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Front Page Stories

Twiggs Named ATLA President

Raleigh lawyer Howard Twiggs is on a crusade. His mission: save consumers and accident victims from tort reform.

Earlier this month, Twiggs was elected president of the Association of Trial Lawyers of America, a plaintiffs' group with about 60,000 members. ATLA's stated goals are to safeguard victims' rights and protect the civil justice system. But the higher calling this year, according to Twiggs, is to stave off legislative attempts to cap punitive damages and restrict contingency fees.

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Twiggs, who concentrates in products liability and personal injury cases, has been a member of ATLA's board of governors since 1985. He is also past president of the North Carolina Academy of Trial Lawyers.

In an interview last week with Lawyers Weekly, Twiggs criticized bills introduced at the state and national level to reform the nation's tort laws.

"Tort reform is a bastardization of the word reform, because it is really a destruction of the common law tort system in most states in America," Twiggs says.

The impetus for tort reform comes from the powerful business and insurance lobby, he says, which relies on anecdotal evidence, rather than hard facts, to make the case that punitive damages should be capped.

A favorite anecdote is the infamous McDonald's coffee case. In 1994 a jury hit the fast food chain with \$2.7 million in punitives after a 78-year-old New Mexico woman accidentally spilled coffee on her legs at a drive-through window. The case is the poster child for groups who say punitive damages awards are out of control, but the facts undercut that argument, Twiggs says.

"The woman was a passenger in the car, not the driver, and the car was sitting still when the accident occurred," says Twiggs.

At the time of the accident, McDonald's served its coffee 10 degrees hotter than everybody else _ somewhere between 180 and 190 degrees, according to discovery in the case.

"That's 10 degrees hotter than the coolant in a car radiator," Twiggs says, "and nobody would stick their finger in a car radiator after driving it."

The plaintiff suffered third degree burns over six percent of her body and attempted to settle for her medical bills, but McDonald's refused that offer.

During discovery, the plaintiff's attorneys learned of 700 other similar instances involving McDonald's coffee. And the company acknowledged the coffee represented a burn hazard but said it would not lower the temperature, saying customers wanted it that hot.

"The jury found the company's position to be outrageous," Twiggs says. "They felt for the safety of people McDonalds should lower the temperature."

The punitives awarded equaled McDonald's coffee sales for two days. The trial judge later reduced that to \$480,000 _ or three times compensatory damages.

Shortly after the trial, McDonald's lowered the temperature of its coffee to 158 degrees, Twiggs says, and therein lies the value of punitive damages.

Twiggs is quick to point out the contradictions of those pushing for change.

"Tort reform is being sponsored by Republicans who generally believe in less federal government," he says. "Yet in this area, they want more intrusion, and more rules and regulations. They want Washington to control the tort standard of every state, even though 200 years of common law have gone into developing the law in this state."

At the same time, the insurance industry and business groups want to play by their own rules, Twiggs says.

"The products liability bill recently passed by Congress would have placed caps on the damage awards to individuals, but businesses would have been able to sue each other without being subject to those same restrictions," he says. The bill was vetoed by President Clinton.

North Carolina Laws

Twiggs has few kind words for North Carolina's punitive damages bill, ratified last year. Among other provisions, that law limits punitive damages in products liability cases to three times economic damages.

"When you put a cap on punitives you're saying you simply don't trust 12 citizens who hear all the evidence and make a decision on how outrageous conduct is," he says. "It is a direct attack on the jury system."

Given the chance, Twiggs would rewrite the punitives law and several others in North Carolina that he says are unfair to injured plaintiffs.

Allow plurality juries. "A civil jury should have the right to render a decision where 10 out of 12 agree," he says. "All the states that surround us have this law _ South Carolina, Georgia, Alabama and Florida. That would keep cases from being tried again. That would also settle cases where the defendant hopes there will be a hung jury."

Scrap contributory negligence. "We are one of three or four states that still have contributory negligence," he says. "There is not even a third-world country that has it. Iran, Iraq the Soviet Union don't have it. It is a relic of the past as far as fairness to anyone who is injured is concerned. This is the most outrageous law that is still on the books in North Carolina."

Twiggs says he would like to see more regulation in one specific area: lawyer advertising. He favors a 30-day ban on mailings to personal injury and accident victims. The State Bar recently approved a similar ban. (see August 5 Lawyers Weekly). It is awaiting approval from the State Supreme Court.

"This should be done," Twiggs says. "But it should be done for the insurance industry too. The unsophisticated person may be preyed upon by the adjusters who try to settle claims cheaply."

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