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LIABILITY SUITS ARE PATH TO JUSTICE

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Tom Donohue's diatribe misunderstands and misrepresents the workings of our civil justice system. Donohue would have us believe that the weaker the basis for a claim against any of his constituents, the more likely it is to yield "multibillion dollar settlements."

It is incredible to assert, as he does, that there exists in the United States corporate executives so addled and so mis-served by their own legal counsel that they willingly do damage to their companies and cough up billions (that's Donohue's number) to settle frivolous legal claims. Aside from the contempt for judges and juries this assertion displays, it is absurd.

Donohue would have us believe that product and other liabilities are draining the lifeblood of American commerce, but this has been proven untrue. Corporate liability costs and their overall cost of risk fell substantially during the 1990s, according to a study by the Risk and Insurance Management Society.

A Senate committee concluded in 1997 that "there is absolutely no evidence that product liability hinders the competitiveness of American businesses." The rest of us have seen the longest period of sustained economic growth in the nation's history, record corporate profits and a runaway stock market; Donohue, however, appears to reside in a never-never land where it is an article of faith that the courts tolerate and sanction corporate misconduct.

Neither does product liability have a negative effect on innovation; and, in fact, has been shown to enhance the export value of American products. Studies have concluded that foreign buyers may be willing to pay more for U.S.-produced products because of their added safety. Studies have also concluded that there exists a positive correlation between product liability risks and enhanced product safety; in other words, those risks encourage making a better product.

All of this is simple. A safer product is a better product, and the better product will come in time to dominate its market. Air bags are an excellent example. The automakers for decades resisted installing air bags in American cars. As a result, untold numbers of drivers and passengers were killed or suffered injuries that could have been avoided. Now, the car companies proudly tout the safety features, including air bags, that make their cars safer. This is a result of the incentives of innovation created by product liability, and it is a good thing.

The value of tort liability to deter corporate misconduct is shown by the overwhelming public support, including that of the leading presidential candidates of both parties, for legislation allowing people to sue their HMOs. This public support has been created by HMOs not doing what they reasonably are expected to do to serve their patients. It was also created by the knowledge that the right to sue is a way to compel HMOs to do what they should.

A right to sue HMOs will not and cannot result, as Donohue would have us believe, in a wave of frivolous or groundless lawsuits. The realities and demands of proof will assure that does not occur. An HMO that reasonably denies a patient's request for treatment should not face liability. To win a lawsuit of this nature would require proof that an HMO had acted unreasonably, that it had not acted in good faith or that it had departed from an accepted standard of care. An HMO adhering to the accepted standard of care -- one the medical community would define -- acting reasonably and

in good faith would not face liability.

Tort law and damage suits are a means by which corporate misconduct can be policed. They are a means by which individuals and families harmed by this misconduct can obtain redress. Because they talk in the language -- money -- that corporations understand, they encourage the development of safer, better products. Corporations that make unsafe products should be driven out of business; companies that cheat their customers should suffer the consequences.

There's nothing unfair about any of this. In fact, it's justice.

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At issue: Feb. 2 commentary by U.S. Chamber of Commerce President and CEO Tom Donohue, "Time to fight frivolous lawsuits"