

National President's page

Peter Semmler QC, APLA National President

No Contest

I have just read *No Contest – Corporate Lawyers and the Perversion of Justice in America* which was recently published in the United States. It was co-written by consumer rights activists Ralph Nader and Wesley Smith. It is concerned with the imbalance which exists between the resources available in personal injuries and public interest litigation to defendants on the one hand and plaintiffs on the other. It is all about the kinds of issues which inspired the formation of the Australian Plaintiff Lawyers Association; the importance of the tort system, the need to counter the propaganda peddled by corporations attempting to dismantle that system, and the need for lawyers who act for the little people in litigation to unite against the tactics adopted by those who represent only corporations and insurers.

Although written about the American civil justice system, the applicability of the commentary within this book to the Australian legal scene in the 1990's is obvious. Here are some examples:

If there has been any kind of litigation explosion, it has not been fuelled by personal injury victims... or other individual citizens. Rather it has been in business suing business. Indeed, nearly half of all Federal law suits filed between 1985 and 1991 involved inter-business disputes. But tort reform groups generally do not propose restricting the rights of businesses to sue one another (p266).

There is of course nothing inherently wrong or unethical in making money, nor in representing businesses that exist to make a profit. However, there is a trap here for the unwary. When money and power become the central pursuits of one's work, when the problems and yearnings of average people are rarely encountered (except, perhaps, in opposition on the other side of a court room or conference table, or in representing the occasional client pro bono), as is often the case with big business lawyers, it is easy to lose sight of the fundamental values of fairness and equity that our system of laws is designed to foster (p 326).

In a quote from an address by a then corporate attorney, Louis D. Brandeis (later to become Justice Brandeis) to a gathering at Harvard in 1905, the authors of the book highlight the timelessness of the principles for which organisations like ATLA in the United States, APIL in the UK and APLA in Australia stand:

Instead of holding a position of interdependence, between the wealth and the people, prepared to curb the ex-

Federal-State deal struck on workers' comp

Katharine Murphy

Federal and State Ministers for Industrial Relations have pledged to press ahead with a major national overhaul of workers' compensation schemes, with the aim reducing the costs incurred by big companies operating across State boundaries.

The agreement, reached in Melbourne last Friday at a meeting of labour ministers, follows a major report last year by the Heads of Workers' Compensation Authorities calling for the introduction of nationally consistent workers compensation schemes.

The Federal Minister for Industrial Relations, Mr Peter Reith, said the streamlining of State workers' compensation schemes, creating greater consistency in employers liabilities and employee entitlements, would have positive employment effects.

"If we could have a much simpler system for big companies operating across jurisdictions, that would be a big cost saving for those companies and ultimately again, pushes us towards our objective of lower costs, improving job prospects," Mr Reith said after the meeting.

cesses of either, able lawyers have, to a great extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the corporate lawyer and far too little of the "people's lawyer" (p xxi).

The book is highly critical of things like discovery abuse and confidentiality agreements imposed on plaintiffs in the settlement of product liability cases. As to the latter, the book quotes a top products liability lawyer who comments upon the "terms not to be disclosed" device employed by defendants seeking to impose secrecy in civil cases:

Plaintiffs' lawyers represent real people. The representation is a one-time situation. The client hasn't done anything and usually has nothing to hide. On the other hand, corporate lawyers are often dependent on their major clients, who pay them huge amounts of money. This money talks, causing many corporate lawyers to abdicate professional judgment to the client (p 62).

This book provides an important overview of the problems facing lawyers who act for people, not corporations, not only in

the United States, but here in Australia as well. It is recommended reading for all plaintiff lawyers.

APLA on the Web

In addition to our newly named and formatted paper periodical, *Plaintiff* (which has been very well received since its first publication in April) I am delighted to tell you that APLA now has a presence on the internet. Our home page address is <http://www.apla.com> Many thanks are due to Bill Madden, APLA National Councillor, who co-ordinated this project.

APLA's Policy Officer

By the time you read this edition of *Plaintiff*, APLA will have employed a full-time Policy Officer. Simon McGregor from Victoria will complement our administrative personnel who service members' day-to-day needs. Simon will be concerned with the bigger-picture issues; in particular the need to research the facts and present the evidence to refute the propaganda generated by the insurance industry about the need for caps on damages and restrictions on the rights of individuals to sue.

