IMPACT

Winter 2003
Volume 4, Issue 1

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

CENTER FOR JUSTICE & DEMOCRACY
****NEWS****

Dear Friend,

We are excited to tell you that the Center for Justice & Democracy has started a new project to help improve the image of trial lawyers. This project couldn't come at a better time, as the image of lawyers and the civil justice system took a tremendously unfair hit last December with *Newsweek*'s tabloid cover story, "Lawsuit Hell."

The respected Commonweal Institute has issued a report, *The Attack on Trial Lawyers and Tort Law*, finding that "the criticisms of lawyers in our society … are part of a larger campaign designed both to protect corporate interests and to undermine the public status of trial attorneys and thereby deprive them of political power."

CJ&D is now producing its first 30-second TV ad, aimed at helping to improve the image of trial lawyers. We hope to continue production of these innovative TV spots and to expand our work on the public relations front. If you would like to explore using CJ&D TV spots for broadcast, please contact us.

Let's hope we all have a great year! Best wishes to everyone.

Sincerely,

Joanne Doroshow
Executive Director

IN THIS ISSUE: FOCUS ON POLITICS & MONEY

Federal "Tort Reform" – A Straight Money Deal ?

In December 2002, an internal White House memo was leaked to the *Associated Press* entitled, "Possible '04 Signature Issues." The list included, for the most part, the hot button political topics of the day: the war on terrorism, homeland security, health care, education, social security and tax reform. But making an appearance at number four on the list was a topic that might only be described as curious: "legal reform," a.k.a, "tort reform," a.k.a. restricting the rights of injured consumers to sue corporate wrongdoers. Since that time, the Administration has made the enactment of legal reform not just an important issue for the administration. It is now a key to its 2004 economic growth plan.

It may be hard to understand why "tort reform" is even on the national agenda at a time when insurance industry profits are booming, tort filings are declining, only two percent of injured people sue for compensation, punitive damages are rarely awarded, liability insurance costs for business are minuscule, medical malpractice insurance and claims are both less than 1 percent of all health care costs in America, and the premium-gouging underwriting practices of the insurance industry have been widely exposed.

The answer, it seems, is money. On March 31, 2003, a coalition of nearly 50 lawyers and lobbyists from Fortune 500 companies and large trade associations met with senior presidential adviser Karl Rove at the White House to lobby for class action legislation, one of the three "legal reform" issues promoted by the

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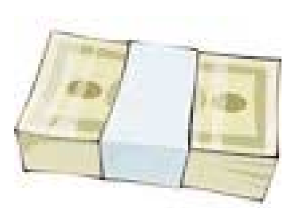
Immunity Payoffs – How Money Can Work For You

Industry after industry has been lining up before Congress to collect their post-election immunity handout. Big drug companies were among the first to be rewarded for big campaign contributions.

In 2002, Senate Majority Leader Bill Frist (R-Tenn.) engineered the insertion of a provision into the Homeland Security bill that would shield Eli Lilly and others pharmaceutical giants from lawsuits over thimerosal, a mercury preservative in infant vaccines that has been connected with autism.



At that point, Frist had received over $265,000 from the pharmaceutical industry, which was also the largest single contributor to the National Republican Senatorial Campaign Committee that Frist chaired, giving about $4 million.

Moreover, Eli Lilly was the single biggest drug industry contributor to federal lawmakers of both parties, having given $1.6 million in the last election cycle, according to the Center for Responsive Politics.

Not long after Frist introduced the legislation, the Pharmaceutical Research and Manufacturers of America,

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Front Groups Galore

The American Tort Reform Association (ATRA) is a Washington, D.C.-based coalition of more than 300 corporations and associations representing tobacco, pharmaceutical, automotive and chemical industries with a direct financial stake in restricting lawsuits. In the early 1990s, ATRA hired APCO & Associates, then one of the nation's leading "grassroots" lobbying/PR firms, to create a national network of local organizations that masquerade as consumer groups formed to combat "lawsuit abuse" when in fact they represent major corporations and industries seeking to escape legal liability for harming consumers.

