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A Study of the Civil Justice Reform Act of 2003: Can Tort Reform Benefit Arkansas?

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A STUDY OF THE CIVIL JUSTICE REFORM ACT OF 2003: CAN TORT REFORM BENEFIT ARKANSAS?

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Abstract:

Without question, reforming America's civil justice system has become a hot button issue in today's political landscape. While most Americans move about their daily lives without giving the subject a second thought, politicians ranging from aspiring state assemblymen to the recently reelected George W. Bush have placed tort reform at the forefront of American political affairs. Although problems plaguing American courts have been discussed for years, criticism of America's current system for adjudicating tort cases has reached a fever pitch. Among the more vocal critics are powerful lobbyist groups, such as the American Medical Association (AMA) and the American Tort Reform Association (ATRA), who believe the current civil justice system is responsible for increases in liability insurance, a decrease in the quality of health care, and an overall increase in the cost of doing business. Opposing groups, such as the Association of Trial Lawyers of America (ATLA), believe it is the right of every American consumer to have their day in court and punish corporations and doctors for committing civil offenses against them. And sandwiched in the middle of this fiasco are the thousands of politicians, businessmen, doctors, and ordinary citizens who are left scratching their heads when they try and figure it all out.

This paper attempts to explain the debate surrounding tort reform on both the national and state levels. Further, it summarizes each section of Arkansas Act 649 of 2003, better known as the Civil Justice Reform Act of 2003 (the "Act"), and point to any obvious benefits to the business community as a result of the reforms. A more challenging topic this paper covers is whether or not tort reform, specifically the Act, will provide future economic benefits to the state of Arkansas. This paper attempts to make the direct link between legal reforms and increases in economic output as measured by personal income levels. The model is intended to be very simplistic yet still provide a picture of how tort reform may or may not benefit Arkansas' economy in the future.

The Growing Debate:

By now most Americans have at least heard of the McDonald's hot coffee case. The case involved Stella Liebeck of Albuquerque, New Mexico suing her local McDonald's fast food restaurant when she spilled hot coffee on herself after making the purchase at the drive-through window. Liebeck was awarded $200,000 in compensatory damages and $2.7 million, two days of McDonald's coffee sales, in punitive damages. The award for punitive damages was later reduced by the trial court judge to $480,000 (iCan2000, n.d.)[1]. Both sides appealed, but before the appellate court could rule on the matter, the case was settled. This case can serve almost single-handedly as the measuring stick with which to gauge whether or not one is for or against tort reform. Many Americans will see the headlines in the paper, "Woman Awarded $2.7 Million for Spilling Coffee," and make the judgment that the courts are out of control in awarding millions in what can only be described as frivolous lawsuits. Others will say that Liebeck received adequate compensation from a negligent business that was serving coffee at around 185 degrees with no warning as to how hot the coffee really was. They would also point out that this case shows that the current system provides a mechanism to reduce unusually large jury awards. Thus, in this example, one may begin to see the makings of the current tort reform debate that has grabbed the attention of both the federal and state governments.

On the federal level, the debate has led to many failed attempts by Congress to pass measures involving the limitation of medical liability, class action status, punitive damages, or any other civil justice reform. Although proponents of tort reform have a tremendous amount of support in the Republican Congress, Senate Republicans have yet to garner enough votes to stop the Democrats' filibuster on all things related to reform. Tort reform proponents were able to score a victory earlier this year regarding class action lawsuits, with the passage of the Class Action Fairness Act (CAFA). However, on most of the major reform issues, tort law reformers have failed to win any major battles on Capitol Hill.

Backed by the ATLA, opponents of reform have plenty of firepower to win the support of key congressional leaders and fight off pushes to reform the system. ATLA CEO John Haber states, "I don't agree [that business interests] have traction with Joe Sixpack. Average Americans don't want a system that's tilted so it works for the rich and powerful" (as cited in Dunham, 2005, p. 53). In general, there is a belief among tort reform opponents that ordinary citizens are able to, in effect, police companies and doctors through lawsuits involving torts. When a business places a faulty product on the market that may cause harm, or a doctor commits medical malpractice, reform opponents believe it is the consumer that has a right to go after that business or doctor and prevent such action from occurring again in the future. According to the organization's mission statement, ATLA is in place to "champion the cause of those who deserve redress for injury to person or property," and to "promote the public good through concerted efforts to secure safe products, a safe workplace, a clean environment, and quality health care" (ATLA Mission, 2005).

