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Series:	Porter, Richard W., Files
Subseries:	Subject Files

OA/ID Number:	21803
Folder ID Number:	21803-031

Folder Title:
South Dakota, Pierre 2/18/92

Stack:	Row:	Section:	Shelf:	Position:
G	34	6	6	3

SOUTH DAKOTA

9N MICKELSON

COS FRANK BROST
224-9809-(h)
605-773-3212 -
773-5702-direct(w) line

COS ASST - shelley stingley

House Rep Leader: Speaker Jim Hood
605-773-3830

Senate hdr (President)
WALTER MILLER
605-773-3661

Frank Brost
chief of staff to the Governor
State Capitol Building
500 E Capitol
Pierre, SD 57501-5070



OFFICE OF THE VICE PRESIDENT
WASHINGTON

February 14, 1992

PHOTO OPPORTUNITY WITH TONY BOUR

DATE: February 18, 1992
LOCATION: South Dakota State Capitol
TIME: 3:10 p.m.
FROM: Richard Porter *RWP*

I. PURPOSE

Build grass roots support for the Civil Justice Reform proposals by having a photo-op with a prominent local supporter of the reform.

II. BACKGROUND

Tony Bour is president of Starmark, which is a member of an association that is part of the Citizens for Civil Justice Reform Coalition.

III. PARTICIPANTS

Tony Bour

IV. SEQUENCE OF EVENTS

3:10 p.m. The Vice President enters the holding room and is met by Tony Bour for a photo opportunity.
3:15 p.m. The Vice President departs holding room

V. PRESS PLAN

None

VI. ATTACHMENTS

Biography of attendee



700 East 48th Street North • Sioux Falls, South Dakota 57104 • 605-335-8600

BIOGRAPHY

Tony Bour - Sioux Falls, South Dakota

President - StarMark, Inc. (Division of Masco Corp.)

26 Years in Cabinet Industry

- 13 Years - StarMark (Started Company in 1978)
- 3 Years - Decora
- 10 Years - Riviera

Wife - Judy, nine children.

Named South Dakota Small Business Person of the Year - 1985

Named Sioux Falls Business Citizen of the Year - 1990

College - University of Minnesota 1962-1966

Current Volunteer Activities

- Past President & Director - KCMA - Kitchen Cabinet Manufacturers Association
- Chairman & Director - Sioux Valley Hospital
- Director - South Dakota Symphony
- Director - Boy Scouts of America
- Director - First Bank of South Dakota
- Past Chairman - Sioux Falls Development Foundation
- Past Chairman - Forward Sioux Falls

StarMark, Inc. - Manufacturer of Kitchen & Bath Cabinetry

500 Employees

2 Plants - Sioux Falls, SD

1 Plant - Lynchburg, VA

Sales - \$40-50 MM



OFFICE OF THE VICE PRESIDENT
WASHINGTON

February 17, 1992

ADDRESS TO THE JOINT SESSION OF THE
SOUTH DAKOTA STATE LEGISLATURE

DATE: February 18, 1992
LOCATION: South Dakota State Capitol
Pierre, South Dakota
TIME: 3:20 p.m.
FROM: John Howard *JH*
Richard Porter *RWP*

I. PURPOSE

Address a joint session of the South Dakota legislature to encourage support for the Model State Punitive Damages Act and the Civil Justice Reform Model State Amendments, underscoring the Administration's commitment to competitiveness and civil justice reform.

II. BACKGROUND

This is your first opportunity to discuss civil justice reform in South Dakota. Governor Mickelson (R) is supportive of the need for reform, but the legislative session in South Dakota will end soon after your visit, preventing any action on the proposals until the next session.

Republicans control both houses of the State Legislature, but have only a one vote edge over Democrats in the State Senate. All of the State House members and half of the Senate are up for reelection in 1992.

Tort reform is not high on the agenda in South Dakota. The business community is focussing on workers' compensation reforms this year.

South Dakota has instituted some tort reforms in the past. Joint and several liability is limited, clear and convincing proof is necessary for punitive damages and discovery for punitive damages is prohibited until the plaintiff convinces the court there is a reasonable basis for the claim.

The Civil Justice Reform Model State Amendments is a ten point proposal for state legislative action that is very similar to the federal Access to Justice Act of 1992. It includes:

- 1) Pre-Complaint Notice of Claims
- 2) Multi-Door Courthouse
- 3) Core Disclosure and Discovery
- 4) Offer of Settlement
- 5) Pretrial Settlement Conference
- 6) Facilitating Summary Judgement
- 7) Expert Testimony
- 8) The Fairness Rule -- Attorney's Fees to the Prevailing Party
- 9) Accuracy in Pleading
- 10) Legislation and Regulation Drafting

The Model State Punitive Damages Act presents a six part proposal for state legislative action, including:

- 1) Pre-Complaint Notice of Claims
- 2) Eliminate Pleading for Specific Amounts of Punitive Damages
- 3) Establish "Clear and Convincing" Standard of Proof
- 4) Bifurcate Trials
- 5) Judicial Determination of Amount of Punitive Damages
- 6) Cap the Amount of Punitive Damages

III. PARTICIPANTS

The Vice President

Governor Mickelson

Members of the State House and Senate (150 attendees)

IV. EVENT OUTLINE

- | | |
|-----------|---|
| 3:15 p.m. | The Vice President departs Holding Room and proceeds to off stage announce position with Governor Mickelson. |
| 3:20 p.m. | The Vice President, accompanied by Governor Mickelson, proceeds to Speaker's podium and remains standing. Governor Mickelson introduces the Vice President. |
| 3:30 p.m. | The Vice President proceeds to podium and begins his remarks. |
| 3:45 p.m. | The Vice President concludes his remarks and proceeds to Holding Room. |

V. PRESS PLAN

Open Press Coverage

VI. ATTACHMENTS

Remarks (Prepared by John McConnell)

Biography of Governor Mickelson

Fact Sheet -- Model State Punitive Damages Act

Fact Sheet -- Civil Justice Reform Model State Amendments

VII. FOLLOW-UP ACTION REQUIRED

Thank You Notes To House and Senate Leaders

Identify Future Sponsors of Model Acts

BIOGRAPHICAL INFORMATION
GEORGE SPEAKER MICKELSON
GOVERNOR OF SOUTH DAKOTA

Innovation, flexibility and political courage have been the hallmarks of the administration of South Dakota Governor George S. Mickelson since he took office in January 1987, exactly 40 years after his father became Governor of South Dakota.

Shortly after Governor Mickelson took office, he began looking for opportunities to enhance South Dakota. He paved the way for the state's \$40 million revolving economic development fund, a year-long state centennial celebration, landmark environmental legislation, education and health care reform, water issues, and a statewide grass roots reconciliation program that will continue for the next century.

In November 1990, after a year of dedicated campaign work, Governor Mickelson was re-elected for another four years. Discussions on taxes filled Governor Mickelson's second term and, through it all, he's remained strongly committed to creating a revenue source that will permanently fund the state's education needs and its water development projects.

To provide a stable revenue source for local schools, Governor Mickelson paved the way for landmark legislation that dedicated 56.25 percent of the state's sales tax revenue to education. During the past three years, that legislation has generated record-setting increases in state aid for local schools.

Two years later, in 1991, Governor Mickelson introduced a modernization program that will have far-reaching effects on the state's K-12 education system. Key elements of the program include the creation of more "hands-on" learning, use of community resources, improved assessment of student knowledge and increased parental involvement. And, just a few months ago, in December of 1991, South Dakota was named as an AMERICA 2000 state.

South Dakota is one of a selected few states to receive a prestigious National Science Foundation grant to upgrade science and mathematics education. The grant money will fund development and implementation of statewide K-12 and post-secondary mathematics and science education programs.

Governor Mickelson firmly believes assistance for today's at-risk youth will prevent increases in tomorrow's prison numbers and social services program users. To that end, under Governor Mickelson's direction, a Youth At Risk Education Trust Fund was created to finance programs for potential dropouts, teenage parents and their children, delinquents, and single parents across South Dakota. A year after the fund's creation, in 1991, 18 grants were awarded for youth at risk programs.

Governor Mickelson has been able to reduce employer contributions to the state's unemployment trust fund by 40 percent. In fact, South Dakota is one of only three states with

fully solvent unemployment trust funds. And, in September of 1991, the state's unemployment rates were among the lowest in the nation--3.2 percent.

Governor Mickelson currently serves as co-chair on the National Governors' Association's Subcommittee on Health. He is also a former chairman of the Western Governors' Association.

There are politicians and there are courageous politicians. Governor Mickelson has not been afraid of controversy but, rather, has acted to provide what he believes is in the best interest of all South Dakotans.

February 13, 1992

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS
"AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA"

FACT SHEET

MODEL STATE PUNITIVE DAMAGES ACT

Punitive damages are punishments in the nature of fines awarded in civil cases after the injured party has been fully compensated. While the award of noncompensatory, punitive damages can serve a useful purpose in deterring and punishing extreme or egregious misconduct, the current methods for awarding punitive damages often impose punishment in a random and capricious manner. Unfortunately, the specter of unlimited punitive damages encourages parties to try cases needlessly and frustrates early settlement, thereby delaying justice and impeding the swift award of compensatory damages to injured victims.

This type of inordinate cost and delay in the civil justice system was one subject of an extensive study by the President's Council on Competitiveness, chaired by Vice President Dan Quayle. As a result, the Council developed 50 recommendations for improving the civil justice system. Reported in the "Agenda for Civil Justice Reform in America," the recommendations will make the justice system more fair and accessible for all citizens. Among the Council's recommendations is the reform of unlimited punitive damages.

The current common law approach of unlimited punitive damages leads to indiscriminate awards. If punitive damages are to be an effective deterrent, they must be imposed in a rational and predictable manner. The Council's recommendations for punitive damages reform are now embodied in a Model State Punitive Damages Act. The Model Act establishes reasonable and fair standards that will promote predictability while insuring that punitive damages remain an effective deterrent.

The Model Act presents a six-part proposal for state legislative action for punitive damages reform. Each component has been proven effective in one or more states, but no state has enacted a comprehensive reform package containing all suggested measures. The Model State Punitive Damages Act is a rational and consistent approach to punitive damages that includes:

Pre-Litigation Notice of Claims - In order to provide parties with the opportunity to settle their disputes at the earliest stages, the Model Act requires pre-complaint notice when punitive damages may be requested.

Pleading Punitive Damages - To prevent inclusion of punitive damages merely for publicity and to ensure that punitive damages remain as an issue at trial only if there is sufficient evidence, the Model Act eliminates from the complaint requests for specific dollar amounts.

Standard of Proof - Before an award of punitive damages, the plaintiff must establish, by clear and convincing evidence, that the defendant acted with malice - specific intent to cause serious injury or a flagrant indifference to the potential harm.

