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TESTIMONY OF ALAN BRESLAU  
BEFORE THE  
PENNSYLVANIA STATE LEGISLATURE  
ON THE  
TORT REFORM ACT #916 OF 1989

My name is Alan Breslau and I am the executive director of The Phoenix Society, the national organization for burn survivors and their families with our international headquarters in Bucks County, Pennsylvania. Our membership is almost 5,000, and includes burn survivors, their families, health and legal professionals and interested members of the general public. I am here to speak on the Tort Reform Act as to how it might negatively effect burn survivors, a group already with many ongoing problems and often in great need.

Very few people have any concept whatsoever as to what severe burn injury entails. Time does not permit me to take you through the horrors of this terrible injury and its aftermath. I do have with me photographs and slides, if it were possible for me to show these to the committee. As a burn survivor myself, having survived the crash of a commercial airliner and involved in an ensuing tort action, and also having worked with and counselled more than a thousand over the past dozen years, I am keenly aware of the problems that beset burn survivors and how this proposed act might negatively effect them.

There are some facts that you should be aware of, however. My burns covered 45 percent of my body surface area. Most of them were 4th degree, or what is now known as deep full thickness burns. I underwent 52 operations over a five year period with two full years actually spent in the hospital. I have lost fingers, the sight in one eye, an ear (this one is plastic), and I wear a hairpiece.

If I had been burned slightly more back in 1963, when my accident occurred, I would not have survived. Today, burn survivors with full thickness burns over 95 percent or more of their bodies, are surviving due to improvements in technology, treatment and care.

When a burn injury is job related, financial help is limited by workmen's compensation to actual expenses. Even these are severely limited and do not cover many immediate financial needs, and cease to do so on the long term.

Those who are disabled, which is not only common, but usual with severe burn injury, are limited in income by SSI payments which are at the lowest rung of financial need. Medicare, which covers such patients after a prolonged waiting period, also tries to limit to the maximum extent those items it is willing to pay for. As an example, I use my prosthetic ear and hairpiece as good examples. Not only was my ear incinerated and amputated, but my skull was burned to and through the bone. In order to recover it with skin, small burr holes had to be drilled all over its surface, leaving it bumpy and fragile. Obviously, a hairpiece in my case is not cosmetic. Yet under existing laws, this is not covered.

When someone is severely disfigured due to a tort action, it is often difficult for them to obtain employment, perhaps for the rest of their lives, due to their stigmatized appearance.

Many burn survivors must wear, for a period of from six months to two or more years, a custom made pressure garment, an exhibit which I have here, so as to prevent their scars from becoming raised above the normal skin surface--so-called hypertrophic scars. Two such garments are required so that one can be washed each day while the other is worn. They are custom made after precise measurements of each inch of the injured body. They are very expensive. Small children, because their bodies are constantly changing, need many more such garments as they grow. Where is funding for this to come from?

Because of the prospective payment system recently established by Diagnostic Related Groups (DRG's), patients are kept in hospital for much shorter times than in the past. As a result, they go home in much worse physical condition, with many still-open wounds. How can family members take care of the patient when they already have been away from their employment during most of the patient's hospitalization.

Tort actions act as a safeguard to the public -- all of the public. By penalizing manufacturers and service providers for carelessness, shoddy or dangerous products or performance, you help to police the marketplace and deter continuing bad practices. In many cases, even with high tort outcomes, companies calculate the cost effectiveness of changing a product versus paying the penalties and often opt to pay the penalties. Nevertheless, the deterrent effect is there.

Tort settlements in the long run are more cost-effective than allowing those who have been wronged to become public charges in any of a number of ways.

If you were going to pass any legislation regarding torts, the best thing that you could do, in my humble opinion, would be to limit the amount the attorneys could collect in such actions. Twenty percent would seem more than reasonable, as was the case in my tort action, and I had the very best in the airline tort area. Yet attorneys frequently collect more than the injured party, and this is obviously unfair and unwarranted.

The marketplace is self-regulating. When a jury, in its anger at the defendants behavior, grants an obviously excessive penalty, the trial judge or appeals judge often reduce it. You hear about the large amounts voted by juries but almost never hear about the final settlement amount because that is not news.

Those who suffer severe trauma have enough to cope with without this body adding to their woes. You can never compensate them for the pain and suffering and the negative changes in their lives, but a reasonable financial settlement will at least let them go on with some dignity in spite of all they must continue to suffer, if not physically, then emotionally and psychologically.

Thank you.

I would be happy to answer any questions.

Respectfully submitted,

Alan Breslau