It is the notion of using the courts as an equalizer that pushes some trial lawyers, such as Senator John Edwards (D-North Carolina), into the consumer protection spotlight. Sen. Edwards made a name for himself by representing clients who were injured by the negligence of corporations and doctors. With the attention turned to Sen. Edwards in the 2004 presidential race, tort reform opponents seized the opportunity to publicly state their opposition to limitations on the consumer's ability to file suit with stories from Sen. Edwards' career as an attorney. One case cited numerous times throughout the campaign involved a five year old child named Valerie Lakey. Valerie, according to Sen. Edwards' book *Four Trials* (2004), was disemboweled by a faulty pool drain cover in 1993. The case made the Senator famous when the jury awarded the Lakey's $25 million. Cases such as the Lakey's are often cited by tort reform opponents to show how the system successfully acts as the great equalizer between victims of civil offenses and negligent parties.

Opponents of tort reform face an equally powerful group of lobbyists looking to reform America's civil justice system. Organizations such as the AMA, ATRA, and other groups representing insurance companies, pharmaceutical companies, health maintenance organizations, doctors, and hospitals are fighting to win the war on tort reform. These organizations are carved out of the belief that tort litigation has led to an increased cost of doing business and a decrease in the quality of health care. With President Bush back in office and a greater number of Republicans in both the House and the Senate, reform proponents believe they have gained new life in the tort reform debate. President Bush stated in 2000,

> From people across America, I am hearing that our legal system needs reform. That our courts aren't serving the people, they are serving the lawyers. That frivolous lawsuits are hurting people. Some think this special interest group is too powerful to take on. That money determines everything. This is not an argument; it is an excuse. This cause is not hopeless. ("George W. Bush on", 2000).

President Bush again pushed tort reform in the 2004 presidential campaign, and since his reelection has placed reform near the top of his agenda (Dobbs, 2005).

One of the largest organizations fighting for reforming America's civil justice system is the AMA. The organization leads the way in pushing for legislation to limit the number and severity of medical liability lawsuits. The AMA states, "The crisis is threatening access to care for patients in states without liability reforms" (American Medical Association, 2004a). The organization encourages its membership to contact its respective Senators and Representatives to promote passage of a comprehensive liability reform package. To aid in the effort, the AMA has released a "physician action kit"[2] providing information and talking points on the subject of medical liability reform. The organization also releases routinely cited information regarding which states it considers to be crisis states when it comes to medical liability. The current count stands at 20 crisis states and 24 states showing problem signs (American Medical Association, 2004b).

Leading the way for the business community is ATRA. The organization claims to represent "more than 300 businesses, corporations, municipalities, associations, and professional firms," in its quest for a more fair civil justice system (American Tort Reform Association, 2005a). The group cites 3M, Caterpillar, Boeing, and Pfizer among its members. Even with all of this support, ATRA has yet to persuade Congress to pass legislation that would completely overhaul the way tort cases are carried out in this country. Yet, ATRA fights on. President of ATRA Sherman Joyce states,

> Some astonishing decisions come out of the courts these days. Hundreds of millions in punitive damages piled on top of relatively minor actual damages. Meritless cases settled because defendants fear the outcome of an emotion-filled jury trial or a lawless court. That's why the American Tort Reform Association (ATRA) leads the fight for a better civil justice system - one that's fair, efficient and predictable (American Tort Reform Association, 2005b).

The AMA and ATRA along with other organizations continue to press Congress to pass comprehensive tort reform. Without it, these organizations believe the American economy will be negatively impacted for years to come.

Arkansas' Civil Justice Reform Act of 2003:

Arkansas' version of tort reform, the Civil Justice Reform Act of 2003, was signed into law by Governor Mike Huckabee on March 25, 2003. The Act was passed by the Senate with a vote of 34 to 1, while the House passed the bill 71 to 28.

The Act lays out many changes to the civil justice system in Arkansas. According to an article published in *The Arkansas Lawyer*, some of the more visible reforms include (1) modification of joint and several liability, (2) limits to the amount awarded for punitive damages, and (3) revisions of rules regarding medical injury actions (Leflar, n.d.). While only these three major areas of reform are discussed below, the Act also reforms many other less visible yet still significant areas of Arkansas' tort system. The following attempts to simplify the modifications set forth in the Act. This discussion is designed to follow the organization of the Act as it was passed by the legislature. It does not directly follow the organization of the law as codified in Ark. Code Ann. ßß 16-55-201 to -220, 16-114-206, and 16-114-208 to -212.

Joint and Several Liability

The first section of the Act calls for the modification of joint and several liability. According to this section,

> In any action for personal injury, medical injury, property damage, or wrongful death, the liability of each defendant for compensatory or punitive damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate several judgment shall be rendered against that defendant for that amount (Arkansas General Assembly, 2003, Section 1 (a)).

