For those pursuing the Holy Grail of civil justice reform, it's like deja vu all over again. Another year is drawing to a close without Congress or our state legislatures passing significant tort reform. Once again, many are left wondering how and when legislative solutions can be achieved.

In Congress, plaintiffs’ lawyers have blocked broad reform efforts year after year, thanks to masterful use of their considerable influence and financial war chest. And even when reform proponents have been successful in the states, many of these victories have proven temporary, as activist courts have struck down reasonable tort reform laws as “unconstitutional.”

Unfortunately, we often overlook the huge role the judiciary as a whole plays in applying our tort laws. Rather than impartially refereeing the litigation process, some judges have instead become accomplices in plaintiffs’ lawyers’ efforts to inject exotic legal theories into the law. Strict liability and unproven damage claims for future harm have replaced such time-honored principles as assumption of risk and the need to prove both direct causation and actual injury. A lottery-like atmosphere, fueled by judicially-created causes of action, has undermined valued consistency in the law.

We have runaway juries imposing random, multi-billion dollar punitive damage awards while some presiding judges sit idly by. Million-member class actions and other lawsuits alleging a potpourri of unrelated claims are allowed to go to trial. The standards of tort law have become so relaxed that increasingly, proving a simple “fear” of future harm is enough to win a lawsuit.

Victims of legal abuse will certainly continue to pursue legislative reform despite these continual setbacks. Much of their efforts might be easier, or perhaps even unnecessary, if our judicial caretakers not only refrained from activism, but also took the lead and initiated change.

Maybe what we really need is judicial tort reform.

Judges can start by reducing the pervasive incentives in our legal system that encourage litigation. For instance, judges can take action to dispose of frivolous or abusive lawsuits, while sanctioning the lawyers who bring them. Jury verdicts that blatantly ignore the law should be summarily reversed. Requests to combine legal claims that don’t strictly conform to class action rules should be denied. "Experts" who peddle junk science on the witness stand should be banished from the courtroom. Inflation of punitive damages can be controlled by judges providing rational guidance to emotional juries. Outrageous attorneys’ fee awards should be scrutinized and reduced.

With each passing day, our liability system strays from its original purpose — compensating injured citizens — and drifts towards becoming just another money-making enterprise. If America’s judges don’t restore reason and respect to tort law, then no amount of federal or state reform can make a difference.