

# The Center for Justice & Democracy's

## TOP 30 "TORT REFORM" HYPOCRITES OF 2018!



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# THE TOP 30

## “TORT REFORM” HYPOCRITES OF 2018

This is the fourth in the Center for Justice & Democracy’s “Hypocrites of Tort Reform” series, which began 18 years ago with our study, *Not in My Backyard: The Hypocrites of “Tort Reform.”*<sup>1</sup> What’s a “tort reform” hypocrite? It’s someone who complains about people who file lawsuits and says compensation to injured people should be limited. Yet when they’ve been harmed, they go straight to court and sue for everything they can. No one likes a hypocrite. Yet one would be hard pressed to find more hypocrites than in the “tort reform” movement.

It’s been a number of years since CJ&D’s last “Hypocrite” report, and some may wonder why now? The answer is simple: today’s political environment has produced a critical mass of new examples, and it was time to collect and rank some of the highlights – our “Top 30” to be exact. Of course, 2018 isn’t over yet. So let’s just say, we’re just getting started.

One might compare our “rankings” to other civil justice “rankings,” like those produced by the American Tort Reform Association (*Judicial Hellholes*) or the U.S. Chamber of Commerce (“legal climate” rankings).<sup>2</sup> Like those “rankings,” CJ&D’s list is based on subjective opinion – except, of course, instead of representing the views of industries that have been hauled into court for hurting or killing people, or people who want to make life better for companies like that, our rankings reflect the outlook of everyone else.

We look at factors like: the sheer volume of cases these hypocrites bring, or how recently they’ve gone to court (to establish this is a present-day problem), while they attack the legal rights of others; their involvement with groups like the U.S. Chamber Institute for Legal Reform (ILR) or the American Legislative Exchange Council’s Civil Justice Task Force, which write and support bills to protect corporate lawbreakers<sup>3</sup>; a company’s use of forced arbitration clauses and class action waivers, blocking harmed individuals and small businesses from bringing them to court; or just general civil justice “two-facedness.” And now and then, we throw in a little humor because sometimes you just have to laugh. Shall we begin?

## 1. President Donald J. Trump

Donald J. Trump earns the position of civil justice hypocrite-in-chief simply because his hypocrisy is one for the record books. Trump has tried to block the courthouse doors to others in his business dealings and during his year and a half as President. But when he believes that he or his companies have been wronged in some way, he has always run straight to court. He has done so thousands of times.

Trump has long used forced arbitration clauses to prevent anyone from bringing legal cases in open court against him.<sup>4</sup> Typical is the case involving Stormy Daniels, a former adult film actress who received "hush money" before the 2016 presidential election as she shopped a story about a sexual liaison with Trump a decade earlier. On May 3, 2018, Trump tweeted (referring to his lawyer and fixer, Michael Cohen)<sup>5</sup>:

Mr. Cohen, an attorney, received a monthly retainer, not from the campaign and having nothing to do with the campaign, from which he entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA. These agreements are..... ..very common among celebrities and people of wealth. In this case it is in full force and effect and will be used in Arbitration for damages against Ms. Clifford (Daniels). The agreement was used to stop the false and extortionist accusations made by her about an affair.....

As the *Associated Press* reported during election season, "In his businesses and presidential campaign, Trump requires nearly everyone to sign legally binding nondisclosure agreements prohibiting them from releasing any confidential or disparaging information about the real estate mogul, his family or his companies," with disputes subject to arbitration at the "sole discretion of Trump and others protected by the agreement."<sup>6</sup> Moreover, the "agreement is binding during employment and 'at all times thereafter.'"<sup>7</sup>

These days, "Trump reportedly is frustrated that, as president, he can't make federal employees sign nondisclosure agreements and can't block them from suing...."<sup>8</sup> But that doesn't mean he has been completely unsuccessful in his quest. In November 2017, Trump signed into law a repeal of the Consumer Financial Protection Bureau rule that had allowed defrauded consumers to join with others to bring class action lawsuits against financial institutions over financial products and services. Since taking office, his administration has also stripped away the legal rights of workers, farmers, investors, students and sexual harassment, sexual assault and discrimination survivors.<sup>9</sup> In his first State of the Union address, Trump called for laws that eliminate the legal rights of victims of medical malpractice.

He took the same position in a June 2017 White House "Statement of Administration Policy" and in his Fiscal Year 2019 budget.

On the other hand, Trump and/or his businesses have filed more than 1,900 civil cases over the past three decades.<sup>10</sup> These include:

- In 2009, Trump filed a defamation lawsuit seeking \$2.5 billion in compensation and \$2.5 billion in punitive damages after an author claimed Trump was a millionaire not a billionaire.<sup>11</sup> The case was rejected by a New Jersey court and on appeal.<sup>12</sup>
- "Trump sued for \$4.5 million over unpaid royalties after a company that had been paying him to call its liquor Trump Vodka fell on hard times during the economic downturn, hurting sales of pricier spirits. The company stopped making its licensing payments, and Trump terminated the deal and sued to recoup money. He won a judgment for the amount, though it's unclear whether he ever collected from the troubled company."<sup>13</sup>
- A Trump entity building a golf course "sued a contractor for more than \$25 million, saying it overcharged for excavation work at the site and then walked off the job when it didn't get paid."<sup>14</sup>
- Trump entity 40 Wall Street LLC pursued a contempt order against a company that failed to comply with a subpoena-ordered deposition related to \$600K in back rent.<sup>15</sup>
- "Miss Universe LP, partly owned by Trump, sued to confirm a \$5 million arbitration award against Sheena Monnin, a former Miss Pennsylvania USA and Miss USA Pageant contestant. Miss Universe claimed Monnin falsely stated on her Facebook page and on the 'Today' show that the contest was fixed and called the organization 'fraudulent, lacking in morals, inconsistent and in many ways trashy.'" Trump won.<sup>16</sup>
- As summarized in the *Washington Post*,<sup>17</sup> Trump has sued: "Palm Beach County, Fla., because of the 'malicious' jet noise above Mar-a-Lago"; Bill Maher "after the comedian challenged Trump to prove he was not the spawn of an orangutan"; the *Chicago Tribune* "for \$500 million because its architecture critic said Trump's idea for the world's tallest tower was silly"; "neighbors of the Trump National Doral Miami for vandalizing palm trees"; and "two business executives for using the name 'Trump,' even though their surname was also Trump."

More recently, while president, Trump's company has sued towns all over the nation for tax breaks. As an April 2018 *ProPublica* investigation<sup>18</sup> revealed,

President Donald Trump is famous for bragging about his net worth. Publicly, he claims he's worth more than \$10 billion. ...Yet quietly in another setting, the Trump Organization says the president's holdings are worth far less than he has proclaimed. Across the country, the Trump Organization is suing local governments, claiming it owes much less in property taxes than government assessors say because its properties are worth much less than they've been valued at. In just one example, the company has asserted that its gleaming waterfront skyscraper in Chicago is worth less than its assessed value, in part because its retail space is failing and worth less than nothing.

Since becoming president, Trump's companies have filed at least nine new lawsuits against municipalities in Florida, New York and Illinois, arguing for lower tax bills, *ProPublica* has found. Some of those lawsuits have been previously reported. At stake is millions of dollars that communities use to fund roads, schools and police departments.

And most recently, when a New York State Supreme Court Justice ruled that a 46-story New York City condominium building could remove bronze lettering spelling out Trump's name, Trump's lawyer responded by threatening "legal proceedings to not only prevent such unauthorized action, but to also recover the significant amount of damages, costs and attorney's fees."<sup>19</sup>

## 2. U.S. Chamber of Commerce Institute for Legal Reform (ILR)

In 1998, the U.S. Chamber of Commerce created its "Institute for Legal Reform" (ILR) to pursue the Chamber's national anti-civil justice "tort reform" agenda. Since then, ILR has spent millions on federal lobbying in an effort to keep victims from having their cases heard before a civil judge or jury.<sup>20</sup> ILR now constitutes one of the largest federal lobbying forces in the nation, spending over \$22 million in 2017 alone.<sup>21</sup> This amount is separate from the massive lobbying muscle of the Chamber itself (\$82 million in 2017),<sup>22</sup> which makes the Chamber the top lobbying spender in the country. As U.S. Chamber President Tom Donohue boasted in 2014, "Our Institute for Legal Reform is fighting the expansion of lawsuits on all fronts – in the Congress, in the federal agencies, in the states, and even around the globe where U.S. companies are getting sued."<sup>23</sup> In the current Congress, ILR lobbied for, among other bills: H.R. 720, which would chill the filing of meritorious cases; H.R. 985, which would destroy class



actions and harm asbestos victims; H.R. 725, a corporate forum-shopping bill to advantage big companies; and H.R. 1215, which would strip away the rights of harmed patients, abused and neglected nursing home residents and victims of some unsafe drugs.<sup>24</sup>

In addition, the Chamber and ILR are “increasingly major player[s] in advancing the [American Legislative Exchange Council] (ALEC) tort reform agenda” of passing legislation that undermines the civil justice system.<sup>25</sup> For more than 25 years, ALEC has had an entire division, a “Civil Justice Task Force,” devoted solely to weakening or eliminating corporate liability for wrongdoing.<sup>26</sup> Its work and members are secret,<sup>27</sup> but some documents have leaked exposing Task Force membership for certain years.<sup>28</sup> From these documents, it’s clear that the Chamber and ILR are longtime members of ALEC’s Civil Justice Task Force,<sup>29</sup> most recently registering to attend its 2017 meeting at ALEC’s 44th annual conference in Denver.<sup>30</sup> An investigative report by the Center for Media and Democracy found at least 71 bills resembling “models” from ALEC that were introduced in 30 states in 2013, all of which “make it harder for average Americans to access the civil justice system” and “provide relief and protections for the industries who wrote them.”<sup>31</sup>

But the Chamber only objects to certain kinds of lawsuits: the ones against its own members for negligence and lawbreaking. Otherwise, the Chamber sues like crazy. Over the last 10 years, for example, “the Chamber has been involved in over 1100 lawsuits, either as a plaintiff or as an amicus curiae.”<sup>32</sup> Within the past five months of 2018 alone, the Chamber’s Litigation Center has already filed or joined over 60 amicus briefs.<sup>33</sup>

Moreover, the Chamber freely admits to its “having-it-both-ways” attitude, with its President Donohue telling the *Washington Examiner* in 2015: “We spend half of our time trying to reduce the number of suits by class-action lawyers and the other half of our time suing the hell out of the government. We sue the federal government and units of the federal government and some state governments, 180-90 times a year.”<sup>34</sup> A 2016 Public Citizen study, which examined 501 of the Chamber’s most recent cases, corroborated Donohue’s claims, finding that<sup>35</sup>

- “The Chamber files a case or amicus brief roughly every other day of the 5 day work week.”
- “The number one legal issue addressed by the Chamber is restricting access to the courts, defined for the purposes of this analysis as issues relating to arbitration and/or class actions. More than a fifth of Chamber cases dealt with such civil justice issues. Employment and labor relations issues were second. Environmental issues were third.”