Bifurcated Trials - The jury would award punitive damages in a separate proceeding after liability has been determined. This insures that punitive damages are measured decisions, not the product of passion.

Judicial Determination of Amount - After the jury finds that punitive damages are appropriate, the judge draws upon his or her experience with such cases and determines the amount of punitive damages to be awarded.

Ceiling for Punitive Damages - No award of punitive damages would exceed the amount of total compensatory damages award to the plaintiff. Capping the amount of punitive damages at one times the actual damages serves as a deterrent while insuring that the injured party is fully compensated for his or her injuries.

The Administration is committed to the fair, efficient and early resolution of disputes. In addition to the Model State Punitive Damages Act, the Administration has made available Civil Justice Reform Model State Amendments for additional reform at the state level. On the Federal level, the Administration has applied the civil justice reform recommendations through Executive Order 12778 and has transmitted to Congress the "Access to Justice Act of 1992." The Administration is also proposing amendments to the Federal Rules of Procedure and Evidence through the Supreme Court's rulemaking process.

February 13, 1992

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS
"AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA"
FACT SHEET

CIVIL JUSTICE REFORM MODEL STATE AMENDMENTS

As part of the Administration's efforts to reform the civil justice system, Vice President Dan Quayle today presented the Civil Justice Reform Model State Amendments. The Amendments, which include both model legislation and model rules of procedure and evidence, would implement the recommendations proposed by the President's Council on Competitiveness Report, "Agenda for Civil Justice Reform in America."

Over the past 30 years, our legal system has become burdened with excessive costs and long delays. Many features of the current legal system no longer serve to expedite justice or to ensure fair results. Instead, overuse and abuse of the legal system impose tremendous costs upon American society. Higher costs mean higher prices for American consumers for everything from household goods to medical treatment. Higher costs also reduce America's ability to compete in the global marketplace.

To address these problems, the Council established a working group, chaired by Solicitor General Kenneth W. Starr. The resulting recommendations provide concrete steps that can be taken to restore our civil justice system as an institution that is fair to all and serves the ends of justice. The Administration's proposals seek to restore fairness to our judicial system and to eliminate the economic burden placed on American society by excessive litigation. None of the reforms impairs any substantive legal rights. Instead, they will help ensure that deserving victims actually receive their compensation earlier and with less expense.

The Problem: An Overburdened System

States reported the filing of 17,321,125 civil cases in 1989. Excessive and expensive civil litigation has overburdened our court system and imposed higher costs on small businesses, professionals, industry, and Government at all levels in the form of excessive legal fees, court costs, and wasted individual time and effort. Every year, our legal system costs Americans, directly and indirectly, an estimated \$300 billion.

While every State has its unique legal system, each can benefit by applying the principles of fair, efficient, and early resolution of disputes.

In order to reduce litigation costs, promote swifter justice, protect individual rights, and restore the integrity of our legal system, among the provisions of the "Access to Justice Act of 1992" are the following reforms:

Multi-Door Courthouse - To give consumers the opportunity to elect an effective alternative to court adjudication, courts would be required to foster alternative dispute resolution (ADR) procedures rather than trials to settle disputes. The parties would be free to select from different ADR procedures such as early neutral evaluation, traditional mediation, outcome determinative mediation, mini-trials, summary jury trials, and arbitration.

Core Disclosure and Discovery - Discovery consumes 80 percent of the time and money in litigation; it should be reformed to enable the parties to proceed to the central issues without extraneous, costly, and unproductive practices. The Model proposals will require automatic disclosure of basic or "core information" and mandate that the parties confer at discovery planning conferences. Discovery would also be partially governed by market incentives.

Expert Evidence Reform - Unlike ordinary witnesses who may offer only factual testimony, expert witnesses are allowed to testify as to their opinions. Therefore, it is necessary that the expert's opinion testimony be based on "widely accepted" theories instead of "junk science." The Model proposals will require courts to determine that proposed witnesses are legitimate experts in their field. The Model also bans contingency fees for experts.

The Fairness Rule - The United States is one of the few countries which does not allow the winning party to recover the costs of litigation. Instead, winners and losers alike pay their own legal fees. The "loser pays" rule would help those who have legitimate claims, particularly those who effectively barred from the courts because the costs of pursuing the claim would have exceeded the expected recovery. The legislation would limit the amount the loser must pay and specifies that courts should not require the loser to pay if circumstances make payment "unjust."

The Civil Justice Reform Model State Amendments also include other provisions to encourage settlement and reduce costs. This package of state legislation and rules changes, in conjunction with the Administration's proposed "Access to Justice Act of 1992" will greatly reduce the burdens of excessive, needless litigation while protecting and enhancing every American's ability to vindicate legal rights through our legal system.



OFFICE OF THE VICE PRESIDENT
WASHINGTON

February 14, 1992

Address the Industry and Commerce Association of South Dakota

Date: Tuesday, February 18, 1992
Location: Pierre River Center at the Ramkota Inn
Pierre, South Dakota
Time: 6:00 p.m.
From: Cecile B. Kremer *Cecile*
Assistant to the Vice President
for Scheduling and Public Liaison

I. PURPOSE

To participate in a photo opportunity/VIP Reception and to address a banquet in conjunction with "Business Day at the Legislature", sponsored by the Industry and Commerce Association of South Dakota.

II. BACKGROUND

The Industry and Commerce Association of South Dakota (ICA) is the product of a merger which took place in 1985 between the South Dakota State Chamber of Commerce and the South Dakota Manufacturers and Processors Association. With over 700 members, ICA is considered to be the "Voice of South Dakota Business" in the State. ICA's stated mission is "to create a favorable business, legal/regulatory, and quality of life environment within the State of South Dakota so that members of the association, and the state, can prosper."

As a source of information on all legislative issues impacting business in South Dakota, ICA hosts an annual "Business Day at the Legislature" -- the largest legislative event held during the State legislature's session.

You will participate in a Photo Opportunity/VIP Reception with 31 members of ICA's Board of Directors and their spouses. Following this, you will address the "Business Day at the Legislature" banquet. The ICA's officers are listed below. A list of other Photo Opportunity participants is attached.

Approximately 775 people will attend the banquet: 575 business people, 150 State Legislators and spouses, and 50 others including the Governor, members of his Cabinet and State Constitutional Officers.

Additional substantive briefing material will be provided by John Howard. Remarks will be provided by John McConnell.

III. PARTICIPANTS

Photo Opportunity/VIP Reception

The Vice President

✓ **George C. Whyte, ICA Chairman of the Board**

In addition to serving as Chairman of the Board of the ICA, Mr. Whyte is President and CEO of DAKOTAH, Inc., an employee-owned corporation which manufactures decorative pillows and bedcoverings in Webster, South Dakota. DAKOTAH employs over 300 people and has sales in excess of \$15 million. Whyte was twice named "Business Person of the Year" by the Small Business Administration.

✓ **Mike Fokken, ICA Chairman-Elect**

In addition to being ICA's Chairman-Elect, Mr. Fokken is Vice President of Manufacturing of Aaladin Industries, Inc., a manufacturer of high pressure cleaning systems in Elk Point, South Dakota. Fokken also served one term as Mayor of the City of Elk Point from 1986-1987.

✓ **Gary Loving, ICA Vice Chairman**

In addition to being ICA's Vice Chairman, Mr. Loving is General Manager of Homestake Mining Company in Lead, South Dakota. He is also a member of the Board of Directors of the South Dakota Mining Association.

Duane Butt, ICA Treasurer

In addition to being ICA's Treasurer, Mr. Butt is a Certified Public Accountant with McGladrey & Pullen in Pierre, South Dakota. He is a member of the American Institute of Certified Public Accountants and the South Dakota Society of CPAs. Mr. Butt and his wife own KOKK AM Radio station in Huron, South Dakota.

Tom Everist, ICA Immediate Past Chairman

In addition to being ICA's Immediate Past Chairman, Mr. Everist is President and CEO of L.G. Everist, Inc., a sand and gravel supply company in Sioux Falls, South Dakota. He also serves on the Board of Water and Natural Resources of South Dakota.

Julie Johnson, ICA President

Ms. Johnson has served as President of the Industry and Commerce Association of South Dakota since 1987. Prior to that time, she was Secretary of the South Dakota Department of Labor from 1985-1987, and Deputy Secretary of the same agency from 1983-1984.

List of 25 additional Board Members is attached

Address to "Business Day at the Legislature" Banquet

The Vice President
775 Attendees

IV. SEQUENCE OF EVENTS

THE VICE PRESIDENT arrives Lewis and Clark B Room and participates in Photo Opportunity.

THE VICE PRESIDENT concludes Photo Opportunity and participates in Mix and Mingle.

THE VICE PRESIDENT concludes Mix and Mingle and proceeds to Off Stage Announce Position, Ballroom.

THE VICE PRESIDENT proceeds onto dais and is seated (introduced by George Whyte).

THE VICE PRESIDENT proceeds to Podium and begins Remarks.

THE VICE PRESIDENT concludes Remarks and proceeds to motorcade for boarding

V. PRESS PLAN

Photo Opportunity/VIP Reception

Closed Press
Official Photographer

Address to "Business Day at the Legislature" Banquet

Open Press
Official Photographer

VI. ATTACHMENTS

List of ICA Board Members participating in Photo Opportunity.

VII. FOLLOW UP

THE VICE PRESIDENT will prepare a personal note to selected participants in the Photo Opportunity.

A follow-up letter signed by THE VICE PRESIDENT will be mailed to remaining Photo Opportunity participants.

Photos will be mailed as appropriate.

BOARD OF DIRECTORS OF THE
INDUSTRY AND COMMERCE ASSOCIATION OF SOUTH DAKOTA

Chairman of the Board

George Whyte
Chairman and CEO
Dakotah, Inc.

Chairman-Elect

Mike Fokken
Vice President/Mfg.
AaLadin Industries, Inc.

Vice Chairman

Gary Loving X
General Manager
Homestake Mining Company

Treasurer

Duane Butt, CPA
McGladrey & Pullen

Immediate Past Chairman

Tom Everest X
President
L.G. Everest, Inc.

President (Paid Staff)

Julie M. Johson
President
Industry & Commerce Association of South Dakota

Angus Anson X
Gen. Mgr./SD
Northern States Power Company

Mr. James Bell
(Retired Businessman)

Sharon Casey
Vice President
Casey Corporation

Paul Christen
President
The Bellefonte Company

Mr. Charles E. Clay
President
Fall River Abstract Company

Marty Cunningham
Dir/Sales & Plng.
Toshiba America Information Systems

Charles Ekstrum
President
First National Bank in Philip

Max Gonzenbach
Vice President
Valley Queen Cheese Factory

OK

Garry Jacobson
President
Malloy Electric

Martin Jorgensen
Partner
Jorgensen Farms

Aelred J. Kurtenbach X
President
Daktronics, Inc.

