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NOT IN MY BACKYARD –

HYPOCRITES OF "TORT REFORM"

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INTRODUCTION

No one likes a hypocrite. Yet one would be hard pressed to find more hypocrites than in the "tort reform" movement. Take a look at the record of a host of lawmakers, lobbyists and even journalists who complain about lawsuits and argue that the rights of injured consumers to go to court should be scaled back because we are too "litigious." Yet when they or family members are hurt and need compensation for their own injuries, often minor ones, these same individuals do not hesitate to use the courts to obtain compensation, to right a wrong, to hold a wrongdoer accountable or to obtain justice. The same is true for corporations that have funded the "tort reform" movement. These companies support efforts to immunize themselves from liability for harming consumers. But when these same companies believe they have been wronged by a business competitor, they are the first to sue.

In this report we take a look at the cases of several proponents of tort restrictions who do not "practice what they preach." We examine individuals who have sued sometimes for millions of dollars while at the same time championing damage caps and other severe liability restrictions for others. We also look at corporate litigants who have lent financial or other support to groups like the American Tort Reform Association (ATRA), the Manhattan Institute and state business coalitions like New Yorkers for Civil Justice Reform (NYCJR).[1] *Notably, tort restrictions advocated by these organizations virtually never limit the rights of corporations to sue business competitors for commercial losses.* This list is by no means exhaustive but merely representative of businesses and other "tort reformers" who say one thing but do another when it comes to the civil justice system.

INDIVIDUAL HYPOCRITES

George W. Bush

As Texas Governor, George W. Bush was one of the "tort reform" movement's biggest proponents. One of Bush's first acts as governor in 1995 was to meet with representatives of nine Texas Citizens Against Lawsuit Abuse (CALA) chapters in a salsa factory outside of Austin, after which he declared a legislative "emergency" on "frivolous lawsuits." Over his two terms, Bush signed a series of brutal bills that severely reduced injured consumers' rights to go to court.

However, when it comes to solving problems involving his own family, Bush heads straight to court. In 1999, Bush sued Enterprise Rent-A-Car over a minor fender-bender involving one of his daughters in which no one was hurt. Although his insurance would have covered the repair costs making a lawsuit unnecessary, Bush sought additional money from Enterprise, which had rented a car to someone with a suspended license. In this case, Bush seemed to understand one of the most important functions of civil lawsuits — to deter further wrongdoing. The case settled for $2,000 to $2,500.[2]

"In 1999, [George W.] Bush sued Enterprise Rent-A-Car over a minor fender-bender involving one of his daughters in which no one was hurt."

ABC News Correspondent John Stossel

As *20/20* viewers know, there are few things that irk John Stossel more than people who file lawsuits. "We all have pain and suffering in our lives. And if each time we hang onto it until we get some kind of compensation, society can't work," he says.[3] When speaking before corporate-funded groups such as the Cato and Manhattan Institutes, organizations whose members advocate severely restricting the ability of injured consumers to sue companies for their injuries, he can barely contain his contempt for those who file lawsuits and the attorneys who represent them.[4]

But what did John Stossel do when a pro wrestler hit him in 1986 after Stossel implied pro wrestling was fake? He sued. And in settling his lawsuit, Stossel reportedly accepted $200,000 for his pain and suffering.[5]

U.S. Senator Rick Santorum (R-Pa.)

As a United States Senator, Rick Santorum has repeatedly supported limits on consumers' rights to seek compensation in the courts. In 1994, Santorum sponsored the Comprehensive Family Health Access and Savings Act that would have capped non-economic damages at $250,000.[6] In a 1995 floor speech supporting damages caps, Santorum said, "We have a much too costly legal system. It is one that makes us uncompetitive and inefficient, and one that is not fair to society as a whole. While we may have people, individuals, who hit the jackpot and win the lottery in some cases, that is not exactly what our legal system should be designed to do."[7]

"At trial, [Senator Santorum] testified that his wife should be compensated for the pain and suffering caused by a botched spine adjustment, claiming that she had to 'treat her back gingerly' and could no longer accompany him on the campaign trail."