- “The industry most frequently assisted by the Chamber’s litigation efforts is the financial services industry, supported in a total of 88 cases. Energy & utilities is next at 80 cases, and Pharmaceuticals and healthcare is third at 50 cases.”

### 3. National Rifle Association (NRA)

In 2005, after intense lobbying by the NRA,<sup>36</sup> Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA), which then-President George W. Bush signed into law. This law provides gun manufacturers, dealers, distributors and trade associations with immunity from lawsuits brought by gun violence victims, cities and counties. The NRA has continued to aggressively defend the PLCAA since its passage, recently telling the Connecticut Supreme Court that, per the statute, gun companies shouldn’t face civil liability for manufacturing and selling military-style assault rifles that were used to kill 20 children and 6 adults at Sandy Hook Elementary School. In its 2017 amicus brief, “the National Rifle Association argued that allowing the case to move forward threatened to ‘eviscerate’ the gun companies’ legal protections.”<sup>37</sup>

The NRA has also pursued a state-focused “tort reform” agenda through ALEC. Florida’s Stand Your Ground “shoot first” law was the statute at the heart of the controversy over George Zimmerman’s killing of Trayvon Martin in 2012. It now exists in at least 22 states (including Florida),<sup>38</sup> with Wyoming slated to join this group in July 2018 “after a hard-fought legislative effort pushed by gun rights advocates and the National Rifle Association.”<sup>39</sup> Buried in the statute is a provision that confers absolute civil immunity on perpetrators who successfully avoid arrest and prosecution under this law, stripping crime victims of their legal rights and access to the courts. This bill was written by the NRA. As the Center for Media and Democracy reported,<sup>40</sup>

The NRA and its lobbyist Marion Hammer helped draft the “stand your ground” law and first pushed it in Florida. Florida Senator Durell Peaden, an ALEC member, introduced the law in his state and it passed in early 2005 as the NRA’s Hammer reportedly “stared down legislators as they voted.” After Governor Jeb Bush signed it into law, Hammer presented the bill to ALEC’s Criminal Justice Task Force (now known as the Public Safety and Elections Task Force) months later.

Notably, ALEC’s association with this highly controversial law began a stream of high-profile corporate defections.<sup>41</sup>

In addition to “Stand Your Ground” laws, the NRA has lately had success with enactment of its so-called “Business Liability Protection Act” in March 2018. The NRA-backed law – which allows employees to keep firearms locked in their cars while parked on their employers’ property – also provides employers with civil immunity if they’re sued because of the weapon.<sup>42</sup>

Yet the NRA regularly sues in civil court. Examples of recent headlines speak for themselves: “NRA, Olympic Shooter Sue California Over Its Restrictions on Ammunition Sales”<sup>43</sup> (April 2018); “NRA files federal lawsuit challenging Florida gun-safety bill”<sup>44</sup> (March 2018); “NRA backs lawsuit claiming NJ handgun policy is ‘unconstitutional’”<sup>45</sup> (February 2018); “NRA threatens lawsuit after US Virgin Islands governor orders weapons seizure”<sup>46</sup> (September 2017); “NRA files second lawsuit challenging state gun laws, this time targeting ban on high-capacity magazines”<sup>47</sup> (May 2017); “NRA files lawsuit over ban on assault weapons in Mass.”<sup>48</sup> (January 2017); “NRA sues Seattle over \$25 gun tax”<sup>49</sup> (August 2015); “Philadelphia, Pennsylvania, sued by NRA along with 2 other cities”<sup>50</sup> (January 2015).

On May 4, 2018, the NRA sued an insurance broker, “alleging the firm breached its contract to administer an insurance program for the firearms advocacy group.”<sup>51</sup> As reported by the *Wall Street Journal*, “The NRA said its lawsuit aims to recover damages and ‘to bring to light the mechanics and consequences of an ongoing, unconstitutional blacklisting campaign being pursued by regulatory authorities in New York.’”<sup>52</sup> And on May 11, 2018, the NRA “sued New York Governor Andrew Cuomo and the state’s financial regulator for engaging in what it said was a ‘blacklisting campaign’ aimed at swaying banks and insurers to stop doing business with the gun advocacy group.”<sup>53</sup> Said the Governor, “‘The NRA’s lawsuit is a futile and desperate attempt to advance its dangerous agenda to sell more guns.’”<sup>54</sup>

#### 4. National Federation of Independent Business (NFIB)

When surveyed, small businesses virtually always put issues like “lawsuits,” “liability,” “tort reform” or the cost of “liability insurance” at the bottom of any list of concerns.<sup>55</sup> Perhaps the most striking example of this are surveys of small business priorities conducted by the National Federation of Independent Business (NFIB).<sup>56</sup> In its most recent survey of small business NFIB members, the issue “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked *68 out of 75 possible issues of concern to small businesses*. It was listed among the problems of *least concern to small business members*. It was of less concern to them than “Access to High-Speed Internet.”<sup>57</sup> Yet because NFIB generally lobbies for laws that “favor large corporate interests

and run counter to the interests of small businesses,<sup>58</sup> it pays no attention to these findings and pushes a civil justice agenda that can harm its own members.<sup>59</sup>

More specifically, lawsuits sometimes provide the only way for small businesses to recover money as a result of illegal corporate misconduct targeting them.<sup>60</sup> A good example led to the 2013 U.S. Supreme Court case, *American Express v. Italian Colors Restaurant*,<sup>61</sup> which was brought by Italian Colors restaurant, a small business in Oakland, California. AmEx's merchant agreement violated antitrust laws so the owner, Alan Carlson, filed a class action lawsuit against AmEx on behalf of other small businesses like his. However, AmEx's merchant contracts contained forced arbitration clauses and class action bans. According to those terms, Mr. Carlson was not allowed to join with others in a class action lawsuit but rather had to bring his antitrust case in a private arbitration system all by himself – an impossibility because the cost to one person of bringing an antitrust action against a huge company like American Express is prohibitive.<sup>62</sup> The U.S. Supreme Court did not care. It upheld AmEx's forced arbitration clause and class action waiver, preventing this small business from litigating its case.

Rather than working to undo this decision or acknowledging that small businesses like Italian Colors Restaurant are often plaintiffs in cases, NFIB's representatives went to Congress to attack "plaintiff attorneys," their "outlandish claims" and their "perverse incentive to threaten or initiate a legal action."<sup>63</sup> The group justifies its nationwide campaign to limit victims' rights by saying small businesses live in a "climate of fear"<sup>64</sup> over lawsuits – even though their own members repeatedly say that is nonsense.

Yet even if NFIB's lobbying operations were not failing its own members, there would still be plenty to say about the organization's "tort reform" hypocrisy. Like the U.S. Chamber of Commerce, NFIB lobbies for federal limits on victims' rights, including a corporate forum-shopping bill to advantage big companies<sup>65</sup> and legislation that places unnecessary roadblocks in the way of cases brought by, among others, small businesses, consumers and civil rights victims.<sup>66</sup> NFIB has also been an active member of ALEC's Civil Justice Task Force<sup>67</sup> in at least 2011 and 2017, according to publicly released documents.<sup>68</sup>

While attacking everyone else's rights, however, the NFIB itself routinely litigates. In fact, it has its own "Small Business Legal Center," which is described on the Center's website as follows: "We do what federal and state NFIB lobbyists do, but instead of lobbying legislators we lobby judges through briefs and oral arguments in court."<sup>69</sup> Visitors to the website are invited to "SEE THE CASES NFIB LEGAL CENTER IS FIGHTING IN ACROSS THE US" by way of an interactive U.S. map where you can "Double Click on your state to see the listings of cases NFIB is playing a role in."<sup>70</sup> The Center's most current Annual Report presents a similar picture

of nationwide legal activity, stating, “2016 was our busiest and most successful year to date...with the Legal Center filing 61 briefs in state and federal courts across the country to ensure that judges know where small business stands in cases that will have a big impact on their bottom lines and freedom to do business going forward.”<sup>71</sup> In addition, the Center’s website provides a list of “cases NFIB has helped win in the courtroom.”<sup>72</sup> Moreover, the Center recently reported annual expenses of over \$1.1 million in 2016.<sup>73</sup>

## Auto Companies: General Motors (5) and Chrysler (6)

When General Motors (GM) and Chrysler filed for bankruptcy in 2009, both companies sought immunity from all products liability suits involving the tens of millions of GM and Chrysler cars then on the road. The two companies were responsible for nearly half of all defect claims against auto manufacturers in the country. At the time, there were hundreds of serious injuries or deaths due to cars designed or built with defects every year.<sup>74</sup> (Notably, GM’s Vice President and General Counsel, Robert S. Osborne, was then on the Board of Directors of the U.S. Chamber of Commerce Institute for Legal Reform, which was lobbying to limit the rights of injury victims.<sup>75</sup>)

After a lot of pressure, both companies relented but only somewhat. They no longer insisted on immunity for deaths and injuries caused by crashes occurring post-bankruptcy. However, they did demand – and were granted by the bankruptcy court – immunity for injuries or deaths from any crash that occurred before 2010.

### 5. General Motors (GM)

To obtain this immunity, GM hid from the bankruptcy court a lethal ignition switch defect, which caused vehicles to lose control and had already caused numerous crashes, injuries and deaths.<sup>76</sup> Once the scandal was revealed several years later, leading to the recall of millions of defective cars, GM ran to the bankruptcy court to try to “shut down a rising tide of class-action lawsuits” over the defect which, by then, had been linked to over a dozen deaths.<sup>77</sup> *Bloomberg* also noted, “GM is fighting more than 100 lawsuits over the recalled cars’ declining prices, claims for injuries and deaths and the alleged waste of corporate assets.”<sup>78</sup>

In 2016, harmed customers had some success in court when the 2nd Circuit ruled that by failing to disclose the ignition switch defect to the bankruptcy court, GM had “prevented crash victims from making claims or contesting the bankruptcy provisions, robbing them of due process.”<sup>79</sup>

The court essentially voided the immunity GM had received for these cars and, in April 2017, the U.S. Supreme Court let that ruling stand.<sup>80</sup> It's been over a year since that decision and victims are still seeking resolution of their legal claims.<sup>81</sup>

Meanwhile, throughout this entire debacle, the company never hesitated to aggressively pursue its own interests in court. For example, it "asked a federal judge in Washington to keep confidential information related to its 2009 government rescue" from the Center for Auto Safety, which had been stymied in its attempt to get information via a Freedom of Information Act request, and "sued the Treasury in 2011 for business information that GM turned over to the government before the bailout."<sup>82</sup>

And it has filed many other cases as well. For example,

- From December 2014 until its stipulation of dismissal a year and a half later,<sup>83</sup> GM continued to assert copyright and breach of contract claims against a maker of diagnostic tools for cars.<sup>84</sup>
- In April 2018, the automaker filed suit<sup>85</sup> seeking nearly \$10 million from a Chicago-area dealership group, claiming it "breached an exclusive-use agreement in the sale of its Chevrolet and Cadillac dealership assets"<sup>86</sup> and caused GM to incur brand-related losses. Within eight days of filing the complaint, GM moved to voluntarily dismiss the case; the court granted the motion.<sup>87</sup>
- As of publication, the automaker continues to pursue its now multiyear litigation against aftermarket parts sellers,<sup>88</sup> who allegedly committed copyright infringement "by making and selling vehicle control modules that contain unauthorized copies of Plaintiffs' copyrighted software, and by overriding the security measures used in Plaintiffs' vehicle control modules in order to program these modules with unauthorized copies of Plaintiffs' copyrighted software."<sup>89</sup> GM seeks,<sup>90</sup> among other things, "damages to compensate GM for the injuries caused by the Defendants, together with any applicable interest," "enhanced damages for willful and intentional infringement" and a jury trial.

