

## Bringing Down the Barriers to Justice

by Burton Craige



*Academy President Burton Craige is a partner with the firm of Patterson, Harkavy & Lawrence in Raleigh, North Carolina. Craige has made significant contributions to the Academy as a member of the board of governors and most recently as president-elect. He has also served as legislative vice president and legal affairs vice president. Before entering private practice, Craige worked as a trial attorney in the Civil Rights Division of the U.S. Department of Justice. He received his law degree with high honors from UNC-Chapel Hill in 1980.*

At the Academy's convention last June, I spoke about the need for a campaign to bring down the five great barriers to civil justice:

- Sovereign Immunity
- Punitive Damages Cap
- Rule 9(j)
- Products Liability Statute of Repose
- Contributory Negligence

In the past year, we have made some notable progress:

– In *Anderson v. Assimos*, the N.C. Court of Appeals (Greene, J.), struck down Rule 9(j) as unconstitutional. The case is now pending in the N.C. Supreme Court. The Academy's amicus brief includes compelling documentation of how Rule 9(j) has obstructed meritorious malpractice claims. An amicus brief from the Association of Trial Lawyers of America and the North Carolina ACLU provides analysis of the constitutional issues.

– In *Dombrowska v. Wall*, the N.C. Supreme Court affirmed per curiam the court of appeals' decision (Hunter, J.) that the City of Greensboro could be sued under § 1983 for alleged violations of the injured plaintiffs' substantive due process and equal protection rights. The City's practice was to selectively settle some claims while asserting the defense of governmental immunity at other times. The Academy filed an amicus brief in support of the plaintiffs.

– The General Assembly is considering a bill sponsored by Senator Brad Miller that requires local governments to pay claims from the first dollar of damages up to the full extent of coverage. The bill would also make the use of funded reserves equivalent to the purchase of insurance, so that governmental immunity would be waived to the extent specified by the local government. This bill passed the state Senate.

– We are helping challenge the cap on punitive damages in *Rhyne v. K-Mart*, a

case pending in the N.C. Court of Appeals. Briefs submitted by the plaintiffs and the Academy explain that the cap violates several provisions of the North Carolina Constitution and defeats the purpose of punitive damages.

– Representatives Blue, Alexander, Barefoot, Haire, Jeffus, and Wainwright introduced a bill to extend the products liability statute of repose from six to fifteen years.

– Appellate and trial judges are beginning to question the validity of the doctrine of contributory negligence. Early this year, Judge R. Vosburgh reluctantly denied summary judgment for a plaintiff on the issue of his contributory negligence, noting that he was bound by stare decisis. His order cited two court of appeals opinions reflecting growing discomfort with contributory negligence and called on our courts to follow South Carolina and other states in abolishing the doctrine.

The Academy has also intensified its public education efforts. On our Web site, <[www.ncatl.org](http://www.ncatl.org)>, we now provide information to the public about the barriers to justice. We are also preparing informational packets for the media and legislators, and gathering stories about clients that illustrate the impact of these barriers on individual North Carolinians.

The fight to bring down the barriers to civil justice will be difficult and long, and it will demand a sustained commitment of the Academy's resources. At the same time, we must make an equal commitment to enact a moratorium on the death penalty, and to safeguard workers' rights.

During my term as president, it has been gratifying to see that so many care so deeply about these issues. Having witnessed the dedication and generosity of Academy members, and having worked so closely with the extraordinary Academy staff, I am now more confident than ever that we will bring these barriers down. ■



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