Prior to the Act, liability for damages in civil cases involving multiple defendants was not divided between each defendant. For example, assume two defendants were found negligent for personal injury in a car accident and were ordered to pay $1 million in compensatory and punitive damages. Defendant A was responsible for 90 percent of the damages caused by the accident, while Defendant B was responsible for only 10 percent of the damages. If Defendant A was only able to pay $10,000 due to insufficient funds, then Defendant B, regardless of his percentage of fault, would be required to come up with the remaining balance of $990,000 if he is solvent. In other words, the amount paid in damages by each defendant is not directly proportional to the percentage of fault.

Section One of the Act attempts to remove the inconsistency that exist between the amount each defendant is ordered to pay and his/her percentage of fault. Using the same example from above, since Defendant A was responsible for 90 percent of the damages, he must pay 90 percent of the award amount, or $900,000. Defendant B would only be responsible for his percentage of fault. In this example, he would pay 10 percent of the damages, or $100,000, versus the more than $900,000 he would pay in the previous example. This example holds true unless one or more of the defendants is insolvent. If that is the case, the Act calls for a graduated increase in the percentage a defendant must pay as described in Section Three of the Act, discussed later in this paper. As a general overview of the new joint and several liability provisions, however, the simplified example above holds.

Section Two of the Act further details the procedures that are to be used in assessing percentage of fault. Mainly, this section deals with the liability of parties not directly named in the suit. Under the Act, awards must be adjusted based on the percentage of fault of such nonparties. If the defendant can show a nonparty was liable for some of the damages, then the award amount must take into consideration the proportion of damages for which that person is responsible. According to *The Arkansas Lawyer*,

> These nonparties to whom fault could be assigned might include out-of-state or foreign firms that cannot be sued for lack of personal jurisdiction; persons or entities protected by sovereign, charitable, or intrafamily immunities; employers whose negligence was one cause of injury to an employee suing a third party such as a product manufacturer; persons or entities without assets "not worth suing"; and persons whose location and perhaps even identity is unknown (Leflar, n.d.).

The Act specifies that fault of a nonparty can be considered either if the plaintiff enters into a settlement with that particular nonparty, or if the defendant can show that the nonparty was either partially or wholly at fault. As laid out in Section Two, the defense must file a pleading with the court stating the identity of the nonparty along with why the defense believes that party to be at fault in the particular matter. The pleadings regarding the percentage of fault of persons not named in the suit must be filed no later than 120 days prior to the date on which the trial is set to begin. Importantly, the Act also states that if the fact finder assesses fault to a nonparty based on a settlement with the plaintiff or a pleading filed by the defense, the findings of fault do not subject the nonparty to any liability with regards to current matter.

Section Three of the Act also relates to joint and several liability reforms. This section calls for graduated increases in the percentage points a defendant is ordered to pay if it is determined that other defendants found liable in the suit are not able to make full payment. In other words, if one defendant is insolvent, the other defendants may have to cover some of the funds that were to be provided by the insolvent defendant. In order to accomplish this, the Act sets up three levels of liability where the defendant determined to be the most responsible for the damages incurs most of the burden, and the defendant that is least responsible for the damages incurs the least amount of the burden. The first level of liability involves those defendants whose percentage of fault is no more than ten percent. If a defendant meets this criterion, then that defendant shall not be subject to any increase in his share of the damages owed. The second level of liability involves those defendants whose percentage of fault is greater than ten percent but less than 50 percent. Defendants that fall into this category may see their proportion of the damages owed increase by up to ten percentage points if another defendant is unable to make payment. The final level of liability encompasses defendants whose percentage of fault is determined to be 50 percent or greater. Defendants in this grouping may see an increase of as much as twenty percentage points in their amount of damages owed should another defendant become insolvent.

It is easy to see how Arkansas businesses will benefit from reforming the joint and several liability rules that were in place prior to passage of the Act. Under the new provisions, businesses are able to limit their share of liability in certain situations. For example, assume a customer of a small, locally owned retail establishment is injured while taking an item off of a shelf. The customer sues the retail business and is awarded $100,000 in punitive and compensatory damages. Under the old law, the business must pay the entire $100,000 in damages. Today, with the new law in place, the business may be able to show that either another named defendant or even a nonparty is partially to blame for the accident. Continuing, assume the trier of fact determines that the defendant was responsible for only 20 percent of the fault while a nonparty was responsible for the other 80 percent, then the business would only have to pay $20,000, or 20 percent of the damages. As is the case with many small businesses in Arkansas, the difference in paying $20,000 and paying $100,000 can be the difference between staying in business and closing the doors for good. Of course, this is only a simplified hypothetical situation, but one can easily see that the changes made to joint and several liability can greatly impact a business's bottom line.