## 6. Chrysler

Like GM, Chrysler (which became Fiat Chrysler Automobiles, a.k.a. FCA US or "New Chrysler," after being sold in 2009) continued to fight victims in court after receiving products liability

immunity for pre-2010 crashes. As recently as November 2017, FCA tried and failed to convince a bankruptcy court that it was immune from vehicle owners' claims for faulty repairs.<sup>91</sup> That same month, another judge in a different case also rejected FCA's immunity argument as the company sought to avoid product liability claims related to the death of a pregnant 23-year-old woman who "was killed in 2014 when her Jeep Liberty exploded when hit from behind. The 2003 vehicle had been under recall because of the placement of the gas tank."<sup>92</sup>

And just like GM, Chrysler regularly runs to court when it has something to gain financially:

- In August 2016, FCA went to court seeking a jury trial and compensation for an alleged defective design component that failed to meet contractual specifications.<sup>93</sup> A stipulated order dismissing the case was entered in February 2018.<sup>94</sup>
- In April 2017, FCA filed a lawsuit, claiming that a seller of new and used automotive diagnostic equipment and shop tools committed breach of contract plus willful and intentional copyright infringement regarding FCA's wiTECH diagnostic application.<sup>95</sup> Three months later, the case closed after the court entered a permanent injunction and FCA's notice of voluntary dismissal.<sup>96</sup>
- In July 2017, the 6th Circuit affirmed summary judgment in the automaker's suit against a dealership that allegedly "breached its contract by failing and refusing to submit complete architectural plans and specifications to [FCA] for the renovations of its existing facility."<sup>97</sup>
- As of publication, FCA is suing its former lawyer who allegedly used "confidential and proprietary client information to benefit plaintiffs in warranty litigation against FCA US."<sup>98</sup>

In addition, Chrysler is now requiring employees to sign employment contracts with forced arbitration clauses and class action waivers, denying workers' access to the courts if they have been cheated, harassed, abused or discriminated against. In a recent Michigan case, for example, Chrysler succeeded in preventing a number of salaried, nonunion black employees from filing a civil rights class action against the company, forcing these employees to "arbitrate their claims individually."<sup>99</sup> This is an unrealistic option for any employee trying to prove not only their own discrimination but also any sort of company-wide pattern.<sup>100</sup> (See more about forced arbitration below.)

## Forced Arbitration Hypocrites: Uber (7), Airbnb (8), Amazon (9) Verizon (10) Independent Community Bankers of America (ICBA) (11) and Debt Collectors (12)

It is a fundamental precept of American democracy that injured or violated people are entitled to vindicate their rights in court. However, recent Supreme Court cases have allowed corporations to strip away this basic right by taking away consumer, employee and small business access to civil trials and forcing them to resolve disputes in secretive, corporate-controlled, rigged arbitration systems via mandatory arbitration clauses. Such clauses also typically prevent harmed individuals from joining together with other victims in class action lawsuits.<sup>101</sup>

These days, most companies put forced arbitration clauses and class action waivers in any document they can in order to avoid legal accountability to someone they've harmed. Some corporations and industries stand out as particular hypocrites, since they do not hesitate to use the civil courts when they feel their own rights have been violated. The following got our attention.

### 7. Uber

Auto companies, like Hypocrite #5, General Motors, have a long history of cutting safety corners and fighting compensation to those injured or killed in crashes. Tech companies have now joined automakers rushing to be the first on the road with driverless cars. Unfortunately, newer companies involved in autonomous vehicle (AV) technology, like Uber, show no signs of operating any differently from the auto industry. As Uber's former autonomous vehicle head, Anthony Levandowski, put it in a series of 2016 texts to former Uber CEO Travis Kalanick: "I just see this as a race and we need to win, second place is first loser," and "We do need to think through the strategy to take all the shortcuts we can find."<sup>102</sup>

As important as it is to establish a strong safety regime for AV cars, providing a civil remedy in the event of a car accident, injury or fatality is also critical. Yet the use of forced arbitration clauses could undermine the entire liability structure no matter how expressly the law attempts to preserve legal rights. Companies like Uber currently use such clauses to keep many kinds of disputes out of court.<sup>103</sup> In a recent Uber autonomous car crash where an innocent pedestrian was killed, Uber quickly and confidentially settled with the family before a lawsuit was filed.<sup>104</sup> It is not known how Uber might have responded if the family had gotten



to court. However, as long as forced arbitration clauses are considered legal, an at-fault company can decide whether or not to compel their use in an individual case. That is why many U.S. Senators have tried to determine whether Uber and others intend to use forced arbitration clauses in autonomous vehicle contracts and the intended scope of such clauses.<sup>105</sup>

Uber can be commended for agreeing to no longer force cases involving sexual assault into arbitration, bowing to pressure from sexual assault victims.<sup>106</sup> But the fact remains that the company still insists on using class action waivers to prevent victims from joining with others in court and continues using forced arbitration clauses and class action bans in every other kind of dispute, whether the case involves employees, drivers or users of the Uber app.<sup>107</sup> For example, just recently, the company successfully compelled arbitration in a price-fixing case involving Uber fares, with a court throwing out a customer's class action after finding that the arbitration clause "was right there, lurking within a 'terms and conditions' page hyperlinked on his smartphone. Once he clicked the 'I agree' button to set up his account, he was 'sunk.'"<sup>108</sup> The company is also now demanding that a federal court "dissolve a class of hundreds of thousands of current and former Uber drivers who allege they were misclassified as independent contractors and denied fair wages," claiming they are bound by forced arbitration clauses and class action waivers.<sup>109</sup>

Yet the same rules don't apply to Uber. For example, in September 2017, the company filed a lawsuit seeking at least \$40 million for harms Uber says it suffered after a mobile ad agency "misrepresented the effectiveness of its mobile ads," among other things.<sup>110</sup> A company representative told *Law360*, "While we believe litigation should always be a last resort, we hope this action will help bring more attention to the problem of online ad fraud."<sup>111</sup> Uber withdrew the suit in December 2017.<sup>112</sup> And as of publication, Uber continues to pursue a lawsuit to uncover the identity of someone who allegedly "stole information from a database containing names and driver's license numbers for 50,000 current and former drivers."<sup>113</sup>

## 8. Airbnb

To use its service, Airbnb requires customers to settle "any dispute, claim or controversy" through binding arbitration and waive "the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney-general action, or any other representative proceeding as to all Disputes."<sup>114</sup> Reports the *New York Times*, "When there is litigation, Airbnb has not been afraid to use the class-action waiver clause. In March [2016], the company cited the clause in fighting a class-action suit that accused Airbnb

of acting as an unlicensed real estate broker. The company said the suit was moot because the plaintiffs had agreed to waive their class-action rights and, in a related clause, agreed to resolve disputes through individual arbitration.<sup>115</sup> More recently, in October 2017, the U.S. Supreme Court allowed Airbnb to force a user into arbitration when he attempted to pursue a class action discrimination suit after a host on the site allegedly denied him accommodation because of his race.<sup>116</sup>

Yet when Airbnb believes it has suffered “harm” from local regulatory laws, as it recently felt regarding San Francisco and New York City, “two of its biggest markets in the United States,” it sues.<sup>117</sup> In June 2016, Airbnb went to court seeking an injunction to block forthcoming amendments to San Francisco law requiring short-term rental companies to police their websites, remove unregistered hosts and pay \$1,000 per day for every unregistered host on its service.<sup>118</sup> The parties eventually settled.<sup>119</sup> Then in October 2016, “[h]ours after Gov. Andrew M. Cuomo of New York signed a bill that would impose steep fines on Airbnb hosts who break local housing regulations, Airbnb filed a federal lawsuit contending the new law would cause it ‘irreparable harm.’”<sup>120</sup> The following month, Airbnb settled with the state Attorney General after it was agreed that the AG would not take any action to enforce the law but instead have New York City handle compliance and enforcement.<sup>121</sup> The month after that, Airbnb dropped its suit against New York City after the city “agreed that the law would not be enforced against the company.”<sup>122</sup>

## 9. Amazon

As a condition of consumers’ using Amazon services, “[a]ny dispute or claim relating in any way to your use of any Amazon Service, or to any products or services sold or distributed by Amazon or through Amazon.com will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify.” In addition, “any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial.”<sup>123</sup>

Yet Amazon clearly understands the importance of litigation, and makes unfettered use of the civil courts in order to protect its interests. In August 2017, Amazon sued after patent-licensing companies allegedly infringed on Amazon’s conference call patent.<sup>124</sup> That case is pending. Four months later, the company sued “two con-men and their companies that trade on the Amazon name to convince thousands of people around the country to sign up for their ‘selling on Amazon’ training programs and to buy their wholesale products to sell on Amazon.com.

Posing as Amazon in aggressive marketing campaigns, they pitch a get-rich-quick scheme to hopeful entrepreneurs wanting to learn how to join Amazon's third-party seller program."<sup>125</sup> In addition, the company has a history of filing lawsuits to stop fake reviews.<sup>126</sup>

## 10. Verizon

Verizon's "Customer Agreement" states: "You and Verizon both agree to resolve disputes only by arbitration or in small claims court. You understand that by this agreement you are giving up the right to bring a claim in court or in front of a jury." Moreover, "This agreement doesn't allow class or collective arbitrations...."<sup>127</sup> Similarly, as *Ars Technica* recently reported, "Verizon is forcing users of Yahoo services to waive their class-action rights and agree to resolve disputes through arbitration. Yahoo users who don't agree to the new terms will be cut off from the services, though Verizon hasn't said exactly when the cutoff date is."<sup>128</sup>

However, whenever small cities and towns tell Verizon Wireless that it can't build an ugly cellphone tower in their area, the company runs straight to court. There have been several such lawsuits just in the last two years. For example, in August 2016, Verizon Wireless sued the city of Appleton, WI after it rejected the company's bid for a cell tower permit.<sup>129</sup> The following year, the company sued the town of Clifton Park, NY, which had rejected its application for a cellphone tower.<sup>130</sup> Verizon also sued Clarksburg, MA in 2017 for "wrongfully denying its application to build a cell tower."<sup>131</sup> And this past February, Verizon Wireless sued over "Hudson Valley town's decision denying its request for a wetlands permit to build a wireless facility."<sup>132</sup>

## 11. Independent Community Bankers of America (ICBA)<sup>133</sup>

This business association has been a vigorous opponent of efforts to eliminate forced arbitration in consumer financial contracts – writing letters to Congress,<sup>134</sup> submitting comments to the Consumer Financial Protection Bureau (CFPB),<sup>135</sup> putting out press releases<sup>136</sup> and even publicizing that ICBA President and CEO Camden Fine stood behind President Trump as he signed into law a repeal of the CFPB rule that had allowed defrauded consumers to join with others to bring class action lawsuits against banks over financial products and services.<sup>137</sup> "Arbitration is a well-established and tested process that offers better results for consumers ..." ICBA said in a November 1, 2017 press release.<sup>138</sup>

Yet within weeks of the CFPB repeal ceremony, ICBA filed a class action lawsuit against Equifax seeking “monetary relief for community banks affected by the breach of at least 145.5 million consumer records and 209,000 payment cards.”<sup>139</sup> In announcing the suit, ICBA’s President and CEO said, “ICBA and the nation’s community banks are deeply troubled by the massive and preventable data breach at Equifax and its impact on community banks, consumers, small businesses and the economy. Today’s lawsuit demands remedial action because Equifax needs to be held accountable for this massive and preventable catastrophic event.”<sup>140</sup> The case is pending.

