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Lawsuit

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LAWSUIT. By *Stuart M. Speiser*. New York: Horizon Press. 1980. Pp. v, 617. $40; paper $12.50.

The size of tort damages awards and their impact on industry have increased phenomenally in the twentieth century. After the 1974 crash of a DC-10 outside Orly Airport in Paris, for example, Turkish Airlines and its insurers paid a total of $62,268,750 to settle 340 wrongful death actions. The trend toward ever-larger awards and settlements has alarmed many observers and resulted in a number of proposals for reform. As long ago as 1880, Professor Thomas M. Cooley suggested a $5000 limit on compensatory damages for wrongful death;[1] more recently, other commentators have endorsed similar ceilings[2] and revisions in the contingent fee system.[3] Whether one views the trend as good or bad, however, depends on one's perspective. From the perspective of Stuart Speiser, an aviation tort law specialist and a practicing plaintiffs' attorney, larger and more frequent judgments should be encouraged because they provide one of the few effective checks on corporate abuse of individual rights.

In his most recent book, *Lawsuit*, Speiser draws upon his extensive experience in aviation tort litigation to construct a defense of the personal injury bar and the contingent fee system. Without contingent fees, Speiser argues, many injuries would go unredressed and a valuable deterrent to irresponsible business practices would be lost. The "entrepreneur-lawyer,"[4] he claims, has become a vital link in

1. T. COOLEY, A. TREATISE ON THE LAW OF TORTS 274 (1880).

2. *See, e.g.*, Franklin, *Replacing the Negligence Lottery: Compensation and Selective Reimbursement*, 53 VA. L. REV. 774, 798-802 (1967).

3. Legal scholars have debated many of the questions surrounding the contingent fee system. *See, e.g.*, F. MACKINNON, CONTINGENT FEES FOR LEGAL SERVICES (1964). But *Lawsuit* is addressed primarily to the layman.

4. The "entrepreneur-lawyer" is the tort lawyer who is willing to incur substantial costs in advance of trial in exchange for a contingent fee. Pp. 144-54.

the remedial process: If lawyers were unwilling to invest their time and money to pursue large contingent fees, few individuals could afford to sue big corporations.

Speiser develops this thesis largely through accounts of important cases. He recounts, for example, the procedural gymnastics performed by General Motors against Ralph Nader in the labyrinthine New York court system. Had Nader been paying hourly attorneys' fees, Speiser argues, General Motors would have attempted to exhaust his resources by further delaying the trial. Under the contingent fee system, corporate defendants are less able to wear down their opponents because many plaintiffs' lawyers will advance the costs of expensive litigation. By preserving meritorious lawsuits and prolonging the attendant adverse publicity, therefore, the contingent fee system makes corporate defendants more willing to settle.[5] This process, as well as the prospect of substantial awards,[6] has enabled entrepreneur-lawyers to deter the marketing of an inestimable number of unsafe products (pp. 342-45).

The contingent fee system, Speiser posits, has magnified the deterrent effect of litigation on manufacturers not only by increasing plaintiffs' stamina, but also by improving the quality of the plaintiffs' bar. Until recently, tort plaintiffs were often represented by poorly prepared lawyers who depended on volume for an adequate income, and opposed by defense attorneys who were paid by the hour and unconcerned with the cost of trial preparation. A significant portion of the plaintiffs' bar, Speiser believes, has become "scientific" in its use of sophisticated evidence, exhaustive investigative techniques, and expert witnesses (p. 560). "Scientific" trial preparation, however, can be enormously expensive. Without the incentive of large contingent fees, lawyers would be unwilling or unable to undertake and prepare properly risky products liability suits. By contributing to the preparedness of plaintiffs' attorneys, Speiser maintains, these large fees have promoted compensation and deterrence (pp. 341-48).

Although Speiser's argument is credible, it is weakened by his overbroad and sometimes unsupported statements. He asserts, for example, that "[m]illions of people have been and will be spared serious injuries or death because of the deterrent effect of litigation on manufacturers" (p. 343). He provides no support for this claim or for his conclusion that "[o]nly the threats of large money judgments

5. According to Speiser, General Motors eventually settled the *Nader* case when it realized that negative press coverage of each new development in the litigation was producing a net loss from continued defense. Pp. 99-100.

6. Speiser points, for example, to the award of $125 million in punitive damages in one Ford Pinto case. The punitive damage award was eventually reduced by the trial judge on remittitur. Ford refused to pay even the $3.5 million reduced award, but the judgment was upheld on appeal. Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 357, 174 Cal. Rptr. 348 (1981).

and loss of cheap insurance coverage have brought safety progress in most American industries" (p. 348). The assumptions underlying Speiser's argument — that the threat of liability can alter the behavior of corporate managers and that injuries result from defects that were known to those managers and correctable at a reasonable cost — are not universally accepted, but he makes no attempt to justify them.

In his eagerness to praise the tort liability system, moreover, Speiser overlooks a number of fundamental defects. Many plaintiffs go uncompensated while others receive astronomical awards; the system is painfully slow and expensive to administer; and lawyers may often be the big winners.[7] Speiser fails to mention that in many cases, liability is unchallenged and attorneys can hardly be said to earn their contingent fees. Thus, while *Lawsuit* may serve a valuable role in rehabilitating the public's opinion of plaintiffs' attorneys, many readers will find its lack of balance distressing.

Nevertheless, Speiser's book is worth reading. The work lacks the depth necessary to satisfy legal scholars, but its intended audience — the general public — should find it interesting and informative. Unfortunately, Speiser's rambling anecdotal approach, undoubtedly designed to provide color and hold the reader's attention, may frustrate comprehension of the book's deeper message. Many pages are devoted to patting the backs of colleagues, self-aggrandizement, and conveying irrelevant information. Despite its shortcomings, *Lawsuit* brings a unique perspective to a complex and misunderstood legal dilemma; although opponents of the contingent fee system will undoubtedly ask for equal time, Speiser has contributed substantially to the debate.[8]

7. *See generally* Franklin, *supra* note 2.

8. Speiser's book has also been reviewed by Braun, Book Review, 1981 DET. C. L. REV. 251; Callen, Book Review, 5 OKLA. CITY U. L. REV. 711 (1980); Cordiano, Book Review, 28 U. KAN. L. REV. 575 (1980); Le Bel, Book Review, 76 NW. U. L. REV. 838 (1981); and Wilkins, Book Review, 14 AKRON L. REV. 535 (1981).