

## “TORT REFORMS” ARE RACIALLY DISCRIMINATORY

### Executive Summary

“The Racial Implications of Tort Reform” by Joanne Doroshow and Amy Widman, 25 WASH. U. J.L. & POL’Y 161 (2007), is part of a volume entitled, “ACCESS TO JUSTICE: THE SOCIAL RESPONSIBILITY OF LAWYER.” <http://law.wustl.edu/Journal/index.asp?ID=6718>. The full article is here: <http://law.wustl.edu/Journal/25/DoroshowWidman.pdf>

Whether discussing the impact of typical “tort reform” proposals or the broad rhetoric used to support restrictions on legal rights, racial prejudice lurks behind the “tort reform” movement. It is clear that this rhetoric is pervasive and often obscured by less offensive arguments that allow some “tort reform” proponents to mask a racially discriminatory agenda. Attacks on the civil justice system include:

- **Medical Malpractice Legislation.** Racial and ethnic minorities receive inferior medical treatment by the health care industry and are being subjected to high rates of preventable medical errors. As a result, limits on the rights of patients who have been killed or injured due to medical malpractice will disproportionately hurt racial and ethnic minorities.
- **Limits on Non-Economic Damages.** If an individual is injured, the calculation of their “economic” loss includes consideration of wages or lost salary. Therefore, those with low or no wages – such as children, senior citizens, and women who do not work outside the home are more likely to receive a greater percentage of their compensation in the form of non-economic payments. Limits on non-economic damages are disproportionately unfair to minorities.
- **Class Action Legislation** is a critical tool used by individuals in this country to deter violations of individual rights and corporate misconduct. Recent federal class action legislation creates new procedural class action hurdles and results in new and substantial limitations on access to the courts for victims of discrimination.
- **Attacks on Civil Juries.** Throughout recent history, business groups have specifically targeted juries in minority jurisdictions for relentless attacks, implying that juries in these jurisdictions are rendering unfair verdicts against undeserving corporations *not* because jurors have listened to the evidence in a case, but for other reasons – they are too poor, too uneducated, too “sympathetic” to the injured victim – even though the facts prove otherwise.
- **Weakening Civil Rights Remedies.** Successful civil lawsuits against hate groups not only directly respond to the needs of those injured by providing financial compensation for losses, but also often provide the only effective means to put these dangerous entities out of business. “Tort reform” laws, which reduce the power and authority of civil juries, weaken the only available forum in some cases for holding perpetrators of hate crimes and hate groups accountable.