Daniel Landguth
Chair., Pres. & CEO
Black Hills Corporation

George Mitchell
President
First Western Bancorp, Inc

Mr. Rudy Nef
Partner
Valley Queen Cheese Factory

OK

Jeff Parker X
President
Parker Transfer & Storage Inc.

Don Peterson
President
Yaggies, Inc.

St.
Chi.

Mr. Jack G. Rentschler
Owner
Rentschler's Standard Truck Plaza

Tom Roby
Owner
Roby Agency

Mr. Jerry Simmons
President
The Idea Management Company

Jim Smiley X A+
VP & CEO/SD
US WEST Communications

Irvin Sterner
President
Custom Coils. Inc.

Norman Waitt, Jr.
President
Norman Waitt, Jr. Enterprises

Robert Wilkens
President & CEO
Northwestern Public Service

Ronald Williamson X A+
President & CEO
Citibank (South Dakota), N.A.

Charlotte Conway
Program Director
Industry & Commerce Association of South Dakota

TALKING POINTS FOR THE VICE PRESIDENT
CIVIL JUSTICE REFORM
INDUSTRY AND COMMERCE ASSOCIATION - VIP RECEPTION
PIERRE, SOUTH DAKOTA
FEBRUARY 18, 1992

We are still the world leaders in the marketplace.

- o **Our economy is more than twice as large as any competitor.**
- o **Still, we have some competitive disadvantages.**
- o **Some come from trading partners; other from inside.**
- o **Council on Competitiveness is an avenue to help regain edge.**

Unfortunately, we are also the world leader in lawsuits.

- o We have 70% of the world's lawyers and only 5% of its population.**
- o System costs an estimated \$300 billion dollars a year.**
- o This is a self-inflicted competitive disadvantage which saps the strength of our economy.**
- o Foreign companies have lower product liability costs. At 2.5% of U.S. GNP, the "tort tax" imposes an economic burden in the U.S. five times that in the U.K. and seven times that in Japan**
- o Some beneficial products never come to the market.**

The Federal government and other states are not as enlightened as South Dakota. South Dakota has reasonable liability laws -- but more can be done.

The Administration's Civil Justice Reform Proposals

- o **ADR - The Multidoor Courthouse**
- o **Discovery Reform**
- o **Expert Evidence - Widely Accepted Theories**
- o **Fairness Rule**
- o **Punitive Damage Reform**

We are committed to Civil Justice Reform.

- o **The President has signed an Executive Order.**
- o **"Access to Justice Act of 1992" sent to Congress**
- o **Amendments to Federal Rules unveiled this week.**
- o **Civil Justice Reform Model State Amendments and Model State Punitive Damages Act here today.**

We cannot do it alone. The "litigation explosion" isn't just in Washington. I'm here today to ask for your help with Civil Justice Reform.

- o Impact on state is great, as most cases are brought in state courts.**
- o South Dakota has reasonable laws, and they should be kept.**
- o Work to fight legislation creating unnecessary litigation.**
- o Remove the costs and delays in the system.**
- o Institute policy reforms -- product liability and medical malpractice.**

Please work hard to keep your system rational and to make Washington know of South Dakota's success.

uth Dakota State List

2 FEB 1992 1

ILING LABEL.....	FAMILIAR NAME	SPOUSE	FIRST TITLE.....	PHONE.....	D	CONTACT. Contact Info.....	CATEGORIES...
	NAME					DATE	
. Frances Cloud-Hawkins esident's Committe on the Arts SD	Frances		Committee Member			09/27/91 photo opportunity with Members of the President's Committee on the Arts in the DEOB office	ARTS/HUMAN
lene Ham uth Dakota GOP nrad-Ham & Associates 21 West Chicago pid City, SD 57702			National Committ	(605) 343-1600 (			POLITICAL COMM MEM
				(605) 348-1506 (			
e Honorable Bill Janklow 1 South Phillips ite 111 oux Falls, SD 57102	Bill			(605) 582-6439 H			POLITICAL
				(605) 336-3357 O			
				(605) 339-3357 F			
. Herb Jones uth Dakota GOP 1 E. Sioux Ave. erre, SD 57501			Executive Direct	(605) 224-7347 (			POLITICAL COMM MEM
e Honorable Orrin Juel x 270 ookings, SD 57006			Mayor				POLITICAL PERSONAL
. Charles Lien 90 and Deadwood Ave. pid City, SD 57702				(605) 342-7224			POLITICAL PERSONAL
ie Honorable and Mrs. George Michelso George and Li SD			Governor			10/20/91	GOP GOVS GOVS INTERGOVTL POLITICAL
ie Honorable George Mickelson ate of South Dakota ate Capitol Building 0 East Capitol	George	Linda	Governor	(605) 224-8055 H	07/29/91	VP sent typed 28th anniversary note and wrote at the bottom "George, keep up the great work."	POLITICAL INTERGOVTL GOP GOVS GOVS
				(605) 773-3213 O			
				(605) 773-4711 F			

South Dakota State List

2 FEB 1992 2

FILE LABEL..... FAMILIAR NAME SPOUSE FIRST TITLE..... PHONE..... D CONTACT. Contact Info..... CATEGORIES...
NAME DATE

Sioux Falls, SD 57501					
Honorable George Mickelson		Governor	(605) 773-3212 O	02/03/92 Attended Governors Reception at the Residence.	GOP GOVS
State of South Dakota					
300 East Capitol					
Sioux Falls, SD 57501					
Honorable Walter Miller	Walter	Lieutenant Governor	(605) 773-3661 O		POLITICAL
South Dakota			(605) 224-6768		COMM MEM
300 E. Capitol			(605) 773-4711 F		INTERGOVTL
Capitol Building					LT GOVS
Sioux Falls, SD 57501					
Don Peterson		Chairman	(605) 224-7347 C		POLITICAL
South Dakota GOP					COMM MEM
P.O. Box 1099					
Sioux Falls, SD 57501					

Post-It™ brand fax transmittal memo 7671		# of pages > 7
To Eric Joubert	From Julie Johnson	
Co. Vice Presidents Office	Co. ICA - South Dakota	
Dept.	Phone # 605-224-6161	
Fax # 202-456-7004	Fax # 605-224-7198	

SUPREME COURT LIBRARY
500 E. CAPITOL AVE.
PIERRE, SD 57501

10-01

NEGLIGENCE - DEFINITION

Under the law as applied to the present case, every person is responsible for injury to the person or property of another, caused by such person's want of ordinary care or skill, subject to the defense of contributory negligence. When used in these instructions, negligence means want of such ordinary care or skill. Such want of ordinary care or skill exists when there is a failure to do that which a reasonably prudent person would do or when there is done that which a reasonably prudent person would not do; this in each instance in the same or similar circumstances as existed in connection with the conduct which is under consideration.

Reference:

California Jury Instructions (BAJI 7th Ed.) 3.10
Illinois Pattern Jury Instructions (Civil), No. 10.01
Pattern Instructions for Kansas, No. 3.01
Minnesota Jury Instruction Guides, No. 101
Am Jur Pleading and Practice Forms, (Rev), Negligence, Forms 12 et seq.
57A Am Jur 2d, (Rev), Negligence, § 30
Restatement of the Law, 2d, Torts, §§ 282 et seq.
SDCL 20-9-1
Granflaten v. Rohde, 66 SD 335, 283 NW 153 (1938)
Tufty v. Sioux Transit Co., 69 SD 368, 10 NW 2d 767 (1943)
Daniels v. Moser, 76 SD 47, 71 NW 2d 739 (1955)
Bucholz v. City of Sioux Falls, 77 SD 322, 91 NW 2d 606 (1958)
Loonan Lumber Co. v. Wannamaker, 81 SD 51, 131 NW 2d 78 (1964)
Jorgenson v. Dronebarger, 82 SD 213, 143 NW 2d 869 (1966)
Nugent v. Quam, 82 SD 583, 152 NW 2d 371 (1967)
Northwestern Bell Telephone Co. v. Henry Carlson Co., 83 SD 664, 168 NW 2d 346 (1969)
Alley v. Slepman, 87 SD 670, 214 NW 2d 7 (1974)
Johnson v. Straight's, Inc., 288 NW 2d 325 (SD 1980)
Erickson v. Lavielle, 368 NW 2d 624 (SD 1985)
Kryger v. Dokken, 386 NW 2d 481 (SD 1986)
Lovell v. Oahe Elec. Co-op., 382 NW 2d 396 (1986)
Beyer v. Cordell, 420 NW 2d 767 (SD 1988)
Small v. McKennan Hospital, ___ NW 2d ___, SD Opinion filed March 8, 1989

Comment:

This instruction should not be used in malpractice cases. See Instruction No. 105.

Revised 1989

CONTRIBUTORY NEGLIGENCE

In such actions as this, and except as otherwise elsewhere stated in these instructions, a claimant for damages cannot recover if he was himself contributorily negligent. Such contributory negligence exists when such claimant was himself negligent as negligence has been defined in another instruction, and when such negligence of the claimant, combined with the negligence of another or others, causes the accident. Therefore, and if the jury should find such claimant himself negligent, it would not be contributory negligence unless the jury should also find that if it had not been for such claimant's negligence the accident would not have happened.

Reference:

California Jury Instructions (BAJI 7th Ed.) 3.50
Illinois Pattern Jury Instructions (Civil), No. 11.01
Minnesota Jury Instruction Guides, No. 125
Am Jur Pleading and Practice Forms, (Rev), Negligence, Forms 321 et seq.
57A Am Jur 2d, (Rev), Negligence, §§ 1108 et seq.
Restatement of the Law, Torts, §§ 462-465
SDCL 20-9-1
Campbell v. Jackson, 65 SD 154, 272 NW 293 (1937)
Haase v. Willers Truck Service, 72 SD 353, 34 NW 2d 313 (1948)
Starnes v. Stofferahn, 83 SD 424, 160 NW 2d 421 (1968)
Kubik v. Farmers Union Oil Co. of Reliance, 87 SD 417, 209 NW 2d 551 (1973)
Contributory negligence, assumption of the risk by gratuitous employee.
Alley v. Slepman, 87 SD 670, 214 NW 2d 7 (1974)
Smith v. Smith, et al, 278 NW 2d 155 (SD 1979) says contributory negligence
is not a defense in theory of strict liability.
Frazier v. Norton, 334 NW 2d 865 (SD 1983)
Berg v. Sukup Mfg. Co., 355 NW 2d 833 (SD 1984)
Bayer v. Cordell, 420 NW 2d 767 (SD 1988)
Safeco Ins. Co. of America v. City of Watertown, 529 F Supp 1220 (D.C. SD
1981)
Key: Negligence, 65, 141 (1-12)

Revised 1989

COMPARATIVE NEGLIGENCE

If the jury should find the plaintiff contributorily negligent, as elsewhere in these instructions defined, the plaintiff may still recover if the jury should find that such contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant. This rule has no application unless such contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant. If the jury considers that such contributory negligence of the plaintiff exceeds that which in the circumstances is slight negligence in comparison with the negligence of the defendant, the plaintiff cannot recover. If the jury should find that the plaintiff is contributorily negligent but under the rule just stated the plaintiff is still entitled to recover, then the damages to be awarded to the plaintiff must be reduced in proportion to the amount of the plaintiff's contributory negligence.

