

The trial lawyers save the world

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When Newt Gingrich finally re-emerged from his self-made Elba, he had, not unexpectedly, things to say. But rather than holding forth on the sensitive issues that helped make him an ex-Speaker of the House, Newt decided to play it safe by embarking on a little trial lawyer bashing...with a twist.

The subject was the approaching Y2K crisis, and Gingrich noted that "the trial lawyers" were already gearing up for a litigation bonanza. He pointed to ATLA's Y2K litigation group, which he characterised as eagerly preparing "to pounce" on any contractor whose Y2K fixes don't quite do the job. "This strikes me as profoundly unpatriotic and close to treasonous," intoned the Speaker emeritus.

Treasonous?

Sure, Gingrich explained: here was the United States requiring every technical hand available to avert major, even cataclysmic, breakdowns in government services, banking, finance, commerce, transportation, health care and national defence, and trial lawyers were intimidating technical firms by making it clear that huge liability suits would follow any misstep. The whole future of the nation could be hanging in the balance, and all the plaintiff's bar was thinking about was getting rich off of the carnage.

This indictment would be right at home in Louis Carroll's *Through the Looking Glass*. It looks real enough, but upon closer examination it becomes clear that it is the reverse image of the truth. For the threat of liability, and the presence of a dedicated and skilled body of trial attorneys to follow through on that threat, is the single greatest impetus towards minimising the damage that could result from Y2K. The civil justice system's impact on efforts to address the problem cannot be overstated, and in fact is itself a decisive testament to the folly of tort reform.

A fly on the wall of any Fortune 500

company's conference room during one of the many Y2K briefing sessions held there would feel the buzz of one word above all others: "liability".

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Liability for unperformable contracts, liability to stockholders, liability to all those dependent on performance. The climate is perfect for the growth of negligence: a threat known long in advance, with potentially widespread and destructive consequences to those who depend on the corporation. The certainty of litigation from all sides has been a wonderful motivator, as fear always is. Forget the public statements about "duty to our customers." It is the trial bar looking over those corporate shoulders that has the CEOs and VPs hustling.

Speaking of hustling, every computer jockey with an e-mail address is seeking to cash in on the Y2K fix frenzy. This is not a reliable bunch: one study estimated that 80% of all technical contractors miss their delivery dates, and 50% never complete their tasks, period! Well, it is already clear that Y2K measures are being implemented at a much better rate, and one clear reason is the threat of litigation. The consequences of taking on a job beyond a technical company's resources or expertise are potentially ruinous. These are the companies that Newt says are being unpatriotically discouraged from joining the Y2K bucket brigade. Earth to Newt: This is a good thing. We don't want them.

And the clincher is this: what country is leading all others in taking remedial

action on Y2K? Why, the United States, with all those mean old trial lawyers. Let me rephrase: because of all those trial lawyers, Japan, that Mecca for tort reform enthusiasts, where tort damages won't pay for a day pass to Disneyland, is in a mass state of corporate denial. What's scaring Japanese corporations, Mister Former Speaker?

Nothing. And they are behaving accordingly.

When we celebrate the new millennium on January 1, 2000, a big apple will drop in Times Square, but no planes will fall out of the sky. The 20th Century will disappear, but citizens' bank assets won't. Champagne will flow, and so will electrical power. It will be a celebration, not a cataclysm.

And the civil justice system will have played a major role in getting us there. No one will thank the trial bar, as usual. But midnight, on the first day of the first month of The Dreaded Year 2000, will mark one of its finest hours. ■

APLA Membership at 30 June 1999

NSW	566
Queensland	363
Victoria	260
South Australia	78
Western Australia	44
ACT	31
Northern Territory	16
Tasmania	15
International	51
TOTAL	1,424