But the same rhetoric does not seem to apply to Senator Santorum. In December 1999 Santorum supported his wife's medical malpractice lawsuit against her chiropractor for $500,000.[8] At trial, the Senator testified that his wife should be compensated for the pain and suffering caused by a botched spine adjustment, claiming that she had to "treat her back gingerly"[9] and could no longer accompany him on the campaign trail. After the verdict, Santorum refused to answer phone calls asking what impact the case had on his views of "tort reform."[10] According to his spokesman Robert Traynham, "Senator Santorum is of the belief that the verdict decided upon by the jury during last week's court case of his wife is strictly a private matter. The legislative positions that Senator Santorum has taken on tort reform and health care have been consistent with the case involving Mrs. Santorum."[11] In January 2000, a judge set aside the $350,000 verdict, deeming it excessive, and offered a reduced award of $175,000 or a new trial on damages only.[12]

Alaska State Representative Mark Hodgins

Alaska's Republican Assemblyman Mark Hodgins was a proponent of a severe "tort reform" package, including caps on damages, that was enacted in Alaska in 1997. Yet on two separate occasions — once in 1989 and again in 1994 — Hodgins filed "loss of comfort, care and consortium" claims against the families of teenage drivers who struck his wife's car. The 1989 lawsuit settled out of court. The outcome of the 1994 suit, filed two years after the accident, is unknown.[13]

"Lawsuit Abuse" Group Founder and Trustee, Sterling Cornelius

Sterling Cornelius, owner of Cornelius Nurseries and Turkey Creek Farms in Houston and a trustee of the corporate front-group, Citizens Against Lawsuit Abuse (CALA), is one of the most vocal businessmen complaining about lawsuits and advocating tort restrictions in Texas. With the help and support of the Texas CALA group, Texas enacted a series of "tort reforms" in 1995, including caps on punitive damages and severe restrictions on lawsuits filed under Texas' Deceptive Trade Practices Act.[14]

"In 1993, when [Florida State Representative Art] Argenio was injured by a driver who hit him as he jogged along the street, what did he do? He sued the driver, of course."

But in 1993, Sterling filed a $100 million lawsuit against DuPont, claiming that its fungicide, Benlate, damaged his companies' crop and nursery. Among the damages Cornelius sought were $75.3 million in punitive damages under the Deceptive Trade Practices Act as well as additional punitive damages. Because his lawsuit was filed before enactment of the 1995 legislation, his lawsuit was not affected by the "tort reforms" that passed.[15]

Florida State Representative Art Argenio

Republican Representative Art Argenio in Florida has been one of the state's most outspoken supporters of restricting the rights of injured Floridians to go to court, calling himself "a leader" in this movement. But in 1993, when Argenio was injured by a driver who hit him as he jogged along the street, what did he do? He sued the driver, of course. Moreover, campaign literature distributed by Argenio's opponent noted that he filed suit even though his insurance company had paid all his medical bills. Argenio, it seems, wanted more money to compensate him for what he said were "severe and permanent injuries" — *i.e.*, noneconomic damages, the kind of injuries "tort reform" proponents continuously rail against. The case ultimately settled. The compensation he received must have helped him recover. Three years after the accident, Argenio ran in a marathon.[16]

Florida State Representative Mark Flanagan

As a member of the House Civil Justice and Claims Committee, Mark Flanagan was a major force behind severe tort restrictions that were enacted in Florida in 1999, sponsoring and co-sponsoring bills that protect manufacturers of defective products, while calling Florida "the most litigious society in the world."

But it was a different story when his own daughter fell from a daycare center's jungle gym and broke her leg in 1995. Flanagan sued both the day care center and the manufacturer of the jungle gym, alleging that the manufacturer "negligently and carelessly designed" the apparatus and that the preschool failed to properly supervise his daughter. Like many injured victims whose rights Flanagan's legislation decimates, the lawsuit alleged that his daughter suffered from "severe pain" and "lost the capacity to enjoy life." After 18 months of litigation — and two months before his bid for re-election — Flanagan settled for an undisclosed amount.[17]

"[A]t the time [Texas 'tort reform'] legislation passed, [Texans for Lawsuit Reform] Board members Leo Linbeck, Richard Trabulsi and Richard Weekley had themselves filed over 60 lawsuits either personally or as business owners."