Reference:

- Am Jur Pleading and Practice Forms, (Rev), Negligence, Forms 352 et seq.
57 Am Jur 2d, Negligence, §§ 426-455
57B Am Jur 2d, (Rev), Negligence, §§ 1128 et seq.
SDCL 20-9-2. See annotation on this statute.
Friesse v. Gulbrandson, et al, 69 SD 179, 8 NW 2d 438 (1943)
Knapp v. Styer, 280 F 2d 384 (8th Cir. 1960)
Fryda v. Vesely, 80 SD 356, 123 NW 2d 345 (1963)
Grob v. Hahn, 80 SD 271, 122 NW 2d 460 (1963)
Nugent v. Quam, 82 SD 583, 152 NW 2d 371 (1967)
Crabb v. Wade, 84 SD 93, 167 NW 2d 546 (1969)
Finch v. Christensen, 84 SD 420, 172 NW 2d 571 (1969)
Smith v. Gunderson, 86 SD 38, 190 NW 2d 841 (1971)
Corey v. Kocer, 86 SD 221, 193 NW 2d 589 (1972)
Beck v. Wessel, 90 SD 107, 237 NW 2d 905 (1976) - Instructions not to be given unless some evidence of negligence on part of plaintiff.
Robinson v. Mudlin, 273 NW 2d 753 (SD 1979)
Thomas v. St. Mary's Roman Catholic Church, 283 NW 2d 254 (SD 1979)
Lewis v. Storms, 290 NW 2d 494 (SD 1980)
Stoltz v. Stonecypher, 336 NW 2d 654 (SD 1983)
Kallis v. Beers, 375 NW 2d 642 (SD 1985)
Lowell v. Oahe Elec. Co-op, 382 NW 2d 396 (SD 1986)
Zacher v. Budd Co., 396 NW 2d 122 (SD 1986)
Beyer v. Cordell, 420 NW 2d 767 (SD 1988)
Musilek v. Stober, _____ NW 2d _____, Opinion filed 1/25/89
Theunissen v. Brisky, _____ NW 2d _____, Opinion filed 3/29/89
Snodgrass v. Nelson, 369 F Supp 1206 (SD 1974)
Associated Engineers, Inc. v. Job, 370 F 2d 633 (8th Cir. 1966)
Provancial v. United States, 463 F 2d 760 (8th Cir. 1972)
Bartok v. Bell-Galyardt, 629 F 2d 523 (C.A. SD 1980)
Troy Cannon Const. Co. v. Job, 88 S. Ct. 59, 389 U.S. 823, 19 L.Ed. 2d 77 (1967)
Key: Negligence 136 (31)

ASSUMPTION OF RISK

It is the law that a person cannot be heard to complain of a dangerous condition, situation or conduct when such person with knowledge thereof voluntarily places himself or herself in a position or voluntarily continues in a position wherein he or she knows of hazard of injury or damage to himself or herself from such dangerous condition, situation or conduct. To support an assumption of the risk defense, the defendant must show that the plaintiff not only had knowledge of the existence of the specific risk involved and appreciation of its character, but also that he or she voluntarily accepted this risk. This requires the defendant to show that the plaintiff had a sufficient amount of time, knowledge and experience to make an intelligent choice. If this is shown, the plaintiff is deemed to have assumed the risk of injury or damage and is not entitled to any recovery.

Reference:

- Illinois Pattern Jury Instructions, No. 13.00-13.02
- Minnesota Jury Instruction Guides, No. 135
- Am Jur Pleading and Practice Forms, (Rev), Negligence, §§ 292 et seq.
- 57A Am Jur 2d, (Rev), Negligence, §§ 804-841
- 65 CJS, Negligence, § 174
- Restatement of the Law, 2d, Torts, § 496D
- Miller v. Stevens, 63 SD 10, 256 NW 152 (1934)
- Hall v. Hall, 63 SD 343, 258 NW 491 (1935)
- Bartlett v. Gregg, 77 SD 406, 92 NW 2d 654 (1958)
- Wentzel v. Huebner, 78 SD 481, 104 NW 2d 695 (1960)
- Miller v. Baken Park, Inc., 84 SD 624, 175 NW 2d 605 (1970)
- Kubik v. Farmers Union Oil Co. of Reliance, 87 SD 417, 209 NW 2d 551 (1973)
- Smith v. Community Co-operative Ass'n. of Murdo, 87 SD 440, 209 NW 2d 891 (1973)
- Thomas v. St. Mary's Roman Catholic Church, 283 NW 2d 254 (1979)
- Wolf v. Graber, 303 NW 2d 364 (SD 1981)
- Mayers v. Lennox Co-op, 307 NW 2d 863 (SD 1981)
- Underberg v. Cain, 348 NW 2d 145 (SD 1984)
- Berg v. Sukup Mfg. Co., 355 NW 2d 833 (SD 1984)
- Lovell v. Oahe Elec. Co-op, 382 NW 2d 396 (SD 1986)
- Ballard v. Happy Jacks Supper Club, 425 NW 2d 385 (SD 1988)
- Didier v. J.C. Penney Company, Inc., _____ F.2d _____ (8th Cir. 1989)
- Associated Engineers, Inc. v. Job, 370 F 2d 633, 639 (8th Cir. 1966)
- Keeler v. Bowie Machine Works, Inc., 501 F 2d 617, 621 (8th Cir. 1974)
- Key: Automobiles, 224(5), 224 (8); Negligence, 105

Comment:

The defenses of assumption of risk and of contributory negligence have often times been confused. Often, it makes little difference which the defense is called. Quoting Proser, the South Dakota court in the Bartlett

EXEMPLARY/PUNITIVE DAMAGES

You are instructed that in addition to any compensatory damages that you may award to the plaintiff, you may also, in your discretion, award exemplary or punitive damages if you find that the plaintiff suffered injury to his person or property through the oppression, fraud, malice or assault of another or an injury resulting from the wanton and reckless disregard of his rights.

The purpose of awarding exemplary or punitive damages is to set an example to potential wrongdoers and to punish the wrongdoer in this particular case.

Malice as used in this instruction is not simply the doing of an unlawful or injurious act, it implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations. Additionally, malice may be inferred from the surrounding facts and circumstances.

Furthermore, the burden of proof is on the plaintiff to establish all facts necessary to sustain a recovery for exemplary/punitive damages.

If you find that exemplary/punitive damages should be awarded, you must next determine the amount. In fixing the amount of exemplary/punitive damages, you should consider the following factors:

- (a) the amount allowed in compensatory damage,
- (b) the nature and enormity of the wrong,
- (c) The intent of the wrongdoer,
- (d) The financial condition of the wrongdoer, and
- (e) all of the circumstances attending the particular act involved, including any mitigating circumstances which may operate to reduce, but not defeat, the exemplary/punitive damage award.

Reference:

See reference material with Instruction 35-01.

Revised 1989

DUTY OF MANUFACTURER AND SELLER

Negligence is the failure to exercise ordinary care under the circumstances; that is, the failure to use such care as a reasonable person would use under the same or similar circumstances.

Kansas Pattern Instructions, No. 13.01
South Dakota Pattern Instructions, No. 10-01
Daniels v. Moser, 76 SD 47, 71 NW 2d 739 (1955)
Wittmeier v. Post, 78 SD 520, 105 NW 2d 65, 97 ALR 2d 853 (1960)
Loonan Lumber Co. v. Wannamaker, 81 SD 51, 131 NW 2d 78 (1964)
N.W. Bell Telephone Co. v. Henry Carlson Co., 83 SD 664, 165 NW 2d 346 (1969)
Johnson v. Straight's, Inc., 288 NW 2d 325 (SD 1980)
Key: Negligence, 3, 4

As applied to the manufacture, distribution and sale of a product, it means the failure of a manufacturer or seller to do something that a reasonably careful manufacturer or seller engaged in the same business would do, or the doing of something by a manufacturer or seller that a reasonably careful manufacturer or seller engaged in the same business would not do. The degree of care must be equal to the danger reasonably to be anticipated, measured by all the facts and circumstances.

Reference:

California Jury Instructions (BAJI 7th Ed.) 9.15 et seq.
Kansas Pattern Instructions, No. 13.01
63 Am Jur 2d, Products Liability (1984), § 1 et seq., 284 et seq.
65 CJS, Negligence, § 100
52 ALR 2d 117, 159
74 ALR 2d 1111
97 ALR 2d 811
16 ALR 3d 683
17 SD&L Rev 116, Products Liability: "Negligent Design of Farm Machinery: Duties and Defenses," by Donald E. Covey
28 SD&L Rev 259, "Reflections on South Dakota Trifurcated Law of Products Liability," by Robert Dugan
Restatement of the Law, 2d, Torts, § 395
Fish v. Kirlin-Gray Electric Co., 18 SD 122, 99 NW 1092 (1904)
Roster v. Inter-State Power Co., 58 SD 521, 237 NW 738 (1931)
Whitethorn v. Nash-Finch Co., 67 SD 465, 293 NW 859 (1940)
Ries v. Daffin Corp., 81 SD 134, 131 NW 2d 577 (1964)
Engberg v. Ford Motor Co., 87 SD 196, 206 NW 2d 104 (1973)
Smith v. Smith, 278 NW 2d 155 (SD 1979)
Jahnig v. Coisman, 283 NW 2d 557 (SD 1979)
McElhaney v. Eli Lilly & Co., 564 F Supp 265 (1983)
Key: Automobiles, 16; Negligence, 27, 139(1); Products Liability,

MANUFACTURER - SELLER LIABILITY (STRICT)

With respect to the claimed defective condition of the _____, you are instructed that subject to the defenses previously indicated, a manufacturer of a product is liable for damages proximately caused by its product

First, it was in a defective condition;

Second, the defective condition made the _____ unreasonably dangerous to the plaintiff use;

Third, the defect existed at the time it left the control of the defendant(s);

Fourth, the _____ was expected to and did reach the plaintiff user without any substantial change in the condition it was in when it left the control of the defendant(s); and

Fifth, the plaintiff user used the product in a manner in which the defendant(s) could reasonably anticipate it would be used.

You are instructed that a product is in a defective condition if it is not reasonably fit for the ordinary and reasonably foreseeable purposes for which it was sold or manufactured and expected to be used.

You are further instructed that even though the defendant(s) exercised all possible care in the manufacture of the product, if it was nonetheless in a defective condition unreasonably dangerous to users at the time it left the control of the defendant(s), it is liable for damages proximately caused thereby.

