LIABILITY INSURANCE: A LIABILITY TO AMERICANS

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[Assignment: You will write an essay that uses logic to change the reader's mind or to strengthen an attitude he already has. Choose a controversial subject and use your thesis to state your point of view. It is essential that you formally support your thesis statement with ample evidence from your own experience and the authoritative statements of others.]

(1) The birth of a child is one of the most remarkable events to happen to a person, but how special would it be if there were no doctors to guide the mother through her pregnancy? Such a situation exists in Molokai, Hawaii. The doctors who delivered the babies on Molokai have stopped because malpractice insurance costs more than their income (Church 16).

(2) This is only one of the situations created by the high cost of liability insurance. Rising premiums affect many individuals, firms, and even cities. This phenomenon is a very recent one. Only in the past two or three years has liability insurance risen so far and so fast (Church 24). In 1985, $9.1 billion was paid in liability insurance premiums, a 60% increase over the 1984 figure (Church 16). To put this figure in perspective, $9.1 billion is approximately the combined 1985 budgets of NASA and the CIA (Church 17). This amount of money threatens to disrupt organized society, and some action must be taken.

(3) Doctors are perhaps the group most affected by this crisis. Rates have increased by 15-20% per year since 1980 except for an increase of 25-30% in 1984 (Moore 10). Doctors need this insurance because of the high number of lawsuits filed against them. There were twenty claims per one hundred doctors in 1983, an increase of 15% since 1975 (Moore 9). This exorbitantly high number of lawsuits forces doctors to pay annual premiums such as $83,000 for a neurosurgeon in Long Island (Church 18). This added expense for doctors is passed on to the patient. Dr. James Todd, a member of the American Medical Association board of trustees, said in 1985, "Doctors will pay between $1 billion and $1.5 billion in malpractice premiums this year. That clearly will be added on to medical bills" (Moore 10). Companies have been forced to buy liability insurance because the number of product-liability lawsuits has risen 680% over the period 1974-1984 (Church 18). Thus, the insurance problem is affecting two of the groups that keep our society functioning smoothly.

(4) Ordinary citizens are being affected also. One example is that of day care centers. Charges of child abuse have prompted may insurers to deny or raise the cost of insurance because of the uncertainty of the dam-
ages that would be awarded if a center were sued because of abuse (Church 19). Cities are being pushed to the limit also. Rates for local governments climbed 1000% in one year (Elsassar 1). Dallas' rates rose 1,128% (Elsassar 16). By July 1987, two-thirds of California's towns and cities could be functioning without liability insurance (Church 19).

(5) What are the causes of this rise in insurance rates? Insurers blame lawyers for twisting negligence laws to gain large damage awards because sometimes the lawyers are paid according to the size of the award, but lawyers say insurers distort award figures to justify higher rates. Who is right? In my opinion, the insurers are correct.

(6) Lawyers have almost singlehandedly forced insurance rates to skyrocket because of the way some lawyers are paid. Some lawyers are paid contingency fees; a contingency fee is a percentage of the jury's award, and if the plaintiff loses, the lawyer get nothing. (Church 19). So a lawyer can ask for exorbitant damages because he has nothing to lose. If he wins, he gets more money; if he loses, he gets nothing. There is no risk involved in asking for large damages. Excessively high claims also can intimidate the defendant into settling out of court, paying more than normal without ever stepping into a courtroom (Church 20). The average award in product-liability cases and malpractice cases is $1 million (Church 20). Edward Levy, general manager of the Association of California Insurance Companies, says, "Lawyers are out to make a buck, and they seem to have little concern for the overall societal effects of what they are doing" (Church 19).

(7) Most hospital bills do not amount to $1 million. The majority of the money is for "pain and suffering" and to punish the offender (Church 23). It is also easier to win a liability lawsuit. In some states, no proof of negligence is needed. For example, if a lawn mower injures me while mowing the lawn, I can sue the manufacturer. To win, all I need to do is prove that I was injured while using the mower the way it was intended. The mower need not be defective; theoretically, I can sue the company and win even though I may be totally at fault. A person can also sue a partly negligent party even though the plaintiff is also negligent (Church 23). A plaintiff may also sue several parties responsible for the plaintiff's injuries, but only one party pays the plaintiff. This is usually the richest party, and this law really affects large companies and cities (Church 24).

(8) Lawyers justify their actions by saying that most of the big awards go to the seriously injured, and the average award would be lower if all cases, including mistrials and dismissed cases, were counted (Church 20). They also say that insurers are trying to justify high profits made from gouging their customers by unjustly
blaming lawyers, and they also point out that every citizen has a right to seek compensation for injuries (Church 26).

(9) These arguments by the lawyers do not excuse their actions because of these reasons.

(10) The seriously injured deserve compensation, but lawyers ask high damages for all clients; and all awards affect insurers, not just deserved awards. The argument that all cases should be used to figure average awards is weak because an award is given in only one type of case—a plaintiff victory. Other types of cases have no bearing on awards. It is also not true that the insurance industry is making a lot of money; because of falling interest rates, the industry lost $3.8 billion in 1984 and $5.5 billion in 1985 (Church 25). Finally, limiting the right to sue for damages is not the only proposed solution.

(11) There are several proposed remedies. Some want to limit "pain and suffering" and punishment damages (Church 25). Stricter proofs of negligence have been debated, and a California bill proposes that each defendant's part of an award be proportional to his negligence; for example, if he is 10% negligent, he pays 10% of the award. Some want to put a cap on contingency fees or institute punishments for "frivolous" cases (Church 26). Tighter regulation of the insurance industry has been proposed also. The Reagan administration has asked for legislation that limits damages and that strengthens standards of negligence (Elsassar 16).

(12) I believe the best solutions to the problem are capping damages and requiring proof of negligence on the part of the defendant. These reforms could reduce the amount of the award and eventually ease the burden on the insurers; at the same time, a person will still have the right to seek compensation but will have to prove that he deserves it. Limiting contingency fees is a violation of the free market principle of being able to earn what the market can offer. Fining "frivolous" plaintiffs is difficult, for what is frivolous? Is every losing case frivolous? Different judges can interpret "frivolous" different ways. Regulating insurers is unwise because it restricts their right to make money, and they need to start making profits because they are incurring tremendous losses. The best solutions, in summary, are to limit damages and to require a proof of negligence.

(13) In a way, the American people have brought this problem upon themselves. There has been a growing feeling that suing can solve all problems. Programs like "The People's Court," by telling people to resolve their differences in court, contribute to this attitude; and the media exacerbates the problem by publicizing multi-million dollar awards and portraying courts as a way to become wealthy. As a result, greed has become the primary force behind many lawsuits, not justice. The
law, by not requiring proof of negligence, just makes it easier for those who would see their injuries as a chance to become wealthy to force innocent people to pay for their greed. The courts are seen as a bottomless pit of money, but someone pays for each award given. Through higher prices, taxes, or premiums—someone pays. Ironically, insurance, the device that is supposed to protect from injury or destruction, has become injurious. The high cost of protection has led to abandonment by the protectors.

Works Cited

Church, George J. "Sorry Your Policy is Canceled." Time 24 Mar. 1986: 16-26
