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## **Tort Reform: Fighting Back for Consumers**

Wednesday, November 23, 2011 by Keith Ecker for Lawyers.com

*This is part three of a three-part series. [Part one](#) and [part two](#) appeared previously this week.*

When Ronald Sanders' wife died of brain damage in a hospital in 2005, he sued neurologist Iftexhar Ahmed. The doctor had ordered [Depakote](#), an anti-seizure medicine, for her but failed to order any blood tests. Sanders went into a coma because the drug's side effects caused her brain cells to die.

At the end of the medical malpractice trial, the jury awarded Sanders and his daughters money to pay back medical bills plus \$9.2 million in non-economic damages.

There was just one problem: a state law that caps the non-economic damages in medical malpractice lawsuits. That statute cut down Sanders' \$9.2 non-economic awards to \$1.2 million. Sanders appealed and the case was heard by the Missouri Supreme Court on Nov. 2.

Sanders argues that the legislature's cap on non-economic damages in medical malpractice lawsuits violates the Missouri Constitution, which guarantees the right of trial by jury. The legislature first imposed limits on non-economic damage awards in an effort to hold down the rise in medical malpractice insurance rates.

Unless the state supreme court restores the will of the jury, it will be another example of how tort reform has throttled the authority of juries and taken away a legal award won by a consumer in court.

### **Chipping away at consumer rights**

Consumer advocacy groups and a handful of other organizations are struggling to reverse the tide in favor of tort reform, which has chipped away at consumer rights to file a medical malpractice or defective drug lawsuit. Consumer groups face highly-organized associations of corporations that have achieved major results in limiting your access to get into court, restricting the types of claims you can assert and capping the recoveries you can obtain.

At the federal level, an example of pro-consumer legislation is the [Arbitration Fairness Act](#). The proposed law would turn back the clock on forced arbitration agreements making such arrangements illegal. This would protect the Seventh Amendment rights of consumers and non-union employees, allowing these parties to access the courts should a legal dispute arise with a company.

Democratic [Senator Al Franken](#) sponsored the bill. He has received a significant amount of funding from organizations that traditionally support consumer rights. For example, from 2007 to the present, he has received more than \$1.3 million from lawyers and law firms. In that same time frame, he has received nearly \$1 million from associations which represent retired Americans and is another group that aggressively advocates against such tort reforms as limits on medical malpractice awards.

In addition, groups like Public Citizen and the American Association of Justice have urged Congress to look at proposing additional legislation to restore the rights of consumers.

"We've tried to get legislation introduced that would roll back nursing home arbitration agreements, but nothing is moving through the Congress," says Gary M. Paul, president of the [American Association of Justice](#). "With the leadership that exists in the House right now, it's an anti-consumer situation. It's a deadlock."

Although consumers' rights may be dwindling, they can still have their opinions heard. Paul recommends consumers reach out to their members of Congress and voice their concerns.



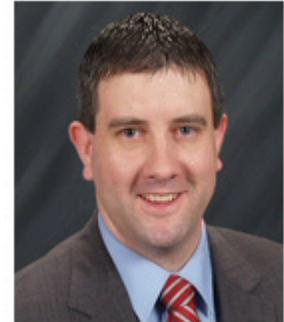
Senator Al Franken

"If citizens want their rights protected, such as a trial by jury, they have got to rise up and let their elected officials know," he says. "It's amazing how often elected officials have no idea what their constituents want."

### **An uphill battle for consumer rights**

However, consumers face an uphill battle, not just on the federal front but within the states as well. For example, Wisconsin Governor Scott Walker ordered the state legislature into a special session recently to consider legislation that will promote job creation. However, consumer-rights advocates revealed the legislation has little to do with improving employment and everything to do with shielding pharmaceutical and medical device manufacturers from lawsuits -- by taking away consumers' access to the courts.

Introduced by Republican state [Senator Rich Zipperer](#), [Senate Bill 13](#) protects drug makers and medical device manufacturers from liability caused by defects in their products as long as the product was approved by the Food and Drug Administration (FDA). In essence, the tort reform measure removes any responsibility of the manufacturer to ensure the safety of its products and misplaces it on a government agency. Further, if the FDA fails to identify a harmful side effect or a design flaw, citizens who are injured will not be able to successfully sue the manufacturer in state court.



Senator Rich Zipperer

As exemplified by S.B. 13, one of the hottest areas for tort reform is medical malpractice. In this case, one well-funded representative is trying to pass a piece of legislation that has the potential to leave consumers virtually powerless against the leading businesses in the health care industry, from doctors and hospitals to drug companies and nursing homes.

According to the 2010 campaign finance summary of Wisconsin state Sen. Zipperer, some of his largest contributors were the health industry with \$13,321 and the insurance industry with \$6,822, totaling more than \$20,000. This amount represented about 23.5 percent of total donor dollars he received for that cycle.

Sen. Zipperer did not respond after repeated requests for comment.

### **What you can do about tort reform**

Your elected officials have whittled away at your legal right to bring a medical malpractice or defective drug lawsuit. If you are injured you'll face laws that:

- Limit your access to get into court
- Restrict the types of claims you can assert once you're in court
- Cap the recoveries you can obtain in court

Senators and representative accept generous contributions from well-organized pro-business groups to insulate them from responsibility for the damage they cause. The best hope for consumers is to go online and learn where your elected officials stand on tort reform. If your elected official voted to cut back your rights, the best place to respond is the ballot box.

[Keith Ecker](#) is a reporter for [Lawyers.com](#).

*This is Part Three of a series. To read Part One, visit [How Your Elected Legislators Have Chiseled Away Your Legal Rights](#). To read Part Two, visit [How the Health Care and Insurance Industries Work to Limit Your Legal Rights](#).*

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