



Louisiana Advocates

Study shows legal awards have little impact on economy

A report issued by the Economic Policy Institute (EPI) shows that tort liability and awards from lawsuits do not harm the U.S. economy and that arguments for corporate-supported changes to the legal system that would make it more difficult to win compensation in court are not based on fact.

In "Tort Costs and the Economy," Ross Eisenbrey, EPI vice president and policy director, disputes a 2004 economic report issued from the White House that states tort liability hurt the economy in a number of different ways. Eisenbrey uses data from the insurance industry's own consultant, Towers Perrin, and Moody's Economy.com to test each claim made about tort liability.

Insurance industry proponents of changes to the civil justice system have claimed that the tort law system creates economic harm by stifling job growth, research and development spending, profitability and productivity, and by raising health care costs. These claims are based largely on reports

issued by industry consultants.

Eisenbrey says it is difficult to find any evidence that tort costs have harmed the U.S. economy. In his report he states, "The economic case made by tort system critics to justify changes in the system is remarkably weak. The costs of the tort system have been grossly exaggerated, and its supposed impact on job creation, R&D, productivity, and profits has been exaggerated or simply invented."

Eisenbrey has found that there is no correlation between tort costs and job growth. The EPI report points out that from 1950 to 1987 when tort costs increased almost 300 percent as a share of the economy, jobs by more than 100 percent. But from 1987 to 2004 when tort costs fell as a share of gross domestic product, job growth was much slower—well under 50 percent.

The EPI study also concludes that laws designed to reduce awards to plaintiffs have a negative effect upon employment. An Economy.com fore-

casting model—using assumptions extremely favorable to the arguments for changing the tort system—predicts that legal changes effective enough to reduce tort cost increases by 3 percentage points per year would reduce employment growth. The model further finds that four years after such a change took effect, employment would be about 200,000 jobs lower than if no changes were enacted.

The study also shows that tort costs have no effect on research and development spending. As tort costs rose from the late 1970s to the mid-1980s, R&D spending rose, not fell. Also, R&D spending has been relatively stable as a percent of gross domestic product over the last 20 years, even though tort costs declined from 1987 until 2001.

The Economic Policy Institute is an independent, nonprofit, nonpartisan research institute that studies the impact of economic trends and policies upon working people in the United States and worldwide.

USDC MDLA to begin mandatory electronic filing in March

The U.S. District Court for the Middle District of Louisiana will make electronic case filing mandatory for all attorneys beginning March 1, 2007.

All documents filed with the court must be filed using the Electronic Case Filing System (ECF System), unless exempt by the administrative procedures governing ECF, local rules and/or court orders.

The court's Web site, www.lamd.uscourts.gov/, provides an online electronic tutorial "designed for attorneys and law firm staff interested in learning how to use the CM/ECF system, but [who] do not have time to attend the recommended training at the court."

According to the Web site, the tutorial provides guided practice, using simulated CM/ECF screens and actions.

The tutorial is self paced and allows you to bookmark your place and return when and where it is convenient to you. The entire tutorial will take about one hour to complete, the Web site said.

After completing the tutorial, participants must complete a registration form to receive the login and password information necessary to begin e-filing.

The U.S. District Court of the Eastern District of Louisiana's mandatory electronic filing program has a Jan. 1, 2007, start date.

The Eastern District is providing free classes on electronic filing that will continue through the end of April 2007, according to that court's Web site, www.laed.uscourts.gov/cmecf/edf.htm.

2007 Winter Ski Seminar, Feb. 19-22, provides opportunity to learn, enjoy slopes

Plan to spend your 2007 Mardi Gras week with your colleagues in Aspen, Colo., at Louisiana Association for Justice's 2007 Winter Ski Seminar, Feb. 19-22, at The Gant Conference Center & Resort.

Since conference presentations are scheduled for late afternoon and early evening, there will be plenty of time to enjoy the slopes or the many other activities the Aspen area has to offer.

In addition to skiing and snowboarding on four area mountains with more than 4,000 acres of terrain, Aspen visitors can enjoy snowshoeing, snowmobiling, sleigh rides, snowcat powder tours, Nordic skiing at Ashcroft Ski Touring Center and Aspen Golf Course, fly fishing, hot air balloon rides, ice skating and spa treatments at Aspen Club & Spa.

