

## 8.5: Concluding Thoughts

Tort law is continually changing and adapting to societal expectations about the freedoms and interests we expect to protect. Although it has endured for many years, recent debates have sought to recast the viability of tort law in political terms. The Republican Party platform, for example, maintains that the rule of tort trial lawyers threatens America's "global competitiveness, denies Americans access to the quality of justice they deserve, and puts every small business one lawsuit away from bankruptcy." Republican National Committee, "2008 Republican Platform," 2008, [www.gop.com/2008Platform/Economy.htm#7](http://www.gop.com/2008Platform/Economy.htm#7) (accessed September 27, 2010). Many businesses see tort lawsuits as a nuisance at best and ruinous at worst, and would like to see them disappear altogether. Consumer rights activists, on the other hand (and often backed by plaintiff lawyer groups), believe that tort lawsuits are the most effective way to keep corporations honest and prevent them from putting profits before safety. This debate has led to several proposals for tort reform among the various states, or by the federal government.

These reforms can take several different forms. One common reform is to impose a statute of repose on product liability claims. These statutes function like a statute of limitations and bar plaintiffs from filing tort claims after a certain period of time has lapsed. For example, in 1994 President Clinton signed the General Aviation Revitalization Act into law, imposing an eighteen-year statute of repose on product liability claims brought against general aviation aircraft manufacturers such as Cessna and Piper. The law allowed these manufacturers to once again launch new light aircraft production in the United States. Another popular tort reform is a cap on punitive damages. President George W. Bush supported a nationwide punitive damage cap of \$250,000 for medical malpractice claims, but Congress did not pass any such law. Other reforms call for eliminating defective design as a basis for recovery, barring any claims if a product has been modified by the consumer in any way, and allowing for the state-of-the-art defense (if something was "state of the art" at the time it was produced then no strict liability can apply).

Occasionally Congress passes legislation that provides industry-wide tort lawsuit protection for certain industries. For example, in 2005 President George W. Bush signed the Protection of Lawful Commerce in Arms Act. The law shields firearm manufacturers and dealers from product liability lawsuits for crimes committed with their products. Many industries have tried to obtain this form of industry-wide protection, either from Congress or from judicial rulings. Most recently, drug manufacturers hoped for industry-wide protection by arguing that if the Food and Drug Administration approved drug labels, labeling lawsuits would be preempted by the Constitution. The Supreme Court rejected this argument in 2009. *Wyeth v. Levine*, 555 U.S. \_\_\_\_ (2009), <http://www.law.cornell.edu/supct/html/06-1249.ZS.html> (accessed October 2, 2010).

In spite of these efforts at tort reform, torts remain an important and viable part of civil law. All businesses, of all sizes and across all industries, must maintain a keen understanding of the duties and responsibilities imposed by tort law. Being able to understand, and even embrace, these duties can help businesses thrive while keeping consumers and customers safe.

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