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### LWV Bulletin, April, 2005

League of Women Voters of the Huntington Area

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# THE LEAGUE OF WOMEN VOTERS® OF HUNTINGTON



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LWVUS website: [www.LWV.ORG](http://www.LWV.ORG)

April 2005 Bulletin

## TORT REFORM – PRO AND CON.

The League's April 18, 7 pm meeting at Enslow Park Presbyterian Church features two speakers. Nora Price will speak in favor of tort reform; Paul Ryker, against. Patricia Keller will moderate the meeting. Both the U.S. Congress and the WV Legislature are considering changes in our laws concerning tort cases. It may be that some changes will have been enacted by the time of our meeting. Although the League does not have a position on tort reform, we are always interested in current issues of the day. Some of the definitions are included in this bulletin, and a larger glossary will be available at the meeting. Please invite friends to our meeting on this important topic. "An elevator is available for those who can not climb the steps. Please let Helen Gibbins, 736-3287, know if you need this assistance."

## A GLOSSARY OF TORT TERMS

**TORT:** Barron's Law Dictionary defines a tort as "a civil [as opposed to criminal] wrong or injury resulting from a breach of legal duty that exists by virtue of society's expectations regarding interpersonal conduct."

A tort arises when all four of the following elements occur:

A defendant has a duty to a plaintiff (for instance, to ensure that a product is safe for use) the defendant has breached that duty (for instance, the product has been made unsafe) and

The breach is the cause of an injury (or loss). If, for instance, a defendant manufactures an unsafe product and sells it to a customer, but no injury or loss occurs, there has been no tort.

**LIABILITY:** Liability is legal responsibility under civil law. In the context of personal injury tort law, liability refers to being legally responsible for an injury or loss.

**CONTINGENCY FEE:** The contingent fee system allows people who suffered an injury to bring a suit without having to have the money up front to pay their attorney. Rather than charging for legal services by the hour, an attorney agrees to accept a portion of any recovery in the case, usually one-third. If the plaintiff

receives no compensation, the attorney receives nothing.

**DAMAGES:** There are two major types of damages:

1. "Compensatory damages": Compensatory damages compensate a plaintiff - one who brings a lawsuit - for injury or loss. Compensatory damages are subdivided into two types, "economic" and "non-economic" damages.

A. "Economic Damages" compensate plaintiffs for losses that are easily measured by money, such as lost wages, repairs to a car, the cost of hospital care, etc.

B. "Non-economic Damages" compensate real injuries and losses that are not easily quantified by a dollar amount. Non-economic damages compensate for losses such as blindness, physical disfigurement, loss of reputation, emotional distress, loss of fertility, loss of sexual function, loss of a limb, loss of mobility, and loss of enjoyment of life. Non-lawyers frequently refer to "non-economic damages" as "pain and suffering" damages or damages for "emotional distress."

C. "Punitive damages": A jury awards a plaintiff punitive damages to punish a defendant for willful malicious wrongful acts that go beyond mere negligence. Unlike compensatory damages, which are awarded to make the plaintiff "whole," punitive damages are awarded as damages that are assessed to punish and deter bad behavior (such as fraud, for instance). Punitive damages are awarded very rarely (in only about 3% of cases).

**DAMAGES CAP:** A damages cap is a law that limits the amount a jury can award for damages, no matter what the facts of the case are. Some state legislatures have enacted caps in civil cases and some have not. Some caps are only for specific kinds of cases, such as medical malpractice. Some caps limit non-economic damages only, and some limit punitive damages.

**JOINT AND SEVERAL LIABILITY:** In a case where two or more defendants caused injury, and it may not be possible to assess which defendant caused which part of the injury, plaintiffs can call on the principle of "joint and several liability". Joint and several liability means that two or more defendants each are responsible for paying the plaintiff the entire amount of compensatory damages. So if A and B negligently injure C, either A or B can fully compensate C.

**NEGLIGENCE:** "Negligence" is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. If a person is negligent and an injury results, the person may be liable to pay damages for that injury.

**PREEMPTION:** Under the Constitution, Federal law is superior to state law, and can therefore preempt state laws that are inconsistent. Often Federal laws are written to provide complete preemption of state laws. In liability bills however, preemption is almost always "one-way." This means that state laws that are more pro-consumer are wiped out; but state laws that are more pro-defendant remain law. This unfairness means that, despite claims to the contrary, a Federal product liability bill will not result in uniform laws, since state laws that are more anti-consumer than the federal law still stands.

**STATUTE OF LIMITATIONS:** A "statute of limitations" is an arbitrary time limit that cuts off a plaintiff's ability to file a case after a certain period of time. Statutes of limitation can begin to run at various points after the event that is the subject of the action took place. Some statutes of limitations run from the date of the injury, even if the injury is not detected until much later.

**STATUTE OF REPOSE:** A "statute of repose" is an arbitrary time limit that cuts off liability for "products" beyond a certain age. For instance, a 15 year statute of repose would wipe out a corporation's responsibility for putting a faulty product on the market if the fault does not show up for 15 years.

**THIRD PARTY BAD-FAITH LAWSUITS:** Persons may sue another person's insurance company for not settling with them in a fair, timely fashion.

Quoted from the Association of Trial Lawyers of America, The Leonard M. Ring Law Center, 1050 31st Street, NW Washington, DC 20007, 800-424-2725 or 202-965-3500.

**PERSONAL CARE PRODUCTS –** Unsafe and safe personal care products are listed on [www.ewg.org/reports/skindeep](http://www.ewg.org/reports/skindeep).

LWV is a nonpartisan organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy.

Membership in the League is open to women and men of voting age. Annual dues, not tax deductible, are \$40 individual, \$55 for two in one household and \$24 for students.

To join, send your check to: Ann Spear, Treasurer, 706 Ridgewood Road, Huntington, WV 25701

WV Huntington Area Jane Husted, Editor

## CALENDAR



April 16, WV League Convention, Morgantown  
April 18, 7 pm. League meeting -Tort Reform – Pro and Con; Enslow Park Presbyterian Church  
April 22, Earth Day  
April 25, Huntington LWV board meeting  
May 16, League reception for new citizens

## REMEMBRANCES

Recently long time League member Edna Duckworth died. At her funeral we were reminded how much she contributed to our community, as a conscience, historian, poet, and worker for social concerns. We were privileged to be her friends.

**WELCOME** New member Krista Conway.

**DUES.** Our financial year goes from April to April. Dues may be paid to League of Women Voters, c/o Ann Spear, 706 Ridgewood Rd., Huntington 25701. (\$40, single; \$55, household; \$24, student) Sending in your dues now will save Ann from sending you a dues notice.

## WV LEAGUE CONVENTION.

Contact Helen Gibbins, 736-3287, if you wish to attend the April 16 convention in Morgantown. 736-3287. Prof. Blakely, Social Work Dept., WVU, will speak on the effects of Welfare Reform.

**CABELL CO. SOLID WASTE AUTHORITY –** The Huntington League made comments to the SWA on its updated plan. The draft plans are in the libraries.

**RECEPTION FOR NEW CITIZENS –** Terri Waldeck has agreed to coordinate a new project for our League, a reception for new citizens on May 16. Please let Helen Gibbins, 736-3287, know if you can help.

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