## 12. Debt Collectors

A *New York Times* investigation<sup>141</sup> uncovered this hypocrisy, reporting that debt collection companies “are using the courts to sue consumers and collect debt, then preventing those same consumers from using the courts to challenge the companies’ tactics,” pushing “the parameters of that legal strategy into audacious new territory.” Reported the *NYT*,

- “Perhaps more than any other industry, debt collectors use the courts while invoking arbitration to deny court access to others. The companies file lawsuits seeking to force borrowers to pay debts. Because borrowers seldom show up to challenge the lawsuits, the collectors win almost every case, transforming debts that banks had given up on into big profits.”
- “In the case of debt collectors, the arbitration clauses that companies are invoking are often in contracts that borrowers presumably agreed to with their original lenders – not with the debt collector. Additionally, debt collectors often cannot produce a copy of the agreement in court, according to records and interviews.”
- “The Times, examining thousands of state and federal court records, and interviewing hundreds of lawyers, plaintiffs, industry consultants and judges, found that debt collection companies have already used the strategy to great success. In the cases that The Times examined, judges routinely sided with debt collectors on forcing the disputes into arbitration.”

Moreover,

The debt collectors do not just use the courts to collect on the money, they flood them. In 2014, the industry filed roughly 20,000 lawsuits in Maryland and more than 67,000 in New York, according to court records.

Philip S. Straniere, a civil court judge in Staten Island, called some of the cases that crossed his desk “garbage.” Some debt collectors, Judge Straniere said, have sought to recoup payments from the wrong person.

Little of that matters, because many defendants do not show up to defend themselves. Some never read nondescript legal notices informing them of the lawsuits. Others who do are too intimidated or ill-equipped to go to court.

Once it begins, the litigation machine is virtually impossible to stop. When defendants are absent, judges have little choice but to find in favor of the debt collectors, according to interviews. Industry consultants estimated that collectors win 95 percent of the lawsuits.

### **Property/Casualty Insurance Companies: State Farm (13), Liberty Mutual (14) and Farmers (15)**

Since at least the 1950s, property/casualty insurance companies have been attacking the civil justice system and injured people who go to court. Insurance companies don't like to pay claims. In the '50s, '60s and '70s, for example, Crum and Foster, Aetna and St. Paul launched direct advertising assaults on the civil jury system.<sup>142</sup> But by the 1980s and 1990s, the industry decided that, if possible, it was best to hide behind others to accomplish its goals, well aware that the public generally detests insurance companies. As a representative from the American Tort Reform Association (ATRA)'s then PR firm explained to an audience, “In a tort reform battle if State Farm – I think they're here, Nationwide – is the leader of the coalition, you're not going to pass the bill. It is not credible, O.K., because it's so self-serving.”<sup>143</sup> As a result, other front groups began hiding insurance industry involvement. For example, when ATRA was founded in 1986, nearly 40 of its members were insurance companies or insurance-related organizations and six ATRA directors worked for insurance companies or law firms that frequently represented insurers.<sup>144</sup>

Yet their influence has always been unmistakable. Evidence gathered by over a dozen state attorneys general for an antitrust<sup>145</sup> class action filed in 1988, and settled in 1995, showed that a number of insurance and reinsurance companies had restricted coverage to commercial

customers and increased rates for the purpose of creating an atmosphere intended to coax states into enacting “tort reform.”<sup>146</sup> Virtually all such laws were designed to put more money in the pockets of insurance companies, making it more difficult for injured victims to go to court or obtain compensation from a jury.

In addition, throughout history, the insurance industry has been involved in actively conspiring with asbestos companies to suppress knowledge about asbestos hazards, and to limit their liability to pay compensation to sick and dying workers.<sup>147</sup> Insurance companies have been looking for ways to limit their liability and prevent asbestos litigation since at least the 1920s. These companies have all largely avoided accountability for their role in helping to further a five decades-long conspiracy of silence and disinformation about asbestos disease.<sup>148</sup>

Today, at the state and/or federal levels, a number of property/casualty insurance companies have been actively lobbying for laws to limit corporate liability for causing harm and are not just hiding behind front groups. Some of these companies stand out as particular hypocrites, since they don’t hesitate to use the civil courts to protect their own profits. Three of the nation’s top 10 property/casualty companies got our particular attention.<sup>149</sup>

### 13. State Farm

State Farm is the number one property/casualty group in the country. For years, its Chief Legal Officer, Executive Vice President and Secretary, Kim M. Brunner, has been on the Board of the U.S. Chamber’s Institute for Legal Reform, including as Chairman of the Board.<sup>150</sup> But State Farm doesn’t rely on ILR to be its only voice in Congress or at the state level. At the federal level, State Farm has recently lobbied for H.R. 985, a bill that would both wipe out class action lawsuits and limit the legal rights of asbestos victims.<sup>151</sup> The company is also very involved with ALEC,<sup>152</sup> including ALEC’s Civil Justice Task Force in at least 2010, 2011 and 2017.<sup>153</sup>

State Farm has a somewhat well-known history of not paying legitimate claims,<sup>154</sup> committing fraud and fighting others in court.<sup>155</sup> But the company also likes to exercise its own rights to file lawsuits (as well as counterclaims in lawsuits against them<sup>156</sup>). It recently tried to force another insurance company to pay it back after State Farm shelled out a \$975,000 settlement for serious injuries suffered by a pledge during a fraternity hazing ritual.<sup>157</sup> In January 2017, a federal judge said no.<sup>158</sup> One year earlier, State Farm settled a lawsuit where it again sought to recover money it had paid out, namely \$800,000 in a case involving medical clinics.<sup>159</sup>

And in California, State Farm has been part of a relentless legal campaign to undermine the most effective insurance regulatory law in the nation, known as “Prop. 103,” passed by voter initiative in 1988.<sup>160</sup> The law has saved California motorists over \$100 billion “by regulating insurance companies to limit price gouging, profiteering, inflated executive salaries and other unjustified expenses.”<sup>161</sup> For example, in February 2018, the U.S. Supreme Court rejected “a request by Mercury Insurance and lobbyists representing State Farm and other insurance companies to review a 2013 decision rejecting Mercury’s request for an 8% increase in its homeowners insurance rates and ordering the company instead to lower its rates by 8%. The insurance companies argued that Proposition 103’s rate setting rules violate their constitutional right to earn a fair profit....”<sup>162</sup>

In 2016, State Farm filed suit in San Diego “to block \$250 million in rate reductions and refunds, claiming it can’t afford to lower its homeowners insurance premiums, which the Insurance Commissioner determined were excessive.”<sup>163</sup> State Farm won before a judge, but the case may be appealed.<sup>164</sup> Harvey Rosenfield, Prop. 103 author and founder of advocacy group Consumer Watchdog, said that “if this order stands, it would make it easier for big insurance companies to make an end run around Prop. 103 and charge Californians more. He sees the case as part of a larger trend of insurance companies pushing to weaken the law.”<sup>165</sup>

## 14. Liberty Mutual

Liberty Mutual, the third largest insurance group in the country, has been an active “tort reform” lobbyist. In 2017 and 2018, it lobbied Congress directly for passage of the FACT Act, which would limit the rights of asbestos victims.<sup>166</sup> Yet the company goes right to court when it feels it’s suffered some financial harm, even against individuals. For example, in April 2018, Liberty Mutual “sued a former lead sales representative, alleging she diverted Liberty Mutual clients to her new employer and made off with trade secrets.”<sup>167</sup> The case is pending. And as of publication, Liberty Mutual was still pursuing a June 2013 lawsuit against its insured, seeking reimbursement plus a declaratory judgment that it wasn’t required to cover certain indemnity costs related to payments or judgments in asbestos actions.<sup>168</sup> An April 10, 2018 docket entry in the case described the situation as follows: “On the recommendation of the mediator, these cases remain stayed until June 29, 2018. No further extensions. The Liberty Mutual case is almost five (5) years old. It is time to move on.”<sup>169</sup> And in June 2018, the U.S. Supreme Court declined to take up the company’s unsuccessful five-year legal effort to find unconstitutional a New York State decision to shut down a workers compensation fund.<sup>170</sup>

## 15. Farmers Insurance

Farmers Insurance Group checks in as the nation's ninth largest property/casualty insurer<sup>171</sup> and makes our list of Top 30 hypocrites. That's because, like State Farm, Farmers is involved with ALEC, including ALEC's Civil Justice Task Force in at least the year 2011.<sup>172</sup> It registered for the 2017 ALEC conference as well (although specific task force interests were not listed for Farmers on the publicly available document).<sup>173</sup>

Meanwhile, Farmers clearly values its own civil justice rights to protect its bottom line, especially when it comes to suing those with fewer resources. For example, in October 2017, the company sued two former employees and the Automobile Club of Michigan for allegedly stealing trade secrets. The case is pending.<sup>174</sup> And while Farmers may not care if an injured consumer is compensated for a defective product, it's an entirely different story when Farmers has to pay a claim. In December 2017, Farmers settled<sup>175</sup> its case against Broan-NuTone for damages it paid concerning a defective bathroom fan after it complained about the "damage" caused by the defective fan.<sup>176</sup> Farmers had filed a similar lawsuit against Broan-NuTone in January 2016 "after its insured sustained property damage from a fire caused by a Broan-NuTone fan."<sup>177</sup> The case is pending.<sup>178</sup>

And like State Farm, Farmers has filed numerous legal challenges to the pro-consumer insurance regulatory law, Prop. 103, in California. Specifically, "Farmers Insurance was in two courts at the same time – Los Angeles Superior Court and the Court of Appeal – to stop state regulators from holding a public hearing on charges that the company is using algorithms to overcharge motorists in violation of Proposition 103. After losing its motion to block the California Department of Insurance from investigating Farmers, the company is dropping its litigation."<sup>179</sup>

