

juries to decide cases, and consider jurors to be too unschooled in the intricacies of the system to decide complex issues of liability, causation, and damages, all of which they believe should be left to professionals.

Opponents of the system argue that the deterrent value of tort law is far weaker than claimed by its advocates because few people understand its concepts, because of the purchase of liability insurance, and because the impact of tort sanctions comes so long after the conduct in question. The business community complains that the market impact of encounters with the tort system is not predictable enough to be effectively factored into decision-making to ensure safer conduct. They say the current approach wreaks havoc on long-term financial planning and discourages innovation, an argument not borne out by the most authoritative studies.

Proponents of tort law assert that a tort claim offers the potential for more individualized and complete compensation for an injured person's losses than systems found elsewhere in the world. They say that without this method of compensation, the injured would often be relegated to a "retreat to a life at or below the poverty line" (p. 67). To the claim that the current system hurts the economy, advocates respond that, rather than doing harm, it serves as a useful regulator of the marketplace. It adds a constructive element to the cost-benefit analysis involved in choosing between alternative courses of conduct by making bad choices more costly. Dangerous products and services become more expensive than their safer competitors, decreasing the demand for goods or services that lead to injury. By this means, tort law encourages the "development and use of safer ways of living" (p. 70).

To its advocates, the tort system is a balanced deterrent against unsafe conduct, more effective than government regulation or criminal statutes. The damages recovered in a negligence action are based on the severity of the injuries caused by the defen-

dant's conduct and the effect the injuries have on the victim's life. Administrative fines and criminal penalties do nothing for the injured plaintiff and are often viewed as a cost of doing business, with little deterrent value. Even if a civil judgment has no other effect, at least the victim of the unsafe conduct gets compensated for the loss.

The authors' discussion of the positive side of the ledger on the tort system is more abstract than their discussion of its purported faults. For example, they offer in support of the current system, the psychological justification that going through a case helps the injured person to overcome the role of victim and re-establish a more positive place in society. It offers vindication; the responsible party can be brought into a public forum to be called to account for the conduct in question. These may be worthy goals, but they pale in comparison to the power tort law gives a person to recover full damages from the responsible party. The expenses associated with a lawsuit may seem disproportionately high when compared to "no fault" methods of compensating for injuries, such as workers' compensation, but nothing else responds as fully as the tort system to the unique losses of the individual whose case is being tried.

In their concluding chapter, the authors discuss what they see as the next wave of tort reform. Federalization of products liability cases will continue to be sought. Also on the agenda will be limitations on contingent fees and no-fault proposals that go beyond the realm of automobile accidents. One innovation the authors discuss is an early offer option in personal injury cases, where a defendant can make a settlement offer within 120 days of an accident to pay certain of the claimant's tangible damages and reasonable hourly attorney's fees, and the claimant must accept the offer. Failure to make the offer opens up the defendant to the full range of damages. The early offer option has the goal of limiting both the total

damages, particularly intangible damages, and attorneys' fees. Also in the sights of reformers is the procedure for deciding class actions, something that has drawn criticism from industries targeted for products liability or toxic tort cases with financially catastrophic consequences. The proposals the authors discuss are not likely to find support in the trial bar or among consumer groups. The new no-fault options may appear to be easy targets for criticism, but the power of their advocates should not be underestimated. Two decades of success cannot be discounted.

To illustrate the intricacies of a tort case, the authors create a complex negligence action involving a young attorney, who is gravely injured when he stumbles from a subway platform while intoxicated, and is struck by the train, cutting short a promising career and jeopardizing the security of his wife and children. The hapless lawyer surfaces from time to time, but he and his family become largely one-dimensional as the discussion of the issues progresses. Perhaps this is as it should be — the weakest voices in this debate are usually those of the injured victims. They are reluctant consumers of legal services they would rather not need, but, because of the uncontrollable tide of events, they look to the lawyers and the courts for help. Few of the proposals advocated in the name of tort reform appear to have the interests of these victims as their guiding principle. ■

*Michael Foster is a sole practitioner in Tampa, Fla., who specializes in representing claimants in personal injury and wrongful death cases. He is a board certified civil trial lawyer, certified by both the Florida Bar and the National Board of Trial Advocacy. He received his B.A. from the University of Tampa in 1962 and his J.D. from Stetson University College of Law in 1965.*