The Ethics of Tort Reform

This essay is concerned, as the title indicates, with a certain kind of legal reform – what it’s for, what it’s worth, and what should be done to get it. But I want to start by talking about why people often don’t know that reform is needed, in this and other areas.

There are at least three basic kinds of bias in our sources of information.

There is *description bias*, in which the source colors its presentation of data by using loaded descriptions, such as using “ultra right wing” or “ultra left wing” to describe someone who is merely conservative or liberal, in the contemporary senses of those terms. (Mainstream media are prodigal in their use of the former phrase: Google-search “ultra right wing” and you get 124,000 hits, compared to only 24,000 for the phrase “ultra left wing.”)

Then there is *data selection bias*, or what logicians call “special pleading,” where someone presents only data that support his own perspective or conclusion.

Both of these sources of bias can reassure us that nothing needs to be done, at least if we’re on the proper side of the political spectrum and have a lot of special pleaders around us.

But a deeper sort of bias is *issue selection bias*, where the source refuses even to mention certain worthwhile questions. This bias can be intentional. Some institutions have well-understood standards of political correctness that make various areas of inquiry unwelcome. It can also be unconscious. Relevant issues simply may not occur to researchers, or just not seem interesting.

Many years ago I was interviewed for a columnist slot at the major newspaper in the city where I worked, and the editor of the op-ed page (who was, like most of his ilk, “progressive” to the bone) asked whether I had any plan to do some columns about the Religious Right. I replied that the topic was well explored, but how about some columns on the Religious Left, such as the (then) popular “liberation theology” movement? He stared at me as if I had suggested slitting his mother’s throat. The bias was unconscious, but very active.

One effective way to counter these various biases is to read or listen to information sources coming from people of markedly different ideological persuasions. The facts that support an idea that are not mentioned by sources that oppose it will usually be presented in depth by the sources that support it. And issues not even discussed by one source will fascinate another source of different ideological stripe.

This assumes, however, that you can find information sources representing all major ideological perspectives. Most social science and humanities departments are now essentially leftist think tanks, with overwhelmingly left-liberal faculties. (Even Economics departments—more ideologically balanced than the other social sciences—are still predominantly liberal). This is why think tanks are so important. They are places where dissenters from academic orthodoxy can pursue their research and ask questions that wouldn’t even occur to other academics. Of course, I don’t pretend that such institutions are themselves free from bias; but at least their advocacy is clearly acknowledged. More to the point, they provide a counter-balance to the academy’s incessant stream of leftist research.

Now let’s consider a substantive issue, one that is vital to everyone affected by the American civil court system, whether they know it or not: “How much does the American tort system cost us?” This question has occurred to almost everyone who has ever run a business, but it is not a question that seems to interest many academic economists or other social scientists. Nor is it of absorbing interest to political leaders. Trial lawyers, who profit mightily from the present system, are also mighty contributors to political campaigns. Indeed, one of the major candidates for the Democratic nomination, John Edwards, made mega-millions from tort cases. It is especially hard for Democratic politicians, who get the majority of trial-lawyer money, to see trial lawyers, not as heroes, but as participants in an institution that (like any other) has socio-economic costs.

So it is a welcome development that a group of scholars at the Pacific Research Institute have investigated precisely this neglected issue. The PRI is an independently funded free market think tank. The group was headed by distinguished economist Lawrence McQuillan, and included Hovannes Abramyan and Anthony Archie. The McQuillan group has written a solid report on the costs of our tort system, with remarkable findings. The report, entitled “Jackpot Justice: the True Cost of America’s Tort System,” is downloadable in full from the PRI website.[[1]](#endnote-1)

The document is meticulously researched and extremely detailed. It looks at the various economic costs of lawsuits aimed at giving an injured party compensation for damages suffered through the negligence of another (“tort” is French for “wrong”). The study focuses on class actions, medical malpractice suits, and product liability suits. It aims, in the investigators’ words, to provide “a conservative first approximation of the total costs, both direct and indirect, as well as the total excess costs of the U.S. tort system.”[[2]](#endnote-2)

The McQuillan group is not attacking tort law itself. It stipulates that a good tort system is essential to the free market, because it helps ensure that businesses take care to make safe products and refrain from harming the environment, and that people who are truly harmed by some trade or industry—as inevitably happens in any economic system—are appropriately compensated. When critics of the tort system miss this point, their prose turns into mere lawyer-bashing, complete with the line from “Henry VI,” “The first thing we do, let’s kill all the lawyers.”

