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# **Debating tort reform CIVIL JUSTICE: Court system serves as a watchdog, providing us with a high standard of responsibility Knie: Reform measures compromise our safety**

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What is tort reform, and what are the forces driving it? Tort reform is a name created by large corporations, banks and insurance companies in an effort to avoid responsibility for their actions. Those large companies want to limit your access to the court system.

What is it about our civil justice system then that these powerful groups want to reform? For the past 225 years, we, as consumers, taxpayers, parents and patients, have consistently demanded a high standard of safety in the products and services available in our great country. As a result, we generally enjoy safe cars, safe work environments, honest lending practices, insurance with adequate coverage and quality medical care. The court system is the watchdog protecting us from these big companies when those who provide goods and services fail to meet our standards, causing financial losses, injury or death. Those who back tort reform want to change that high standard of responsibility. Why, then, is "change" necessary? Of course, the answer is simply, it's not. These large corporations, banks and insurance companies resent being accountable to the American public for their actions. By lobbying to state legislatures and Congress for tort reform, the big companies want to deny you access to the court system, so they can increase their huge profits by making inferior products and providing inferior services to the American public. How have we, as consumers and parents, benefited from our current system of civil justice? When Ford made those Pintos years ago and learned that they exploded on impact, the executives of Ford made a quick calculation - how much would it cost to fix the problem versus how many people were likely to die or be maimed and how much would those victims cost the company. Ford's calculation showed it would be cheaper to pay the victims than fix the car. In other words, based on their profit motive, they decided it would be better to let people

die than to spend a few dollars more to save the lives of their own customers. I would call that criminal, but no one from Ford went to prison. As it turned out, jurors who heard the Pinto case decided that Ford had a duty to its customers and that the company should be punished. That serious financial punishment forced Ford, through the use of punitive damages, to stop making exploding Pintos. We, as Americans, are safer as a result. The civil justice system can't put anyone in jail. Instead, it punishes those who act with disregard for our health and well-being. Not surprisingly, these large corporations want to do away with punitive damages. What is their argument then? They claim tort reform will lower insurance rates, but this is not true. In a startling admission, the American Insurance Association, a major insurance trade group, says lawmakers who enact tort reform should not expect insurance rates to drop. In their March 13, 2002, news release, the AIA said, "The insurance industry never promised that tort reform would achieve specific premium savings." Then what is it achieving? That's simple - greater profits for the insurance industry. Our civil justice system has been a powerful force for positive change. Our cars are safer, not just because of the Ford Pinto but because of seat belts, air bags and child safety seats. Our schools are safer because they are no longer insulated with asbestos. Children's pajamas are no longer flammable, and heavy machinery is less likely to take off a worker's hand or foot - all because of the civil justice system. The political arm of these big companies, the Chamber of Commerce, argues that lawsuits are costing corporations, stifling American creativity and ingenuity. This humorous argument ignores the strength of our economy for decades because, as a society, we have demanded high quality products at reasonable prices. Some doctors have been convinced by the insurance companies that provide them coverage that higher premiums must be charged to them because of medical malpractice lawsuits. Is there a malpractice crisis? The problem in South Carolina at least comes from three factors over which the overwhelming number of excellent doctors have had no control. First, the insurance companies have treated all doctors in a certain group - all surgeons, for instance - the same regardless of the number of verdicts against them. This is wrong. Just like bad drivers, bad doctors should pay more. Secondly, the insurance companies made poor investments with the premium money that was paid by doctors, causing the insurance reserves to dwindle. Instead of using the civil justice system as a scapegoat, maybe our good doctors should hire lawyers to fight for their rights against the insurance companies. There is a third problem that doctors freely admit has caused injuries and death. The HMOs and other managed care providers, which are nothing more than specialized insurance companies, repeatedly prevent our doctors from ordering the tests and providing the services that we need. These insurance companies are, in essence, practicing medicine without a license. Yet they have lobbied Congress and obtained complete immunity or protection from being sued. The civil justice system has been fighting to attack this immunity. Just imagine what would happen if other big companies got similar laws passed through tort reform. If the rest of us are responsible for our actions, why shouldn't the HMOs be responsible, too? If there is a malpractice crisis in our country, it is because medical malpractice is the eighth leading cause of death in our country, killing more people than AIDS, breast cancer or automobile accidents. Ask any doctor. Hospitals are dangerous places. In the end, it really comes down to who we

trust: those of you who give of your time to sit on juries and the judges who protect our rights, or the insurance companies and big corporations. I know which get my vote. Maybe the question would best be asked of the workers at Enron whose retirement accounts were used to buy Enron stock. The top executives at Enron sold their shares when the price started to go down, making millions, while the workers couldn't sell theirs. We all know the result. They lost their life savings. They have no money to hire lawyers to fight. But big companies are against class actions and the contingency fee systems, the only way most Americans can fight these big companies when many have been injured. Class actions let many citizens with small claims band together, share expenses and together fight for their rights. Contingency fees let them hire good lawyers who only get paid if they win. As you have quickly figured out, tort reform attacks both class actions and contingency fees because the large corporations don't want a level playing field. Much has been written about the now famous McDonald's coffee case. It is not my purpose to defend the verdict because I did not witness the trial nor sit on the jury, and neither did those who criticize the verdict. Some facts that have not been widely publicized include: -- The lady received third-degree burns over 16 percent of her body, requiring skin grafts and hospitalization for over than a week. -- McDonald's made a point of selling its coffee at temperatures unsafe to drink and above temperatures recommended by industry standards. -- McDonald's was aware of the problem because at least 700 of its customers had been hospitalized with second- and third-degree burns. -- The trial judge who called McDonald's conduct "callous" reduced the verdict from \$2.9 million to \$680,000. -- McDonald's earns \$1.3 million per day from coffee sales alone. Much misinformation is spread about the size and fairness of verdicts. No system is perfect, but ours has served us well for 225 years. We South Carolinians must use our independent judgment when on juries and in the voting booth to protect our civil justice system from the Fords, Firestones and Enrons who would change it to serve their own interests. Our families will be safer as a result.

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WHAT THEY'RE SAYING "The big companies want to deny you access to the court system, so they can increase their huge profits by making inferior products and providing inferior services ... ." PATRICK E. KNIE Member, board of governors, South Carolina Trial Lawyers Association