



MOUNTAIN BRIEFS...

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By Lawyers for Non-lawyers

So you want to sue somebody and want to know what a lawsuit is all about?

The concept of a "lawsuit" is actually quite simple. The civil lawsuit was invented as a more reasonable substitute for dueling. The idea of a lawsuit is simply to have two sides tell a story and let a neutral fact-finder decide the dispute. Rules of Evidence are intended to keep the dispute fair by leaving out of one side's story things like: "Well, my best friend's girlfriend's former husband's gardener told me that the defendant..." (this is called hearsay) or things like: "I know the plaintiff is a cripple, but he deserves to be

crippled, because of the way he talks back to his mother and wears his hair..." (called "opinion" evidence). The Rules of Procedure, both civil and criminal, are designed to ensure that each side knows what the story is and what the other side's evidence is. Sounds pretty simple, doesn't it? The only problem is there are more than 10,000 statutes and sub-parts regarding evidence and procedure.

But before you could even get to the story, you have to decide if you have a "legitimate" story to tell. If 10,000 code sections and sub-parts are required to set the rules as to how to tell a story, there are at least

five times that number for deciding whether a story is legitimate. In California, the "law" (or "legitimate" story) is not only what the legislature decides, but what the Courts of Appeal have decided. In addition, a case can depend upon Federal Statutes, Federal Administrative Codes, Federal Appeals decisions and, in some cases, even the trial court decisions of Federal Judges.

Whether there is a legitimate "story" that warrants a trial is a decision made by legislators, congressmen, governors, appellate court judges, and sometimes a combination of each. For example, judges decided that people injured by defective products should be made whole by the manufacturers of the products. But firearms manufacturers enjoy special protection against products-liability suits in California and I believe that tobacco companies — with millions of dollars to pay into political-action committees — are likely to receive the same type of protection in the near future. Judges also decided that each person should be responsible for his or her negligence, but the doctors' lobby has written special protection for

doctors against malpractice lawsuits. The (legal) drug lobby has written special protection for itself in both federal statutes and California law. Architects also enjoy special protection (although why architects enjoy protection not afforded to attorneys is something I cannot understand). Special laws exist for the protection of construction contractors and material suppliers and, of course, banks always enjoy special legal protection.

Sometimes judges go too far in making law and Congress and the Legislature pull them back. For example, a panel of three judges sitting on the Court of Appeal out of Los Angeles once decided that the parents of a mentally retarded child had a cause of action against the wife's obstetrician for failing to conduct a test which would determine that their unborn child was mentally retarded. According to the parents, had they known that the wife was carrying a defective child, the wife would have aborted the child. The cause of action was termed by the media as a "wrongful life" case which was immediately rescinded by the California Legislature. In another

case, the California Supreme Court decided that a landowner's failure to exclude public, recreational users from his property was an implied dedication of that property to public use for all time, thereby rendering the property worthless. The Legislature's response was to repeal the offending decision by a new statute.

Courts have also responded to legislative actions declaring the legislation either without substance or unconstitutional. For example, the Legislature passed a comprehensive law governing the obligations of an insurance company towards claimants. For a time, this law was used as the basis for lawsuits resulting from unfair practices by insurance companies. Our new Supreme Court, however, decided that, although the law is valid, the people harmed by an insurance company's breach of the law had no right to sue the insurance company under that statute, effectively eliminating enforcement of this law. In another case, the Legislature decided that, in order to keep costs of suits low, a corporation could appear in municipal court actions by an officer of the

corporation. The California Supreme Court found the statute unconstitutional. The Legislature, however, has left the statute on the books for more than 10 years after the Supreme Court's decision.

Consideration of cases, statutes, ordinances, and plain old "right and wrong" all go into the decision as to whether or not there is a legitimate "story" to tell. Of course, sometimes the answer is obvious. To a person rear-ended at a red light, everyone would acknowledge that he or she has a story to tell. Someone whose arm is ripped up by a Rottweiler also has a story to tell, which most people would admit.

But beyond cases as simple as these, the story and its presentation can get very complex. That's when you need a lawyer and that's what a lawyer is trained for.

But there is one important thing to remember when considering a lawsuit: Lawsuits sometimes start with expectations that are not reasonable. It is wise to consider that going into a lawsuit is somewhat like a slaughterhouse. The litigant goes in a pig, and leaves a sausage.

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