Yet a bad tort system is a burdensome tax on the economy, killing jobs, lowering income, and increasing prices. Additionally, it exacts opportunity costs: every nickel a company has to plow into fighting lawsuits is a nickel less that it can plow into research and development, higher salaries for its employees, or lower costs for consumers. And to the extent that America has an unnecessarily burdensome tort system it will be at a disadvantage in the global economy.

The authors find that the direct and indirect cost of the current tort system was, in 2006, an astonishing $865 billion: “To put the annual social cost of the U.S. tort system into perspective, it is equivalent to an eight-percent tax on consumption, a 13-percent tax on wages, the combined annual output of all six New England states…. The annual price tag, or ‘tort tax,’ for a family of four in terms of costs and foregone benefits is $9,827.”[[3]](#endnote-3)

Comparison with other industrialized nations—who seem to be protecting *their* consumers well enough—shows that the U.S. tort system is grossly excessive. We spend 2.2% of our GDP on direct tort expenses; the other advanced nations spend 0.9%. That 1.3% difference suggests that as much as 59% of U.S. tort costs are excessive. This means that about $589 billion annually is drained uselessly from the American economy-- about $7,850 per family of four.

The McQuillan group unfortunately does not compare the number of lawyers in the U.S. to those in other industrialized nations. Back in 2000, The Economist pointed out that the U.S. had 281 lawyers for every 100,000 people, versus 94 for Britain, 33 for France, and only 7 for Japan.[[4]](#endnote-4) The percentage of lawyers in the U.S. has increased even more since then.

Along these lines, in a now classic study done in 1992,[[5]](#endnote-5) economist Stephen Magee, using international data sets comparing growth rates and relative numbers of lawyers as a percentage of white collar workers, concluded that there was an optimum of the percentage of lawyers in a population. Too many lawyers hurt the economy, *as do too few.* By his estimate, the U.S. had something like 40% too many lawyers.

It’s a depressing subject. The McQuillan group does its best to leaven dry economic analysis with illustrations of crazy tort actions, but these tend to be depressing too. In one case, a small pharmacy owner was sued in a class action against a diet drug (Fen-phen) that had been approved by the FDA and was sold by the pharmacy only by prescription. The lawyers targeted the small pharmacy because it was in a county known to be “plaintiff-friendly,” even though the drug maker was located in an entirely different state. The stress of the legal shark attack apparently induced a heart attack in the owner, killing him. His wife subsequently had to sell the pharmacy they had built. She was sued over a hundred times before the sharks had their fill.

And these things don’t stop. Since the report was issued, several even more egregious examples of tort law abuse have made the headlines. Consider, for instance, an administrative law judge by the name of Roy Pearson, who sued his dry cleaners for *fifty four million bucks,* for losing his pants. He also lost his case, but he plans to appeal, putting the defendants (Soo and Jin Chung) through living hell.

In another big news story, William Lerach, one of the most famous and successful class-action lawyers in the country, pleaded guilty to several felonies for his role in bribing people to become plaintiffs in big-buck lawsuits.[[6]](#endnote-6) Lerach won billions by suing major corporations, including ATT, Enron, Lucent, Microsoft, and Prudential Insurance. His firm, Milberg Weiss, had paid over $11 million in kickbacks to get people to be plaintiffs in lawsuits that netted the firm over $250 million. (Lerach will do only one or two years, alas, but will have to disgorge the better part of $8 million. Other partners in the firm have been charged, including co-founder Melvyn Weiss, who faces up to 40 years in jail).

A third case of trial lawyers gone wild occurred recently in Kentucky.[[7]](#endnote-7) Three tort lawyers—Shirley Cunningham, Jr. William Gallion, and Melbourne Mills, Jr.—got a settlement (in 2001) for a group of 440 consumers who had purchased a diet drug containing fen-phen. The settlement was for $200 million, from which the attorneys were to collect a third for their contingency fees. The lawyers kept $106 million for themselves and put another $20 million into a charity that they set up. So the plaintiffs got $74 million rather than the $132 million they were due. The judge who presided over the original settlement, Judge Bamburger, retired in 2004, and was promptly appointed “director” of that selfsame charity, at a hefty salary. Complaints by the plaintiffs led to a federal investigation, and the lawyers have all been indicted. The federal judge overseeing the case has even jailed them as flight risks. And the plaintiffs are suing to get the rest of the money. The Kentucky Bar Association has yet to disbar the crooks.

