

Corporate wolves in victims' clothing

To most tort 'reform' advocates, the only good lawsuit is the one they file, the only injuries that deserve compensation are theirs, and damages paid to them (but only to them) should be unlimited. The right dose of ridicule can expose these hypocrites for what they are.

JUSTINIAN LANE

Trial lawyers are always telling stories about victims. They speak of grieving parents forced to stand over the graves of children killed by defective products. They talk of once-strong men and women who can no longer support their families because of on-the-job accidents. They even tell the stories of infants whose futures were stolen during their birth by negligent doctors. But in all these accounts, they've forgotten different group of victims: the victims of our justice system.

These are men like Maurice "Hank" Greenberg, the former chairman of American International Group, Inc. It took Greenberg nearly 30 years to build a multibillion-dollar fortune. Throughout those years, Greenberg was constantly victimized by a civil justice system that forced his company to pay the medical bills of individuals injured by those he insured.

As if that weren't enough, Eliot Spitzer, the New York attorney general, alleged that Greenberg made his billions through illegal business practices. Thanks to Spitzer, Greenberg was kicked out of the company he built and was ordered to transfer over \$2 billion in assets to his wife's name.¹ Is it any wonder that Greenberg has accused trial lawyers of being "terrorists" that must be stopped at any cost?²

Or consider Bernie Marcus, the self-made billionaire who founded Home Depot. In 2004, he wrote an op-ed article accusing trial lawyers of slowing the economy and scaring people away from giving to charities. That same year, Home Depot boasted record profits of over \$1.5 billion, and the next year, Marcus personally gave over \$200 million to various charities.³ It's easy to see how trial lawyers hurt Home Depot, our nation's charitable organizations, and Bernie Marcus.

And let us not forget courageous Texas Attorney General Greg Abbott, who was confined to a wheelchair after a tree fell on him while he was jogging. Despite his horrific injuries, Abbott rode his wheelchair to victory in his campaign for attorney general against a well-funded candidate whom he described as a "liberal plaintiff personal-injury trial lawyer who's made millions suing doctors, hospitals, businessmen and women."⁴

During Abbott's campaign, the scoundrels of the Texas Trial Lawyers Association accused him of being a hypocrite. What supposed act of hypocrisy did he commit? Merely advocating a \$250,000 cap on noneconomic damages shortly after receiving millions of dollars in noneconomic damages from his own accident.⁵

Wait, I know what you're thinking: Greenberg, Marcus, and Abbott aren't victims of the justice system. They're rich, powerful, and (until recently in Greenberg's case) admired men who benefited from America's robust justice system. Their wealth and station in life leave them wanting little. So how have they managed to persuade the American public that they deserve to be helped, and that average citizens who were injured through no fault of their own deserve to be scorned?

They've done it by tugging at purse strings, not heartstrings.

Trial lawyers crusade against tort "reform" because it will endanger the public. Tort "reform" advocates promise the opposite: that changes to the civil justice system will enrich the public. Call it greed, selfishness, or self-interest, but many Americans today care more about protecting their pocketbooks than protecting society.

And the average American doesn't believe that trial lawyers really care about safety, society, or their clients. Thanks to a multiple-decade onslaught of propaganda by the "reformers," most Americans believe trial lawyers have a "Show me the money!" mentality that would embarrass even Donald Trump, who recently filed a lawsuit asking for \$2.5 billion in punitive damages against



the author and publisher of a book that questioned whether Trump is really a billionaire.⁶

Save justice to save money

The way to beat the tort “reformers” in winning the hearts and minds of the American public is to beat them at their own game: by making economic arguments in favor of preserving the justice system. This tactic works for two reasons. First, our culture is far more individualistic than collectivist; we’re raised to look out for ourselves, not for others. Arguments about the legal system protecting the public often fall on deaf ears because Americans don’t see themselves as victims.

