



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

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LITIGATION AS A SUBSTITUTE FOR LEGISLATION AND THE INJURY TO THE CIVIL JUSTICE SYSTEM

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I. INTRODUCTION: The Sources of Tort Law

II. THE TRADITIONAL ROLE OF JUDGES IN FORMULATING TORT LAW

III. THE FIRST NEW ROLE OF JUDGES - REGULATION THROUGH LITIGATION

A. Selective unpopular defendants

1. Tobacco - The Quasi-Sovereign Doctrine

2. Guns

a. Negligent distribution

b. Defective because the product did not protect against wrongdoers

3. Who is next? Lead paint, automobiles, liquor, latex

IV. THE SECOND NEW ROLE OF JUDGES - CREATING BRAND NEW WAYS TO SUE

A. Medical Monitoring

B. Liability for Increased Risk

C. Hedonic Products

V. THE THIRD NEW ROLE OF JUDGES - JUDICIAL NULLIFICATION OF CIVIL JUSTICE REFORM

A. The Good News - Michigan: *McDouglass v. Shanz*, 597 N.W. 2d 148 (Mich. 1999); Virginia: *Pulliam v. Coastal Emergency Services of Richmond, Inc.*, 509 S.E. 2d 307 (Va. 1999); Alaska: *Evans v. State of Alaska*, No. 4BE-98-32 Civ. (Alaska Super. Ct. 4th Jud. Dist., Aug. 26, 1999)

B. The Bad News - 92 Cases Overturning Civil Justice Reform; for example, *State ex rel. Ohio Trial Lawyers*

v. Sheward, 1999 WL 617856 (Ohio Aug. 16, 1999)

C. Judicial Extremism Under Separation of Powers -Judges Who Believe That Only Courts Can Limit Liability and Damages

VI. WHY SOME JUDGES HAVE REVERSED ROLES

A. Legislators at the State and Federal Level Will Not Do It

B. Doing the Bidding of a \$\$\$ Constituency

VII. FACILITATOR OF THE TREND - THE WEALTHY PERSONAL INJURY LAWYER-PUBLIC OFFICIAL ALLIANCE

VIII. HOW YOU CAN CHANGE THE PARADIGM OF JUDGES VERSUS LEGISLATURES

IX. CONCLUSION

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