Restrictions on Victims Rights

The employment of our full-time Policy Officer is not be-

www.apla.com

Bill Madden, Blessington Judd, Sydney

In early June 1997, APLA launched an internet website.

The site is intended as a service to members and to publicise the aims of the Association.

It is divided into two parts:-

- The public access area
- The members access area

The public access area contains a range of information concerning the association including a general description and membership criteria with an application form.

The Association's rules can be viewed online and details of each of the state and territory branches are available with email to the various committee members.

The site describes the special interest groups (breast implant litigation, medical negligence, tobacco litigation and chemical injury) and it is intended that a list server facility will later be implemented to provide for email exchange of information between members of the special interest groups.

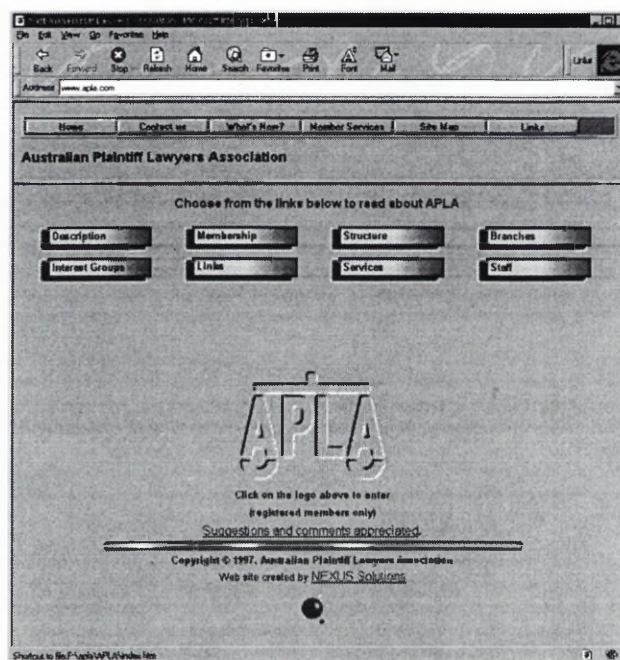
The site provides links to related sites including the American Trial Lawyers Association and the Ontario Trial Lawyers Association.

Finally in the public area the "What's New" section gives details of conferences and seminars and allows viewing of submissions lodged by APLA and press releases issued from time to time.

The member services portion of the website requires user id/password access.

Four members areas exist:-

- Library, which will include indexes to past editions of APLA Update/*Plaintiff* and of course access to current editions of *Plaintiff* along with submissions and press releases.
- Access to the expert database.
- Information regarding useful contacts within government.



- Media, which will provide newspaper, television and contact details.

The site should develop into a very useful resource for APLA members. Contributions and suggestions are most welcome.

Bill Madden of Blessington Judd has co-ordinated the APLA web site. Bill is a National Councillor & NSW Committee Member.

fore time. As you will read later in this edition of *Plaintiff*, attempts to curtail victims rights are on the increase; they extend from the ominous agreement which appears to have been reached about some kind of uniform national workers' compensation scheme (see news clipping opposite, reproduced with permission from The Australian Financial Review), to the enquiry into medical negligence actions in New South Wales. In relation to that subject, a spokesman for one of the larger Medical Defence Unions, United

Medical Defence recently said:

"The current unmitigated trend in litigation will inevitably lead to a crisis worse than that experienced in the United States of America. Already, the amount of damages given out by the common law court judges in Australia are exceeding those experienced in California. Frequency of claims are on the rise in Australia, and if we have the American frequency multiplied by the Australian levels of awards, I contend that Australia will not be able to afford the resulting cost of litigation."

(Chairman's Report, UMD).

A broader threat to common law rights as a whole looms in Victoria. In that state, APLA is co-ordinating an extensive Protect Victims' Rights campaign. I attended a very successful function in Melbourne on 5 June 1997 which was part of that campaign. The meeting attracted a large number of Victorian barristers, many of whom have now joined APLA. Further information about that meeting and the Victorian campaign generally can be found in the APLA Victoria report.