This rule applies only where the product is, at the time it leaves the manufacturer's hands, in a condition not contemplated by the ultimate consumer, in this case is _____, and which will be unreasonably dangerous to users. [In this regard, the manufacturer is not liable if he delivers a product in a safe condition and subsequent misuse or other causes make such product dangerous or dangerous.] A product is not in a defective condition when it is safe for normal use and handling or when the plaintiff is aware of the condition of the product when he complains.

Whether or not a duty has been violated depends upon the risks of the product, the dangers known or reasonably to be anticipated, and all of the surrounding circumstances.

If you find liability on the part of the defendant(s) on the grounds just stated, you shall not consider negligence of the plaintiff unless you find that the plaintiff's negligence was the sole proximate cause of plaintiff's damages.

OFFICE OF ATTORNEY GENERAL
STATE OF SOUTH DAKOTA
500 East Capitol
Pierre, South Dakota 57501-5070

FAX # (605) 773-4106



Date: 2/14/92

Time: 4:20 pm.

TO: Office of Vice President - Attn: Eric Jowett *John Howard*

PLEASE NOTIFY TELEPHONE NUMBER: 202-456-7044
(This is phone number for the FAX station where FAX is received so they have a phone number for contact.)

FROM: Larry Long

TELEPHONE: (605) 773-3215

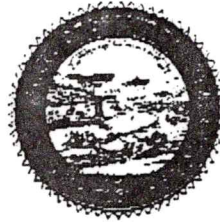
NUMBER OF PAGES 7, (INCLUDING TITLE PAGE).

In the event that you require further information or have difficulty with this transmission, please call

(605) 773-3215

Thank you.

Mark Barnett
ATTORNEY GENERAL



Larry Long
CHIEF DEPUTY

Office of the Attorney General
STATE OF SOUTH DAKOTA

February 14, 1992

MEMORANDUM

TO: Office of the Vice President
Attn: John Howard
Eric Jowett

FROM: Lawrence E. Long, Chief Deputy Attorney General

RE: South Dakota's current statutes regarding civil
justice reform and punitive damage reform

At your request, I have reviewed the fact sheet dated February 13, 1992, regarding Civil Justice Reform Model State Amendments and the Fact Sheet dated February 13, 1992, regarding Model State Punitive Damages Act. You have asked for a memo on the current status of South Dakota law in these two areas. I will address each separately.

CIVIL JUSTICE REFORM MODEL STATE AMENDMENTS

Generally, South Dakota's Rules of Civil Procedure are identical to the Federal Rules of Civil Procedure. South Dakota has also adopted almost verbatim the Federal Rules of Evidence.

Multi-door courthouse:

In the area of alternate dispute resolution, South Dakota has addressed these areas in a rather piecemeal fashion. South Dakota has a small claims court proceeding which allows contested disputes of small claims of a contractual or tortious nature where the amount in controversy does not exceed \$2,000. This has traditionally been a very effective way of resolving minor disputes. South Dakota at SDCL 21-25A and 21-25B has provided a voluntary procedure for arbitration of medical malpractice claims and a procedure for enforcement of any arbitration agreement or award.

Vice President
February 14, 1992
Page 2

SDCL 54-13 is a mandatory mediation process as a condition precedent to foreclosure of mortgages on farm and ranch land in South Dakota. South Dakota has not adopted any comprehensive, mandatory alternative dispute resolution of the type contemplated by your model act.

Core disclosure and discovery:

As I previously stated, South Dakota's civil procedure rules are virtually identical to the Federal Rules of Civil Procedure. South Dakota is not currently contemplating any streamlining of the rules of discovery.

Expert evidence reform:

South Dakota has adopted virtually verbatim the Federal Rules of Evidence and we operate with the same advantages and disadvantages as the federal courts regarding the rules of conduct regarding expert witnesses. South Dakota is not currently contemplating any major reforms in that area.

The fairness rule:

The general rule in South Dakota is that everybody pays their own lawyers unless there is a specific statute which authorizes the awarding of attorney's fees. This is the standard American rule. There are in South Dakota several areas where the court may make discretionary awards of attorney's fees on behalf of the prevailing party and against the losing party. The standard areas are domestic relations and foreclosure of mortgage actions. There is also an award for attorney's fees in the collection of small open accounts which do not exceed \$2500. By state law, the prevailing plaintiff in an antitrust and taxpayer actions may be awarded attorney's fees. There are other miscellaneous areas under South Dakota law where attorney's fees can be awarded against the losing party. Legislation most comparable to the proposed fairness rule would be SDCL 15-17-35, a copy of which is attached for your information. The statute allows the awarding of all costs to a prevailing defendant if the court determines that the litigation brought against the defendant was frivolous or brought for malicious purposes. Attorney's fees are specifically included as costs in the statute.

Vice President
February 14, 1992
Page 3

PUNITIVE DAMAGES REFORM

Your fact sheet indicates several areas which have been suggested for reform in the punitive damages area. Again, South Dakota has the standard, general rule on punitive damages. The rule is found at SDCL 21-3-2, a copy of which is attached. The statute states as follows: "In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, or any case of wrongful injury to animals, being subjects of property, committed intentionally or by willful or wanton misconduct, in disregard of humanity, the jury, in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant." This statute was adopted in 1877 and has not been amended.

I will deal with your six basic categories separately.

Prelitigation notice of claims:

South Dakota has not addressed the topic.

Pleading punitive damages:

South Dakota's practice rules require the specific pleading of punitive damage claims; however, there is nothing in South Dakota law which requires the elimination from the complaint of specific dollar amount requests for punitive damages.

Standard of proof:

The standard of proof for punitive damages is set out in SDCL 21-3-2 previously provided to you. South Dakota has no statutory burden of proof regarding punitive damages.

Bifurcated trials:

South Dakota has not addressed bifurcated trials for punitive damages but has enacted some legislation in this regard. That legislation is found at SDCL 21-1-4.1, a copy of the statute is attached for your reference. Essentially, if punitive damages are requested, the plaintiff must make a

Vice President
February 14, 1992
Page 4

threshold showing and convince the court, based upon clear and convincing evidence, that he has a reasonable basis for submitting a punitive damage claim before he will be allowed to engage in discovery related to the punitive damage claim.

Judicial determination of amount:

Under current South Dakota law, particularly SDCL 21-3-2 which has previously been provided to you, punitive damages are awarded by the jury.

Ceiling for punitive damages:

South Dakota has not addressed this issue except in the context of small claims court proceedings and medical malpractice claims and claims arising out of rodeo accidents. Punitive damages are generally excluded from a small claims court proceeding with the exception of landlord-tenant disputes, wage and hour claims. South Dakota has a statute which puts a million dollar cap on damages which can be awarded in a medical malpractice claim. Presumably such claim would include punitive damages. A similar cap exists for claims arising out of rodeo events with a total cap of \$100,000.

LEL:jp

Attachments

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the court shall direct the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense.

Source: CCivP 1877, § 391; CL 1887, § 5201; RCCivP 1903, § 427; RC 1919, § 2619; SDC 1939 & Supp 1960, § 23.1811.
See Cal Code Civ Proc, § 1031.

Personal Liability on Judgment Against Estate.

Where judgment was against executor of estate of decedent for costs, but such costs were not by the judgment made chargeable upon the estate, the executor was personally liable for such costs. *McCarthy v. Speed* (1903) 16 SD 584, 94 NW 411.

Collateral References.

Attorney employed by estate attorney without consent of executor or administrator, liability of estate for legal services of, 83 ALR 2d 1160.

Letters of administration, allowance out of decedent's estate for costs and attorneys' fees incurred by parties interested in granting or revoking letters of administration or letters testamentary, 90 ALR 101.

Personal liability of executor or administrator for fees of attorney employed by him for the benefit of the estate, 13 ALR 3d 518.

Sanity, allowance of attorney's fee out of estate of alleged incompetent for services in connection with inquisition into, 22 ALR 2d 1438.

Surcharging account, right of executor,

administrator, or testamentary trustee to allowance of attorneys' fees and expenses incident to controversy over surcharging his account, 101 ALR 806.

Trust administration expenses such as court costs, costs of litigation, bond premiums, attorneys' fees, etc., as payable from income or corpus, 124 ALR 1183.

Trust, allowance of costs in litigation by beneficiary respecting trust, on theory that fund was created or preserved, 9 ALR 2d 1150.

Voting trust, costs in action for removal of trustee of, 84 ALR 2d 1142.

Will contest, attorney's fees and expenses incurred by personal representative in successful defense of will contest as chargeable to the residuary estate or as apportionable among beneficiaries, 20 ALR 2d 1226.

Will, right to allowance out of estate for attorneys' fees incurred in attempt to establish or defeat will, 40 ALR 2d 1407.

Unsuccessful attempt to uphold particular provisions of will, right of executor to an allowance for expenses incurred in, 7 ALR 1499.

Unsuccessful effort to claim property for the estate, right of personal representative to allowance, out of property involved, for attorneys' fees or other expenses incurred in, 126 ALR 1349.

15-17-34. Settlement of jury case — Expenses of requiring jury to report. If a civil jury case is settled within forty-eight hours (or such other time as may be fixed by the court) of the time the jury is scheduled to report, the trial court may impose against any or all parties the expenses of requiring the jury to report, together with such other terms as may be appropriate.

Source: Supreme Court Rule 80-10.

15-17-35. Frivolous and malicious actions — Plaintiff liable for costs and attorney fees. If a cause of action against any person is dismissed, and the court determines that the cause of action was frivolous or brought for malicious purposes, the court may order the plaintiff to pay any or all costs incurred by the person in defending the cause of action, including reasonable attorney's fees.

Source: SL 1984, ch 157.

Invitation to Litigation?, 28 SD LRev 467 (1983).

Subsurco, Inc. v. B-Y Water District: Apply-

ing the Diminution in Value Measure of Damages for Breach of Rural Water Construction Contracts, 29 SD LRev 445 (1984).

21-1-4. Exemplary or penal damages only as provided — Interest on damages. The general remedy by damages does not include exemplary or penal damages nor interest on any damages unless expressly provided by statute.

Source: CivC 1877, § 1983; CL 1887, § 4616; RCivC 1903, § 2328; RC 1919, § 2000; SDC 1939 & Supp 1960, § 37.1705.

See Cal Civ Code, § 3357.

Cross-References.

Interest payable on damages, §§ 21-1-11 to 21-1-13.

Restriction of exemplary or punitive damages in small claims proceedings, § 15-39-45.

Collateral References.

Damages ⇐ 66-69.

22 Am Jur 2d, Damages, §§ 179-194, 236-268.

25 CJS, Damages, §§ 51-54, 117-127.

Actual damages as a necessary predicate of punitive or exemplary damages, 33 ALR 384; 17 ALR 2d 527.