In a fourth recent case, Mississippi tortmeister Dickie Scruggs (an apt moniker, indeed) was indicted for attempting to bribe a judge, presiding circuit court Judge Henry Lackey.[[8]](#endnote-8) Scruggs’ law firm had obtained massive settlements from insurance companies for Katrina victims, and Scruggs fell into a dispute with another attorney in the firm (John Griffin Jones) about how to divide the $26.5 million in attorneys’ fees. The *Jones v. Scruggs* suit was due to be heard by Judge Lackey.

According to the indictment, Scruggs sent an emissary (an outside attorney named Timothy Balducci) to offer a bribe to Judge Lackey. Lackey, however, refused to fulfill the promise of his name, and went to the FBI. Working undercover and likely wearing a wire, he agreed to take a $40,000 bribe. Balducci then allegedly handed over $20,000 on cash up front, and the rest later on. Scruggs and his four cohorts—lawyers all, remember—face 30 years in prison.

If you want to read other outrageous cases, the estimable American Tort Reform Association has a page on its website[[9]](#endnote-9) listing some of the more ludicrous ones. It also has a downloadable annual report on the areas of the country that have the worst record of judicial rulings in tort cases. These are called, appropriately enough, “Judicial Hellholes.”

To return, however, to the McQuillan study: As useful as it is, it does not include the costs of other areas of civil law, such as employment, securities, the Americans with Disabilities Act, or contract lawsuits. So the study’s “conservative first approximation” of the total costs of our tort system is very conservative, indeed.

More importantly from the philosophic point of view, the study explores only the utilitarian (or more broadly) consequentialist case against tort law abuse. That case is fairly obvious, so long as one does not suffer from any of the biases listed above. Yet there are also ethical perspectives to be invoked.

Begin with the Kantian perspective – the injunction to treat people as ends, not as mere means to our own ends. That would surely rule out suing someone (or some company) not because he actually harmed you, but because you can convince a jury that he did and thereby take his assets. It would also rule out the “deep pockets” strategy employed by not a few trial attorneys, that of suing persons or companies that were only tangentially involved in a tort, and truly blameless of the harm, simply because they have more assets, or because they are located in a jurisdiction favorable to trial attorneys. And it would rule out juries’ occasional practice of awarding damages to a plaintiff not because he was really harmed by the defendant but because the jury felt sorry for him and viewed the defendant (a large corporation, typically) as having the resources to help him. Such a Robin Hood approach clearly treats wealthy defendants as if they were cows to be milked.

There is also the natural rights perspective. If all people have unalienable rights, surely they have the right to be free from harassment by other people, from having their property wrongfully taken, and from having their privacy violated by unjust legal actions.

Finally, the recently regnant “virtue ethics” perspective would encourage us to look at the role of institutions in building or destroying character. From such a perspective, one must view with alarm a tort system so loose that it encourages people to legally steal from others. Ironically, it has been economists rather than moral philosophers who have been most aware of the moral hazards (especially rent-seeking) that come from a loose tort system. Moral hazard (in philosophic terms) is making people vicious by offering them perverse incentives to become so.

In sum, a number of consilient moral considerations argue for systematic tort reform.

The McQuillan study does not suggest how this might happen, though several approaches come to mind. I want to start, however, by reviewing some ideas for controlling tort abuse with which I do *not* agree. One is the general idea of limiting what people can gain from lawsuits, with an eye to lowering incentives for them to file frivolous ones.

We could cap non-economic damages (awards for pain and suffering over and above economic loss). There is some evidence that non-economic damage caps work to curtail tort abuse. For example, a recent article in the Investor’s Business Daily[[10]](#endnote-10) shows that after Texas, four years ago, passed a state constitutional amendment capping non-economic damages in medical malpractice cases, it has seen a 21% drop in medical malpractice insurance premiums. This of course helps healthcare consumers (aka patients) in two ways.

Directly, it lowers doctors’ charges, since any healthcare provider builds insurance costs into the price of services. Indirectly, in Texas it has led to a flood of doctors moving from states that have runaway tort systems. Since awards were capped in 2003, applications for medical licenses have skyrocketed, from 8,391 in the four years before the cap was passed, to 10,878 in the four years since.[[11]](#endnote-11)

Nevertheless, capping non-economic damage awards is less appealing than some other approaches. For one thing, it limits the freedom of juries to address a proven harm as they see fit. While individual juries can behave irresponsibly, we still have to judge the institution as a whole.

