

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

**CENTER FOR JUSTICE
& DEMOCRACY
NEWS**

Dear Friend,

It is difficult to express how deeply saddened we are by the events of September 11. Our office is only a few blocks from the World Trade Center, yet we were lucky. We all made it home safely that day. But so many of our Lower Manhattan neighbors were not as fortunate. Our hearts go out to them, as well as to many small businesses in our area that are now struggling to survive.

While the events of September 11 and its aftermath will naturally dominate the national discourse for some time, we believe it is important not to become complacent about the civil justice system. Efforts to erode it continue to lurk behind every corner, most recently in the form of the airline industry's call for immunity in the wake of these tragedies.

We have devoted this issue of *Impact* to the topic of crime and the civil justice system, following one of the worst criminal acts in U.S. history. The rush by Congress to enact a September 11 victim compensation package speaks not only to the enormity of this tragedy, but also to the recognition that all innocent victims who have been wronged have a right to full compensation, including payment for both economic and non-economic loss. This is one of the most important functions of the civil justice system, and one that we are working hard to preserve.

Joanne Doroshow
Executive Director

IN THIS ISSUE: FOCUS ON CRIME

Civil Justice is Criminal Justice

In this history of crime in America, nothing compares to the hijackings of four planes on September 11 and the resulting deaths of 6,000 people in two hours. Within days of this tragedy, politicians were asking for federal help to make sure victims were adequately compensated for their losses, partly in response to calls for complete airline immunity from their lobbyists.

In discussing the September 11 victim compensation fund that a bi-partisan Congress established, U.S. Senate Judiciary Committee Chair Patrick Leahy (D-Vt.) said, "We have to ensure that the needs of

those who suffered most directly are met, that they receive adequate compensation." U.S. Senator John McCain (R-Az.) echoed these views, saying, "The intent of the fund is to ensure that the victims of this unprecedented, unforeseeable, and horrific event, and their families do not suffer financial hardship in addition to the terrible hardships they already have been forced to endure."

While the September 11th events certainly stand out as one of the worst criminal acts in U.S. history, compensating victims of brutal crimes for their losses has always been a

central function of the civil justice system. Each year millions of Americans are victimized by violent crime. Between 1992 and 1998, over 18 million people suffered injuries from rape, simple assault, aggravated assault, robbery and sexual assault. For many of these victims, civil litigation against the perpetrators and responsible third parties is the only way they are able to achieve some form of compensation and recovery.

"Crime victims need the civil justice system because the criminal system wasn't

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Toppling Hate With The Tools of Litigation

All too often, members of minority communities are targets of violent bigotry. According to the most recent FBI data, over 9,800 people reported being victims of racial, religious, sexual orientation, disability or ethnicity/national origin bias in 1999. Yet these figures represent only a small percentage of those emotionally, physically and psychologically impacted by hate crime each year.

"Every hour, someone commits a hate crime," says Richard Cohen, an attorney with the Southern Poverty Law Center (SPLC), a public inter-

est law firm that has filed a series of successful cases against hate groups. "Although there are no reliable statistics from which one could chart hate crime trends with precision, the number of hate groups has been increasing in recent years. Today, there are approximately 600 hate groups."

Although Congress and state governments have enacted numerous criminal laws to combat violence stemming from intolerance, such measures do little to compensate hate crime victims, much less effectively deter many perpe-

trators and their supporters from engaging in hate-motivated violence.

On the other hand, the civil justice system can and often does both. Successful civil lawsuits against a hate group not only directly respond to the needs of those injured by providing financial compensation for losses but also provide one of the only effective means to put these dangerous entities out of business. Says SPLC's Cohen, "Civil lawsuits are a crucial tool in the fight against hate. They are often

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In Pursuit of Justice... Ralph W. Hoar

We are deeply saddened by the death of one of our great friends, Ralph W. Hoar. Ralph was a tireless safety advocate and corporate critic. He passed away due to complications from prostate cancer on September 21, 2001. He was 56 years old.