Punitive Damages

The second major reform imposed by the Civil Justice Reform Act of 2003 pertains to punitive damages. According to *Black's Law Dictionary,* punitive damages are "damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit" (Garner, 2001, p. 171). Section Nine of the Act is the first section to deal with the subject. This section states that if a court is to award punitive damages in a civil case, the plaintiff must first show that the defendant is liable for compensatory damages. Therefore, if a court rules in favor of the defendant and awards no compensatory damages, the plaintiff has no claim with regards to punitive damages. Beyond proving liability for compensatory damages, the plaintiff must also meet either of the following aspects as they relate to a particular case:

> (1) That the defendant knew or ought to have known, in light of the surrounding circumstances, that his or her conduct would naturally and probably result in injury or damage and that he or she continued the conduct with malice or in reckless disregard of the consequences from which malice may be inferred (Arkansas General Assembly, 2003, Section 9 (1)).
>
> (2) That the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage (Arkansas General Assembly, 2003, Section 9 (2)).

Providing the plaintiff can show that the defendant's actions meet either one of the above criterion, the plaintiff may then proceed to petition the court to award punitive damages, although the Act states the plaintiff has no right to receive a punitive damages award.

Section 11 of the Act pertains to one of the more controversial and heavily debated reforms put into place by the Act. This section limits the amount of punitive damages that may be awarded in a civil case. According to the Act, punitive damages awarded by a court must not exceed the greater of (1) $250,000 or (2) three times the amount awarded for compensatory damages not to exceed $1,000,000. Further, Section 11 requires that every three years beginning January 1, 2006 the limits on punitive damages set forth by the Act are to be adjusted for inflation in accordance with the Consumer Price Index.

To illustrate the punitive damage caps imposed by the Act, suppose, hypothetically, a consumer is severely injured by a razor while shaving. The consumer meets with an attorney and decides to pursue legal action against the maker of that particular razor blade. Upon completion of the trial, the trier of fact determines that the company was indeed liable for the injuries sustained by the plaintiff, the consumer, and awards $20,000 in compensatory damages to cover medical expenses. Now assume the plaintiff can prove that the defendant knew of the defective razors but chose not to act on this information. In light of this information, the plaintiff may be awarded as much as $250,000 in punitive damages since, as stated in the Act, this amount is the greater of the two punitive damage caps. If the plaintiff were awarded compensatory damages totaling more than $83,333, then the plaintiff may be awarded punitive damages in the amount of three times compensatory damages but less than $1,000,000. Again, this is only a hypothetical example and is oversimplified to communicate the basic aspects of the Act.

Section 11 also allows for exceptional cases in which the plaintiff may recover more than the amount specified by the damage caps. The Act states,

> When the fact finder determines by clear and convincing evidence that, at the time of the injury, the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage and determines that the defendant's conduct did, in fact, harm the plaintiff, then (the caps stated previously) shall not apply (Arkansas General Assembly, 2003, Section 11 (b)).

Therefore, continuing with the example regarding razor blades, if the plaintiff can show by "clear and convincing evidence" that the manufacturer of the razor blades intentionally sold defective razors in order to injure its customers, then the amount awarded to the plaintiff for punitive damages is not subject to the restrictions detailed previously. It is important here to define "clear and convincing evidence." That is, "evidence indicating that the thing to be proved is highly probable or reasonably certain" (Garner, 2001, p. 250). This burden of proof can be described as greater than a "preponderance of the evidence" used in civil cases but less than "beyond a reasonable doubt" used in criminal cases.

Another major reform concerning punitive damages is the establishment of an option to request a bifurcated proceeding. According to Section 14 of the Act, "In any case in which punitive damages are sought, any party may request a bifurcated proceeding at least ten days prior to trial" (Arkansas General Assembly, 2003, Section 14 (a)). In other words, either party may request that the trial be divided into two stages. In the first stage, the trial would take place and the court would decide whether or not compensatory damages are to be awarded. If compensatory damages are awarded, then a second stage commences in which the court rules as to whether or not punitive damages are warranted and in what amount. Section 14 goes on to state that it is only during the second stage of the trial, the stage regarding punitive damages, that the financial condition of the defendant be admissible.

