

Taking a Look at Cruise Ship Regulations

Recently, editorials have been written around the nation urging a look at cruise ship regulations. Who is it who should look at those regulations? The editorials suggest that “governments” should do this. The reality is that the Italian government is not going to look at cruise ship regulations when it is desperate for tourist dollars. The Americans are not going to try to regulate Italian cruise ships off the coast of Italy. The United Nations does not have authority to regulate cruise ships.

Government control of cruise ship safety, airline safety, and other mass means of moving people is part of the answer but will not solve the problem.

The cruise ship industry, together with many other industries, are protected from significant financial responsibility by all kinds of artificial legalistic immunities. Parochial government legislation and limitation of liability in ticketing protects most travel industries from financial remedies when they kill and maim travelers.

The most effective way to “regulate” is to permit people to sue for damages when they have legitimate claims. This presupposes, of course, an open and fair court system which protects both the injured party and the company being sued.

In the United States, fortunately, we still have the Seventh Amendment to the United States Constitution, which guarantees the right to trial by jury. If that is the case, why do we have what is frequently referred to as “the disappearing jury trial?” The number of jury trials in this country has plummeted to unheard of lows. While our population and economic activity have increased, the right to trial by jury has all but vanished. The guarantee of the right to trial by jury is illusory, much as the rights guaranteed by the constitution of the old Soviet Union were nothing more than a statement of fictional principles.

The major reasons why the American right to trial by jury exists more on paper than in reality are the following:

1. **The Iron Curtain.** Immunity laws protect government, mass communication, the transportation industry, and all sorts of other boutique immunities. Back in the 1980’s, the insurance industry coined the phrase “tort reform.” Originally, reforming the legal system meant making it more accessible, less expensive, and more fair. However, the concept has now been distorted so as to prevent

legitimate claims from being heard in a court of law. That is not “tort reform,” but what a friend of mine referred to as “tort deform.” The American public has blithely stood by while its rights have disappeared, only to wonder where they are after it is too late. As Carol King wrote in *Big Yellow Taxi*, “sometimes you don’t know what you got ‘til it’s gone.”

2. **Apocryphal Untrue Stories.** Have you met anyone who did not hear of the McDonald’s coffee case? The fact that the story bears virtually no resemblance to the truth is irrelevant. There are those who have fought back trying to remind the public that McDonald’s deliberately overheated its coffee to keep it warm longer, that there were numerous complaints of injuries due to excessively heated coffee, that the woman in question had numerous skin grafts, and that the ultimate amount of money paid was far less than the verdict. The truth matters little. Instead, various industrial groups, along with the medical field, have spent hundreds of millions of dollars taking apart the legal system. While drug company like Pfizer spend millions of dollars in federal court so that they can sue their competitors to keep less expensive products off the market, they would deny an open court system to the most vulnerable citizens in society.
3. **Cost and Secrecy.** The cost of bringing claims, and the secrecy that protects people who do the wrong things makes it extremely difficult to pursue claims. Doctors and hospitals are protected by “peer review”; automobile manufacturers are protected by a doctrine called “preemption.” There are so many artificial hurdles to bringing claims inexpensively, that most people just give up. Take Pennsylvania, for example. In a state with 12 million people and reports to government agencies of over 330,000 medical errors (both incidents and serious events) there are less than 1,500 medical malpractice cases brought in a year. Of that number, it is, practically speaking, almost impossible for a plaintiff to win when they do go to a trial by jury. While the number of doctors and medical health care providers relative to Pennsylvania population has increased substantially since records were kept in the early 1970’s, medical folks have spent untold millions of dollars advertising just the opposite. They are not telling the truth to the public, but unfortunately the fairy tale of departing doctors continues to spread. The more the government regulates businesses, the more it denies an individual’s right to sue using a

doctrine called “preemption.” What this means is that if the government has regulated something, there may be no private remedy. The government was not supposed to stand in the way of people exercising their legitimate constitutional rights, but rather was to make the assertion of the privileges and immunities of being a United States citizen easier.

The big yellow taxi may have pulled away, but all is not lost. Take a look at any contract you sign with any big company, whether it is for your cell phone, leasing a car, a stock brokerage account, or any agreement whatsoever. In all of them, you give up your basic Seventh Amendment right to trial by jury. Substitute systems are created by these contracts which are run by the very businesses which cause major problems for the consumer. We are permitting government and industry to substitute a false god for the Divine Rights guaranteed by our constitution.

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