

**Social Inflation: Fact or Fiction, or
old claims wrapped in new rhetoric?**
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In Conclusion . . .

What cures or remedies are Social Inflation proponents advocating for to address this “increasingly dangerous phenomenon?” (III)

The drivers:

- The U.S. litigation system: nuclear verdicts, tort reform roll-backs, class action abuse, third-party litigation funding,
- A population increasingly entitled, suspicious of business, more willing to litigate and as juries, more willing to punish
- Plaintiffs’ attorneys are getting to darn good and out-lawyering the defense bar

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Remedy?

State legislatures should enact strong tort reform measures to curb this scourge of Social Inflation

“Reform” is truly in the eyes of the beholder and for the last 40+ years tort reform has been driven by suspicion of, and therefore interference in the basic premise of our adversarial system of justice through litigation

Our System of Justice is Premised On:

- I. The adversarial system, where truth or justice is obtained by advocates for each party representing their clients zealously, and also within a system of checks, balances, and appeals,
- II. Heard before and decided by neutral factfinders: historically and currently, judges and juries

The right to civil trials decided by juries is not a quaint remnant of merry olde England [i.e., the Magna Carta], but enshrined in our Constitution through the 7th Amendment, and state constitutional counterparts. With limits, but as the U.S. Supreme Court instructed us last month, as understood through the fundamental interpretive principle of historical context – what did the rights mean when the Amendment was enacted.

Tort Reform: Interfering with the free market system of litigation?

This should *not* mean that all efforts to reduce or restrict access to the courts, alter how advocates are permitted to argue, or setting outer limits on damage awards despite the amount of harm established, are unconstitutional or necessarily bad public policy, *but* since tort reform proposals are often inconsistent with these core principles, they need to be carefully scrutinized by our elected officials before enacted.

Separating facts and causation from anecdotes, rumors, and partisan positioning

So, ...

Thank You