Again, it is simple to see how the reforms regarding punitive damages may positively affect businesses involved in tort litigation. Prior to passage of the Act, a business may have been required to pay thousands or sometimes millions of dollars in punitive damages. Under the reforms laid out in the Act, the amount a business may be required to pay in punitive damages is reduced substantially provided the business did not intentionally cause the injury. If a particular business caused unintentional harm to the plaintiff and lost at trial, the most the defendant would be obligated to pay in punitive damages would total $1,000,000. Additionally, assuming compensatory damages equaled $83,333 or less, punitive damages could not exceed $250,000. Thus the savings to a business' bottom line can be substantial due to the reforms imposed by the Act.

Medical Injury Reforms

Finally, as is the case with many of the tort reforms enacted by states, the Act makes some significant changes to the procedures and rules governing cases involving medical injuries. The first of these reforms appears in Section 15 of the Act. Overturning previous case law, this section eradicates the collateral source rule. As defined in Black's Law Dictionary, the collateral source rule is "the doctrine that if an injured party receives compensation for the injuries from a source independent of the tortfeasor, the payment should not be deducted from the damages that the tortfeasor must pay" (Garner, 2001, p. 109). Although the Act does not limit the amount that may be awarded for compensatory damages, Section 15 does require that any payments made by an independent source to cover medical expenses be subtracted from the damages awarded. Mainly, Section 15 is designed to account for any money the plaintiff may have received from an insurance provider. If the insurance company already paid for all or part of the medical expenses, that amount is deducted from the compensatory damages award. Under the previous law, a medical care provider may have paid for all of the medical expenses incurred by the plaintiff because of the provider's negligent actions, even if the plaintiff had received reimbursement from an insurance provider. In essence, the complaining party may have collected double the compensation for his/her injuries. This is no longer the case because of the provisions set forth in Section 15 the Act.

Section 18 of the Act establishes new procedures regarding the use of expert witnesses. According to this section, if it is determined that the negligent action for which the defendant is charged is not "within the jury's comprehension as a matter of common knowledge," the plaintiff bears the burden of showing that the injuries caused by the defendant should not have occurred (Arkansas General Assembly, 2003, Sec. 18). This can be accomplished through the testimony of an expert witness. The plaintiff by means of the expert witness, who must be of the same specialty as the defendant, must show that the defendant did not act within what is considered standard practice for that specialty and therefore caused the particular medical injury. The reason for employing such a provision is two fold. First, the use of an expert witness is designed to bridge the gap between what is considered common knowledge and what can be highly technical, medical terminology. Second, it prevents the plaintiff from bringing in a "hired gun" to testify about a specialty in which he/she is not trained (Leflar, n.d.). In this way, Section 18 limits a common measure used by plaintiffs in proving negligence on the part of the defendant.

Section 20 of the Act also contains language pertaining to medical injury cases. Although the reforms made by Section 20 appear subtle upon first glance (only 14 words were added to the existing law), the changes can have a substantial impact on the ability of the defendant to pay, and the plaintiff to receive, any damages awarded by the court. Previously, Arkansas law stated, "If the award for future damages exceeds $100,000 the court may, at the request of either party, order that the future damagesÖbe paid in whole, or in part, by periodic payment" (Arkansas Code, ß 16-114-209). The key alteration made by the Act replaces the word "may" with "shall." Although this does not seem significant, the repercussions are noteworthy. In the past, the court had the ultimate say as to whether or not judgments against the defendant were to be paid up front or in periodic payments. Under the Act, the court is obligated to set periodic payments for damage awards at the request of either party. The financial benefit to medical providers is indeed substantial. For example, a judgment against the defendant in the amount of $500,000 could potentially render the defendant insolvent if a lump sum payment is required. If the defendant requests periodic payment of the damages, the defendant may allocate future payments into his/her financial situation. Thus, not only is the defendant better able to recover from the loss incurred as a result of the lawsuit, the plaintiff is more likely to receive compensation for his/her injury.

Section 21 of the Act sets new rules regarding what is termed, "False and unreasonable pleadings" in medical injury actions (Arkansas General Assembly, 2003, Section 21). This section, in line with previous law, forces the complaining party to pay for the costs, including attorney's fees, incurred by the defendant as a direct result of the filing of the case. Although previous state law required the same repayment for false and unreasonable pleadings as a means to reduce the number of unfounded claims, the Act goes one step further in allowing the court to place sanctions deemed appropriate on the party or attorney who filed the claim. The Act, however, does not specify what sanctions are considered appropriate.