## 16. Honeywell International

CJ&D is not the first organization to call out this company on its civil justice hypocrisy, specifically as a member of the U.S. Chamber of Commerce's Institute for Legal Reform Board.<sup>180</sup> However, as a producer of unsafe products and a company liable to dying asbestos victims, Honeywell does not rely exclusively on ILR's or ALEC's lobbying muscle. Recent federal reports reveal that the company has lobbied for passage of both H.R. 906, which would harm asbestos victims, and H.R. 985, which would destroy both class actions and the legal rights of asbestos victims.<sup>181</sup> The company was also involved with ALEC's Civil Justice Task



Force in at least 2010 and 2011, according to publicly released documents. As late as 2017, it registered for ALEC's annual conference (although not specifically listing the Civil Justice Task Force on publicly available documents).<sup>182</sup>

Yet it's a different story when it comes to protecting Honeywell's bottom line. Honeywell frequently turns to the civil justice system to protect its financial interests, even being featured in CJ&D's original 2000 study, *Not in My Backyard: The Hypocrites of "Tort Reform."*<sup>183</sup> The years 2017 and 2018 have been no different for the company. As reported by *Law360*, in February 2017, Honeywell "filed an antitrust action against Alarm.com and Icontrol Networks Inc. over a planned \$140 million security technology acquisition deal."<sup>184</sup> Five months later, the case closed.<sup>185</sup> In February 2018, Honeywell filed a complaint for damages after the nation's Nuclear Regulatory Commission "billed it \$1.9 million in connection with sanctions the agency imposed on the company's Illinois uranium conversion facility."<sup>186</sup> The case is pending. And in June 2018, Honeywell sued Exxon Mobil and another company to try to hold them partly responsible for cleanup costs connected to the heavily-polluted Onondaga Lake near Oil City, New York.<sup>187</sup>

Honeywell also likes its patents. In 2017, Honeywell announced<sup>188</sup> that it was suing Code Corp., a company that manufactured bar code readers, claiming "widespread patent infringement." They settled in February 2018.<sup>189</sup> It filed another lawsuit in 2017, arguing that indoor air quality manufacturer Aprilaire had committed widespread patent infringement "related to Honeywell's forced air zoning products for residential heating, ventilation, and air conditioning (HVAC) systems."<sup>190</sup> The case is pending.<sup>191</sup>

## 17. Covington & Burling

The contingency fee system provides anyone with a legitimate injury case, regardless of their financial means, with access to an attorney. The attorney takes a case without charging any money up front and is paid only if the case is successful. Attorneys who work on contingency fee take a huge risk – if the case is lost, the lawyer is paid nothing. Laws that limit plaintiffs' contingency fees with government-imposed schedules or "caps" make it less likely that attorneys can afford to bring legitimate cases. Such legislation has been a staple of the "tort reform" movement since its inception.<sup>192</sup>

Covington & Burling, a Washington, D.C. corporate law firm, was an early force behind the "tort reform" movement. A huge cache of documents made public during state attorneys general litigation against the tobacco industry in the late 1990s revealed that this firm, which

for decades represented the tobacco industry, would funnel money to “tort reform” groups on behalf of Big Tobacco. The point was to pass laws to keep cigarette companies from ever being sued in court. Covington partner Keith A. Teel was the firm’s tobacco point man and even boasted about setting up “tort reform” groups with tobacco money.<sup>193</sup>

In addition to the release of millions of documents, the state tobacco litigation resulted in a \$200 billion settlement. The settlement reimbursed 46 states for costs dealing with one of the biggest public health disasters in modern times. To get this incredible result, the states all used outside law firms, who worked for years without pay and risked being paid nothing at all. As to the fees ultimately paid in the tobacco case, most private counsel gave up the contracted fee (which tended to be around 15 percent, a rate lower than typical 1/3 arrangements) and amiably agreed, along with the tobacco industry, to arbitrated fee decisions.<sup>194</sup>

That didn’t matter to Covington, however. In 1996, Teel met with Texas Attorney General Dan Morales to try to derail the Texas AG’s tobacco suit altogether.<sup>195</sup> Fortunately Texas ignored him, and the industry ultimately paid the state \$15 billion. But Covington’s attacks on lawsuits and those who use the civil justice system didn’t end in the 1990s. Lately, one of its partners and Trump advisor, Phil Howard, has made a name for himself “attacking corporate regulations and the civil jury system [by] using inflammatory stereotypes about public protection laws and attorneys for the injured to deflect attention from the misdeeds of those he defends.”<sup>196</sup> For example, sexual harassment claims should be barred if “just offensive comments” are at issue, says Howard.<sup>197</sup> The alternative, he says, would kill “the spontaneity needed” for a “healthy” work environment. He also derides laws that permit civil rights lawyers to be paid.<sup>198</sup>

Given Covington’s “tort reform” track record, a March 2018 *BNA Bloomberg* piece set off our hypocrisy detector. Turns out that the D.C.-based firm – with no office in Minnesota – received a \$125 million contingency fee from the state of Minnesota in its environmental lawsuit against 3M Co., which settled on February 20, 2018 for \$850 million. Said Minnesota State Rep. Sarah Anderson (R), “I’m just curious as to why we are paying a law firm \$125 million for seven years of work,’ she said. Referring to her own math, she said the sum works out to about \$48,000 per day. ‘That seems a little steep.’”<sup>199</sup>

A Covington spokesman snapped back with a “not very self-aware” statement: “Our work on the NRD case involved a contingency fee arrangement, the attendant risk that we might receive no fee whatsoever, and dedicated efforts by our team in hard-fought, complex litigation lasting over seven years.”<sup>200</sup> Indeed.

## 18. Texas Governors

Some Texas Governors sure like to sue while eliminating everyone else's rights. Take former Texas Attorney General and current Governor, Greg Abbott. First as a member of the Texas Supreme Court, Abbot "began adopting tighter standards for losses that involved pain and suffering and mental anguish."<sup>201</sup> As state AG and Governor, he has supported many kinds of "tort reforms" to make it harder for injured people to receive adequate compensation or even to sue at all.<sup>202</sup>

But during his gubernatorial run, it was revealed that when his "spine was crushed by a falling oak tree in 1984," he sued and won millions of dollars in compensation. At that point, he had "received about \$5.8 million and is entitled to monthly income from the settlement until he dies."<sup>203</sup> Most of what he receives is compensation for "noneconomic losses for pain and suffering and mental anguish."<sup>204</sup> Observed one local attorney, "You would think that a young man, at the start of his career, crippled by an injury, would want to make sure that others that may have the misfortune to follow in his footsteps would ensure that those people had the opportunity to be compensated for their injuries in the same way he was."<sup>205</sup> And his lawsuits continued. According to a 2017 analysis by the *Texas Tribune*, he filed a whopping 31 lawsuits against the Obama Administration.<sup>206</sup>

U.S. Energy Secretary Rick Perry seemed to have the same problem when he was Governor of Texas. Perry has long been a champion of "tort reform" – limiting civil lawsuits, especially against business.<sup>207</sup> But in 2011, Perry sued the State of Virginia's Board of Elections over its ballot access rules. He brought this suit even though he failed to submit the requisite total number of signatures; he lost.<sup>208</sup> He was represented by Joe Nixon, a former Texas legislator who was known as the architect of "tort reform" laws in the state.<sup>209</sup> Upon losing his case, Nixon said, "I commend Governor Perry for his courage and tenacity in pursuing the case and seeking to protect the rights of Virginia voters."<sup>210</sup> Guess he didn't feel the same when it came to safeguarding the rights of Texas voters.

## 19. U.S. Senator Ted Cruz (R-TX)

Sorry to keep picking on Texas, but... As a policy advisor to George W. Bush's 2000 campaign, Ted Cruz helped write the candidate's position paper, which, among other things, advocated for severe restrictions on tort lawsuits.<sup>211</sup> While Texas Solicitor General from 2003 until 2008,

he served as a staunch defender of the state’s brutal “tort reform” law that severely constrained the ability of consumers to sue medical professionals and nursing homes and to collect punitive damages in other cases.<sup>212</sup> Cruz touted this experience when he ran for U.S. Senate in 2012.<sup>213</sup> And since becoming a Senator, he has pushed for Congress to foist Texas-like “tort reforms” on the nation, arguing for state caps on punitive damages in medical malpractice lawsuits.<sup>214</sup> As explained by *Mother Jones*, “On the campaign trail – when he is trying to score political points and draw the support of the business community – Cruz has embraced tort reform that disempowers consumers and protects negligent companies from such penalties.”<sup>215</sup>

However, it turns out that Cruz’s stance is entirely dependent on what he has to gain. “In the courtroom – when he was being paid – Cruz was an articulate and forceful champion of super-size punitive awards, insisting such lawsuits and punishments were needed to protect consumers from reckless corporations that put profits ahead of people.”<sup>216</sup> More specifically,

[A]s a lawyer in private practice, Cruz – at least twice, in 2010 and 2011 – worked on cases in New Mexico to secure \$50 million-plus jury awards in tort cases prompted by corporate malfeasance. These are precisely the kind of jury awards that the tort reform Cruz has promoted would abolish. That is, Cruz the attorney, who sometimes billed clients \$695 an hour, made money defending jury awards that Cruz the politician wanted to eliminate – and he did so at the same time he was running for Senate as a pro-tort-reform candidate.<sup>217</sup>

In fact, “on November 15, 2011, Cruz took time off from his Senate campaign to appear in an Albuquerque courtroom to argue” that a \$54 million jury award (\$4.95 million in compensatory damages and a \$49.2 million in punitive damages) was justified against a health services firm and its subsidiary after “a profoundly mentally and developmentally disabled man – he could not speak or effectively use his limbs – had been raped, presumably by an employee at the Roswell group home where he lived.”<sup>218</sup> Apparently Cruz told the appeals court that it “was obliged ‘to respect the jury’s finding,’ regarding the substantial punitive damages. He put it simply: ‘The purpose of punitive damages is to punish and to deter...The jury rightly concluded the appropriate amount to punish and deter was \$48 million.’”<sup>219</sup>

## 20. Retiring U.S. Representative Darrell Issa (R-CA)

The nine-term California congressman<sup>220</sup> has long been a vocal proponent of restricting injured victims’ access to the civil justice system. For example, in February 2010, Issa issued a report

that pushed for non-economic damages caps in medical malpractice cases.<sup>221</sup> That same month, he issued a press release<sup>222</sup> filled with med mal “tort reform” rhetoric and penned a *Politico* piece claiming that “tort reform” was needed in health care cases to “close the loopholes that allow frivolous lawsuits to clog up the system” and curtail “outrageous jury awards.”<sup>223</sup>

Issa’s congressional record also reflects his anti-civil justice bias. Year after year, Issa has said yes to legislation that strips Americans of their ability to pursue class action lawsuits or to seek and obtain fair compensation for asbestos exposure, medical negligence and a host of other harms.<sup>224</sup> The current 2017-18 session has been no different, with Issa voting for H.R. 720, which would chill the filing of meritorious cases; H.R. 985, which would destroy class actions and harm asbestos victims; H.R. 1215, which would strip away the rights of harmed patients, abused and neglected nursing home residents and victims of some unsafe drugs; and a host of other anti-civil justice bills.<sup>225</sup>