Ralph was president of Ralph Hoar & Associates, an Arlington-based product safety research firm he founded in 1989. Several years later, he created SafetyForum Research and SafetyForum.com, an Internet-based nationwide resource for safety advocates on product, workplace and environmental issues.

Ralph's firm and SafetyForum.com were instrumental in most of the 1990s' major campaigns to secure recalls of vehicles demonstrated to be unsafe and to force safety de-

sign improvements in automotive and other products ranging from minivan door latches to child safety seats: Nissan's 1994 repurchase of more than 30,000 fire-prone minivans, the first such buy-back in vehicle history; the 1995 recall to correct defective rear-lift gate latches on 4.5 million Chrysler minivans; the 1996 recall and correction of 8.9 million Fords found to have fire-prone ignition switches, and Ford's recent recall of 13 million Firestone Wilderness All-Terrain tires.

In 2000, while we were researching cases for our study, *Lifesavers: CJ&D's Guide to Lawsuits That Protect Us All*, CJ&D Executive Director Joanne Doroshow met with Hoar for several hours at his Arlington headquarters. Says Doroshow, "Ralph was incredibly helpful and generous with

his time. He personally drove to the subway to get me, took me to his office and spent several hours with me brainstorming about possible cases to include in our report. He answered so many questions. After *Lifesavers* was finished, he took it upon himself to spread the word about the study, sending e-mails to his listserve and mentioning *Lifesavers* on SafetyForum's web site. No single individual helped us more."

In addition to his mother, Ralph is survived by his partner, Russwin N. Francisco; his son, Jason Hoar Stryker and daughter-in-law Jorie L. Stryker; his daughter, Adrienne E. Hoar; the mother of his children, Patsy J. Hemp; and two brothers, James C. Hoar and Robert "Wayne" Hoar.

We will miss him tremendously.

How Civil Cases Can Assist Criminal Prosecutions

Child abuse. From 1981 to 1992, a priest molested boys, age 14 or younger, at three different Dallas-area churches. The victims and their families filed a civil suit against the priest, the Roman Catholic Diocese of Dallas and its bishop. Trial testimony revealed that the Diocese knew the priest had been sexually abusing children for years yet failed to act. As a result of the lawsuit, prosecutors pursued criminal charges against the priest. He was found guilty of aggravated sexual abuse, sexual assault and indecency and was ultimately sentenced to life in prison.

Illegal Commercial Drivers' Licenses. Parents filed a wrongful death lawsuit after their six children were killed when their minivan ran over a mud-flap/tail light assembly that had fallen off a truck. During discovery, whistleblowers revealed a bribery scheme involving the sale of commercial driver's licenses run through the Illinois Secretary of State's office. The civil case prompted a federal investigation of the bribery scheme, resulting in 25 criminal convictions.

Invisible Empire Klan. Over 100 members of the Invisible Empire Klan – armed with bats, ax handles and guns – attacked and injured civil rights marchers in Decatur, Alabama. After the FBI dropped its investigation of the Klan, citing lack of evidence to support conspiracy charges, the victims sued. Discovery evidence convinced the FBI to re-open the criminal case against the Klansmen. Nine Klansmen were ultimately convicted of criminal charges related to the assault.

Oraflex. A Georgia man filed a civil suit when his 81-year-old mother died after taking the anti-arthritis drug Oraflex manufactured by Eli Lilly & Co. Preliminary court papers revealed that a former top Lilly executive knew of 29 overseas deaths associated with Oraflex yet withheld this information from the FDA. At the trial, Lilly's Chairman and CEO admitted that the company knew of at least five European deaths. As a result of the civil lawsuit, Lilly and its executives were held criminally responsible for mislabeling and failing to report fatal side effects and illnesses related to Oraflex and agreed to pay a \$40,000 fine.

United Klans of America. A 19-year-old was abducted, beaten, stabbed and hanged by men who attended a United Klans of America (UKA) meeting that focused on the trial of a black man who allegedly shot and killed a white policeman. The victim's mother sued the Klansmen involved in the lynching as well as the UKA. The case led to the criminal convictions of two Klansmen.

