



Tort Reform

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Tort Reform

Note:

Most of the text of the following slides comes verbatim or nearly verbatim from CBO reports or letters.

Tort reform:

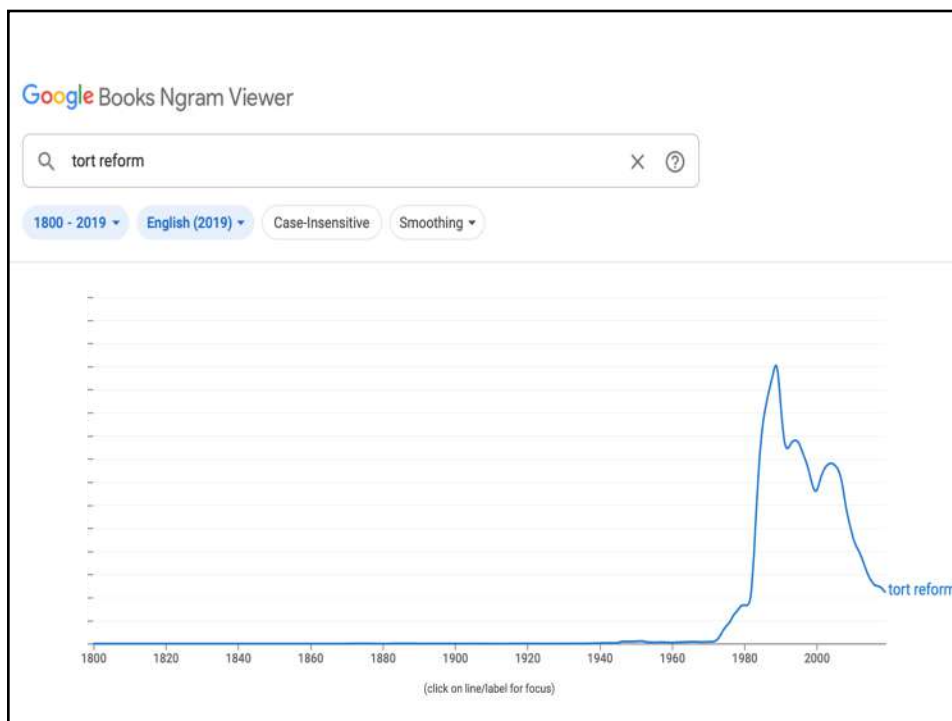
- driven by presumption that
 - too many tort claims are filed and
 - court awards, such as those for punitive damages and pain and suffering tend to be excessive

Tort reforms include:

- caps on noneconomic compensatory damages (e.g., pain and suffering)
- limits on punitive damages, redirecting fraction of punitive damages to state treasury
- modifications to joint-and-several liability
- changes to collateral-source rule, reducing award by amounts received from third parties
- procedural hurdles to filing suit

Tort Reform

- Tort reform gained prominence in the mid-1980s, when many states enacted reforms in response to a perceived problem in insurance costs.
- Those reforms sought to limit exposure to liability, thereby reducing general insurance premiums.
- CBO reports premiums fell by 40 percent for some commercial policies in 1987, after tripling in the 1984-1986 period.
- Since 1986, states have put in place various other tort reforms.



Tort Reform

- Most consistent finding in the studies that CBO reviewed:
 - Caps on damage awards reduced the number of lawsuits filed, the value of awards, and insurance costs.
- Also:
 - One study of automobile-related torts found that caps on noneconomic damages decreased not only the value of noneconomic claims made to insurance companies but also the number of lawsuits filed.
 - Other studies suggested that those caps led to increases in insurers' profitability for both medical malpractice and general liability insurance. Evidence on whether premiums were affected was mixed.

Tort Reform

Public debate / rhetoric

Debates over tort reform:

- Like many such debates, side-taking often is political
- Driven by organized interests on two sides, each with concerted lobbying and public-relations efforts, e.g.:
 - ATRA (American Tort Reform Association)
 - American Association for Justice (formerly the American Trial Lawyers Association)

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- Looney Lawsuits**
- "Judge Suing City For \$1M After Fall On Wet Courthouse Floor," [New York Daily News, 04/14/08](#)
 - "Boring Couple Sues Google Over Street View," [law.com, 04/07/08](#)
 - "Lawyer: Siren Case Not As Simple As Just Noise," [Chicago Daily Herald, 03/28/08](#)
 - "Lost Laptop? Sue For Millions!," [Minneapolis-St. Paul Star Tribune, 02/13/08](#)
 - "Blue Man Group Show Makes One Chicago Theatergoer See Red," [The Chicago Tribune, 01/24/08](#)
 - "Prisoner's Lawsuit Says It Was Too Easy To Escape," [Los Angeles Times, 01/13/08](#)
 - "Please Don't Do That!": Man Says Hospital Forced Rectal Exam," [FoxNews.com, 01/16/08](#)
 - "Mother Suing Herself For Son's Injuries In Crash With Ambulance," [Madison County Record, 01/03/08](#)

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ss, Predictability and Efficiency to the Civil Justice System

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Let's look at this.

 **Madison - St. Clair Record** News About Contact Arguments ▾

Sydney L. Bender of Fairview Heights is apparently suing herself as well as an ambulance driver for an accident that left her infant son permanently injured two years ago.

According to a lawsuit filed Dec. 20 in St. Clair County Circuit Court, Bender was attempting a left hand turn onto North Ruby from Lincoln Trail in Fairview Heights when she was struck by an LPG Ambulance driven by Jeffrey L. Scott of Madison County.