Moreover, while the function of the tort system is primarily to compensate, “make whole,” the person injured, that is not its sole function. In some unusual cases (say, where people are permanently disabled or disfigured through extreme recklessness), punitive damages may well be just, both to punish the defendant and to deter future recklessness by others. In this regard, we should note that since 2003, Texas has witnessed a rise in investigations of doctors (up by 40%), complaints by patients (up by 25%), and disciplinary actions against doctors (up by 8%), though this could also be caused by closer regulatory scrutiny.[[12]](#endnote-12)

We can agree that the punitive function should be kept strictly for egregious cases, not for ordinary negligence, but it seems legitimate in theory. There is recklessness that does not rise to the level of outright criminality. In fact, courts tend to peg the amount of punitive damages to the actual damages suffered by the plaintiff, and they require greater burden of proof for punitive as opposed to other damages.

A second approach is to limit or even prohibit contingent fees, fees that lawyers get only if they win a suit. Contingent fees are not allowed in most European courts, and were not permitted in early America. Yet this again is an approach I do not favor, for the same reasons that the American legal system eventually decided against it.

We should be reluctant to tell autonomous agents engaged in negotiating a price for some service what they must agree to. The practice obviously violates their rights to negotiate freely. More specifically, there are some cases in which a person who has truly been harmed could not afford a lawyer, if a contingent fee arrangement were not available.

Besides attempting to limit awards for damages or fees for trial lawyers, reformers have suggested that we simply eliminate the jury system for tort cases, and rely on the judges instead. This is the norm in Europe, and makes a certain amount of sense. After all, judges are trained in law, and are (arguably, at least) less susceptible than juries to the irrelevant emotional appeals and flowery rhetoric—especially class warfare rhetoric—that trial lawyers too often dish out.

But trial by jury in common law suits of over $20 is guaranteed by the seventh amendment to the federal constitution, so at least at the federal level the change would be practically impossible to make. And I think the reasons for putting that right into the constitution still apply. Not only are juries a check on the power of government but, except in a headline-grabbing minority of cases, jurors tend to be reasonable. I don’t think they are the core of the problem.

My preference is for a number of other approaches, some rather narrow, and one very broad, that focus on making the tort procedures themselves (as opposed to the lawyers and jurors who work under the procedures) more rational and fair.

To begin with the narrower approaches, we first need to pass laws that limit liability for torts to agents who have the main direct causal role in the tort. (These laws to limit tort exposure will likely have to be industry-specific). Dragging into lawsuits people who had no real hand in the commission of the harm surely violates their rights. Remember the case of the pharmacist who was sued for selling an FDA-approved drug. Since the pharmacist didn’t manufacture or prescribe the drug, he should have been held legally harmless in the matter. Pharmacists should be responsible for torts that occur in the normal specific practice of their business, such as mistakes in filling prescriptions or selling drugs that are past their declared shelf life, not for things they weren’t involved in, such as the manufacture of the drugs they sell.

For this reason I support attempts to hold gun manufacturers liable only for damages that occur from defects in their products (such as guns that can explode when fired), as opposed to liability for the wrongful use of their products (such as the use of guns in criminal activities, unless the manufacturer had knowledge that the person buying a gun was criminal or mentally incompetent).

Second, a number of states (such as California) have enacted statutes that require compulsory arbitration in certain cases, and many contracts (especially for medical, legal, and other professional services) already contain arbitration clauses. But we need to get creative in setting up even more venues for compulsory arbitration.

Third, we need to follow a suggestion by Peter Huber, who argues in “Galileo’s Revenge: Junk Science in the Courtroom”*[[13]](#endnote-13)* that the dropping of the *Frye* rule about the “general acceptance” of professional ideas has led to a proliferation of dubious cases in which clearly bogus science was allowed into the courtroom. For example, the aforementioned John Edwards won a lot of money from convincing juries that obstetricians caused cerebral palsy in the infants they delivered by failing to perform caesarian sections, a claim the vast majority of medical scientists would view as pseudo-science.

I will be brief, referring the reader to Huber’s fine book for further details. In 1923 a federal appellate court ruled that expert testimony would be allowed in a trial only if was based on theories and methods generally accepted by practitioners in the field. However, in 1975 this rule was weakened at the federal level, and in 1993 the U.S Supreme Court (in *Daubert v. Merrel Dow*) rejected it and put in its place a requirement for independent judicial review of the scientific testimony. But absent the *Frye* rule or some other tight standards, judges (who are trained in the law but typically not in science or statistics) and juries (who are ordinary folk, not trained scientists from relevant disciplines) are put in the position of having to decide which scientific theories and practices are scientifically correct.

