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Andy Rooney
60 Minutes
524 West 57th St.
New York, NY 10019

VIA FACSIMILE 212/757-6975

Dear Mr. Rooney,

Re: "I'm Going to Sue"

The Center for Justice & Democracy is a national consumer group that works to educate the public about the civil courts and the importance of our civil justice system. We are not associated with any trial lawyer or business group.

Consumer groups in D.C. and around the country are attempting to fight a mammoth, multi-million-dollar corporate PR and lobbying effort to weaken this system and limit liability for corporate misconduct. Part of their effort is to focus attention on a few rare, anecdotal cases, usually gimmicky descriptions of cases intended to shock or amuse the public. By trying to convince the public that these cases are the norm, instead of the majority of cases that pass through the courts each year, they have been successful at getting laws passed that immunize corporate wrongdoers from being held accountable in court.

We cannot come close to competing financially with this corporate effort. All we can do is try to correct the record when we see stories that feed into a false and dangerous perception that the system is overflowing with frivolous lawsuits. This is not always easy when, as in your piece, cases are often not cited by name or even by date so they can be checked for accuracy. Our experience has been that when journalists or researchers do track them down, they find in virtually every situation that such cases have been misreported and misused.

So please let me try to respond to some of the points that you raised in your last commentary on *60 Minutes*.

1. "Suing has become a popular American pastime."

The facts are the exact opposite. According to the Rand Corporation, only 10 percent of injured Americans even file a claim for compensation, which includes informal demands and insurance claims. *Only two percent file lawsuits.* Rand Institute for Civil Justice, *Compensation for*

Accidental Injuries in the United States (1991). Moreover, the number of personal injury lawsuits is steadily dropping, while contract suits (often businesses suing businesses) are on the rise. Tort suit filings have dropped 18 percent since 1996; contract suit filings went up 12 percent between 1996 and 1999. *Examining the Work of State Courts, 1999-2000; A National Perspective from the Court Statistics Project* (2001), p. 25. (The Court Statistics Project is a joint project of the National Center for State Courts, the State Justice Institute and the Bureau of Justice Statistics of the Department of Justice.)

2. “A jury in Los Angeles awarded \$28 billion to a woman who has lung cancer and says it’s because the Philip Morris Tobacco Company talked her into smoking with their advertising.”

If that were all the jury was asked to examine, this woman might have been thrown out of court. But it’s not. Only very recently have tobacco companies started losing these kinds of cases (they’ve been brought since the 1980s) and it is for one reason - because recent litigation by state governments against tobacco companies forced the release of tens of thousands of previously secret documents showing for the first time that, for decades, the tobacco industry promoted addiction through manipulation of nicotine levels, engaged in a secret campaign to hook teens and even pre-teens, and lied to government officials and to the public. As former Minnesota Attorney General Hubert H. Humphrey put it, “This outlaw industry marketed to kids to hook them on nicotine, manipulated nicotine to keep smokers hooked, and then used corporate welfare to stifle products that helped smokers break their addictions.” Juries are responding to this evidence by trying, for the first time, to hold the tobacco industry accountable for engaging in these activities and then killing over 400,000 Americans each year. The tobacco industry is arguably the worst corporate offender of any industry in this past century. It is responsible for the biggest public health disaster of our time. That said, I am sure this verdict will be greatly reduced on appeal, as large verdicts always are.

3. “Stella Liebeck —she was the woman who spilled coffee in her lap in a car and got big bucks when she sued McDonald’s because the coffee was too hot.”

Yes, Stella Liebeck, 79 years old, spilled coffee on her lap and received third-degree burns over 16 percent of her body, necessitating hospitalization for eight days, whirlpool treatment for debridement of her wounds, skin grafting, scarring, and was disabled for more than two years. Despite receiving these extensive injuries, Liebeck offered to settle with McDonald’s for only \$20,000. However, McDonald’s refused to settle. The jury awarded Liebeck \$200,000 in compensatory damages —reduced to \$160,000 because the jury found her 20 percent at fault — and \$2.7 million in punitive damages for McDonald’s callous conduct. To put this in perspective, McDonald’s revenue from coffee sales alone is in excess of \$1.3 million a day. The trial judge reduced the punitive damages to \$480,000. Subsequently, the parties entered a post-verdict settlement for an even smaller amount.

The jury heard the following among other things about McDonald’s conduct: by corporate specifications, McDonald’s sold its coffee at superheated temperatures, about 180 to 190 degrees Fahrenheit; coffee at that temperature, if spilled, causes third-degree burns (the skin is burned away down to the muscle/fatty-tissue layer) in two to seven seconds; McDonald’s admitted that it has known about the risk of serious burns from its scalding hot coffee for more than 10 years

— the risk was brought to its attention through numerous other claims and suits, to no avail; from 1982 to 1992, McDonald’s coffee burned more than 700 people, many receiving severe burns to the genital area, perineum, inner thighs, and buttocks; and not only men and women, but also children and infants, had been burned by McDonald’s scalding hot coffee, in some instances due to inadvertent spillage by McDonald’s employees.

4. “Kellogg’s and Black & Decker got sued by a New Jersey couple who put one of Kellogg’s Pop-Tarts in the toaster and then left the house.”

I cannot comment on the facts of this case because when Kellogg’s and Black & Decker settled it, they insisted that the victim sign a gag order so no one but the companies are allowed to speak about it. (The problem of corporations forcing victims to sign confidential settlements, so that the public and government agencies do not learn about product hazards, is very serious and certainly worthy of a commentary.) The only public version of the facts therefore comes from the companies themselves. That said, these products have a history of catching fire in toasters. That is a highly unacceptable risk, particularly with children in the house. Moreover, one’s home is not supposed to burn down as a result leaving something in a toaster.