Second, public safety arguments, at least in part, ask people to believe something they don’t want to—that big corporations knowingly develop and mar-

ket dangerously defective products. No one wants to believe that corporate America will let consumers die just to make a buck.

It’s exceedingly difficult to get people to believe something they don’t want to believe, even if the facts are on your side. One example of this is that, depending on which survey you consult, between 10 percent and 25 percent of Americans believe we really did find weapons of mass destruction in Iraq.⁷

While Americans generally feel they’re invincible and unlikely to be hurt by an accident or a defective product, there is one thing that scares them—the prospect of being ripped off. From shady car dealers to price-gouging oil companies, many people believe that someone or something lurks around every corner just waiting to steal their money.

What they haven’t realized yet is that

this fear makes sense when it comes to tort “reform”: The effort to engineer the civil justice system to benefit big corporations and their wealthy CEOs constitutes an enormous scam that will *increase* the cost of health insurance and *reduce* access to medical care. Worse yet, tort “reform” may have to be paid for by tax increases or cuts in entitlement benefits.

How do you persuade the public of this? By destroying the most duplicitous argument tort “reformers” use—that “reform” measures will still protect the truly injured and won’t place any limits on economic damages.

To sell that lie, tort “reformers” use words like “fair,” “just,” “reasonable,” and “common sense.” Trial lawyers know that most members of the American Tort Reform Association (ATRA) would like nothing better than to make sure their corporate masters never have to pay a dime to an injured consumer ever again, a result that is hardly fair or just. The Holy Grail of ATRA and its many members is national legislation that bars products liability lawsuits involving any product approved by a federal regulatory agency, such as the National Highway Traffic Safety Administration (NHTSA) or the FDA.

A strong proponent of this exemption is DaimlerChrysler Associate General Counsel Steven Hantler. If his name sounds familiar, it might be because, under his direction, Chrysler spent over \$250,000 to defend an \$8,700 case—and then claimed that its constitutional right to due process was violated because it had to pay almost \$150,000 in attorney fees to the prevailing party.⁸ (Apparently the “loser pays” rule is fair only if you’re the winner.)

Hantler has also been known to sue plaintiff attorneys for myriad reasons, including fraud. As Hantler says, “We want to make plaintiff lawyers think twice before bringing a meritless case against us.”⁹

In his view, any products liability case

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is “meritless” if the product in question was approved by a federal regulatory agency. Since all of DaimlerChrysler’s products are approved by NHTSA, the legislation Hantler fights for would ensure that his company is never again sued for making a defective automobile.

Hantler and others who support such legislation hope to convince the public that the king’s-ransom salaries “earned” by corporate executives aren’t passed on to consumers in the form of higher prices, but that the costs of the tort sys-

tem are forced to raise premiums to make up the difference. If the injured person doesn’t have insurance and can’t afford to pay the bills, then the doctors and hospitals that treated him or her have to eat the cost, which forces them to raise *their* prices to make up the difference. And if the injured consumer is on Medicaid, Michigan taxpayers pick up the tab.

Engler’s legislation has been so deleterious to the health of Michigan’s economy that several staunchly conservative Republican state legislators are breaking

never has to defend another products liability lawsuit and never has to reimburse taxpayers for the billions of dollars in medical bills its products generate.

Stop the charlatans

Clearly, something must be done to prevent the charlatans behind the tort “reform” movement from passing national legislation.

Fortunately, there are ways to do this. Thanks to the cheats, liars, and crooks at companies like Enron, WorldCom, and Arthur Andersen, Americans are more distrustful than ever of corporate executives. These are the same cheats, liars, and crooks who tell the public that tort “reform” is good for them.

When some corporate mouthpiece like ATRA’s Sherman Joyce claims that lawsuits are slowing the economy, point out that last year, the CEOs of the Fortune 500 took home over \$5.1 billion—an increase of more than 30 percent from 2004.¹² If the economy were really being hurt by lawsuits, could corporations afford such generous pay raises for their CEOs?