This was the finding of a groundbreaking report by the Center for Justice & Democracy entitled *The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights*.

According to the 2000 study, ATRA hired APCO to set up these supposed "grassroots" groups, calling themselves any number of names, typically Citizens Against Lawsuit Abuse (CALA), Lawsuit Abuse Watch, Stop Lawsuit Abuse or People for a FAIR Legal System. Collectively referred to as "CALAs," these so-called "citizen" groups receive substantial financial and strategic assistance from ATRA and APCO. More specifically, ATRA and APCO supply the groups with media training and pre-produced radio, television, print advertising and billboards designed for maximum media exposure and legislative impact.

CALAs are bankrolled by some of America's biggest corporations, chief among them Big Tobacco, a fact uncovered by *The CALA Files*. Documents released in connection with state lawsuits against the tobacco industry in the late 1990s reveal that Big Tobacco spent millions annually (and in at least one year $15 million) supporting ATRA, state CALAs and other activities to weaken tort laws in many states. In 1995 alone, the tobacco industry allocated $5.5 million for ATRA, more than half of its budget.

To date, there are dozens of CALAs in at least 18 states working on behalf of major corporations and industries to win corporate immunity from civil liability.

Immunity Payoffs – How Money Can Work For You continued...

the drug industry's trade group, gave $10,000 to Frist's political action committee. It took a wave of media backlash before the thimerosal immunity was finally repealed.

Two other bills underscore how this special-interest game is being played. In 2003, oil and chemical companies persuaded House leaders to insert language in the omnibus energy bill that would immunize them from liability for manufacturing methyl tertiary butyl ether (MTBE), a toxic gasoline additive that has contaminated water supplies in every state in the nation.

The legislation not only protected MTBE makers from paying for environmental cleanups in future product defect actions but also provided retroactive immunity from pending state lawsuits, shifting remediation costs onto taxpayers.

According to the Center for Responsive Politics, the oil and gas industries have already given a total of more than $64 million to federal political races since 2000. The chemical industry has given more than $20 million.

House Majority Leader Tom DeLay (R-Tex.) and his GOP colleagues, Congressmen Joe Barton (R-Tex.) and W.J. "Billy" Tauzin (R-La.), who count oil and gas interests among their top industry contributors, orchestrated the liability waiver's inclusion.

As Senator Richard Durbin (D-Ill.) told the *St. Louis Post-Dispatch,* "If you're vulnerable to a lawsuit for wrongdoing, if you've degraded the drinking water around the country…where do you turn? You come to Congress. You come to mama."

On November 21, the bill died in the Senate after GOP lawmakers refused to remove the MTBE immunity provision, but new action is expected in 2004.

Federal "Tort Reform" – A Straight Money Deal ? continued . . .

Administration (the other two being asbestos and medical malpractice legislation.) The class action bill makes it more difficult for consumers to succeed in class action lawsuits against corporations that commit fraud and other violations of consumer health, safety, and environmental laws.

Leading this group to the White House was Stanton Anderson, executive vice president of the U.S. Chamber of Commerce, joined by such large corporate interests as the Business Roundtable, the American Council of Life Insurers, the National Association of Manufacturers, Aetna, Ford, General Electric and Johnson & Johnson. During the meeting, Rove agreed to make the bill a top priority for the Bush administration, promising that the White House would be "willing to pitch in and help."

Public Citizen and Texans for Public Justice (TPJ), who jointly contribute to the web site WhiteHouseForSale.org, reported in January 2004 that the President's re-election campaign has raised nearly $140 million, primarily from big-money donors, many of whom would benefit greatly from the class action bill.

But that's not all. According to Public Citizen's June 2003 report, *Unfairness Incorporated: The Corporate Campaign Against Consumer Class Actions*, "At least 100 major corporations and pro-business associations have banded together to spend millions of dollars and to employ at least 475 lobbyists to make sure that class-action legislation is tilted in their favor."

