



NATIONAL INSURANCE
CONSUMER ORGANIZATION

INSURANCE INDUSTRY TALL TALES

Tall Tale #1:

"The average product liability award is \$1.07 million;
the average medical malpractice award is \$950,000."

The Real Facts:

The median jury verdict has remained at approximately \$8,000 in 1979 dollars since 1959; the mean jury verdict increased from \$30,000 to \$69,000. Statement of Gustave Shubert, Director, Rand Institute for Civil Justice, before the National Conference of State Legislatures, Denver, Colo., January 4, 1986; M. Peterson & G. Priest, The Civil Jury: Trends in Trials and Verdicts (Rand Institute for Civil Justice 1982). Moreover, between 1980 and 1985 less than 4% of all cases won by plaintiffs resulted in million dollar verdicts. Statement of Mark A. Peterson, Rand Institute for Civil Justice, before the Subcommittee on Oversight, House Ways and Means Committee, March 13, 1986.

The figures disseminated by the insurance industry are the average of awards to plaintiffs reported by Jury Verdict Research, Inc., of Solon, Ohio, which collects cases it learns about through a clipping service it subscribes to, through legal publications such as the ATLA Law Reporter, through reports directly from plaintiff's lawyers, and through reports by a small fraction of court clerks. Since the popular press, understandably, report only the big cases, and since plaintiff's lawyers report only their great victories, the average of awards to plaintiffs collected by JVR is far higher than the average of awards to all plaintiffs. Moreover, JVR's data do not include defense verdicts, which consistently account for more than half -- and in medical malpractice up to 80% -- of all jury verdicts. Finally, JVR includes in its data base both verdicts that were remitted by the judge -- such as the \$125 million verdict (remitted to 3.5 million) in Grimshaw v. Ford Motor Co., 174 Cal. Rptr. 348 (1981) -- and verdicts that were later reversed on appeal.

121 N. Payne Street
Alexandria, Virginia 22314
(703) 540-0050

Although JVR acknowledges that it is neither comprehensive nor scientific, for 26 years it has provided a useful service to both plaintiff's and defense lawyers by helping them to evaluate their cases. To look only at JVR-reported verdicts in order to find the average size of all verdicts, however, as the insurance industry is doing, is like looking only at elephants in order to find the average size of all animals.

For more information on JVR, contact Jeanine Schmoll or Jeanine Fischer at JVR's Research Department, (216)248-7960.

Tall Tale #2:

"We are witnessing a 'litigation explosion' -- the number of lawsuits filed has increased dramatically in recent years."

The Real Facts:

The number of lawsuits filed per capita has remained constant since 1959. Statement of Rand ICJ Director Gustave Shubert, January 4, 1986, before the NCSL. And "the vast majority of plaintiffs received the same level of compensation in the 1970's as they would have in the previous decade." M. Peterson, Compensation of Injuries: Civil Jury Verdicts in Cook County (forthcoming, Rand ICJ). Moreover, Americans file suit at about the same rate as do the British, Canadians, Australians, New Zealanders and Danes -- about 44 per 1,000. M. Galanter, Reading the Landscape of Disputes, 31 UCLA L. Rev. 4, 55-56 (Oct. 1983). Thus, "the facts do not support the rhetoric surrounding the litigation explosion." Daniels, We're Not A Litigious Society, 1985 The Judges Journal 18 (Spring 1985) (citing Illinois statistics demonstrating that the largest number of claims per capita were filed in 1870 and 1925, and citing California and Missouri studies finding no consistent upward trend in cases per capita over time).

Tall Tale #3:

"Tort reform will reduce insurance premiums."

The Real Facts:

1. Limitations on doctors' liability enacted in the mid-1970's did not reduce medical malpractice insurance premiums, according to a study done for the US Health Care Financing Administration. See Sloan, State Responses to the Malpractice Insurance "Crisis" of the 1970's: An Empirical Assessment, 9 Journal of Health Politics 629 (Winter 1985).

2. In 1978 Pennsylvania enacted a law immunizing all Pennsylvania municipalities from most kinds of liability suits and limiting liability for even catastrophic events to \$500,000 per occurrence (thus, if 50 people were killed in an accident, their families would receive a maximum of \$10,000). See 42 P.C.S. 8501 et. seq. Yet Pennsylvania cities and towns are still having their insurance policies cancelled. See Pa. Local Government Commission, Hearing on Municipal Liability Insurance, November 1985.

3. Having been told that if joint and several liability were eliminated municipalities would be able to obtain insurance, Iowa abolished joint and several liability in 1983. Yet in late 1985 41 Iowa counties had their liability insurance cancelled. Statement of Iowa State Senator Lowell Junkins, before the Florida Senate Commerce Committee, January 7, 1986 (Sen. Junkins led the fight to abolish joint and several liability but changed his position when abolition of the doctrine did not have the effect the insurance industry said it would.)

4. Virtually every "tort reform" measure the insurance industry is seeking -- including caps on pain and suffering, the elimination of punitive damages and contingency fees, and penalties for frivolous suits -- is currently the law in Ontario, Canada. Yet the insurance industry is raising premiums by 400%, cancelling coverage in mid-term and refusing to provide coverage at any price in Ontario, Canada just as it is in the United States. See, e.g., Toronto Star, January 10, 1986 ("Liability coverage crunch may shut day-care agencies"; "Higher insurance rates hit school bus operators"); Toronto Globe and Mail, January 15, 1986 ("Ski team can't get liability insurance").