Allowance of prejudgment interest on builder's recovery in action for breach of construction contract, 60 ALR 3d 487.

Allowance of punitive damages for invasion of common-law right in literary property, 40 ALR 3d 248.

Apportionment of punitive or exemplary damages as between joint tortfeasors, 20 ALR 3d 666.

Arbitrator's power to award punitive damages, 83 ALR 3d 1037.

Assault, punitive or exemplary damages for, 16 ALR 771; 123 ALR 1115.

Attorneys' fees or other expenses of litigation as element in measuring exemplary or punitive damages, 30 ALR 3d 1443.

Claim for punitive damages in tort action as surviving death of tortfeasor or person wronged, 30 ALR 4th 707.

Criminal liability as barring or mitigating recovery of punitive damages, 98 ALR 3d 870.

Death, exemplary or punitive damages as recoverable in action for death, 94 ALR 384.

Equity court's power to award exemplary or punitive damages, 48 ALR 2d 947.

Financial resources, admissibility on defendant's behalf, as matter in mitigation of punitive damages, of evidence as to his lack of, 79 ALR 3d 1138.

Financial worth of one or more of several joint defendants as proper matter for consideration in fixing punitive damages, 9 ALR 3d 692.

Motor vehicles, excessiveness of punitive or exemplary damages for personal injury or death from operation of motor vehicle, 62 ALR 2d 839.

Motor vehicles, right to punitive or exemplary damages in action for personal injury or death caused by operation of automobile, 62 ALR 2d 813.

Recovery of exemplary or punitive damages from municipal corporation, 1 ALR 4th 448.

Right to interest, pending appeal, of judgment creditor appealing unsuccessfully on ground of inadequacy, 15 ALR 3d 411.

Running of interest on judgment where both parties appeal, 11 ALR 4th 1099.

Sales, punitive or exemplary damages in action in tort based on fraudulent sale, 165 ALR 614.

Law Reviews.

B&M Homes, Inc. v. Hogan: A Breakthrough in the Law's Reluctance to Award Damages in Contract for Mental Anguish and Other Non-Economic Detriment, 26 SD LRev 48 (1981).

21-1-4.1. Discovery and trial of exemplary damage claims. In any claim alleging punitive or exemplary damages, before any discovery relating thereto may be commenced and before any such claim may be submitted to the finder of fact, the court shall find, after a hearing and based upon clear and convincing evidence, that there is a reasonable basis to believe that there has been willful, wanton or malicious conduct on the part of the party claimed against.

21-3-2

JUDICIAL REMEDIES

or mental anguish following breach of contract or tort, 122 ALR 1486.

Mental distress from pregnant woman's apprehension or realization of injury to or loss of child, as element of damages in action for personal injury, 145 ALR 1104.

Nuisance as entitling owner or occupant of real estate to recover damages for personal inconvenience, discomfort, annoyance, anguish, or sickness, distinct from, or in addition to, damages for depreciation in value of property or its use, 142 ALR 1307.

Pension, receipt of public or private pension as affecting recovery against a tort-feasor, 75 ALR 2d 885.

Physical condition of plaintiff in personal injury action as affecting right to be present at trial, 27 ALR 4th 583.

Proof of injury to reputation as prerequisite

to recovery of damages in defamation action — post-Gertz cases, 36 ALR 4th 807.

Proximate cause: liability of tortfeasor for injured person's subsequent injury or reinjury, 81 ALR 3d 1000.

Recovery for loss of consortium for injury occurring prior to marriage, 5 ALR 4th 300.

Separate trial of issues of liability and damages in tort, 85 ALR 2d 9.

Tort immunity of nongovernmental charities — modern status, 25 ALR 4th 517.

Law Reviews.

The Weathermaker and the Law, 1 SD LRev 105 (1956).

A Cause of Action for Ignominious Birth? 11 SD LRev 180 (1966).

21-3-2. Punitive damages in discretion of jury. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, or in any case of wrongful injury to animals, being subjects of property, committed intentionally or by willful and wanton misconduct, in disregard of humanity, the jury, in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant.

Source: CivC 1877, §§ 1946, 1974; CL 1887, §§ 4580, 4607; RCivC 1903, §§ 2292, 2319; RC 1919, §§ 1965, 1991; SDC 1939 & Supp 1960, § 37.1902.

See Cal Civ Code, § 3294.

Cross-References.

Interference with lawful hunting or fishing, punitive damages authorized, § 41-1-10.

Minors, restriction on liability for punitive damages, § 26-1-4.

Persons of unsound mind, restriction on liability for punitive damages, § 27A-2-5.

Abuse of Process.

Creditor who knowingly levied against exempt property of judgment debtor could be held liable for punitive damages resulting from conversion as well as interest; fact that damages were awarded by court on directed verdict rather than by jury was inconsequential and court could properly include a fixed amount as interest where length of time was certain. *Roberts v. Shaffer* (1916) 36 SD 551, 156 NW 67.

Surety on attachment bond is not liable in damages for wrongful attachment except upon showing that attachment was malicious and without probable cause. *Slaughter v. Nolan* (1918) 41 SD 134, 169 NW 282.

Upon showing of malice attending wrongful attachment, plaintiff may recover in separate action for damages in addition to action on at-

tachment bond. *Kirby v. First Nat. Bank of Vermillion* (1936) 64 SD 404, 266 NW 883.

Farm tenant was entitled to exemplary damages against landowner for wrongfully delaying tenant's livestock auction where landowner unjustifiably filed agister's lien against livestock when amounts tenant owed him were not for pasturing cattle but were for hay sold to tenant and rental on land; malice was sufficiently established on evidence that before sale, landowner threatened to tie up sale unless tenant paid and, in securing agister's lien, misrepresented true facts to attorney who drew lien. *Hannahs v. Noah* (1968) 83 SD 296, 158 NW 2d 678.

Alienation of Affections.

Award of more than \$6000 for both compensatory and exemplary damages in alienation of affections case was not excessive. *Morey v. Keller* (1957) 77 SD 49, 85 NW 2d 57.

Amount of Punitive Damages.

Punitive damage award of \$7,000 for the intentional and malicious destruction of fence valued at approximately \$200 was not excessive. *K & E Land and Cattle, Inc. v. Mayer* (1983) 330 NW 2d 529.

Assault and Battery.

Court properly submitted issue of exemplary damages in action for assault and battery; mal-

SOUTH CAROLINA

CONVENES JANUARY 14 -- ADJOURNS JUNE 4

Mr. Edward E. Pollakoff
Steering Committee Chairman
South Carolina Civil Justice Coalition
Nelson, Mullins, Riley and Scarborough
P.O. Box 11070
Columbia, South Carolina 29211
803-793-2000

The South Carolina Civil Justice Coalition will maintain a vigilant watch for any opposition bills this year, according to Ed Poliakoff. While much of the legislature's attention will be focused on automobile insurance reform, the SCCJC remains in a watchful position. There is widespread concern about an unfavorable comparative negligence bill that was carried over from last year's session. As you may recall, last year's legislation would have codified the South Carolina Supreme Court decision abolishing contributory negligence for the first time. The South Carolina Law Institute and other tort reform opponents had amended the bill to provide for the adoption of pure comparative negligence. The bill is currently in the Judiciary Committee.

SOUTH DAKOTA

CONVENES JANUARY 7 -- ADJOURNS MID-MARCH

Ms. Julie Johnson
Industry and Commerce Associations of
South Dakota
P.O. Box 190
Pierre, South Dakota 57501
605-224-6161

Fortunately, South Dakota enjoys reasonable liability laws so that most of the tort reform agenda is not of concern here. Julie Johnson says, however, that the opposition can again be expected to lobby for passage of protective orders legislation.

The Industry and Commerce Associations will focus on workers' compensation this year. Their proposed legislation is a workers' compensation package will include: a limit on the punitive damages assessed against an insurer that has wrongfully failed to pay a claim; ways of addressing fraudulent claims other than through the criminal justice system; limits on attorneys' fees in workers' compensation cases; and methods of expediting claims to keep transactional costs down.

SUBJECT INDEX - Civil Procedure

Page 100

- SB 121. An Act to require perpetual care cemetery organizations to prepare financial reports and to publish notice of such report.
- SB 228. An Act to provide for the disclosure of certain violations of the law by solid waste facility permit applicants.
- SB 240. An Act to provide for a gambling problem referral program.
- SB 257. An Act to provide for the regulation of third party administrators.
- HB 1096. An Act to exempt certain corporations and limited partnerships from the requirement to file a business name with the county register of deeds.
- HB 1103. An Act to revise the publication requirements for the sale of surplus property.
- HB 1105. An Act to provide for registration of persons who have committed sex offenses against minors.
- HB 1120. An Act to require that the owner of the premises covered by an alcoholic beverage license application be notified of such application.
- HB 1137. An Act to revise certain provisions concerning video lottery machines.
- HB 1154. An Act to revise the notice of township meetings.
- HB 1166. An Act to revise certain provisions regarding public notice for sanitary district trustee elections.
- HB 1192. An Act to provide for the notification of certain lessees regarding the sale of state railroad property.
- HB 1223. An Act to provide for the preparation and distribution of public information about certain ballot issues.
- HB 1235. An Act to require the department of game, fish and parks to notify local land owners prior to purchasing land.
- HB 1343. An Act to appropriate money for family practice residency programs and to require an annual report.
- Probate, Wills & Succession**
- SB 167. An Act to allow registering ownership of certain securities in beneficiary form.
- HB 1133. An Act to revise the method of transferring intangible assets or securities of a decedent.
- HB 1317. An Act to allow the opening of a safe deposit box of a decedent without the county treasurer present.
- Small Claims Procedure**
- SB 100. An Act to raise the limit on small claims actions.
- SB 101. An Act to allow exemplary or punitive damages against the perpetrator of grand theft or petty theft for the benefit of the person whose property is stolen under the small claims procedure.
- Statutes of Limitation**
- SB 16. An Act to limit the time for filing of an application for disability benefits with the South Dakota retirement system.
- HB 1068. An Act to revise the process for filing claims to the subsequent injury fund and to provide a continuous appropriation of that fund.
- HB 1160. An Act to allow execution of a judgment for as long a time period as the judgment remains in effect.
- HB 1253. An Act to revise the procedures which allow tuition to be waived by mutual agreement of school boards.
- Torts, Liabilities & Damages**
- SB 4. An Act to clarify certain provisions relating to the correction of erosion damage.

