

European Justice Forum: Position Paper No 2 A Balanced Approach to Consumer Redress in Europe

Summary

At both national and EU level, there is a vigorous debate about consumer rights and in particular about the ability to obtain redress for grievances.

European Justice Forum is committed to ensuring access to justice for consumers. At the same time, EJF believes it is essential to maintain a balanced system that safeguards the interests of Society as a whole. Where reforms are made to the existing justice system, they should be based on sound empirical research both as to their need and as to their likely effect.

Europe already spends on average close to 1% of its GDP on tort litigation. Before encouraging an expansion of such litigation, the use of other existing remedies should be encouraged. These range from the use of ombudsmen; small claims courts; alternative dispute resolution and mediation, including the Commission's own "Solve It" initiative; to the use of public regulatory bodies to oblige wrong doers to make restitution to those who have been wronged.

At both EU and national level, Europe has developed a sophisticated system of regulation including food, medicines, financial services, electrical goods, automobiles, aircraft, and energy as well as in general areas such as consumer protection, misleading advertising and competition law. In all these areas, it is common experience that the great majority of companies seek to operate within the confines of law and society's expectations. A Regulator is vigilant but he only rarely needs to exercise his powers.

Moreover, when a regulator does find abuse, it should assess the seriousness of the matter and in appropriate cases oblige the culprit to make restitution to those who have suffered loss. Indeed, it is already common practice in a number of Member States for Regulators to act in this manner.

If it is determined that class or collective actions may be needed as a backstop for consumer redress, they should normally be kept in reserve. If collective actions are required, it is essential that they are accompanied by measures that will substantially eliminate their abuse and avoid the problems experienced in the USA. What is clear is that the US did not intend their class action system to be abused in the way that has become common. It is too easy to assume that "this will not happen in Europe".

It is also essential to bear in mind that the different national European justice systems differ widely in the way they operate. Moreover, many of those national systems are currently subject themselves to substantial reform. The effect of a single EU collective redress system imposed from Brussels is likely to have a significantly different effect country to country.

The European Justice Forum (EJF) is a coalition of businesses, individuals and organisations that are working to promote fair, balanced, transparent and efficient civil justice laws in Europe. EJF is seeking to ensure that the legal environment in Europe protects both consumers and businesses alike. For further information please see our website: <http://www.europeanjusticeforum.org> or contact the EJF Secretariat at info@europeanjusticeforum.org

1. Discussion.

There is general agreement about the importance of enabling consumers (or indeed businesses) to obtain redress where it is deserved. To that extent there is common ground between all protagonists in this debate. In considering remedies, a number of basic principles should be borne in mind.

First, it should be recognised that almost all European national jurisdictions already have remedies whereby plaintiffs can secure redress. Changes to these systems should only be introduced on the basis that there is sound empirical evidence for both the need for change and the appropriateness of the proposed solution. As a basic principle, any reform should be based on reliable risk assessment, rather than on polemic and assertion.

Second, it is essential to take into account the wide underlying differences between the national legal systems in Member States. This is not an area in which it is simple to introduce a single central reform. The effect of any change engineered from the centre (e.g. by a European Directive or Regulation) will differ greatly from jurisdiction to jurisdiction.

Third, Europe is already governed by regulation in most of the areas that are of principal concern to consumers, including competition law, advertising and marketing claims, consumer credit, pharmaceuticals, medical devices and cosmetic products, and automobiles. Enforcement by public authorities in these areas should be the primary mechanism for controlling markets. The involvement of public authorities can provide speedy, effective and low cost delivery of restitutionary damages in many situations, like the widely used *partie civile* mechanism¹, and this should be expanded further.

Fourth, self-regulatory systems can also deliver speedy, effective and low cost compensation. Ombudsmen, ADR and Codes of Business Practice and other such approaches should be prioritised whenever appropriate. No one size fits all situations.

Fifth, Courts will increasingly need mechanisms to manage multiple similar individual claims. But court-based mechanisms must be kept as a long-stop to other mechanisms, and the procedures and incentives must be balanced so as not to allow capture and abuse by intermediaries, whether they be plaintiff law firms or companies whose business it is to fund litigation.

2. The authorities' concerns

What are the issues for which one or more solutions need to be found?