Texans for Lawsuit Reform Board Members

In April 1995, Texans for Lawsuit Reform (TLR) helped lobby for legislation that capped punitive damages, limited governmental and professional liability, undermined joint and several liability and decimated Texas' Deceptive Claims Practices Act.[18]

Yet at the time this legislation passed, TLR Board members Leo Linbeck,[19] Richard Trabulsi and Richard Weekley had themselves filed over 60 lawsuits either personally or as business owners. Between 1978 and 1995, Leo Linbeck's construction company was the plaintiff in at least 37 lawsuits. In one suit, which was settled confidentially, his company sued its own insurance company for triple damages stemming from the deaths of three workers in a construction accident. In another case, settled in November 1988, Linbeck sued for punitive damages.

By 1995, Board member Richard Trabulsi had also filed suit numerous times. In 1986, as the owner of Richard's Liquor and Fine Wines, Trabulsi sued Walgreen's to force it to stop selling alcohol in Texas. He also filed a personal-injury suit against his company in which the company prevailed. He told the *Houston Post*, "I have had access to the courts a number of times I had forgotten."[20] As of 1995, TLR President and co-founder Richard Weekly, head of Weekley Properties and Weekley Development and a partner of David Weekley Homes, had sued six times; his companies had sued 14 times.[21]

W.V. Supreme Court Justice Richard Neely

"In 1986, [West Virginia Supreme Court Justice Richard Neely] reportedly sued TWA because his bags arrived 70 minutes late. He demanded $38,000, $3,000 of which was a 'speaker's fee' for telling other passengers about the delay."

In January 1994, West Virginia Supreme Court Justice Richard Neely testified before the New Jersey Senate Commerce Committee as it considered bills designed to abolish the state's tort system. Appearing as a paid spokesman for the corporate front-group, New Jersey Citizens Against Lawsuit Abuse, Neely attacked every player in the civil justice system, from lawyers to judges to injured victims who sue.

Those pronouncements were surprising given Neely's personal history with the civil justice system. In 1986, he reportedly sued TWA because his bags arrived 70 minutes late. He demanded $38,000, $3,000 of which was a "speaker's fee" for telling other passengers about the delay. Three years later, the case settled for $12,500. In 1993, Neely sued Goodyear Tire after a wheel fell off his father's Cadillac. He sought $49,000 that included $2,000 for himself for five-hours worth of telephone calls to his parents. As Neely testified before the New Jersey Senate, the case was dismissed.[22]

Citizens for a Strong Ohio Advisory Board Member R. Emmett Boyle

In 1996, the Ohio Chamber of Commerce lobbied for a package of laws that made it more difficult or impossible for injured Ohio citizens to sue wrongdoers and be fairly compensated for their injuries.[23] On August 16, 1999, the Ohio Supreme Court struck down this package of laws in its

entirety, calling it "openly subversive of the separation of powers and, in particular, of the judicial system" established by the Ohio Constitution. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451 (1999). During the 2000 elections, Citizens for a Strong Ohio, a group created by the Ohio Chamber of Commerce,[24] spent an estimated $5 million to oust Supreme Court Justice Alice Robie Resnick, who wrote the *Sheward* decision.[25]

Yet when it comes to his own company, Citizens for a Strong Ohio Advisory Board Member R. Emmett Boyle does not hesitate to sue. In 1995, Boyle's company, Ormet Primary Aluminum Corporation, sued Certain Underwriters at Lloyd's of London, Employers Insurance of Wausau, Globe Indemnity Company and Home Indemnity Company, seeking coverage for environmental contamination at its Hannibal, Ohio reduction facility and remediation costs. After five years of litigation, the Ohio Supreme Court upheld the lower court's decision to throw the case out, finding that the company had known it was liable for the contamination yet waited 16 years before notifying its insurers. *Ormet Primary Aluminum Corporation v. Employers Insurance of Wausau et al.*, 88 Ohio St.3d 292 (2000).