Bender's son, Nathan J. Bender, a passenger, was one-month-old at the time of the accident on Jan. 5, 2006. He sustained a severe and permanent head injury, the suit says.

Sydney L. Bender is listed as an individual plaintiff and as a plaintiff acting on behalf of her son. Sydney L. Bender also is named as a defendant in the complaint.

"Defendant Sydney L. Bender negligently and carelessly caused the vehicle she was operating to strike Defendant's emergency vehicle," the complaint states.

The ambulance service, Mission Care of Illinois LLC, is blamed for its driver's "excessive rate of speed."

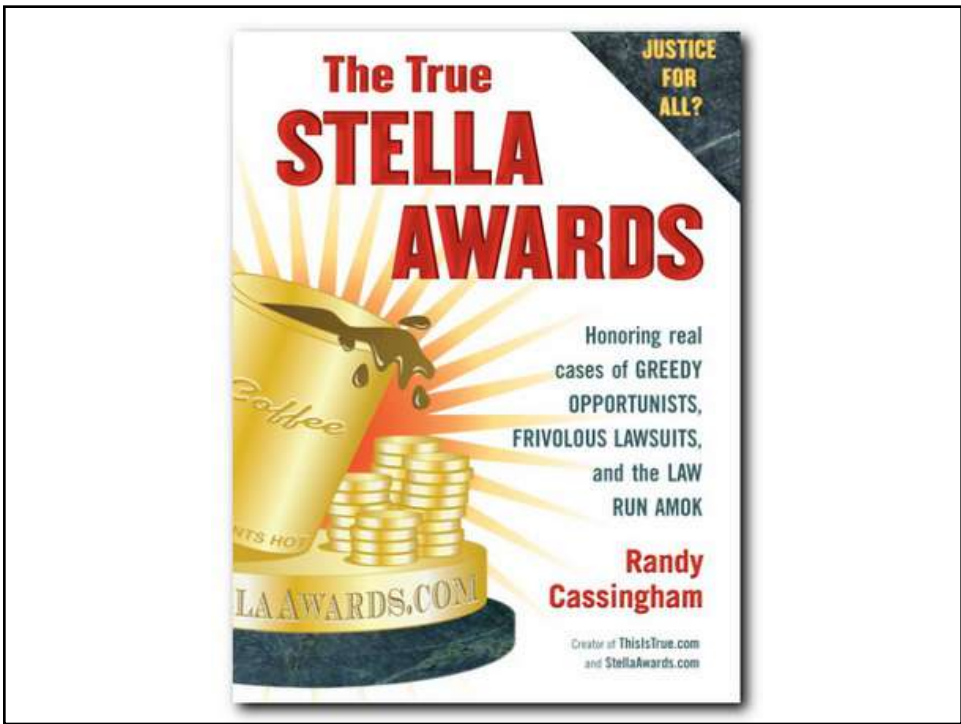
"Defendant Jeffrey L. Scott, while in the scope of his employment with Defendant Mission Care of Illinois, LLC f/k/a LPG Ambulance Service of Illinois, negligently and carelessly caused the emergency vehicle he was operating to strike Plaintiff's vehicle," the complaint states.

Bender seeks damages in excess of \$50,000 for her son's incurred medical expenses and future care.

Bender is represented by Sheldon Weinstein of Cofman & Townsley in St. Louis. Weinstein has been contacted for comment, but at press time had not returned a phone call.

In the complaint, Bender alleges she failed to stop, slow down or swerve to avoid an accident with an emergency vehicle.







Tort Reform

International Context

When thinking about tort reform, it's illuminating to think about the international context.

- The U.S. has had larger potential jury awards, more availability for hiring an attorney through contingency fees.
- Other highly developed countries don't have these, but do tend to have more regulation and more taxpayer-funded medical care.

A TALE OF TWO SYSTEMS

Western Europeans smoke, take Vioxx, and buy Firestone tires, too. But when they get injured, claims are handled far differently. Here's a simplified summary of the key differences between their system and ours...

	EUROPE	U.S.
MEDICAL EXPENSES	National insurance plans cover most health costs.	Private coverage means more uninsured citizens and higher personal exposure.
EMOTIONAL AND PUNITIVE DAMAGES	Payments for emotional distress restricted. Punitives nonexistent.	Potential for lottery-like winnings for a small percentage of victims.
JURIES	Payment rulings made by administrative judges with fee schedules.	Justice is dispensed by ordinary citizens. No scientific or business expertise required.
CONTINGENT FEES	Qu'est-ce que c'est?	Plaintiffs' lawyers rake in 33% to 40% of their clients' winnings.
... and how they play out for all involved		
SIZE OF AWARDS	Much smaller. Even extreme emotional distress does not lead to larger awards.	Much bigger. Thanks to sympathetic juries, multimillion-dollar verdicts common.
SPEED OF PAYMENT	Faster. No adversarial process. Less room for pretrial maneuvering or appeals.	Slower. It can take years for victims to recover their money.

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LAWYER POPULATION	Much smaller. Very few call themselves plaintiffs' attorneys.	More than 1 million, some 10% to 15% of whom represent plaintiffs.
PUBLICITY	Less elaborate pretrial discovery equals fewer smoking guns.	Battles that should be won in court are won in press—but public learns more.

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BusinessWeek

Graphic: A Tale Of Two Systems

MARCH 14, 2005 SPECIAL REPORT -- TORT REFORM

http://www.businessweek.com/magazine/content/05_11/b3924601.htm