There is a perceived gap in national access to justice systems, leading to inhibition of individuals and SMEs in bringing small claims. The causes lie in costs and financial

¹ This is a common feature of civil law jurisdictions, where a public prosecutor may bring a public case, and private parties may join the case as a *partie civile* seeking compensation if the defendant is found to be liable, thereby avoiding duplication, saving costs and overcoming barriers of access to evidence.

arrangements. It is argued that a collective mechanism would solve this by reducing costs through aggregation.

There is a perceived gap in enforcement of regulatory laws on competition (where the emphasis on SMEs is more important than on consumers), and to a lesser extent on consumer protection. Maintaining a strongly competitive and compliant market is important for enhancing EU competitiveness. Some authorities claim that only 20% of competition infringements are identified – although empirical evidence for this assertion is unclear.

There is a particular concern that enterprises and rogues may ‘skim off’ small individual sums from many customers/consumers and hence accumulate large total illicit sums. This would have a distorting effect on the market.

On the other hand, there are widely recognised risks of abuse of the justice system if ‘US-style’ class actions are imported. Problems arise if private intermediaries are enabled to control the process and gain excessive profits. This would impose a high and unnecessary economic burden, worsening rather than enhancing economic competitiveness, through high transaction costs, concentration of powerful economic and negotiating positions encouraging poor claims and ‘blackmail’ settlements. The relevant factors involve not just the class action mechanisms, but also factors like financing of litigation, costs rules, damages, and advertising are particularly important. Changes in each of these areas will have unpredictable effects. Not only do national justice systems differ one from another, but many of these factors are also changing in different ways and at different speeds within those national systems. The combination of introducing new funding arrangements at the same time that new collective mechanisms are introduced may lead to undesirable consequences.

The overall position is complex. It is a real challenge to maintain a system that balances provision of access to justice, delivery of compensation when due, observance and enforcement of regulatory requirements, removal of illicit gains, effective market control, solutions that are effective, efficient and low cost, without encouraging a litigation culture, and excessive claims.

3. The conclusions from the available evidence and academic research

There is a need for full data and impact assessment before any decisions are taken about major changes in civil justice systems. Clear evidence is required both of the need for new remedies and of how any new proposed solution would be effective.

It is extraordinary that the current debate is being concluded in a cloud of unsubstantiated assertions, insulated from any proper empirical evidence. This is just not acceptable in a Community that claims only to make evidence-based policy based on robust and reliable impact assessments. Is it not of great importance where the potential for causing harm is so great? Exactly where are the gaps in access to justice, or under-delivery of compensation, or below-optimal compliance or enforcement? What evidence is there that would enable an informed choice to be made amongst the possible options that particular solutions would be effective and preferable?

There are various factual situations in which the absence of access to justice under current methods is plausible – but their extent is unproven. Since there is very little empirical evidence of the size of any issues that need to be addressed, it is impossible to carry out cost-benefit or impact assessments in relation to evaluation of various possible alternative solutions. There is a strong need for empirical research into the individual situations and alternatives before sound policy decisions are taken.

So the question arises as to what objective evidence is available at present?

There is ample evidence that collective actions increase the number of claims by reducing the aggregate cost of individual cases. But also, if their economic incentives are not carefully controlled (and this is extraordinarily difficult to do) they will generate undesirable litigation against governments and companies of all sizes that imposes huge unnecessary costs on an economy. In USA, the cost of the litigation system is excessive – recently published data is summarised in the Annex. High litigation risks and stringent regulations were the principal factors in a 2007 Report that New York is in danger of losing its status as world financial centre.²

A major priority for Europe is to enhance competitiveness. In order to achieve this, the EU has emphasised strong, competitive, innovative open markets and lightening the regulatory burden on business.³ However, positively increasing private litigation (especially through collective or class actions) could impose a huge burden on business and the economy. Thus, great care needs to be taken in adopting a balanced approach in implementing these policies: maximising enforcement of competition laws through boosting litigation is not consistent with ‘better regulation’ lifting of burdens

Introducing collective mechanisms at the same time as changes are occurring in national litigation funding mechanisms is inherently risky.

