Trial by Jury

by: Jim Iagmin, CASD President

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The Seventh Amendment to the United States Constitution states in part, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved…." The guarantee of this fundamental, legal right was a response to the oppression of the Colonists. The Declaration of Independence indicted the British Government for, among other things, "depriving us in many cases, of the benefit of Trial by Jury…." California law reaffirms and guarantees this right: "Trial by jury is an inviolate right and shall be secured to all…." Cal. Const., art. I, §16. Citizens' rights to seek redress in the courts is a cornerstone of American Jurisprudence.

Unfortunately, Special Interests have fought for decades to limit injured persons' access to the courts. The proponents of so-called "tort reform" use a variety of vehicles, from forced arbitration to damage caps, to reduce or block the courthouse doors. "Tort reform" measures instituted in California run the gambit from the Medical Injury Compensation Reform Act ("MICRA"), an early "tort reform" measure capping general damages in medmal cases, to Proposition 64, which limited standing for unfair competition claims. Tort reform not only infringes on a fundamental constitutional right, it harms society's most vulnerable, and fails to accomplish its purported goals.

Tort reform erodes a crucial Constitutional right. The Seventh Amendment guarantees the right to trial by jury. So do the constitutions of 48 states, including California's Constitution. Capping the amount of damages despite the amount of the jury's verdict, or preventing an injured party from getting to a jury in the first place, violates this constitutional right. Incredibly, the California Supreme Court has continuously passed on determining the constitutionality of MICRA, despite several other states deciding similar caps violate the right to a jury trial (See, e.g., *Smith v. Dept. of Insurance* (Fla. 1987) 507 So.2d 1080; *Atlanta Oculoplastic Surgery, P.C. v. Nestlehut*t (Ga. 2010) 691 S.E.2d 218.) and violate the state's Equal Protection Clause. (See *North Broward Hospital District v. Kalitan*, No. SC15-1858. "[W]e conclude that the statutory caps in section 766.118 unreasonably and arbitrarily limit recovery of those most grievously injured by medical negligence.")

Tort Reform disproportionately harms the elderly, children, and the catastrophically injured. When people are injured by a defective product or in an auto collision, their medical care and lost wages are a cost to society created by the defective product or negligent conduct, not by the legal liability itself. Changing product liability or negligence laws to introduce "reform" doesn't make medical care and lost wages of injured parties go away, it simply makes victims and the public, rather than culpable parties, bear the expense. In the specific context of MICRA, the severe injury or wrongful death of a child, unemployed adult, or a retiree due to medical malpractice typically does not result in economic harm to the victim because there is no future earnings loss and future medical care is often paid for by Medicare, MediCal, or Medicaid. Under MICRA's noneconomic damages cap, the maximum recovery in these cases is effectively $250,000. This arbitrary damage cap drives down the potential recovery and prevents the injured from finding an attorney to represent them. The damage cap emboldens the defense because defense potential exposure is limited. This dynamic, paradoxically, results in prolonged and expensive litigation. Under these tort reforms, noneconomic costs are shifted to

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the vulnerable child or elderly person and economic costs are shifted to the public. It is wrong to benefit corporations and insurers on the backs of the public and the most vulnerable members of society and it is wrong to have the law arbitrarily tell a person that the value of their ability to see, or walk, or hold their loved ones is worth a maximum of $250,000.

In addition, Evidence shows that "tort reform" does not accomplish its ostensible justifications. For example, studies show that tort reform has not resulted in lower insurance premiums for physicians. The data shows that, in fact, physicians' insurance premiums have spiked over several years no fewer than three times since MICRA was passed. These spikes are correctly attributable to insurers' own economic cycles, linked to the markets and their internal financial mismanagement. (See, e.g., Americans for Insurance Reform, Sustainable Losses Unsustainable Rates, 2016, at https://centerjd.org/system/files/MasterStablelosses2016F9.pdf.) It is wrong for the insurance industry to pass off its losses to physicians and punish those who need the most protection.

The efforts of Special Interests to denigrate our Constitution rights and exploit the most vulnerable should outrage everyone. All those who have sworn to uphold the Constitution understand the injustice of intrusions into our civil rights. Litigants have the right to seek redress in the courts and jurors have the right to decide based on the case facts. Tort reforms infringes on these legal rights by telling judges, juries, and victims alike that lawmakers have determined, in advance, the maximum amount of compensation available, regardless of the facts. Judges and attorneys know that the adversary system weeds out so-called frivolous lawsuits. Unfortunately, the phrase "frivolous lawsuit" too often simply means "someone else's lawsuit." Tort reform statutes take just compensation out of the pockets of defenseless victims for the sole purpose of increasing insurance companies' profits. Just as California led the way down the now-invalidated "tort reform" path with MICRA in 1975, it must now lead the way out. **TBN**