Civil Justice is Criminal Justice *continued...*

designed to compensate victims,” says Jeff Dion, Chief Counsel for Public Affairs of the National Crime Victim Bar Association. Indeed, the criminal justice system is not equipped to handle the costs of crime on victims, their families and society, which far exceed the criminal act itself. Crime victims face financial burdens, like medical and mental health care bills, but also experience trauma, pain, suffering and lost quality of life. According to recent estimates by the National Institute of Justice, the cost of non-fatal violent crimes alone is \$426 billion per year.

Explains Dion, “In the criminal justice system, perpetrators

are only held accountable to the state. In contrast, the civil justice system recognizes that individual offenders or third parties whose conduct contributes to the occurrence of crime should be held directly accountable to victims for pain and suffering damages, as well as out-of-pocket expenses, that will help rebuild their lives.”

Equally important, lawsuits by crime victims help deter crime, particularly when third parties like negligent landlords, parking lot owners or other corporate offenders share responsibility for a crime’s commission. While district attorneys may decline to prosecute these parties, crime victims can, and often do, sue them for dam-

ages. Civil litigation provides the financial incentive for these third parties to change their unsafe practices and safeguard the public from future harm. Countless examples exist of parking lots, nursing homes, apartment buildings, hotels, schools and workplaces that have been made safer due to civil lawsuits. Many examples have been documented in CJ&D’s 2001 study, *Lifesavers: CJ&D’s Guide To Lawsuits That Protect Us All*. (Contact CJ&D for more information.)

Laws that make it more difficult for crime victims to sue, so-called “tort reforms,” not only hurt crime victims, but also make society less safe. In the view of National Crime Victim

Bar Association’s Jeff Dion, “Tort reform does a true disservice to victims by precluding them from holding accountable those who are in a position to prevent crimes in the first place.” As a society, laws that restrict the rights of crime victims to go to court hurt us all.

WAR, TERRORISM AND THE CIVIL JUSTICE SYSTEM

CJ&D’s new Primer is an up-to-the-minute compilation of lawsuits and civil remedies that have been used to combat war crimes, terrorism and other abuses by foreign governments.

Available free to certain CJ&D members. For more information or for copies, call CJ&D at 1.888.450.5545 or e-mail liz@centerjd.org

Lawsuits: Combating Corporate Crime in America

“In America, 19,000 Americans are murdered annually.”

-FBI Crime Statistics

“Every year, 56,000 people in the United States die on the job or from occupational diseases such as black lung and asbestosis, and tens of thousands of others fall victim to the silent violence of pollution, contaminated foods, hazardous consumer products and hospital malpractice.”

Russell Mokhiber, editor, Corporate Crime Reporter

When we think about criminals, occupants of corporate boardrooms and executive suites don’t often come to mind. Yet history tells us that time and again, certain corporate practices have resulted in severe injury and death. Moreover, in many cases, corporate executives have knowingly placed the public or

workers at risk or have failed to take appropriate preventive actions.

Says Mokhiber, “A wave of corporate criminality ... has swamped prosecutors offices around the country.” Yet rarely are instances of intentional or reckless corporate policies that result in injury or death prosecuted as crimes. The civil justice system is often the most effective and sometimes the only means for holding corporate wrongdoers accountable or deterring them and others from repeating misconduct.

Take, for example, the case of 19-year-old college student Daniel Paul Van Etten, who was killed in 1997 when his Ford Explorer equipped with Firestone radial ATX tires flipped over. Three years after the crash, it became clear that Ford and Firestone had known since the early 1990s of numerous deaths and injuries

caused by tire crashes involving Explorers and Firestone tires. Demands for confidentiality by Ford and Firestone, through protective orders and confidential settlements, had allowed the companies to keep critical safety information from reaching the public and government regulators. Ford also never notified U.S. safety agencies that it had recalled and replaced Firestone tires on Explorers sold abroad in 1999 and 2000.

At least 35 people died and 130 people were injured in Ford Explorer/Firestone Tire crashes before the National Highway Traffic and Safety Administration (NHTSA) began an investigation in May 2000. The agency did so in response to a wave of public concern following media reports, the first by a Houston television station. The story was based, in part, on information uncovered in civil lawsuits.