Mechanisms for funding litigation are changing at national level.⁴ Both contingency fees and third party commercial investors in litigation are spreading at national level. Both these developments need to be controlled. But the underlying instability creates great uncertainty for predicting the effects of further changes in procedural mechanisms, especially aggregated or collective mechanisms. It also increases the risk of capture of systems by lawyers or other commercial funders. This is at a time when significant change is being introduced through permitting lawyers to advertise.⁵

² M R Bloomberg and C E Schlumer, “Sustaining New York’s and the US’s Global Financial Services Leadership,

³ Communication from the Commission, *Working Together for Growth and Jobs: a New Start for the Lisbon Strategy* COM(2005) 24. Communication from the Commission, *Common Actions for Growth and Employment: the Community Lisbon Programme* COM(2005) 330. Communication from the Commission, *Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing – towards a more integrated approach for industrial policy* COM(2005) 474, 5.10.2005. Communication from the Commission, *Strategic Report on the Renewed Lisbon Strategy for Growth in Jobs: Launching the new Cycle (2008-2010). Keeping up the Pace of Change* COM(2007)803 Final, 11.12.2007

⁴ C Hodges, ‘Europeanization of Civil Justice: Trends and Issues’ *Civil Justice Quarterly* (2007) 1, 96-123

⁵ Directive 2006/123 on services in the internal market, art 7.

Incentives for intermediaries to make profits from litigation are affected by multiple factors, including ability to advertise, availability of collective mechanisms, access to funding, costs rules, size of damages. It is entirely possible to cause similar adverse consequences in Europe to those experienced in America without importing a ‘US-style class action’ mechanism. The key in private litigation is to provide enough financial incentive to achieve the desired access to justice but not too much so as to permit abuse. Achieving a balance is very difficult, especially where national systems are changing, notably with the introduction of contingency fees, third party commercial funders and advertising by lawyers

If financial incentives are too great, those who invest by supporting litigation will seek to bring more claims, especially against ‘deep pocket’ governments and responsible businesses, accompanied by wide media coverage, seeking to force settlements on a commercial basis irrespective of the merits of the case. The costs in defending a large aggregate case coupled with pressure on reputation, investors’ funds and management time, lead clearly to ‘blackmail settlements’. The huge costs involved cause significant harm to companies, shareholders, pension funds, employees, customers and the general economy.

4. The differing and complex national models for collective redress

All Member States have in place mechanisms for controlling markets through court injunctions. About half of the Member States have recently introduced mechanisms for obtaining damages in collective situations. But the national models differ so widely that they simply cannot be rationally harmonised at EU level. Models vary from primary reliance on public authorities to oversee both regulatory intervention and some compensation (Consumer Ombudsmen and Market Courts in the Nordic states, or the Office of Fair Trading and the Competition Appeal Tribunal in UK) to extensive reliance on private bodies (consumer organisations, as in Austria, Germany, Italy and Portugal, often operating in different ways). Hence, the rational observation is that no single solution fits all situations

What is common across the EU is an individual mixture of public and private bodies that deal with regulatory enforcement and delivery of compensation as an integrated national system. But each national system differs, and the individual public and private elements are mixed in different ways.

For example, specific solutions (e.g. Small Claims,⁶ Ombudsmen, ADR⁷ and Codes of Conduct) can work well in individual sectors and are being strongly emphasised at EU level.⁸ These ADR mechanisms offer many advantages, such as access, speed,

⁶ Regulation (EC) No 861/2007 establishing a European Small Claims Procedure.

⁷ COM(2004) 718 final, 22.10.2004.

⁸ J Stuyck et al, *Study on alternative means of consumer redress other than redress through ordinary judicial proceedings* (Catholic University of Leuven, January 17, 2007), published April 2007.

low cost, expertise, effectiveness and flexibility. But the introduction of a horizontal court-based collective action solution may undermine these mechanisms.

Some Member States have introduced mechanisms to aggregate claims in their court systems, but others have not. A number of the problems for civil claims arise because of inherent inadequacies in national civil justice systems. Some of these inadequacies are avoidable in a number of EU Member States,⁹ and, where necessary, action should be taken nationally to improve matters. However, civil litigation systems will always have thresholds below which small claims are not cost-effective.

Some Member States place primary responsibility for regulating markets *and* for initiating or overseeing delivery of compensation on public authorities. The Nordic States are an effective example, with Consumer Ombudsmen and Market Courts. In the UK the Financial Services Authority has power to apply to the court in an enforcement action for a compensation order but it rarely uses it because of the existence of the effective Financial Services Ombudsman service.