Yet when Issa didn’t like a rival’s political ads, he went straight to court. In November 2016, the incumbent filed a \$10 million libel suit against challenger Doug Applegate, his campaign manager and the campaign itself, alleging that Applegate’s campaign commercials had damaged his reputation. More specifically, as reported by the *San Diego Tribune*,

Issa’s lawsuit takes issue with two commercials that Applegate’s campaign aired on broadcast and cable television this fall in Orange and San Diego counties. One of the advertisements cited an August 2011 article from The New York Times headlined “A Businessman in Congress Helps his District and Himself” that Issa has long contested. The other Applegate commercial was about statements Issa made about a bill that would benefit victims of the 9/11 terrorists attacks.<sup>226</sup>

The court: 1) dismissed Issa’s complaint; 2) ruled that the congressman had violated a California statute that bars lawsuits filed with the intent to intimidate free speech; and 3) ordered Issa to pay his opponents’ legal expenses totaling \$45,000.<sup>227</sup> In February 2018, Issa filed an appellate brief seeking to reinstate his complaint; the case is pending.<sup>228</sup>

## 21. Former Alaska Governor Sarah Palin

Like Hypocrite #22, Ted Frank – who vetted Palin before she was put on the 2008 Republican ticket<sup>229</sup> – Palin’s positions can be somewhat confusing. For example, when the U.S. Supreme Court slashed the Exxon Valdez oil spill jury verdict for the 30,000 fishermen, businesses and

others who were hurt, then-Governor Palin strongly denounced the 2008 decision. She said she didn't think it was "right" or "fair" and was "extremely sorry for this decision," explaining "that the Supreme Court has decided to ratchet down the punitive damages to the degree that they have" was a "huge disappointment."<sup>230</sup> But the next year, Palin did a complete 180. Not only did she praise the ruling in her book *Going Rogue* but she also called for severe limits on compensation to injured patients.<sup>231</sup> In addition, she said the filing of so-called "frivolous lawsuits" against her was a driving force behind her decision to resign on July 3, 2009. "It doesn't cost the critics anything to file frivolous lawsuits," Palin told *CNN*.<sup>232</sup> Then in 2010, Palin wrote the forward to a Pacific Research Institute study attacking state tort systems that protect victims' rights to hold corporate wrongdoers accountable.<sup>233</sup>

Yet Palin has an extensive record of suing or threatening suit. For example, in 2009, after a blogger wrote about Palin being under federal investigation, her attorney sent a letter "to provide notice" to "those who republish the defamation, such as *Huffington Post*, *MSNBC*, *The New York Times* and *The Washington Post*, that the Palins will not allow them to propagate defamatory material without answering to this in a court of law."<sup>234</sup> More recently, in 2017, Palin filed a defamation lawsuit against the *New York Times* after the paper published an editorial linking Palin's political action committee to a 2011 shooting that wounded U.S. Rep. Gabrielle Giffords, a connection the paper corrected two days later. A federal judge found no evidence of malice and dismissed the case with prejudice.<sup>235</sup> As of publication, the case was pending.

## 22. Ted Frank, Director, Center for Class Action Fairness

To some of us, Ted Frank has always appeared to be a little inconsistent. For example, he invited the Center for Justice & Democracy's Executive Director and this report's co-author, Joanne Doroshow, to join him on an American Enterprise Institute panel to discuss post-Hurricane Katrina insurance problems (which aired on *C-SPAN*),<sup>236</sup> after which he wrote, "We were fortunate to be able to have someone of your stature join us ... You performed admirably in this role and our panel was unquestionably stronger for your participation." Then he accused CJ&D of producing "a long line of faulty studies," "playing fast and loose with the data" and "misrepresent[ing] the state of the world" when it came to medical malpractice insurance.<sup>237</sup> He also called CJ&D's blog "brainless."<sup>238</sup> It's somewhat hard to keep up.

These later statements seem more consistent with his recent occupational choice – attacking those who bring lawsuits. He suggests there's a need for his work in this area because the United States generally rejects the British "loser pays" rule,<sup>239</sup> a type of "tort reform" that chills

the filing of cases by requiring Americans to pay the hourly attorney fees and court costs of a big corporation that they lose to.<sup>240</sup> As Congress was exploring legislation to cap compensation to victims of medical malpractice in 2006, he criticized pushback from consumer advocates who correctly showed why malpractice insurance rates had stabilized<sup>241</sup> – a soft market which continues to this day.<sup>242</sup> He has been a particularly vocal opponent of litigation to invalidate “contracts” between companies and consumers, no matter how one-sided. We all suffer when someone brings such a lawsuit, he argues, because “a deal is a deal.”<sup>243</sup>

These days – except when vetting other “tort reform” hypocrites for presidential tickets (like our #21 pick, Sarah Palin)<sup>244</sup> – Ted Frank is a professional class action settlement objector.<sup>245</sup> As *Bloomberg* explains, Frank “shows up at court to challenge settlements, often with the goal of scuttling them, to the dismay of both plaintiffs’ attorneys and companies that just want to put the suit behind them.”<sup>246</sup> While he rejects the word “professional,” objecting to class action settlements appears to be what he does for a living.<sup>247</sup> But he says he is unlike other “professional settlement objectors who target large cases in hopes of extracting a percentage of the attorney fees as a reward,” as he told the *ABA Journal* in 2010.<sup>248</sup> He also told *American Lawyer*, “Some law firms simply lie about me in their pleadings. They claim I’m trying to extort a piece of the settlement for myself. I’ve never agreed to a quid pro quo settlement.”<sup>249</sup> In 2013 testimony before Congress, he railed against such “self-dealing” by class attorneys.<sup>250</sup> And he requires “his clients to pledge in their retainer agreements that they’re not looking for financial payoffs in bringing objections to proposed class settlements.”<sup>251</sup>

So imagine everyone’s surprise upon learning that, in 2013, Frank was receiving contingency fees – a “piece of the settlement for himself” – as a result of a consulting arrangement he had with another class action objector – Christopher Bandas of the Bandas Law Firm.<sup>252</sup> His first arrangement with Bandas allowed him to receive “a piece of Bandas’ share of proceeds from resolved cases in which Frank was a consultant.”<sup>253</sup> Later, the contract changed so he received “a minimum monthly payment for his work on Bandas’ behalf.”<sup>254</sup> Frank apparently received fees totaling about \$250,000 until the arrangement ended in 2015. This all spilled out in a 2015 Frank declaration, made in a 7th Circuit “appeal of a fee award in a \$75.5 million settlement” involving Capital One’s violation of the Telephone Consumer Protection Act (TCPA) for debt collection robocalls.<sup>255</sup>

Speaking of robocalls, in 2017 Frank *filed his own class action lawsuit*<sup>256</sup> – designating himself lead plaintiff – alleging robocall violations of the TCPA, a “law invoked in several suits where Frank has appeared as objector’s counsel. Surely, he sees a bit of irony in all this?” commented the *National Law Journal*. “Not really, Frank said,” insisting that “his case is different from those he’s objected to....”<sup>257</sup> Yes, aren’t they all? The case is pending.

## 23. Koch Industries/Georgia-Pacific

There are a number of reasons why Koch Industries, the privately-held multinational conglomerate, toxic polluter and repeated lawbreaker,<sup>258</sup> might be interested in limiting its liability for killing or injuring its victims. For example, since 2005, Koch has owned the paper mill giant Georgia-Pacific, a company that has been sued by hundreds of thousands of asbestos victims for poisoning them with the company's asbestos-containing joint compound.<sup>259</sup> Another reason for liability concern might be because its pipelines are vulnerable to explosions that kill people.<sup>260</sup>

Mark Holden, Senior Vice President, General Counsel and Secretary for Koch Industries, is a longtime Board member of the U.S. Chamber of Commerce's Institute for Legal Reform, which lobbies for a host of bills to limit or destroy the legal rights of victims.<sup>261</sup> Koch Industries has also been a key player on ALEC's Civil Justice Task Force,<sup>262</sup> which has written and is circulating model bills to, among other things, limit the legal rights of asbestos victims as well as legislation to "largely absolve landowners from a responsibility to maintain safe premises, and tends to benefit large landowners like railroads, utility companies, and big agriculture."<sup>263</sup>

While working to limit the rights of dying asbestos victims, Georgia-Pacific likes to file lawsuits, especially when it comes to protecting profits for its important paper towel and toilet paper products. In one case filed in April 2015, the company sued another paper company (for punitive and other damages) for selling "Soft Touch" toilet paper, which it said was too similar to its "Angel Soft" toilet paper.<sup>264</sup> The case terminated in January 2016.<sup>265</sup> In a March 2015 decision, a North Carolina federal court "wiped out much of Georgia-Pacific's damages" against another company for "selling paper towels that specifically fit inside a Georgia-Pacific dispenser" used in public bathrooms. The company had sued – and lost – in other federal courts over the same issue, with other courts saying "customers weren't likely to be confused about the brand of paper towel coming out of the dispenser."<sup>266</sup>

Georgia-Pacific even files negligence suits. For example, the company sued Johnson's Fence for negligence, namely "causing damage" to Georgia-Pacific "while excavating for fence construction and identification and marking of underground electric cable."<sup>267</sup> The case closed in October 2015.<sup>268</sup> And let's not forget other Koch-owned companies. In November 2017, for example, two Koch-owned companies filed suit against the Venezuelan government "to enforce international arbitration awards totaling nearly \$400 million related to the South American government's nationalization of two fertilizer plants in 2010."<sup>269</sup> The case is pending.



## 24. ExxonMobil/Rex Tillerson

Exxon fought Alaska residents and fishermen hurt by ecological disaster caused by its 1989 Exxon Valdez oil spill, even though in 1994 an Alaska jury awarded the victims \$287 million in actual damages and \$5 billion in punitive damages. Exxon kept appealing all the way to the U.S. Supreme Court, where it finally got a judgment that slashed the verdict so Exxon's 30,000 plus victims could only receive one-tenth of the jury's award.<sup>270</sup> Given that sort of hostility towards its victims, it may be no surprise that in the past ExxonMobil has been represented on the Board of the U.S. Chamber of Commerce's Institute for Legal Reform.<sup>271</sup> The company was also involved with ALEC's Civil Justice Task Force in at least 2010 and 2011, according to publicly released documents,<sup>272</sup> and registered for the 2017 ALEC conference (although not specifically listing civil justice as its interest area).<sup>273</sup> With the exception of ALEC's last meeting, Exxon was run by Rex Tillerson, perhaps more well-known as Trump's Secretary of State until he was unceremoniously fired in March 2018.<sup>274</sup>

In 2014, the *Wall Street Journal* broke a story about Tillerson, who lived in a "wealthy community outside Dallas."<sup>275</sup> He had filed a lawsuit along with his neighbors to block construction of a nearby water tower, "saying it is illegal and would create 'a noise nuisance and traffic hazards,' in part because it would provide water for use in hydraulic fracturing."<sup>276</sup> Fracking, noted the paper, "is a core part of Exxon's business."<sup>277</sup> Except in Tillerson's backyard it seems. (Interestingly, Exxon was one of the companies featured in CJ&D's original 2000 study, *Not in My Backyard: The Hypocrites of "Tort Reform."*<sup>278</sup>)

