

Every sector of New York's economy, including manufacturers, are adversely affected by the virtually open-ended liability created by the state's current tort laws.

The costs are significant because, under our current civil justice system, damages are often imposed on an irrational, unpredictable and unfair basis.

The Business Council, as part of the statewide tort reform coalition "New Yorkers for Civil Justice Reform," (www.nycjr.org) supports a comprehensive reform program that will restore fairness and balance to the state's tort system while protecting the rights of injured victims to recover damages.

Repeal Joint and Several Liability: Under current law, when there are multiple defendants in a tort case, any one defendant can be required to pay the entire amount of damages, regardless of their actual degree of fault. This results in unfair outcomes in instances where the defendant who is mainly responsible is insolvent, uninsured or outside the jurisdiction of state court. Under joint and several liability, tort cases often turn into a search for a "deep pocket" – often a manufacturer or other business – that may have limited involvement in the case. The Business Council supports adoption of a liability standard that holds defendants responsible for damages in proportion for their share of responsibility for the plaintiffs's harm.

Cap Non-Economic Damages: Non-economic damages, such as pain and suffering, emotional distress, and loss of companionship, have no precise cash value. As a result, juries tend to assign erratic and excessive value to such claims. The Business Council recommends that all non-economic damage awards be limited to \$250,000.

Adopt a "statute of repose": Under current law, there are virtually no limits on the time period after a construction project is completed or after a product enters the market place in which the project or product can become the subject of a tort claim. The Business Council recommends establishment of a 10 year period for both product-related cases and for claims against engineers, architects, construction contractors and others involved in building projects.

Adopt "Safe Place to Work" protections: The state Labor Law is interpreted as imposing absolute liability on contractors and building owners for construction related falls – even if an employee ignored company safety policies, or was intoxicated, drug induced or in the process of committing a crime when the injury occurred. New York State is the only state which imposes such a liability standard. The Business Council supports adoption of a negligence standard.

Bar Use of Post-Manufacture Improvements as Evidence of Defect: Under current law, improvements that make products safer can be used as evidence suggesting that older products were defective. This creates a significant disincentive against upgrades and improvements to manufactured products, impairing a manufacturer's competitiveness. The Business Council supports reforms that bar the use of such improvements as evidence of defects, and requiring that plaintiffs prove that a defect in a product actually caused harm.

Adopt a "State of the Art" Defense: The Business Council believes that a manufacturer that used the most advanced available technology when a product was developed cannot be held responsible if later developments improve the product. There is no such protections in current state law.

Establish Reasonable Statutes of Limitation: Unreasonably long statutes of limitation for liability can unfairly hold defendants to standards of practice that were not in effect when the item was manufactured. The Business Council recommends the adoption of a three year statute of limitations for product liability cases, beginning from the time of the discovery of the injury.

Limit Contingency Fees: Plaintiffs' attorneys customarily collect one-third of damages awarded in tort suits other than medical malpractice. As a result, injured persons collect less than one-half of the money spent on the state's liability system. High contingency fees also provide an incentive for trial attorneys to promote litigation. The Business Council supports applying the current 25% cap on contingency fees for medical malpractice claims to all tort claims.

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