Empowering private entities, such as consumer organisations, to act as quasi-public enforcement authorities or coordinators of private law damages claims is a mechanism that has grown in some Member States (where there is an absence of a strong public authority tradition and/or an effective court system). But primary reliance on consumer organisations as public enforcement agencies and overseers of compensation claims raises problems: representation, potential for hijack, accountability to stakeholders, democratic accountability, balance, independence, conflict of financial and public incentives, oversight, access to funding, ability to distribute funds fairly and economically, proliferation and diversity of regulatory/legal standards leading to confusion amongst business and government defendants.¹⁰

Enforcement of standards/infringements by private actors is only likely to be effective if private actors are provided with sufficient funding or incentives such that private action is profitable. The US system involves no risk for nominally representative class claimants and significant (sometimes huge) financial incentives for intermediaries (lawyers or other funders). The evidence indicates that it is very difficult to balance modest incentives with effective action.

Empowering private entities to carry out the coordination function for multiple claims (investigation and financial distribution), if it occurs at all, should be limited to entities that satisfy criteria of objectivity and balance, so as to avoid allowing individual profit considerations to capture the process.

5. Some technical issues

⁹ *Cost-effective measures taken by States to increase the Efficiency of Justice: Report prepared by the European Committee on Legal Co-operation (CDCJ) in consultation with the European Committee on Crime Problems (CDPC)*, 23rd Conference of European Ministers of Justice, 8-9 June 2000. Green Paper: Access of consumers to justice and the settlement of consumer disputes in the single market, COM(93) 576, 16.11.1993, p 57.

¹⁰ C Hodges, 'Collectivism: Evaluating the effectiveness of public and private models for regulating consumer protection' in W van Boom and M Loos (eds), *Collective Enforcement of Consumer Law* (Europa, 2007).

Any privatised coordination of damages claims will face some or all hurdles, depending on its context (and especially in complex cases such as under competition law: access to evidence (discovery), confidentiality of some information (commercially sensitive and leniency applications), expert assessment, evidence of proof of individual causes of action and of loss, fair distribution of lump sums, what to do with any surplus funds. Standard solutions to these issues merely inflate the costs of private systems, sometimes considerably.

Both opt-in and opt-out approaches¹¹ involve significant costs in order to satisfy requirements of notification, information and control. The US opt-out class action mechanism has economic attractions in some types of cases, where all claimants can be identified and contacted, but objectively requires notification and control by class members, which ought properly to involve significant cost if widely applied. Equally, an opt-in system will be expensive in some situations. Courts and justice require an opt-in approach in some situations (e.g. where individual issues predominate over apparently generic issues).

There are constitutional and human rights objections to an opt-out mechanism, as several EU jurisdictions have recognised.¹² An opt-in approach does not give rise to such objections. Neither does a criminal-based inquiry, if backed by a long-stop private law solution.

The argument that private damages and costs constitute deterrence is unproven in a corporate context. There is considerable behavioural psychological evidence of the impact of deterrence in relation to influencing the behaviour of *individual* offenders¹² but little in more complex groupings,¹³ such as *companies*.¹⁴ Such research as is currently available in relation to infringements instituted by individuals employed by companies tends not to support the widely quoted assertion that imposition of a financial penalty on the company will necessarily affect the behaviour, since it may be ineffective for the key individual. The implication is that those agencies that rely on financial forces (whether fines or damages) as mechanisms for influencing behaviour may be pursuing ineffective policies in promoting deterrence and compliance.

¹¹ Under an opt-in system, each individual plaintiff must agree to take part in the litigation. Under an opt-out procedure, a law firm is able to enrol individuals into litigation without those individuals even knowing of the existence of the case let alone consenting to take part.

¹² H-W Micklitz ‘ Collective private enforcement of consumer law: the key questions’ in W van Boom and M Loos (eds), *Collective Enforcement of Consumer Law* (Europa, 2007).

¹³ Darley, J.M., Teger, A.L. & Lewis, L.D. (1973). Do Groups Always Inhibit Individuals Responses to Potential Emergencies. *Journal of Personality and Social Psychology* 26, 395-399. Greenwald, A. G., & Banaji, M. R. (1995). Implicit Social Cognition: Attitudes, Self esteem, and Stereotypes. *Psychological Review*, 102, 4-27.

