Frivolous Lawsuits Violate Natural Justice

The purpose of research is to discover what was previously unknown. Research wouldn't be necessary if we knew everything there was to know, but that will never be the case so research will always be a necessity, so long as knowledge remains preferable to ignorance. And while wisdom may be folly where ignorance is bliss, you can never know that to be true until after you've become wise.

Apparently, all of this is perfectly obvious except to certain trial lawyers, whose job it is to exploit the corrupt and corrupting tort system.

A recent edition of the *New England Journal of Medicine* reports the outcome of a case in which three plaintiffs sought to sue the University of Alabama Institutional Review Board and the electronics firm Masimo. The case was brought on behalf of three infants, born premature, who were enrolled in a clinical trial concerning the best oxygen concentration to give such infants.

At the time of this trial, it was known that oxygen concentrations below 89 percent resulted in higher rates of death, while those above 95 percent resulted in higher rates of retinopathy, which causes permanent blindness. As a result, the recommended concentration was between 89 to 95 percent, but the actual optimal percentage was unknown. The trial sought to clarify matters by allocating premature infants randomly to concentrations between 89 and 91 percent, and also between 92 and 95 percent.

They discovered, somewhat to their surprise, that the lower concentration resulted in a higher death rate, while the higher concentration resulted in higher rates of blindness.

This was no doubt an uncomfortable finding, for it would present future parents of premature infants with a choice between a slightly higher risk of death or a slightly higher risk of blindness, but the trial undoubtedly increased human knowledge.

The parents of the two infants who died, and also the parents of the blinded infant, sued the investigating body and equipment manufacturer for negligence. This was clearly a frivolous suit because negligence could be alleged only in the light of the very knowledge that the trial was trying to discover – information that was impossible to know before.

Moreover, it had to be shown that the damage suffered was more likely than not on account of the treatment. This could not be shown because the increased risk of death and blindness in the two groups was not above 50 percent. Thus it could not be alleged that, in any individual case, the harm was more likely than not to have been caused by the treatment.

The suit failed on both legs necessary to prove liability: that harm was caused by the actions of the defendants and that those actions were due to negligence.

All this, again, was perfectly obvious from the outset, and the judge in the suit summarily dismissed it. But the commentary in the NEJM, celebrating the result, did not point to the larger problem with the tort system, which is that the system violates natural justice in so far as plaintiffs may bring cases with nothing to lose even. This is an open invitation to frivolous and even fraudulent suits, and so long as a number of such suits are successful, however much they deserve not to be, they will be brought, to the great detriment of society. No plaintiff should have nothing to lose.

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