A July 21, 2003. *Associated Press* story looked at six bills in the House, including medical malpractice and class action legislation, and compared members' votes with the money they received from various interest groups. *AP* found that "Groups that outspent opponents got the bills they wanted in five of the six cases examined by the AP." As far as class actions, "House members who sided with trial lawyers and voted against shifting class action lawsuits from state courts to more restrictive federal courts [i.e., the losing position] averaged $1.63 from attorneys for every $1 given to legislation supporters. Businesses contributed $276.7 million to House members, compared with $21.3 million for lawyers."

Corporations and business groups lobbying most aggressively for class action legislation gave a total of $49 million in PAC and soft money contributions to both parties between 1998 and 2002.

Last June 12, the U.S. House of Representatives approved the so-called "Class Action Fairness Act" (H.R. 1115) on a mostly party-line vote. The Senate is now expected to take up and pass the legislation this year.

The correlation between big corporate contributions and legislative paybacks that benefit special interests is not limited to the class action bill. Rather, it is representative of how the Bush administration and Congress are working hand in hand with their corporate allies to push a broader "tort reform" agenda that protects industry at the expense of innocent consumers.

The Bush Texas Legacy

George W. Bush is no stranger to backing measures that limit the legal liability of his largest campaign contributors. One of his first acts as Texas governor in 1995 was to fast-track "tort reform" legislation by declaring it a legislative "emergency," a move that benefited big donors

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A Word About Judicial Elections

The nature of judicial elections in this country is fundamentally changing. Never before has so much corporate money been dumped into the states for the purpose of ensuring the election of pro-industry judges and defeating judges who have voted to strike down "tort reforms."

For example, between 2000 and 2002, the U.S. Chamber of Commerce spent $100 million to unseat state court judges and attorneys general viewed as being pro-plaintiff and anti-business. Nowhere did the corporate money flow more heavily than into Ohio. The Chamber funneled money into a group called Citizens for a Strong Ohio, which aired attack ads against Supreme Court Justice Alice Robie Resnick, who in a 3-2 decision had declared Ohio's draconian 1996 "tort reform" law unconstitutional. Resnick beat the effort and was reelected. But the Chamber did not give up.

In the next election cycle, during a renewed effort to pack the court with pro-industry judges, Citizens for a Strong Ohio disclosed that it received $100,000 from the Ohio Chamber of Commerce and over half its money from the insurance industry. Donors included the American Insurance Institute ($75,000); State Farm ($60,000); Ohio Casualty Insurance ($20,000); State Auto Insurance ($25,000); Grange Insurance ($20,000); Met Life ($10,000); and Ohio National Insurance ($5,000). In all, the Chamber has won 21 of 24 judicial elections in Ohio and seven other states and prevailed in 11 attorney general races.

Influencing judicial elections continues to be a major focus for the Chamber. According to *Forbes* magazine, the business group plans to spend another $50 million during the 2004 election cycle to throw at least 10 judges out of office, specifically targeting states like West Virginia, Illinois, Texas, Mississippi and Ohio. The Chamber has the full support of corporate backers like Home Depot, Daimler-Chrysler and insurance giant American International Group (AIG).

In September 2003, Maurice "Hank" Greenberg, AIG chairman and chief executive, met with Thomas Donahue, president and chief executive of the Chamber, to discuss ways to influence forthcoming judicial elections in certain states. "We're looking to have a say in some of those elections, who should be backed and who shouldn't," he said. "There's a war and we will continue to fight that for some time."

Federal “Tort Reform” – A Straight Money Deal ? continued . . .

like Enron and the corporate-backed Texans for Lawsuit Reform (TLR). Bush went on to sign a series of laws that insulate Texas corporations from lawsuits for their reckless behavior and strip the rights of injured Texans who would be entitled to compensation. These “tort reform” measures included: capping punitive damages; diluting Texas’s Deceptive Trade Practices Act to benefit, among others, used car salesmen and real-estate developers; making it more difficult for the sick and injured to sue malpracticing doctors; immunizing teachers from liability for hitting children; and prohibiting Texas cities from suing gun makers and sellers.

