CENTER FOR JUSTICE & DEMOCRACY
CJ&D

IMPACT

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...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE & DEMOCRACY **NEWS**

Dear Friends,

This year marks the 10th Anniversary of the Center for Justice & Democracy. We are excited to celebrate our many accomplishments and grateful for all the support we have received over the past decade for our work fighting to protect the civil justice system.

Some great new things are happening at CJ&D. We will be launching a new user-friendly web site shortly. Some of our New York staff have started a new blog: ThePopTort.com, covers civil justice issues in an entertaining and irreverent manner. And our Illinois office staff also has a great new blog: IllinoisDeservesTheTruth.org. Don't forget to check these out!

Please stay tuned for more 10th Anniversary activities and events as we take the opportunity to thank those who have helped CJ&D achieve its many successes this past decade.

Sincerely,

Joanne Doroshow
Executive Director

IN THIS ISSUE: STATE ATTORNEYS GENERAL

ATTORNEYS GENERAL: ON THE FRONT LINE

Take a quick survey of the day's top news stories and you're bound to see a story about a state Attorney General, somewhere in the United States, taking action on behalf of consumers. Today, there's Massachusetts Attorney General Martha Coakley leading a group of 18 state AGs in a court case to force the Environmental Protection Agency to comply with a Supreme Court ruling about regulating greenhouse gas emissions.

And then there's Iowa AG Tom Miller, stressing his disappointment at state lawmakers for rejecting a bill that would have allowed consumers to file lawsuits under Iowa's anti-fraud act, complaining that Iowa is the only state where consumers do not have this right. Miller is also taking the lead in a 10-state subprime crisis task force to help homeowners avoid foreclosure and to prevent further predatory lending. And then there's New York AG Andrew Cuomo, who is conducting a major investigation into health insurance companies and their practice of gouging patients when using doctors and hospitals outside their insurer's networks.

AGs are often the unsung heroes of the consumer rights movement. They and their underfunded staff toil away in back offices finding ways to protect consumers against all sorts of corporate abuse when all other systems fail.

Here's another interesting fact about state AGs: they have been instrumental in helping preserve the civil justice system. In fact, in the 1980s, no group did more to expose the truth behind the real causes for the liability insurance crisis, which the insurance and corporate lobbies were blaming on lawsuits but were really the fault of the insurance industry itself.

In 1986, the Ad Hoc Insurance Committee of the National Association of Attorneys General concluded after studying the insurance crisis, that:

> "The facts do not bear out the allegations of an 'explosion' in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis in availability and affordability of insurance and such a litigation 'explosion.' Instead, the available data indicate that the causes of, and therefore solutions to, the current crisis lie with the insurance industry itself."

(continued on page 2)

ATTORNEYS GENERAL: ON THE FRONT LINE continued . . .

Then in 1988, a dozen state AGs filed an antitrust class action against the insurance industry after finding that a number of insurance companies, including Aetna, Cigna, Hartford and Lloyd's of London, conspired to create the insurance crisis of the mid-1980s. The companies were alleged to have restricted coverage to commercial customers, thus raising prices, creating an atmosphere intended to coax states into enacting "tort reform." The case settled in 1995 for $36 million.

So what's changed since then? Not much in terms of the causes of liability insurance crises. What has changed, however, is how corporate groups have started focusing like a laser on trying to discredit and defund suits brought by Attorneys General. One line of attack is the states' sometimes use of outside counsel.

Private outside counsel are hired by state AGs on contingency at no cost to taxpayers. Contingency fee arrangements entered between state AGs and private counsel serve the same functions as lawyers' fee contracts used by injured victims. Private counsel working on contingency receive no fee up front. In return, counsel is entitled to a percentage of the money collected if the case is successful. Attorneys who take cases on contingency take a risk - if the case is lost, they are paid nothing. If successful, however, settlements and fees are paid for by the wrongdoer, not the taxpayer. This money is used to cover the costs of the litigation as well as disbursed into public programs related to the lawsuit or funneled back into the Attorney General's office.

Contingency fee arrangements make it possible for relatively underfunded and understaffed Attorneys General offices to bring important public interest lawsuits. According to Ohio Attorney General Marc Dann, the U.S. Chamber of Commerce and the American Tort Reform Association (ATRA) have launched an aggressive media attack against this practice,

> "[b]ecause they know that public officials don't have the resources to finance complicated law suits that often take years to work their way through the courts…If these groups get their way, Attorneys General around the country will be disarmed."

