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Claims, Not Courts, for Injuries : Lawsuits Too Often Breed Waste, Chaos and Anger

August 28, 1989 | STEPHEN D. SUGARMAN | *Stephen D. Sugarman is a professor of law at UC Berkeley.*



The personal-injury law system is a mess. Most of the money goes to lawyers, to insurance companies, or to pay out extravagant pain-and-suffering awards. Too little goes for the real job--replacing lost income and paying for medical and other costs incurred by accident victims.

At the same time--because of the litigation landslide--high-tech research in fields such as contraception and children's vaccines is grinding to a halt, new and reasonably safe products are not being manufactured by American companies and doctors are wasting millions on unnecessary tests.

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The system might be worth saving if it provided an outlet for people's desire for vengeance by punishing wrongdoers and giving satisfaction to victims. But in practice, individual wrongdoers are not punished. Either insurance or a large enterprise pays the damage awards, or else the victim doesn't bother to sue because the injurer has no money. And, while plaintiffs' lawyers no doubt gain satisfaction from sticking it to the other side, claimants themselves are too often ignored by their attorneys, harassed by the defense lawyers and generally bewildered by the whole process that, more than 9 times out of 10, leads to a compromise settlement worked out by the professionals.

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So let's replace personal-injury law. But with what? Workers' compensation in California is also a mess. It does convert a far higher proportion of insurance premiums into victim benefits than does the personal-injury law system. Yet workers' comp is saddled with unconscionably low benefits and, for those with serious injuries, agonizingly long waits, bureaucratic hassles and inconsistencies.

Moreover, workers' comp starts from the wrong premises. Workers injured while showering before heading to the office and workers hurt on the highways while commuting to work have the same needs as those injured on the shop floor, whether because of a defective tool or someone's carelessness. To respond to these similar problems with very different and sometimes overlapping solutions is disastrous.

Product liability suits against the tool maker, workers' comp claims against the employer, private insurance for home accidents, and lawsuits or no-fault plans for auto injuries add up to chaos, waste and resentment.

Better solutions are at hand. Most accident victims lose little work time; more than 90% are out less than six months. Their income needs can be efficiently and generously met by expanding California's existing temporary disability insurance plan. Replacing two-thirds (tax free) of lost income in cases of both work and non-work accidents would be easy to achieve. Were that done, all but a tiny share of income loss claims now made in both the personal-injury law and the workers' compensation systems could fairly be eliminated. And, because they would save elsewhere, employers could be fairly asked to join their employees in paying for the higher disability insurance costs.

In a parallel way, if the Legislature enacted one of the plans now before it that would assure decent health care to all Californians, we would no longer need to duplicate this function through lawsuits and workers' comp.

This leaves the small proportion of people who are seriously injured. In the short run, we might have personal-injury law and workers' compensation concentrate on them. But in the longer run this is unwise.

One solution would be a new series of focused compensation schemes. One recently adopted model is the National Childhood Vaccine Injury Act, funded by an excise tax on vaccines, which offers generous compensation without the necessity of going to court to those few children who are badly damaged by vaccines like the one developed to protect against whooping cough. Another is the Virginia Birth-Related Neurological Injury Compensation Act, funded primarily by obstetricians and hospitals, that provides benefits for newborns badly injured in the birth process. In yet another existing plan, seriously injured high school athletes can trade their right to sue for a generous disability insurance benefit. In its few years of operation, nearly all the injured athletes given the choice have opted against litigation.

But ultimately a broader net of protection is merited. Is someone crippled by arthritis any less deserving than someone crippled by the unexpected side effect of a drug developed to relieve the pain of arthritis? Is someone injured when an airplane crashed after being hit by lightning any more deserving than is someone hit directly by lightning? Is a child differently deserving if badly burned by a stove, a campfire or a chemistry set?

The only real solution for the seriously injured--indeed, for the seriously disabled generally--is an improved disability benefit under the existing Social Security system (or some state-adopted equivalent).

Nearly 20 years ago, New Zealand adopted a comprehensive accident compensation scheme to replace both lawsuits for personal injuries and workers' compensation claims. It works. Injured people there file claims with the independent Accident Compensation Corporation and, by and large, are promptly, politely and generously compensated. If Americans would more clearly recognize that any one of us could easily suffer a seriously disabling injury, there is hope that we together would assure that a counterpart to the New Zealand agency would treat victims here with the dignity and assistance they deserve.



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