Texans for Public Justice reported in a January 2000 study that political action committees, businesses and individuals affiliated with Texas’s two major corporate tort groups -- Texans for Lawsuit Reform and the Texas Civil Justice League -- contributed $4.1 million to Bush’s two gubernatorial campaigns, outspending every other special-interest donor except for those in the “energy and natural resource” category. And major corporate interests contributed heavily towards his 2000 presidential bid, as well.

Dan Lambe, Executive Director of TexasWatch, said at that time, “The special interests got a hefty return on their investment in George W. Bush as Governor and there is no reason to believe they won’t be seeking the same after getting him his new job.”

White House Pay-Off

Lambe seems to have predicted right. For example, since 2001, Bush has been stumping for medical malpractice limits. This legislation would insulate two of his top ten industry donors, health professionals and insurers, from legal accountability.

Data from the Center for Responsive Politics show that health professionals and insurers gave Bush more than $4.4 million combined during the 1999-2000 election cycle and have already contributed over $2 million and $1.4 million, respectively, to his re-election campaign.

Bush’s advocacy of the terrorism insurance bailout bill is another example of how his administration pays back big donors by championing lawsuit restrictions. Ten days after the September 11, 2001 terrorist attacks, a delegation of 15 insurance executives met privately with Bush and Commerce Secretary Donald Evans at the White House in an effort to limit insurance companies’ liability exposure for future acts of terrorism. Two of the visiting insurance executives, Maurice “Hank” Greenberg, chairman and chief executive officer of the American International Group (AIG), and Robert O’Connell, chairman, president and CEO of Massachusetts Mutual Life Insurance, had been named “Pioneers” by the Bush campaign for each raising at least $100,000 towards his 2000 presidential run. In addition, the insurance industry had given nearly $1.7 million to the Bush campaign and over $1.1 million to underwrite his inauguration, with Greenberg’s AIG, the American Council of Life Insurance and the American Insurance Association each contributing $100,000 to the inaugural fund.

It was not long before the White House offered a proposal for a federal terrorism insurance “backstop” that not only shielded the industry from paying billions of dollars in another attack but also severely limited the ability of future terrorism victims to seek damages from insurers and other businesses in court. Insisted upon by insurers and the White House, the so-called “Litigation Management” provisions eliminated punitive damages, forced all terrorism-related lawsuits into federal court, abolished joint and several liability for non-economic damages, reduced all damages awards by payments from collateral sources and capped attorneys’ fees at 20 percent of any award. When those “tort reforms” stalled the bill, Congress removed all but the state lawsuit preemption measure from the final legislation.

Trade Group Riches

Corporate interests are clearly dominating the legislative branches of government. The U.S. Chamber of Commerce’s Institute for Legal Reform – an organization whose sole purpose is to take compensation judgments away from civil juries – has been at the forefront of this effort. The Institute spent over $22 million on “tort reform” lobbying in 2002 and hoped to devote $40 million in 2003, having spent between $5 and $15 million on issue ads attacking class action lawsuits alone.

The Institute has been getting plenty of help from other trade groups and corporations. In 2002, the American Medical Association devoted $15 million to a lobbying campaign that sought a $250,000 cap on non-economic damages in medical malpractice cases.

Lawmakers who supported the bill to limit medical malpractice liability “averaged $1.41 in campaign contributions from physicians and other health professionals for every $1 given to lawmakers against the measure. Opponents of the bill received $1.85 from lawyers, who objected to curbs on awards, for every $1 given to those who voted yes,” according to *AP*.

The National Association of Manufacturers spent $2.2 million during the first six months of 2002 lobbying for restrictions on lawsuits brought by asbestos exposure victims, according to the Center for Responsive Politics.

As the Administration’s “legal reform” agenda continues to get traction, the special interest money behind it will no doubt grow. Whether federal lawmakers will give in to these monied interests over this upcoming election year is certainly worth watching.