

"Writing the truth  
as I see it;  
trying not to  
offend  
those who will  
disagree."

# The truth as I see it™

Idaho Common Sense™



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## Who pays for our risks and choices?

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On June 6, 2006, a tragic accident occurred during a little league baseball game. The 14-year-old pitcher was hit in the chest by a line drive off a metal bat. Unbelievably, when the ball struck the young man's chest, his heart went into ventricular fibrillation, a rhythm incompatible with life. He remained in this rhythm until the paramedics arrived and "shocked" him back into a normal rhythm. Sadly, he suffered permanent brain injury and will live with significant disabilities the rest of his life. The family's attorney estimates this young man's future care will cost millions of dollars.

The family has decided to sue Little League Baseball, the sporting goods store that sold the bat, and the manufacturer of the bat. They contend metal bats are inherently dangerous and if not for the negligence of allowing metal bats, their son would not have suffered the injuries he did. The bat's manufacturer explained that the young man's injury rarely occurs, but when it does it mainly results from thrown balls, not batted balls. Moreover, nearly 18 years ago, metal bat manufacturers and Little League Baseball worked together to limit the performance of metal bats to that of wood bats.

Does this sound like negligence or does this sound like reasonable people working together doing their best to reduce the risk in a sport that does have inherent risk? As sad as this young man's condition is, I wonder if this lawsuit has less to do with negligence and more to do with searching for "deep pockets."

In 1992, a young woman backed her car into Galveston Bay and drowned, unable to get out of her

seatbelt. Her parents successfully sued Honda for their negligence in failing to make the seat belt user friendly. Not surprisingly, an appeals court threw out the case. Why? Because this young woman had a blood alcohol of 0.17, twice the legal limit. Does it seem unbelievable the first jury found Honda 75 percent responsible for their seatbelt being difficult to operate by someone who was drunk? Must we warn people that the seatbelts may be more difficult to operate if they are drunk?

Do we have any personal responsibility or any personal liability participating in sports or in life? Is it reasonable to participate in a sport, without accepting the risks of that sport? More important, are these lawsuits about negligence, as claimed? As I review some of these cases, I recognized a pattern. There was a direct relationship between the extent of the injury, the financial costs of an injury, and the probability of filing a lawsuit.

Frivolous suits, simply looking for deep pockets, have significant drawbacks. First, they clog an already overburdened court system wasting time and money. Second, the companies involved will recover their legal costs by passing them on to us, the consumer. We all pay the costs of frivolous lawsuits. There is plenty of blame to share for propagating frivolous lawsuits, for our society abdicating individual responsibility. Anything that goes wrong in our lives must be somebody else's negligence and someone owes us money.

Our ancestors possessed something that seems to be in short supply today – simple common sense. I learned this lesson well ten years ago when my wife and I were vacationing

in Belize. We hired a guide to tour us through their national zoo. The zoo consisted of dirt paths through natural forested areas, sections periodically fenced with a 2" x 4" vertical mesh fence. One of their prized exhibits was the jaguars, animals up to 6 feet in length weighing up to 250 pounds. The only thing separating us from death was the mesh fence I could put my hand through, if I chose to do so. I asked the guide what would happen if someone was injured sticking his or her hand through the fence. How would this poor country pay the costs of the resulting lawsuit? He looked at me with an admixture of surprise and puzzlement, making it obvious he thought my question was absurd. He answered, "How could someone sue us because they were stupid?"

What a novel thought, perhaps something to put into effect in our legal system – common sense. It appears that as the financial risk to those filing the lawsuits goes down, the incidence of lawsuits goes up. Perhaps there needs to be some financial risk associated with filing a lawsuit, leading to more thought before filing. The system was designed to protect those individuals who cannot spend large sums of money to initiate a lawsuit. But, have we protected them so well that we are making it far too easy to initiate a lawsuit; to easy to throw out a net and see what we can catch?

The Belizean guide understood common sense. Let us learn from him.