"When it comes to his own company, Citizens for a Strong Ohio Advisory Board Member R. Emmett Boyle does not hesitate to sue."

CORPORATE HYPOCRITES

The following corporations have funded or are members of either national or state organizations that advocate "tort reform." Tort reforms are always aimed at curbing litigation by sick and injured consumers against corporations, hospitals and other wrongdoers. Such "reforms" rarely affect "business-to-business" litigation, leaving corporations with unfettered use of the courts to obtain compensation for their commercial losses from trademark infringements, breach of contract, patent infringements, unfair completion or a host of other commercial claims. Sometimes the targets of their lawsuits are much smaller businesses or even consumers. The following are a few examples:

Aetna Casualty & Surety Company

From the 1970s through the 1980s, Aetna was an outspoken leader in efforts to push for tort restrictions and to create juror

scorn for trial lawyers and lawsuits. In the 50s, 60s and 70s, Aetna was among several insurance companies that had launched direct advertising assaults on the civil jury system. These ads were so misleading that in the 1978 case, *Quinn v. Aetna Life and Casualty Co.*, 409 N.Y.S.2d 473, the New York Supreme Court found that two Aetna ads could convince some jurors to reduce arbitrarily personal injury awards. The court held that these ads "violate[d] the state public policy against jury tampering, unduly burden[ed] plaintiffs' right to an impartial jury, and distort[ed] the trial process by providing otherwise inadmissible insurance evidence..."

Yet Aetna has not hesitated to use the civil jury system when it suits itself, in particular to recoup its own insurance payouts. For example, in 1998, Aetna sued to recover money it had paid to its customer, Merchants Company, for thefts it claimed were caused by lax security by another company, Pendleton Detectives. Aetna went before a jury, which awarded Aetna $174,000. The verdict was upheld on appeal. *Aetna Casualty & Surety Co. v. Pendleton Detectives, Inc.*, 182 F.3d 376 (5th Cir.1999).

"In the early 1990s, Anheuser-Busch sued a small publishing company over a parody advertise-ment for 'Michelob Oily' beer published in ***Snicker*** magazine in 1989."

Anheuser-Busch, Inc.

In the early 1990s, Anheuser-Busch sued a small publishing company over a parody advertisement for "Michelob Oily" beer published in *Snicker* magazine in 1989. The company alleged "trademark infringement" and "unfair competition." *Anheuser-Busch, Inc. v. Balducci Publications et al.*, 28 F.3d 769 (8th Cir.1994), *cert. denied*, 513 U.S. 1112 (1995). Anheuser-Busch won the case but still paid the publisher $10,000 for the negative and paste-up sheet of the ad and all remaining copies of the magazine.[26]

Eastman Kodak Company

Eastman Kodak holds a number of patents and does not hesitate to sue when it believes its patents are being infringed upon. For example, in 1990, Eastman Kodak sued Goodyear Tire and Shell Oil for patent infringement over a process that increased the molecular weight of polyester. The jury awarded Kodak and its co-plaintiff $12 million. *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, Civ-2-90-221

(E.D. Tenn.1995). In 1993, Eastman Kodak filed another patent infringement case against Sony for use of a magnetic recording system used in VCR machines, camcorders and other products.[27]

Eli Lilly & Co.

