

America's Love of Lawsuits

excerpt from «Understanding American and German Business Cultures»

BMW penalized \$2,004,000 for repainting a new car

In 1990, Dr. Ira Gore bought a BMW 535i from his dealer in Birmingham, Alabama. Nine months later, a body shop told him his car's paint job had been partially refinished after shipment from Germany. Cars often suffer minor damage in transit and American BMW dealers touch them up so there are virtually no visible marks.

Dr. Gore's lawyer suggested he sue the manufacturer for failing to disclose the touch-up job. Dr. Gore went to court and a jury awarded him \$4,000 in compensatory damages and \$4 million in punitive damages. Later, the Alabama Supreme Court decided this was excessive and reduced the payout to "only" \$2 million.

The jury reached its verdict based on evidence that BMW had touched-up 1,000 cars in the previous ten years. The Alabama jurors were punishing the car company for failing to disclose the practice.

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Nothing is more striking to a visitor to the U.S. than the over-abundance of lawyers and lawsuits. Many critics believe the reason there's so much "hair-trigger suing" is because there are so many lawyers. The country has four times more of them per capita than Germany. Also, they're willing to work for free in exchange for a percentage of whatever money is eventually won (a practice forbidden in Germany). This leads to a lot of absurd litigations.

One of the most famous examples is the \$3 million awarded to a woman who spilt hot coffee on her hand at a McDonald's restaurant. Such mega-settlements encourage those with minor — or non-existent injuries — to contact a lawyer in hope of winning a similar "jackpot".

Why does the American justice system permit such preposterous lawsuits? Is it simply because there are too many hungry lawyers who need to create work for themselves? Those who have studied the problem say the answer is to be found in the Seventh Amendment of the U.S. Constitution. It states that any citizen has the right to present his or her case in front of twelve peers, twelve average citizens — the jury.

The American Jury System

Before discussing the jury system in America, some history is necessary. The U.S. judicial concept is based on Anglo-Saxon common law. All legal decisions are rendered by judges, not legislators, and are bound by precedent (previous cases). This is in contrast with Western Europe, which the legal system is borrowed from Roman law. Laws are written by professional jurists, a sort of state-controlled bureaucracy, as opposed to judge-made “interpretations”.

Anglo-Saxon common law derives its structure from the Magna Carta, signed by King John of England in 1215. Of the 61 clauses, the most important one was “No freeman shall be captured or imprisoned (...) except by lawful judgement of his peers or by the law of the land.” The “jury” was born.

By the 18th century, it had become an important protection against judicial and administrative tyranny. The institution spread to the territories colonized by England.

After the creation of the U.S. Constitution in 1787, Americans added a Bill of Rights to ensure free speech, freedom of the press and of religion, protection against “cruel and unusual punishment” and against unreasonable search or seizure. The Seventh Amendment guarantees citizens the right to trial by peers for most civil and criminal cases.

Jury trial was also widely adopted on the European continent in the 19th century, but only for criminal cases. After World War I, the custom was largely abandoned in Europe (Germany in 1924) in favor of a mixed jury, on which judges sit together with average people. Even in England, where it originated, the “layman jury” is now used only in a small percentage of cases.

Due to the Seventh Amendment in the Bill of Rights, the United States is the only country in the world that has maintained the jury system for both criminal and civil cases. It is estimated that some 220,000 jury trials are conducted each year (over 90% of all jury trials in the world).

As there has been a litigation explosion in the past 20 years, there is now a movement to abolish trial by jury in civil cases. The main argument is that a jury relies on amateurs who are emotionally swayed by unscrupulous lawyers and thus incapable of making reasonable cash assessments of damages. It would be better, so the argument goes, to permit a disciplined and experienced judge to decide if there is fault and, once fault is established, what constitutes a fair settlement. German courts use this method.

Most American lawyers, who have a vested interest in the system, are vehemently opposed to change. They argue that some decisions have forced businesses worldwide to change the ways in which they operate. Without the jury system, Ralph Nader might not have been successful in his suit against G.M.’s ill-conceived Corvair in the 1960s and car companies worldwide would have been less inclined to worry about safety issues.

Similarly, civil lawsuits are now forcing tobacco companies to pay billions of dollars in fines with much of the money going toward medical treatment for smokers. These suits are now having international repercussions.

Arguing further, American lawyers say that the justice rendered by juries has made the “little guy” a force to reckon with. As people feel more alienated from their elected representatives and government bureaucracies — and increasingly powerless in the hands of large corporations — the one place where they can still make themselves heard is the jury system. Taking away that right would be destroying a part of the American democratic ideal for most citizens.

Legal observers from Canada and Europe don't at all agree. They point out that jury settlements have become so huge that many American companies are reluctant to put out new products for fear of suits. Likewise, certain professionals, such as gynecologists and obstetricians, normally pay over \$250,000 in yearly insurance premiums just to protect themselves against lawsuits. In the end, it raises the price for everything, hurting everyone.

