I have been in the insurance business for 55 years. I began my career as an adjuster. The first "principle" that I learned was that if the injured party is 1% negligent he has no right to collect, since one should not profit from one's own negligence. The attitude of courts, however, has changed by 180 degrees. Today, if one limps into the courtroom, the attitude of the court changes from objectivity to compassion.

Several years ago, I wrote a series of articles and a booklet outlining the need for tort reform. The following represents a summary of my arguments that bear repeating at this critical point:

1. The current tort system in Pennsylvania unduly favors compensating the injured party, according to a book written by G. Edward White, a law school professor at the University of Virginia. If the court "favors" the injured party, it is, accordingly, prejudiced. Given that justice is defined as "an unprejudiced adjudication of conflicting views," the practice of the court contradicts the principle of justice, thereby, making the system unjust. In fact, the court system is unjust in this area and has been made so by unjust tort rules and, in my judgment, by the dishonesty of many tort lawyers.

2. The potential for non-economic and punitive damage awards is unlimited, which in effect, violates the common good.

3. Joint and several liability unjustly imposes a disproportionate degree of responsibility on defendants who have "deep pockets" and whose negligence is questionable or non-existent in order to inflate or guarantee the payment of a claim.

4. The collateral source rule denies the right of a defendant to reveal sources utilized by the plaintiff to collect monies that would reduce the true amount of the economic loss. This is inherently dishonest.

5. Product liability lacks a reasonable statute of limitations.

6. Lawyers who file frivolous suits should be held liable to the defendant for all expenses incurred by the defendant plus non-economic damages.
7. Tort lawyers, in my judgment, exercise an inordinate amount of influence over our state legislators.

As of June 30, 2001, 45 states reformed their tort laws along the lines listed above. These are reforms I proposed fifteen years ago. At that time, I was severely criticized by lawyers and ignored by legislators. Tort reform in Pennsylvania was soundly rejected a few years ago by the latter. Now that the indifference of the legislative bodies and, I believe, the greed of tort lawyers have all but bankrupted the health care system in our state, the legislature has changed some of these egregious rules, but it has been too little, and, possibly, too late.

Unfortunately, the legislature has failed to enact laws imposing a limit on non-economic and punitive damages, both of which are in the interest of the common good. The failure to impose such limits will continue to provide tort lawyers with weapons that force a defendant to pay dearly—even when negligence is absent, questionable, or limited. The notion that such a limitation is unconstitutional is a reflection of the inability of those who argue this position to comprehend adequately the common good, the commonwealth of our state.

Doctors are retiring, quitting their practices, or leaving Pennsylvania due to the corruption of our court system and the grotesque awards by juries. With a cap on non-economic and punitive damages of, say, $250,000, juries would not be able to act as irresponsibly as they have on far too many occasions. I would add, however, that I am not proposing that a limitation be placed on the actual economic loss. Rather, a cap on non-economic and punitive damages is an essential ingredient in responsible tort reform. Until we have such a limitation, doctors will continue to retire or move to other states and hospitals will be forced to close. When we are forced to go to neighboring states for medical attention, waiting six months for an appointment, then we shall come to understand fully the tragedy that has long been in the making.

Over the past forty years, many tort lawyers and legislators, I believe, have engaged in an incestuous relationship and the fruit of this union has been a pernicious system of injustice that has made the courtroom a money machine for lawyers, destroying our economy at large, not simply the health care industry.

If the legislators would ignore the tort lawyers—who, have the most to gain under the current laws—and enact responsible tort reform, malpractice premiums would be dramatically reduced for the doctors, as would the liability insurance paid by both individuals and businesses. We would all gain by such reforms; only a small percentage of our fellow citizens gain under the present system.

Despite the large awards in the courtroom, less than 1% of the people are actually enriched under the current tort system. On the other hand, 100% of the tort lawyers hold a winning lotto ticket unavailable to most people. Over
60% of all the awards granted in the courtroom end up as attorney fees—and the attorneys sustain no injury! 57% of the "malpractice" premiums go toward attorney fees. While nearly 70% of all medical claim cases are won by the doctor, the average cost of defending such suits is $66,747. As citizens, we build the courthouses and pay the judges; as the insuring and consuming public, we pay all the awards granted in the courtroom. It is time, then, that we make our voices heard and insist that we not be so severely taxed to benefit only 1% of our fellow citizens who have been seriously injured, but 100% of the lawyers who represent them, as we watch our physicians engage in an exodus of biblical proportions.

Recently, the U.S. House of Representatives passed legislation providing for a maximum of $250,000 for non-economic damages. It must now go to the U.S. Senate. This would bring about a change in our tort system in Pennsylvania, in spite of the unwillingness of our state legislators to do this.

St. Thomas Aquinas wrote, "A just man comprehends justice because he acts justly; an unjust man does not comprehend justice because he acts unjustly." Predicated upon his statement, I must conclude that a very substantial number of lawyers who operate within the "tort system" do not seem to comprehend justice.

Mr. Clauss is in the insurance business in Pennsylvania. He received his bachelor's degree from the University of Scranton and has a master's degree in religious education from Marywood University.