From 1995 to 1997, Ely Lilly filed three separate lawsuits — two for patent infringement and one for additional civil claims — against Biochimica Opos, a manufacturer of bulk pharmaceutical chemicals for generic drug companies. The suits concerned the production and sale of an antibiotic drug. *Eli Lilly & Co. v. American Cyanamid et al*., 66 F. Supp.2d 924 (S.D. Ind. 1999); *Eli Lilly & Co. v. Roussel Corp. et al.*, 23 F.Supp.2d 460 (U.S. Dist. Ct. NJ 1998); *Eli Lilly & Co. v. American Cyanamid et al*., 896 F.Supp.851 (S.D. Ind. 1995). The companies settled all three cases in January 2000. Under the settlement agreement, Ely Lilly received $110 million.[28]

"In 1998, Enterprise Rent-A-Car began litigation against Rent-A-Wreck – a company 25 times smaller than Enterprise – over Enterprise's trademarked phrase, 'We'll Pick You Up.' Rent-A-Wreck had used radio ads that contained the phrase 'And of course, they'll pick you up.'"

Enterprise Rent-A-Car

In 1998, Enterprise Rent-A-Car began litigation against Rent-A-Wreck — a company 25 times smaller than Enterprise — over Enterprise's trademarked phrase, "We'll Pick You Up." Rent-A-Wreck had used radio ads that contained the phrase "And of course, they'll pick you up." Later, after a purported settlement between the companies, Enterprise tried to stop Rent-A-Wreck from obtaining a trademark for the phrase, "We'll Give You A Lift." *Enterprise Rent-A-Car Co. v. Rent-A-Wreck of America*, 98-CV-592 (E.D. Mo.1999). In 2000, Enterprise sued Rent-A-Wreck for civil contempt for using "We'll Give You a Lift." The contempt motion was dismissed.[29]

Exxon Corporation

Major corporations like Exxon support laws to limit the ability of average consumers to sue their insurance companies when those companies unfairly deny claims. But when Lloyds of London refused to pay Exxon $250 million for losses it suffered as a cargo owner resulting from the Valdez oil spill in Alaska, Exxon did what all consumers should have the right to

do. Exxon sued its insurance company. In this case, Exxon won. *Exxon Corp. v. Certain Underwriters At Lloyds*, No. 93-40252 (Harris County Dist. Ct., Tex., April 8, 1996).

Exxon has used the courts for other purposes well. For example, in August 1998, Exxon sued Mobil Oil Corp. for patent infringement involving a catalyst that makes better plastics. *Exxon Corp. v. Mobil Oil Corp*., 1998 U.S. Dist. LEXIS 17555 (S.D. Tex.). A jury awarded Exxon $171 million and a judge issued an order prohibiting Mobil from infringing on Exxon's patent.[30]

Ford Motor Company

"Ford is seeking over $100,000 from each of the 95 companies and individuals named as defendants who registered domain names like 'fordsucks.com' and '57tbird.com.'"

The company that now finds itself embroiled in massive amounts of litigation involving Explorers and Firestone tires has joined efforts to limit consumer lawsuits. But in August 1999, when student and Mustang enthusiast Robert Lane posted internal Ford documents — which he had received anonymously — on the Internet, Ford immediately sued Robert Lane. Ford's request for a temporary injunction was denied as a violation of the First Amendment. The court, however, did restrict Lane's use of the documents and other material copyrighted by Ford. *Ford Motor Co. v. Lane*, 67 F.Supp.2d 745 (E.D. Mich.1999). As of May 2000, the case was still pending.

In addition, in February, Ford won a temporary injunction against a Cleveland man halting sales of 52 domain names containing the word, "Ford," on the Ebay website. In another lawsuit filed in March, Ford is seeking over $100,000 from each of the 95 companies and individuals named as defendants who registered domain names like "fordsucks.com" and "57tbird.com."[31]

GEICO

Aside perhaps from the tobacco industry, there has been no industry that has pushed harder for laws that restrict injured consumers' rights to sue than the insurance industry. This year, GEICO teamed with three other insurance companies — Allstate, Progressive and New York Central Mutual Fire Insurance Company — to file a $60 million civil suit against a

group of doctors, chiropractors and management companies alleging violations of RICO, common-law fraud and other claims. *Progressive v. Advanced Diagnostic*, No. 601112-00 (N.Y. Super. Ct., March 14, 2000). The case has yet to be resolved.

Honeywell Inc.

