

EDITORIAL

There are No Floodgates!

Roland Everingham, Cashman & Partners, NSW

There is a lot of misinformation about the American legal system which is used in debate about tort reform in Australia.

It is often said that Australia "will become a litigious society like the Americans". There is an enduring perception that Americans sue each other in personal injury cases at the drop of a hat and recover extraordinary damages. This is an evil, which we are told, the Australian legal system must protect itself against.

The reality is that such concerns are without justification and are unwarranted.

A recent report "Facts About The American Civil Justice System" published by the American Bar Association, shows the falsity of such assertions. The ABA found that:

- personal injury cases (excluding small claims) account for less than 2% of all the total civil and criminal case load in state courts;
- four times as many family law matters are filed as personal injury tort claims. In 1994, product liability claims constituted less than 1% of the total state/federal caseload in the United States;
- the total product liability risk cost for U.S. manufacturers constitutes less than 1% of sales revenue;
- punitive damages awards are not common in product liability cases. Between 1965 and 1990, only 355 of these awards were made in these cases. Excluding asbestos cases, which represented some 25% of the total, there were on average only 11 such awards made each year;
- a 1990 study by the Harvard Medical Study Group estimated that in 1984 eight times as many patients suffered an injury from negligent medical treatment as filed malpractice claims;
- the direct total cost of medical malpractice is less than 1% of total health care expenditures.

The conclusion to be drawn from the ABA study is that Australian legislators, tort reform enthusiasts and insurance companies cannot rely on the fear of the American bogie to justify tort reform and damages limits.

Dear Editor

Civil Justice Award 1996

I wanted to place on the record my sincere gratitude to APLA for bestowing this honour upon me. In the shock of being called up to receive it, I may have overlooked acknowledging some important people.

Firstly, all members of APLA. Every day, in ways big and small, APLA members struggle for their clients and for recognition of civil justice issues. As Howard Twigg said "we are trustees of our liberties" and every day APLA members discharge that onerous obligation. Most cases won't make the papers. There might not be an award, or any recognition beyond the thanks of their grateful client. But this work is no less important for that fact. That is why I was at once so proud, honoured and humbled to receive the award in the presence of these lawyers whom I respect so much.

Secondly, to the partners of Slater & Gordon, past and present who have given me the opportunity to work in such challenging, and ultimately professionally satisfying litigation such as Wittenoom asbestos, and Ok Tedi. Without their courage and the risks they took I would have not had the opportunities that were noted by Peter Semmler QC at the presentation.

To the Council of APLA who chose Peter Cashman and I, thank you for your kindness. With so many APLA members doing so much for the cause of civil justice, I am surprised and grateful that I was one of two whom you chose.

To all at Slater & Gordon who worked on the Wittenoom and Ok Tedi cases, (and to the team in Perth who proved I wasn't really needed!), thank you all for your dedication, and to Nick Styant-Browne, who corralled my occasional over-exuberance and who committed himself so completely to the Ok Tedi plaintiffs, I will always be grateful.

And finally, and most importantly to my wife Sam, who endured so much - more than anyone should have to - during Ok Tedi, I dedicate the award; my thanks are not enough.

There will always be discussion about the place for such awards in organisations like ours. The work we do, we do not do seeking such personal recognition. It is nevertheless a matter of great pride to receive the plaudits of peers to whom one owes so much, and respects so completely. If such recognition inspires one more lawyer to go the extra yard for a client or the protection of important rights, then it has served its purpose.

Thank you again, and "Never Give Up!".

John Gordon, Slater & Gordon, Perth