EXECUTIVE SUMMARY

The United States is held together by a shared commitment to the rule of law. We depend on a fair, credible, and efficient legal system to enforce economic and social policies embodied in law, to protect citizens from unwarranted actions by government, to enforce the rules of commerce, and to provide remedies for wrongs done to one another. A smoothly functioning and respected legal system is essential to the prosperity and to the freedom of all Americans.

CED believes the current legal system fails to serve the American people as it should. As a result, respect for the law and the legal process is eroded. The problem is particularly evident in the enforcement mechanism of the law — civil litigation. While numerous efforts are being made to improve discrete parts of the litigation system, these reforms entail detailed changes in laws and rules and therefore require the expertise of lawyers and judges.

Breaking the Litigation Habit: Economic Incentives for Legal Reform takes a more fundamental approach to reform by offering Americans alternatives to litigation. We recommend two specific innovative reforms that use the dollars that otherwise would be spent on payment of non-economic damages, attorneys’ fees, and transaction costs to provide compensation for actual financial loss. Such compensation would be paid to more victims, more quickly, and without litigation. These are balanced reforms that benefit plaintiffs, defendants, and society as a whole.

FINDINGS

- The country has acted on the unexamined assumption that litigation is the appropriate way to right private wrongs, determine compensation for injury, and resolve many matters of economic and social policy.
- Litigation is too intrusive, too complex, too slow, and too expensive.
- Most victims of wrongful conduct do not sue.
- The current compensation system for injuries, operating through litigation, is unfair. The larger the actual economic loss, the smaller the proportion typically recovered through litigation.
- Total transaction costs for running the system are almost as large as the compensation that victims receive.
- Winning plaintiffs under the current system may not be fully compensated for their loss because attor-
neys’ fees absorb a substantial portion of any judgment.

Punitive damage awards have skyrocketed in number and size in recent years, and the resulting awards have been both highly variable and unpredictable.

As a result, the litigation system is inefficient and does not adequately provide justice.

**RECOMMENDATIONS**

Because of these conditions, CED believes it is important to offer and encourage alternatives to litigation. Therefore, we recommend the use of two mechanisms that give injured parties the opportunity to collect fair compensation without having to litigate: **Early Offers and Auto Choice**.

1. **Early Offers** provide incentives for potential defendants to offer to pay victims’ economic damages and incentives for potential claimants to accept such offers.

   By making an Early Offer, potential defendants would reduce the likelihood of:
   - incurring the costs and other problems of litigation;
   - having to pay large and uncertain punitive and other non-economic damages.

   By accepting an Early Offer, potential claimants would:
   - obtain fair compensation quickly, when they need it, and without having to undergo the delay, expense, and trauma of litigation;
   - avoid litigation conducted under the different rules that would apply if they reject the qualifying offer and go to court.

   An Early Offer made by a potential defendant would have to qualify by meeting certain conditions. It must:
   - satisfy a formula defined by statute;
   - commit to make payments for uncompensated economic losses (wages, costs of medical care, and rehabilitation expenses) and for additional items, such as the cost of modifying the victim’s house to accommodate disabilities;
   - include the reasonable fees of a lawyer to advise the claimant whether to accept the offer;
   - be made within a required period of time.

2. **Auto Choice** gives motorists a choice between two different types of insurance, thereby saving substantial amounts of money for drivers and providing rapid compensation of economic damages without litigation.

   Auto Choice gives car owners, for both personal and business use, the option to buy less expensive insurance that pays economic compensation for personal injury quickly and without litigation, in exchange for forgoing pursuit of non-economic damages.

   - Auto Choice would reduce average auto insurance premiums by 23-24 percent. Potential savings would be approximately $35 billion per year if all motorists selected the alternative system. Of this amount, consumers would save $27 billion.
   - Auto Choice would produce large savings for low-income families. Individuals and families in the lowest income quintile, who now spend 16.3 percent of their income for car insurance, could reduce their premiums by 36 percent.
   - Business costs also would fall under Auto Choice. Nearly 40 percent of all automobile cases that go to trial are against businesses, and 39 percent of all tort cases against business are related to car ownership. Business auto premium costs could fall by almost 27 percent, or $8 billion, allowing price reductions for consumers.

**CONCLUSION**

CED believes Early Offers and Auto Choice will help more injured people receive efficient and fair compensation by avoiding the waste and delay of the litigation system. Auto Choice and Early Offers will also reduce the number of cases brought to the courts and thus make justice more accessible to others who need to use the courts.

The reforms put forth here are only the beginning. More broadly, we encourage a re-examination of the public role of litigation in American life. We urge the development of other mechanisms to allow more Americans to break the habit of litigating and to receive fair, efficient, and speedy compensation for injury and loss.