Despite widespread discussion about prosecuting these two corporations, to date criminal charges have not been brought against Ford, Firestone or their top executives.

Failure to prosecute corporations with records of abuse is the rule rather than the exception. There are many reasons for this, most linked to the lack of either financial resources or political will by prosecutors to challenge large, powerful companies. In addition, laws can limit possible criminal charges that can be brought against a corporation or its executives, and sanctions available to prosecutors, often civil fines, can amount to nothing more than slaps on the wrist for big corporations.

For most victims of corporate crime, the civil justice system remains the only tool for holding accountable companies

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Toppling Hate With The Tools of Litigation *continued...*

the only way to hold hate groups like the Klan and the Aryan Nations responsible for the violent actions of their members.”

A recent SPLC lawsuit against the Aryan Nations is a case in point. In 2000, a jury found that Aryan Nations leader Richard Butler and his group were responsible for an attack on Victoria Keenan and her teenage son, who were chased and shot at by members of the Nation’s security force while driving past the group’s Idaho compound. When their car went into a ditch, the security chief assaulted Keenan and

threatened to kill her while guards beat her son. As a result of a \$6.3 million verdict against Butler and the Aryan Nations, the Idaho complex was transferred to the Keenans. It is being turned into a human rights park.

SPLC has also used civil litigation to put chapters of the Ku Klux Klan (KKK) out of business. For example, the Invisible Empire Klan was disbanded after a \$1 million jury verdict against the Invisible Empire leader and his organization, whose members attacked an interracial group marching in a 1987 Martin

Luther King celebration in Georgia. Similarly, the Christian Knights of the KKK can no longer function as a viable hate group after SPLC won a multi-million-dollar verdict against the “Grand Dragon” of the South Carolina Klan, as well as the Klan’s North and South Carolina organizations, whose members had burned down a black church in Clarendon County, South Carolina in 1995. (For more information about the Southern Poverty Law Center, visit <http://www.splcenter.org>.)

Given the impact of hate

crimes on victims and communities, and the absence of many safeguards to effectively address such bias-motivated incidents, the importance of civil lawsuits cannot be overstated. Such litigation not only makes the injured whole but also protects others from becoming targets of violence in the future.

Lawsuits: Combating Corporate Crime in America *continued...*

that knowingly cause massive harm. Without civil lawsuits, asbestos makers, who hid information about the deadly consequences of asbestos exposure, would have escaped responsibility for causing lung diseases and cancers in hundreds of thousands of workers. But for the ability to seek damages in civil court, A.H. Robins would never have been held accountable for selling the Dalkon Shield IUD, an intrauterine medical device that injured and killed thousands of women. And if not for the civil justice system, Ford and Firestone would have avoided public responsibility for the deaths and debilitating injuries suffered by drivers and passengers around the country. And the list goes on.

In addition to compensating victims, personal injury suits, such as wrongful death, products liability and toxic tort actions, can police the danger-

ous practices of individual companies or entire industries. For example, the imposition or threat of punitive damages has forced corporations to recall, redesign or remove defective products from the marketplace or operate more safely. Flammable children’s pajamas, backyard water slides and “Saturday Night Special” handguns are among the products taken off the market after juries awarded punitive damages. Similarly, warning labels on charcoal bags and tampon packages, redesigned infant cribs and jeeps and revised policies on emitting toxic chemicals and staffing pediatric units at hospitals – changes which have saved lives – are directly attributable to punitive damages awards. (For more information and examples, see *Lifesavers: CJ&D’s Guide To Lawsuits That Protect Us All*, and CJ&D’s White Paper, *What You Need to Know*

About Punitive Damages.)

All Americans are greatly affected by corporate crime, which not only costs hundreds of billions of dollars annually – far more than street crimes do – but also causes an untold number of preventable deaths and injuries. Given the lack of criminal prosecutions, one cannot overestimate the importance of civil lawsuits in protecting the public from companies that endanger workers and the public.



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