Section 21 also requires the plaintiff to submit an affidavit signed by an expert showing reasonable cause for filing a particular claim. The affidavit must state,

> (A) The expert's familiarity with the applicable standard of care in issue;
>
> (B) The expert's qualification;
>
> (C) The expert's opinion as to how the applicable standard of care has been breached; and
>
> (D) The expert's opinion as to how the breach of the applicable standard of care resulted in injury or death (Arkansas General Assembly, Section 21 (2)).

This affidavit must be filed within 30 days of the time the complaint was originally filed, or the case will be dismissed by the court before ever going to trial. Again, provisions such as this were put into place to help curb the number of frivolous lawsuits filed against medical care providers in Arkansas.

Section 22 lays out a number of reforms pertaining to medical injury actions. First, this section seeks to limit the liability exposure of medical care facilities (i.e. hospitals, nursing homes, clinics, etcÖ). The limitation of exposure is accomplished by placing the burden of proof on the complaining party in proving that the medical care provider was indeed an employee of the medical facility named as a codefendant. This provision prevents plaintiffs from attempting to hold a medical facility liable for injuries caused by a non-employee medical care provider at that facility. For example, if a non-employee doctor causes a medical injury while visiting a patient at a hospital, the plaintiff may not bring suit against the hospital since the doctor is not considered an employee of the facility.

Section 22 also provides that surveys and inspections the plaintiff "seeks to use as evidence against a medical care provider must be relevant to the plaintiff's injury to be admissible at trial" (Arkansas General Assembly, 2003, Section 22). For instance, if a plaintiff is suing a hospital in the death of the plaintiff's newborn child, an inspection of the hospital's onsite pharmacy conducted by the State Board of Pharmacy would most likely be inadmissible. This of course assumes the pharmacy was in no way linked to the death of the child. Interestingly, this element of Section 22 applies only to the plaintiff's side of the case. If the defendant wishes to submit surveys or inspection results displaying the overall quality of the medical facility, the evidence would not be deemed inadmissible under Section 22 of the Act.

The Economics of Tort Reform:

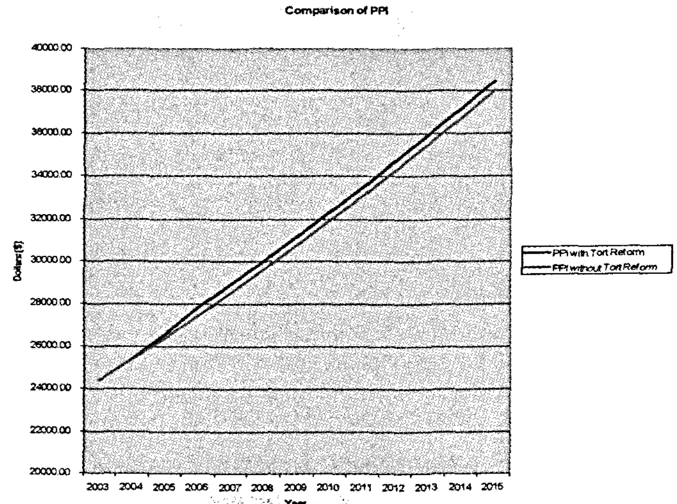
The final piece of this thesis is to measure the impact of the Civil Justice Reform Act of 2003 on Arkansas' economy. With the introduction of this legislation to the state legislature in 2003, many argued that the reform package would bring economic prosperity as insurance premiums went down and industry flooded to the state. Indeed, it is still too soon to know the savings, if any, that the reforms have actually brought to Arkansas' businesses and citizens. However, using data collected from other states that have enacted tort reform bills over the last several decades, it is possible to project the savings to Arkansans within the next few years.

Methodology

In order to study the impact of tort reform passed in early 2003 on Arkansas' economy, it is first necessary to study the relationship between tort reform enacted in other states and the impact on that state's economy. To accomplish this, I collected data from the Bureau of Economic Analysis regarding each state's per capita personal income (PPI) from 1969 to 2003.[3] I also collected data as to whether or not a state had enacted tort reform and in what year(s) the reforms were passed. This data was collected from the American Tort Reform Association.[4] This study defines tort reform as removal of traditional joint and several liability from a state's civil procedure or as the capping of punitive damages. By doing this, the model employed is able to better compare two of the most basic reforms of the Civil Justice Reform Act (joint and several liability reform and punitive damage caps) to reforms passed in other states. The model developed by the author, Dr. Jeff Collins[5], and Dr. Cary Deck[6] is as follows:

$$\Delta Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \beta_5 X_5 + \beta_6 X_6 + \beta_7 X_7 + e$$