In 1994, Honeywell filed suit against American Flywheel Systems, Inc., claiming that American Flywheel had failed to pay the $2 million it owed relating to work on a flywheel battery. American Flywheel countersued and won, with the jury rejecting Honeywell's claims and awarding Flywheel $38 million on its counterclaims. *Honeywell Inc. v. American Flywheel Systems Inc*., CV 94-14428 (Marcopia Co. Super. Ct., Ariz.1996).

"Johnson & Johnson, makers of Mylanta in partnership with Merck, sued Smithkline Beecham Corp. for false advertising regarding the nutritional benefit of Tums over Mylanta."

Johnson & Johnson

Johnson & Johnson, makers of Mylanta in partnership with Merck, sued Smithkline Beecham Corp. for false advertising regarding the nutritional benefit of Tums over Mylanta. The court dismissed Johnson & Johnson's complaint. *Johnson & Johnson-Merck Consumer Pharmaceuticals Co. v. SmithKline Beecham Corp.*, 1991 U.S. Dist. LEXIS 13689 (S.D.N.Y.1991). The lower court's decision was upheld on appeal. *Johnson & Johnson-Merck Consumer Pharmaceuticals Co. v. SmithKline Beecham Corp*., 960 F.2d 294 (2nd Cir.1992).

In 1995, Johnson & Johnson/Merck filed another false advertising suit against SmithKline over claims that Tums and Tagamet HB were superior to Pepcid AC. The court issued a preliminary injunction, ordering SmithKline to suspend the ads.[32] In 1999, Johnson & Johnson sued Bausch & Lomb for making claims about the superiority of its extended wear contact lenses.[33]

Pfizer Inc.

In early November 1999, Pfizer filed suit to stop a merger between American Home Products and Warner-Lambert just hours after it proposed a competing bid for Warner-Lambert. *Pfizer Inc. v. Warner-Lambert Co.*, No. 17524 (Del. Ch. Ct., Nov. 4, 1999). Later that month, Pfizer filed another suit against Warner Lambert and AHP, this time claiming that Warner-Lambert violated an agreement that prohibited Pfizer from moving to acquire Warner-Lambert as long as the two companies marketed the cholesterol-reducing drug, Lipitor, together. Warner Lambert then sued Pfizer to end the Lipitor marketing agreement.[34]

In January 2000, Warner-Lambert agreed to explore Pfizer's $80 billion merger offer. In June, Pfizer completed its merger with Warner-Lambert.[35]

Riddell Sports, Inc.

On May 2, 1995, David Mauer, Chief Executive Officer of Riddell Sports, Inc., argued before a Senate subcommittee that restricting the rights of injured victims to sue was necessary to counter the "skyrocketing cost of insurance premiums and other expenditures" associated with lawsuits. "Without changes to our legal system," Mauer claimed, "no American company will find it economically feasible to manufacture football helmets or other equipment used in inherently dangerous sports."[36]

He neglected to mention that in 1994, Riddell itself had two lawsuits pending in New York federal court. The first suit, against Sport Supply Group, concerned ownership of the MAXPRO trademark for football helmets and other equipment under the terms of a licensing agreement. *Riddell Sports, Inc. v. Sport Supply Group*, 1994 U.S. Dist. Lexis 2909 (S.D.N.Y.). The second alleged a scheme to manipulate the price of Riddell stock. *Riddell Sports, Inc. v. Brooks*, 1997 U.S. Dist. Lexis 3621 (S.D.N.Y.).

"On May 2, 1995, David Mauer, Chief Executive Officer of Riddell Sports, Inc., argued before a Senate subcommittee that restricting the rights of injured victims to sue was necessary to counter the 'skyrocketing cost of insurance premiums and other expenditures'... He neglected to mention that in 1994, Riddell itself had two lawsuits pending in New York federal court."

Schutt Sports, Inc.

