Resurrecting Justice

Hellhole-proof the justice system

The ongoing "crisis" related to "liquor liability" has occupied all media and garnered political attention, but confused solutions. This is not a narrow issue, confined to the collateral damage heaped upon unfortunate young partiers in golf carts and pleasure boats. It overshadows a larger, more insidious set of threats facing every business sector and citizen with insurance and earned assets.

In commerce, management is responsible for its decisions but can't always control every action of their employees. This varies by sector and activity. Insurance is purchased to protect the buyer and provide reasonable restitution to the injured. But it's unsustainable to expect yours to pay for the fault or irresponsibility of others.'

When an injury lawyer snags a claimant and files a lawsuit where there is a "deep pocket" (lots of insurance), high stakes legal gamesmanship begins. And in many of South Carolina's "judicial hellholes" it's like the rules are different. Unbridled plaintiffs' lawyers can't stop themselves from monetizing a system that is largely of their making but suffering from decades of legislative neglect.

Our state's civil justice system, its terms, processes, and ethics have been methodically degraded to the point that it's no longer about the pursuit of justice. Instead, it's about selectively suing, settling-out minimally-insureds, then targeting, assigning and stacking fault to the party with the most insurance. Worse, everyday mistakes or oversights expose parties to punitive damages, despite no intentions of harm. "Nuclear verdicts" are not good for anyone but a contingency fee lawyer.

Public systems that aren't held accountable inevitably require reform. The judiciary and its professionals are no exception. Without oversight and sunlight they lose the public's trust. Witness what was allowed to grow and fester in Hampton County. Hellholes have spread, abuse is widespread.

Despite the Constitutional right to a jury trial the system denies juries' ability to account for all involved on the Jury Verdict Form. Confoundingly, the law requires the jury to find 100% of fault between only those on the form. Close to 90% of the most recent voters in our Republican Presidential Primary agreed that people should be responsible only for their share of fault.

Add that "negligence in any form" triggers a jury's power to punish with punitive damages. "Ordinary negligence, gross negligence, and reckless, willful or wanton conduct" are legally synonymous as determined by our own Supreme Court.

This is how today's unreformed common law incentivizes economic lawfare, regardless of venue: lawsuit marketers chase collisions making demands far greater than their actuarial "value" to coerce excessive settlements to avoid a jury inflamed by emphatic claims of indistinguishable "reckless" conduct; when the potential for massive windfall is too tempting, they often associate powerfully connected lawyers, or "Big Law."

Between what fair restitution should be and what is paid in the end lies an enormous “dollar delta,” likely hundreds of millions annually in this state alone. Close to half is a contingency fee bounty going to a very small, protected class.

“Incremental” reforms to this system will not solve this crisis of cumulative injustice. Continued legislative negligence only serves to accelerate social inflation and sanction insurance fraud.

Our sister citizens, our competitors, don’t suffer from this racket-like system. South Carolina’s leaders remain stuck, unable to break free and separate themselves from the Contingency Fee Caucus.

Isn’t it time to end the monetization of mistakes, to hellhole-proof South Carolina’s civil justice system? The downstream effects are a deteriorating culture and lawsuit taxes paid by every consumer through insurance and cost of goods and services.