ExxonMobil has continued to be an active litigator. In October 2014, Mobil subsidiaries went to federal court seeking to enforce a \$1.6 billion-plus international arbitral judgment over Venezuela's 2007 seizure of company assets in oil development ventures. Nearly three years later, the 2nd Circuit ruled against ExxonMobil.<sup>279</sup> And in 2016, after the Attorneys General of New York and Massachusetts filed one of several cases "centered on whether Exxon has for decades lied about climate change, including its impact on energy prices and the environment and its ability to develop reserves," Exxon astonishingly filed suit against the state AGs.<sup>280</sup> It alleged, among other things, that the corporation's rights to free speech were being violated. The case was thrown out.<sup>281</sup>

## 25. Amway/parent Alticor

While many major corporations that were once active in ALEC's Civil Justice Task Force have resigned from ALEC, not so for Michigan-based Amway, founded by the billionaire father-in-law of U.S. Education Secretary Betsy DeVos. In July 2017, Amway lobbyist Bryan Harrison was one of a handful of ALEC "private sector" members who registered to attend this Task Force's meeting, according to publicly available documents.<sup>282</sup> And lobbying for state anti-civil justice bills is not Amway's only activity. According to 2017 and 2018 federal reports, Amway/Alticor has lobbied for multiple federal anti-civil justice bills, including H.R. 985, which would obliterate class actions in America, and H.R. 720, which would chill the filing of meritorious civil rights, employment, small business and consumer cases.<sup>283</sup>

But like many companies who advocate stripping away the rights of those they may have harmed, the company understands the value of lawsuits when it comes to its own self-interest. Recently, for example, the firm and its parent company sued the world's three largest record companies, claiming that they conspired "to flout a 1998 agreement under which UMG, Sony and Warner promised to provide notice of allegations of copyright infringement by Amway distributors so that Amway could investigate and stop them."<sup>284</sup> In January 2017, the parties reached a confidential settlement.<sup>285</sup> Then, six months later, Amway sued two of its insurance companies for \$75 million plus additional damages for not covering a claim.<sup>286</sup> The case is pending.<sup>287</sup>

## 26. Bayer Corporation

Pharmaceutical giant Bayer has been one of the most active members of ALEC's Civil Justice Task Force. That includes membership in 2010 (when the company was a Conference breakfast sponsor), 2011 and 2017.<sup>288</sup> Bayer representatives who have been on the Task Force include Joseph Cleary, Director, State Government Affairs Bayer HealthCare, and Richard Winget, former Bayer executive and recipient of ALEC's 2003 Private Member of the Year Award<sup>289</sup> (who later went on to represent the U.S. Chamber Institute for Legal Reform<sup>290</sup>).

Many ALEC model bills that were written and approved by the Civil Justice Task Force would protect drug companies and strip away the rights of patients harmed by unsafe drugs. For example, one model bill is called "the Drug Liability Act,"<sup>291</sup> which would "bar lawsuits by families of Americans killed or injured by FDA-approved drugs, even if the drugs are recalled,

thus preventing drug companies from being held accountable for the injuries or deaths they cause."<sup>292</sup>

But when it comes to important matters like weed-killer, Bayer does not hesitate to sue a competitor in order to protect its bottom line. In May 2017, for example, the Federal Circuit affirmed a \$455 million judgment for Bayer, upholding an arbitration panel's finding that Dow AgroSciences had infringed on Bayer's weed control patents.<sup>293</sup> The U.S. Supreme Court denied review.<sup>294</sup> In fact, Bayer seems to like having unfettered use of the courts for all kinds of patent infringement cases. It also recently sued Watson Laboratories for patent infringement related to Bayer's erectile dysfunction drug Staxyn.<sup>295</sup> In November 2017, after five and a half years of litigation, an appeals court ruled against Bayer, finding that its patent was invalid as obvious.<sup>296</sup> Yet patent infringement isn't the only kind of commercial problem leading Bayer to the courthouse. In December 2017, Bayer ended its lawsuit<sup>297</sup> after it said RJ Health gave it "misleading and fraudulent information ... regarding the reimbursement price for Mirena®, a hormonal intrauterine device ('IUD') used for birth control."<sup>298</sup>

## 27. Burlington Northern Santa Fe Railroad (BNSF)

There is little question that railroad workers are at significant risk of dying from asbestos disease.<sup>299</sup> And like other companies whose products and practices have caused asbestos-related injuries and deaths (such as Hypocrite #23, Koch/Georgia-Pacific), BNSF has been an active member and financial supporter of ALEC<sup>300</sup> and a member of ALEC's Civil Justice Task Force in at least 2010, 2011 and 2017.<sup>301</sup> Among other things, ALEC's Civil Justice Task Force has written and is circulating model bills to limit the legal rights of asbestos victims, as well as legislation to "largely absolve landowners from a responsibility to maintain safe premises, and tends to benefit large landowners like railroads, utility companies, and big agriculture."<sup>302</sup>

Meanwhile, BNSF hates compensating rail workers so much that it's suing its own lawyer for losing a case won by an injured worker.<sup>303</sup> BNSF also breaks the law and then sues over it. In November 2017, the railroad company "hit the labor chiefs of California and Washington with a pair of lawsuits in federal court" to invalidate state labor laws regulating employee hours of service, rest breaks and wage statements. As reported by *Law360*, BNSF "concedes in the suits that the company is currently not complying with the California and Washington labor statutes and that it has no plans to comply."<sup>304</sup> And in April 2018, BNSF "filed a lawsuit claiming the Equal Employment Opportunity Commission improperly authorized more than 50 workers and job applicants to sue the company for disability discrimination."<sup>305</sup> The case is pending.

## 28. Pfizer

Pfizer and its subsidiaries have manufactured and been sued over harm caused by a long list of notorious drugs and medical devices.<sup>306</sup> It was one of the many drug companies whose liability exposure for injuring or killing patients was severely weakened in the 1990s, when Michigan enacted an unprecedented law that prevents its residents from gaining access to the civil justice system if they are harmed by certain dangerous drugs. In December 2006, responding to an effort to repeal the law, the *Detroit News* ran an editorial praising Pfizer for providing so many good jobs in the state – the supposed trade-off for stripping victims of their rights.<sup>307</sup> Less than a month later, Pfizer announced it was closing its Kalamazoo and Ann Arbor research and development facilities – a move that affected thousands of jobs in Michigan.<sup>308</sup> A year later, the Ann Arbor site was nearly abandoned and hundreds of Pfizer employees and their families had moved out of the state.<sup>309</sup>

Being a bad corporate citizen does not a hypocrite make. But other things do. Pfizer was one of the companies that helped support some of first “tort reform” organizations in the country.<sup>310</sup> It also has long been involved with ALEC’s Civil Justice Task Force, since at least the years 2010 and 2011.<sup>311</sup> It registered for the 2017 ALEC conference as well (although it did not specifically list interest in the Civil Justice Task Force).<sup>312</sup>

Yet Pfizer files many lawsuits and was even featured in CJ&D’s original 2000 study, *Not in My Backyard: The Hypocrites of “Tort Reform.”*<sup>313</sup> Recently, in September 2017, the pharmaceutical giant filed a lawsuit against Johnson & Johnson and its subsidiary over alleged anticompetitive practices to maintain its drug monopoly for treatment of rheumatoid arthritis, Crohn’s disease and other conditions.<sup>314</sup> As reported by *Reuters*, “Pfizer said in the suit that J&J is offering discounts on its Remicade treatment in exchange for essentially excluding Pfizer’s drug from insurance coverage, keeping it out of the hands of patients.”<sup>315</sup> The case is pending. The following month, Pfizer lost its lawsuit against the Texas Health and Human Services Commission, which had disclosed the company’s drug pricing and rebate information to two state legislators in alleged violation of state and federal law.<sup>316</sup> The court denied Pfizer’s bid for an injunction, finding that “Pfizer’s state law claims against the commission are barred by the Eleventh Amendment, which prohibits a federal court from awarding legal or equitable relief against the state.” And in February 2018, Pfizer filed a lawsuit “seeking \$30 million in coverage from a trio of insurers for the settlement of a \$400 million shareholder suit over off-label marketing.”<sup>317</sup> The case is pending.<sup>318</sup>

## 29. Teva Pharmaceutical

Teva seems to understand the importance of using the civil justice system as a tool to remedy fraud – but apparently only when Teva’s the swindle-ee. In 2017 and 2018, Teva lobbied<sup>319</sup> for passage of H.R. 985, which would eviscerate class actions for, among others, cheated and defrauded consumers.<sup>320</sup> Yet in July 2016, Teva reached a confidential settlement with Forest Laboratories in a long-running patent infringement lawsuit over an Alzheimer drug.<sup>321</sup> Two months later, Teva sued two brothers who had sold their Mexican drug company to Teva. According to the suit, the men had “affirmatively lied and concealed extraordinary legal violations to obtain \$2.3 billion through the sale of a Mexican pharmaceutical manufacturer and its intellectual property.”<sup>322</sup> In August 2017, the court tossed most of the fraud suit.<sup>323</sup> The case is pending. And just this April 2018, Teva reached an undisclosed settlement with a former top executive, her boyfriend – the president and CEO of rival generic drug company – and the company itself after she allegedly shared Teva trade secrets and confidential business information with him.<sup>324</sup>

## 30. Procter & Gamble (P&G)

This manufacturer had lobbyists push H.R. 985 in 2017 and 2018, which would destroy class actions and strip dying asbestos victims of their legal rights.<sup>325</sup> However, P&G seems to have a clearer understanding of and appreciation for the civil justice system when it comes to teeth whiteners. For example, P&G has a history of suing private label manufacturers for patent infringement of its Crest Whitestrips, having prevailed and settled one case in 2014 and prevailing again in another case in 2016.<sup>326</sup> Then in March 2017, P&G “filed a federal lawsuit claiming that its patented technology for tooth-whitening strips had been infringed upon by a competitor, Ranir.”<sup>327</sup> The case settled in March 2018.<sup>328</sup>

As for other products, in August 2017, the company sued for alleged willful infringement of its “Skin Imaging and Analysis Systems and Methods” patent.<sup>329</sup> The case is pending.<sup>330</sup> And in December 2016, P&G voluntarily dismissed its lawsuit against Apollo Health & Beauty Care Corporation, which it had sued because Apollo’s hair care products apparently looked too similar to Head & Shoulders.<sup>331</sup>

## About the Center for Justice & Democracy at New York Law School

Now in its 20th year, the Center for Justice & Democracy is the only national consumer organization in the country exclusively dedicated to protecting our civil justice system. CJ&D works full-time to make sure all Americans get a fair shake in court, even against the country's most powerful special interests. CJ&D exposes unscrupulous attacks by special interests on judges, juries, injured consumers and the attorneys who represent them, and raises public awareness of the value of our civil justice system and the dangerous campaign behind the "tort reform" movement.