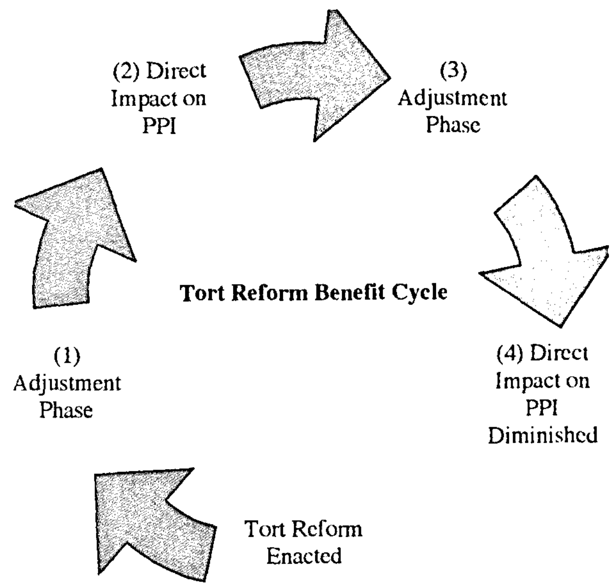
In this model, ΔY represents the change in personal per capita income (PPI) from year to year. β_0 is simply a constant, or intercept term, representing the value of the change in PPI when the X variables are zero. The variable X_1 represents the previous year's PPI, as this is a likely determinant of next year's PPI. The variable X_2 represents whether or not tort reform was enacted in that particular year. It is a dummy variable that receives a value of zero if no reform occurred in that year and a value of one if reform did occur. In order to account for the likely lag that occurs from the time tort reform was enacted and when its economic impact is measurable, the reform dates are lagged using variables X_3, X_4, X_5 and X_6. These variables represent whether tort reform was enacted the previous year, two years ago, three years ago, or four years ago respectively. The variable X_7 represents whether or not reform was enacted in any year prior to the year attached to this variable. The coefficients of these variables provide for the measure of the impact of tort reform on the change in PPI. The term *e* is simply the error term, which in this model is used to account for any other changes within a state's economy that may have led to a change in PPI.



Findings of the Study

The chart above summarizes the results obtained by applying the model to the data collected[7]. The results show that tort reform, as defined by this study, does indeed have a slight impact on the change in PPI after the reform is enacted. After running a regression using the model described previously, one observes that the coefficients of the variables representing tort reform on a two and three year lag (X_4 and X_5) are both positive and statistically significant using a 95 percent confidence interval (See Appendix 2). The actual coefficient for X_4 is 163.02. This implies that tort reform is responsible for a $163.02 change in PPI if tort reform was enacted two years prior. The coefficient for X_5 is 204.11. This implies that tort reform is responsible for a $204.11 change in PPI if tort reform was enacted three years prior. The coefficients for X_2, X_3, X_6, and X_7 are all negative, implying a negative impact on the change in PPI for that particular variable. This however is rejected by the author because it does not fall within the 95 percent confidence interval.

The projected benefit to Arkansas from the Civil Justice Reform Act is an increase in the growth of PPI for 2005 and 2006 (two and three years removed from the year the reform was enacted). The model employed in this research shows that there



is a positive change in the growth rate in these years with little or no effect on any prior or future year's PPI. Therefore, one may begin to develop a timeline for when tort reform begins to impact the economy. This timeline is reflected above in the Tort Reform Benefit Cycle. Within the first two years of the reform, businesses, insurers, healthcare providers, and ordinary citizens enter into an adjustment phase (1) in which insurance premiums and the cost of doing business begins to decrease. Eventually, this decrease is passed on to employees in the form of higher wages and to consumers in the form of lower prices (2). This research implies that the passing of the savings occurs in years three and four. After this time, it is reasonable to conclude that the economy adjusts to the original reforms made (3), and the change in PPI is no longer impacted directly by the reforms(4).

By inserting PPI data into the model, one can calculate the per capita dollar impact of tort reform on personal income in Arkansas in the years 2005 and 2006. With the reforms in place, PPI for 2005 should total $26,577.34. Without the reforms, PPI would total $26,414.32. The total increase in PPI that can be attributed to the tort reforms passed in 2003 is $163.02. With the reforms in place, PPI for 2006 should total $27,833.95. Without the reforms, PPI would total $27,463.21. The total increase in PPI for 2006 attributable to tort reform is $370.74. After this time, the model predicts that none of the growth in PPI can be attributed to the tort reforms of 2003. However, although the direct impact on personal income is diminished after 2006, Arkansas' PPI would then grow from a higher level with the tort reform in place versus without. Thus, the actual dollar amount of growth and level of PPI is higher than had reform not been enacted for the foreseeable future.

