

Unmade in Madison

Earlier this month Wisconsin Governor Jim Doyle vetoed several bills that would have addressed two egregious rulings from the state Supreme Court. In doing so, he may well have set back tort reform in his state by a decade. The good news is that the two men vying to run against him this November want to make sure that the people of Wisconsin know it.

Last summer the Wisconsin Supreme Court declared the state open for business to trial lawyers looking to extort money from businesses based on dubious or frivolous personal-injury claims. In one case, the Court threw out a state cap on noneconomic damages in medical malpractice suits, calling the cap arbitrary; it seems the Court prefers the arbitrariness of potentially enormous judgments.

In a separate case, it promulgated a theory of "contributory risk" in a lead-poisoning case, saying in effect that if you ever made lead paint, you put someone, somewhere at risk and so could be held liable if someone sued claiming lead poisoning from paint. It was not necessary, the Court ruled, to show that the company being sued actually poisoned you—it was enough to show that you made lead paint, and so might have contributed to the poisoning.

The state legislature responded to the Court's expansion of the tort bar's power by passing reforms to address both issues late last year. One bill would have limited liability to cases where it could—perish the thought!—actually be shown that a defendant bore responsibility for the injury. Another reinstated a

slightly higher cap on noneconomic damages in medical malpractice suits.

Governor Doyle vetoed both, along with a bill to limit the ability to sue gun makers over gun violence and another that sought to make clear that manufacturers could not be held liable for injuries suf-

fered when people misused or abused products.

In doing so, he claimed to be protecting consumers, but the chief beneficiaries of frivolous tort claims are the trial lawyers who bring the cases. His two would-be Republican opponents wasted no time pointing this out. Scott Walker, the Milwaukee County Executive, put tort reform into a hundred-day plan he announced within days of the Governor's vetoes.

Congressman Mark Green, who is also running for the Republican nomination, was equally emphatic. "People in Wisconsin are blue-collar conservatives. They don't believe in the lawsuit lottery. They want to see our manufacturing economy grow. The lead paint decision could spell disaster for Wisconsin." Both candidates noted that the lead paint decision has potential ramifications for anyone who makes things. Its impact is not likely to be limited to the paint industry.

Governor Doyle's vetoes are all the more remarkable coming at a time when other states are trying to clean up their acts, having realized that being a beacon for specious claims isn't good for the economy. If there's a silver lining here, it's that voters will soon be offered a clear choice between a candidate who supports the litigation explosion and a candidate who sees danger in inviting the trial lawyers to hunt for prey.

A tort-law showdown in Wisconsin.