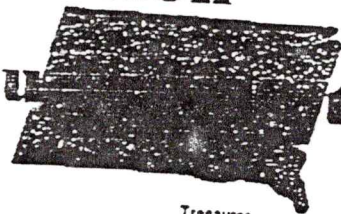
- SB 9. An Act to allow illegally employed minors to recover either under worker's compensation or at common law.
- SB 101. An Act to allow exemplary or punitive damages against the perpetrator of grand theft or petty theft for the benefit of the person whose property is stolen under the small claims procedure.
- SB 117. An Act to regulate radioactive waste defined by the nuclear regulatory commission as below regulatory concern.
- SB 141. An Act to clarify the procedure for seeking certain judicial remedies against the state.
- SB 154. An Act to define a program of drug utilization review; to authorize pharmacists to offer drug information to patients; to establish conditions for review and release of patient information and to provide for rule-making authority and immunity.
- SB 157. An Act to establish the crime of stalking and to provide penalties therefor.
- SB 160. An Act to require the use of a safety seat belt system in passenger vehicles.
- SB 175. An Act to limit the liability of any county official or employee and to provide for the payment of certain court costs.
- SB 183. An Act to protect persons who construct certain fences across navigable streams from liability and to revise certain rule-making authority relating to such fences.
- SB 216. An Act to abrogate the common law doctrine of champerty.
- SB 236. An Act to prohibit a cause of action for the breach of a promise of marriage.
- SB 252. An Act to add a member to the crime victims' compensation commission and to provide for a resolution if the commission is equally divided.
- SB 254. An Act to establish a procedure for investigating fraudulent worker's compensation claims; to require a causal connection between the injury and the employment in worker's compensation claims; to limit certain permanent total disability worker's compensation benefits; to define community for purposes of the odd-lot doctrine; to require that lump sum settlements be in the best interests of the employer and to allow the secretary of labor to accept funds for the purpose of computerization.
- HB 1049. An Act to regulate certain transfers of psychologically impacted property.
- HB 1109. An Act to provide certain immunity from liability when performing 911 emergency reporting services.
- HB 1131. An Act to provide healthcare provider immunity in certain situations in which there is a written power of attorney.
- HB 1264. An Act to limit liability to third parties for environmental damage for lenders who comply with certain conditions.
- HB 1301. An Act to limit the liability of local governments for the torts of certain constructive agents.
- HB 1307. An Act to confer liability on hunters for actions that cause damage to persons or property.
- HB 1332. An Act to provide for parental leave; family leave and temporary medical leave for certain employees.
- Witnesses & Jurors**
- HB 1163. An Act to revise certain jury selection statutes.
- CIVIL RIGHTS**
- Discrimination**
- SB 232. An Act to appropriate money to reimburse the city of Lake Andes

Industry and Commerce Association

"VOICE OF SOUTH DAKOTA BUSINESS"

P.O. BOX 190 • PIERRE, SOUTH DAKOTA 57501-0190 • 605/224-6161

of South Dakota



January 27, 1992

Attn: Cece Kremer

This is the SD dinner

The Honorable Dan Quayle
Vice President
United States of America
Washington, DC

Dear Vice President Quayle,

The Industry and Commerce Association of South Dakota cordially invites you to attend and to speak at the banquet at "Business Day at the Legislature" on February 18, 1992 in Pierre, South Dakota.

"Business Day at the Legislature" is the largest event held during our brief legislative session. Nearly 1,000 business people from communities all over South Dakota attend "Business Day" to have their collective voices heard.

ICA is the product of a merger between the former State Chamber of Commerce and the South Dakota Manufacturers and Processors Association. We are a business group representing every size, shape and configuration of businesses from all over South Dakota.

Topics which would be especially relevant for your remarks would be:

°South Dakota's economy as such a bright spot in the national economy and the Administration's plans for the economy.

°Product liability reform - but be aware there will be plenty of lawyers on both sides in the room.

°Small business and/or rural development initiatives, or

°Business-education partnerships ("choice" really isn't an issue out here at this point).

The event starts with a reception at 5:30 p.m. (CST), followed by the banquet at 6:30 p.m. (CST) at the Pierre River Center at the Ramkota Inn. Charlotte Conway, ICA Program Director, is the point person for this event. Your staff can contact her at 605-224-6161.

We would be honored to have you in attendance!

Respectfully submitted,

Julie M. Johnson
Julie M. Johnson
President

SHARON CASEY
Member Services Chair/BIPAC Co-Chair
Casey Corporation, Chamberlain

JEFF PARKER
Membership Co-Chair
Parker Transfer, Sioux Falls

TOM ROBY
BIPAC Co-Chair
Roby Agency, Watertown

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Watertown

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Valley Queen Cheese Co.
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BILL HUSTEAD
Wall Drug Store, Inc.
Wall

GARY JACOBSON
Malloy Electric
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MARTIN JORGENSEN
Jorgensen Farms
Ida

DANIEL LANDGUTH
Black Hills Corp.
Rapid City

STEVEN LOWRIE
Watertown Public Opinion
Watertown

DON PETERSON
Yeggies, Inc.
Yankton

JIM SMILEY
U S WEST Communications
Sioux Falls

LOREN STEELE
Super 8 Motel, Inc.
Aberdeen

IRVIN STERNER
Custom Colls, Inc.
Aloster

NORMAN WAITT, JR.
Norman Waitt, Jr. Ent.
Dakota Dunes

ROS WHEELER
Wheeler Manufacturing Co.
Lemmon

ROBERT WILKENS
Northwestern Public Service Co.
Huron

RONALD WILLIAMSON
Gibbank (SD), N.A.
Sioux Falls

ART KROETCH
Industry Council Chair
Satterman Industries, Philip

Suing for damages has become both a huge industry and a tremendous drag on American industry's ability to compete.

The tort tax

By Leslie Spencer

MILLIONS OF ordinary Americans may be worried about the economy, but 1992 already promises to be another big year for the country's trial lawyers. Arm in arm with the Scientologists, the plaintiffs' bar is in hot pursuit of Eli Lilly, maker of the antidepressant Prozac. A flurry of liability suits is about to engulf Upjohn, maker of Halcion, the popular sleeping pill. On a third front, plaintiffs' lawyers have just filed hundreds of cases against Dow Corning's silicone breast implants, which they hope will enrich them as asbestos enriched them in the 1980s.

Further down the line, plaintiffs' lawyers are assessing their prospects against Nutri/System and HMR 500 diet plans. The Civil Rights Act of 1991 promises to generate countless lawsuits against employers.

How much does all this tort litigation cost the U.S.? Two years ago FORBES reported the tort system's direct costs at \$80 billion a year (FORBES, Oct. 16, 1989). That figure was based on a study by Tillinghast, a Hartford-based actuarial consulting firm. It represented lawyers' fees, payouts to claimants and insurers' administrative costs in 1985.

The estimate did not go down well with the trial lawyers and the groups associated with them. Last October Joan Claybrook, president of Ralph Nader's Public Citizen, told PBS' *Adam Smith's Money World* that the annual cost of torts is just \$30 billion. Claybrook sourced her figure to a study done by Rand Corp.'s respected Institute for Civil Justice, and asserted that the FORBES figure had "no statistical basis whatsoever."

If anything, FORBES' estimate un-

derstated the true cost of the tort system. In a recently released update of its 1984 study, Tillinghast analyzed liability insurers' costs for 1987. Its conclusion: Tort claims cost the country \$117 billion that year. James Kakalik, coauthor of the Rand study cited by Claybrook, says it is Tillinghast's \$117 billion number, not Rand's \$30 billion to \$36 billion range, that represents the direct "tort tax" consumers end up paying.

Robert Sturgis, who wrote the latest Tillinghast study, notes that from 1933 until 1950, U.S. tort costs grew in line with the

overall economy. Since 1950, however, they have grown at a compound rate of 12% a year—much faster than the costs of workers' compensation, government-paid health care and welfare. Assuming that tort costs kept growing at 12% after 1987, the cost last year came to \$184 billion—nearly on a par with the country's net private domestic investment.

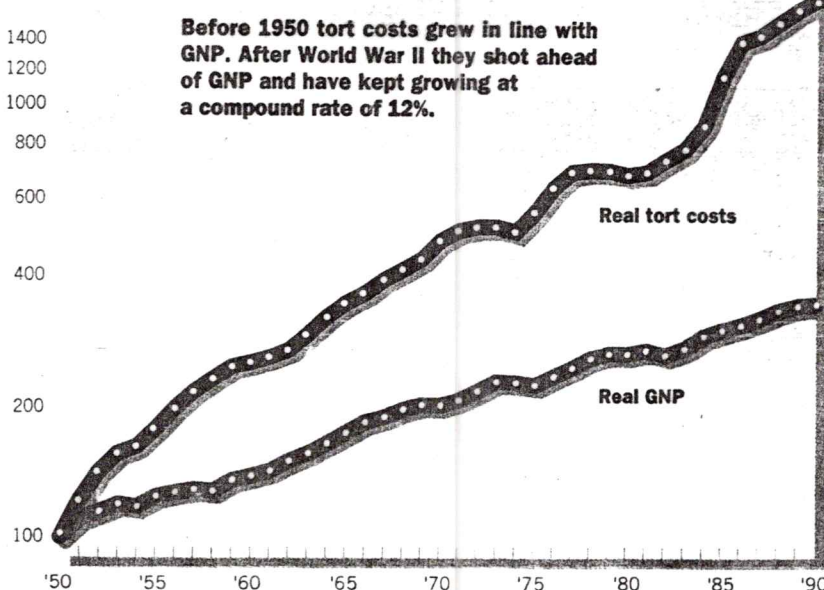
Where does all the money go? Both Rand and Tillinghast agree that injured claimants end up with only half of the proceeds from this tort tax. Further, according to Tillinghast, only a quarter compensates economic losses of plaintiffs. (The other quarter pays for plaintiffs' "pain and suffering.") The other half goes to insurers' administration costs and to lawyers to cover their fees and the expenses they incur on things like discovery and expert witnesses.

How could two studies come up with such different numbers? The Rand study set out to measure only the costs directly associated with state and federal lawsuits. The Tillinghast study went further. It took into account such costs as the payments to resolve the millions of potential lawsuits that never reach the courthouse, and the costs to insurers of processing

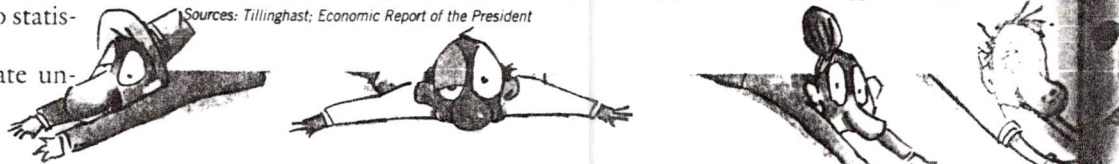


Torts vs. GNP

Index, 1950=100
1800



Sources: Tillinghast; Economic Report of the President



claims and defending suits.

Note that the Tillinghast and Rand studies consider only the tort system's *direct* costs to the economy. Beyond the direct costs are the harder-to-measure—but very real nonetheless—indirect costs incurred in efforts to stay out of the trial lawyers' talons.

