

The article on product liability by Mahoney and Littlejohn reflects the pervasive misinterpretation of the so-called liability crisis. While it is undeniably true that opportunistic lawyers and greedy plaintiffs have exacerbated the problem, they did not create it. And that is because the issue is not really one of liability; it is one of accountability.

The fact is, large businesses and the people who run them have, over the last few decades, succeeded in large measure in insulating themselves from the consequences of their actions. They have immense resources (including the best lawyers) and great political clout, particularly through their role in financing elections. The solitary individual in our society is, at best, severely limited in his ability to hold such great and powerful organizations accountable. This weakness of the individual holds for both the marketplace and the political arena.

But there is one recourse in our society for the helpless individual, and that is the courts. The glorious principle of equality before the law diminishes the mighty organizations and raises the individual, like David, to the status of giant-killer.

It is unfortunate and, as Mahoney and Littlejohn correctly point out, ultimately injurious to the economy that respectable and conscientious companies can be victims. Instead of wishing away the problem, however, or engaging in ultimately vain activities like tort reform, the leaders of companies such as Monsanto would be better advised to work toward requiring higher standards of integrity and greater accountability in American industry. That, and that alone, will resolve the crisis.

ARNOLD BROWN  
Chairman,  
Weiner Edrich Brown,  
200 East 33rd Street,  
New York, NY 10016

Thank you for publishing "Innovation on trial: Punitive damages versus new products." On the reasonable policy base that manufacturers must be responsible for their products, production processes, and operations, including liability for failure of the product or operations, or both, we have added the wish that business be the insurer against accidents and misfortune and be punished for failure (beyond responsibility for the consequential damages). While these additions may be legitimate choices our society can make, it is noteworthy that we do not similarly hold government—a more promising candidate for spreading risks and costs across society—responsible for misfortune or misfeasance, even its own. One consequence of loading business and indus-

try with extraneous general social costs is that U.S. industry may become less effective at its main function of devising, producing, and distributing goods and services of a design, quality, and cost we and consumers abroad will find attractive.

ROBERT L. RANDALL  
U.S. International Trade Commission,  
Washington, DC 20436

*Response:* Kaye raises three significant issues: the reduction on appeal of punitive damage awards, the relationship between high settlement costs and the seeking of punitive damages by plaintiffs, and the adequacy of compensatory damages as that relates to punitive damages.

The reduction on appeal of many punitive damage awards is not an indication that the system is working, but rather that the basis for awarding punitive damages at the trial court level is seriously amiss. A recent study by the Government Accounting Office (1) shows that punitive damage awards are frequently reversed on appeal, but that this process doubled the legal costs for defendants.

Manufacturers and others should not have to rely on appellate review to remedy the inequities and social costs associated with randomly imposed punitive damages. There is a vital need for fair rules and structure within the system. We remain exposed to lengthy periods of uncertainty during which legal costs mount inexorably. Instead of moving forward with key research and development, we must remain focused on potential results of an arbitrary system of punishment.

The hypothesis that plaintiffs are more likely to allege punitive damages in those cases in which liability is clearest is simply wrong. Data show that punitive damages are sought routinely, without regard to the merit of cases. This has been confirmed by a U.S. Department of Justice study (2). Plaintiff's lawyers seek punitive damages because they believe that such action can be an effective means of raising settlements.

In the overwhelming majority of states, the sole purpose of punitive damages is to punish and deter conduct that society finds unacceptable. They do not compensate real losses. The punishment purpose is frustrated by the randomness and arbitrariness of punitive awards. Reforming punitive damages will have nothing to do with whether injured persons are properly compensated for their actual harms.

Despite the noncompensatory purpose of punitive damages, Kaye suggests that they are still needed to supplement what he considers to be inadequate compensatory damages. We do not know any basis for this

observation. The dramatic expansion of noneconomic compensatory damages such as pain and suffering (which can be five to ten times economic damages), the shift to strict liability, and the increase in overall compensatory awards has led seasoned observers of the tort liability system like George Priest to suggest (3) that overcompensation, rather than undercompensation, is a major problem.

We agree with Brown that companies like Monsanto should be judged by how they conduct themselves and that they should strive for the greatest degree of integrity and social consciousness. For example, we have voluntarily made ourselves accountable for reducing all toxic and hazardous releases and emissions, working toward an ultimate goal of zero effect.

Unfortunately, the current punitive damages system does not encourage such positive conduct. The random imposition of punitive damages drives conscientious firms away from socially useful endeavors, while weakening their deterrent effect on companies that are not conscientious. Reforming punitive damages is fully consistent with and supports higher standards of integrity and greater accountability.

We agree with Randall that U.S. industry should not be diverted from its principal societal mission of responsibly discovering and producing goods and services that improve the quality of life for our consumers here and abroad. That is why the punitive damage system must be reformed.

RICHARD J. MAHONEY  
STEPHEN E. LITTLEJOHN  
Monsanto Company,  
800 North Lindbergh Boulevard,  
St. Louis, MO 63167

#### REFERENCES

1. *Product Liability, Verdicts and Case Resolution in Five States* (General Accounting Office, Washington DC, 1989), p. 69.
2. R. K. Willard and R. L. Willmore, *An Update of the Liability Crisis* (Department of Justice, Washington, DC, 1987), p. 50.
3. G. L. Priest, *Fortune* 119 (no. 9), 323 (24 April 1989).

*Erratum:* In his letter of 2 March (p. 1018), Gobinda Sarkar's address should have been given as 922B, Homestead Village, Rochester, MN 55904.

*Erratum:* In the article "Academy sued on 'plagiarized' diet report" by Eliot Marshall (News & Comment, 2 Mar., p. 1022), every reference to the "9th RDA [Recommended Dietary Allowances]" should have been to the "10th RDA" (the 10th RDA was assembled twice by the National Academy of Sciences—in 1985 and 1989). The reference to the "8th RDA" (the 1980 report) should have been to the "9th RDA."

*Erratum:* The first sentence of the caption for the figure on page 525 accompanying Marcia Barinaga's Research News article "Neuroscience models the brain" (2 Feb., p. 524) should have read, "Computer simulation by Kenneth D. Miller models formation of ocular dominance columns." The photo credit for the figure should have been to Kenneth D. Miller.