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CIVIL JUSTICE HIGHLIGHTS FROM *THERE ARE NO ACCIDENTS: THE DEADLY RISE OF INJURY AND DISASTER — WHO PROFITS AND WHO PAYS THE PRICE* BY JESSIE SINGER

Accidents in America

- “The accidental death toll in the United States is now over 173,000 people a year, or the equivalent of more than one fully loaded Boeing 747 — 400 falling out of the sky, killing everyone onboard, every day.”¹
- “Accidents happen in America ... at outsize rates compared to our peer countries around the globe.”²

Worker Accidents and Safety

- “In industrial work across the country, labor journalist Christopher Leonard has found that managers often point to ... safety manuals after an accident. Accidents happen largely because owners change the production process, he says — speeding up the assembly line, for example — but the safety manual does not change. The rules become harder to follow when the pace of the operation is accelerated, and thus the work becomes more dangerous.”³
- “Where the primary incentive of a person who owns a slaughterhouse is to process as many animals as possible, for a person who works in a slaughterhouse, there are two different incentives: not getting hurt and not getting fired.”⁴

Spending

“One study of budgets, accidental death, and U.S. cities with a population of 100,000 or more found that ... cities that spent more on roads — correcting dangerous conditions — had a 14 percent lower rate of accidental death than the others.”⁵

Pedestrian Deaths

“Pedestrian deaths are rising — and rising inverse to the deaths of people in cars — because more people are driving larger, more powerful vehicles, such as SUVs, pickup trucks, and minivans. ... One researcher estimated that between 2000 and 2018, if every

SUV, pickup, and minivan on the road were instead a sedan, there would be 8,131 people walking around alive today.”⁶

Regulations, Agency Oversight, and Torts

- “[Ralph Nader] turned the idea that corporations should be formally accountable for accidents into U.S. law. His work led to the creation of wholesale accountability systems in U.S. government.”⁷
- “Government regulations issued and enforced by [government] agencies encourage corporations to take responsibility ... by imposing financial penalties for letting people die by accident. When those regulations fail to prevent an accident, the use of tort law can fill in the gaps, providing financial recourse via legal action for the injured or the families of the dead, and a systemic incentive for corporations to prevent future accidents.”⁸

Accountability is Weakening

- “Roughly every other president for the past forty years has run on a platform of anti-regulatory ideology, and even those who haven’t have done little to protect regulations. The number of people who’ve filed a tort lawsuit has been in steady decline for more than two decades, closely following the decline of the average amount awarded to accident survivors and their families. Even the limited systems of accountability we have are being dismantled, subverted, and overtaken by the corporations they are supposed to hold to account.”⁹
- “It’s not just the cost of complying with a regulation that corporations want to avoid but the legal liability for a broken rule.”¹⁰
- “Regulatory capture and the dismantling of regulations return us all to the early days of the Industrial Revolution, when disaster was blamed on the least powerful — the accident-prone worker, the jaywalker, the criminal addict, the nut behind the wheel.”¹¹
- “Deregulation has a societal cost. Taxpayers pay for the ambulances, health care, and reconstruction of public infrastructure destroyed in the accidents that follow unwatched industries.”¹²

A Strong Civil Justice System Can Make Us Safer

- “Fortunately, as federal regulators grow more and more beholden to the companies they regulate, the civil court system offers another system of accountability.”¹³
- “Tort law provides accountability after an accident, but, more importantly, it gives an incentive to prevent similar accidents in the future. It is a rare form of punishment that reduces accidents, since it holds accountable the powerful people who actually control whether or not accidents happen.”¹⁴

The Tort System is Being Weakened, Increasing Accidents

- “Corporate influence has weakened [the tort] system as much as it has weakened government regulation.”¹⁵
- “[T]oday, people file fewer and fewer tort lawsuits, and more courts seal documents in the cases that do make their way through.”¹⁶
- “Tort reform is a euphemism for an infringement on your right to sue in civil court. The wordplay and the reforms are both crafted by the people who profit from that infringement.”¹⁷
- “[There is] also good reason to believe that tort reforms cause accidents by reducing the threat of lawsuits Of the nine U.S. states that currently cap noneconomic damages — the amount of money that can be recovered for pain and suffering, impairment, and disfigurement — in tort cases related to products or personal injuries, six have a higher than average rate of accidental death compared to the rest of the country. Three are in the top ten states with the highest accident rates in the country.”¹⁸
- “The result of all this is that the cost of accidents is manageable for corporations. When tort reforms cap the amount of money that an accident will cost a corporation, accidents can be built into the cost of business. Then there is no need to fireproof a factory, recall a car, safely bottle a pill, or stop selling an addictive drug — because the accidents that result are expected, and affordable.”¹⁹

