

Tort Reform will increase Tax Burden, Concludes Expert on Financial Aspects of Litigation Damages

by Richard G. Halpern

"Tort reform will have the direct effect of costing taxpayers money," asserts Richard G. Halpern, a nationally recognized authority on personal injury litigation and the financial needs of injury victims.

In an article published this month entitled "Tort Reform: Taxation Without Representation," Halpern writes that both advocates and opponents of tort reform, as well as the public, have failed to consider a critical dynamic.

"In today's America, grievous injuries to individuals result in costs to everyone in our society. Public policy can only adjust the relative distribution of those costs. The party that is least able to bear the economic burden of catastrophic injury is almost always the injured victim. A disproportionate number of plaintiffs in major personal injury and medical malpractice cases are in low income brackets to begin with, and all but the most affluent and thoroughly insured victims see their earning ability and financial resources wiped out by catastrophic injury. Absent a judgment or a settlement that shifts the financial burden to the defendant, the victim has no alternative but to rely on public assistance: welfare, Medicaid, food stamps. All come out of tax dollars. Our current system permits the financial burden of the injury to be shifted from the taxpayers (who had no part in causing the damages) to the defendants (who did cause the damages) in a successful tort action. The major thrust of tort reform is to prevent that transfer, or severely curtail it."

Halpern concludes that, "Fiscal conservatives, rather than supporting tort reform, should vehemently oppose it" because it will increase the burden on the taxpayers. "By restricting their own fiscal responsibility for the welfare of tort victims, [proposed tort reform measures would allow] wealthy corporations, insurance companies, and doctors... to shift the financial burden of caring for injured plaintiffs not to the plaintiffs themselves, who have no resources, but to the taxpaying public, through Medicaid and other public assistance."

Halpern first recognized this relationship between tort reform and the public tax burden in the course of his work as a settlement consultant in personal injury cases. "Negligent parties and their insurers often acknowledge their negligence, but try to negotiate inadequate damages with the argument that public assistance will pick up the rest of the tab. In states with caps on damages, this is happening as a matter of course. Voters haven't made the connection that by limiting damages, the most significant result isn't unclogging the courts, lowering insurance rates, lowering prices or any of the standard claims made by tort reform proponents. The most significant result is higher taxes (or greater budget deficits)."

Richard G. Halpern is president and founder of The Halpern Group, a litigation consulting firm that specializes in customizing financial settlements to the long term needs of injury victims. He is the author of the standard reference work, *Structured Settlements*, published by Matthew Bender, and is a frequent lecturer and writer on the topic. Halpern's article appears in the Winter issue of "The Settlement Strategist," a quarterly newsletter on settlement issues.

Complete text of the article in white paper format is available upon request.