¹⁴ Davis, C, (2005). Making Companies Safe: What Works. Presentation to Health and Safety Executive Conference on "Director Responsibility for Health and Safety: What the evidence shows". London, 6 October. This study notes that members of senior management in responsible companies are significantly influenced by the twin goals of regulating positive company credibility, and preventing the loss of that credibility), and employees who may have directly caused the offending behaviour may not be singled out as the cause.

Further, a financial consequence for a company may simply adversely affect shareholders (e.g. pension funds and therefore consumers and the economy generally). If true, this argument would significantly undermine the argument for 'private enforcement'. Further empirical research is being scoped on this issue.

6. Conclusions for policy

From the above, it is reasonable to draw the following conclusions in relation to policy in this area:

1. Avoid “capture”

Avoid reforms that could in practice enable capture of private litigation by intermediaries. The prime movers in any litigation should be the plaintiffs, not the plaintiff law firm or any company whose business it is to provide funding for individual pieces of litigation. In America, it is common for litigation to be initiated by law firms who make it their business to represent plaintiffs who in many cases have not even consented to take part in the litigation. Such behaviour is a complete “privatisation” of collective actions often supported by opt-out mechanisms, uncontrolled funding, the ability to earn excessive profits, and the ability to control collective claims without independent supervision.

2. Proceed carefully on the basis of research, evidence and evaluation

Proceed carefully and incrementally, on the basis of valid empirical research. No one size fits all situations. Accordingly, there is no generic solution that deals with all situations. Specialist solutions (ombudsmen, ADR, tribunals) are indicated for particular situations.

3. Establish criteria rather than prescribe specific solutions

Given the current diversity in national models, and the currently insuperable challenges in relation to potential harmonisation, the most effective approach is first to establish criteria by which any future systems and mechanisms can be evaluated. This is what Commissioner Kuneva announced at Lisbon on 10 November 2007. The European Justice Forum supports this initiative and looks forward to being involved in the debate on what the criteria should be.

It is far better to define the results that should be achieved by national justice systems than try to impose specific reforms on those systems from the centre.

It also follows that any attempt at addressing a cross-border solution should be based on mutual recognition of national systems. The model of the Consumer Protection Cooperation regulation may offer guidance here.

4. Promote integrated solutions that contain balanced prioritisation of multiple levers

It is of paramount importance to recognise that models which address the linked goals of controlling compliant behaviour in markets (i.e. enforcement, whether public or private) and delivery of restitution or compensation for damage constitute systems that are **vertically integrated** and include a variety of different public and private mechanisms.

We advocate vertically integrated solutions that produce a balanced result by prioritising the various levers of public and private mechanisms. Our ideal would be a system that placed primary emphasis on the public authorities, which would in turn encourage active self-regulatory and ADR mechanisms, with private action through the courts as the long-stop.

5. Promote Oversight by Public Authorities

Oversight of market behaviour, and of restitution of financial imbalances by public authorities, where due, offers the most speedy, effective, cheap and efficient approach. The existence of a strong public body with effective powers will encourage effective take-up of self-regulatory systems for businesses that have reputations to lose. The aim should be to construct mechanisms that are compelling, especially for less reputable businesses, without encouraging unnecessary transactional costs and unnecessary litigation. Accordingly, one should utilise ADR, Ombudsmen, Codes of Business Practice, or other alternative approaches whenever appropriate in order to be more efficient where these can be effective in delivering compensation.

6. Link the Public Enforcement Process to Private Restitution

Where alignment can be achieved between public offences and private causes of action, it will be very efficient and speedy to include private restitution within the public enforcement process in order to maximise efficiency (access to evidence, utilise the power of public authorities, plea bargaining, general efficiency, influence on encouraging early settlement of voluntary or overseen repayment) and solve the issue of justice (fines and undistributed skimmed-off profits to be retained by the state). Restitutionary damages should be paid to victims where economically justifiable. This solution is already included within many Member States as a *partie civile* mechanism¹⁵ and should be expanded further through closer alignment.

7. Reserve Collective Actions to the last Resort

The above solutions are far preferable to adoption of court-based collective action, which runs the insuperable risk of capture by intermediaries and the inevitable production of US-style abuse. Whilst some Member States may wish to retain mechanisms that coordinate similar claims if they arise, the policy should *not be to promote* collective court-based systems, such as by opt-out or costs risk rules. The European traditions should be retained of ‘loser pays costs’, and preventing intermediaries from abusing consumers by skimming off large percentages of sums recovered.

