

Commentary

Dan Popeo: Money for nothing: Judges and lawyers abuse our legal system

Dan Popeo, The Examiner
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WASHINGTON -

Hardly a day goes by that we don't read about another outrageous example of abuse by class-action lawyers. We all know the story: Lawyers collect millions in fees while the purportedly injured parties get next to nothing.

In one case after another, plaintiffs' lawyers plunder businesses and jeopardize employees' jobs and pensions with costly and ridiculous class-action lawsuits. If you're wondering just how ridiculous things have gotten, former Viet Cong and North Vietnamese soldiers are now part of a class-action against American chemical companies for exposure to Agent Orange during the Vietnam War. Oral arguments were held earlier this week in the U.S. Court of Appeals for the Second Circuit in New York.

What's next? Al Qaeda shakedown suits based on cruise missile injuries?

The litigation industry is operating in an endless bull market. In case you're not familiar with it, this is how the class-action game is played across the country:

First, trial lawyers work to convince the public that most corporations and business people are trying to steal from consumers or shareholders. Then activist groups and friendly state attorneys general are enlisted to charge companies with fraud and wrongdoing — even when there's no evidence or the "injury" is far-fetched or minuscule.

If evidence is lacking, simply manufacture it, as apparently was done when thousands of bogus silicosis lawsuits were filed in Texas, a scheme that is now the subject of a federal criminal investigation.

Next, get a lead plaintiff to serve as the front man for the lawsuit. Finally, shake down the targeted company for a settlement that ensures multimillion-dollar attorneys' fees are paid, even though class members get little or nothing. Then pay lucrative "referral fees" to ensure a steady supply of friendly "clients" for future cases.

These legal costs translate into higher prices on products, which are paid like an unfair hidden tax by families across the United States. America sorely needs to fix its dysfunctional tort system.

Fortunately, the American people are recognizing that consumers need protection from the predatory practices of their own lawyers. The Washington Legal Foundation (WLF) goes to court repeatedly to oppose unconscionable attorneys' fee awards. In fact, WLF is the only pro-free enterprise public interest law and policy center that represents class members in court and opposes the award of excessive attorneys' fees to plaintiffs' attorneys. In every instance, we face stiff resistance from the powerful trial lawyer establishment.

Most Americans recognize that our litigation system needs repair, but how can we effectively begin that process? Here are a couple suggestions:

» The failure of judges to control the antics of trial lawyers certainly contributes to our litigation crisis. We often overlook the role they play in applying laws and refereeing the litigation process.

Judges can start by reducing the pervasive incentives within our legal system that encourage litigation. They should scrutinize and reduce outrageous attorneys' fees instead of rubber-stamping such requests.

For example, an Illinois trial judge awarded \$1 million to the plaintiffs' attorneys while the members of the class itself were awarded a total of \$2,402 — in coupons — to be disbursed among the 1.5 million members.

America's federal and state judges have an opportunity to restore credibility to our rule of law. Judicial tort reform may not be a panacea, but it just might return some luster to our tarnished scales of justice.

» And why not consider a 15 percent excise tax on all lawyer revenue from any single lawsuit that results in attorney fees in excess of \$500,000? This litigation tax would impose no monetary cost whatsoever on clients, and the funds could be used to help improve the administration of justice.

For starters, we could fortify courthouse security and repair the physical infrastructure of America's aging courthouses, especially those at the state and local levels; improve our understaffed juvenile justice system; fix deteriorating jails; fund existing legal services programs; and help indigent crime victims receive compensation and important medical treatment.

Left unchecked, plaintiffs attorneys' aggressive and self-serving tactics will continue to punish American wealth creation, innovation and profit. Why are we alone, among the industrialized nations, allowing this to happen? It's about time we rein in the plaintiffs' bar and stop their assault on our free enterprise system.

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