On March 4, 1997 Julie Nimens, President and Chief Executive Officer of Schutt Sports, Inc., testified before the Senate Commerce Committee about the need for a federal product liability law that would have placed severe restrictions on the rights of consumers to sue manufacturers of defective products. She alleged that litigation and the threat of "frivolous lawsuits" stifled innovation, hurting businesses and consumers.[37]

Nimens failed to mention — until Senator Ernest Hollings (D-S.C.) brought it up — that in 1978, Schutt Sports sued Riddell, Inc., claiming that the protective face masks on Riddell helmets too closely resembled Schutt's and that Riddell copied its sizing specifications. The case was thrown out, with the court noting "seldom have we seen a lawsuit as unwarranted and frivolous as this one." *Schutt Manufacturing v. Riddell, Inc*., 673 F.2d 202, 204 (7th Cir.1982). Moreover, in 1989, Schutt sued Riddell over an agreement with the National Football League in which Riddell provided free helmets to players in exchange for their displaying Riddell's logo during games. The trial court found that Schutt failed to produce sufficient evidence to support any of its state and federal claims. *Schutt Athletic Sales Co. v. Riddell, Inc*., 727 F.Supp.1220 (N.D. Ill.1989).

"[I]n 1978, Schutt Sports sued Riddell, Inc., claiming that the protective face masks on Riddell helmets too closely resembled Schutt's and that Riddell copied its sizing specifications. The case was thrown out, with the court noting 'seldom have we seen a lawsuit as unwarranted and frivolous as this one.'"

CONCLUSION

In 1975, Indiana lobbyist Frank Cornelius, whose clients included the Insurance Institute of Indiana, helped secure passage of a $500,000 cap on medical malpractice awards and elimination of all damages for pain and suffering in Indiana. As he wrote in the *New York Times* on October 7, 1994, he now "rue[s] that accomplishment." Beginning in 1989, Frank Cornelius experienced a series of medical catastrophes that resulted in his wheelchair confinement, respirator-assisted breathing and constant physical pain.

When he turned to the Indiana courts to provide a remedy, to compensate him for his massive injuries and hold the negligent health care providers accountable, the law was no

longer there for him. The Indiana legislature had taken his rights away. Though his medical expenses and lost wages amounted to over $5 million, his claims against both the hospital and physical therapist at fault settled for a mere $500,000 — the limit on damages for a single incident of malpractice.[38]

In some ways, the hypocrites of "tort reform" are an amusing list. But tragedy for them lurks just around the corner, just like it did for Frank Cornelius.

NOTES

1. Information relating to specific corporate sponsorship of ATRA and the Manhattan Institute is based on John Gannon's article, "Tort Deform – Lethal Bedfellows" (Essential Information, 1995), citing Chesebro, Kenneth, "Galileo's Retort: Peter Huber's Junk Scholarship," *Amer. Univ. L. Rev.*, Volume 42, No. 4 (Summer 1993). Very few state "tort reform" groups publicly list their corporate members. One of the few that does, with the most comprehensive public list available, is New Yorkers for Civil Justice Reform. NYCJR's list can be found at the organization's website, http://www.nycjr.org/support.html.

2 Burger, Timothy, "Bush sued Enterprise Rent-A-Car over daughter's fender bender," *Daily News*, August 26, 2000; "Bush sued rental agency over fender bender," *Houston Chronicle*, August 26, 2000.

3 Martin, John, "ABC takes aim at the 'blame-game,'" *Providence Journal-Bulletin*, October 26, 1994. *See*, Stossel, John, "The Blame Game: Are We a Country of Victims?" *ABC News*, October 26, 1994.

4 Rose, Ted, "Laissez-Fair TV," *Brill's Content*, (March 2000), found at www.brillscontent.com/features/stossel_0300.html, *Cato Policy Report*, (September/October 1999), found at www.cato.org/pubs/policy_report/v21n5/catoevents.html; Stossel, John, "Pandering to Fear," keynote address at Manhattan Institute conference, January 20, 1999, listed at http://www.manhattan-institute.org/html/past_events_1999.htm; Solomon, Norman, "Media Moguls on Board," *Extra!*, (January/February 1998), found at www.fair.org/extra/9801/cato-media-moguls.html; Warren, James, "Born-Again Free-Marketer," *Chicago Tribune*, December 4, 1994.