When Attorneys General and private attorneys join together, the power of the state is made stronger by the additional resources, manpower and strategic advice provided by private counsel. It increases the state's access to documents so it can investigate exactly what was happening behind corporate doors. Also, because the state is involved, it can provide more whistleblower protection to insiders willing to speak the truth about industry misconduct.

Given the critical role state Attorneys General play in safeguarding the public, it comes as no surprise that Congress is attempting to increase their ability to protect consumers. More specifically, both the House and Senate have passed a bill giving state AGs authority to seek federal injunctions against manufacturers, distributors and retailers who violate consumer product safety laws. And if an injunction is granted, the bill would allow state Attorneys General to recover costs and attorneys fees from the manufacturer, distributor or retailer. Clearly, Congress recognizes that taxpayers benefit from the consumer protections realized when state Attorneys General take action.

LEARNING ABOUT BIG TOBACCO

The state tobacco litigation of the last decade was a watershed case for Attorneys General. In partnership with private attorneys, AGs were able to force the tobacco industry to reimburse state funds expended to deal with one of the biggest public health disasters in modern times. (Eventually, 46 states settled whereby the tobacco industry paid more than $200 billion.)

They were also able to expose the industry's corrupt practices, uncovering for the first time how it promoted addiction through manipulation of nicotine levels, engaged in a secret campaign to hook teens (even pre-teens) and lied to government officials and the public.

One of the most important suits was brought by Minnesota Attorney General Hubert H. ("Skip") Humphrey III and Blue Cross/Blue Shield of Minnesota, aided by the Minnesota law firm Robins, Kaplan, Miller & Ciresi and its counsel, Roberta B. Walburn. Part of the settlement involved releasing 30 million pages of internal documents that showed an industry engaging in active fraud on the public and aggressively marketing a dangerous product to kids. They also showed the tobacco industry to have been a significant covert funder of the "tort reform" movement.

On the next page are examples of information that came to light through the virtual gold mine of documents released following this litigation.

HERE'S WHAT THE TOBACCO LITIGATION BROUGHT TO LIGHT:

- In 1989, the tobacco industry held a planning conference at a West Virginia resort to establish an agenda for what was informally referred to within the industry as "The Tort Reform Project." Among the tasks assigned the Project were coalition building, public relations and grass-roots efforts.

- The costs of the project were shared, by and large, by American Brands, Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds.

- Keith A. Teel, a partner at the D.C. firm of Covington & Burling, and the firm's point man on tobacco, wrote a January 24, 1995, memo in which he described a "communications program … intended to enhance our ability to enact favorable legislation at both the federal and state level. It is also intended to put the trial bar on the defensive and to improve the legislative climate concerning tort issues, both because of pressure from constituents and through possible electoral changes in the composition of various legislatures."

- In 1994, the tobacco industry set aside $100,000 for the American Tort Reform Association (ATRA) to use to help underwrite the activities of the so-called "Citizens Against Lawsuit Abuse" (CALA) groups in California. The industry set aside $100,000 for ATRA to use to support 10 Texas CALA groups in 1994. The industry financially supported coalition efforts in Massachusetts, New Jersey and Louisiana to cover, in part, the fees of ATRA's public relations consultants, APCO.

- In 1992, the Tobacco Institute laid out plans to help set up and fund a Louisiana CALA. The tobacco industry secretly took credit for this when Philip Morris Vice President Craig Fuller reported to his superiors: "The coalition Philip Morris helped organize, Louisiana Citizens Against Lawsuit Abuse, led the effort to defeat all trial-lawyer advocated tort proposals" for the 1992 legislative session.

- In Alabama, during the first nine months of 1995, the Tobacco Institute's Tort Reform Project allocated $25,000 to Alabama Voters Against Lawsuit Abuse (AVALA), apparently funneled through the law firm Covington & Burling. For the last quarter of 1995, Lorillard, a partner in the Tort Reform Project, approved a payment of $22,000 for AVALA.

