

# The push for tort reform

By Tom Goudkamp

**T**he push for tort reform is not confined to Australia. It is also alive and well in the USA and the UK. President Bush has taken a deep interest in tort law for many years. Indeed, I understand he discusses it more frequently than the war in Iraq. Unfortunately, his interest is an entirely unhealthy one, namely the eradication of tort cases. He has been Carr-esque in his denunciation of tort law and, in particular, the personal injury lawyers who operate, in his view, to the financial detriment of corporations, insurers and the medical profession by promoting what he terms 'junk' claims.

He has a lot of support. The tort law reform lobby in the USA is very strong and is promoted by many organisations (for example, Citizens Against Law Suit Abuse). According to a Commonwealth Institute Report by David C Johnson (1 October 2003), these organisations are funded by ultra-conservative interests.

You can imagine, therefore, the outrage and dismay expressed by the Bush administration, conservative media and commentators in the USA when former personal injury lawyer, John Edwards, was selected as the Democrat presidential running mate in the forthcoming election. If Mr Bush loses the election a former personal injury lawyer will be a mere heartbeat away from the White House.

Edwards was loudly condemned as being anti-corporation, anti-doctor and in the pocket of the American Trial Lawyers Association (ATLA).

Personal injury-lawyer bashing is just as virulent in the UK as in the USA and here. Fortunately, the UK government has been more measured and circumspect than our governments, thus far resisting the urge to reduce compensation rights of accident victims. A recent UK study concluded that, despite media hysteria, with frequent publication of outrageous personal injury cases, often fictitious, there is no evidence of personal injury litigation being 'out of control' in that country. (See our UK correspondent's comments on p7 in this issue).

Meanwhile, in Australia the zeal for tort reform may be tapering off. It is becoming evident that insurers have been handed windfall profits with no commensurate reduction in insurance premiums. No such luck for accident victims, who are the big losers in the whole sorry process.

Hopefully, the disgraceful behaviour of James Hardie in attempting to thwart payment of proper compensation to the



victims of its deadly product will see a change in the attitude of the media and politicians.

The Federal Labor Party has announced that, if elected, it will introduce laws to impose substantial fines on insurance companies that fail to pass on the fruits of tort law reforms to consumers (*Australian Financial Review*, 16 August 2004).

While APLA is undergoing a major makeover, its fight to stop any further tort law reform and to restore proper levels of compensation continues unabated.

It will also continue to try and educate the public, the media and politicians that the development of the law of negligence has actually made our society and community much safer. There have been a multitude of tort cases that have uncovered corporate culpability and negligent practices.

For example, were it not for personal injury lawyers and the law of negligence, the industry-wide cover-up of the deadly consequences of unprotected exposure to asbestos dust would not have been revealed. Tort cases have resulted in dangerous products being taken off the market or modified (for example, the Dalkon Shield), the creation of protocols in hospitals such as post-surgery sponge and instrument counts, the recall of faulty motor vehicles, the removal from the market of dangerous toys, the development of risk management strategies in supermarkets, and the creation of appropriate systems of inspection, maintenance and warnings at fairgrounds, parks and workplaces. The list is extensive.

Realistically, it will take several years before the unsuspecting members of the Australian public realise that they have been duped by the tort reform foisted on them by governments under pressure from insurers and other powerful lobby groups. Hopefully, governments will be brought to account by the public outrage when accident victims are not compensated for injuries caused by collapsing bridges, faulty fairground equipment, wet and dirty supermarket floors, defective products, inept doctors, dangerous balcony railings and other preventable disasters.

The fight goes on. ■

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