Conclusion:

As one can clearly see, tort reform is a complex and difficult issue. The sheer number of reforms and combinations of reforms possible is, simply put, mind-boggling. One thing is for certain: the debate as to whether or not tort reform provides an overall net positive for society is sure to surge ahead. Some will say that the impact on the economy and improved efficiency in the civil justice system provides enough evidence to conclude that tort reform should be enacted at every level. Others will say that by limiting the amount awarded in damages or eliminating the long standing precedence of things such as joint and several liability or the collateral source rule does nothing but hurt the very people the legal system is designed to protect. Above all else, this study will hopefully prove useful in its summary of the Civil Justice Reform Act of 2003, and its impact on Arkansas' economy

Endnotes:

[1] To read a summary of the entire case, see http://www.ican2000.com/statements/tort/mcdonalds.html.

[2] This publication can be found at http://www.ama-assn.org/ama/pub/category/14819.html.

[3] Data can be obtained from http://www.bea.gov/bea/regional/spi/#download.

[4] Data can be obtained from http://www.atra.org/states/.

[5] Dr. Collins serves as Director for the Center for Business and Economic Research at the University of Arkansas' Sam M. Walton College of Business.

[6] Dr. Deck is an Assistant Professor of Economics at the University of Arkansas' Sam M. Walton College of Business.

[7] Results are summarized in Appendix 1.

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Appendix 1.

Year	PPI with Tort Reform	PPI without Tort Reform
2003	24384.00	24384.00
2004	25388.07	25388.07
2005	26577.34	26414.32
2006	27833.95	27463.21
2007	28914.19	28535.27
2008	30018.28	29630.99
2009	31146.74	30750.91
2010	32300.12	31895.55
2011	33478.97	33065.46
2012	34683.84	34261.20
2013	35915.31	35483.34
2014	37173.96	36732.46
2015	38460.41	38009.16

Appendix 2.

Regression Statistics	
Multiple R	0.41269447
R Square	0.17031673
Adjusted R Square	0.16688423
Standard Error	405.819834
Observations	1700

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	7	57202085.54	8171726.51	49.618918	1.9201E-64
Residual	1692	278655035.7	164689.737		
Total	1699	335857121.2			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	465.734185	20.72956871	22.467143	4.816E-98	425.0758937	506.39248	425.075894	506.392477
Last Years PPI	0.02207759	0.001445329	15.2751289	1.903E-49	0.019242767	0.0249124	0.01924277	0.02491241
Tort Reform	-66.171214	68.95168299	-0.9596751	0.3373559	-201.410767	69.06834	-201.41077	69.0683401
Reform (t-1)	-34.590464	69.96783268	-0.4943767	0.6211044	-171.82306	102.64213	-171.82306	102.642133
Reform (t-2)	163.022902	70.09402596	2.32577456	0.0201482	25.54279455	300.50301	25.5427946	300.50301
Reform (t-3)	204.112481	70.28123009	2.90422465	0.0037294	66.26519726	341.95976	66.2651973	341.959764
Reform (t-4)	-74.685266	70.51302106	-1.0591699	0.2896736	-212.987177	63.616645	-212.98718	63.6166445
Prior Reform	-45.996536	30.52463237	-1.5068662	0.1320316	-105.866542	13.87347	-105.86654	13.8734699

Faculty comment:

In recommending Mr. Jackson's paper for publication, his mentor, John Norwood, made the following remarks.

I am pleased to support the publication of Scott Jackson's paper in *Inquiry*. Scott's paper deals with the subject of Tort Reform in Arkansas. It is based on the tort reform act passed by the legislature in 2003. In the paper Scott reviews the most common components of tort reform legislation nationwide. He then discusses in details the components of the tort reform law passed by the Arkansas legislature in 2003. It is interesting to see how the Arkansas law is similar to those passed by other states, but is unique in a couple of aspects.

By far the most interesting part of Scott's paper is an economic analysis in which he attempts to answer the question whether or not tort reform is good for Arkansas. Scott consulted with two economics professors here in the Walton College and with their help developed a model which might provide some insight as to whether tort reform is beneficial. The results of other states are reviewed, and Scott concludes with a prediction of what will be the economic results of tort reform in Arkansas.

In summary, Scott did an outstanding job on this paper, both in terms of background research involving an immense number of hours in the library, and considerable effort in developing an economic model. This was not surprising to me, as I have worked with Scott for many years in my capacity as director of the honors program. Scott is a superior student, and will be graduating next week Summa Cum Laude and as a First Ranked Senior Scholar. After graduation he will continue his studies in iaw school.