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Ruinous Litigation

In Glendale, California, a couple recently filed a malpractice suit against a church, alleging that incompetent pastoral counseling had led to a suicide. The case was dismissed in the end because the ministers had taken no money for their counseling. But it also suggested that church-sponsored counselors who charge fees may become the targets of such suits. In the future they will need malpractice insurance.

Everyone, it seems, is suing. Workers are bringing suits against employers, customers against businessmen, tenants against landlords, clients against architects, engineers, and attorneys, patients against their doctors, students against their teachers. In just six years federal product-liability suits alone have more than doubled, now exceeding 10,000 every year. Last year, even the weather bureau was sued for having failed to predict a storm.

The American insurance industry is suffering the worst losses since 1906, the year of the San Francisco earthquake and fire. In reaction, it is becoming highly selective in deciding whom and what it will cover. Moreover, it is raising its rates to unprecedented levels that are jarring all other industries. Many business firms, along with individuals, professional partnerships and government agencies, are suffering an insurance crisis. Property, casualty, and liability policies are outrageously expensive or are simply unavailable. Even Lloyds of London, having suffered stag-

gering losses on its business dealings with American clients, is reluctant to deal any more with American insurers.

Huge malpractice suits and staggering insurance premiums are threatening health care. The industry now pays over \$2 billion in malpractice insurance, which visibly contributes to the high cost of medical care. One in every five doctors was sued last year, and can expect to be sued this year. The average award, according to Jury Verdict Research of Solon, Ohio, climbed to \$840,396. Consequently, doctors practice "defensive medicine," spending some \$15 billion to \$30 billion on lab tests and x-rays that are unneeded but deemed necessary for possible malpractice suits.

The rampant increase in insurance costs is changing the tenor of the medical profession. Rather than pay higher and higher insurance bills, some physicians are limiting their practice to relatively safe fields, like general practice or dermatology. Some are retiring early, others are abandoning their specialty altogether. Some are moving from high-risk areas to areas affected less by the litigation mania. Some 25 percent of urban obstetricians have left the city or stopped practicing their profession, another 25 percent plan to stop soon. The effects are obvious: health care in high-risk areas is declining significantly and patients' health-care costs are rising rapidly. The quality of health care is declining in reaction to inordinate cost.

It is futile to search for a scapegoat for this liability and insurance dilemma. It is fruitless to blame patients for turning into "adversaries" eager to sue. The people are not out "to get" their doctors. It is absurd to make lawyers the favorite scapegoats, to deride them as opportunistic parasites preying on the fears of patients and pocketing the lion's share of the awards. Attorneys are no worse than their clients without whom they have no case. Similarly, it is foolish to conclude that every doctor is careless and incompetent. To search for an explanation of the malpractice insurance crisis is to seek for changes in social mores and economic doctrines that distinguish contemporary Americans from their forebears.

Under the influence of liberal political thought, Americans now live by political power and economic entitlement. They are convinced that political power reigns supreme in human affairs, that government as agency of this power can create income and wealth, provide knowledge and education, and care for the sick and dying. Most Americans now hold to a philosophy of economic entitlement that makes government the arbiter, regulator, and provider of last resort. In the field of health care, the entitlement doctrine has given rise to "legal medicine" that is characterized by government responsibility in medical matters, by federal and state rules and regulations, and employer obligations and patients' rights. Legal medicine with its myriad of rules and regulations about entitlement affords countless opportunities for litigation.


Most Americans have come to think that they are morally entitled to transfer benefits just because they are Americans. They believe in "human rights," which they interpret to mean political entitlements created by Congressional vote and defined by bureaucratic edict. They advocate political rights that take income and wealth from some people and give them to others; they call this the supremacy of

"human rights" over "property rights," which in reality means the supremacy of political might over human right.

The entitlement ideology is a transfer and redistribution ideology that is relentlessly pressing its case in the halls of politics and the courts of law. It is confrontational in design and intent, seeking to benefit some people at the expense of others. Entitlement battles never end; they rage in every election and every session of Congress. They are heard in every court of law that is called upon to referee the entitlements.

A society that elevates economic entitlement to its guiding maxim not only breeds social conflict, but also fosters confrontational mores that permeate all walks of life. The confrontation is rather virulent and painful wherever the claims of beneficiaries clash with the complaints of the victims. It is loudest in service industries catering to millions of beneficiaries jealously guarding their rights. After all, entitlements springing from conflict and breeding conflict create classes of victims as well as victors. They give free rein to distrust and suspicion and openly invite litigation between the classes.

The malpractice crisis that is touching the quick of the professions and the product-liability crisis that is crippling several industries reveal a moral crisis that is putting all free societies in jeopardy. They manifest a disease which, in the end, is likely to give rise to a political and economic command system. For the present, they offer a panoramic view of things to come, of federal and state legislation and regulation, patients' rights and doctors' duties, of demagogic politics and ruinous litigation.



Hans F. Sennholz

You cannot correct all the evils of the world, nor relieve all the poverty in the world.
You cannot comfort all in distress, nor support all the underprivileged.
But you can stand by FEE which brings the light of freedom to the world.