Fourth, we need to require that any person filing a lawsuit must actually have been harmed by the person or company he is intending to sue. Believe it or not, there are some states (such as my beloved state of California) that actually allow attorneys to sue companies for various consumer law or other infractions (such as infractions of ADA codes) despite the absence of an actual consumer’s even alleging harm. A recent case became notorious for this—a legal firm sent its employees out to various small businesses, studying the width of parking stalls, the accessibility of bathrooms, etc. The firm then filed hundreds of lawsuits against the businesses, usually settling for roughly what it would have cost them to contest the cases in court. This firm was living parasitically upon the small business community, and living well.

Fifth, we need sharp limitations on discovery during the early phases of the tort complaint. Allowing the plaintiff’s attorney freedom to trawl through a defendant’s records, searching for anything that might be damaging, is an invitation to frivolity and injustice. Most other legal systems in the industrialized world limit discovery to what is reasonably relevant to the alleged tort.

Sixth, and more broadly, we should move to the system of “loser pays.” Under this system—sometimes called “the English Rule,” although it is the norm throughout Europe—if Jones sues Smith for any reason and loses, Jones has to pay Smith’s legal fees. This would be a constant guard against frivolous lawsuits, such as the infamous $54 million lost-trousers action.

From the ethical point of view, the loser-pays rule seems imperative. We need to remember that every frivolous lawsuit against an innocent person or company is itself a tort. It causes stress, a kind of pain and suffering for the wrongfully sued person. It often hurts the reputation of the person sued, potentially causing large loss of income. (Indeed, precisely because being sued often results in tremendous amounts of bad publicity, lawyers are often able to extort money from public corporatins). The time and trouble of putting up a defense is an opportunity cost, because that time could be spent more profitably elsewhere. Worse, even if the victim prevails, he still typically pays his own legal fees, which complete the punishment of the innocent.

Let’s return to the Kantian perspective for a moment. Kant had a second formulation for his ethical theory, one he termed the categorical imperative. I view this theory as essentially a demand for consistency in ethical reasoning. In his formulation, we should act under those, and only those, rules that we could will to be universally adopted. This is (as often noted) an abstract formulation of the Golden Rule: do unto others as you would have them do unto you.

Well, what are the reasons typically given for the tort system? That it makes people who have been harmed whole, i.e., compensates them fairly for their loss; that it acts as a deterrent to negligence or reckless behavior; that it helps to motivate those who have caused harm to negotiate in good faith with those they have harmed (or face a lawsuit).

If consistency has any meaning, these reasons should apply to the tort system itself

If one reason for a rightful tort case is to compensate the victim appropriately, then in a wrongful tort case the victim (the defendant) should be compensated appropriately. He or she has lost money in legal fees, and so having the plaintiff reimburse those fees would make the defendant whole.

If we accept the need to deter negligence and recklessness, then we also need to deter lawyers from carelessness or worse in bringing lawsuits. The loser pays system would be such a deterrent. Why suppose that the tort law business needs any less deterrence against malfeasance or negligence than any other business? I don’t believe that lawyers on average are any more prone to unethical behavior than are (say) people in the housing industry, but it beggars the imagination to suppose that they are less so.

And if we agree that the threat of a tort lawsuit can motivate those who have caused harm to negotiate fair compensation for those whom they have harmed, then consistency should tell us that the threat of having to pay the defendant’s legal fees, as well as one’s own, should one lose, will encourage plaintiffs to seek reasonable settlements first, or accept binding arbitration to begin with.

That loser-pays is a moral imperative becomes even clearer when you reflect upon the fact that in a tort case, the level of proof is only “the preponderance of evidence,” nothing near the high standard of “proof beyond all reasonable doubt” that is required in criminal trials.

I would anticipate a few objections to the loser-pay system, but none that strike me as morally compelling.

One is the objection that if we move to a loser-pay system, the average person harmed by defective products will not be able to get legal representation at all, because his or her attorney will be up against a huge team of lawyers for the evil Big Business that produced the defective product.