8. Monitor the Effect of Reform

After introducing the reforms advocated above, empirical research should be undertaken to establish whether a significant number of multiple small claims (especially by SMEs in competition law but also by consumers) remain problematic. The possible options should then be evaluated.

¹⁵ See footnote 1 above.

Annex

The cost of excessive litigation in USA

Data from USA illustrates these trends and the vast and wasteful costs that such a system imposes on that economy:

1. US Tort Costs in 2006 were estimated at \$247bn, which was approximately \$825 per person of the US population.¹⁶
2. There is evidence that CAFA legislation and other developments at State Level have helped mitigate the growth of class action suits. Indeed, the Tillinghast Towers Perrin report quoted above recorded in 2006 the first decrease in tort costs since 1997. Costs in 2006 fell by 5.5% compared to 2005. However, up to 2006, recent years have seen significant increases in tort costs. The growth of tort costs in 2003 was 5.7%; in 2004 it was 5.5%; and in 2005 it was 0.5%. Looking ahead, Tillinghast forecast that tort costs will grow by 2.5% in 2007 and by 4.5% in 2008 and 2009¹⁷.
3. A US federal government analysis in 2002 concluded that excessive tort litigation costs in 2000 were an \$87 billion drag on the national economy.¹⁸ The study estimated that the impact of wasteful legal expenditures equated to a 1.3% tax on consumption, or a 2.1% tax on wages.
4. Over the past 56 years, direct tort costs in the US grew more than 100-fold from less than \$2 billion in 1950 to \$247 billion in 2006, while GDP has only grown by a factor of 45. The 2007 figure equates to a “litigation tax” of \$825 per person, compared to \$12 in 1950, and is equal to just under 2% of the Gross Domestic Product of the United States. Nearly one in six jury awards is now \$1 million or more. Over 7% of businesses experienced a liability loss of \$5 million or more during the past five years.¹⁹
5. In 2005 the annual tort cost for small US businesses was \$98 billion. This equates to \$20 per \$1,000 of revenue. Small businesses bear 69% of US business tort liability but take only 19% of revenues. They pay \$20 billion of their tort costs out of pocket, as opposed to through insurance.²⁰
6. A survey of 500 U.S. CEOs by the Conference Board found that lawsuits caused 36% of their companies to discontinue products, 15% to lay off workers, and 8% to close plants.²¹

¹⁶ 2007 Update on *US Tort Cost Trends*, (Tillinghast-Towers Perrin 2007)

¹⁷ *Ibid.*

¹⁸ *An Economic Analysis of the U.S. Tort Liability System*, (U.S. Council of Economic Advisers, 2002).

¹⁹ 2007 Update on *US Tort Cost Trends*, (Tillinghast-Towers Perrin 2007)

²⁰ *Tort Liability Costs For Small Business* (US Chamber Institute for Legal Reform, 2007). Small businesses are defined here as those with less than £10 million annual revenues and at least one employee in addition to the owner. The tort cost increased 13% from 2002 to 2005.

²¹ U.S. Senate Commerce Committee Report on Product Liability Reform Act of 1997.

7. A Gallup survey of U.S. small businesses found that 26% of owners said that fear of liability kept them from releasing new products, services or operations to the market.²²
8. US corporations paid \$9.6 billion to shareholders to settle securities class actions in 2005, excluding a \$7.1 billion settlement involving Enron.²³ Settlements in securities cases have grown successively over the past decade: in 735 cases between 1997 and 2005, the total settlement amount was \$26 billion.²⁴ This would have yielded plaintiffs' lawyers' fees \$7.8 billion assuming the average 30% contingency fee is assumed.
9. Over 200 insurance companies failed in USA in the past decade.²⁵

February 2008

²² National Small Business Poll (National Federation of Independent Businesses, 2002).

²³ ⁴ L E Simmons and E M Ryan, *Post-Reform Act Securities Settlements: 2005 Review and Analysis* (Cornerstone Research, 2006).

²⁴ Ibid.

²⁵ A M Best, 'Rising Number of P/C Company Impairments Continues Trend' March 10, 2003, quoted in D Deal et al, *Tort Excess 2005: The Necessity for Reform from a Policy, Legal and Risk Management Perspective* (U S Chamber of Commerce, 2005).