When a politician in the pocket of the insurance industry accuses trial lawyers of creating a poor business climate in your state, respond by pointing out that such irresponsible fearmongering scares off new businesses and discourages existing businesses from expanding. Then charge those politicians with using trial lawyers as an easy target, rather than tackling the real problems facing businesses in your state, like an unfair tax climate, or oppressive insurance rates, or any other issue your state’s Chamber of Commerce is concerned about. Think how much fun it will be forcing the Chamber of Commerce to decide how to deal with pro-business trial lawyers.

And the next time someone brings up Stella Liebeck and the McDonald’s coffee case, ask why a \$2 million lawsuit over third-degree burns to a woman’s genitals is frivolous, but a \$5 billion lawsuit over Donald Trump’s ego isn’t.

When he or she agrees with you that Trump’s suit is the epitome of a frivolous lawsuit, go on to explain that tort “reform” won’t prevent Trump from col-

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tem are. While they rarely say it directly, “reformers” strongly imply that passing tort “reform” will save the public money.

A free lunch for corporations

The “reformers” economic argument can be easily refuted by a basic economic principle: “There’s no such thing as a free lunch.” All costs are paid by someone.

A relevant example is what’s happening today in Michigan. Before leaving office, former Republican Gov. John Engler signed a bill that prevents citizens of the state from suing pharmaceutical companies over injuries caused by any FDA-approved drug. That means the thousands of Michigan citizens injured or killed by Vioxx, Zyprexa, or any other approved drug can’t sue to recover even their medical bills. (So much for the lie that “reformers” don’t want to cap economic damages.)

While Engler made the rights of injured consumers disappear, neither he nor anyone else can vaporize the costs incurred by these injuries. So who pays, if not the manufacturers who caused them?

If the injured consumer has medical insurance, his or her insurer covers those costs—and without subrogation, insur-

rank and joining with Democratic legislators to try to repeal this probably unconstitutional law.¹⁰

If Hantler and his friends at ATRA have their way, corporate executives in every federally regulated industry will receive a “free” steak-and-martini lunch paid for by American taxpayers. And now, as if it isn’t bad enough that the pharmaceutical companies and manufacturing industries (by the way, the National Association of Manufacturers is now run by John Engler) are pushing for legislation that would shield them from products liability lawsuits, the great-granddaddy of all special-interest groups will soon join them: big tobacco.

Altria, the parent company of cigarette maker Philip Morris, desperately wants cigarettes to be regulated by the FDA. In their own words, “Altria and Philip Morris USA (PM USA) strongly support the passage of legislation that would give the U.S. Food and Drug Administration meaningful and effective authority to regulate tobacco products.”¹¹

While the merits of such a law are debatable, one thing isn’t: If it passes, the tobacco industry will spend whatever it takes to pass the government-approved-product exemption that ATRA wants. Together, those two pieces of legislation would ensure that the tobacco industry

lecting \$2.5 billion in punitive damages, because "reform" measures never focus on capping damages in financial injury cases, which are generally filed by the rich and the powerful. Instead, tort "reform" applies only to personal injury cases, which are generally filed against the rich and the powerful. By using clear and concise economic arguments, people who care about civil justice can convey the message that tort "reform" is a series of un-American changes to tort law that protect the rich and punish the poor.

People often ask me why I spend my time and money running the Web site Corpreform.com when I'm neither a lawyer nor on a lawyer's payroll. I tell them it's because the thing I hate most in the world is hypocrisy, and no special interest group has more hypocrites in it than ATRA.