The “Tort Reform” Movement

- “In 1986, a few hundred of the largest corporations in the United States, together with the insurance industry, formed the American Tort Reform Association. Twelve years later, the U.S. Chamber of Commerce created its own ‘tort reform’ branch, the Institute for Legal Reform, which is now one of the largest lobbying groups in the country. Around that time, small and seemingly grassroots tort reform groups cropped up, too. But these, too, were funded by corporations — in the guise of tax-exempt advocacy groups that appeared to be organized by average Joes who wanted to limit their own right to sue: Citizens Against Lawsuit Abuse, Stop Lawsuit Abuse, Lawsuit Abuse Watch, People for a FAIR Legal System. All of these were actually founded and funded by corporations seeking to protect themselves from accountability for accidents. Together these organizations have pushed a raft of laws across the United States that limit people’s ability to hold corporations accountable.”²⁰
- “The Product Liability Act and the Ten-Year Statute of Repose Act are just two examples of what the American Legislative Exchange Council (ALEC) calls ‘model legislation’ — namely, laws it writes or promotes Mad Libs–style for any lawmaker to drop into their state, many of them aimed at limiting your ability to sue corporations in case of accidental harm. One — the Comparative Fault Act — frees a corporation from liability for an accident and prevents people from suing if the corporation is 49 percent

responsible or less. Others — such as the Noneconomic Damage Awards Act and the Full and Fair Noneconomic Damages Act, notably deceptive names — limit the amounts that juries can award and the amounts that a corporation can be made to pay for pain, hardship, and diminished quality of life after an accident. ALEC has a wealth of these laws waiting for the right lawmaker. The bills are introduced regularly in statehouses across the country, often verbatim as ALEC wrote them, and, what’s worse, they pass at a higher rate than does most legislation. With these restrictions, tort law cases have been decreasing for twenty years. But one area of tort has been exempt from this decline: contract disputes — people being sued for having debt, being foreclosed on, or not being able to pay rent.”²¹

- “It’s an area of tort law that Joanne Doroshow, the lawyer behind the Center for Justice & Democracy, the nation’s first and only consumer organization dedicated to fighting tort reform, refers to as ‘going after the little guy.’ ‘Very, very few people who are hurt accidentally ever go to court,’ Doroshow tells me. ‘If you look at the statistics, tort lawsuits have been dropping like a rock for a long time. The only real increases you see are debt collections by banks and big companies.’ The decline in tort lawsuits against corporations has been aided by effective rhetoric around tort lawsuits — such as the phrase ‘litigious society.’ Doroshow explains that the litigious society is a myth invented by corporations to protect corporations. Much of the support for tort reform is a response to this rhetoric — clever marketing by the most often sued corporations. The rhetoric has trickled into our discourse in the form of a wealth of mocking euphemisms for enacting your right to justice: ‘free money,’ ‘frivolous lawsuit,’ ‘ambulance chaser.’ And all of this is a victory for the corporations.”²²

Medical Malpractice, “Tort Reform,” and Safety

“[A] study in the *New England Journal of Medicine* found that the passage of tort reform in three states did not affect the number of medical tests ordered or hospital admissions in those states. In Missouri, the opposite of tort reformers’ predictions proved true. An increase in medical accidents — misdiagnoses, mis-dosed medication, injuries sustained under doctors’ care — followed a tort reform cap on financial damages in medical malpractice. The Missouri Foundation for Health reported on the real result of the laws in 2012: ‘The only clear impact has been a drop in the number of claims and lawsuits made, and a more profitable malpractice insurance industry.’ The success of tort reform is especially hazardous to society because it curtails a tort system that, in creating accountability, has proven highly effective at preventing deadly accidents. In the 1980s, accidental deaths caused by poor anesthesiology practices led to a handful of major tort lawsuits. These prompted reform: better machines, monitoring, and training, and quotas for how much time off anesthesiologists needed between shifts. Within a decade, the number of people accidentally killed by anesthesia fell from one in 6,000 patients per year to one in 200,000.”²³

Solutions

- “There are large and specific steps that we can take to end the accident epidemic in America. We can repeal every tort reform law and every rule requiring cost-benefit analyses of regulations.”²⁴
- “Blame is a food chain. Always look to the top. Who has the most power? Who can have the greatest effect? The answer is very rarely the person closest to the accident — the reckless driver, or the pilot who pulled up when he should have pulled down, or the power plant operator who fell asleep on the job. People who blame individuals for accidents and crimes are almost always drawing attention away from the systems that allowed the death and injury, and the vast potential for prevention.”²⁵
- “Accidents are not a design problem — we know how to design the built environment to prevent death and injury in accidents. And accidents are not a regulatory problem — we know the regulations that will reduce the accidental death toll. Rather, accidents are a political and social problem. To prevent them, we only need the will to redesign our systems, the courage to confront our worst inclinations, and the strength to rein in the powerful who allow accidents to happen.”²⁶

NOTES

¹ Jessie Singer, *There Are No Accidents: The Deadly Rise of Injury and Disaster —Who Profits and Who Pays the Price*. Simon & Schuster, February 2020, at 1.

² *Id.* at 253.

³ *Id.* at 31.

⁴ *Id.* at 34.

⁵ *Id.* at 188.

⁶ *Id.* at 206.

⁷ *Id.* at 223.

⁸ *Id.* at 223.

⁹ *Id.* at 234.

¹⁰ *Id.* at 234.

¹¹ *Id.* at 234.

¹² *Id.* at 234.

¹³ *Id.* at 234.

¹⁴ *Id.* at 235.

¹⁵ *Id.* at 235.

¹⁶ *Id.* at 235.

¹⁷ *Id.* at 235.

¹⁸ *Id.* at 240.

¹⁹ *Id.* at 240.

²⁰ *Id.* at 235.

²¹ *Id.* at 237.

²² *Id.* at 237-8.

²³ *Id.* at 239.

²⁴ *Id.* at 253.

²⁵ *Id.* at 255.

²⁶ *Id.* at 250.