Other Aspen-area attractions include tours of the Wheeler Opera House and Smuggler Mine; dozens of art galleries, including the Aspen Art Museum, Wheeler-Stallard House Historical Museum and Anderson Ranch Center; the Joan and Irving Harris Concert Hall; and

Community Theatre productions.

Seminar cost for all registrants is \$492. You may register by phone by calling LAJ at (800) 354-6267 or (225) 383-5554. Online registration and a pdf registration form are available on www.ltl.org.

Conference participants interested in staying at The Gant Aspen should contact the condominium resort directly at (800) 345-1471. The property includes two heated outdoor pools; three jetted hot tubs; five tennis courts, three of which are clay courts; an exercise facility; locker rooms with saunas; free parking; laundry facilities; barbeque grills; and ski and bicycle storage.

Each Gant condo features a wood-burning fireplace, large private patio or balcony, fully equipped kitchen, cable television with HBO, modem/fax lines, bath amenities, bedroom humidifiers and fans, iron and ironing board, complimentary daily coffee/tea package and on-site 24-hour maintenance.

Below: Skiers on the slopes during the 2006 Winter Ski Seminar



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Verdicts & Settlements

Medical malpractice; excessive scarring; \$275,000 judgment

After conservative treatments failed, patient, a 9-year-old girl, went to a plastic surgeon for treatment of more than 100 warts. The plastic surgeon removed the warts using excision and electric cauterization. The removal left third-degree burn-type scars on virtually all of the wart locations on plaintiff's arms and legs.

Plaintiff alleged lack of informed consent and malpractice for using an aggressive method of treatment for so many warts.

Judgment was for plaintiff in the amount of \$275,000.

Smith, et al. v. Smoot and Professional Physicians Insurance Co., No. 2002-5760, 14th JDC, Calcasieu Parish, 6/06

Plaintiffs' counsel: Steven Broussard of Broussard & Hart, LLC, Lake Charles

Plaintiffs' expert: Dr. Paul Weber, dermatology, Ft. Lauderdale, Fla.

Improperly administered injection; \$330,000 settlement

While giving plaintiff an injection in the front aspect of his inner thigh, a medical office technician, who was not licensed to give injections, hit the femoral artery, causing compartment syndrome.

Compartment syndrome results from impaired blood flow. Pictures of the boy's injured leg show that the limb looked like it had been bitten by a shark.

Although there was concern early in his care that plaintiff might lose his leg, he was able to make a fairly good recovery.

Medical bills totaled about \$70,000, and the case settled for \$330,000.

Vincent v. Lake Charles Pediatricians, No. 2006-0069, 14th JDC, Calcasieu Parish, 6/06

Plaintiff's counsel: Sera Russell, Law Offices of Sera H. Russell III, Lafayette

Plaintiff's expert: Theresa Debeche, nursing, Lafayette

Defective automobile seat-back bolt; injuries; \$278,500 jury award

Plaintiff was injured when the seat-back bolt in her Dodge Intrepid broke, causing her to fall backward and the back of her head to slam into the vehicle's back seat.

DaimlerChrysler Corporation had recalled plaintiff's vehicle because of the bolt problem, and plaintiff took the vehicle to a local dealer to have the repair made two months before the accident. The dealer told plaintiff that it completed the repair, but it had not done so.

Plaintiffs alleged the dealer was liable because it did not complete the repair. They also sought recovery from DaimlerChrysler, maintaining it did not adequately warn plaintiffs of the bolt defect and that it did not have in place adequate safeguards to ensure that the recall repair was actually performed.

They sought damages for physical pain and suffering, mental pain and suffering, medical expenses, future loss of earnings, loss of enjoyment of life and loss of consortium.

After notice of DaimlerChrysler's 1442 deposition, the company moved to quash deposition and stipulated to its and the local dealer's liability for plaintiff's injuries. Defendants sought a motion *in limine* to preclude the presentation of evidence of their liability at trial.

Plaintiffs successfully defeated the subject motions. On the morning of the trial, defendants filed a writ to the 2nd Circuit, which the appellate court denied.

After a four-day trial, jury found the local dealer 70 percent liable for plaintiff's damages and DaimlerChrysler 30 percent liable. It awarded plaintiff approximately \$83,500 in general damages and almost \$195,000 in special damages. Damages for loss-of-consortium claim were not awarded.

Dyes v. Ruston Chrysler, Inc. & Daimler Chrysler Corporation, No. 49993, 3rd JDC, 8/3/2006

Plaintiffs' counsel: Tracy W. Houck and Ron Riggle, Belton Houck & Associates, LLC, Ruston

Plaintiffs' experts: Claude Mount, engineering, Jackson, La.; Robert C. Eisenstadt, economist, Monroe, La.

