or restrict joint and several liability. Even more striking, after the West Virginia legislature went into special session and, among other things, limited joint and several liability so that St. Paul would not withdraw from the state, the company sought a 136% rate increase—on top of the 190% increase it had received the year before.

Perhaps most significant, the Aetna request for a rate increase includes a form that asks for, and has yielded, very specific data on the effect on Aetna's payouts of noneconomic damages, punitive damages, joint and several liability, and other legal doctrines. Up to now Aetna has consistently refused to disclose such data to the public or to legislators, and, in fact, has maintained that such data are impossible to obtain.

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It is not just Aetna and St. Paul that are telling us this. In a letter to the Kansas Insurance Department, State Farm said that tort reform would have a negligible effect on rates; the Insurance Services Offices—the national industry organization that issues rate information—has announced that its new rates will show no savings from tort reform; and Great American West Insurance Co. has told the insurance commissioner of Washington, which enacted the most comprehensive tort-reform legislation in the nation last year, that tort reform would actually increase its insurance rates. No wonder the insurance industry earned a record $11.5 billion in 1986, 605% more than in 1985.

Last year, several state legislatures enacted legislation that would limit the amount severely injured people could recover in court—in the good-faith belief that such limitations would reduce insurance rates. Aetna (one of the nation's largest insurance and financial-services companies) and St. Paul (the nation's largest medical-malpractice insurer), among other insurers, have now stated that limiting compensation to the severely injured will not reduce rates. So don't be surprised if, just as last year was the year of "tort reform," this year turns out to be the year of insurance reform.

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