But the counterarguments are as obvious as they are numerous. To begin with, scaring off potential plaintiffs who have weak or frivolous cases is the whole idea. Next, most business in America is small to medium-sized business, so in most cases where someone is genuinely harmed by a defective product or service, the legal representation will be roughly equal. In cases of genuine harm caused by truly big business other plaintiffs could join in a class-action lawsuit. Finally, the management of any business that has to employ a large team of lawyers to face a plaintiff in the loser-pay system will have motivation to enter into settlement negotiations in good faith. After all, it faces huge legal bills just from its own lawyers, and it knows that the plaintiff and plaintiff’s counsel are almost surely sincerely convinced that they have enough evidence to prevail.

Another objection is the contrary argument: under loser-pays, poor plaintiffs will be more inclined to sue, knowing that they have nothing to lose, whereas the other side does have something to lose.

This is weak. Under the current system, that’s precisely what we have for everyone: nothing to lose! More importantly, while any poor plaintiff inclined to a frivolous lawsuit has nothing to lose, his or her attorney certainly does.

A third objection: What about cases in which a person is harmed by a product or service, not by negligence, but by mere bad luck? That is, what about harms for which the company that produced the product or rendered the service was in no way really negligent, and in no way could have foreseen it, but still caused harm? If such consumers can’t collect from the company, aren’t they forced to pay for their own medical bills? Is that just? And what about people who can’t pay medical bills at all?

My reply is that the vast majority of people have health, auto, home, and other insurance, for just this reason: to protect against what are in effect the acts of nature. And if I am harmed by a product that I chose to buy, a product that was not negligently designed or produced, and turned out to harm me through no fault of the producer, it is as if an act of nature caused the harm.

But what about all those people who can’t afford health and accident insurance? Well, the pricing and financing of healthcare is a serious social problem (and the topic for another essay), but social problems require social solutions. In the meantime, it is simply unjust to allow juries to force an innocent party to pay.

It is worth reiterating that one U.S. state and virtually all the major nations in Europe already have the loser-pay system. Yet I must admit honestly that getting it enacted into law in this country is a daunting tax.

There are two major barriers.

The first is the power of the chief rent-seekers in this field, the trial lawyers. They are articulate, skilled in using the law to their own ends, well-connected politically, and in danger of losing a great deal of income if reform triumphs. This power explains why only one state (Alaska) has enacted loser-pay (although Oklahoma and Oregon both have some form of loser-pay in a few areas of their tort systems).

The second is that tort reform needs to be passed on both the state and the federal level, because the U.S. Congress—under the “Erie Doctrine”—has limited power to mandate state court rules and procedures[[14]](#endnote-14).

Any meaningful, just tort reform will face a long struggle, state by state and nationally. Is it worth it? Yes, it is.

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1. [www.pacificresearch.org](http://www.pacificresearch.org). [↑](#endnote-ref-1)
2. Op. cit p. x. [↑](#endnote-ref-2)
3. Op. Cit. p. xii. [↑](#endnote-ref-3)
4. The Economist (Dcc. 16, 2000). 35. [↑](#endnote-ref-4)
5. Stephen P. Magee, “The Optimum Number of Lawyers: A Reply to Epp,” Law & Social Inquiry 17 (Autumn 1992). 667-93. This article is downloadable from the website jstor.org. [↑](#endnote-ref-5)
6. AP report in the Orange County Register (Oct. 30, 2007). See also the AP report in Orange County Register (Sept. 19, 2007). [↑](#endnote-ref-6)
7. “Kentucky Trial Derby,” Wall Street Journal (Aug. 20, 2007). [↑](#endnote-ref-7)
8. See “The Trial Bar on Trial,” Wall Street Journal (Nov. 30, 2007). [↑](#endnote-ref-8)
9. [www.atra.org](http://www.atra.org) [↑](#endnote-ref-9)
10. “The Doctors Are In,” Investor’s Business Daily (July 13, 2007). [↑](#endnote-ref-10)
11. Ralph Blumenthal, “More Doctors in Texas After Malpractice Caps,” New York Times (Oct. 5, 2007). [↑](#endnote-ref-11)
12. Blumenthal op. cit. 2. [↑](#endnote-ref-12)
13. Peter Huber, “Galileo’s Revenge: Junk Science in the Courtroom,” (New York: Basic Books, 1991). [↑](#endnote-ref-13)
14. The Erie Doctrine originated in a 1938 Supreme Court decision, written by Judge Louis Brandeis, which requires Federal courts to follow the state common law when deciding issues concerning that state’s law. [↑](#endnote-ref-14)