- In Mississippi, documents indicate that RJR, which had been committed to paying a 35 percent share of the tobacco industry's Tort Reform Project budget, poured more than $100,000 into Mississippians for a Fair Legal System in 1993, its first year. Lorillard, as a 10 percent partner, paid $27,500.

Without the AGs' suit against Big Tobacco, we may never have learned the extent to which the tobacco industry created and bankrolled these early "tort reform" efforts to manipulate the media, the political process, the electoral process and the American public.

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MULTISTATE LITIGATION IN THE PUBLIC INTEREST

As documented in the CJ&D study, *State Attorneys General: The People's Champion*, state AGs often work together to hold corporations accountable for dangerous behavior and protect consumers from future harm. Below are some recent legal victories:

Baycol. In January 2007, 30 Attorneys General settled with Bayer for failing to adequately warn prescribers and consumers about the safety risks of its cholesterol-lowering drug. As part of the $8 million agreement, Bayer was required to: 1) share more information about its clinical studies; 2) comply with the law in future marketing, sale and promotion of its pharmaceutical and biological products; and 3) refrain from making false and misleading claims relating to any such product sold in the United States.

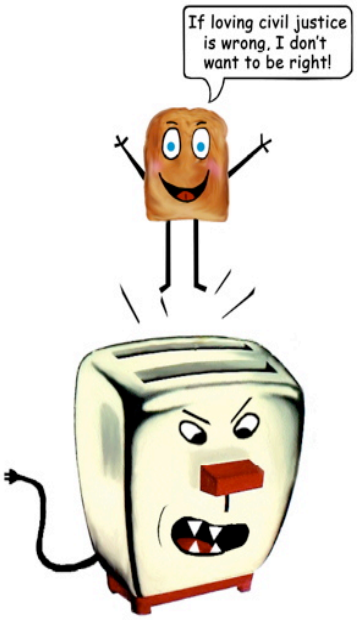
Defibrillators. In August 2007, 36 Attorneys General reached a $16.75 million settlement with Boston Scientific Corp. after its subsidiary knowingly sold implantable defibrillators with a wiring defect. As part of the settlement, Boston Scientific agreed to extend the timeline of its warranty program, institute safety programs and publicly report critical safety information about its defibrillators.

Ovcon. In June 2007, 35 Attorneys General settled with oral contraceptive manufacturer Warner Chilcott, which allegedly paid Barr Pharmaceuticals $20 million to keep Barr's generic version of Ovcon off the market. In addition to a $5.5 million payment, Warner Chilcott pledged to: 1) refrain from entering agreements limiting research, development, manufacture or sale of generic alternatives to its drugs; 2) provide the states notice of agreements entered into with generic manufacturers; and 3) make its records available to the states to ensure compliance with the settlement. In February 2008, Barr reached a related settlement for $5.9 million and agreed to change its business practices.

Oxycotin. In May 2007, 27 Attorneys General reached a settlement with Purdue Pharma that stopped the drug company from aggressively marketing its prescription painkiller to doctors while intentionally downplaying the known addiction risks. Among the reforms agreed to: 1) Purdue could not promote OxyContin for non-FDA approved uses or make false or exaggerated claims about the drug's treatment properties; 2) company employees had to undergo training to educate physicians and the public about its proper uses; and 3) Purdue could not base its sales representatives' bonuses solely on the volume of OxyContin prescribed.

Predatory Lending. In January 2006, 49 states and the District of Columbia entered into a settlement agreement with Ameriquest Mortgage Company over alleged illegal lending practices. Under the settlement, Ameriquest agreed to pay $295 million to consumers and reform its business practices. Changes included: 1) providing identical interest rates and discount points for similarly-situated consumers; 2) not encouraging prospective borrowers to misstate income sources or income levels; 3) providing full disclosure regarding interest rates, discount points, prepayment penalties and other loan or refinancing terms; 4) overhauling appraisal practices; 5) providing accurate, good faith estimates; and 6) adopting whistleblower protection policies.

CHECK OUT THE NEW BLOG FROM CJ&D STAFFERS



The POP torx .com ...so civil justice isn't toast

With pithy commentary, occasional wit, and perhaps a little bit of pizzazz, these zaniest of zanies discuss why, at a time when corporate crime and abuse is at an all-time high, it is actually a good thing to take Corporate America to court sometimes.

Visit http://ThePopTort.com today!

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