I truly believe that the only way to expose these hypocrites and win the war for our justice system is to challenge them relentlessly, on every issue and in every forum. The brave men and wo-

men who fight for consumer rights have no choice if they want to take our court system back. ■

Notes

1. Stephen Taub, *Greenberg Shifts \$2.2B of Shares to Wife*, CFO.COM: TODAYIN FINANCE, Apr. 13, 2005, available at www.cfo.com/article.cfm/3860319/c_3860989?f=TodayInFinance_Inside (last visited May 22, 2006).
2. Tim McLaughlin, *Lawyers Demand Apology for "Terrorists" Remark*, REUTERS, Feb. 25, 2004, available at www.forbes.com/reuters/newswire/2004/02/25/rtr1276264.html (last visited May 22, 2006).
3. Press Release, The Home Depot, The Home Depot Continues Strong Performance and Announces Record Second Quarter Results (Aug. 17, 2004), available at <http://ir.homedepot.com/releaseDetail.cfm?ReleaseID=141762&ShSect=E> (last visited May 22, 2006).
4. Andrew Wheat, *Stop Lawsuit Abuse—Or I'll Sue*, TEXAS OBSERVER, Oct. 25, 2002, available at www.texasobserver.org/showArticle.asp?ArticleID=1121 (last visited May 22, 2006).
5. *News Top 10s: Top Ten State Election Moments*, AUSTIN CHRON., Jan. 3, 2003, available at www.austinchronicle.com/issues/dispatch/2003-01-03/pols_roundup7.html (last visited May 22, 2006).
6. Greg Levine, *Trump Sues over Bio Book;*

Launches Travel Web Site, FORBES.COM, Jan. 24, 2006, available at www.forbes.com/2006/01/24/trump-lawsuit-travel-cx_gl_0124autofacescan11.html (last visited May 22, 2006).

7. Ruy Teixeira, *Public Opinion Watch: The Iraq War, Three Years On*, THE CENTURY FOUNDATION, Mar. 22, 2006, available at www.tcf.org/list.asp?type=NC&pubid=1249. See also Jim Lobe, *The World According to a Bush Voter*, ALTERNET, Oct. 21, 2004, available at www.alternet.org/waroniraq/20263 (both last visited May 22, 2006).

8. Matt Fleischer-Black, *Fighting Against Big Tort Awards in Court and Beyond*, AM. LAWYER, Dec. 28, 2005, available at www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1135677909856 (last visited May 22, 2006).

9. *Id.*

10. Alicia Mundy, *Pillboxed In*, WASH. MONTHLY, Oct. 1, 2003, available at www.newamerica.net/index.cfm?pg=article&DocID=1380 (last visited May 22, 2006).

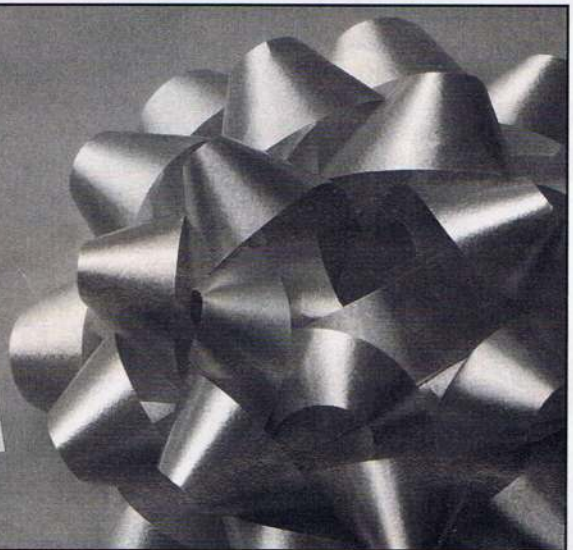
11. PHILIP MORRIS USA: FDA REGULATION OF TOBACCO PRODUCTS (May 3, 2006), available at http://pmusa.com/en/policies_practices/legislation_regulation/fda_tobacco.asp (last visited May 22, 2006).

12. Scott DeCarlo, Ed., *Special Report: CEO Compensation*, FORBES.COM, Apr. 21, 2005, available at www.forbes.com/2005/04/20/05ceoland.html (last visited May 22, 2006).

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