**TORT REFORM**

- **Definition One:**
  Improve the “civil justice system [to] one that’s fair, efficient and predictable.”
  - Sherman Joyce, President
    American Tort Reform Association

- **Definition Two:**
  “Tort reforms are always aimed at curbing litigation by sick and injured consumers against corporations, hospitals and other wrong-doers.”
  - Emily Gottlieb, Deputy Director
    Center for Justice & Democracy
Legislative - Federal

- Med-Mal Proposed Damages Caps:
  - Non Economic: $250,000
  - Punitive: Greater of $250,000 or 2 times economic damages
- Apportions Liability
- Limits Attorneys’ Fees
- Establishes Limitation Period
- Passed in House/ Stalled in Senate
Primary Source of Legislative Tort Reform

South Carolina, Tennessee and Kentucky have No Damages Cap for Tort Reform

Legislative – Judicial


Types of Damages

- Compensatory: intended to make plaintiff whole
  - Economic
    - Readily measurable in economic terms (Hospital bills, lost income, property damages)
  - Non-Economic
    - “real” damages but not susceptible to easy calculation (pain and suffering, mental anguish)

- Punitive: intended to punish actual conduct and deter future conduct
Tort Reform Options:

**Damage Caps**

- **Punitive Damage Caps**
  - Absolute Cap (Virginia)
  - Multiple of Compensatory (Alabama, Florida, and North Carolina)

- **Non-Economic Damage Caps**
  - Absolute
  - Multiple of Economic Damages
Tort Reform Options: Statutes of Limitation and Repose

- Establish deadline to file lawsuit
- Shortened SOL for certain actions
  - Alabama has 1 year for medical malpractice vs. 2 year for general tort
- Remove Incompetency of Minors (Arkansas)
Tort Reform Options: Collateral Source Rule

- Prevents admissibility of collateral source payments to plaintiff (ex: insurance benefits)

- Many states have abolished collateral source rule (Alabama, Georgia, Kentucky)

- Others have required damages to be offset by collateral source payments (Tennessee)
Tort Reform Options: Joint and Several Liability

- No apportionment of fault
- Comparative fault of parties
- Comparative fault of non-parties
Tort Reform Options:

**Miscellaneous**

- Proof of qualified expert witness before filing lawsuits (Alabama, Arkansas, Mississippi)
- Good Samaritan Laws
- Increased Standard of Care
- Contingent Fee Limitations
Tort Reform: For or Against?

**Damage Caps**

**Arguments in Favor**
- Reduces likelihood of outrageous jury verdicts
- Lowers cost and uncertainty for doctors and insurance companies
- Increases likelihood of settlement
- Lowers concerns of doctors about practicing in a particular state or regions
- Results in reduction of defensive medication

**Arguments Against**
- They can leave severely injured plaintiffs less than “whole”
- Results in less adequate punishment for the most egregious cases
- Result in less safe medical practices
- No guaranty that savings to insurance companies will result in lower premiums
- Less likely that attorneys will represent plaintiffs with smaller but worthy claims
Tort Reform: For or Against?

Statutes of Limitation

**Arguments in Favor**
- Closure
- Witnesses & evidence are fresh
- Greater certainty for business
- Due diligence required by Plaintiff

**Arguments Against**
- Arbitrarily cuts off valid claims
- Not always easy to know your cause of action quickly
Tort Reform: For or Against?

Collateral Source Rule

Arguments in Favor
- Prevents double recovery or undeserved windfall
- Allows for more accurate computation of damages

Arguments Against
- Prejudice to jury by identifying insurance company
- Reward wrongdoers at expense of plaintiff and/or plaintiff’s insurance company
- Affects subrogation interest of insurance company
Tort Reform: For or Against?

Joint & Several Liability Reform

- **Arguments in Favor**
  - Defendants pay only “fair share”
  - Forces plaintiff to sue all responsible parties

- **Arguments Against**
  - Can leave plaintiff less than “whole”
  - Can result in unjust (unconstitutional ?) “punishment” of one defendant
Tort Reform: For or Against?

Miscellaneous Reforms

- Contingent Fee Limitations
- Higher Standard of Liability
- Higher Burden of Proof
Tort Reform: Does It Work?

American Medical Association:

- In Crisis: WA, OR, NV, WY, TX, AR, MO, IL, KY, OH, WV, PA, NY, NC, GA, FL

- Showing Problem Signs: AZ, UT, ID, MT, ND, SD, NE, KS, IA, TN, AL, SC, VA, RI, MA, NH, ME, VT, MI

- Currently OK: CA, CO, NM, LA, WI, IN
Tort Reform: Is It Necessary?
