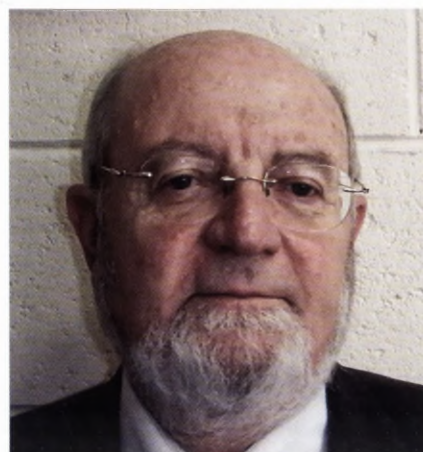


Insurance companies and the law

By John Green



Modern insurance companies are usually extremely large, wealthy transnational corporations with significant power and political influence.

By the early 20th century, every state government had established its own insurance office. But the resurgence of free market fundamentalism in the 1980s scrapped the state insurance offices, reducing competition and depriving government of objective advice about the alleged 'epidemic' of personal injury claims and their 'unaffordability'.

The 9/11 terrorist attacks in the US led to tens of thousands of very large workers' compensation claims, which in turn caused the reinsurance industry to greatly increase its premiums to insurance companies in Australia.

Wanting to protect their profits, they began a lobbying campaign which effectively undermined the rights of injured people to obtain proper compensation.

A major tactic was to refuse to provide public liability insurance to small community groups unless they paid a premium that was often several thousand per cent higher than their previous premiums.

Facing a public outcry, politicians claimed – as part of the propaganda campaign – that the dramatic increase in claims for workers' compensation and personal injury had led to the need to increase premiums.

Most workers' compensation Acts were thus changed to exclude the majority of workers from common law damages, either directly or by creating an injury threshold that very few could meet.

In Tasmania, the *AMA Guidelines*

were adopted and a 30 per cent whole person impairment threshold imposed. These *Guidelines* were intrinsically unfair, as they did not even purport to measure a person's incapacity to work; just whether a person has lost the use of part of their body.

It is ironic that one can be discriminated against on the basis that one is an employee, when discrimination on the grounds of sex, race and religion is illegal.

In Tasmania, only 1 or 2 per cent of injured people can meet the 30 per cent whole person impairment threshold.

Some states, like Victoria, have better tests, but workers are still discriminated against everywhere in Australia.

And the common law caps for loss of earning capacity and general damages further weaken everybody's right to be properly compensated. In my experience, awards for damages have been halved.

It should be kept in mind, of course, that most matters settle, so when one is starting with a common law claim worth a million dollars, one is usually in a better position to settle than if one starts with the workers' comp claim with a maximum of only a few hundred thousand dollars.

The irritating thing about the tort 'deforms' is that there's no objective evidence to support the insurance companies' claims.

In Tasmania, intensive lobbying reduced the threshold to 20 per cent, and there are signs that the tide may now be turning.

The National Rehabilitation Scheme and its emphasis on caring for the severely disabled may generate more sympathy for injured people and generate momentum to roll back the

reforms – if the ALA and others work very hard at it.

The *Tasmanian Motor Accidents (Liabilities and Compensation) Act* created a statutory authority that collects about \$300 a year from the average motorist as a premium to cover the costs of those injured in motor vehicle accidents.

Everybody who is injured in a motor vehicle accident gets their medical bills paid. There is a cap, but also separate provision for people who are catastrophically injured and need constant 24/7 care. In most cases, 80 per cent of income is paid for three years.

In addition, an injured person who can prove that their injury was caused by somebody else's negligence can go to common law.

The Tasmanian system works: premiums have not escalated to any great extent, and those injured in motor vehicle accidents receive proper compensation.

One reason why it works is because there's only one insurer; the administration and astronomically high senior salary costs of half a dozen insurance companies are eliminated.

This Tasmanian model could benefit everyone if adopted on an Australia-wide basis. ■

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