

Is Common Sense Dead?

By Steven B. Hantler
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In 1996, Philip K. Howard published “The Death Of Common Sense,” which told the devastating effects of lawsuit abuse on our American way of life, much of which is instigated by trial lawyers who file frivolous or unwarranted lawsuits. That book, and Howard’s work since its publication, send a wake-up call to all Americans.

I’ve been thinking of that book this summer as I visit public swimming pools where diving boards have been removed out of liability fears, and when I hear stories of people afraid to umpire Little League games out of fear of being sued for a “bad call.”

Lawsuits, and the threat of lawsuits, are hurting our economy and distorting our way of life. Our quality of life is being diminished, and a good case can be made that liability fears have kept life-saving medical and safety innovations off the market.

Has America gone lawsuit crazy? Absolutely.

Consider just a few stories from this year. In New York City, a fifth grade teacher hurt his knee playing ball in the school gym. He sued – the floor “was slippery and not level.” Payoff: \$1.2 million. Last year the city paid \$500 million in claims, up from \$21.4 million in 1978.

In Greenwich, Conn., a man hurt himself while sledding on public property. He sued. Payoff: \$6 million. As a result town officials may ban sledding. The Christian Science Monitor reported in June that “increasingly, high schools and colleges are ‘grounding’ teams” as they battle lawsuits.

We might be appalled at these developments, but we should not be surprised. Our legal environment encourages Americans to sue. Common Good, a group chaired by Howard that keeps tabs on lawsuit abuse, cites one case in which a driver was involved in a crash with another driver who “was allegedly talking on a Cingular Wireless phone.” Driver number one launched a lawsuit – against Cingular.

We slip and fall, we sue. We eat too many French fries and gain too much weight, we sue. The road to personal wealth, many Americans have apparently concluded, leads straight through the courthouse door. The U.S. Chamber’s Institute for Legal Reform reports that in a typical year, a lawsuit is filed every 2 seconds. The Institute also reports that there are more lawyers in West Los Angeles than in all of Japan.

Lawsuit mania is costing us more than our diving boards. It is also costing us jobs, innovation, and it is driving medical costs through the roof and doctors out of practice.

Some economists estimate that the cost of "defensive medicine" – often unnecessary procedures that help insulate doctors from lawsuits -- now exceeds \$100 billion. That helps add, in some states, \$2000 to the cost of having a baby.

Lawsuit fears have stymied or destroyed promising research. According to an article in Science magazine, two companies delayed research on an AIDS vaccine, while another company abandoned a promising approach altogether, due to liability concerns. Volvo will not market its integrated child booster seat in the United States because of the threat of abusive lawsuits.

Yes, lawsuit abuse is a life and death issue. The big winner is of course the plaintiff's bar, dubbed "Trial Lawyers, Inc.," by the Manhattan Institute. According to the Manhattan Institute, Trial Lawyers, Inc., receives about \$40 billion in fees a year, which is 50% more than the sales revenue of Microsoft or Intel, and double that of Coca-Cola. Trial Lawyers, Inc., also greases the political skids in order to thwart reform. Its PAC contributed nearly \$3 million to Congressional campaigns in 2002, the Manhattan Institute says.

Polling shows that most Americans want significant legal reform. Most of us want our diving boards back and we want the search for AIDS vaccines and other life-saving innovations to accelerate. But until there is reform, that's simply not going to happen. It's time for the voting public to take a stand in favor of common sense.

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