



Pennsylvania Trial Lawyers Association

Talking Points on: The Big Lie on Frivolous Lawsuits

Introduction. There is no explosion of litigation in America or Pennsylvania. The facts show that the civil justice system really is the last resort for people who have been seriously injured by the negligence or gross misconduct of the most powerful forces in America: large corporations, big pharma, medical special interests and insurance companies. Many of the statistics which counter the myth of the litigation explosion come from the Bush Administration, which has helped to perpetuate the myth that there a flood of frivolous lawsuits that is hurting our economy.

Talking Points

- ❑ **Blind to the facts, big business and the insurance companies continue to drag out old myths about frivolous lawsuits, crippling verdicts and the attorneys involved in the civil justice system.**
- ❑ **The facts are that cases filed by attorneys are down, trials are down, and the average amount of verdicts are down.**
- ❑ **For example, in Philadelphia, supposedly one of the most sympathetic counties in the country for people filing lawsuits,¹ medical malpractice cases filed are down by 50%.**
- ❑ **This proves the case that the civil justice system is doing what it was designed to do: dealing with the worst instances of negligence and gross misconduct.**
- ❑ **And in the small number of cases where juries set punitive damages, they send a message that companies can't put products on the market until they know they are safe, that we need patient safety and that insurance companies cannot drag their feet in paying out valid claims.**

Top Five Stats

1. According to Bush Administration statistics, personal injury trials are way down and so are state trials.
2. Med Mal cases initiated in Philadelphia down 60%.
3. According to the Bush Administration, the number of large payouts in med mal cases dropped 56%.
4. 70% of federal judges surveyed say so called frivolous lawsuits are not a major problem, compared to 2% who said it was a large one.
5. Business leaders, in National Association of Manufacturers survey, ranked fear of litigation 10th out of ten.

¹ The infamous report of the American Tort Reform Foundation, "[Judicial Hellholes 2006.](#)" put Philadelphia on its hellhole watchlist. It said that the city has "long been known for high awards and its abysmal medical liability climate. Shortcuts used by Philadelphia courts strip asbestos defendants of their due process rights by having juries reach monetary awards before even finding that a defendant is responsible for the injury at issue." The facts prove out that ATRF should be on a watchlist for unthinkable think tanks for baseless propaganda.

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- In an age when information is so available to all of us, corporate America's big lie machine won't work any more.

The Statistics

Number of Cases Significantly Down

- In Pennsylvania, there was a 38 percent decline in med mal filings from the base years 2000-2002. [Administrative Office of Pennsylvania Courts, April 25, 2007](#)
- In Philadelphia, the state's largest judicial district, the decline has been over 50 percent. 2006 saw the fewest number of jury verdicts resulting in plaintiff awards. [Administrative Office of Pennsylvania Courts, April 25, 2007](#)
- The number of personal injury trials in federal court is down nearly 80% since 1985. *Bush Administration, Bureau of Justice Statistics*
- In 1985, 3,600 personal jury cases were decided by a judge or jury in U.S. District Courts. *By 2003, that number dropped to less than 800. Bush Administration, Bureau of Justice Statistics*
- The number of personal injury trials in state courts is down by 31.8% between 1992 and 2001. These statistics were compiled by the U.S. Justice Department in a study of the nation's 75 largest counties. *Bush Administration, Bureau of Justice Statistics*
- Med Mal cases initiated in Philadelphia is down by 60%, 1365 in 2002 to 504 in 2005 in Philadelphia, 2903 in 2002 to 1698 for Commonwealth in 2005, *Unified Pennsylvania Judicial System statistics*
- Automobile personal injury filings, which make up the majority of all tort claims, have fallen by 5% since 1993 and by 14% since their high in 1996. Examining the Work of State Courts, 2003, at 23, National Center for State Courts, 2004

Top Five Talking Points

1. All the stats about litigation are down—the number of filings and the amount of verdicts
2. In Philadelphia, filings for med mal cases are down by 50%.
3. The civil justice system is a vital tool to keep consumers safe.
4. Both judges and business leaders know that frivolous litigation is not a problem.
5. Guess who convinced then Governor George W. Bush to make tort reform one of his big issues? It was Karl Rove, then a consultant to tobacco giant Philip Morris.

Payouts in Personal Injury Cases Way Down

- The median payout for all personal injury cases dropped 56 percent between 1992 and 2001. The median inflation-adjusted payout in all tort (personal injury) cases dropped 56.3% between 1992 and 2001 to \$28,000. *Bush Administration, Bureau of Justice Statistics*

People Who Know—Judges, Business Leaders--Know There's No Problem

- In its 2007 report to the legislature, the Pennsylvania Supreme Court said that the system is much improved. "The number of med mal lawsuits has dropped by more than a third since the Court reformed the procedural rules governing venue and

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required certificate of merit by an expert in the appropriate field. Our latest figures show that the dramatically lower level of filings remains stable throughout 2006. Additionally, a number of Pennsylvania's medical centers have instituted malpractice mediation programs, often resulting in pre-litigation settlement of medical malpractice claims. These programs appear very positive in preventing expensive litigation. The University of Pittsburgh Medical Center, for example, has found that mediation both accelerates case resolution and lowers attorney costs. UPMC also reports that mediation has brought about improvements in patient care."