Worker poisoned on rig; multiple injuries; \$7 million jury verdict

Plaintiff, a rig mechanic, was working for several years on the drilling rig *The Ocean Spartan* in Lake Maracaibo, Venezuela. While aboard the vessel he developed various illnesses, attributable to the polluted and toxic working conditions.

Plaintiff sustained multiple injuries, including muscle cell destruction that rendered plaintiff almost completely paralyzed. Plaintiff filed suit, alleging he was poisoned with toxins and heavy metals from the drilling-rig environment.

Jury unanimously found for plaintiff and awarded him \$7 million.

Levis v. Diamond Offshore Drilling Inc., No. 97-5579, CDC Orleans Parish, 11/30/06

Plaintiff's counsel: Van Robichaux of Robichaux Law Firm, Covington

Wastewater dumping; property damage; \$57 million jury award

Plaintiff, the owners of 18,000 acres Cameron Parish wetlands, sued defendant for marsh loss and contamination resulting from defendant's unreasonable and excessive operating practices in the Cameron Meadows Field. Plaintiff argued that defendant

breached its obligations under the Mineral Code and the applicable mineral lease by intentionally dumping its produced water into the canals on the Cameron Meadows property for more than 40 years, resulting in damage to the property.

Jury found that defendant did violate the lease and deviate from the standard of a prudent operator. It awarded \$57 million for remediation and restoration of the property.

Dore Energy Corporation v. Carter-Langham, et al., No. 10-16202, 38th JDC, Cameron Parish, 11/10/2006

Plaintiff's counsel: Gladstone N. Jones III, Eberhard D. Garrison, Keven E. Huddell of Jones, Verras & Freiberg, LLC, New Orleans; Jennifer Jones, Jones Law Firm, Lake Charles; Glenn W. Alexander of Glenn W. Alexander, APLC, Cameron

Plaintiff's experts: Sherwood Gagliano, Ph.D., wetlands restoration, Baton Rouge; Jerry C. Fontenot, water- and soil-damage analysis, Lafayette; William C. Kimbrell, P.E., petroleum engineering, Baton Rouge; Gary Barbee, Ph.D., toxicology, Baton Rouge; Leonard Chauvin, P.E., civil engineering, Thibodaux

EMTs failed to transport; death; \$450,000 settlement

Decedent became weak, was passing out and exhibited clear symptoms of a heart attack. EMT/paramedics who responded to the emergency call told decedent that her condition appeared to be related to the heat and that she simply need to take a cool bath and suck on ice chips.

Emergency personnel told decedent that if she did not want to go to the hospital that she needed to sign a refusal-to-transport form releasing the hospital from liability. Decedent completed the form and, within less than a half hour, she suffered an acute heart attack and subsequently died.

Plaintiff successfully defended against the hospital's motion for summary judgment based on the executed refusal-of-care form and release from liability.

Case settled for \$450,000.

Browning v. West Calcasieu-Cameron Hospital, No. 2002-60, 14th JDC, Calcasieu Parish, 5/06

Plaintiff's counsel: Steven Broussard of Broussard & Hart, LLC, Lake Charles
Plaintiff's expert: Dr. Kenneth Desser, cardiologist, Phoenix, Ariz.

Medical malpractice after auto wreck; hip injury; \$610,000 settlement

Plaintiff suffered an injury to her hip in an automobile wreck. The orthopedist who attempted to fix the injury made the condition worse, leaving plaintiff with a permanent limp and serious partial disability. She will likely need additional care in the future.

The wreck was a comparative negligence situation, which also resulted in a workers' compensation claim.

Case settled, just before a motion for summary judgment was to be heard, for the cap plus medical bills: \$610,000.

Comp paid the medical bills and then waived any subrogation interest, so plaintiff was able to reap the benefits of the law that says medical bills are not capped (Cap is "exclusive of future medical care and related benefits.")

Prior to motion for summary judgment, plaintiff won the medical review panel 3-0. Medical review panel and plaintiff's second treating orthopedic surgeon said the first orthopedist's services fell below the standard of care.

Griffin v. Bernauer, No. 2005-003719, 14th JDC, Calcasieu Parish, 11/06

Plaintiff's counsel: Sera Russell, Law Offices of Sera H. Russell III, Lafayette

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