## Notes

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<sup>1</sup> See Center for Justice & Democracy, *Not in My Backyard: The Hypocrites of "Tort Reform"* (December 2000), <https://centerjd.org/content/white-paper-not-my-backyard-hypocrites-%E2%80%9Ctort-reform%E2%80%9D>. See also, Center for Justice & Democracy, *Hypocrites of 'Tort Reform': Doctors and Organized Medicine* (October 2003), <https://centerjd.org/content/hypocrites-tort-reform-doctors-and-organized-medicine>; Center for Justice & Democracy, *Not in My Backyard II: The High-Tech Hypocrites of "Tort Reform"* (April 2002), <https://centerjd.org/content/white-paper-not-my-backyard-ii-high-tech-hypocrites-%E2%80%9Ctort-reform%E2%80%9D>

<sup>2</sup> See, e.g., St. Louis Public Radio legal roundtable discussion of ATRA's *Judicial Hellholes*, January 24, 2017, <https://www.youtube.com/watch?v=ohzfZZx-HYY>; Center for Justice & Democracy, "Poking Holes in Judicial Hellholes, ATRA's Annual Fake News Story," December 16, 2016, <https://centerjd.org/content/poking-holes-judicial-hellholes-atra%E2%80%99s-annual-fake-news-story>; Eisenberg, Theodore, "U.S. Chamber of Commerce Liability Survey: Inaccurate, Unfair, and Bad for Business" (2009). Cornell Law Faculty Publications. Paper 373. <http://scholarship.law.cornell.edu/facpub/373>

<sup>3</sup> See American Legislative Exchange Council, "Civil Justice: Task Force Description," <https://www.alec.org/task-force/civil-justice/> and "ALEC Model Policies," <http://www.statelawsuitreform.com/model-policies/> (viewed April 19, 2018).

<sup>4</sup> Forced arbitration clauses keep disputes in secretive, rigged proceedings that the company controls and allow information to be hidden from the public. There is no right to appeal. For more, see "Forced Arbitration Hypocrites: Uber (7), Airbnb (8), Amazon (9) Verizon (10) Independent Community Bankers of America (ICBA) (11) and Debt Collectors (12)."

<sup>5</sup> <https://twitter.com/realdonaldtrump/status/991992302267785216> and <https://twitter.com/realDonaldTrump/status/991994433750142976>. See also, Christian Berthelsen, "Trump Campaign Uses Stormy Daniels Tactic to Keep Harassment Case Quiet," *Bloomberg*, June 4, 2018.

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<sup>6</sup> Julie Pace and Chad Day, "For many Trump employees, keeping quiet is legally required," *Associated Press*, June 21, 2016, <https://apnews.com/14542a6687a3452d8c9918e2fobf16e6/many-trump-employees-keeping-quiet-legally-required>

<sup>7</sup> Ibid.

<sup>8</sup> David Lazarus, "On people's right to sue, Trump's hypocrisy matches that of businesses," *Los Angeles Times*, August 4, 2017, <http://www.latimes.com/business/lazarus/la-fi-lazarus-lewandowski-cfpb-arbitration-20170804-story.html>

<sup>9</sup> See Center for Justice & Democracy, *Trump's Civil Justice Scorecard* (March 2018), <https://centerjd.org/content/trumps-civil-justice-scorecard>

<sup>10</sup> See "Donald Trump: Three decades – 4,095 lawsuits," *USA Today*, July 7, 2016, <https://www.usatoday.com/pages/interactives/trump-lawsuits/>; Nick Penzenstadler and Susan Page, "Exclusive: Trump's 3,500 lawsuits unprecedented for a presidential nominee," *USA Today*, June 1, 2016, <https://www.usatoday.com/story/news/politics/elections/2016/06/01/donald-trump-lawsuits-legal-battles/84995854/>

<sup>11</sup> *Trump v. Timothy L. O'Brien, Time Warner Book Group and Warner Books Inc.*, 2009 Jury Verdicts LEXIS 421807, July 15, 2009. See also, Ian Tuttle, "The Litigious – and Bullying – Mr. Trump," *National Review*, February 19, 2016, <https://www.nationalreview.com/2016/02/donald-trump-tim-obrien-courtroom-story/>; Eriq Gardner, "Donald Trump Loses Libel Lawsuit Over Being Called A 'Millionaire,'" *Hollywood Reporter*, September 8, 2011, <https://www.hollywoodreporter.com/thr-esq/donald-trump-loses-libel-lawsuit-232923>; "Donald Trump sues writer for calling him millionaire not billionaire," *Telegraph*, May 19, 2009, <https://www.telegraph.co.uk/news/worldnews/northamerica/usa/5347989/Donald-Trump-sues-writer-for-calling-him-millionaire-not-billionaire.html>

<sup>12</sup> *Trump v. O'Brien*, 422 N.J. Super. 540 (N.J. App. Div.), September 7, 2011.

<sup>13</sup> "Donald Trump: Three decades – 4,095 lawsuits," *USA Today*, July 7, 2016, <https://www.usatoday.com/pages/interactives/trump-lawsuits/>

<sup>14</sup> "Trump Will See You in Court," *Bloomberg*, April 25, 2016, <https://www.bloomberg.com/graphics/2016-trump-lawsuits/>

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Dana Milbank, "Trump calls the Russia lawsuit 'funny.' He once sued to prove he wasn't an orangutan." *Washington Post*, April 23, 2018, [https://www.washingtonpost.com/opinions/trump-calls-the-russia-lawsuit-funny-he-once-sued-to-prove-he-wasnt-an-orangutan/2018/04/23/3e1b09b8-473b-11e8-827e-190efaf1f1ee\\_story.html](https://www.washingtonpost.com/opinions/trump-calls-the-russia-lawsuit-funny-he-once-sued-to-prove-he-wasnt-an-orangutan/2018/04/23/3e1b09b8-473b-11e8-827e-190efaf1f1ee_story.html)

<sup>18</sup> Katherine Sullivan, "Trump's Company Is Suing Towns Across the Country to Get Breaks on Taxes – 'Trump, Inc.' Podcast," *ProPublica*, April 11, 2018, <https://www.propublica.org/article/trump-inc-podcast-trump-organization-suing-towns-property-tax-breaks>

<sup>19</sup> Charles V. Bagli, "Trump Place Does Not Have to Be a Forever Name, Judge Says," *New York Times*, May 3, 2018, <https://www.nytimes.com/2018/05/03/nyregion/trump-place-name-nyc.html>

<sup>20</sup> See, e.g., Center for Responsive Politics, "U.S. Chamber Institute for Legal Reform," <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2018> (\$7.54 million as of May 1, 2018), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2017> (\$22.7 million in 2017), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2016> (\$27.71 million in 2016), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2015> (\$21.53 million in 2015), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2014> (\$33.16 million in 2014), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2013> (\$20.86 million in 2013), <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2012> (\$31.58 million in 2012),

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<https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2011> (\$21.58 million in 2011) and <https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2010> (\$31.3 million in 2010).

<sup>21</sup> Center for Responsive Politics, "U.S. Chamber Institute for Legal Reform,"

<https://www.opensecrets.org/lobby/firmsum.php?id=D000022405&year=2017> (\$22.7 million in 2017).

<sup>22</sup> Center for Responsive Politics, "Top Spenders, 2017"

<https://www.opensecrets.org/lobby/top.php?showYear=2017&indexType=s>

<sup>23</sup> U.S. Chamber of Commerce, "The State of American Business 2014, Remarks by Thomas J. Donohue President and CEO, U.S. Chamber of Commerce," January 8, 2014, <https://www.uschamber.com/speech/state-american-business-2014-remarks-thomas-j-donohue-president-and-ceo-us-chamber-commerce>

<sup>24</sup> Center for Responsive Politics, "U.S. Chamber Institute for Legal Reform," Firm Profile: Bills 2017,

<https://www.opensecrets.org/lobby/firmbills.php?id=D000022405&year=2017> For an explanation and critique of these bills, see Center for Justice & Democracy, "Letters Opposing Six U.S. House Anti-Civil Justice Bills," <https://centerjd.org/content/letters-opposing-six-us-house-anti-civil-justice-bills>

<sup>25</sup> Center for Media and Democracy, "Justice Denied: 71 ALEC Bills in 2013 Make It Harder to Hold Corporations Accountable for Causing Injury or Death," July 10, 2013, <https://www.prwatch.org/news/2013/07/12172/justice-denied-71-alec-bills-2013-make-it-harder-hold-corporations-accountable-ca>. See also, "ALEC Model Policies," <http://www.statelawsuitreform.com/model-policies/> (viewed April 19, 2018).

<sup>26</sup> See American Legislative Exchange Council, "Civil Justice: Task Force Description," <https://www.alec.org/task-force/civil-justice/> and "ALEC Model Policies," <http://www.statelawsuitreform.com/model-policies/> (viewed April 19, 2018).

<sup>27</sup> In deciding ALEC's agenda, corporate lobbyists and state lawmakers meet behind closed doors and vote. Members of the press are not permitted to observe. In 2015, one Georgia reporter tried to attend ALEC's Spring meeting at a resort hotel in Savannah, Georgia. Not only was he kicked out of the meeting, but also – to make sure he stayed out – ALEC called over a number of off-duty police officers who escorted him out of the hotel even though he was a paying guest. See, e.g., Center for Media and Democracy, "So a Lobbyist and an ALEC Legislator Walk into a Bar...Caught on Tape by NBC," May 21, 2015, <https://www.prwatch.org/news/2015/05/12838/alec-lobbyist-funding-caught-on-tape>

<sup>28</sup> See member directories attached to meeting agendas for Civil Justice Task Force meetings (on file with CJ&D); Jamie Corey, "Revealed: Names of Alec Lobbyist and Legislator Members," *Documented*, March 8, 2018, <http://documentedinvestigations.org/2018/03/08/revealed-names-alec-lobbyist-legislator-members/>

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<sup>318</sup> See docket for *Pfizer Inc. v. The North River Insurance Company*, (D. Del.)

<sup>319</sup> Open Secrets, “Clients lobbying on H.R.985: Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017,” <https://www.opensecrets.org/lobby/billsum.php?id=hr985-115>

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<sup>324</sup> Matt Fair, "Teva Settles Case Over Alleged Info Sharing With Rival CEO," *Law360*, April 26, 2018, <https://www.law360.com/articles/1037560/teva-settles-case-over-alleged-info-sharing-with-rival-ceo>. See also, Linda Loyd, "Sex, drugs, and sharing trade secrets," *Philadelphia Inquirer*, July 12, 2017, <http://www.philly.com/philly/business/sex-drugs-and-sharing-trade-secrets-20170712.html> and Dani Kass, "Teva Targets Ex-Exec Who Dated, Gave Info To Apotex CEO," *Law360*, July 7, 2017, <https://www.law360.com/articles/942334/teva-targets-ex-exec-who-dated-gave-info-to-apotex-ceo>, discussing *Teva Pharmaceuticals USA, Inc. v. Sandhu*, Case No. 2:17-cv-03031-TON (E.D. Pa.)(complaint filed July 7, 2017).

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<sup>331</sup> See docket for *Procter & Gamble Company v. Apollo Health & Beauty Care Corporation*, Case No. 1:16-CV-05673 (S.D.N.Y.)