5 Lacy, Mike, "ABC report looks at system of litigation," *Tampa Tribune*, January 2, 1996; Martin, John, "ABC takes aim at the 'blame-game,'" *Providence Journal-Bulletin*, October 26, 1994. *See also*, Hoffman, Ken, "Talking on the radio and making some (air)waves," *Houston Chronicle*, January 3, 1996; Slewinski, Christy, "Stossel Contemptuous In Trouble With Lawyers," *Daily News*, January 2, 1996. Notably, on the August 11, 2000 edition of ABC's "20/20," Stossel was forced to make an apology for fabricating data that disparaged the benefits of organic food. Barringer, Felicity and Jim Rutenberg, "Apology Highlights ABC Reporter's Contrarian Image," *New York Times*, August 14, 2000.

6 Keller, Amy, "Judge Strikes Down Award in Santorum Case," *Roll Call*, January 10, 2000; White, Ben, "POLITICS; For a Senate Champion of Malpractice Damage Limits, a Controversy Close to Home," *Washington Post*, December 25, 1999.

7 "Wife's Malpractice Win Is Jury Award Pa. Senator Doesn't Mind," *Commercial Appeal*, December 15, 1999.

[8] Keller, Amy, "Karen Santorum Wins Lawsuit Va. Jury Gives Senator's Wife $350,000 Victory," *Roll Call*, December 13, 1999.

[9] *Id.*

[10] "Santorum's Views On Litigation Questioned," *Pennsylvania Law Weekly*, December 20, 1999.

[11] "Lawsuit critic's wife wins medical claim," *Telegraph Herald*, December 15, 1999.

[12] Keller, *supra* note 6.

[13] Kizzia, Tom, "Phillips Weathers Whitmore's Strong Challenge," *Anchorage Daily News*, November 6, 1996; Kizzia, Tom, "Tort Reform-Backer Is A Plaintiff Himself," *Anchorage Daily News*, November 1, 1996.

[14] *See, e.g.*, Sterling, Cornelius, "When juries give plaintiffs outlandish awards, little folks pay," *Houston Chronicle*, May 23, 1993; Piller, Ruth, "Fledgling group takes on abuse of lawsuits," *Houston Chronicle*, February 28, 1993; Houston CALA website, http://www.calahouston.org/reform95.html.

[15] "Tort reform lobbyists have litigious history," *Austin American-Statesman*, April 13, 1995.

[16] Argenio, Art, "Argenio: I Have Never Filed A Frivolous Lawsuit," *Stuart News/Port St. Lucie News*, August 30, 2000; Rosynsky, Paul, "Flier Details '93 Suit In Attack On Argenio," *Stuart News/Port St. Lucie News*, August 30, 2000.

[17] Lyons, Tom, "The truth doesn't always lie somewhere in the middle," *Sarasota Herald-Tribune*, October 24, 2000; Barrouquere, Brett, "State Rep. Flanagan Settles Negligence Suit," *Sarasota Herald-Tribune*, September 1, 1998; Russell, Gordon, "Paradox? Reformer Wages Suit," *Sarasota Herald-Tribune*, March 13, 1998.

[18] Patterson, Kelly, "More tort reform needed, businessman says," *Dallas Morning News*, March 9, 2000; Glaberson, William, "Damage Control: A special report; Some Plaintiffs Losing Out in Texas War on Lawsuits," *New York Times*, June 7, 1999; Texans for Lawsuit Reform website, http://www.tortreform.com.

[19] Linbeck headed the commission that investigated the November 18, 1999, Texas A&M bonfire collapse. He said that liability questions "did not figure into his commission's work. The commission, however, appeared to let off the hook two private entities that legal experts say also could face lawsuits, especially since potential damages from A&M are so limited." Lee, Christopher, "Despite commission, Aggies still dwell on deadly bonfire collapse," *Dallas Morning News*, May 4, 2000.

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