



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

BIG TOBACCO'S COVERT ROLE IN "TORT REFORM"

Tobacco products kill 400,000 Americans each year. The tobacco companies have known for years that their products are lethal and addictive. They have pushed "tort reform" bills around the country to provide them with legal immunity for the illnesses and deaths their products cause.

In addition to the tort limitations advocated by most corporations, the tobacco industry has had particular interest in changing punitive damages standards and "product liability" laws, so as to completely immunize companies that sell "inherently dangerous or unsafe" products or those with "obvious risks."

The following is some of the history of Big Tobacco's involvement in the "tort reform" movement.

- In 1989, the tobacco industry held a planning conference at a West Virginia resort to establish an agenda for what was informally referred to within the industry as "The Tort Reform Project." Among the tasks assigned the Project were coalition building, public relations, and grassroots efforts. Industry Planning Conference, Agenda, July 13-15, 1990, RJR Files, Document #50761 4436, 50762 9019.
- The costs of the project were shared, by and large, by American Brands, Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. Tort Reform and Protective Order Projects, March 23, 1993, Philip Morris Files, Document # 2023960943.
- The Tobacco Archives contain numerous "Tort Reform Project" budgets from Covington & Burling, as well as from individual tobacco companies, showing fees to several major law firms (Covington & Burling, Crowell & Moring and its former counsel, Victor Schwartz), many local law firms, the American Tort Reform Association (ATRA), the conservative American Legislative Exchange Council, and numerous state and local groups. Tort Reform Project Budget, Covington & Burling, October 3, 1995, Document #2041201160 et seq.
- Keith A. Teel, a partner at Covington & Burling and the firm's point man on tobacco, wrote a January 24, 1995, memo to the tobacco industry's "Tort Reform Policy Committee" in which he described a "communications program ... intended to enhance our ability to enact favorable legislation at both the federal and state level. It is also intended to put the trial bar on the defensive and to improve the legislative climate concerning tort issues, both because of pressure from constituents and through possible electoral changes in the composition of various legislatures." Teel observed, however, that "these media activities, to be effective, must not be linked to the tobacco industry."

(emphasis added). Memo from Keith A. Teel to Tort Reform Policy Committee, January 24, 1995, Lorillard Files, Document #91881092/1095.

- In his memo, Teel further said that, “if the industry were to undertake an expanded program in which [PR consultants] APCO is an integral part, it is only fair that APCO’s cost be borne industry-wide.” Less than a month later, the Policy Committee agreed to “increase the balance in the industry tort reform [bank] account.” Specifically, said Teel in a follow-up memo to the meeting, “we would like to increase the account balance to \$2 million. This is necessary to accommodate several media buys and other activities that must be made within the next few weeks.” Memorandum from Keith A. Teel and Joseph K. Doss, February 13, 1995, Lorillard Files, Document #91876026/6029. Shortly thereafter, ads advocating federal tort legislation began to air.
- By October, 1995, the tobacco industry had spent over \$5 million on “communications,” with nearly \$3 million of it going to ATRA. In addition, the industry paid almost \$1 million in consulting fees directly to APCO for “consultant costs and expenses related to media buys and other activities.” Projections for 1996 were substantial as well: \$3.8 million for “communications,” \$3.5 million of which was budgeted for ATRA. Another \$1 million was projected for APCO. In other words, by 1995, Big Tobacco’s Tort Reform Project had grown into a sophisticated \$15 million a year campaign. Tort Reform Project Budget, Covington & Burling, October 3, 1995, Document #2041201160 et seq.

THE TOBACCO INDUSTRY HAS DIRECTLY SUPPORTED THE AMERICAN TORT REFORM ASSOCIATION (ATRA) AND LOCAL “TORT REFORM” GROUPS.

- In 1994, the tobacco industry set aside \$100,000 for ATRA to use to help underwrite the activities of the so-called “Citizens Against Lawsuit Abuse” (CALA) groups in California. The industry also set aside \$100,000 for ATRA to use to support 10 Texas CALA groups in 1994. The industry also financially supported coalition efforts in Massachusetts, New Jersey and Louisiana to cover, in part, the fees of ATRA’s public relations consultants, APCO. Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, Philip Morris Files, Document #2025773219.
- A recently uncovered 1995 Lorillard document from the Tobacco Archives notes as an “objective” in California, “Defend the 1987 product liability statute ... and support CALA groups.” Memo dated January 4, 1995, Lorillard Files, Document #91880923/0972.
- In 1992, the Tobacco Institute laid out plans to help set up and fund a Louisiana CALA. The tobacco industry secretly took credit for this when Philip Morris Vice President Craig Fuller reported to his superiors, “The coalition Philip Morris helped organize, Louisiana Citizens Against Lawsuit Abuse, led the effort to defeat all trial-lawyer advocated tort proposals” for the 1992 legislative session. Inter-Office Memo to Michael A. Miles from Craig Fuller, July 8, 1992, Philip Morris Files, Document #2024671832. Fuller was an adviser to President George H.W. Bush, and served as Bush’s Chief of Staff during the Reagan Administration.

- In Alabama, during the first nine months of 1995, the Tobacco Institute's Tort Reform Project allocated \$25,000 to Alabama Voters Against Lawsuit Abuse (AVALA), apparently funneled through Covington & Burling. For the last quarter of 1995, Lorillard, a partner in the Tort Reform Project, approved a payment of \$22,000 for AVALA. October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.; Memo from Peter Marzullo, Lorillard, October 24, 1995, Lorillard Files, Document # 88015851. Lorillard had been a 10 percent partner in the industry's "tort reform" project.
- In Michigan, documents indicate that Michigan Voters Against Lawsuit Abuse received substantial contributions from the tobacco industry's Tort Reform Project throughout its one-and-a-half years of existence. October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.; October 24, 1995, Lorillard Internal Memo, Peter Marzullo.
- In Mississippi, documents indicate that RJR, which had been committed to paying a 35 percent share of the tobacco industry's Tort Reform Project budget, poured more than \$100,00 into Mississippians for a Fair Legal System in 1993, its first year. Lorillard, as a 10 percent partner, paid \$27,500. The industry projected continued support for M-FAIR through 1996, when it budgeted \$300,000 for the group. Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, with attached budget of RJR contributions, Philip Morris Files, Document #2025773219, 2025773225; List of payments, Lorillard Files, Document #91880655-0669; October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.
- The activities of the Massachusetts Coalition for a Fair Legal System (MASS-FAIR), incorporated in 1993, were coordinated by tobacco lobbyist John Murphy. Documents from the Tobacco Archives discuss Murphy coordinating "tort reform" efforts with APCO's Neal Cohen and Covington & Burling's Keith Teel. Letter from John E. Murphy Jr. to Keith A. Teel, July 6, 1993, Lorillard Files, Document #91817407; Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405.
- The New Jersey CALA was formed in 1994 by supporters of "tort reform," including tobacco industry lobbyists. In fact, Big Tobacco's Keith Teel of Covington & Burling wrote in a 1994 memo that "a broad-based grassroots coalition has been established, and in part due to the successful efforts of the industry's lobbyist, Dale Florio, there is legislative and executive branch interest in tort issues." Teel called Florio's loyalty "substantial." Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405. New Jersey CALA operates out of Florio's firm, Princeton Public Affairs Group, one of the top two lobby firms in New Jersey. Richmond, "Senate's Top Democrat Says Votes Are for Sale: Lobbyists With Cash Get Results," *Bergen Record*, February 28, 1997; Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405.