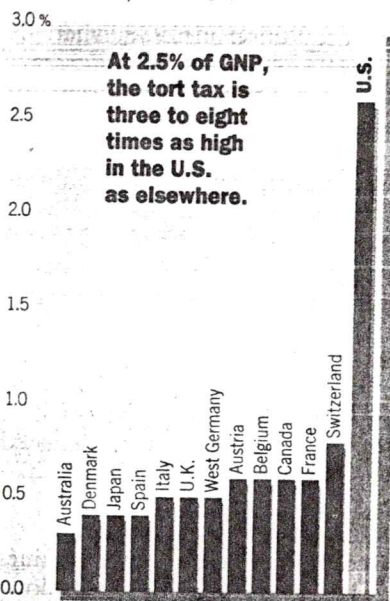
For example, a 1989 American Medical Association study estimated that for every \$1 they spend on insurance premiums, doctors spend \$2.70 performing often unnecessary tests and beefing up record keeping to avoid litigation; this suggests that excluding premium costs of about \$5 billion to \$6 billion, the indirect tort tax related to medical malpractice liability alone cost the economy about \$15 billion that year.

How much of the nation's \$738-billion-a-year health care bill can be laid to the tort system? Hard to say, but a 1991 study of auto injury claims in Hawaii by the Insurance Research Council gives some indication. The study reports that medical treatment of a typical neck sprain from whiplash comes to about \$1,300 if handled without a lawyer, on a no-fault basis. The cost to treat the same injury if part of a tort claim comes to about \$8,000.



Out front and losing

Tort costs as percent of GNP



At 2.5% of GNP, the tort tax is three to eight times as high in the U.S. as elsewhere.

Source: Tillinghast, 1987 study



One can argue that the right of consumers to sue to recover for injury protects us against incompetent doctors, and manufacturers who make lawnmowers that cut fingers along with the grass. The problem with the argument is that the tort industry has grown so large that it is now reducing the quality and availability of many

goods and services.

There are countless examples. Toxic leak detectors, useful to anyone handling toxic substances, were designed in the mid-1970s. But many were kept off the market out of fear of lawsuits should the detectors fail.

Or take small planes. Very few new, technologically advanced single- and

Tort gushers for 1991

Juries handed down these jackpot tort verdicts last year. The top ten total comes in at three times the total of just three years ago.

\$127.7 million Chicago	Product liability verdict against drug manufacturer Upjohn Co., alleging that anti-inflammation drug Depo-Medrol caused blindness, which resulted in loss of plaintiff's eye.
\$91.3 million Brooklyn	45-plaintiff consolidated award in case tried against Owens-Corning Fiberglas and other asbestos manufacturers. Same jury still deciding product identification, defendant's culpability and punitive damages.
\$86.5 million St. Louis	Sum of verdicts against Decom Medical Waste Systems, KML Corp., Bunker Resources, Recycling and Reclamation Inc. and Raymond Adams, for accusing plaintiff of bringing AIDS virus into a hospital. Settled, amount sealed.
\$84.5 million Houston	Premises liability award against an apartment complex and its management company in case of children drowned and brain-damaged in complex pool. Settled for \$17 million.
\$75 million New York	Product liability case consolidating 36 plaintiffs against the Manville Trust, Owens-Illinois and other asbestos manufacturers.
\$62 million Santa Ana, Calif.	Insurance bad faith award against Truck Insurance Exchange and Farmer's Insurance Exchange where insurer was accused of failing to pay for insured's legal defense. Judge reduced verdict to \$58 million. On appeal.
\$61.2 million Anchorage	Insurance bad faith case against underwriters at Lloyd's of London for failure to pay a restaurant owner's fire insurance claim. On appeal.
\$47 million Houston	Product liability case against Fibreboard and three other asbestos manufacturers for 275 plaintiffs.
\$35 million Los Angeles	Finding against California for failure to maintain center barrier of interstate highway in case of accident resulting in quadriplegia to a 34-year-old man. Settled for \$15 million.
\$33.8 million Corpus Christi	Product liability award against Merrell-Dow Pharmaceuticals for birth defects allegedly caused by pregnant woman's use of Bendectin.

Note: Excludes civil verdicts against alleged or convicted criminals.

Sources: Jury Verdict Research; Jury Verdict Review; FORBES.

Where lawyers are prospecting

If juries go along, these hot new tort topics will make plaintiffs' lawyers and their expert witnesses rich.

Breast implants	Hundreds of cases pending against Dow Corning, other manufacturers and physicians, arising from alleged implant leaks and fibrous tissue formation.
Halcion	At least 20 cases pending against Upjohn Co.'s drug alleging behavioral side effects resulting in paranoia, suicide and murder.
Insurance policies	Hundreds of bad faith cases pending against many insurance companies and agents alleging emotional distress after the insured's claim is rejected.
Electromagnetic fields	About a dozen personal injury cases against several utility companies and electrical transmission equipment manufacturers alleging brain damage, cancer and leukemia caused by electric and magnetic fields.
Prozac	An estimated 100 cases pending against Eli Lilly & Co. Supposed adverse effects include suicidal and homicidal behavior.

twin-engine planes are manufactured today because of liability costs to the manufacturer. The perverse consequence: Older planes stay in use longer than they would if prices of new ones weren't so high.

Although impossible to quantify precisely, it's likely that the tort system's indirect costs are at least as high as the direct ones. That would put the annual tort tax at well over \$300 billion today—and growing rapidly. Rand's James Kakalik thinks that the American Medical Association's estimate that medical malpractice's indirect costs are over 2½ times direct costs is a fair high-end estimate for the tort system as a whole.

Whatever its precise dimension, the tort tax is now weighing heavily on the ability of American industries to innovate and to compete internationally. At 2.5% of U.S. GNP, the tort system's direct costs (as estimated by Tillinghast for 1987) impose a burden in the U.S. five times that in the U.K., and almost seven times the level in Japan (see chart, p. 41).

There are a few rays of hope. Vice President Dan Quayle is pushing tort reform, targeting such areas as frivolous lawsuits, arbitrary punitive damages, "junk science" in the courtroom (FORBES, July 8, 1991). Among Quayle's proposals: Ban contingency fees for expert witnesses, curb punitive damages and adopt the English Rule, whereby losers pay the winners' costs. Last October President George Bush signed an executive order mandating that all government agencies implement Quayle's proposed reforms when litigating. In his State of the Union address late last month, Bush again called for tort reform.

But effective reform remains elusive. Those who oppose it are too powerful and have too much at stake. As of Jan. 22 a loser-pays rule is authorized in most cases the government brings. But this sensible reform is toothless without budget approval from Congress, whose members are unlikely to approve.

Perhaps the only real solution lies with judges and juries. As they begin to appreciate the true magnitude and ramifications of the spiraling tort tax, they will be more likely to throw frivolous lawsuits and venal demands back at the lawyers responsible.

His enemies say it's only a matter of time before William Dean Singleton's highly leveraged newspaper empire totally collapses. The wait may be long.

"We're the only one left"

By William P. Barrett

WILLIAM DEAN SINGLETON's first effort at owning a daily newspaper ended badly but memorably. His *Fort Worth Press*, a poorly financed revival facing an entrenched competitor, shut in 1975 after only three months. On the final day, angry reporters hurled beer cans at Singleton as he made a newsroom speech.

"I was 24 years old then," he says, clearly pained by the memory. "I've learned a lot since then."

Among the things Singleton, now 40, has learned is how to finance his acquisitions. Rule number one: Use other people's capital. Rule number two: Don't use all your assets as collateral

for a loan to buy another property; that way, one piece of the empire can go down without dooming the whole empire. And never sign personal guarantees for corporate loans. Another important rule: Keep overhead down. Singleton's headquarters staff: just 14 people.

With aggressive borrowing and diligent cost-chopping, Singleton—who tends to leave daily operations to his lieutenants while he makes deals—has built quite a business. Revenues of his privately owned parent, Houston-based MediaNews Group, were an estimated \$450 million last year. Its 15 dailies in 9 states include the *Denver Post*, the *Houston Post* and monopoly papers in several smaller cities.

Singleton made his first MediaNews acquisition in 1983 when he paid \$10 million for the *Gloucester County Times*, in the New Jersey suburbs of Philadelphia. Some \$7 million of that came from banks. The rest came from Richard Scudder, a third-generation newspaper owner who had run the now defunct *Newark Evening News*. Now 78, Scudder is still Singleton's 50-50 partner and MediaNews' chairman.

As media values rose during the 1980s, Singleton was often able to entirely finance a new property with a short-term bank loan, later refinanced with longer-term investors. MediaNews' debt and preferred stock is down to around \$400 million.

Recently, of course, media values have been falling and cash flows slowing. Singleton's many detractors—he gets a dreadful word-of-mouth within the business, partly because he often furloughs employees—predict his



MediaNews Group's William Dean Singleton Gets a dreadful word-of-mouth.

180 East Highway Fourteen • P.O. Box 850 • Philip, South Dakota 57567 USA

September 16, 1991

Honorable Vice President Dan Quayle
The White House
Washington, D.C. 20501

Dear Mr. Vice President Quayle:

I would like to commend you on your comments made to the American Bar Association on August 13, 1991. Your statements made in reference to the legal profession's needed reforms were refreshing to hear. The Bush Administration is advocating the viewpoint I have had on this subject for the past ten years. I and many other citizens of this great Country appreciate your efforts and we are pleased to have you join in our cause to solicit these needed reforms.

I am the founder and president of a small manufacturing company in western South Dakota. I am also the chairman of the National Machine Tool Builders Association's Product Liability Committee. I see the problems caused by the many liberal, confusing and chaotic laws that now govern the liability courts on a daily basis. The competitiveness of my company has been greatly diminished in the past ten years. If the current system is followed for the next ten years, my company and many others will have a hard time surviving. The backbone of America is crumbling and now is the time for change. That is why I appreciate your courage in speaking up and the Bush Administration's stand against the Trial Lawyers in this matter.

The enclosed copies I am sending you are articles that appeared in the Rapid City Journal on September 8th and 12th and I thought they might be of interest to you. The first is by Don Schultz, the new president of the American Board of Trial Advocates. There is no question to which side of this issue he defends. The second is my rebuttal of his viewpoint.

I am also enclosing a copy of a letter that I have to date sent out approximately 2,000 copies in a effort to get others involved in this movement. We need to get producers and consumers together to support this reform if the Trial Lawyers are going to be defeated.

Thank you again for your efforts in helping to expose this problem to the American public.

Sincerely,



Arthur A. Kroetch

Enclosures

Manny Mc Clure

South Dakota

- Biggest issue is the budget - when UP speaks they will only be 10 days from the end of session
Mickelson - proposed a property tax rebate

Reuben Bezpalety - Judiciary Committee
~~Julie~~ Johnson (605) 773-3251
Julie →

→ ~~Assembly~~ Fast material in Friday AM ↘

GOU's State of State Address