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**Our thoughts are with those that are defending this great nation. We wish their speedy return to their families and loved ones.**

If you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem. You may fool all of the people some of the time; you can even fool some of the people all the time; but you can't fool all of the people all of the time. -- Abraham Lincoln

### DARK DAYS AHEAD

In 20 plus years of protecting the rights of those that have been injured based on a well established constitutional system I am saddened by the fact that such a system will be replaced by big business sponsored legislation. More government less individual rights is alive and well at the legislature, despite being told the opposite before the recent elections.

The legislature, pressured by insurance companies and big business, have capped noneconomic damages (pain, and suffering, disfigurement, emotional trauma, etc.) to \$350,000—HB2128. In other words, lobbyists with their campaign fund payments have convinced the legislature that insurance companies, doctors, and corporations should not have to pay an injured victim what a jury determines is reasonable in a case. Government, with big business riding on its shoulders, has now taken a firm seat in the jury box at the expense of the citizens of this state. Legislators, without considering the particular facts of a case, have mandated a one shoe fits all approach to compensating injured Oklahomans.

What does this mean? Well if you are a homemaker, retired, a child or anyone with out an income and lose both of your legs as a result of a drunk driver, defective automobile or other product, your maximum recovery is \$350,000. That may sound like a lot of money, but I doubt anyone would take such an amount in exchange for having their legs amputated. If you are a child, that is your compensation for the loss of your legs for the next 60 or 70 years of your life. How that is fair is beyond comprehension. Politics and politicians...will campaign money provided by special interest groups always carry the day? Yes, only if we allow it.

Our constitution provides that *“The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.”* So, justice shall not be denied to any person for any injury they suffer. Therefore, unless “justice” is a one size fits all

cap randomly put in place by politicians who are taking their marching orders from big business and insurance companies who are trying to increase their wealth at the expense of injured Oklahomans, a law capping damages would clearly violate our State Constitution. Jurors make life and death decisions every day in criminal cases, they are most capable of determining fair compensation in civil cases!

This legislation will eventually reach the Oklahoma Supreme Court, which by admission by several legislators, will be ruled unconstitutional. In the interim, many will receive less than adequate compensation for life long injuries.

### Supporter Of Tort Reform Makes Use of Judicial System

Dr. Sharla Helton, an outspoken proponent of tort reform (limiting access to the courts, supporting caps on damages, etc.), used the very system she complained about to redress alleged injuries caused by the use of the drug Botox. She was represented by attorney Ray Chester from Austin Texas, a state virtually devastated by tort reform. The case was tried in Tulsa County.

It was reported that Dr. Helton handed out brochures to her patients advocating tort reform in her Lakeside Women's Hospital in Oklahoma City. There was no mention however that she herself was using the very judicial system she adamantly opposed to redress her own injuries. Apparently she had the prevailing mentality that everyone has a frivolous case except me.

The jury awarded her \$15 million dollars for injuries she attributed to botulism. Had the changes she supported been in affect, her non economic damages would

have been capped at \$350,000. There is certainly no indication that she plans on advising the defendant in the case that the verdict was too high and should be reduced to the amount she advocated for.

Those that scream for tort reform yet rely on the very jury system they seek to destroy only to their advantage never cease to amaze me. The doctor certainly had a right to present her case to a jury. She certainly had the right to be fully compensated for the injuries she sustained and to have a jury determine the amount she should receive. She relied on those infallible rights when she filed her case. The question becomes, why would she seek to take those very rights away from her own patients, friends and citizens of this state? Perhaps it only becomes important to do so if you are the one not injured.

Just a thought.

Rick Bisher

## DID YOU KNOW?

Oklahoma allows the state and its political subdivisions to recover limited damages from a parent for certain actions of a child under the age of 18.

23 O.S. Section 10 allows:

*"The state or any county, city, town, municipal corporation or school district, or any person, corporation or organization, shall be entitled to recover damages in a court of competent jurisdiction from a parent or parents of any child under the age of eighteen (18) years when the child is living with the parent or parents at the time of the act, and commits any criminal or delinquent act resulting in bodily injury to any person or damage to or larceny of any property, real, personal or mixed, belonging to the state or a county, city, town, municipal corporation, school district, person, corporation or organization. The amount of damages awarded pursuant to this subsection shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00)."*

The statute is an exception to the common law rule that a parent is not vicariously liable for the actions of his/her child unless the parent knew that the child was going to commit the act and did nothing to prevent it. The statute only applies to the state and its political subdivisions.

## OPTIMISM

"I am a huge bull on this country. We will not have a double-dip recession at all. I see our businesses coming back almost across the board."

Warren Buffett

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## TRUTH?

Tort reform rhetoric is never ending. I hate frivolous lawsuits, but I hate liars worse. I'd rather POLITICIANS just tell me the truth and say they need to pay back the folks who bank-rolled their 2010 victories. Despite what we were told after the last round of tort reform, Bingman and Coffee keep insisting we desperately need so-called tort reform now, even if we violate the 7th Amendment and impair the right to have a fair trial.

In 2009, Coffee, an associate at one of Oklahoma's top insurance defense firms in addition to being Senate Leader declared Oklahoma "tort reformed". In fact the American Tort Reform Association gave Oklahoma their coveted "gold Medal" for having the best state civil justice system.

From the Insurance Journal May 22, 2009:

*Now, "the days of Oklahoma being known as a jackpot justice state are over," said House Speaker Chris Benge. "This legislation will change the economic landscape of our state and will say to companies that we welcome their business in Oklahoma.*

## LICENSE OR SALE

The Supreme Court has sided with a lower court's ruling in a lawsuit over the worth of music sold on iTunes, saying that digital music should be treated as a license, not a sale, which could potentially entitle artists to higher royalties. Experts say this decision will have a huge affect on older artists whose contracts pre-dated digital sales. For decades, artists have been getting 10-15 percent in royalty rates off sales; however, the licensing of music usually entitles an artist to a 50 percent share, because there is no packaging to be done by the record label. The decision is discussed in The New York Times, 3/27/11.

*Senate President Pro Tem Glenn Coffee, who has previously criticized the governor for his views on lawsuit reform, thanked Henry for signing the legislation, calling it 'a huge day for Oklahoma'.*

Question is, were they lying to us then, or are they lying to us now? The answer is both. There are simply no statics supporting the statement that Oklahoma was or has ever been a "jackpot" justice state. If you are a corporation, insurance company or one who wrongfully caused someone an injury, the definition of jackpot justice is any time the jury finds you liable and awards a reasonable amount to your victim for the damages you caused. The solution, just use catch all phrases to promote an agenda that allows the legislature to hoodwink the public and pass laws that equate to nothing more than corporate immunity and call it "tort reform". The truth is in the pudding—just take a look at the current bills: SB2128 caps non-economic damages; SB2024 allows defendant to make periodic payments on a judgment for 7 years; SB864: allows defendant a credit for the victims own insurance proceeds the victim received from his/her own insurance carrier.

## COX—SENATE BILL 3209

Republican Doug Cox, who owns several nursing homes, has a history of authoring legislation that protects the interests of nursing home owners over its residents. In a procedural move in the committee he chaired, Cox killed a bill that would have required nursing homes to carry liability insurance. Now Cox is proposing to take away a resident's rights to seek redress from the courts. If he has his way he will allow nursing homes to take away consumers' right to a jury trial by imposing take-it-or-leave-it contracts by mandating binding arbitration in the fine print of contracts, often without the signer's full or even partial understanding of the consequences. He has authored a committee substitute to SB329 seeking to establish mandatory arbitration clauses.