5. “The same with ladders. It costs a company almost as much for insurance as it costs them to make the ladders”

This is absurd. Products liability insurance costs, per \$100 of a retail product, are only about 16¢ — a tiny fraction equaling less than 2/10 of 1 percent of the product’s cost. Adjusted for inflation, these products liability insurance costs have fallen about 75% over the last decade. These statistics were compiled by the Consumer Federation of America based on data collected by the National Association of Insurance Commissioners (NAIC).

Moreover, the 2001 Ernst & Young and Risk & Insurance Management Society’s annual survey of business liability costs found that annual insurance and claims costs for U.S. businesses, including property damage, workers’ compensation and all other premium and claim costs, to be miniscule and the lowest in more than a decade — only \$4.83 for every \$1000 in revenue in 2000. *2001 RIMS Benchmark Survey, Produced jointly by Ernst & Young LLP and RIMS, 2001.*

6. “Doctors are leaving Pennsylvania because they've been sued so much there.”

No. Doctors *say* they are leaving virtually every state in the nation (who knows where they’re going) because their insurance rates are too high. In fact, insurers are price-gouging policyholders all over the country, in most lines of insurance, because they are in what’s known as the “hard market” part of their underwriting cycle, after suffering investment losses following years of underpricing. In fact, these kinds of market-driven volcanic eruptions in insurance premiums have occurred three times in the last 30 years. The cause is always the same: a drop in investment income for insurers compounded by severe underpricing in prior years. This has been documented over and over again by insurance analysts and by a cover story in the June 24, 2002, *Wall St. Journal*. Each time, insurers have tried to cover up their mismanaged underwriting by blaming jury awards. Under this theory, one would have to believe that juries engineered high awards to precisely coincide with the insurance industry’s economic cycle. In other words,

one would have to accept the notion that juries engineered high awards in the mid 1970s, then stopped for a decade, then engineered high awards in the mid-1980s, stopped for 17 years and are now engineering high awards again. This is ludicrous. And it's not true. There is a wealth of information about this on the web site of Americans for Insurance Reform, <http://insurance-reform.org>. Please visit this site when you get a chance.

7. "If someone is killed when his car turns over going around a curve at 90 miles an hour, his family sues the car manufacturer or the company that made the tires."

I don't know what you mean by this, that is, a car going 90 miles an hour around a curve and then the family sues. If you are talking about the Ford/Firestone cases, 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. Civil lawsuits are the only reason any action was ultimately taken to get these lethal tires and vehicles off the road.

8. "If he hits a telephone pole, they sue the telephone company."

I think you are probably referring to the case of Charles Bigbee, which was the "McDonald's coffee case" of the 1980s. Ronald Reagan described Bigbee's case in a 1986 speech as follows: "In California, a man was using a public telephone booth to place a call. An alleged drunk driver careened down the street, lost control of his car, and crashed into a phone booth. Now, it's no surprise that the injured man sued. But you might be startled to hear whom he sued: the telephone company and associated firms!" The true facts are these: Bigbee's leg was severed after a car hit the phone booth in which he had been trapped. The door jammed after he saw the car coming — he tried to flee but could not. The accident left him unable to walk, severely depressed and unable to work. He has since died. Because the phone company had placed the booth near a known hazardous intersection, and because the door was defective, keeping him trapped inside, he sued the phone company for compensation. It was never established that the driver was drunk.

9. "The wife of a man who was murdered sued the company that made the gun."

You are probably referring to a Brady Center to Prevent Gun Violence case. Here's what they said about it in a May 2002 press release:

"The widow of schoolteacher Barry Grunow has won an important victory in her lawsuit against the distributor that supplied the semi-automatic pistol used by seventh-grader Nathaniel Brazill to shoot and kill Mr. Grunow in his classroom in Lake Worth, Florida in May 2000. Pamela Grunow is seeking to hold the distributor, Valor Corporation, responsible for selling an unreasonably dangerous and defective product. Allen Rostron, attorney for the Legal Action Project of the Brady Center to Prevent Gun Violence, which serves as co-counsel for the Grunow

family, said, ‘Guns can be made to protect against their unauthorized use by children and teenagers. These businesses have a responsibility to take reasonable steps to prevent the products they sell from being used to cause harm.’”

10. “I’d split the billions I’d collect 90 percent — 10 percent with the trial lawyer. He’d get 90 percent — I’d get 10.”

I know it’s popular to poke fun at lawyers and their fees. But any implication that this kind of contingency fee is within the range of customary practice for lawyers is entirely false and does great disservice to the debate over the contingency fee system. In a carefully-designed, systematic study of contingency practices in this country, Professor Herbert M. Kritzer found that “a contingency fee of 33% was by far the most common, accounting for 92% of those cases. Five percent of the cases called for fees of 25% or less, 2% specified fees around 30%, and *only 1% specified fees exceeded 33%.*” Kritzer, “The Wages Of Risk: The Returns Of Contingency Fee Legal practice,” 47 *DePaul L. Rev.* 267 (Winter 1998)(emphasis added).

Finally, our interest in this issue is this. Society benefits in countless ways as a result of lawsuits: they prevent future injuries by removing dangerous products and practices from the marketplace and spurring safety innovation; they educate the public about unnecessary and unacceptable risks associated with some products and services through disclosure of facts discovered during trial; and they provide authoritative judicial forums for the ethical growth of law where the responsibility of perpetrators of trauma and disease can be established.

Your commentary did a disservice to the debate over the importance of the civil justice system. We hope you will consider doing a future commentary that explains how we all benefit from those who do pursue their cases in court.

Sincerely,

Joanne Doroshow
Executive Director