- A 2006 survey by the Federal Judicial Center - the research and education agency of the federal court system – shows most federal judges do not view "frivolous lawsuits" as a problem. Seventy percent of the 278 federal court judges who responded to the survey declared that groundless litigation is either a 'small problem' or a 'very small problem,' and 15 percent said it was no problem at all. *Federal Judicial Center study, 2005, published in Business Insurance, April 11, 2005*

- 91% of Federal Judges opposed the "Lawsuit Abuse Reduction Act," passed by the House of Representatives in the last Congress. *Federal Judicial Center study, 2005, published in Business Insurance, April 11, 2005*

- Business leaders put "fear of litigation" at the bottom of their list of concerns. The cost of non-wage compensation (e.g. health care) ranked number 1; taxes ranked 6th; litigation ranked 10th. *Study by National Association of Manufacturers, 2006*

- Judges already have the authority"—under "Rule 11"—to throw out a frivolous lawsuit and sanction the attorney before the case even gets started, as do Pennsylvania state court judges.

- Insurers like doing business in Pennsylvania so much so that the largest, State Farm, recently applied for a rate *decrease*. One reason cited for the positive industry climate is the state's "calm" in terms of legislation. [*Pittsburgh Tribune-Review, April 16, 2007*](#)

Who's Behind the Big Lie? Big Business and Karl Rove

- When George W. Bush was running for Governor of Texas in 1994, Karl Rove acknowledges that he "talked him into" adding tort reform to his campaign platform. At the time, Rove was a consultant to tobacco giant Philip Morris, one of the most litigious industries in the nation, having the most to gain from tort reform. *Atlanta Journal-Constitution, March 2, 2003.*

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Journalists Expose the True Meaning of "Frivolous"

Los Angeles Times Report (August 14, 2005)

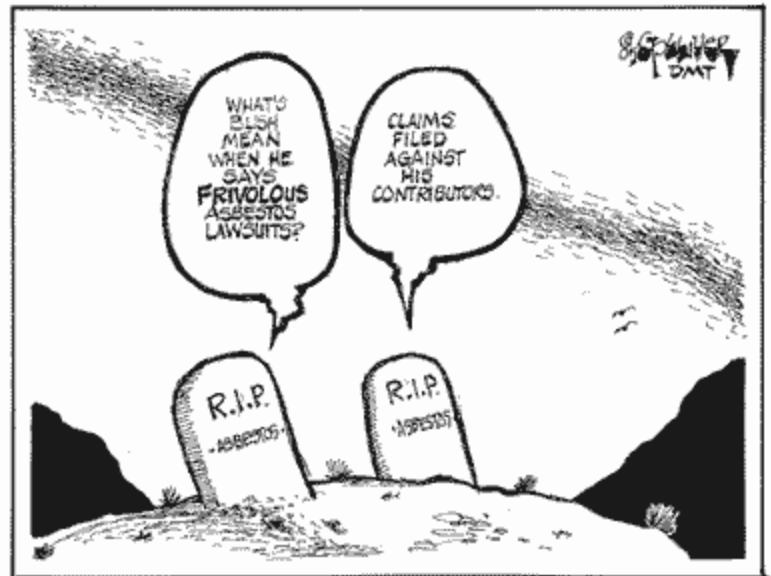
["Legal Urban Legends Hold Sway"](#)

"Tall tales of outrageous jury awards have helped bolster business-led campaigns to overhaul the civil justice system."

Palm Beach Post (April 21, 2005)

["A Lawsuit Myth Goes Up in Smoke"](#)

"Florida's 'notorious' tobacco lawsuit isn't an argument for tort reform. Lawyers in that case saved lives by taking on an industry notorious for hooking children on a deadly product, lying about it and leaving taxpayers to pick up the tab."



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USA Today Column (January 30, 2005)

["Legal Myths: Hardly the Whole Truth"](#)

"Have you heard about the guy who injured himself while using his lawn mower as a hedge clipper, and then won \$500,000 in a lawsuit against the lawn mower company? How about the woman who threw a soft drink at her boyfriend, slipped on the wet floor, and then won \$100,000 in a lawsuit against the restaurant? These are only two of the common examples of lawsuit abuses that are fueling the call for 'litigation reform.' They are also completely untrue — part of a growing collection of legal mythologies that are appearing widely in the national media...

"Both stories have been attributed to the Stella Awards, an annual listing of loony lawsuits. But the Stella Web site points out that they both are complete fabrications... Legal legends fit the stereotype of litigation so well that their falsity becomes secondary...

"There is, however, a great difference between using urban legends to dish on some actress and using them to make massive changes in the law. So as we begin this latest debate over tort reform, one small piece of advice: If you hear about a case that is almost too good to be true, it probably isn't."

Washington Monthly (October 2004):

["False Alarm: How the media helps promote the myth of America's 'lawsuit crisis'"](#)

"The current PR campaign by the insurance industry and other big corporations [to limit Americans' legal rights] is just the latest iteration of a long fight tracing back to the

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1950s. That was when plaintiffs' lawyers started breaking down some of the legal barriers that had long protected industry from responsibility for injuries to workers and consumers and opened up jury pools to make them more representative of the general public... Politically, it was a lot easier to attack juries and trial lawyers than the popular consumer, civil rights, and environmental protection laws they enforced—or the injured victims they represented... The plain fact is, most lawsuits are neither ridiculous nor lucrative."



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". . . the right of trial by jury shall be preserved . . ." Amendment 7, U.S. Constitution

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