

## COMMENTARY

*Insurance companies have caused malpractice lawsuit 'crisis'***Don't blame juries**

BY BRIAN R. WILSON

**T**o quote former President Reagan, "There you go again." Once again, the bottom has fallen out of the stock market. And just like in the 1970s and 1980s when the markets were flat, the insurance industry is carping about a "lawsuit crisis" and the need for "tort reform." Again it's being blamed on jury verdicts. Companies who insure doctors are pushing for the same threadbare caps on damages, which severely limit the amount of money a jury can provide to those who have been catastrophically injured. This time it's a "generous" \$300,000 cap that our Legislature is proposing.

And we hear the same shopworn threats that things are so bad that doctors will flee Ohio for greener pastures unless there is "lawsuit reform." One might well ask: How did this train wreck in broad daylight without anybody noticing?

The answer is simple: The train didn't wreck because of lawsuits. Although Ohio physicians are being gouged by their insurance companies with skyrocketing premiums, there is no "malpractice lawsuit crisis" in Ohio. Quite simply, the problem is with the wolves crying wolf.

**The pack that sells** malpractice insurance in Ohio is a small one. After the "crisis" of the mid-1980s, the insurance cycle flattened and rates stabilized. By the mid-1990s, the pack grew to gain market share in the suddenly lucrative malpractice insurance market. Next came an industrywide price slashing of malpractice rates to compete for market share.

According to a June 2002 Wall Street Journal article, these price wars, combined with a stalled bull market and declining returns on insurers' investments, are the real culprit for the rising premiums. Market history and cause and effect suggest that misinvestment of premiums in a declining market is the root cause of rising malpractice insurance.

But insurance companies' crying wolf is not the sole reason for increased liability premiums. Some of the pack has died off due to attrition. The 1998 collapse of P.I.E., Ohio's leading malpractice insurer, was a tsunami that is still leaving victims in its path. Did outrageous jury verdicts bring this insurer of 18,000 doctors to its knees? Just two years before P.I.E. fell, it reported a \$65 million surplus, when in reality claims exceeded its assets by \$275 million. Indictments for fraud and misappropriation of \$6.8 million followed. Sound familiar?

The void left by P.I.E.'s implosion made the malpractice insurance market smaller, causing less leverage for physicians who purchase it.

**Medical negligence** also contributes to the current problem. There are thousands of wonderful doctors in this

state, my family doctor included, who are compassionate and dedicated to their patients' well-being. But medical negligence in the United States kills at least 44,000 people every year (some estimates are as high as 100,000 per year), according to a 1998 study by the U.S. Institute of Medicine. A July 2000 article in the Journal of the American Medical Association confirmed the accuracy of those statistics. That's 4,000 more people killed due to malpractice than were killed on our nation's highways last year.

But no new laws were passed to protect patients. A patient's only recourse is bringing a lawsuit. However, only 1 in 100 victims of malpractice ever bring lawsuits against the medical profession. And out of the 1 in 100 who sue in court, less than 30 percent actually win. This is the national average. Why? Because medical malpractice cases are extremely expensive and difficult to win.

Like stale leftovers on a buffet table, juries are again made the scapegoats for rising insurance rates. Doctors don't deserve to be held hostage by huge rate increases, and they are victims in this mess, too. But they've misdiagnosed the problem. Their anger should be focused on the industry that is trying to recoup its huge market losses. The Ohio Department of Insurance should freeze rates until insurance company practices can be investigated.

**But if our Legislature** passes limits on victims' recovery, innocent victims — and taxpayers — will pay the price. Those who can't afford future medical care and can't work will go on Medicaid or welfare. The increase in governmental assistance due to caps on damages is a dirty secret that lobbyists never want to debate when mentioning "tort reform."

Ironically, insurance bigwigs who want these caps have never had their salaries capped. P.I.E. President Larry Rogers (who's now in prison) earned \$6.1 million as P.I.E. was failing. And the CEO of the St. Paul Companies earned a cool \$39.5 million in 2001. Is it fair for legislators to cap an innocent person's misery while insurance company CEOs earn millions in salaries?

Apparently, the free market system is OK if you're at the top of the chain, but "reform" and "caps" are needed for those at the bottom because juries can't be trusted to decide what is fair compensation.

But you can trust these companies to tell you the truth, can't you? If you buy that one, I've got some Enron and Tyco stock to sell you. But you can't buy P.I.E. stock. It's out of business, as Ohioans will be if these damage caps are passed and upheld by the Ohio Supreme Court.

*Brian R. Wilson is an attorney with the Okey Law Firm, LPA, in Canton.*